STOCK EXCHANGE PRACTICES

HEARINGS

BEFORE THE

COMMITTEE ON BANKING AND CURRENCY
UNITED STATES SENATE

SEVENTY-THIRD CONGRESS

SECOND SESSION

ON

S.Res. 84

(72d CONGRESS)

A RESOLUTION TO INVESTIGATE PRACTICES OF STOCK EXCHANGES WITH RESPECT TO THE BUYING AND SELLING AND THE BORROWING AND LENDING OF LISTED SECURITIES

AND

S.Res. 56

(73d CONGRESS)

A RESOLUTION TO INVESTIGATE THE MATTER OF BANKING OPERATIONS AND PRACTICES, THE ISSUANCE AND SALE OF SECURITIES, AND THE TRADING THEREIN

PART 8

CHASE SECURITIES CORPORATION
(Continued)

NOVEMBER 23 TO DECEMBER 7, 1933

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STOCK EXCHANGE PRACTICES

THURSDAY, NOVEMBER 23, 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 on yesterday, 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; Murry C. Becker, counsel representing William Fox.

The CHAIRMAN. The subcommittee will come to order. You may proceed, Mr. Pecora.

TESTIMONY OF HARLEY L. CLARKE—Resumed

Mr. PECORA. Mr. Clarke——

Mr. CLARKE (interposing). Mr. Pecora, might I at this time present those two checks that you requested yesterday?

Mr. PECORA. All right.

Mr. CLARKE. Here are the originals for your inspection.

Mr. ROGERS. Mr. Pecora, Mr. Clarke having shown you the original checks, might I now show you these photostats and have them substituted for the original checks for the purpose of your record, so that we might have the originals returned to us?

Mr. PECORA. Yes. Now, Mr. Clarke, do you recall that in the course of the examination of Mr. Dodge yesterday, testimony was introduced with respect to a telephone conversation it was claimed you had with Harry L. Stuart on April 8, 1930, of which you made a certain memorandum?

Mr. CLARKE. How was that?

Mr. PECORA. No; this was not a telephone conversation. It was a conversation that you had in your office with Stuart. And in the course of that conversation the folowing colloquy occurred between

you and Mr. Stuart, according to the memorandum you made of such conversation:

STUART. I have been out on the end of a springboard and told to jump off.
CLARKE. What do you mean?
STUART. Well, for one thing, Blumenthal and Greenfield knew what was going on and I didn't.
CLARKE. Well, if they got any information they didn't get it from me. If you want to play ball with me you tell me what you have on me, and if you have anything on me I will come clean with you.

What did you mean by that statement to Stuart, Mr. Clarke?

Mr. CLARKE. Simply that Mr. Stuart stated to me he felt that he had stepped aside with Mr. John Otterson in their endeavor to purchase the Fox Film Co. from Mr. William Fox, and permitted me to do so. Mr. Fox came to me and said he wished to sell his company, that he had finished with his endeavor to finance it with certain bankers and Mr. Stuart. Mr. Stuart had a preferential contract for the financing of Fox films, and there was every wish and endeavor on my part to carry out that preferential contract if he could do the financing. In fact, it was imperative that some one do it after the purchase was made. Mr. Stuart felt, and so stated, that I was very anxious to give him none of the financing, and hence my statement.

Mr. PECORA. Well, does that explain fully your statement to Mr. Stuart:

If you have anything on me you tell me what you have on me, and if you have anything on me I will come clean with you?

Mr. CLARKE. Yes, sir; he told me that he knew positively I was negotiating with others bankers for the sale of those securities. I told him I was not, which was the truth.

Mr. PECORA. Now, have you produced here this morning a canceled check made by you on the Chase National Bank, dated August 1, 1929, payable to the order of William Fox, for $1,625,000?

Mr. CLARKE. Yes, sir.

Mr. PECORA. I show you what purports to be a photostatic reproduction of such check, together with the endorsements thereon. Will you look at its and tell me if that is a true and correct copy of the original check.

Mr. CLARKE. That is a copy of the original check, which I have here.

Mr. PECORA. Is that one of the two checks that you referred to yesterday in the course of your testimony as being the checks agreegating $2,000,000 which you gave to William Fox on August 1, 1929?

Mr. FOX. Yes, sir.

Mr. PECORA. Mr. Chairman, I offer that photostatic reproduction of the check in evidence, and ask that it may be made a part of the record.

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

(A photostatic reproduction of a check payable to the order of William Fox, on the Chase National Bank of the city of New York, dated Aug. 1, 1929, for $1,625,000, was marked "Committee Exhibit No. 167, Nov. 23, 1933", and will be found on page 3719.)

Mr. PECORA. Mr. Clarke, have you produced the second one of those checks referred to in your testimony yesterday, in the form of a check drawn by you on your account in the Chase National Bank, dated August 1, 1929, payable to the order of William Fox, for $375,000?

Mr. CLARKE. Yes, sir. And I have the original of it here.

Mr. PECORA. I show you what purports to be a photostatic reproduction of such check, with its endorsements. Will you look at it and tell me if it is a true and correct copy thereof?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Mr. Chairman, I offer it 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 photostatic reproduction of a check drawn to the order of William Fox, on the Chase National Bank of the City of New York, dated Aug. 1, 1929, for $375,000, was marked "Committee Exhibit No. 168", Nov. 23, 1933, and will be found on page 3719.

Mr. PECORA. There is an endorsement on each one of these checks reading as follows: "For deposit, William Fox." Both of these checks were paid, were they?

Mr. CLARKE. Yes, sir. They were certified checks.

Mr. PECORA. Now, Mr. Clarke, at the time when you gave William Fox those two checks did he give you in exchange for them any check or checks of his?

Mr. CLARKE. No, sir.

Mr. PECORA. Are you sure of that?

Mr. CLARKE. Yes, sir.

Mr. PECORA. In the course of your testimony yesterday afternoon you told us something about a transaction whereby General Theatres Equipment, Inc., bought back from Bancamerica-Blair Corporation 70,000 stock purchase warrants, which were among the 300,000 that had been issued by Fox Films, Inc., to Halsey, Stuart & Co., and were given to Halsey, Stuart & Co. as a part of the transaction whereby they underwrote the 55 million dollars of debenture notes. Do you remember that?

Mr. FOX. Yes, sir.

Mr. PECORA. In the course of your testimony yesterday on that transaction I believe you testified, in substance, that at the time of the purchase of those 70,000 stock purchase warrants by General Theaters Equipment, Inc., from Bancamerica-Blair Corporation, which purchase was effected some time in May of 1931, the market value of Fox Films stock, to which those warrants referred, was at such a price above $35 a share as to make the price of $1,660,000 that was paid for those warrants by General Theaters Equipment, Inc., on a parity with the market price and value of the warrants. Do you recall that testimony?

Mr. CLARKE. In substance; yes. I referred to the prices that I heard read at the time, and also to the record books of the company, which were produced here for me to look at.

Mr. PECORA. What was that answer?

Mr. CLARKE. I say, I referred to the prices that I had heard mentioned here, and also to the record book which had been furnished

me by someone, which record stated that they were purchased at the market price, or words to that effect.

Mr. PECORA. What was the record book you referred to?

Mr. CLARKE. The minute book of General Theaters Equipment, Inc. Would you have that furnished to me again?

Mr. PECORA. I think I have here a transcript of the record.

Mr. ROGERS. Will some one let me have that minute book again?

(The minute book was produced.)

Mr. PECORA. Will you turn to page 249 of that minute book?

Mr. ROGERS. I have it right here now, Mr. Pecora.

Mr. PECORA. Mr. Clarke, you will notice that in the minutes of the meeting of the board of directors of General Theaters Equipment, Inc., held on May 14, 1931, it appears that the chairman of the meeting stated there had been paid to Bancamerica-Blair Corporation $1,660,000 for warrants to purchase 70,000 shares of class A stock of Fox Film Corporation. The chairman stated that the price paid for the warrants was on a parity with the market price of the class A stock of the Fox Film Corporation at the time. Do you know what the market value of the Fox Film A stock was at the time of this transaction?

Mr. CLARKE. This does not give you the date of the actual purchase.

Mr. PECORA. And can you give us the date of the actual purchase?

Mr. CLARKE. No; I cannot. I think you may have it among the papers you have.

Senator COUZENS. That figured about $22 a share.

Mr. PECORA. And it was above $35. In other words, in order to justify that purchase of those 70,000 warrants for the sum of $1,660,000, the market price of the stock would have had to be at that time about $55 or $57 a share.

Mr. CLARKE. That is correct.

Mr. PECORA. In view of the fact that the warrants entitled the holder to purchase stock at $35 a share?

Mr. CLARKE. That is correct.

Mr. PECORA. Now, do you know what the market price of Fox Film A stock actually was at about that time?

Mr. CLARKE. No; I do not.

Senator COUZENS. You stated yesterday, Mr. Pecora, that during that period of time it ranged from $43 to $56 a share.

Mr. PECORA. No; that was in 1930. This is 1931 I am speaking of now.

Senator COUZENS. I see.

Mr. PECORA. According to the table that we have of the closing market quotations of Fox Film Corporation class A stock from January 1, 1930, to April 30, 1931, which was furnished to us from the files of the Chase Corporation, the highest closing quotation for Fox Film A stock in the month of April 1931 was 33½ and the lowest quotation in that month was 16¾, the high of 33½ having been reached on the 1st of April and on the 6th of April and the low having been reached on the 25th of April. And on the 30th of April 1931 the closing quotation was 20⅛. Now, assuming that to be correct, there was nothing in the market price of the securities in April or May 1931 that justified a purchase of those warrants for any such price, was there?

Mr. CLARKE. That is the date of this meeting, according to that; but my recollection would be that it could not have been in 1931, but in 1930 this stock was purchased. May I have the date of that?

Mr. PECORA. The date of what?

Mr. CLARKE. The date of the purchase.

Mr. PECORA. The only reference in the minute book is embodied in the minutes of the board held on May 14, 1931.

Mr. CLARKE. It does not give the date.

Mr. PECORA. I know; but I assumed when I saw these minutes yesterday that the transaction was reported shortly after it occurred and not a year after, as you now seem to indicate.

Mr. CLARKE. I cannot see why it would have taken until a year later. It states right here they were acquired in April 1930.

Mr. PECORA. Where do you see that?

Mr. CLARKE. I say, they were acquired.

Mr. PECORA. They were acquired by the Bancamerica; yes.

Mr. CLARKE. But my recollection is that within 60 days, or perhaps sooner, they were purchased. There is certainly someone here, with all these details, that can give us the date of that.

Mr. PECORA. Is there anyone here from the Chase Corporation? (No response.)

Mr. CLARKE. The General Theatres records will show.

Mr. PECORA. You have the minute book.

Mr. CLARKE. Yes. All I have is the minute book.

Senator COUZENS. Have you a record of when the check was issued to the Bancamerica?

Mr. CLARKE. That is what I am asking someone to furnish.

Mr. PECORA. Can you not refer us to anything of record which would fix or give the date of the purchase of those 70,000 stock purchase warrants of General Theatres from Bancamerica-Blair Corporation?

Mr. CLARKE. I could if I had the records, but I do not have them. It does not seem to me possible that there is not somebody here, with all these records, who has got the date. It seems to me someone must have it. The record of the payment must be in this room somewhere.

Mr. PECORA. Let us assume that this transaction was consummated a long time prior to May 1931. Will you then explain why it was not reported to the board of directors of the General Theatres Equipment until the 14th of May 1931?

Mr. CLARKE. No; my memory does not tell me why. I am only guessing at it, that it happened that way, from this record. But I distinctly recollect this, that my conversations with the bankers and with our people with reference to the purchase of these warrants—the arbitrage price was paid between the option price of the warrants and the market, or within close range of it. From the information you have given me of the stock market prices, and the record as it appears in the minute book, that would not appear possible——

Mr. PECORA. According to our statement of the closing market quotations of the Fox Film class A stock, January 1, 1930, to April 30, 1931, the highest quotation, closing, on that stock reached within that period of time was 56, which was reached on the 25th of April 1930; that at no time subsequent to June 6, 1930, does it appear that

the stock was quoted above 50 except on September 8, 9, and 10, when it reached 51⅝ and 50⅞. Those 300,000 option warrants were issued to Halsey, Stuart & Co. Do you know how 70,000 of them got into the hands of Bancamerica-Blair, Inc.?

Mr. CLARKE. I assume that they got their portion of the notes they purchased.

Mr. PECORA. They were allied with Halsey, Stuart & Co. in the financing of this $55,000,000 worth of debentures?

Mr. CLARKE. I assume that is the way they got them, but I have no positive knowledge of it; but they were allied with them in the financing; yes.

Mr. PECORA. Did the Bancamerica-Blair executives take up with you as the then president of the General Theaters Equipment the matter of turning in those option warrants?

Mr. CLARKE. They did.

Mr. PECORA. Can you not tell us from your recollection, then, how long after the issuance of those warrants by your company it bought back these 70,000 warrants from Bancamerica-Blair?

Mr. CLARKE. My best recollection is that it happened very shortly after the financing.

Mr. PECORA. Then why was it not reported to the board of directors until May 1931?

Mr. CLARKE. I presume it was an error. Everyone knew about it; the bankers knew about it; all the directors knew about it; and I assume it was simply an error and somebody discovered it and then it was put into the minutes.

Mr. PECORA. Mr. Clarke, I am having an inquiry made by telephone at the office of General Theaters in New York to see if they can give us the date of that transaction. When I get that information I will probably recall you to the stand.

Meanwhile, Mr. Chairman, I would like to suspend the examination of this witness and call Mr. William Fox.

(Witness temporarily excused.)

TESTIMONY OF WILLIAM FOX, WOODMERE, LONG ISLAND, N.Y.

The CHAIRMAN. Do 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. FOX. I do.

Mr. PECORA. Mr. Fox, will you give your full name and address to the reporter?

Mr. FOX. William Fox; Woodmere, Long Island, N.Y.

Mr. PECORA. What is your business or occupation?

Mr. FOX. I am retired, now.

Mr. PECORA. When you were actively engaged in business, what kind of business were you engaged in?

Mr. FOX. The motion-picture business.

Mr. PECORA. Do you know a corporation called the Fox Film Corporation?

Mr. FOX. Yes, sir.

Mr. PECORA. Were you connected with that corporation at any time?

Mr. FOX. I was its president.

Mr. PECORA. For how long a period?

Mr. FOX. From 1915 until April 7, 1930.

Mr. PECORA. Was the corporation organized in February 1915?

Mr. FOX. In February 1915.

Mr. PECORA. Do you also know a corporation known as "Fox Theaters, Inc."?

Mr. FOX. I do, sir.

Mr. PECORA. Were you connected with that corporation at any time?

Mr. FOX. I was its president.

Mr. PECORA. For what period?

Mr. FOX. From its organization in November 1925 until April 7, 1930.

Mr. PECORA. On April 7, 1930, did you enter into a transaction with General Theatres Equipment, Inc., whereby you sold to that company certain stock which you owned in both Fox Film, Inc., and Fox Theaters, Inc.?

Mr. FOX. I was forced to enter into that under duress. I had not any choice except to sell out.

Mr. PECORA. Who forced you?

Mr. FOX. A group of bankers in New York.

Mr. PECORA. Will you not identify them more specifically?

Mr. FOX. Halsey, Stuart & Co., Mr. Albert Wiggin, of the Chase Bank; Mr. John Otterson, of the American Telephone & Telegraph Co.——

Senator ADAMS. Pardon me a moment. Is your attorney with you?

Mr. FOX. Yes, sir.

Senator ADAMS. May I have his name?

Mr. BECKER. My name is Murry C. Becker.

Mr. FOX (continuing). Mr. Harley L. Clarke, and 11 bankers in New York to whom Fox Film was indebted. They all formed a conspiracy to drive me out of that business.

Senator COUZENS. What was the alternative to your selling out?

Mr. FOX. Driving the company into receivership and destroying the property owned by the stockholders of the company.

Senator COUZENS. You had to sell out or suffer that alternative; is that correct?

Mr. FOX. I did not mind suffering the alternative, but I did not want to see the stockholders of these companies suffer as a result of my not selling out.

The CHAIRMAN. You had to sell out or pay up, did you?

Mr. FOX. I was prepared to pay up, but those to whom we owed the money would not take it. They said they did not want any money; they just wanted a receiver appointed for the company. The creditors were offered their money, but they would not take it.

Senator COUZENS. That is the story you gave Upton Sinclair, is it?

Mr. FOX. That is the story I gave Upton Sinclair; yes, sir. And not only did I give him that story, but of course we have all the documents to prove that that story was correct.

Senator TOWNSEND. Why would they not receive the money? Under what conditions could they force you to keep the money and

not pay them? If you owed them the money and you tendered them the money, how could they refuse to receive it?

Mr. Fox. The money was to be tendered when the new financing was completed by the new banking group. When they furnished the money these funds were to be used to pay the company's creditors. They would not allow a banking firm to do the financing.

Mr. PECORA. Without giving the committee all of the details that you gave Upton Sinclair and which he gave out, published in book form, can you briefly and concisely give this committee a statement of the facts by which, according to your statement here this morning, a conspiracy was formed to obtain control of these two companies called the Fox Film and Fox Theaters?

Mr. Fox. Mr. Pecora, may I go to my grip? I would like to get copies of some letters that I would like this committee to hear in connection with it. That will give you a slight indication.

Mr. PECORA. Your attorney has gone after them.

Mr. Fox (after searching through papers in grip referred to). I thought I had those letters with me, but I find I did not bring them.

The CHAIRMAN. Mr. Fox, you said that the Fox Film Corporation was indebted to various banks?

Mr. Fox. Yes, sir.

The CHAIRMAN. And you were forced to some settlement. Do you remember what the amount of the indebtedness was?

Mr. Fox. An amount a little less than $7,000,000.

The CHAIRMAN. That was the total indebtedness?

Mr. Fox. To those 11 banks.

Senator ADAMS. What amounts were due, or had they become due?

Mr. Fox. They had become due—they were not all due, but they were coming due.

Mr. PECORA. Bear in mind that whatever statements you are making before this committee now are made under oath, and will you give this committee a summary of the facts which led up to the formation of what you call this conspiracy and the consummation of its purposes?

Mr. Fox. Mr. Pecora, I believe what I would like to do is, if you will permit me, to please make this book [indicating] a part of the Senate record.

Mr. PECORA. You mean the book written by Upton Sinclair?

Mr. Fox. Yes.

Mr. PECORA. Oh, no.

Mr. Fox. I would have to go over it page by page to answer your questions, sir. This gives the story in detail.

Mr. PECORA. If the facts that led to the financial embarrassment to which you have already alluded are so detailed in character that it would require that book of several hundred pages to narrate them——

Mr. Fox. I do not think you can narrate this conspiracy if you had 10 books that size.

Mr. PECORA. Can you not do this for the benefit of the committee: state what the loans were that were outstanding which created this financial embarrassment; how you were unable to extricate yourself from that embarrassment; and what was done? Can you not give us that concisely?

Mr. Fox. Of course you know, Mr. Pecora, you just gave me a subpena to appear here, without telling me what you were going to ask me, and I thought I had brought a grip of papers along, but I find now that I have taken the wrong grip and I have none of my papers with me.

Mr. PECORA. Can you not tell us from memory?

Mr. Fox. I would not like to do that, because it is so well confined to documentary records that I think you would rather have them than my memory. There is a balance sheet that gives you every debt the company has, and I would not like to rely on my memory for that.

Senator TOWNSEND. How soon could you get your grip here that you left at home?

Mr. Fox. I could get it here by tomorrow morning, I presume. I could get it on the next train if I can have somebody bring it here.

Mr. PECORA. Can you arrange for that?

Mr. BECKER. Yes, surely.

The CHAIRMAN. It is strange that you would leave the only one of value——

Mr. Fox. The wrong grip was handed to me. There is nothing strange about it. I was not obliged to bring any paper here this morning. I did not know that I was to be examined on this subject. I did not know what the examination was for, or I would have been happy to bring them along.

Mr. PECORA. Did you not think the examination related to General Theaters Equipment and transactions with Fox Film and Fox Theaters?

Mr. Fox. Yes; I knew you were going to ask about that.

The CHAIRMAN. Can you not give us a general picture of the situation at that time, from your recollection of it, the amount of debts and obligations you had to meet? You knew what arrangements you had made to meet them and you knew what was demanded. Can you not give us an idea about that?

Mr. Fox. If you want me to do it from memory, sir, I will do it.

Mr. PECORA. Do it as best you can from memory. Give us a general idea, and then if it is necessary to reinforce or fortify or substantiate the statements with records you will have every opportunity to do that.

Mr. Fox. Now, sir, how far back do you want me to go? Do you want me to go back to the original purchase of the Loew shares and the difficulty we had with the Department of Justice in connection with the consent we had to obtain?

Mr. PECORA. If they are proper elements or component parts of the whole picture; but do not go into unnecessary detail about it. Give us a general statement about it, Mr. Fox, according to the best of your recollection.

Mr. Fox. Yes, sir.

Mr. BECKER. May I talk to Mr. Fox?

Mr. PECORA. Certainly.

Mr. Fox (after conference with his attorney). Some time during the latter part of 1928 I was informed that there were for sale the shares of the Loew Co. belonging to the family of Marcus Loew, who had died. I was told that 400,000 of those shares could be purchased for $50,000,000.

Senator ADAMS. Shares in what company?

Mr. FOX. In the Loews, Inc. Realizing that these shares were of a competing company, I took the precaution to call on the then Assistant Attorney General to inquire as to whether or not the Government would permit the acquisition of those shares by the Fox Co.

Senator COUZENS. Who was he?

Mr. FOX. Mr. Donovan.

Senator COUZENS. Mr. William Donovan?

Mr. FOX. I think it was William Donovan. I had made a visit with him. He was then in New Mexico as chairman of one of the dam committees. I had left a dictated memorandum with Mr. Donovan on the matter and he suggested sending a copy of that memorandum to his assistant, Mr. Thompson, and also mailing a copy to my attorneys in New York, and that they could meet and talk the matter over and perhaps find a way as to how these shares could be acquired. I went to California so that I would be near by when he received word as to whether or not we could make the acquisition. A month had elapsed and no word had come, and I came back to New York, and on the day that I arrived in New York I was told by my attorney that that morning he had had a conference with Mr. Thompson of the Department of Justice—of the Attorney General's office, rather—and that Thompson had told him it was all right for us to acquire the shares.

Mr. PECORA. Did you thereafter acquire those shares?

Mr. FOX. Pursuant to that the Fox Theatres Corporation bought 400,000 shares of stock and paid the Loew family $50,000,000.

Mr. PECORA. Cash?

Mr. FOX. By check, sir. Prior to paying for it, we naturally had to have the funds to do it with.

The CHAIRMAN. It was the Fox Theatres Corporation that purchased them?

Mr. FOX. Yes, sir.

Mr. PECORA. Did those 400,000 shares of Loews, Inc., represent management and control?

Mr. FOX. No; there was a million, three or four hundred thousand shares outstanding.

Mr. PECORA. Did they represent management and control?

Mr. FOX. The family was controlling the company with those shares.

Mr. PECORA. On the passing of those shares to Fox Theatres, the latter company succeeded to that management and control?

Mr. FOX. It never exercised its control over the Loew Co. It was necessary to raise the money to make this acquisition, and I called on Mr. Bloom, president of the Western Electric Co., which is almost a wholly owned subsidiary of the A. T. & T., and I informed him that the Theatres Co. was desirous of making this acquisition, that I would like the Telephone Co. to loan the Theatres Co. or the Film Co. $15,000,000 to help them to acquire this stock. I explained to him that we had competition in this acquisition, that the Warner Bros. were negotiating for the purchase of these shares. At this time Warner Bros. and the Telephone Co. were in a controversy that had been carried on through a period of a year or two, and Mr. Bloom had informed me that the one thing that the Telephone Co.

did not want to happen was to have Warner Bros. make this acquisition; and on that day, in a conversation that lasted less than a half hour, $15,000,000 was loaned to us by the Telephone Co. to help us acquire these shares. I had explained the details of the acquisition to Mr. Bloom, the price we were paying, and all of the details that went with it.

Mr. PECORA. How did the price that you were paying for the Loews, Inc., shares compare with the market price of those shares at the time?

Mr. FOX. Oh, I believe they were more than double the market price of the shares at the time. I do not believe the stock was then selling for more than around $60 a share. We paid $125 a share for it.

I then proceeded to call on Mr. Harry L. Stuart, of Halsey, Stuart & Co., who was familiar with the fact that I was negotiating for the acquisition of the Loew shares, and informed him that the Loew Co. was prepared to sell the stock and that the Telephone Co. was anxious for me to acquire it, and the Telephone Co. was loaning $15,000,000 towards the acquisition, and that the Telephone Co. was likewise agreeing to support me by a further loan; I believe it was about $35,000,000 additional money.

Mr. PECORA. Was that $35,000,000 with the $15,000,000 that the Telephone Co. loaned you the money that you used, or that the Fox Theatres used, to buy the stock in Loew's, Inc., from the Loew family?

Mr. FOX. That $15,000,000, plus $35,000,000 more that we borrowed either from Halsey, Stuart or elsewhere or had cash in bank, made it possible to make the acquisition.

Mr. PECORA. And the acquisition was made possible by borrowed money almost entirely?

Mr. FOX. The acquisition was made possible by borrowing most of the money.

Mr. PECORA. Yes.

Mr. FOX. Borrowing most of the money. Halsey, Stuart & Co. helped the acquisition as bankers for the companies by loaning the company $10,000,000. Well, they loaned the company $12,000,000, but $2,000,000 of it was being borrowed to pay to them for the retirement of certain Fox obligations that were outstanding which they had acquired in the market for less than the price that they had originally sold them to the public for.

After a thorough explanation of the purpose in acquiring the stock and the manner in which the funds were being raised to buy these shares, Halsey, Stuart and the telephone company consented that the transaction should be made and advised it strongly.

Within a few days after we had acquired these 400,000 shares and paid $50,000,000 Mr. Harry Stuart called on me and said that I had made a terrific blunder, and I inquired how, and he said, "You know that 400,000 shares is less than one third of the number of shares outstanding in the Loew Co. What is there to stop the Loew family from going right into the market and repurchasing 400,000 shares of stock?" The market at that time was around $60 a share. "Supposing they buy 400,000 shares of stock at this market or a little more. They could buy that stock back for 25 or 26 million, still have their 400,000 shares of stock, and your acquisition would be a mistake."

Mr. PECORA. Did he tell you that after the acquisition had been effected?

Mr. FOX. After the acquisition was effected. I told him that we could not—that we had the consent of the Government to buy those 400,000 shares. He said, "I know that, and therefore you must buy additional shares in the market in another name other than the company, so that you may control at least 50 percent of this company."

Senator ADAMS. Did you understand the Government's consent was being given to you because you were buying less than the actual majority? Is that the basis of the Government's consent?

Mr. FOX. I understand the Government's consent was on the basis—the only inquiry we made from the Government was, were they willing to have us, would they permit us to buy 400,000 shares of stock with the idea in mind of ultimately merging these companies together or consolidating them in one form or another? The number of shares we were buying was wholly immaterial.

Senator GOLDSBOROUGH. You did that because it was a competing company; you sought the information because you were a competing company, did you not?

Mr. FOX. There was little or no competition between the Fox Theatres Co. and the Loew Co., but there was competition between the Fox Film Corporation and the Loew Co.

Mr. PECORA. Fox Film was a subsidiary?

Mr. FOX. No, sir; they were two separate corporations, but both were controlled by me.

Mr. PECORA. Controlled by the same interests?

Mr. FOX. No; they were different companies, except that I had control of both of them.

Mr. PECORA. But they both had the same management and control?

Mr. FOX. Yes.

Mr. PECORA. All right; go ahead.

Mr. FOX. Well, I said to Stuart, "We did not arrange for any more money than the acquisition of these 400,00 shares of stock; and if I am to buy any more shares in the market, what will I use for money?" He seemed to be familiar with our balance sheet and knew that we had six or seven million of additional cash; that we had arranged for about fifty-seven million and only used fifty to make this purchase; and he suggested that that additional money be used to acquire these shares, and it was used to acquire additional shares until we had bought 260,900 additional shares.

Mr. PECORA. In the open market?

Mr. FOX. In the open market.

Mr. PECORA. That means at market prices?

Mr. FOX. At market prices.

Mr. PECORA. Over what period of time was that acquisition of these 260,000 additional shares made?

Mr. FOX. It was done very quickly after the acquisition of the first 400,000, on the theory that we were afraid that the Loew family would jump in and buy back their 400,000 shares in the open market, and these 260,900 shares, I haven't the exact price on it, although it can be obtained, my recollection is that the average price was somewhere around $70 per share.

All this Stuart knew all about. All this Stuart was urging to have done. And, of course, the Telephone Co. knew all about it, because I kept them informed. I told them that Stuart had advised the acquisition of additional shares.

Senator ADAMS. Did I understand that the Telephone Co. had agreed that its advance should be inferior in priority to that of the money that you had gotten elsewhere?

Mr. FOX. Yes, sir; and it was in the form of a contract that we would be glad to exhibit to this committee if you request it.

Senator COUZENS. Before you go beyond that point, why did you pay such a high price for the Loew stocks when the market was so much below?

Mr. FOX. Well, that was the price the chap wanted for it. He fixed the price, and it was a question of whether we would take it or leave it. In fact, we had a competitor who was willing to pay, I was told by the Loew family at that time, some five or six million dollars more than the amount we were paying.

Senator COUZENS. What would have happened if you had gone into the market and bought Loew shares as you did after the acquisition of the 400,000 shares? What would have happened then if you had proceeded under those plans?

Mr. FOX. I do not know that, for this reason, that the Loew family knew I was going into the market and buying these additional shares. I had talked the matter over with them and told them of the danger that Halsey Stuart had brought to my attention, and inquired of them whether it was their intention to go back into the market and acquire those shares, and they assured me that they had no such intention, that they made this deal and intended to stand by it, and that they were perfectly willing—in fact, it was not a question of their willingness, but they had no voice in the matter at all, and that I should go right along and acquire these shares and that they would see that neither they nor their friends would be buying for them, the result of which was I had little or no competition in acquisition of the other shares.

Let us reverse it now and assume that I had not bought these shares from the Loew family and the Loew family got suspicious that someone was in the market trying to buy the control of their company in the open market. Well, in the first place, you would have to buy not 400,000 shares but practically a majority to have control, because, so long as you did not have a majority, the Loew family would remain in control with the 400,000 shares that they then owned, they having created this company and having successfully run it for a period of 15 or 20 years.

Senator ADAMS. The course of events rather demonstrated the soundness of the judgment of the Loew family, did it not?

Mr. FOX. The course of events, in my opinion, proved the soundness of the acquisition of the Loew shares and the error that the Loew family made in making the sale of the Loew shares. I do not know, Senator, whether you are familiar with the fact that the Loew Co. is practically the only motion-picture company in America that has made money throughout this entire depression and that its profits in the last 4 years were upwards of 50 millions of dollars. And the Loew family who took this 50 millions of dollars for the

400,000 of Loew shares, you may rest assured, did not put it in the safety deposit vault, but reinvested it during the year of 1929 in securities of other companies, and only the Lord knows their value today.

The CHAIRMAN. Is the Loew Co. still operating and doing business?

Mr. FOX. Oh, yes; and very successfully, sir.

The CHAIRMAN. Do you own a majority of stock now?

Mr. FOX. I am out of it entirely.

The CHAIRMAN. I mean the Fox Theaters.

Mr. FOX. There have been lots of swindles going on in that, and we do not know who the owner is at this particular time. We will come to that much later in the story.

The CHAIRMAN. All right.

Mr. FOX. Suffice to say that Fox Film, the people that paid 75 million for it, do not own it any more. That has been taken away from them.

The CHAIRMAN. I did not understand the Fox Film bought it; I thought it was the Fox Theaters.

Mr. FOX. I am going to come to that a little later, Senator. Later the Fox Film did acquire it from the Theaters Co.

Senator COUZENS. I am afraid I did not get the answer to my question. Before you purchased the 400,000 shares from the Loews why didn't you go in the market and buy them at the market price or all you could accumulate at the market price, which was materially less than the price that you paid to Loew's?

Mr. FOX. I thought, Senator, that I had explained that.

Senator COUZENS. No; you explained what happened after the acquisition of the 400,000 shares. When you desired to get control or to get a management control of the Loews, why didn't you then go out in the market and buy shares which were selling from 60 to 70 instead of paying the Loews 125?

Mr. FOX. Well, there were two reasons for that, Senator: One was that we were really not trying to buy shares of stock. We were trying to buy the good will of an organization that had taken 20 years to construct, and we hoped that the executives of the Loew Corporation would go along with this merger and consolidation that we were planning. We just did not want to buy shares of stock and take the management and throw it out and say, "You all get out of here now. We are going to run this company." Under those circumstances we would not have bought the stock at the open market or from the Loew family. But the idea was to try to conserve this valuable institution that had made money throughout its entire existence and was right at this particular time at the peak of its money-earning power.

Mr. PECORA. By the way, what was the par value of those shares, or did they have no par value?

Mr. FOX. There was no par value.

Mr. PECORA. You reached the point where you had acquired in the open market some 260,900 additional shares?

Mr. FOX. Yes, sir.

Mr. PECORA. After the purchase of the Loew family's 400,000 shares.

Mr. FOX. Yes, sir.

Mr. PECORA. Now, that gave your company 660,900 shares of Loews, Inc.?

Mr. FOX. Yes, sir.

Mr. PECORA. For a total consideration of about sixty-six million two hundred thousand and odd dollars, if I have correctly followed your figures?

Mr. FOX. Yes, I believe. The first was 50 million. Then the price, Mr. Pecora, the average price was evidently higher, because my recollection is that the total cost of the acquisition was either 72 or 73 million dollars. So evidently I have the average price of the open market shares incorrectly. It may have been in the eighties.

Mr. PECORA. All right.

Mr. FOX. But I do know that it ran between 72 and 73 million.

Senator COUZENS. How many shares were outstanding at the time?

Mr. FOX. My recollection is that it was somewhere between a million three hundred fifty thousand and a million four hundred thousand.

Senator COUZENS. So you did not have control either after the acquisition of those additional shares or before; you did not have control?

Mr. FOX. We had about the amount.

Mr. PECORA. You had a little less than 50 percent, did you not, of the outstanding stock?

Mr. FOX. We probably would have bought a hundred thousand more, but we did not have anything to buy it with any more. We just ran out of money.

Senator COUZENS. So in effect you had management control after the acquisition of both the Loew shares and the market shares?

Mr. FOX. Yes, sir. And again, Senator, I wish to say that we did not assert our rights, had made no change in the corporation, did nothing to change its management, made no interrelationships between the two companies, and left it run exactly as it was prior to the time that we had bought a single share. Of course, our purpose was to merge these companies together.

Now, everything up to this time was perfectly peaceful. Fox Film Corporation was earning the largest earning it ever did in the history of its career. The Loew Co. was earning more money than it ever earned before in the history of their career. The Theaters Co. was operating at a substantial profit.

Mr. PECORA. By what date had these purchases of the six hundred and sixty-odd shares of Loews, Inc., been effected?

Mr. FOX. I would have to get that exact date for you.

Mr. PECORA. Well, approximately.

Mr. FOX. I should say that they were effected some time in April.

Mr. PECORA. Of 1928?

Mr. FOX. Of 1929.

Mr. PECORA. '29?

Mr. FOX. This is all 1929.

Mr. PECORA. Now will you resume from that point?

Mr. FOX. Yes, sir. As I said before, everything was perfectly peaceful now. We thought we had made a fine deal. Our bankers were perfectly pleased with the things that we had purchased, and these businesses were operating and were earning substantial sums of money.

Mr. PECORA. Now just one more question before you resume your narration. Were these two hundred and sixty thousand and odd shares that were purchased in the market purchased with the funds that Fox Theaters had available in its treasury, or were they purchased mainly with borrowed moneys?

Mr. FOX. Why, I should say that they were purchased with any kind of money that we could lay our hands on. Whether it was borrowed or whether we had had it or whether I had laid the money out, it made no difference, just so long as we were acquiring more shares than what the bankers regarded control of the company.

Mr. PECORA. I know, but you said before that the Fox Theaters after the acquisition of the 400,000 share block from the Loew family had about six or seven million dollars in the treasury.

Mr. FOX. Yes.

Mr. PECORA. Now, the two hundred and sixty thousand and odd shares must have cost around 22 or 23 million dollars. If you only had 7 million, you must have borrowed the greater part of the moneys that were used to purchase these additional two hundred and sixty thousand and odd shares. Isn't that so?

Mr. FOX. The greatest portion of the 260,000 shares remained with stockbrokers under a margin arrangement.

Mr. PECORA. All right; now go ahead.

Mr. FOX. The complete detail as to how all of this money was raised I think is described in this book [pointing to book before him]. If you would like to have me refer to it, or if you still want me to give it for the record, I will do so.

Mr. PECORA. I just want to get the general facts.

Mr. FOX. Yes.

Mr. PECORA. As to whether or not the Fox Theaters used moneys that it then had in its treasury to acquire the 260,000 shares in the market.

Mr. FOX. It did, sir; and most of the shares remained with stockbrokers under a margin arrangement.

Mr. PECORA. Now go ahead from that point on, please.

Mr. FOX. I believe it was some time in May——

Mr. PECORA. Of 1929?

Mr. FOX. Of 1929—no; I am a little bit ahead of my story for just a moment. Of course, an unfortunate thing had occurred. You will recall I said that Mr. Thompson, the assistant to Colonel Donovan, had told my attorney in New York that it was all right for me to acquire these 400,000 shares of stock. This was in February 1929. Mr. Hoover had been elected in November 1928 and was not to take office until March 4, 1929, and it was thought advisable to wait until he was inaugurated and appointed his Attorney General, so that we could then go and discuss the merger and consolidation of these companies. There was a common rumor at that time that Mr. Donovan was to be the Attorney General of the United States, and for some reason he did not receive the appointment. That was rather unfortunate for us, as events have proven later. Instead, a gentleman from somewhere in Minnesota came down here. He knew nothing about any arrangement that Mr. Thompson had made with my attorneys in New York, and he promptly said, "Now, this is a matter that after all will be handled by my assistant when he is ap-

pointed. Supposing you wait until the President appoints my assistant."

For some reason the assistant was not appointed promptly, and I think 60 days elapsed before John Lord O'Brian was made the Assistant Attorney General, and as promptly as we read of his appointment both my attorney and myself came to Washington and asked for an appointment to see him. Said we came to discuss the consolidation of those companies. We would like to tell him what our plan is, how we hope to do it.

It was customary in those days to consult with the Department, and they were accustomed to giving suggestions and advice as to how companies could be merged. That was the policy of the Government at that time, as I understood it. At this conference there was present John Lord O'Brian——

Senator COUZENS (interposing). Why do you emphasize the "Lord" every time you say that?

Mr. FOX. That was his name, sir; and I have great reverence for Him.

Mr. PECORA. For the name?

Mr. FOX. For the Lord. [Laughter.]

The CHAIRMAN. And who else did you say?

Mr. FOX. Mr. Thompson, this Mr. Thompson that I spoke of before, who was a gentleman that was Mr. Donovan's assistant, called to New York in February 1929 and informed us that it was all right with the Government for us to acquire these shares.

Senator COUZENS. None of this was in writing, was it, Mr. Fox?

Mr. FOX. No; it was not. Will I just complete the four people present and then let me answer that?

Senator COUZENS. Surely.

Mr. FOX. My attorney and myself.

Mr. PECORA. Who was your attorney at that time?

Mr. FOX. At that time Mr. Saul E. Rogers was my attorney.

Mr. PECORA. He now appears before this committee as attorney for Mr. Clarke; you know that?

Mr. FOX. I did not know that. I have seen him here this morning.

Senator COUZENS. Do you still speak to him? (After a pause:) You do not have to answer that.

Mr. FOX. I think there is quite a chapter in this book upon that subject, sir.

Will you please ask that question, Mr. Pecora, you were asking me, and I would like to answer it?

Mr. PECORA. The question I asked you was who was your attorney in this conference?

Mr. FOX. No; there was another one before that.

Senator COUZENS. I asked you whether or not any of these communications of the Department of Justice were in writing.

Mr. FOX. That is a fair question to ask, and I asked it also; and I said to my attorney, "Did you get this in writing?" We were about to pass $50,000,000 and "We ought to have it in writing." And he said, "It would be a mistake to have it in writing. If you have got it in writing, you would have one of the form letters that would have 'if's', 'and's', and 'but's', and all kinds of excuses in it, and it would do you no good. But now you actually have the word

of the Assistant Attorney General of the United States telling you you may acquire these shares." And we relied on that rather than on the form letter.

The CHAIRMAN. What was the result of this conference?

Mr. FOX. Mr. O'Brian said, "Let us get the record on this and find out what this is all about," and he brought out a file of papers and said, "Why, who did you say had consented to allow you to buy these 400,000 shares of stock?" We said, "This department." That is, my attorney said "This department." He said, "That is not what I find in this record, sir. In fact, I find the opposite here. I find that the record provides that you may not acquire these 400,000 shares of stock." I said, "There must be some mistake, sir." I said, "Fortunately for us, the two men who have made this negotiation are present in this room," and I turned to Mr. Thompson. I said, "Mr. Thompson, won't you please tell your new chief whether or not you were in New York in February 1929, met with Mr. Rogers and told him it was all right for us to acquire these shares?" Thompson said, "I would answer that question if Mr. O'Brian asks it of me." O'Brian said he had not any desire to ask the question.

Mr. PECORA. What decision, if any, was arrived at?

Mr. FOX. At the conclusion of that I remember Mr. O'Brian standing up from his chair, which I believe meant "This is time for you-all to get out", so we just stepped out without knowing exactly what it was all about, not knowing what we were going to do. We were in a perfect quandary as to what we were going to do. But we left Washington knowing that the record as it stood then was that we had no right to acquire these 400,000 shares of stock.

Senator COUZENS. Now whom do you believe, Mr. Rogers or Mr. Thompson?

Mr. FOX. Well now, I believe if I were asked that question now, as the events passed by, as the events passed, I would have a hard job making up my mind about that, but I must have clearly in mind the picture that I challenged Mr. Thompson there and then to say whether or not he had been to New York and had given the consent, and it was a perfectly simple matter for him to say, "I was in New York and I did not give any consent and I told Rogers not to buy these shares", but in the absence of his making that statement, sir, and in face of the fact that he said, "I will only answer that question when I am asked it by my chief", I am sure that had Mr. O'Brien asked that question he would have said, "I told Rogers to buy these shares."

Mr. PECORA. Up to that time had you bought those shares?

Mr. FOX. Oh, yes; we had them all.

Mr. PECORA. Four hundred thousand?

Mr. FOX. We had the 400,000 and the 260,900 additional shares. Well, you can well imagine that I was alarmed about all this. Here were two companies that were being involved innocently, had borrowed these huge sums of money, with no prospects of paying it back.

The CHAIRMAN. You were both making good dividends then?

Mr. FOX. Yes, they were earning money; but I had borrowed this money for a short time. If anyone wants to find out how fast a year passes by just let them make a note for 1 year. [Laughter.]

Shortly thereafter two very fine, well-dressed, well-groomed gentlemen came to New York and said that they represented the Department of Justice. They were making an inquiry about the illegal acquiring of shares of stock by the Fox companies of the Loew Co.

Mr. PECORA. Let me interrupt a moment. Were the moneys that you had borrowed to buy these 660,000 shares of Loew stock borrowed for 1 year?

Mr. FOX. Most of it borrowed for a year; some of it for less than a year.

Senator COUZENS. Was the stock up for collateral?

Mr. FOX. All the stock was up as collateral. In fact, it was the money that we were able to borrow on the stock that gave us all the money we required to make this transaction.

Mr. PECORA. Where I interrupted you, you had reached the point where two well-groomed men called upon you from the Department of Justice.

Mr. FOX. Yes, sir. I then came to the full realization that we were going to have some serious trouble, and it would be wise if I tried to find some one who could adjust this matter. After all, it seems to me, as I believe Thompson, we told Rogers, that we had a right to acquire these shares. I was sure that this was not a department of injustice, but rather a department of justice, and that once we could prove to their satisfaction that they had told us to do it they would allow this thing to go on.

The question, now, was, who shall be the intermediary with the Department that can adjust this matter for us? I was told by a friend that there was a man by the name of Claudius Huston, who perhaps could be of some help in the matter, and that he had another friend that perhaps could help. I think he has since died—Lord rest his soul—Mr. James Francis Burke.

I consulted with these two gentlemen. I told them our predicament. They said they would look into it and report back. They took a little longer than I thought they should have taken, and I asked to see the President, and talk to him about the matter. Some time in the early part of June I received an invitation to come to the White House and lunch with him. I did, and I described to him the trouble that I was in. I told him that I had gone to see Donovan about this, and that Thompson had said to go along, and described the story to him, that I had made this commitment of all these millions of dollars, not of my money, but of money belonging to my stockholders, and that I was in a terrible place, and wouldn't he please adjust the matter for me.

I told him that I had talked to Huston about it, and that Huston asked me to talk to Burke about it, and he said there was not any use for all that. "You don't have to talk to Huston. You don't have to talk to Burke about this matter. Just send your attorney who had made this deal, whoever he is, to the Attorney General's Office. I am sure they will understand that an error has been made here. You discuss it with them. You do not need any intermediaries in this matter, if what you tell me is true."

A few days thereafter, Mr. James Francis Burke and Mr. Huston called at my home, Woodmere, Long Island, and during the conversation, which lasted several hours, in which they said they were mak-

ing progress, they inquired whether I knew a man by the name of Louis B. Mayer, of California. I said I did. "Well", he said, "I think it would pay you to have a talk with Mayer, and I would do it soon if I were you."

Senator COUZENS. Was he not the head of the Republican organization in California at that time?

Mr. Fox. He was, sir. I would like to stop at this point for just a moment so that I can give you a little history about the relationship of Louis B. Mayer in this whole transaction, so that you will understand it more clearly, if I may.

Mr. Louis B. Mayer and two others had a corporation that at this time had a contract with the Loew Co. to manufacture all of its pictures in California. Under this contract Louis B. Mayer and his two associates were receiving 20 percent of the net profit of the Loew Co., after $2 a share of dividend had been paid on the common stock. I believe that this contract netted Mayer and his associates, for the fiscal year 1929–30, somewhere around $3,000,000. It is not at all confusing to understand that Mayer did not rejoice in the Fox Co. acquiring the control of the Loew Co. The problem on his mind was as to whether or not that contract would ever be renewed under my regime. He knew that the Fox Co. knew how to make motion pictures and that if these two concerns were consolidated perhaps his contract would not be renewed, and it was important to him. The most important thing in his life was this particular transaction of the Fox Co.'s acquiring the Loew shares. During the time of the acquisition he had called on me and said that he had been mistreated in this matter, that the Loew Co. had been a thing that he had helped build up; that it earned little or no profit before he made this contract with it, and that now the Loew family was selling 400,000 shares at $50,000,000—$125 per share—and he was not participating in this $50,000,000.

There was a great deal of weight to what he was saying. I had talked to the Loew people, and they said "Well, he is all wrong about that. How can he participate in this matter? He does not own a share of the Loew Co. If he had any shares we would have taken him along."

Then, talking to Mayer again, I said "Well, you don't own any shares. Here is a company in which you are earning all this money, and you have not faith enough to own a share of stock in it."

His side was "The Loew family told me to sell my shares. They said they were not going to go any higher." He said "That is the reason I do not own any now."

I was rather anxious to maintain relationships with the New York end of the Loew family, who were in control of running this business, and foolishly I sided with them and against Mayer and incurred the animosity of Mayer. Of course, this occurred in February 1929, and we are now speaking of June, where I had left off a minute ago, which is the evening when I was told by Burke and Huston that it would be advisable to have a talk with Louis B. Mayer.

Senator ADAMS. May I interject just one inquiry there? Speaking of Huston and Burke, were they representing you as attorneys in this matter?

Mr. Fox. Mr. Burke was an attorney in the matter, and Mr. Huston was just a mutual friend.

Senator ADAMS. A friend of yours of some standing?

Mr. Fox. No; a friend of a friend of mine of some standing. I had only met the man at this particular time, when I asked him to investigate what the trouble was, but he was an intimate friend of a very good friend of mine.

Senator ADAMS. Was it a volunteer engagement, or was it under employment for compensation?

Mr. Fox. May I answer your first question, sir? He was a friend of a man who had loaned our company $10,000,000 and was vitally interested in the return of his $10,000,000, and wanted this matter adjusted. His name was Mr. Albert M. Greenfield, of Philadelphia, whose company had loaned Fox Theatres Corporation $10,000,000 to help make this acquisition, and naturally he was alarmed about it when I told him the difficulty we had, and he suggested that I meet with Huston.

Now, may I answer your second question? Huston was to receive no compensation in the matter. Huston had received no compensation for the services rendered. I felt that Huston had befriended me, and when I had sold out I did lend Huston some money, for which I hold his note, and I would lend Huston money again tomorrow if he asked for it.

Senator COUZENS. He may be glad to learn that.

Mr. Fox. I believe he will.

Mr. PECORA. You were telling us about meeting Mayer out in California in June 1929.

Senator COUZENS. No; he had not got away from the——

Mr. Fox. No; I did not go to meet Mayer. I went to the telephone immediately and called up Louis B. Mayer. Whether he knew I was going to call him or not I do not know, but he was right on tap. The call did not take long. I said, "Louis, the next time you get to New York I would like to see you." He said, "I am taking the next train out." As long as it takes for a train to arrive from California to New York, he was there, and was at my home.

A Mr. Jack G. Leo, a brother-in-law of mine, Mr. Louis B. Mayer, and myself, met as a result of this telephone call, and Louis went into a tirade and said he resented the amalgamation of these companies; that he would oppose it to the last drop and that he would resort to every legal means at his command. I told him that was his right; that if what we were doing was illegal, of course, he should resort to his legal rights in the matter; and I invited him to do it. I did not think that was what he was coming from California to tell me, but if that was what he came to tell me it was all right with me.

A little later I said to him, "Now, I have a different reason for asking you to come here. I have thought this matter over since last February, and I have reached the conclusion that it would have been but fair for you to participate in the money that was expended to acquire these 400,000 shares of stock. After all, you did play an important part in building this company up, and we would like to retain your good will for the company. We would like to retain

you in your present capacity with the company. perhaps not on the same terms as your contract reads now but on other favorable terms to you."

I said, "You know, when we paid $50,000,000 for these 400,000 shares of stock we paid double the price they were worth in the open market, and it was an arbitrary price set by the seller. He might just as well have said $48,000,000 or he might just as well have said $52,000,000. We would have paid it just the same."

I said, "We are now having trouble merging these companies together. What I would like to say to you is this, that if and when these companies are merged I will see that the company will pay you and your associates $2,000,000 in cash, which probably would have been a fair amount for you to have earned in the first place out of the original $50,000,000 that was paid.

Of course, needless to say, Mr. Mayer was very much pleased about that arrangement. He said that I was Dr. Jekyll and Mr. Hyde; that when he threatened to use all his means, legally and otherwise, to stop this consolidation, I was one man; and now, of my own free will and accord, here I am offering him this large sum of money so graciously, and he was glad to know that I wanted him to continue with the company, and so forth.

Then I went on to explain to him the difficulty that we were having with the Department, and he said, "I know all about that." He said, "I caused that record to be changed from a consent to a restriction on acquiring these shares. That was a perfectly simple matter for me to do. The task now is to change the record back to a consent again. That is not going to be quite so easy, but I will try it, and I think I will be able to accomplish it."

Senator ADAMS. Have you any idea how Mr. Huston and Mr. Burke happened to suggest that you see Mr. Mayer, or what led them to think he might be so influential in this Department?

Mr. FOX. I really do not know. These three men were rather intimate friends, you know. They were working for one general cause, and they knew each other very well, and I presume they could read each other's minds.

Senator ADAMS. It was rather curious, was it not, that you should happen to fall across the two men that knew Mr. Mayer, and Mr. Mayer happened to be the man that was able to make changes in Department records?

Mr. FOX. Rather than call it curious, I should call it by another name.

Senator ADAMS. Give it the name.

Mr. FOX. I do not mind telling you that when I learned that a man had the power to go into the Department of Justice to change the records I was rather ashamed of being a citizen of this Nation.

Senator ADAMS. But you telephoned to him.

Mr. FOX. Oh, yes. I telephoned to him and asked him to come down. I had to consider some 12,000 or 15,000 or 20,000 stockholders who had followed me blindly and allowed me to buy these shares of stock.

Senator TOWNSEND. Did the record get changed back?

Senator COUZENS. He has not reached that point yet.

Mr. Fox. Well, some time later Mr. Burke visited with me again, and said that the matter was progressing very well, and that there were a few things that must be gotten out of the way.

Mr. PECORA. Just a moment, Mr. Fox. When, as you claim, Mayer told you that he was the one who was responsible for changing the record in the Department of Justice, is that the first time anyone had told you that?

Mr. Fox. That is the first time that I knew that, sir.

The CHAIRMAN. Why didn't you act on the President's advice to have your attorney go down to the Department of Justice?

Mr. Fox. I did, sir. He went down, and it got him nowhere.

Now, the fact of the matter is, if you were to ask me again today, knowing what had transpired from that day to this, looking backward at the picture, as to whether it was really Louis B. Mayer who had the record changed, I should say he was full of ego in saying that he did. I do not believe he did it at all. If I were asked today who had changed the record, or who had caused that record to be changed, I should say now it was Mr. Harley L. Clarke.

Senator ADAMS. Mr. Fox, do you know, as a matter of fact, that the record was changed?

Mr. Fox. No, I do not, sir, except I only know that Mr. O'Brian told me that the record said "You may not acquire those shares", which was contrary to what Thompson told us to do.

Senator ADAMS. So far as you know, the record never was in any other shape, except as you get it from Mayer?

Mr. Fox. The only thing I know about it, sir, is what I got from Mr. O'Brian, who told me that as the record reads, we were not to acquire those shares.

Senator ADAMS. But he did not tell you it ever read any other way?

Mr. Fox. No; he did not; and I do not know whether it ever read any other way or not.

Senator ADAMS. So, the only source of credibility of that is Mayer, who is the fellow who claims that he was able to do this sort of thing. It would rather affect his credibility a little, I think.

Mr. Fox. That is right. I should say that whatever influence was necessary, if the record was changed at all, was accomplished by those who sought to capture these companies away from me, and ultimately did capture them.

The CHAIRMAN. At this time nobody appears to have been opposing your consolidation except Mayer.

Mr. Fox. Well, as we see the record now, we find my banker, Halsey, Stuart, becoming the banker of Harley L. Clarke about this time. We find that in June 1929 Mr. Harry L. Stuart, who had originally introduced me to Mr. Clarke and who promptly, within 24 or 48 hours thereafter—let me get that a little straighter, now.

The history of my meeting with Mr. Clarke is as follows: He brought a letter of introduction to me from Halsey, Stuart, signed by Harry Stuart.

The CHAIRMAN. At what time?

Mr. Fox. Sometime in the latter part of 1928. And I met with Clarke as a result of that letter and talked in generalities. Within 48 hours thereafter Stuart called on me and said, "I gave a man in Chicago a letter of introduction to you, by the name of Clarke. I

hope you haven't seen him yet." I said, "I have." He said, "I am so sorry. I wanted to talk to you about it before you had seen him." He said, "I do not have any business dealings with that fellow. His word is no good." I said, "That is a rather strange thing to do, Mr. Stuart, to give him a letter of introduction to me." I said, "He seemed to me to be a fine, decent sort of chap." He said, "That is all right. I am putting you on your guard now."

Here we find, in June, 1929, barely 6 or 8 months later, Mr. H. L. Stuart becoming one of the bankers for the General Theaters Equipment Co., which had designs on capturing these companies from me, as the record has been developed here up to now.

Whose were the unseen hands that were moving, that were using pressure and influence at the Department, I do not know. I am unable to tell that at this time. I think more than one person; that is sure.

Mr. PECORA. Mr. Fox, what was Mr. Thompson's full name?

Mr. FOX. I am not sure of that. My guess would be it was William. I am not sure, but I presume we have his name here.

Senator COUZENS. Do you know where he is now?

Mr. FOX. I do not, sir.

Mr. BECKER. Mr. Rogers says he thinks his first name is William.

Mr. FOX. I think it is William. I am not sure.

Mr. PECORA. Just resume your narration, Mr. Fox.

Mr. FOX. At a later call of Mr. Burke at my home, he said the thing was progressing all right, but that there were several things that would have to be done.

Senator GORE. Whose call?

Mr. FOX. Mr. James Francis Burke. He said that there was an outstanding contract between Loew's Inc., and Paramount Pictures Co., a contract made by Mr. Marcus Loew during his life, and Mr. Adolph Zukor, who was the president of the Paramount Co., and who, by the way, were related by their children being married; that this was a sort of contract that had benefited these two companies, and that that contract would have to be abrogated.

The Department held—I am repeating, now, what was said to me—that if they were going to allow the consolidation of our three companies, that there should be no further tieup with any other companies, and that this was considered a tieup with the Paramount Co.

I believe this talk was had somewhere near the 15th of July, and promptly thereafter I made an appointment to meet with Adolph Zukor to discuss with him the abrogation of that contract. I had arranged to meet him at a golf game on the morning of July 17, 1929. I feel certain that had I been able to meet with him that day—and, by the way, the third person to play with us was Mr. Nicholas Schenck, who was then president of the Loew Co. It was a question for them to decide whether or not they should abrogate this contract that existed between them, and I was fairly sure they would do it.

Senator COUZENS. Who won the golf game that day?

Mr. FOX. I lost it, sir. On my way to the golf course my automobile was hit, my chauffeur was killed, and I was wrecked, and I lay in the hospital and confined between the hospital and my home—

well, until the financial earthquake occurred sometime in October 1929. So that I was disabled and made helpless to go on with these negotiations and do anything.

The CHAIRMAN. July 1929?

Mr. FOX. July 17, 1929.

The next time that I was able to go to New York was 2 or 3 days before everything went to hell in the stock market.

Senator COUZENS. That was a good place for it to go, wasn't it?

Mr. FOX. Do you want me to answer that?

Senator COUZENS. No; you do not need to answer that.

Senator GORE. Are you under oath? (Laughter.)

Mr. PECORA. Perhaps that is where the market came from. (Laughter.)

You had reached the point where the market went to hell in October 1929. Now, will you resume.

The CHAIRMAN. You made quite a jump there from June 1928 to October 1929.

Mr. FOX. No, Senator. I had said that Burke called on me somewhere near July 15, 1929, and that as a result of that I had made a golf engagement with Mr. Adolph Zukor and Mr. Nicholas Schenck.

The CHAIRMAN. I understand that. When you were in the automobile accident you were knocked out, and I can understand that lapse of time there, but prior to that time——

Mr. FOX. You mean the lapse between June and July?

The CHAIRMAN. Yes.

Mr. FOX. I said that Burke had reported that progress was being made. I believe this is all a continuity of something that happened inside of 30 days.

The CHAIRMAN. All right.

Mr. FOX. Of course, in the meantime I had become better acquainted with Mr. Harley Clarke.

Senator COUZENS. Why do you emphasize "better"? Do we get any inference from that?

Mr. FOX. No; I mean that. I have only recited up to this time my very first meeting with the man, as the result of a letter of introduction from Mr. H. L. Stuart.

The CHAIRMAN. You never saw him from December 1928 to June 1929?

Mr. FOX. Oh, no; I had seen him in the interim, sir, and, of course, it is a matter that this committee had been questioning Mr. Clarke about.

The CHAIRMAN. All right.

Mr. FOX. Shall I leave my relationships with Mr. Clarke for a little later, and go on to the finish of the story, or shall I first recite my relationships with Mr. Clarke?

Mr. PECORA. Well, you may be able to give us a more orderly presentation of what occurred.

Mr. FOX. I do not think we can quite forget what I have said up to now, so let us assume I ought to tell you my relationship with Mr. Clarke as to what you have been inquiring about.

Mr. PECORA. Go ahead.

Mr. FOX. I had, commencing about 1927, been experimenting in the hopes of developing a wider screen than was then known in the

motion-picture theaters of America; one that would be as wide as the building itself was; some machine that could show a motion picture in a theater that was 40 feet wide—the screen would be 40 feet wide; and if the building was 90 feet wide, the screen would be 90 feet wide. Regardless of the width of the building, so wide could the screen be made that this new device that I had spent time and money on would be wide enough for it. That contrasted with the present day screen, as now used, which is—well, let us call it of almost uniform size, or maximum size, of, say, 25 feet wide and 20 feet high. Instead of that it would be possible under this new arrangement to make it 90 or 100 feet wide.

After we had the camera fairly well perfected, and had the old projection machines developed so that it could take this wide film and give a performance with it, it was necessary to get a more nearly perfected projection machine. And my people had a meeting with Mr. Harley Clarke, who then had something to do with the International Projector Corporation, and had talked to him about building one of these wide projection machines for us.

Sometime later Mr. Clarke and I met——

Mr. PECORA (interposing). Was that prior to your getting a letter of introduction from Mr. Harry L. Stuart?

Mr. FOX. Oh, no. This was after that. And I do not mind telling that I thought Stuart's statements about him were all wrong, because in my meeting, and as I went along with Mr. Clarke, I grew to like him.

Senator COUZENS. It is too bad.

Mr. FOX. And I took him into my confidence. I said: "Look here, Clarke, some time ago I had a negotiation with Mr. Owen D. Young, of the General Electric Co." And during that time we were trying to make a deal, where Mr. Young had stated something, that I have not forgotten. He called my attention to the fact that the General Electric Co. are an important factor in the motion-picture theater, for the General Electric Co. are the patentees of the lamp house, which is a lamp required to give light to motion pictures. And while the General Electric Co. never tried to assert their rights in the matter, and just collected a very nominal royalty from the makers of those lamps, he hoped some day to assert his rights. So I said to Clarke: "Now, I am going to get this wide arrangement, and I intend to acquire those lamp companies——

Mr. PECORA (interposing). What lamp companies did you have in mind?

Mr. FOX. They were a group of lamp companies, the names of which I do not now have in mind. But I have read about them a good deal in the newspapers.

Mr. PECORA. The J. E. McAuley Manufacturing Co.?

Mr. FOX. Yes, sir.

Mr. PECORA. And Hall & Connolly, Inc.?

Mr. FOX. Yes, sir.

Mr. PECORA. And Ashcraft Automatic Arc Co.?

Mr. FOX. Yes, sir.

Mr. PECORA. And the Strong Electric Co.?

Mr. FOX. Yes, sir.

Mr. PECORA. All right.

Mr. Fox. They were the only ones that had licenses from the General Electric Co., by the way, to make those lamps.

Mr. PECORA. All right. You may proceed.

Mr. FOX. As I understood it there were no other licenses out except those four. I may be wrong about that but that was my understanding. Clarke said:

> You are not in the projection-machine business. Let me negotiate that purchase. Let me negotiate the purchase for our joint account.

I had told Clarke that we were likewise, or that I had likewise a verbal option on the Mitchell Camera Co. of California. Clarke said: "Let me negotiate that purchase." I told him the terms of it, and he said, "Let me negotiate that purchase. I will acquire it for our joint account."

The CHAIRMAN. When he said "For our joint account", who was he referring to, you and he personally or your companies?

Mr. CLARKE. No; for H. L. Clarke and myself. Some time later Clarke said that the projection machine was practically finished.

Mr. PECORA. Do you mean the one that you had asked him to build?

Mr. FOX. Yes, sir.

Mr. PECORA. Which was to accommodate the wider film?

Mr. FOX. To accommodate the wider film; yes.

Mr. PECORA. All right.

Mr. FOX. And he was to build it, as I understood from my people, at cost plus; I don't know how much plus, but it was to be cost plus. [Laughter.] So that on this particular day when he called, he told me the cost of erecting that machine was $175,000. Now, a normal projection machine at that time cost about $1,000 or $1,200, or, perhaps, less. I said, "That is a rather steep price." He said, "Of course, but with them you get the dies, tools, jigs, and so on, and they all belong to you." I said, "All right. If you will make the transfer, I will make you out a check for $175,000."

As I later learned, that was the very thing Clarke did not want me to say. He was in hopes I would complain about the bill.

And then he finally changed the subject to "Why can't we make a deal here?" He said "We have done some work in connection with developing the wide projector machines. This idea is nothing new. We have worked on it, and have spent a lot of money on it, and so forth. Why can't we create a company?

At this time we were calling our wide picture, and proudly so, Grandeur. Of course, we thought it was grand, that it was grander than ever. By this time Clarke had seen those pictures at our projection room.

Mr. PECORA. Were there any features about that improved projector other than increased width of film?

Mr. FOX. Yes. It gave an illusion of the third dimension, which was more important even than the fact of its width.

Mr. PECORA. By that do you mean depth?

Mr. FOX. Depth, yes. It gave you the closest illusion to the third dimension yet found in the art of photography. And you know how many years they have been trying to find the third dimension. It is the most marvelous, the most miraculous thing the world has ever seen. And it has been a pity that it has been destroyed, as it

was destroyed by those bankers when they began to control my companies.

Well, I entered into a deal with Clarke——

Senator COUZENS (interposing). What kind of a deal?

Mr. FOX. A contract was made, sir. Would you like to see that contract? We have it here.

Mr. PECORA. I should like to see it.

Mr. FOX. Mr. Becker, did you bring that contract here?

Mr. BECKER. Yes. I have it.

Mr. PECORA. You might tell us about it while the contract is being located by Mr. Becker.

Mr. FOX. Will you just let me rest for about a minute, if you please?

Mr. PECORA. Certainly.

Mr. FOX (after a brief rest, with the contract before him). Now, Mr. Pecora, may I hand you this contract? We understand that we must ask for its return immediately on handing it to you, otherwise it does not come back to us.

Mr. PECORA. Have you a copy of it?

Mr. BECKER. No; but we will furnish you with a photostatic copy.

Mr. PECORA. All right. Mr. Fox, this is the original agreement that you have handed to me?

Mr. FOX. Yes, sir.

Mr. PECORA. It says made this ——— day of May 1929.

Mr. BECKER. I think it is dated May 24.

Mr. PECORA. The covering letter is dated May 24, 1929.

Mr. BECKER. Yes; that is it.

Mr. PECORA. Are the signatures on this agreement that you have handed me, reading "H. L. Clarke" and "William Fox", respectively, the signatures of Mr. Clarke and yourself?

Mr. FOX. That is my signature, and I have seen Mr. Clarke put his name there.

Mr. PECORA. Mr. Chairman, I offer this in evidence and ask that it may be made a part of the record of the proceedings.

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

(The letter of May 24, 1929, from H. L. Clarke to William Fox, and the papers annexed thereto, was marked "Committee Exhibit No. 169, Nov. 23, 1933", and will be found on page 3719.)

Mr. PECORA. I have had this original marked, and, as I understand, you will furnish a copy for our purposes.

Mr. BECKER. Yes, sir.

Mr. PECORA. I will read the covering letter, which is a part of the agreement that has been marked "Committee Exhibit No. 169, November 23, 1933." It is as follows (reading):

MAY 24, 1929.

Mr. WILLIAM FOX,
Fox Film Corporation, New York City.

DEAR SIR: This will confirm the agreement between you and me as follows: I agree to cause to be organized a corporation under the laws of the State of Delaware, or such other State as shall be mutually agreeable to me, to be known as "Grandeur, Inc.", the chief object of which shall be the purchase, sale, lease, and/or license of motion-picture projectors, cameras, and/or equipment or devices to be used in connection with motion-picture projectors. The

corporation shall have an authorized capital stock of 100,000 shares of common stock of no par value. The form of the charter and the details in connection with the organization of said corporation shall be approved by our respective counsel.

I agree to cause a subscription to be made for one half of such capital stock and you agree to subscribe for the other one half at a cost to each of us of $250,000 in cash.

I agree to cause International Projector Corporation to enter into a contract with said new corporation with the terms, provisions, and to be substantially in the form of the copy annexed hereto, made a part hereof, and marked "Exhibit A."

You agree to cause Fox Theatres Corporation to enter into a contract with said new corporation with the terms, provisions, and to be substantially in the form of the copy annexed hereto, made a part hereof, and marked "Exhibit B."

If the foregoing meets with your understanding and you indicate your acceptance in the space below, this shall constitute a contract between us.

Yours very truly,

(Signed) H. L. CLARKE.

Accepted.

(Signed) WILLIAM FOX.

Attached to this letter are two exhibits, marked respectively "Exhibit A" and "Exhibit B"; and attached to this also appears to be another agreement, reading as follows (reading):

MAY 24, 1929.

Mr. WILLIAM FOX,
850 Tenth Avenue,
New York City.

DEAR SIR: With reference to agreement entered into between us, today, concerning the wide film situation, this will confirm our understanding that after Grandeur, Inc., has been duly organized and its business affairs in operation, out of the first profits earned and before any dividends shall have been paid, you shall be reimbursed in the sum of one million ($1,000,000) dollars, and I shall be reimbursed in the sum of five hundred thousand ($500,000) dollars for expenditures, labor, overhead, and services for research work in the development of the wide film art.

Grandeur, Inc., shall cause to be created and delivered to each of us a note or other form of acknowledgement of indebtedness suitable to our respective counsel, evidencing the foregoing arrangements.

Yours very truly,

H. L. CLARKE.

I hereby approve the foregoing and acknowledge it as our understanding.

WILLIAM FOX.

And attached to it is a further agreement or form letter reading as follows [reading]:

MAY 25, 1929.

Mr. WILLIAM FOX,
Fox Film Corporation, New York City.

DEAR MR. FOX: This will confirm the understanding between you and me as follows:

I am now negotiating for the purchase of the Mitchell Camera Co. This purchase shall be for the benefit of the corporation to be organized by us, one half of the stock of which is to be owned by each of us. This corporation shall either be independently operated by us or shall be a wholly owned subsidiary of Grandeur, Inc., as shall be mutually agreed upon between our respective counsel.

It is understood that this corporation shall from time to time acquire additional devices, patents, inventions, or business to be used in connection with or relation to the objects for which the corporation is to be formed, which shall be primarily the manufacture, sale, distribution, leasing, licensing, and generally dealing in cameras. Any such devices, inventions, patents, or businesses that the undersigned may at any time acquire, will be immediately assigned to the said new corporation. In the event that you shall acquire any devices, inventions, patents, or businesses relating to the objects for which the corporation is

to be formed, you shall likewise immediately assign the same to the said corporation.

In the organization and formation of the said corporation, suitable provisions shall be made, by contract or otherwise, that the policy of sales, distribution, leasing, licensing, or dealing in or with any of the devices, apparatus, cameras, or otherwise, embracing the art of photographing negative stock on film commonly known as Grandeur film, to wit: Film in excess in width of 35 mm shall be under your direct supervision, management, and control exclusively, without impairment or interference by anybody, and you shall designate the agency or nominee that shall carry on such exclusive sale, leasing, licensing, or other dealing in such wide film devices as aforesaid.

Yours very truly,

H. L. CLARKE.

Approved and agreed to as our understanding.

WILLIAM FOX.

Mr. PECORA. Mr. Fox, are you now ready to resume from the point in your narration where this agreement just offered in evidence was executed and delivered between you and Mr. Clarke?

Mr. FOX. Yes, sir. When that agreement was made I did not know that Clarke had already acquired the lamp companies. He had not informed me of that. Some time in June of 1929—about the middle of June, I should say—Mr. Clarke called on me and informed me that he was going to create a new company, in which company he was going to merge all of the companies that he controlled in the motion picture business up to that time.

Mr. PECORA. Including the four lamp companies, or did you not know about the four lamp companies' acquisition?

Mr. FOX. I will come to that in just about a moment, sir. Including the four lamp companies. And he said it was not quite convenient to carry out the contract of May 24; that he would like to revise, would like to make changes in it. He did not want a contract outstanding that would give me a million dollars and give him $500,000 and other things contained in the contract, that he would prefer were not had. Of course in the meantime the Grandeur Co. was incorporated. I do not know whether at this time, whether about June 15, the stock was issued or not. I am not certain of that. The stock book can reveal that, which stock book we can get for you.

Mr. PECORA. What was the original capital structure of Grandeur?

Mr. FOX. There was a limited number of no-par shares.

Mr. PECORA. Do you recall when the stock of Grandeur, Inc., was issued?

Mr. FOX. I do not, sir; but we can get that for you without any difficulty.

Mr. PECORA. Well, when it was issued, to whom was it issued?

Mr. FOX. When it was issued there were 50,000 shares of it issued to—I believe that the 50,000 went direct to the General Theatres Equipment—I am not certain of that, and the other 50,000, my 50,000, went to the William Fox Securities Co., a company that is wholly owned by me. Clarke said he would like to revise the transaction, and he did revise it in the following manner. In lieu of not allowing me to participate in the purchase of the lamp companies he said he would give me 25,000 shares of General Theatres Equipment stock—25,000 shares of stock in a company that he was going to form. At this particular time he did not tell me that that was to be the name of the company. I knew it to be something "Theatres" or some name that he was to determine upon.

Mr. PECORA. Was such a company formed afterwards under the name of General Theatres Equipment, Inc.?

Mr. FOX. Yes.

Mr. PECORA. Go ahead.

Mr. FOX. He gave me the 25,000 shares with the understanding that it would be deposited and held in escrow by some bank, and that they could not be sold in the market until February 1, 1930.

Mr. PECORA. Was there any repurchase agreement entered into between you and Mr. Harley Clarke covering those 25,000 shares?

Mr. FOX. There was not.

Mr. PECORA. At no time?

Mr. FOX. No, sir.

Mr. PECORA. Either orally or written?

Mr. FOX. No, sir. The fact of the matter is that the stock was sold in the open market. Not for $750,000, as I read in the newspapers you say that I sold to Clarke for, but upwards of a million dollars.

Mr. PECORA. No; I did not say that. Mr. Clarke said it.

Mr. FOX. Oh, yes; Mr. Clarke said it. For upwards of a million dollars. What Clarke had done in the interim was: On October 1, 1929, I applied for a loan to Clarke and gave these 25,000 shares as collateral, and he loaned me $600,000. $600,000 for, I think, a period of 4 months. I think I have those notes here. Have I not? [Addressing Mr. Becker].

Mr. BECKER. A copy of them.

Senator COUZENS. How did they get out of escrow?

You said they were placed in escrow in the first place.

Mr. FOX. It is so arranged by these two memorandums. I think one shows a note and the other thing shows how they come out of the escrow [handing same to Mr. Pecora].

Mr. PECORA. You have just produced two documents, one of which appears to be a copy of a note for $600,000. Will you look at that particular document and tell me if it is a true and correct copy of a note given by you to Harley Clarke for the amount mentioned?

Mr. FOX. I think there is another part of this, is there not, Mr. Pecora?

Mr. PECORA. Oh, yes [handing another paper to Mr. Fox].

Mr. Fox (after examining same). Yes, sir.

Mr. PECORA. I offer it in evidence and ask to have it spread upon the record.

The CHAIRMAN. It may be admitted in evidence and placed in the record.

(Note for $600,000, dated October 1, 1929, signed "William Fox Securities Corporation, by William Fox, president. William Fox", was received in evidence, marked "Committee Exhibit No. 170 of November 23, 1933", and is here printed in the record in full as follows:)

COMMITTEE EXHIBIT NO. 170, NOVEMBER 23, 1933

$600,000 PAYABLE IN FUNDS CURRENT AT THE NEW YORK CLEARING HOUSE

NEW YORK, *October 1, 1929.*

Four months after date, for value received, without grace, the undersigned (who, if two or more in number, shall be jointly and severally bound) promise to pay to Webster Securities Corporation, or order, at the principal office of

the undersigned, 850 Tenth Avenue, in the city of New York, $600,000, with interest from the date hereof, at the rate of 6 percent per annum, having deposited and pledged with said Webster Securities Corporation as collateral security for the due payment of this note, and any note or obligation given in extension or renewal thereof, the following property, viz: Certificate T.C.C. 164 for 25,000 shares common stock voting trust certificates of General Theaters Equipment, Inc.

Upon the nonpayment of this note or of any of the aforesaid obligations or liabilities, or upon the nonperformance of any of the agreements in this note by the undersigned, or upon the insolvency or bankruptcy, or appointment of receiver for the property of, or entry of any judgment against, any guarantor or endorser of this note, then the whole or any part of any or all of the aforesaid obligations and liabilities of the undersigned, including this note, shall, at the election of the Webster Securities Corporation, immediately mature and forthwith become due and payable without demand or notice; and in any such event the Webster Securities Corporation shall have the right to sell, assign, and deliver the whole or any part of the property hereinabove specifically described or of any property substituted therefor, or of any additions thereto, or of any other property of the undersigned then in its possession, at any time or times either at the New York Stock Exchange or at any other exchange or at any broker's board, or at public or private sale, either for cash or on credit or for future delivery, without demand, advertisement or notice, which are hereby waived, and/or otherwise to collect and/or realize upon any such property, and to apply the net proceeds to the payment of this note and of any and all such other obligations and liabilities of any of the undersigned and of all expenses accounting for any surplus; the undersigned remaining liable for any deficiency. Upon any sale as aforesaid, the Webster Securities Corporation may purchase and hold the whole or any part of the property sold, free from any claim or right of redemption of the undersigned, which is hereby waived and released.

Upon any negotiation or transfer of this note by the Webster Securities Corporation it may deliver the said property or any part thereof to the endorsee or transferee thereof who shall thereupon become vested with all the right, title, and interest of the Webster Securities Corporation in and to said property so transferred, with all the powers and right of the Webster Securities Corporation therein, and the Webster Securities Corporation shall thereafter be forever relieved and fully discharged from any liability or responsibility to any person or corporation which might or could arise under this note as to said property.

No exchange or release of property, and no delay or indulgence on the part of the holder hereof in exercising any rights hereunder shall operate as a waiver of such rights or affect or impair the liability of the undersigned. The provisions, agreements, and terms hereof shall apply to and govern any and all notes and obligations given in extension or renewal of this note.

In the event of the insolvency or bankruptcy of, or appointment of a receiver for, any of the undersigned, this note and all said obligations and liabilities shall forthwith become due and payable without demand or notice.

WILLIAM FOX SECURITIES CORPORATION,
By WILLIAM FOX, *President*,
WILLIAM FOX.

Mr. PECORA. The second document submitted by you purports to be a copy of a letter addressed to Commercial National Bank & Trust Co. of New York, by William Fox Securities Corporation, signed by William Fox as president and by H. L. Clarke. Will you please look at it and tell me if it is a true and correct copy of such a letter that was so signed and sent [handing same to Mr. Fox]?

Mr. FOX (after examining same). Yes, sir.

Mr. PECORA. I offer that in evidence and ask to have it spread upon the record.

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

(Letter of Oct. 1, 1929, addressed to Commercial National Bank & Trust Co. of New York by "William Fox Securities Corporation,

by William Fox, president, H. L. Clarke", was received in evidence and marked "Committee Exhibit 171 of Nov. 23, 1933.")

Mr. PECORA. The first of these two documents, marked in evidence as "Committee Exhibt No. 170", is the usual form of collateral-note agreement.

Mr. FOX. Yes.

Mr. PECORA. Dated October 1, 1929, in the sum of $600,000, payable 4 months after date, payable to the order of Webster Securities Corporation. Did you know the Webster Securities Corporation to be a corporation of Mr. Clarke's?

Mr. FOX. I do not know whose corporation that is.

Mr. PECORA. But this is the note that you referred to a few moments ago as being the note that you gave to Harley Clarke for this loan of $600,000?

Mr. FOX. Yes, sir.

The CHAIRMAN. Specify the collateral.

Mr. PECORA. The note recites that there has been deposited and pledged as collateral with the said Webster Securities Corporation certificate for 25,000 shares common stock voting trust certificates of General Theatres Equipment, Inc.

Senator COUZENS. What is the date of that?

Mr. PECORA. October 1, 1929. The second document marked in evidence is "Committee's Exhibit No. 171." It reads as follows [reading]:

OCTOBER 1, 1929.

COMMERCIAL NATIONAL BANK & TRUST CO. OF NEW YORK,
56 Wall Street, New York City.

(Attention of Mr. H. H. Nutt, Jr., assistant trust officer.)

DEAR SIRS: Referring to escrow letter dated August 2, 1929 pursuant to which there was deposited with you T.C.C. 164 representing 25,000 shares of the common stock voting trust certificates of General Theatres Equipment, Inc., registered in the name of William Fox Securities Corporation, the undersigned hereby requests that you deliver the same to and take the receipt of Webster Securities Corporation notwithstanding the provisions and terms of said letter of August 2, 1929.

Yours very truly,

WILLIAM FOX SECURITIES CORPORATION,
By WILLIAM FOX, *President.*
H. L. CLARKE.

The CHAIRMAN. Is it convenient for you to suspend now where you are?

Mr. FOX. Yes. Any place you say, Senator.

The CHAIRMAN. We will take a recess until 2 o'clock.

(Thereupon, at 1 p.m. the subcommittee stood in recess until 2 p.m. the same day, Thursday, Nov. 23, 1933.)

AFTERNOON SESSION

The subcommittee reconvened at the expiration of the recess at 2 p.m., Thursday, November 23, 1933.

The CHAIRMAN. The committee will come to order. Proceed, Mr. Pecora.

TESTIMONY OF WILLIAM FOX—Resumed

Mr. PECORA. Mr. Fox, will you resume your narration from the point where the committee took a recess today?

Mr. FOX. Yes, sir.

Mr. PECORA. At the time of recess there had just been identified, and put in evidence, exhibits 170 and 171.

Mr. FOX. Yes, sir.

Mr. PECORA. Which related to the loan of $600,000 you obtained on October 1, 1929, and for which you gave as security the certificate for 25,000 shares of the common stock voting trust certificates of General Theatres Equipment, Inc.

Mr. FOX. Yes, sir. Mr. Pecora, I would like to show you a letter addressed to Mr. Saul E. Rogers, from Mr. Clarke, with reference to the same matter [handing paper to Mr. Pecora].

The CHAIRMAN. Who is Mr. Rogers?

Mr. FOX. Mr. Rogers was then my attorney. He is now Mr. Clarke's lawyer.

Mr. PECORA. I cannot decipher the handwriting in which the signature on this letter is written. Can you tell me how that signature reads?

Mr. FOX (after examining paper). This is one of Mr. Clarke's lieutenants. His name is Michael.

Mr. PECORA. I offer the letter in evidence.

The CHAIRMAN. Let it be admitted.

(The document referred to, letter, Oct. 1, 1929, Michael to Rogers, was received in evidence, marked "Committee's Exhibit No. 172", Nov. 23, 1933, and the same was subsequently read into the record by Mr. Pecora.)

Mr. PECORA. The letter is dated October 1, 1929, and reads as follows [reading]:

SAUL E. ROGERS, ESQ.,
Ambassador Hotel, New York, N.Y.

DEAR MR. ROGERS: With reference to the loan of $600,000 by Webster Securities Corporation to William Fox Securities Corporation, it will be necessary to have the following documents, which will be turned over to the Commercial National Bank & Trust Co., who at present have in escrow 25,000 shares of common stock voting trust certificates of General Theatres Equipment, Inc.:

1. An executed collateral trust note signed by William Fox Securities Corporation, signed by William Fox, president, and signed by William Fox, the note to mature 4 months from October 1, 1929, and to bear interest at 6 percent per annum, principal amount $600,000.

2. A resolution of the board of directors of William Fox Securities Corporation authorizing the pledge of said 25,000 shares common stock voting trust certificates of General Theatres Equipment, Inc.

3. An order from William Fox Securities Corporation to Commercial National Bank & Trust Co. to deliver to the Webster Securities Corporation said 25,000 shares common stock voting trust certificates of General Theaters Equipment, Inc., notwithstanding said letter of August 2, 1929, previously mentioned.

4. Certificate, T.C.O.-164, for 25,000 shares common stock voting trust certificates, General Theaters Equipment, Inc., endorsed in blank "William Fox Securities Corporation, by William Fox, president."

On the basis of these they will deliver to you check for $600,000 payable to the order of William Fox Securities Corporation.

Yours very truly,

H. C. MICHAEL.

Mr. FOX. Mr. Pecora, I would like to have you see this letter [handing paper to Mr. Pecora]. This is a copy of a letter written by

Mr. Saul E. Rogers to my accountant. It points out that the Webster Co. is Mr. Clarke's company.

Mr. PECORA. That has been already admitted in the testimony given by Mr. Clarke, so that there does not seem to be any occasion to read that document into the record, so I will return it to you [handing paper to Mr. Fox].

Mr. FOX. The letter has not any other significance.

Finally, this loan was about to become due, and we did not have the money to pay it with, and Mr. Rogers undertook to have the note renewed, and this is the first letter Mr. Rogers had written me on the subject.

The CHAIRMAN. As I understand, that agreement between you and Mr. Clarke, whereby you were to have $1,000,000 and he $500,000 was subsequently modified or canceled or laid aside, and this 25,000 shares of stock in the General Theatres Equipment Co. was taken over instead of that contract; is that it?

Mr. FOX. No. The 25,000 shares of stock, as I remember it, was given to me for denying me the right to participate in the purchase of the lamp companies. That was not in the agreement that we had offered here this morning.

Mr. PECORA. In other words, it was given to you by Mr. Clarke in recognition of some understanding he previously had had with you, under the terms of which you were to be jointly interested with him in the acquisition of the four lamp companies.

Mr. FOX. That is right.

Mr. PECORA. Those four lamp companies, you learned, had been acquired by Mr. Clarke, not for the joint account of yourself and him, but exclusively for his individual account.

Mr. FOX. That is right.

Mr. PECORA. And by way of adjustment of whatever claims you had because of that understanding that they were to be acquired for the joint account of yourself and Mr. Clarke, you now say Mr. Clarke gave you those 25,000 shares of the common stock of the General Theaters Equipment.

Mr. FOX. That is right.

Senator ADAMS. That did not waive your right to the $1,000,000 under your contract.

Mr. FOX. That did not.

Mr. PECORA. Will you narrate to the committee in your own way, as you were doing this morning, the history of the events that led to this so-called "conspiracy" that you referred to this morning, and the accomplishment of their purposes? I will return to you the document you last handed me, because I do not think it is necessary to put it into the record. You may make such reference to it in the course of your testimony as you may deem necessary to fill out the picture.

Mr. FOX. This would complete that transaction, and I thought perhaps we ought to close that incident up. This correspondence would show that it would automatically close it.

Mr. PECORA. Just refer to the correspondence in such manner as will give the committee the information you want to give it with regard to that particular transaction.

Mr. FOX. On January 8 Mr. Rogers informed me that he had communicated with Mr. Clarke that the loan was coming due and

advised me that he thought he could get a 60- or 90-day extension from February 1, and on January 17 Mr. Rogers had wired to Mr. Clarke as follows [reading]:

Pursuant to our telephone conversation last week, you promised to telephone me Monday of this week to arrange meeting to discuss Fox note, due February 1. Not having heard from you on Monday, I endeavored since Tuesday to get you on telephone, without success, and was informed by your secretary this morning that you left for Chicago last night. Inasmuch as due date of that note is rapidly approaching, it is urgent that I get definite decision from you immediately so that proper arrangements can be made by Fox. Kindly inform me your decision without delay.

Senator ADAMS. That is signed by whom?

Mr. FOX. By Mr. Rogers, addressed to Harley L. Clarke.

Mr. PECORA. Mr. Rogers was then acting as your attorney?

Mr. FOX. Mr. Rogers was then acting as my attorney.

On January 17 Mr. Rogers sent a letter to Mr. Clarke by registered mail, and the receipt is here attached, sending a copy of this telegram that I have just read.

On January 17 Mr. Clarke had wired to Mr. Rogers, in which he said [reading]:

Unable to telephone you because I did not have time to find out if bank would renew. Will do so as early as possible and advise you.

On January 22 Mr. Rogers wired to Mr. Clarke:

Please give your decision with reference to Fox note due February 1. Time of maturity rapidly approaching, and in all fairness Fox is entitled to an expression of your position without delay.

On January 22 Mr. Rogers sent a registered letter to Mr. Clarke, sending a copy of that telegram, and the receipt of it is attached.

On January 23 Mr. Rogers received a reply from Mr. Clarke's secretary that read as follows [reading]:

Mr. Clarke advises me to say that he will let you know about the loan as soon as he can find out about its extension, which will probably be early next week.

Then there is a note from Mr. Roger's secretary to him saying as follows [reading]:

Mr. Fox phoned and stated——

This is dated 4:50 p.m., but not dated—just the time [continuing reading]:

Mr. Fox phoned and stated that he advised you to instruct Harman to deliver the 25,000 shares to Bancamerica-Blair Corporation tomorrow to be transferred into 100-share certificates. He said that he wished you to confirm this instruction by letter, and send a copy of the letter to him, as he wished this to be done today, so that delivery of shares could be made tomorrow.

Evidently February 1 was when I had arranged with Bancamerica-Blair to take over the 25,000 shares and pay the note of $600,000, which they did, and following that, several days thereafter, each day selling some of the General Theatres Equipment shares in the open market, as they thought the market would absorb them. They sold a number of shares to make up the $600,000 that he had advanced me.

Mr. PECORA. Do you know what number of shares they so sold out of the 25,000?

Mr. FOX. About 14,000 and a fraction shares, having secured better than $41 per share average.

Mr. PECORA. They returned the remaining shares to you?

Mr. FOX. They returned the remaining shares to me, and I delivered them to my broker, and he sold them.

Mr. PECORA. For your account?

Mr. FOX. For my account; and gave me a check for four hundred thousand and odd dollars. The total realized out of it was about $1,040,000, or $1,050,000. The shares never were repurchased by Mr. Clarke, as he said, unless he purchased them in the open market, and if he did, he paid more than $750,000 for them.

Mr. PECORA. Mr. Fox, when did you arrange with Blair & Co. to take up this $600,000 note that fell due on February 1, 1930?

Mr. FOX. About 1 or 2 days prior to its expiration, when I realized that Clarke was just waiting for the day for the note to become due, and hoping I would default in it, so that he could recapture his shares for the $600,000 that he loaned me.

Mr. PECORA. When did you hear finally from Clarke that he would not renew the loan?

Mr. FOX. We never heard that. We were told, until the last minute of the last day, that during the course of the afternoon a new note would be accepted. A new note was drawn and signed by me, held in readiness for an exchange of the note, but, of course, it was never called for.

Mr. PECORA. When did Blair & Co. take up the old note?

Mr. FOX. I asked Mr. Elisha Walker, in connection with loaning me the $600,000, to please delay doing it until the very last minute, or as close to 3 o'clock as possible.

Mr. PECORA. On February 1?

Mr. FOX. On February 1; in the hopes that Clarke meant what he said, when he said that he would try to renew the note.

Mr. PECORA. That closes your narration of that event?

Mr. FOX. That is right.

Mr. PECORA. Will you resume your narration of all these events?

Mr. FOX. Of course, all that is incidental to the Grandeur thing, and perhaps it is best to dispose of the Grandeur now.

Mr. PECORA. If you will.

Mr. FOX. Sometime in the middle of June Mr. Clarke called on me and told me that he was about to form a General Theatres Co. some time in the middle of June.

Mr. PECORA. Of 1929?

Mr. FOX. Of 1929. He said that he would prefer not to carry out the original contract as entered into between us on May 24, that he did not want the outstanding obligation to pay me $1,000,000, as that contract provided, before any dividends could be paid on the earnings by that company; that he had bought the Mitchell Camera Co. for our joint account, and that he was going to transfer the Mitchell Camera Co. to the Grandeur Co.

Mr. PECORA. Did he tell you how much he had bought the Mitchell Camera Co. for?

Mr. FOX. My recollection is that he said it cost him $1,475,000, and that when the Grandeur Co. would be completed, on the completion of his new financing, that he was doing, it would be in the following position:

First. It would have all that I possessed in connection with Grandeur, the development of the Grandeur idea, the money that I had expended, and all efforts and energies that I had put into it over a period of years.

Mr. PECORA. How much had you expended in those efforts and in that development?

Mr. FOX. I had expended, in actual cash, I should say, about $220,000, and had obligated myself for an amount, perhaps, of another $100,000.

Mr. PECORA. And that was expended in the process of developing a camera and other apparatus designed to take moving pictures on a film wider than the film commonly in use, which was 35 millimeters in width?

Mr. FOX. That is right, and with it went the patents that I had. The person that I had bought it from assigned to me all his right, title, and interest in certain patents that he possessed.

Mr. PECORA. Had you acquired any patents that were held by the Mitchell Camera Co., or that were disputed by the Mitchell Camera Co. of California, in any way?

Mr. FOX. I do not know that, sir.

Second. It would own the Mitchell Camera Co.

Third. It would have $900,000 of cash in bank.

Mr. PECORA. For working capital?

Mr. FOX. For working capital.

Fourth. It would relieve me of putting up the original capital, as provided for in the agreement of May 24.

Senator ADAMS. $250,000?

Mr. FOX. Which provided that both Clarke and I would each put up $250,000. In this, the company that had these four assets, I would have a half interest without cost to me; that Clarke would pay for the half interest out of his personal funds, by some method of exchange of checks. That was carried out, sir. On August 1 Mr. Clarke issued to my order two checks.

Mr. PECORA. I show you committee's exhibits nos. 167 and 168 in evidence. Will you look at them and tell me if you recognize them to be true and correct copies of the two checks you have just referred to, together with the endorsements thereon?

Mr. FOX. The difficulty about it is that I was ill when this was done. I had never seen those checks. This is the first time that I am seeing them now. Of course, the endorsement is not mine, because someone else did it, except it was deposited in my bank. It says, "For deposit, William Fox." I was not present at the closing of this transaction. As you remember, I told you I had been injured on July 17 and did not recover until the end of October.

Mr. PECORA. Did you, subsequent to your recovery from that injury, learn or confirm that those two checks, or the originals of those two checks, had been given by Mr. Clarke?

Mr. FOX. Yes; I had received a letter from one of Mr. Rogers' associates telling me—I believe it is either addressed to me or to Mr. Rogers, telling him that the matter had been closed and that these two checks were issued to my account and deposited in my bank.

On the same day I had issued my check to the Grandeur Co. That is, I did not issue it. Those who had power of attorney for me

had signed this check, in the sum of $1,950,000, to the order of the Grandeur Co.

Mr. PECORA. Do you now produce the original check to which you have just referred?

Mr. FOX. I do, sir. The other $50,000 was the return of the original $50,000 that I had given him in connection with the purchase of the Mitchell Camera Co.

Mr. PECORA. I offer the check just produced by the witness in evidence.

The CHAIRMAN. Let it be admitted.

(The document referred to, check dated Aug. 1, 1929, $1,950,000, signed William Fox, to Grandeur, Inc., was received in evidence, marked "Committee's Exhibit No. 173", Nov. 23, 1933, and the same was subsequently read into the record by Mr. Pecora.)

Mr. PECORA. That is the original check. I do not know whether you want it marked.

Mr. BECKER. That may be marked, and I will give you a photostatic copy.

Mr. PECORA. The check is drawn against the account of William Fox in the National City Bank of New York, dated August 1, 1929, and is payable to the order of Grandeur, Inc. It is made out for the sum of $1,950,000. The endorsement on the back thereof reads as follows [reading]:

For deposit and credit to account of Grandeur, Inc.

Mr. FOX. In the arrangement of the Grandeur Co. I believe Mr. Clarke had elected himself president and treasurer, or president and secretary, or two of the offices, and before I could get any information as to what this whole arrangement was, other than from a memorandum that I had received from Mr. Roger's office, it was necessary, a year later, for me to go to court and get a court order compelling Mr. Clarke to permit me to examine the books and learn the status of the company.

Mr. PECORA. That is, of Grandeur, Inc.

Mr. FOX. Of Grandeur, Inc. And there were several orders issued by the court that resulted in my right to examine the books and learn what happened to that company.

Senator ADAMS. Did Mr. Rogers represent you in those proceedings?

Mr. FOX. No, sir; he did not. It was after I had sold out. Likewise, we had to go to the State of Delaware and ask the courts there to mandamus the Mitchell Camera Co. to let us examine the books of the Mitchell Camera Co., to learn what that was doing from the time Clarke acquired it up to the time of our investigation.

Mr. PECORA. Have you any knowledge as to how Grandeur, Inc., acquired the assets of the Mitchell Camera Co. of California?

Mr. FOX. Only what I have been reading in the newspapers, sir. I did not know how that deal was made.

Mr. PECORA. You are now referring to the newspaper reports of testimony given here within the last few days by Mr. Clarke on that subject?

Mr. FOX. That is right.

Mr. PECORA. Are you still a stockholder of Grandeur, Inc.?

Mr. FOX. I am its sole stockholder now.

Mr. PECORA. Go ahead with your narrative, Mr. Fox.

Mr. FOX. I had retained my half interest and had later bought the other half interest.

Mr. PECORA. From whom?

Mr. FOX. At public auction.

Mr. PECORA. Who had owned the other half interest that you bought at public auction?

Mr. FOX. The other half interest was owned by the General Theatres Equipment Corporation, and they gave it to me as collateral on a loan for some notes that I had.

Mr. PECORA. Go ahead.

Mr. FOX. They had given me that as collateral for certain notes that they had given me.

Mr. PECORA. Were those notes given you in pursuance of terms of the agreement under which you sold your stock in April 1930 to General Theatres Equipment, Inc., or its nominees?

Mr. FOX. They were given to me pursuant to that and pursuant to a further agreement we made on August 13, 1930, at which time there was not delivered to me the number of shares on the new Fox stock that I was entitled to, and notes were given to me in settlement of that matter.

Mr. PECORA. Now, there has been testimony given here, Mr. Fox, by Mr. Clarke, substantially to the effect that the $2,000,000 represented by the two checks marked "Exhibits 167 and 168" in evidence here was paid to you by Mr. Clarke as the consideration or purchase price for certain claims you had that were connected with the business or assets, good will, or otherwise, of the Mitchell Camera Co. and which you transferred for such payment of $2,000,000 either to Grandeur, Inc., or to General Theatres Equipment, Inc. What are the facts, according to your knowledge, of them, with regard to any such transaction?

Mr. FOX. Well, as I said before, the Grandeur Co. were to have four assets: (1), it was to have the experience and the advantage of the money and time that I had expended in the development of the Grandeur camera; (2), it was to have the Mitchell Camera Co.; (3), it was to have 900,000 shares of stock.

Mr. PECORA. $900,000 of working capital?

Mr. FOX. $900,000 of the working capital. And (4) was that which Clarke had contributed, some labor that he said his firm had done in connection with the development of some wide-projection machine.

Now, when the matter was to be closed it was a fact that in consideration of the fact that I had conceived this whole thing and the fact that I had developed it to a point where it was ready to be marketed and where its opportunities and possibilities were to earn many, many millions of dollars, it was agreed between Clarke and I that he was to give me my half interest without cost to me.

Mr. PECORA. Your half interest of Grandeur?

Mr. FOX. Of Grandeur, with these assets in the company.

Mr. PECORA. Then, the $2,000,000 which you got in the form of those 2 checks were checked out by you substantially by the drawing

of the check for $1,950,000 to the order of Grandeur, Inc., which has last been offered in evidence; is that right?

Mr. Fox. That is right, and plus the return of $50,000 originally advanced in connection with the purchase of the Mitchell Camera Co.

Mr. Pecora. That is, $100,000 had been put up by Clarke in the transaction whereby he acquired on the 6th of June 1929 from the Mitchell Camera Co. all of its assets. Did you contribute $50,000 of that $100,000?

Mr. Fox. I did, sir.

Mr. Pecora. And did Clarke contribute the other $50,000, so far as you know?

Mr. Fox. I think he did; and the $2,000,000, one washed the other.

Mr. Pecora. I see.

The Chairman. Was that the understanding at the time these checks were given, that one was to offset the other?

Mr. Fox. Oh, yes. Oh, yes. The net result was to be that there was to be no payment by me for the half Grandeur stock and the Grandeur Co. were going to have these assets. As to the amount of checks that he would exchange at that time, perhaps that was or was not discussed, I do not know. It may have been that he said that he would do it in the form of two million or a million and a half or less, I don't know that. The fact was that when it was arranged it was to have these assets that I have described and that there was to be no payment by me and that I was to waive the million dollars claim that I had to be paid to me out of the first profits before a dividend was declared.

Mr. Pecora. That was under your agreement of May 24, 1929?

Mr. Fox. Under the agreement of May 24, 1929.

The Chairman. Nothing in writing as to that at all?

Mr. Fox. Nothing which, sir?

The Chairman. Nothing in writing as to that?

Mr. Fox. I do not know. I have not been able to find anything. I have searched for it. If there is any writing I have not been able to find it.

Mr. Pecora. On August 1, 1929, when you received those two checks aggregating 2 million dollars from Clarke, if I correctly followed your testimony, you were incapacitated as a result of this automobile accident that occurred on July 17?

Mr. Fox. That is right.

Mr. Pecora. Who acted for you in that transaction in which you got 2 million dollars on August 1?

Mr. Fox. Mr. Saul Rogers and his associates.

Mr. Pecora. At the time did he keep you currently posted while you were in that incapacitated or disabled condition with regard to the events that were taking place?

Mr. Clarke. No; he did not. I made an inquiry about it in a note addressed to his office, I think it is 30 or 60 days later. [Aside to Mr. Becker.] Isn't it?

Mr. Pecora. Were you physically able to attend to any of your business affairs around the 1st of August 1929?

Mr. Fox. Oh, I was not. I think it was about a day after I left the hospital, and I was not in fit condition to do anything. [After hearing from Mr. Becker.] As late as September 27——

Mr. PECORA (interposing). What year?

Mr. FOX. Of 1929. Here is a copy of a memorandum sent to Mr. Saul Rogers from me. May I read it, or would you like to have it?

Mr. PECORA. Go ahead and read it.

Mr. FOX (reading):

Mr. Saul E. Rogers. September 27, 1929. It is important that you familiarize yourself with the following contracts:

One, the Ellen contract.

That was the person from whom I had acquired Grandeur.

Two, the contract with Harley Clarke or his company in connection with the use of Grandeur cameras.

Three, the contract between Harley Clarke or his company and myself regarding the working basis between Grandeur and the International Projector Corporation in connection with Grandeur projection machines, and any and all other contracts or agreements that exist between Harley Clarke's company and myself.

In addition to this I would like to settle the manner in which the Mitchell Camera Co. will work under its present ownership, and I would like you to become familiar with what our rights are in that company. If there are any other papers in connection with this transaction that I have not mentioned in this memorandum, will you likewise familiarize yourself with it and bring them with you, so that you can explain to me exactly what my position is in this matter?

That is how little I knew about the transaction when it was closed. That was 2 months later.

Senator ADAMS. Mr. Fox, this check for 1,900,000——

Mr. PECORA. Nine hundred and fifty thousand.

Senator ADAMS. Nine hundred and fifty thousand—was payable to the Grandeur Co.?

Mr. FOX. Yes, sir.

Senator ADAMS. Went into the Grandeur Co.'s treasury?

Mr. FOX. You mean the check then?

Senator ADAMS. How did you get it out?

Mr. FOX. Never got it out. It stayed there.

Mr. PECORA. You got 50 percent of the capital stock of the Grandeur, Inc.?

Mr. FOX. I did, sir. That is right.

Mr. PECORA. For this $1,950,000?

Mr. FOX. That is right.

Mr. PECORA. Plus the $50,000 that you had given to Clarke as your contribution to the initial payment of a hundred thousand dollars he made in connection with this acquisition of the assets of the Mitchell Camera Co., of California?

Mr. FOX. That is right.

Senator ADAMS. I understood you to say that you had originally contemplated the contribution or subscription of $250,000 from each of you to constitute the working capital of this company.

Mr. FOX. Of course, both being the owners of half of the company, it made little or no difference as long as we were both going to put in a similar amount, as long as we were going to put it in, whether we did or not.

Senator ADAMS. It did not make any difference how you got it out?

Mr. FOX. We never put it in, sir. If you are confused about that, Senator, I wish you would let me tell it to you once more, because I can straighten it out without any difficulty at all.

Senator ADAMS. Frankly, I am confused about it, but I do not care to take up any time of the committee.

Mr. FOX. I do not think we ought to be confused about it, sir. May I describe it just once more very briefly?

The CHAIRMAN. Proceed.

Mr. FOX. The contract dated May 24, 1929, between Clarke and myself agreeing to each contribute $250,000 to the creation of a company called the Grandeur Co. An agreement between Clarke and me that he is to buy the Mitchell Camera Co. for our joint account. The agreement of May 24 provides that out of the first profits that the company earns and before a dividend is declared $1,000,000 is to be given to Fox to compensate him for moneys invested in the time and experience in the assets that he gave to the company.

Some time in June, Clarke comes and says, "Now, I want to change that whole deal. Neither one of us have put up the $250,000 yet." The company had just been created. The Grandeur Co. had just been organized. "Now, I want you to waive the right to receive a million dollars of profits before the company declares dividends. I want you to give to the Grandeur Co. all that you possess in connection with the development of Grandeur, and in consideration of that I will give you 50 percent of the stock in the Grandeur Co. When you receive this 50 percent of the stock the status of the company will be: One, working assets that you now possess; two, it will own the Mitchell Camera Co.; three, it will have $900,000 of working capital; four, it will have that which I have done in the development of it. You will not be obliged to pay a dollar to get your stock. You are getting your stock for what you have already contributed."

Then he does it in the bookkeeping manner that I was not familiar with at the time. I was not present at the closing. He gives me a gift—I consider it a gift—of $2,000,000, providing I take the same $2,000,000 and buy myself a half interest in the Grandeur Co. and deposit the funds in the Grandeur Co., which I did.

Is that clear, Senator?

Senator ADAMS. Yes.

Mr. FOX. It should be, because it was perfectly simple. [Laughter.]

Mr. PECORA. Mr. Fox, did you know how Clarke got the $2,000,000 that he turned over to you in the form of those two checks of August 1, 1929, which aggregated that amount?

Mr. FOX. I haven't the slightest idea where he got that money from.

Mr. PECORA. Can you go on to the date of April 7, 1930, which, as I recall, was the date of the consummation of a transaction between you and General Theatres Equipment, Inc., and in the course of which you sold to that company some 50,000 shares of Fox Film A stock and 100,000 shares of Fox Theatres B stock?

Mr. FOX. Well, we are not quite up to that yet. That would be cutting it rather short. In view of the fact that it was commonly known—Mr. Pecora, may I say now that I am willing to stop whenever you think you have got enough of the story. I am not here to press the story, unless you really want to hear it.

Mr. PECORA. We do not want to curtail you. I thought perhaps that was the next step in the chronological order.

Mr. FOX. Yes, sir.

Mr. PECORA. But if there is something else to come in between, go ahead and narrate it.

Mr. FOX. Yes, sir. As I remember the recital of my story, I got to the point of where I had reached my accident in connection with what I had charged was a general conspiracy of a banking group to capture my companies.

Mr. PECORA. All right.

Mr. FOX. I would like to go back just a step of that, because it is a well-known fact—it has been well advertised—that the Fox Co., when it got into difficulty, owed $91,000,000, and the Loew purchase was only $73,000,000; and I would like to call attention of this committee to how the other $20,000,000 of liability was incurred.

Mr. PECORA. All right, go ahead.

Mr. FOX. There came to America a man by the name of Isador Ostrer, who said that he controlled a company in England called the British Gaumont Co. that had a chain of theaters of more than 300 in number and that had studios where they were manufacturing pictures abroad, and he was desirous that the Fox Co. acquire a 75 percent interest in that company.

In the records of the film company it was clear that the total amount of revenue that we were receiving from these 300 theaters in film rentals per year was less than $500,000 per year, and Ostrer had stated that if we controlled the Gaumont Co. and these 300 theaters it was possible for us to get a film rental revenue from the chain of theaters of somewhere between 4 and 5 million dollars per year.

Senator GORE. Who made that representation?

Mr. FOX. A man by the name of Isador Ostrer, who was in control of the British Gaumont Co. in England.

I had inquired from our English representative whether such a thing was possible, the gentleman who was in charge of the rental of our films to the Gaumont Co., and he said that was possible and more too. The Gaumont Co. was spending huge sums of money for the rental of pictures per year, and we were getting a very small amount of it.

This man Ostrer had come here just at a time when the talking motion pictures had just come into vogue. His theaters were not yet equipped for talking pictures. England was not using talking pictures; they were using silent pictures.

This required an expenditure of 20 millions of dollars, and I realized that I could not undertake it unless I talked to my creditors about it and asked them their advice as to whether they thought I ought to expand any further or whether they thought the matter should end there, particularly in view of the fact of my visit to the Attorney General's office wherein he told me that the record provided that I was not to acquire any Loew stock.

I discussed this mater fully with Mr. Harry Stuart, or Harry Stuart's office rather, Mr. Stuart being abroad at the time, and with Mr. Otterson. Otterson urged it strongly.

Mr. PECORA. That is, he urged the acquisition of the British Gaumont Co.?

Mr. Fox. He urged the acquisition of the British Gaumont Co. Of course, he had two reasons for doing that; that if the Fox Co. was to control the British Gaumont chain, that it would promptly buy the equipment from the American Telephone Co. of these 300 theaters.

Mr. PECORA. That is for the sound pictures?

Mr. Fox. For the sound pictures. At that time they were selling—the price of an equipment in England was about $25,000 in American money. It was clear that Otterson saw a chance to get a 7½ million dollar order.

More than that, it was going to give the Telephone Co. a dominating place in the English field, which they did not control as they had controlled it here in America.

The Stuart firm thought that the transaction ought to be made.

Mr. PECORA. That is Halsey, Stuart?

Mr. CLARKE. Halsey, Stuart & Co. And they urged me to enter into this contract. We arranged and made the purchase. The purchase was being made while Mr. Harry Stuart was in London. It was Mr. Stuart who went to the London Midland Bank and other banks in London and actually arranged or recommended that the loans be made to the Fox Co. to help us make this acquisition, and we did borrow there, I believe it was 800,000 pounds, from the London Midland Bank, $4,000,000, and some other sum, 400,000 pounds, from some other bank.

So that both of these people knew exactly what this transaction was, knew we did not have the money with which to do it, and the Stuart people knew definitely that we were financed on a short term basis and we would have to be financed when these payments became due.

Having in mind that we were under short-term financing, they recommended that I enter into a contract to make this 20 million purchase. That added to the $73,000,000 that we owed for the Loew Co. made an actual liability of about $93,000,000.

Mr. PECORA. Now, when did you complete the acquisition of the British Gaumont Co.?

Mr. Fox. Some time in July or August—no; some time in June or July.

Mr. PECORA. Of 1929?

Mr. Fox. Yes, sir; of 1929. I believe it was the latter part of June or the early part of July.

Mr. PECORA. And that is how the total indebtedness of Fox Cos. was increased to about $93,000,000?

Mr. Fox. That is right.

Mr. PECORA. Go ahead.

Mr. Fox. Now, sir, therefore it is clear that if those companies owed $93,000,000, which was just about the amount of the unpaid claims the companies owed; and that the $93,000,000 was for two exclusive purposes:

First. To buy the Loew shares for $73,000,000; and

Second. To buy the British Gaumont for $20,000,000.

That the fact is that those 2 companies, Fox Theaters and Fox Film, if they had not done those 2 pieces of business they would have been free of liability of any kind, nature, or description what-

soever, bankers or otherwise, and would have owed nobody anything; and would have been in the most liquid position it was possible to have a company in.

Mr. PECORA. And were they going and profitable concerns?

Mr. Fox. Oh, yes. They were then going and profitable concerns. And more than that, their structures were in common stock only. Neither company had any bonds outstanding, and neither company had any preferred stock outstanding.

Now, I have been wondering in my mind what was the reason for the advice that those men had given me, to enter into those additional contracts. Was it in good faith? Was it because they thought the Fox Co. ought to own the British company? Or was it to get me into such a position where I definitely could not get myself out of it? Was that the beginning of the conspiracy I am complaining about and that finally culminated in the capture of those companies from me? And in practically the destruction of those companies, or operation by men who were incompetent, who knew nothing about this whole business?

Was this a method that Mr. Albert Wiggin had made up his mind he was going to employ to enrich himself? Was that his purpose?

Now, what was all this? Who dared to go along with this matter without definite knowledge that from some place, from somewhere, some one was going to supply the money to pay this $93,000,000? Was there an understanding at this particular time that when they got rid of me, when they got ready to proceed as they desired, the Chase National Bank would supply this money?

Mr. PECORA. Mr. Fox, you are not asking me these questions, are you?

Mr. Fox. No; I have been asking myself these questions a thousand times over. If Mr. Wiggin would tell the truth he could tell it—or, I mean, if he were here and saw fit to tell us he could tell whether Clarke and he had this whole thing planned out from the beginning. And whether Mr. Stuart was invited in, not because Stuart liked Clarke, or Clarke liked Stuart, but where the whole foundation was being laid for this whole financing scheme when the opportune time came.

The CHAIRMAN. This is the first time you have mentioned Wiggin. Did you have any relations or conversation with him before this?

Mr. Fox. Do you mean about this matter?

The CHAIRMAN. Yes.

Mr. Fox. No, sir. I did not realize that Mr. Wiggin was in this picture until it was all through, until after I was all out, and until after these companies went on the rocks. Then it appeared that Mr. Albert Wiggin had played an important part in the whole transaction, that he was the Santa Claus, or that the Chase National Bank was. [Laughter.]

Mr. PECORA. What were the maturities of the loans negotiated to enable your companies to acquire the British Gaumont Co.? I mean, were they short-term borrowings, too?

Mr. Fox. Yes, sir; they were all short-term borrowings. I think, they were borrowings for six months, with some understanding of a renewal later. But the banks refused to renew. And after those

acquisitions were made, and I had met with my accident, and then when I recovered and came out ready to——

Senator ADAMS (interposing). Which accident do you refer to?

Mr. PECORA. Mr. Fox is referring to an automobile accident that he sustained.

Mr. FOX. Well, Senator, I have met with so many accidents I don't know which you would like to know about. But I am talking about the automobile accident, the one in which I was injured.

Senator ADAMS. I thought probably you meant the financial one.

Mr. FOX. No; the financial one was not an accident. I claim it was a conspiracy. And in such a case what can anyone know? I mean, what can anyone know, or what could I know in advance, supposing that a group of men have made up their minds to conspire against me? Why, I wouldn't know that until it actually took place.

And, gentlemen of the Committee, I intend to go on with this conspiracy matter, and prove it conclusively, sirs, and not by word of mouth, but by actual documents, if this committee wants to hear about it. I do not want to tell it, or volunteer it, unless you gentlemen want to know about it. And if you want to know the truth, the whole truth, and nothing but the truth, I have not only my word for it but documentary evidence showing just how this whole plan was worked out.

Senator GORE. All right. Step on it.

Mr. FOX. You cannot quite step on it, Senator. It is a rather long story, and I am wondering whether you want me to go forward or to end at this point. I will stop any place you want me to.

Senator ADAMS. No restrictions have been placed on you so far.

Mr. FOX. No, sir; there haven't been any. You have been very nice and very sweet about it, all of you.

Mr. PECORA. Just go ahead.

Mr. FOX. When the Grandeur arrangement was made with Clarke in June, a new arrangement, it abrogated the contract of May 24. You can well imagine then that we were on the most friendly terms. Some time during the month of August, or the early part of September, Mr. Clarke came to my home, Woodmere, Long Island, and wanted to know what progress I was making in connection with the consolidation, the merging of these companies. I told him I had made little or no progress, but that I was going to make progress and the automobile accident had retarded it. He said, "Why don't you let me attend to it?" He said he knew definitely that he could buy the Paramount Co., which was for sale, that he had influential friends in Washington who would see to it that he could not only merge the Loew and the Fox Cos., but also could include the Paramount Co. in it.

Mr. PECORA. Are you now paraphrasing what he told you?

Mr. FOX. Yes, sir; that is right.

Mr. PECORA. Go ahead.

Mr. FOX. And he wanted to know would I sell him a half interest in my voting shares, and let him perfect this thing.

Mr. PECORA. Do you mean the voting shares of the corporation?

Mr. FOX. The voting shares of Fox Theaters and Fox Film.

Mr. PECORA. And they were the B shares?

Mr. Fox. Yes, sir. I told him that I did not believe he or anyone else could have the Government consent to a consolidation that would likewise include the Paramount Co. at that time, and that I thought it was an idle dream on his part; that I had no desire to sell any part of my voting shares.

Senator GORE. Whom were you speaking to then?

Mr. Fox. To Mr. Harley Clarke, who had called on me at my home. Then Clarke said "Well, at any time you want any help at all be sure to call on me and I will be glad to give it to you." And then came this thunderbolt out of the sky, or earthquake, or whatever it was. To me it looked like more than an earthquake. It looked like a canyon had opened up, that hell had broken loose and the earth had caved in, with all these obligations on my back, with nowhere to turn for the usual and proper accommodation. It was a crash that sounded throughout the universe and I wondered where to turn.

Mr. PECORA. You are referring now to the market crash of October 1929?

Mr. Fox. Yes, sir.

The CHAIRMAN. The latter part of October 1929.

Mr. Fox. That is the same one. And there has been plenty of trembling since then, I can tell you. We thought that one was bad enough, at that time, but it was only a little murmer. The real earthquake occurred after that time, I presume.

The CHAIRMAN. And in October of 1930 it was just about as bad, wasn't it?

Mr. Fox. Well, if you will look at June and July of 1932 you can find out how bad it was. And if you will look at March of 1933, when you found every bank in the United States closed, including the great Chase National Bank, you will know how bad it was. [Laughter.]

And, gentlemen of the committee, remember that I fully realize I am never going to be able to borrow a dollar again from any bank in America. I had that clearly in mind before I came down here to testify in response to your subpena. I know that I am ostracized from banking society. I know that I am going to be shunned and all that. But I cannot help that. If you want the truth I will give it to you.

The CHAIRMAN. Well, if you have the $21,000,000 you do not care, do you?

Mr. Fox. I do not know how much of that I have left, you know. I have got something left. And I have the memory of this whole transaction, and the right to tell it. And, Senators, I want to make this statement, and I want you, sirs, to hear it: I came down here to testify only because you wanted me to testify. As you know, I did not volunteer to come down here. You have summoned me to come here, and you are now asking me to tell the story. After I have completed telling this story I feel that my life's work is done. If I were to die tomorrow I would feel that my job on earth is completed provided I have finished my testimony before you.

Senator COUZENS. Are you giving us anything new, that you did not give Mr. Sinclair?

Mr. Fox. I don't know. You see I have not gone into the book at all. Perhaps I am and perhaps I am not, but I don't know.

The CHAIRMAN. Mr. Fox, your story will be helpful if you can lead us to some sort of method by which this sort of thing may be prevented in the future.

Mr. FOX. Why, certainly, there will be no difficulty about that. You are going to find a method by which this thing cannot go on again. I mean, suppose you take Mr. Aldrich, who was man enough and smart enough to come in and visit here somewhere, I believe in the White House, and say that affiliates should no longer be tolerated. But he did not go there before Mr. Sinclair wrote his book. I recommended the elimination of bank affiliates in this book of Sinclair's, sirs, and if you would like for me to read the paragraph I should be very glad to do it. It is a very short paragraph, in which I pointed out the dangers of our banking structure at this time, that it comes from the fact that an affiliate can do that which a bank is not permitted to do. Mr. Aldrich, with his great intelligence, recognized that statement, and knew it was best for him to take the lead in the position of all bankers in America, which he did. He may consider that a voluntary act, but I do not consider that it is voluntary at all. I think that Mr. Sinclair's book compelled him to do that.

Of course, sirs, a great change is going to come about, when this Government will take over all of the banks, and there will be no banks in the United States owned by any one but the Government.

The CHAIRMAN. And do you advocate that step?

Mr. FOX. Well, that is going to be where you will wind up, whether this year or next year or 5 years from now, ultimately there will be no banks in the United States except those owned by the Government. And when you deposit $100 in such a bank you will know that the Government is going to give you your $100 back.

Senator GORE. And the man who can carry his ward will get a loan?

Mr. FOX. Yes, sir.

Senator TOWNSEND. Go ahead with your story.

Mr. FOX. In just a minute.

Mr. PECORA. You may go ahead, Mr. Fox.

Mr. FOX. All right, sir.

Senator ADAMS. I suggest that we go along with the actual facts.

Mr. FOX. I am going right ahead with them now.

The CHAIRMAN. Yes; let us get the facts.

Mr. PECORA. Yes. You may proceed, Mr. Fox.

Mr. FOX. As I said before, when the crash came I tried to find exactly just where we stood. And I promptly sent for the two principal creditors of the Fox enterprises. One was the representative of Halsey, Stuart & Co., and the other was the representative of the telephone company. I told them that there was in the hands of stockbrokers some 260,000 shares of Fox A stock that was under margin. No; I beg pardon; that there were in the hands of stockbrokers, about 223,000 shares of Loew's, Inc., that was under margin, and that it would be necessary for someone to loan the Fox Co. some money in order for it to be able to put up a margin so that those shares would not be sold.

Mr. PECORA. They were under margin because of the depreciation that had taken place in the value of the stock?

Mr. FOX. They were under margin as a result of the panic we have been talking about.

Mr. PECORA. With the resultant depreciation in the value of the stock?

Mr. FOX. That is right, sir.

Mr. PECORA. You may go ahead.

Mr. FOX. You will recall that I said the average price we paid for the 260,900 shares was somewhere in the 80's, and I believe the quotation on this day in question on Loew stock was, no bid—yes; was no bid, and offered at 5 or something like that. There wasn't any market there for it at all. And I think the next day the stock went to something like $40 a share. Oh, yes; the Halsey-Stuart firm listened to me very attentively, and that gentleman said he communicated with Mr. Harry Stuart in Chicago, and then he brought back his regrets. He said Mr. Stuart, his chief, had just created an investment company of his own, involving $75,000,000, and the settlement date was to be November 1, and that he was in all kinds of trouble himself, and as much as he would like to be of help in this matter he could not do it. I believe that was a company formed with Mr. Insull.

Mr. PECORA. Was it the Corporation Securities Co.?

Mr. FOX. The Corporation Securities Co. of Chicago, or something like that.

Mr. PECORA. Go ahead.

Mr. FOX. I then sent for Mr. Otterson of the telephone company, and said: "Look here, John, we owe you $15,000,000, and you haven't any collateral up for it, just an open loan. This company has got to have some money and have it fast, and I would like to arrange for the telephone company to make a further advance to us." He listened to the story very attentively, and said he would call me back the next morning. He did call me back and told me that Mr. Gifford said: "That is as far as the telephone company wants to go. It does not want to loan any more money." I said: "Wait, John. Last evening when we talked we did not cover the thing quite fully. We now owe you $15,000,000 without collateral, and would like to borrow $13,000,000, and would like to give you collateral for $28,000,000 so as to guarantee your company against loss on this $15,000,000 loan." He said: "Well, now, that is a different proposition. I will have to ask Mr. Gifford again." He called back about 5 or 10 minutes later and said that Mr. Gifford was very sorry but the telephone company was not willing to make any further loans. I said: "Well, I can go to my old friend Clarke. I am sure I can get a loan there. That is my partner in Grandeur and he came down to see me when I was convalescing, and he said he would be glad to help me any time at all."

Senator GORE. Your partner in Grandeur, Inc., that was?

Mr. FOX. Yes, sir. Well, I went to him and I said: "Harley, now you will remember you said that at any time I was in trouble just to come to see you, that you could help me straighten it out. I would like to borrow three or four million dollars". That was what I think I asked for then, which probably would have been enough for a day to tide us over. Well, he did not whisper the word "No"; he yelled it as loud as he knew how. [Laughter.]

Mr. PECORA. Anyway, you heard it.

Mr. FOX. Oh, yes; I heard it. [Laughter.]

Mr. PECORA. You may go ahead.

Mr. Fox. Well I worked on the theory that I got into this debt and any man who has the power to get into a $91,000,000 debt ought to have enough intelligence to get out of it. So I said to myself: Well, now, that is all right. These men do not want to do it. I will have no trouble. There are hundreds of places where one can borrow money. Why should I worry about these concerns? I am going round to make a house-to-house canvass, from door to door, to every principal bank in New York, and out of New York, and I will tell this story and show these assets and earnings, and I am sure I will be able to get a loan. But I found out that that theory was all wrong. [Laughter.] I found out that someone, that some underground wire has traveled as quickly as possible, ahead of me wherever I went. They listened attentively; yes. They gave me all attention, all the attention I wanted. They listened to the whole story, and then were very sorry they could not make a loan. It mattered not whether I offered to give $5 as collateral for a one-dollar loan. Oh, no; it made no difference. No loan was to be had. A fellow would say: "By the way, I think you owe us some little now. I think it is $400,000. Are you going to be able to pay that when due?" I said: "I don't think so." And his reply was: "Well, you better get ready to pay it."

Senator Gore. Did they talk to you that way when you first made the loan?

Mr. Fox. No, sir. When they first made the loan I would like to describe the talk. A man by the name of Johnson, Percy Johnson, of the Chemical National Bank, called on me in connection with our company opening a bank account there, and offering to extend credit. And he spent about an hour telling me his rise—and it is really marvelous, and he has had a great career. He said "Now you come of the same kind of a career, and you have worked your way up, and I am in sympathy with a man that is self-made, and so forth, and our bank will be pleased to loan you money." And of course, how can you resist that kind of conversation? You borrow the money from him.

Of course when we went back to Johnson in November 1929, well, he was just as nice, I mean, but there wasn't any more money there for a loan to any Fox companies.

Mr. Pecora. Well, did you make the rounds of the various banks and banking institutions?

Mr. Fox. I went to every bank that I thought could possibly make a loan, from door to door with my bundle of samples under my arm, which was the statements of these companies, which justified any kind of a loan at that time.

Senator Gore. What was the minimum loan that you asked?

Mr. Fox. All at this particular moment that I was worrying about was to borrow a sufficient sum of money to prevent the brokers from selling about 223,000 shares of Loew stock.

Senator Gore. Yes; that was undermargined?

Mr. Fox. The Loew stock that was undermargined. On the theory that we no longer had any control of the Loew Co. if those 223,000 shares of stock were taken from us.

Senator Gore. What was the minimum loan that you asked?

Mr. Fox. I was trying to get some way to take those 223,000 shares of stock away from the brokers and borrow on it—I believe at that

time that it was $40 per share—which was, of course, exactly what the stock was selling for in the market.

Senator GORE. And you were going to give the stock as security?

Mr. FOX. First give the stock as security, plus any other collateral that we had, and we had $25,000,000 or $30,000,000 worth of collateral which was not pledged or hypothecated that could have been offered as collateral for this loan.

Senator GORE. That was the point I was coming to. What was that?

Mr. FOX. Well, we owned real estate of all kinds, a list of which I would have to get from my files, sir. By memory I would not want to state them.

Senator GORE. No.

Mr. FOX. But there were assets that could have been appraised at that time at $25,000,000 or $30,000,000 that were not held as collateral by anyone, and that were not hypothecated under any loan or any trust arrangement.

Senator TOWNSEND. Was that the Fox stock?

Mr. FOX. That was assets of the Fox Theatres Corporation and Fox Corporation.

Mr. PECORA. Well, what happened when you failed in your efforts to get these loans to carry those 223,000 shares?

Mr. FOX. Well, a sort of a miracle happened. Having great faith in God He proved conclusively that I was right in having faith in Him. Within 3 days after this panic, or 4 days after this panic, with my staying up day and night trying to find a way of giving these brokers the margin that they required, a man by the name of Albert Greenfield called me up from Philadelphia and said, "By the way"—excuse me. Albert Greenfield called me up, who, by the way, knew nothing about my troubles, and did not know anything about the difficulties I was in. He said, "By the way, have you still got these First National shares of stock"? The Fox Film Corporation owned 25,001 shares of a picture company called the First National Pictures Co., 21,000 which it had received as a bonus, costing it nothing, when it acquired the West Coast chain of theaters in California some 2 or 3 years back. Never received a penny of dividends on this stock. Never knew anything about the conduct of its business. Never placed any value upon the stock itself. I said, "Yes, we own that stock." "Well," he said, "Warner Brothers want to buy it." "Well," I said, "we are ready to sell it."

Well, to make a long story short, so as not to take up too much of your time, on the following day—this is almost unbelievable for a thing that I thought was valueless, particularly after the panic of October 29, 1929—on November the 2d or 3d this gentleman brought me a check and notes aggregating $10,000,000 for the payment of these 25,001 shares of stock that the Warner Bros. had taken over so that they could merge their company with the First National Co.

Of course, I promptly called together all my brokers, as you can well imagine, and distributed part of this money so as to no longer have these 223,000 shares undercollateralized, but to have them collateralized to the maximum amount that any brokerage house would require—would ask for, rather. And they told me that that was 35 percent margin, providing the shares were written down 5 or 10

points below what they were selling in the market at that day. We had enough money to do that, and did it. And this group of brokers entered into an agreement with me that just as long as I had the margin up to 35 percent that they would not turn the account out or refuse to carry it any longer until December 31, 1929. In other words, they would hold the account intact until December 31, 1929.

That was long enough for me. This is the 5th or 6th of November. I did not doubt at all that I would be able to raise all the money and get out of all this difficulty long before December 31, 1929.

Up to this time I hadn't any idea, any thought or any idea that anybody was trying to oust me out of these companies or to acquire these companies from me. I thought I was just a victim of an accident. First, a mistake to make the acquisitions if I did not have the money on hand. Second, for borrowing the money on too short a time. Third, the automobile accident. Fourth, the panic of 1929. All things that I could hardly foresee in advance. And I felt that this was just a part of an unfortunate condition that had arisen. The thought that some one was working in the dark all of the time and was conspiring to capture these companies from me of course never entered my mind at all.

I wish to call to your attention now that at this time there was no bank where the money that we owed them was due. And after we had received the money from Warner Brothers we had no merchandise creditors, other than those that run currently for 10 or 30 days. My only difficulty then was that when these bank loans—well, it was not a difficulty—I mean I did not count on it at all—when these bank loans became due I hadn't any doubt at all that I would be able to renew them as we had done many times before. Those companies' credit was good.

Senator GORE. How many banks did you owe?

Mr. FOX. I think there were 9 or 10 or 11.

Senator GORE. Will you kindly give us your experience as you approached them as these maturities took place; as the debts were due?

Mr. FOX. Yes, sir.

Mr. PECORA. Were these banks all in New York?

Mr. FOX. Yes, sir. The British acquisition, as I said before——

Mr. PECORA (interposing). Was financed by the London Midland?

Mr. FOX. By the London Midland and some other bank abroad.

Mr. PECORA. All right. Now will you answer Senator Gore's question?

Mr. FOX. Yes, sir. May I come to that in just a moment, Senator, please?

Senator GORE. Yes.

Mr. FOX. I am trying to do this in continuity form, gentlemen. If I hesitate for a moment it is only because I want to get my mind operating on a straight line again.

Coming to your question, Senator Gore, when the note came due there hardly was any——

Senator GORE (interposing). What was the first note to mature? At what bank?

Mr. FOX. I do not remember that, Senator—which one. I can get that for you, though.

Senator GORE. No; it is not material.

Mr. FOX. But as my recollection serves me now it was in the bank owned by the honorable gentleman called Harriman, of New York. The Harriman Bank. You have probably heard of the gentleman.

Senator COUZENS. Did you say "honorable gentleman"?

Mr. FOX. Yes, sir. At that time he was very honorable, sir.

Senator GORE. So were they all honorable men?

Mr. FOX. Yes, sir. And the first thing Mr. Harriman did—he never waited until we talked about the renewal of the note due. He just found out before his note was due. I assume he said to his bookkeeper, "Find out what balance the Fox Film Co. has got here." And he was informed. "All right", he said, "tell them we have applied that to the loan. We have applied that to the note due here." Checks that we had issued on the Harriman Bank for money that we had on deposit came back marked "N.G." That is the first time that a check had ever come back that bore the signature of either Fox Film or Fox Theaters or William Fox in its long career of thirty-odd years. When we inquired what it was about, "Why, don't you know—Harriman took the money."

A few days later: "You cannot do it through the City Bank." "Why?" "Because they just took your money." "You cannot do it through the Manufacturers Trust. They have just taken your money." And so every bank that we had an affiliation with—with whom we have dealt over a period of years—had simply taken every dollar that we had there whether the loan was due or not.

Mr. PECORA. Without notice?

Mr. FOX. Well, notice about at the time they were taking it; yes. Not notice long enough for you to draw a check on cash and draw the money out. [Laughter.]

Mr. PECORA. It does not take long to draw a check, does it?

Mr. FOX. I will tell you how beautifully these boys worked. What a perfect understanding they had. Fox Film Corporation had a deposit in the Guaranty Trust, or its branch in Paris; had it there for a number of years. Occasionally very substantial sums of money. Never had asked for an accommodation during all that time. Never had borrowed a dollar from them. It was just a depository. The manager of our French office was sent for. This is while all this grabbing of our deposits was taking place. By the way, not only grabbing our deposits here in America. Naturally, having dealings with the National City Bank in America, we likewise dealt with them wherever they had a branch throughout the world; and in each country they took our money wherever we had a deposit with them.

The Guaranty Trust, with whom we had never had any relationships, never borrowed a dollar from them, had the account there purely as a depository, sent for our French manager. Said: "Here, withdraw your money out of here. We don't want any Fox account in this bank. Take it out." That is one of the things I never could understand, and do not understand until this day. Evidently he misunderstood his instructions—I don't know—but the fact is he wanted no business with the Fox Film Co.

Well, now, when all this thing went on I said, "Well now, boy, wait a minute. You had better get yourself a lawyer."

Senator COUZENS. That is the last thing you needed.

Mr. Fox. "You look like you are in trouble now." I did not believe I was in trouble up to this time. I thought the whole world was in trouble, and that when the thing adjusted itself mine would adjust itself with it, particularly after the miracle of the Lord answering my prayer and sending $10,000,000 to me 3 days after the panic, for 25,001 shares that I considered worthless.

And then I made my grave mistake by the lawyer that I had selected. By the way, I want to straighten that out for a minute. I said I had better go to some banking friend who hasn't yet captured the money that I have on deposit, and maybe he ought to be a friend, because he had a chance to take the money as well. And there was one chap, who is now in jail; his name is Marcus. I said, "I would like to take you into my confidence. It looks like I have got a little difficulty here." "Oh, I think you have, boy. Yes, sure, I'll get you a lawyer right away." He said, "Now, I'll call him up right now," and he did promptly call that fellow right up, and down this fellow came. What is his name? He was with White & Case.

Mr. Becker. Hartfield.

Mr. Fox. Colonel Hartfield. What is his first name?

Mr. Pecora. Joseph.

Mr. Becker. Joseph.

Mr. Fox. Yes. Col. Joseph Hartfield. He said, "Now here is a man that knows all about Wall Street." Nothing that he doesn't know. He is a banker's lawyer. He understands everything. He is Mr. Morgan's lawyer. The attorney for the Bankers Trust where I owed a substantial sum of money. Hartfield would have no trouble straightening me out. No difficulty at all. So Joe made an examination of everything, and then told us that we owed 91 million dollars or 92 million dollars. That looked like a serious problem. It was a very huge sum of money.

Mr. Pecora. Mr. Fox, at any time you want a few minutes' rest I do not believe the committee would have any objection.

Mr. Fox. I believe I would like to take it at this moment, please.

Mr. Pecora. All right.

(Thereupon, a short recess was taken, during which Mr. Fox withdrew from the hearing room.)

Mr. Pecora. Mr. Rogers, while we are having this interruption in Mr. Fox's testimony it has been suggested that the time be utilized by examining you along certain lines. So the chairman will now put you under oath.

TESTIMONY OF SAUL E. ROGERS, NEW YORK CITY

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

Mr. Rogers. Yes, sir.

Mr. Pecora. Will you give your full name?

Mr. Rogers. Saul E. Rogers.

Mr. Pecora. And place of business and occupation or profession.

Mr. Rogers. Three hundred and seventy-five Park Avenue, New York City, is the address; occupation, lawyer.

Mr. PECORA. Mr. Rogers, have you been present at the hearing before this committee today during the giving of the testimony of Mr. William Fox?

Mr. ROGERS. All except about 15 or 20 minutes, when I was called to the telephone.

Mr. PECORA. Did you hear that portion of Mr. Fox's testimony in which he alluded to certain conferences that you as his attorney had with certain officials of the Department of Justice, namely, the Attorney General's office, some time in 1929, the early part of 1929, at which conferences there was discussed the question of the validity or legality of any acquisition by Fox Films or Fox Theaters Corporation of 400,000 shares of stock of Loew's, Inc.?

Mr. ROGERS. Yes.

Mr. PECORA. Did you hear all of Mr. Fox's testimony before this committee today on that subject?

Mr. ROGERS. I cannot answer that, because I was out of the room 20 or 25 minutes during his testimony. I do not know whether he alluded to that during the period I was out.

Mr. PECORA. I do not believe he made any allusion to that while you were absent from the room during that 20- or 25-minute period, so I think we may safely assume that what you did hear was all of his testimony on that matter today.

Mr. ROGERS. All right.

Mr. PECORA. Will you tell this committee what you recall concerning those conferences and the results of those conferences?

Mr. ROGERS. Mr. Pecora, might I suggest this? I would suggest that, after all, I acted in the capacity of an attorney for Mr. Fox personally, as well as for Fox Film Corporation and Fox Theaters Corporation. I do think that some of these transactions might enter the realm of privilege.

Senator ADAMS. Not privilege to the attorney, but privilege as to the client. If the client is willing to waive them——

Mr. ROGERS. Exactly. I would suggest that Mr. Fox waive that privilege.

Mr. BECKER. In Mr. Fox's behalf—well, I had better wait. He will be back in just a moment.

Mr. PECORA. We will let him waive the privilege if he wishes to.

(Mr. William Fox reentered the hearing room.)

Mr. BECKER (after conferring with Mr. Fox). Mr. Fox is very happy to waive the privilege.

Mr. PECORA. Let Mr. Fox make the statement himself, for the record.

Mr. Fox, are you willing to waive whatever privileges of confidence the law may cast about any testimony that Mr. Rogers now on the stand may be called upon to give with respect to the conferences held by you with him as your attorney and certain officials of the Attorney General's office on the subject of the legality of the acquisition of 400,000 shares of Loews, Inc., stock that you testified about this morning?

Mr. FOX. Yes, sir; I would be happy to have Mr. Rogers explain that; yes, sir.

Mr. PECORA. Go ahead, Mr. Rogers.

Mr. ROGERS. Now, beginning with the inception of it, Mr. Fox and the Loews family group owning and controlling these 400,000

shares that were acquired had arirved at a tentative agreement as to price and the method of payment. Mr. Fox, however, expressed to Mr. Nicholas Schenk, the president of Loews, Inc., that there might be some question involved with reference to a question of the legality of the Fox Theatres Corporation acquiring those shares of stock, and that I had advised him that there might be a question, either under the Clayton Act or the Sherman Act, and that before committing his company to an acquisition that involved that very large sum of money he wanted to be assured on that score, first, that a reasonable opportunity would be afforded him to have that inquiry made and to be permitted to advise before he would attempt the the acquisition. As I recall, in substance, Mr. Schenk said:

This is only a verbal understanding. You can depend upon my keeping the agreement as to price and the method of payment, and if you desire this reasonable opportunity I would be happy to give you an opportunity; but you will have to do it as quickly as possible and not extend it too long. I do not know how long I can keep this situation open, because there is another bidder for this, I tell you confidentially, on terms and prices more beneficial.

Mr. PECORA. Will you disclose the identity of the other bidder?

Mr. ROGERS. I do not recall that, sir. After that, my recollection is that Mr. Fox left to call on Col. William J. Donovan, who at that time was Assistant Attorney General in charge, as I understood, of all matters affecting the Sherman law and Clayton Act situations for the Department of Justice. Mr. Fox left. I received some messages from Mr. Fox while he was gone—I believe, a letter or memorandum that Mr. Fox had prepared while he was with Colonel Donovan, setting forth just the general substance and not attempting to go into legalities, of what the situation really was. I also received a message that Colonel Donovan was placing the matter in the hands of a Mr. Thompson in the Department of Justice, and indicated that he would much prefer that I carry on all further negotiations and conversations with this Mr. Thompson. I recall I left for Washington, came down here and called on Mr. Thompson at the Department of Justice and discussed the matter very broadly with him, and he indicated that in his opinon there were two features of the transaction: One, the Clayton Act feature, as to whether the acquisition of these shares of stock in a competing company would be a violation of section 7 of the Clayton Act for the reason that that acquisition might possibly tend to diminish competition as between the acquiring company and the company whose shares of stock were being acquired. I discussed with him at that time that feature of it. One, that the 400,000 shares, while they might under some circumstances be regarded as operating control, were not necessarily operating control; that in addition thereto the Fox Theatres Corporation, the company that was acquiring the shares of stock, was not really in any substantial competition with Loews, Inc., and that the acquisition was to be made in the name of the Fox Theatres Corporation; that I believed that would take it out of section 7 of the Clayton Act.

He then wished me to indicate if the acquisition were made whether there would be any succeeding steps involved after the acquisition. I told him that in my opinion there would be; that there would be an attempt to either consolidate or merge Fox Theatres Corporation, Fox Film Corporation, and Loews, if a merger of

that kind could be brought about. Mr. Thompson stated, and, I thought, very accurately, that there were not only legal questions involved, but economic questions involved as well, and that all these Clayton Act situations and the Sherman law situations resolved just as much around the economic structure as they did around the legal structure——

Mr. PECORA. Let me interrupt you for a moment.

Mr. ROGERS. Surely.

Mr. PECORA. Was the Fox Film Co. engaged in the production of moving-picture films?

Mr. ROGERS. Production and distribution.

Mr. PECORA. And the Fox Theatres Corporation was an exhibiting company engaged in the business of exhibiting pictures?

Mr. ROGERS. No; it was primarily a holding company.

Mr. PECORA. What was the nature of the business in which Loews, Inc., was engaged?

Mr. ROGERS. Both the distribution and production of motion-picture films and the exhibition thereof in the theaters; the distinction being that Fox Theatres Corporation was merely a holding company for theaters; in fact, entirely, in the exhibition business, whereas Loews was in production, distribution of motion-picture films, and also in exhibition.

Senator ADAMS. May I ask right along that line, Were you satisfied that all of these various companies and their businesses came within the classification of interstate commerce so as to come within those statutes?

Mr. ROGERS. No; I felt that the Theatres Corporation did not come within the category of interstate commerce on account of the Albee case that had been decided prior thereto which held, in effect, that while primarily a theater corporation might be engaged in interstate transportation, it was not engaged in interstate commerce as such; that there was no barter or trade in interstate commerce, while interstate transportation might be present; and I thought the Fox Theatres Corporation could not be held to be engaged in interstate commerce. At any rate, it was primarily a holding company and not engaged in business at all.

Mr. PECORA. The Fox Theatres Corporation was owned and controlled by the same Mr. Fox that owned and controlled Fox Films? Films?

Mr. ROGERS. In that Mr. Fox held the controlling voting shares; in fact, all the controlling voting shares.

Mr. PECORA. Go ahead.

Mr. ROGERS. After we had discussed that and I had prepared, as I recall now—you see, I do not have any of these records at all; they are all company records now—I had prepared a plan for Mr. Thompson. Mr. Thompson came on to New York and he wanted quite a bit of economic data on a number of motion-picture companies, and he went outside of the Loews Co. in order to get the data, as well. He wanted to get data on the amount of business on distribution, the amount of business on production that all these various companies had throughout the country, so he could formulate some thought as to what percentage of the total production, distribution, and exhibition throughout the United States was involved in this

acquisition, first, as a primary acquisition of Loews shares, and, secondly, as a composite picture after the entire amalgamation or consolidation or merger was put into effect. It had not been determined at that time whether it would be done by way of consolidation or merger or amalgamation; that had not been definitely determined.

I was a bit crowded at the time, as I recall now, because of the pressure that was being brought to bear on Mr. Fox to give Mr. Schenk an answer so that Mr. Schenk could determine whether he was going on with Mr. Fox's offer or whether he wanted to take on what he said was a more beneficial offer. I did prepare data along those lines as best I could get it, and transmitted it to Mr. Thompson. Later I believe I went to Washington and had several more conferences with Mr. Thompson, and then finally Mr. Thompson came to see me in New York to give me his decision. As I recall now, his decision was that the Department was not quite positive in its mind as to whether or not the acquisition and the later steps of merger and consolidation would be entirely free from criticism under the Sherman Act, but that he felt rather inclined to think that so far as the Clayton Act was concerned, as far as the acquisition of the shares of stock was concerned, he felt that my position in the matter was very sound, and they thought they could rely upon that position. He said:

> However, I am speaking to you as of today. If conditions should change either in the economic structure of the industry itself—if the condition of predominance or prominence of various companies should change between now and the time this amalgamation or consolidation should take place, an entirely different economic picture would be presented; or if any change should take place in the situation that would change the legal position, my opinion might be different.

Mr. PECORA. Do you recall on what date you had that conversation with Mr. Thompson?

Mr. ROGER. No; I do not.

Mr. PECORA. Approximately?

Mr. ROGERS. Approximately, I think it was in the month of February.

Mr. PECORA. 1929?

Mr. ROGERS. 1929, yes; about February 1929, as well as I can place it.

Senator TOWNSEND. You had no written opinion?

Mr. ROGERS. No; I did not. I spoke to Mr. Thompson about a written opinion. I said, "Can you give me a firm covering letter?" He said:

> Well, we will give you a covering letter, but it will be the customary covering letter that will state it as of today, just as I am speaking to you, and without committing the Department, as to any future situation, as to change in legal status or economic status. We will provisionally approve.

I said, "That letter would not be very valuable."

I think shortly thereafter Mr. Fox returned from his western trip where he was awaiting action by Colonel Donovan, as I understood. I reported to him the nature of my talk with Colonel Thompson. Mr. Fox said, "You feel that your position is sound?" I said, "Yes, but he makes that qualification." Mr. Fox said:

> I think on the basis of that, it is reasonably safe for us to proceed, because I do not think there is going to be any change of situation. I think that any

change that is going to take place will be a change for the better, and this will be a much more valuable picture, both of the Fox Corporation and of the Loews Co. At that time there will be such a favorable picture and such a fine picture of the general stockholders and the general amalgamated situation that I do not think, as long as they find a picture as favorable as that, that any reasonable department or any departmental unit could have any objection to setting up this fine picture.

And the acquisition took place.

Mr. PECORA. Did you construe what Mr. Thompson and Colonel Donovan had said to you as sufficient assurance of the legality of the contemplated acquisition as to justify your advising your client to go ahead and make the acquisition?

Mr. ROGERS. Colonel Donovan said nothing to me; it was only Mr. Thompson.

Mr. PECORA. Did you construe what Mr. Thompson said to you in that way?

Mr. ROGERS. I did, and so advised Mr. Fox.

Mr. PECORA. And then the acquisition was proceeded with?

Mr. ROGERS. Right.

Senator ADAMS. Do you recall the testimony on the subsequent conversation when Mr. Thompson was asked as to whether he had given a certain opinion?

Mr. ROGERS. You mean, that Mr. Fox testified about?

Senator ADAMS. Yes.

Mr. ROGERS. I was present at that conference.

Senator ADAMS. Was that accurate?

Mr. ROGERS. It was substantially correct. He failed to state one thing that took place, and that was that I turned to Mr. Thompson in the presence of Mr. Fox and Mr. O'Brien and said, "The statement that Mr. O'Brien makes now is not in accordance with the talk you and I had at the Ambassador Hotel when you came to New York." It was thereupon that Mr. Fox turned to Mr. Thompson and said, "Why don't you answer the statements made here?" And then Mr. Thompson turned and said, "When Mr. O'Brien asks me for my statement I will make it."

Mr. PECORA. Was he asked by Mr. O'Brien?

Mr. ROGERS. No; he was not.

The CHAIRMAN. Do you know anything about these records or change of records?

Mr. ROGERS. No, sir; never heard of them.

The CHAIRMAN. The Attorney General stated at that time that the record showed——

Mr. ROGERS. Mr. O'Brien stated that according to what he could find in the record, there was no sanction given to the acquisition; but I didn't see the record.

Senator ADAMS. Did they state to you that the record showed that the application had been turned down? That was the statement made in the testimony this morning.

Mr. ROGERS. No, sir; that was not, as I understood Mr. O'Brien's statement. I understood the statement to be that from the record, so far as he could see, there had not been any definite permission or clearance given to the acquisition. That is what he said, as I recall it.

Mr. PECORA. Mr. Rogers, following that conversation you had with Mr. Thompson at the Ambassador Hotel in New York, at which

time Mr. Thompson made statements to you which, according to the advices you gave your then client, Mr. Fox, could be construed as sufficient assurance to enable you to advise your client to proceed with the acquisition of Loew's, Inc., stock, did you inform Mr. Thompson, in words or substance, that you were so construing his statements and that your client would proceed with such acquisition?

Mr. ROGERS. In substance, I stated to Mr. Thompson, after finishing my talk with him, that I would advise, in my opinion, that there was sufficient clearance to permit the acquisition.

Mr. PECORA. What did he say to that?

Mr. ROGERS. I do not recall now, except that there was some pleasant talk after that, and he left.

Mr. PECORA. Do you recall that he said anything which caused you to modify the advice you gave Mr. Fox or the interpretation which you had placed upon Mr. Thompson's statements to you?

Mr. ROGERS. No.

Mr. PECORA. Did you, either before or during the process of the acquisition of the Loew's company stock, or after its acquisition, inform the Department of Justice or any official connected therewith of the fact of such acquisition?

Mr. ROGERS. I believe I did.

Mr. PECORA. In what manner did you convey such information and to whom did you convey it?

Mr. ROGERS. I do not recall the name of the man, but he was in the Department, and in the interim, between the appointment of the Attorney General and the assignment of Mr. O'Brian to that division, I went down there and called on Mr. Thompson and this other member, whose name I don't recall just now, and started to discuss with him the question not only of the acquisition, but told him that I wished to get on with the plan of consolidation or merger.

Mr. PECORA. Was that after the acquisition of the 400,000 shares of Loew's stock had been completed?

Mr. ROGERS. Yes.

Mr. PECORA. What did they say to you?

Mr. ROGERS. They said, pending the appointment of a successor to Colonel Donovan, who could function, that they would much prefer that the matter be held in abeyance.

Mr. PECORA. The matter that they suggested be held in abeyance was the matter of the consolidation or merger?

Mr. ROGERS. Clearance on the consolidation or merger, yes.

Mr. PECORA. Go ahead.

Mr. ROGERS. Then Mr. O'Brian was designated; and I think from that point on, after I had this talk with Mr. O'Brian at which Mr. Fox was present, I believe that Mr. Burke stepped into the situation from that time on as counsel, and Mr. Burke, acting in the capacity of counsel, continued to carry on the negotiations with the Department of Justice.

Mr. PECORA. For whom did Mr. Burke act as counsel?

Mr. ROGERS. It was my understanding at the time that he was acting as counsel for the Fox Theatres Corporation and Fox Film Corporation both.

Mr. PECORA. Did you in any way procure his retention for that purpose?

Mr. ROGERS. No; I did not know Mr. Burke. I met him for the first time through Mr. Fox.

Mr. PECORA. Go ahead Mr. Rogers.

Mr. ROGERS. That is all there is to it.

Mr. PECORA. Does that answer your questions, Senator?

Senator COUZENS. Yes.

The CHAIRMAN. You may be excused.

TESTIMONY OF WILLIAM FOX—Resumed

Mr. PECORA. Mr. Fox, will you resume the witness stand and continue your narration?

The CHAIRMAN. You had reached the point of employing a lawyer.

Mr. PECORA. You had reached the point, prior to the suspension of your examination in order to allow us to hear Mr. Rogers, where you were having a conversation with Mr. Marcus, and he was recommending the employment of some lawyer.

Mr. FOX. Yes.

Mr. PECORA. And you called him Colonel Hartfield?

Mr. FOX. Yes. His first recommendation was that I take Mr. Isadore Kresel. I did not think that was advisable, so he then suggested Colonel Hartfield. Colonel Hartfield had been in the matter a few days (after conferring with an associate) before I had sent for Marcus, the thing that had really caused me to send for Marcus, and the engagement of Hartfield, this incident happened. One day Mr. Harry Stuart and Mr. John Otterson—Harry Stuart of Halsey, Stuart & Co., and John Otterson of the American Telephone Co.—called at my apartment and said that they had both reached the conclusion that the Fox Theatres and Fox Film Corporation were both bankrupt concerns, and that they demanded that I arrange to give them power of attorney under my voting stock to run these two companies from then on.

Senator GORE. Was this after or before you had approached the banks?

Mr. FOX. This was after I had approached the banks.

Senator GORE. This was after the banks had applied your deposits?

Mr. FOX. This was before the banks had captured all the money that was available, and had made it known that when the loans came due, or if they were due, they expected them all to be paid.

There are two sets of letters, sir, that I wish the privilege of offering this committee. I will have them brought here tomorrow. I had addressed a uniform letter to each one of this body of bankers.

Senator GORE. After this conference with Mr. Stuart to which you have just referred?

Mr. FOX. I think it was after the conference with Mr. Stuart, or the day before the conference with Mr. Stuart. I believe one letter is dated January 2d, and the other is dated January 6th. It was after the Stuart conference.

Of course, their demand was an absolute surprise to me for two reasons. The principal reason was that this was sometime in December, in the latter part of November or the early part of December, and the loan of the telephone company was not coming due

until about February 15, if I remember the date correctly, sir. I can look that up. I think it was February 15.

Senator GORE. How much was that?

Mr. FOX. $15,000,000. It was 2½ months before their loan was due, and the Halsey Stuart notes were going to be due on April 1, in about 4½ months. This was about 4½ months before they were due.

Senator GORE. How much?

Mr. FOX. $12,000,000.

Senator GORE. How much did you owe the 11 banks?

Mr. FOX. A little less than $7,000,000.

Senator GORE. Did each of the 11 apply your deposit to your note?

Mr. FOX. No. With several of these banks we had no checking account. Wherever we had a checking account the money was applied, other than, I believe, the Bank of the United States. That was the only one that did not apply it, so far as I recall.

Mr. PECORA. That was Marcus' bank?

Mr. FOX. Yes; that was Marcus' bank. I tried to figure out the reason why he did not apply it, and I reached the conclusion that he did not apply it because he was a sort of intermediary that could come and see me whenever he liked and talk the whole situation over and advise me and tell me what to do, and so forth, so that he was the contact man. It was evidently thought best that a contact man ought not to take the money.

Senator ADAMS. How big a deposit did you have in Marcus's bank?

Mr. FOX. Not very large, and shortly thereafter, perhaps very little, because, having all our other funds taken away, we had to draw on whatever few dollars we had.

Senator ADAMS. What was your indebtedness there?

Mr. FOX. We owed them, I believe, $1,600,000—the Fox Co. did; and I believe I had a personal loan there of $1,000,000, or a total of $2,600,000.

Senator GORE. And he was the contact man between you and whom?

Mr. FOX. Between the bankers, the Chase Bank, the Bankers Trust, the City Bank, and the rest of them.

Mr. PECORA. You were telling us about the request or the demand made upon you by Stuart and Otterson?

Mr. FOX. Yes, sir.

Mr. PECORA. To give them the right to vote your stock in Fox Films and Fox Theaters.

Mr. FOX. Yes, sir. The following day, still not realizing that this was a plan to take these companies away from me—although you would imagine that I would by this time see it clearly, but I did not—I had sent for Stuart, and said "Now, just what is it that you said last night that you wanted me to do? Let us do it calmly, instead of in the excited fashion as you were last evening."

He said, "What we would like to have you do is to create a voting trust of the voting shares that you own, and take as trustees under that voting trust myself, for one, and Mr. John Otterson for another, and yourself for the third, and if you do that we will arrange with your creditors that they do not press you any further; that

these notes are renewed, these loans are renewed." And Mr. Stuart said, "With the help of the telephone company we will find other bankers who will create a new financing plan to finance these companies out of their difficulties. This voting trust is to exist during the time that you owe this money, this new financing."

I said, "Wait a minute, Stuart. I can well understand your being in this picture, but what is the telephone company going to stay in there for all this while? They are a utility company. They are not bankers. They do not belong in this thing at all."

Then Stuart agreed with me that John Otterson would tender his resignation as voting trustee and give up that voting trust to a brother of Harry Stuart, called Charlie Stuart, just as soon as the telephone company had its $15,000,000 repaid. That really sounded wonderful to me. Here were all my troubles going to fade into insignificance. There was no more problem here. I had not any reason for not wanting Harry Stuart and his brother to be voting trustees under my voting shares. I had conducted these companies from the date that they were founded in what I knew was as honest a manner as I possibly could.

I knew that I was serving both these companies without compensation. The Fox Theaters Corporation, which was created in 1925, and this was in 1929, had never paid me a dollar in salary, had never paid me a dollar in dividends. I had spent tens of thousands of dollars in all forms of expenditure for the benefit of that company, and never was reimbursed for it. I had been on the pay roll of Fox Film from 1920 until 1926, I believe it was, or 1927, at $200,000 a year, and when, in 1926 or 1927, business did not look as good as I thought it might, I volunteered to cancel my salary, and from that date on for 2 or 3 years thereafter, until the day this difficulty came, I had received no salary from the Fox Film Corporation. I was serving both these companies without compensation.

What difference did it make whether Stuart and Otterson were voting trustees under my voting shares? They could do no more than give me the advice they had already given me during this entire year, to acquire these various properties and incur this debt.

Otterson asked me to come, I believe, to the University Club, or Stuart did, to meet with them there.

Mr. BECKER. The Metropolitan Club.

Mr. FOX. No, sir; the University Club, where I went, and then a new condition was made. When he asked for this voting trusteeship, there was to be no modification or change in the conduct of our business. It was being formed purely for the financing of these enterprises.

Then they made certain conditions. The first condition was that I immediately dismiss Mr. Rogers. Mr. Rogers had been my personal attorney for 25 years, and had been attorney for these companies from the day they were created, and I at that time saw no reason why he should be thrown out. Stuart said he did not want Rogers. Otterson said he did not want Rogers. Then they asked for the removal of other officials of our company, and it was clear to me that those men would destroy the institution I had built up, so that when I went home to think the matter over, I finally said "Nothing doing.

There will be no trusteeship here at all. You fellows do not intend to do what you said yesterday. You have some other plan in the back of your heads."

Senator GORE. Was this the first reaction you had of that sort?

Mr. FOX. That is the first time. Even then, sir—you would not think a person could be so stupid—I did not realize that the ultimate purpose here was to capture these companies.

Then came the Marcus incident, and then came Hartfield. Hartfield had been in it a short space of time, and he was not making any progress, and I realized that perhaps I ought to have more lawyers. "Perhaps I have not got one good enough to do the job."

Senator GORE. Was Mr. Hartfield cooperating with Mr. Rogers?

Mr. FOX. No. Mr. Rogers for some reason, about this time, did not think that it was humanly possible for any man to ever save these companies; that the thing to do was to enter into a voting trust arrangement with these other people, and I realized that his advice would be of no value to me, so I left him out of it. Besides, our corporations had a very massive business runing throughout the world, and I did not want to disturb the running of our organization. I knew Rogers had enough to do to attend to the legal conduct of our business, rather than advise in this matter. Besides, I did not think Rogers was the man for the job. I did not think he was capable of doing this kind of job. It needed a man bigger than Rogers, I thought.

Where was the big man? There must be some big lawyer, I thought, that you can talk with, that will be sympathetic to this case, that will understand what I am talking about, and that will stop this conspiracy from going on. I hesitated for several days, and checked them off. I had a list of them. I checked one after the other. I said finally "My God! We have got a man who can do this work and do it well, if he will take this case, if he has not any previous obligations", and I said to my family attorney, Mr. Benjamin Reass: "I want you to visit Ex-Justice Charles Evans Hughes, of the United States Supreme Court. Take to him a list of all these people that are persecuting us, and ask him whether there is any name in that group there that would estop him from taking this matter, and taking charge of my affairs."

Senator GORE. At this time you had reached the conclusion, or at least the suspicion, that there was a conspiracy?

Mr. FOX. Not quite yet. I was a little bit muddled. May I say this, gentlemen, so that you may get a clear picture of what was operating in my mind? Here I was, a lone wolf, who for 35 days—and this is by an actual chart that was prepared by my secretary at the time—I had actually slept or lain in bed during those 35 days and nights, for 70 hours, or 2 hours a day. The other 22 hours of the day were devoted to trying to solve a problem. Clouds were beginning to gather all over me, and surrounding me, and my poor, old brain just would not function any more.

Mr. PECORA. You needed a doctor.

Mr. FOX. I needed a doctor.

Mr. Hughes examined this list——

Senator GORE. You needed a rest.

Mr. FOX. There was no use resting, Senator. There was not any time for me to rest then. I would die with my shoes on. This

looked like a war, and there is no time for rest in war while the enemy is firing bombshells at you.

Senator GORE. I was talking about what you needed.

Mr. FOX. Oh, yes. I needed it. I did not take it, foolishly. Maybe it would have helped me.

Finally Hughes examined the list—the telephone company, Halsey-Stuart, all the banks, and the rest of it—and said: "No; there is no reason why I can not be Mr. Fox's lawyer".

I called on Mr. Hughes. He suggested that I come there and tell him this story, and all the story that you have heard here, plus many of the details I have not given you, for I do not want to take that much time, was given to Mr. Hughes.

Mr. PECORA. By you?

Mr. FOX. By me. When he was through, he extended me his hand, and I can recall it as though he were handing it to me now. There were beads of perspiration on it. I knew that my story had affected him, and I felt that he was in sympathy with what I had told him.

Then a few days later I was sent for to come to the Hughes office, and there was my friend Hartfield and Mr. Reass. There was a recommendation made that the easiest way out of all this difficulty was to go along with a voting trust, making these two men voting trustees.

Mr. PECORA. Who made that recommendation to you?

Mr. FOX. Mr. Hughes did, and Mr. Hartfield did. In accordance with that, they had actually drawn the voting trust agreement, and they were recommending that I sign it. I told Hughes the day before, or 2 days before, of my mental condition, and the fact that I had not had any rest in 35 days, and that I could not think for myself any longer, and he assured me that I did not have to; that I came to the right place, and that he would do the thinking for me. He told me he knew the telephone company; he had represented them at various times. He understood their methods and their ways, and that he was sure that no harm would come to me under this arrangement.

It would be important to have that voting trust on record in this matter, and with your permission I would like to bring it tomorrow so that it may be included in the record.

Mr. PECORA. Very well.

Senator TOWNSEND. You signed the agreement?

Mr. FOX. I did, sir. Prior to the time I signed it, there was just a little bit of my story that goes with it. I do not think it is important, but I think it is a little detail you ought to have.

This voting trust was drawn in such a manner that the question arose as to who should be counsel for the voting trustees, and Mr. Hughes said to me, "Whom do you want as counsel for the voting trustees?" I said, "Mr. Hughes, I told you yesterday I cannot think. You have to decide that for me." He said, "You make up your mind now whether you want me to continue as your lawyer, or whether you want me to be the attorney for the voting trustees."

"Well," I said, "in what way would I be served the best? In which way would my interests be best protected?" He said, "Now, I cannot tell you that. You have to decide that for yourself."

"Well," I said, "I cannot decide it. I am just not able to. I came here and engaged you as my lawyer. It is for you to tell me, in what way can you serve me best?"

He says, "No; I won't do that. That you must decide for yourself."

And, like a fool, I decided to let his firm be the attorneys for the voting trustees. Little did I realize that that immediately canceled his entire obligation to me. In fact, I did not realize it until the next day, when the first meeting was to be held of the voting trustees. The meeting was to be held at the American Telephone Building.

Mr. PECORA. Meanwhile had you signed the agreement creating this voting trust?

Mr. FOX. I did, sir.

The CHAIRMAN. About what date was that?

Mr. FOX. I think that was about December 3, Senator. I had signed the agreement creating the voting trust. I had made these two men trustees of what belonged to my wife and children. This was all I had. This was my whole life's possessions.

Mr. PECORA. Who had drawn that agreement?

Mr. FOX. It was drawn in the office of Hughes, Schurman & Dwight. Next day, at the first meeting of the voting trustees, the room was arranged like Senator Fletcher sitting at the head of the table. There was a chair placed at the head of the table, and Mr. Dwight, of the firm of Hughes, Schurman & Dwight, when I came in, ushered me into a seat. I did not realize what he was so kind about. I could see the chairs there, and could sit down by myself, and that chair was empty up there, but he sat me down in the middle of the table.

Then Charlie Stuart came in and he sat him over there [indicating], and then Mr. Otterson came in, and he put him at the head of the table. Then he sat down alongside of me and said, "Well, I guess we are seated right now. I presume the first thing in order is to elect a chairman of this board. Perhaps Mr. Otterson——"

And he addressed himself to Otterson. I said, "Wait a minute. It is not a question of how these chairs are set as to who is going to be chairman here. These shares belong to me. These are not assets belonging to the Fox Film Co., or assets belonging to the Fox Theaters Corporation. These are the assets of William Fox. These are my properties. This belongs to my wife and children. If there is going to be a chairman in this darn thing, I want to act as that."

And Charlie Stuart said, "Well now, that sounds reasonable to me." But once Charlie Stuart had agreed to that, of course, Dwight said, "I guess it is all right, then. Come right over here and sit down." And we exchanged chairs.

Oh, yes; my friend Mr. Hartfield also came to the meeting. And, gentlemen, I am not exaggerating now. I tell you the God's gospel truth, that when I sat down I fell asleep, but when I stood up I fell down. I just did not have the vitality to be able to keep my eyes open.

Senator COUZENS. What did they do to you while you were asleep?

Mr. FOX. A month before, realizing that I had to have cash, I said

to my secretary, "Find out how much can be borrowed on my life insurance." And he reported to me "Around $490,000."

And it was the morning that I walked into this first meeting room that the checks of the insurance companies had been given to me.

Again may I call attention that that was not my money; I was taking the money that belonged to my wife and children, because it was for their benefit that I was insured. I was borrowing this money from them. How in God's world the Telephone Co. or Mr. Dwight or Mr. Hartfield knew that I had just gotten these checks I do not know, but suffice to say that before that session was over that morning, before we went on with any further business, that $490,000 found itself in the pool to support the Fox stock, stripping me of every dollar that I had in the world.

Senator GORE. Did you mention the fact that you had the checks?

Mr. FOX. No, sir; I did not. I do not know whether they can look through my pocket or how they found it out, but I suppose banks have a way of knowing whether you are borrowing money from life insurance companies.

Mr. PECORA. Do you recall the companies?

Mr. FOX. Well, I can bring you a list of them. There must be 30 of them.

Mr. PECORA. Was the Metropolitan one of them?

Mr. FOX. My life had been insured for I believe it is 6 million dollars, and therefore insured, I am sure, in every life insurance company in America. In fact, we had to go to England and to Canada to get some of them to take on the entire commitment.

Senator GORE. You say "entire commitment." Did your creditors insist on this?

Mr. FOX. No, sir; nobody insisted at all. Hartfield took me into another room and spent a half hour with me telling me that—I beg your pardon. One of the first things that they asked for was a statement of my personal assets and liabilities. "Well," I said, "what has that got to do with this?"

Hartfield took me into another room and for a half hour said, "These men are your friends, and when they ask you for a statement of your personal assets and liabilities I see no reason why you should not give it to them." I said, "I cannot do that. There is not any reason for it in this matter at all. My personal assets and liabilities is not part of this transaction."

Mr. PECORA. At least that is what you thought?

Mr. FOX. That is what I thought; yes.

Well, the committee went along and created the condition whereby they took over—they didn't take over—whereby they arranged with a bank or two banks to loan to the company money and to take more collateral (conferring with Mr. Becker).

Gentlemen, I believe that for a moment I must go back. I have skipped an episode here that is important in this matter, and it will be necessary, I think, for you to have it clear, to have that.

(Mr. Fox conferred with Mr. Becker.)

Mr. PECORA. As rapidly as possible will you narrate the episode you had in mind?

Mr. FOX. Yes, sir; I will. (After conferring further) Senator Gore, I wish to apologize to you. I think some time before this date

I began to realize that someone was trying to take the business away—not take it away, but trying to buy it—for this occurred——

Senator GORE (interposing). You had referred to it as a "conspiracy"?

Mr. FOX. Yes.

Senator GORE. As if that was in your mind at the time?

Mr. FOX. Yes. Prior to the time that the voting trust was made or shortly before that there was a lapse of time that Hughes, Shurman & Dwight was in this matter—longer than I have just described; they probably were in it for a week or two longer—and it was during that period that one day a man by the name of Will H. Hays called on me and said, "Now, look here, you are in trouble." Well, I knew that without him telling it to me. [Laughter.] "And I would like to be of some service." And I said, "Yes." "Now", he said, "I got a friend. Now, I may not give you his name, but I got a friend that wants to relieve you of all this trouble. He wants to buy your voting shares."

Senator GORE. This was after you had pooled them?

Mr. FOX. No; before I pooled them.

Senator GORE. Yes.

Mr. FOX. I said, "Yes." He said, "Will you fix a price on them?"

And this was after a long drawn-out, 3-hour conversation. "Now", I said, "look here. I have always felt that if a man came along and offered me a hundred million dollars for these two certificates of stock I would take it, and no less. That is, of course, long before these companies got into trouble. Now, as you say, I am in trouble and these companies are in trouble. I will fix a price now."

He said, "Now, look here: My friend said that you must fix a price. Give me a piece of paper having on it the amount that you will take, so that there is no change of heart between now and the time he says yes or no."

Then I described I expected a hundred million, but that in the face of those difficulties I would take one third of a hundred million dollars, or 33 and a fraction million dollars. He said, "All right, I will now give you the name of my man." I said, "Yes, sir." He said, "The name is Harley Clarke, of Chicago, a large utility man." I said, "All right."

Next day Clarke called me up. He said, "Now, you have given our mutual friend a price, haven't you?" I said, "Yes." He said, "What I would like to do is investigate and examine your books for 24 hours and know what is going on and find out whether that is all right." I said, "You are at liberty to do so. Go right down there and look them up." He said, "No; I can't do that." I said, "Why not?" He said, "I couldn't do it without Halsey, Stuart and the Telephone Co. consenting for me to go in." I said, "What have they got to do with the books of the Fox Film Corporation and the Fox Theatres Corporation? They haven't anything to do with it. I haven't any argument with them." He said, "I know it; but I can't afford to get on the outs with them. You better get them to consent for me to go there." I said, "I won't do anything of the sort. If they are your friends, you ask them to let you go in and look at them."

So he called me up later and said, "I have made an arrangement whereby I have a 24-hour right to examine your books." And he evidently made the examination. I don't know whether he did or not. [After conferring with Mr. Becker:] Yes. The next day he called me on the wire and said, "That is all right. I am ready to make a deal with you."

In the meantime, may I say again that the stocks were going down further and the margin that I thought the Warner Bros'. millions would be sufficient to protect us have now all been used up.

Mr. PECORA. About when did Will Hays appear on the scene?

Mr. FOX. I would have to find that date out of this book, sir, where I have taken it from my data. I should say that this occurred somewhere in the middle of November.

Mr. PECORA. Of 1929?

Mr. FOX. Of 1929. Perhaps around Thanksgiving time or somewhere around that. [Laughter.]

Senator GORE. Do you associate it with that?

Mr. FOX. I told Dwight about this. I said, "We have got good luck. We are going to be out of this trouble soon." He said, "What is it?" I said, "There is a man by the name of Clarke at Chicago that is going to buy these voting shares. He is going to buy them for one third of a hundred million dollars, and my troubles are over." "Well," he said, "seeings is believings."

In the meantime a friend of mine came in.

Senator GORE. You had one, did you? [Laughter.]

Mr. FOX. I had one, just one. And he said, "I came to advise you that on Monday there is going to be a raid on the Loew stock. The price is going to be pushed down so far that your margin is insufficient and your stock is overboard. You are going to lose your 660,900 shares—not only the 223,000."

I then sent for Mr. Rogers. I said, "The only place in the world that I know where we perhaps can get a loan is from a firm from whom we buy millions and millions and millions of goods per year, and we can get the same material elsewhere for the same price." I said, "Now, all our raw film can be bought from the other manufacturers, but we buy it from the Eastman Kodak Co., and we have been buying it for all these years, and I want you to go to Rochester and see the Eastman Kodak Co. and tell them I would either like to have them loan me money or I would like to have them buy 140,000 shares of Loew stock at $50 a share "—or " at $45 a share "—I think the price was; I am not sure of the price now—" with a right on our part to repurchase it in a period of 12 months. And be sure you try to get this money, because we have got to have it Monday morning, because there is going to be trouble if we do not have it."

Rogers left that Friday night for Rochester. I believe he went with the general sales manager of the Eastman Kodak Co., Mr. Jules Broulatour, and conferred with them on Saturday and Sunday.

On Saturday Harley Clarke called up, and Mr. Richard Dwight, of the firm of Hughes, Shurman & Dwight, happened to be in my apartment at the time, and he said that he was prepared to pay that price that I had quoted Will Hays, 33⅓ million dollars. Well, I said, "When will you pay it?" He said, "I will pay it Monday." I said, "That won't do. Monday is too late for me. I may not be in

business by Monday. I understand there is a plan on to destroy this business between now and Monday." "Well", he says, "you needn't worry about that. I will have one of the officials of the Chase Bank come over and give you a commitment today or tomorrow, telling you that you will have placed to your credit—how much money do you need?" I said, "Six or six and a half million dollars." "It will be placed to your credit."

"Oh", I said, "this all sounds too good to be true." I said, "Just a moment, now. Mr. Dwight, of Hughes, Shurman & Dwight, is here. Will you please tell it to him?"

So Mr. Dwight took the telephone and Clarke evidently repeated what he said to me, that someone on Sunday morning would come to the Ambassador Hotel where my apartment was, representing the Chase Bank and supply us with the funds necessary to relieve our tension of the following day.

Sunday morning arrived. Mr. Dwight and I waited for the representative of the Chase Bank, but he did not appear. Instead, the telephone bell rang and Harley Clarke was on the wire. Said that he was sorry that he could not arrange that, but he was taking an early train out of Chicago and will arrive in New York long before banking hours and will have in my possession this money.

Well now, to me, of course, unless that would happen, or unless the Eastman Kodak Co. would give us the money we asked for, so far as I was concerned the world was coming to an end. I had gone to the end of my rope. There was no other place that I could turn to. This was the last place.

And on Monday morning I waited anxiously. I counted the minutes.

Mr. BECKER (in a low voice). They called a meeting of the Eastman board for Monday.

Mr. Fox. I didn't know that. I know that now. I didn't know it then.

Harley Clarke's train was due to arrive, I believe, at 8:45 if he took an early train. That gave Clarke plenty of time to walk from the Grand Central Station to the Ambassador Hotel, 5- or 10-minute walk, and be there at 9 o'clock.

No Clarke. Called up the New York Central—"Did the train arrive?" "Yes." "Well", I said, "he must have missed it. There is another one comes in at 9:45. He will be on that sure—just be able to make it, I think. All he has to do is call up", he said, "Anybody can get the money."

9:45—No word from Rochester, or no word from Clarke. My friend calling me up—"It is all over. I can tell you now when that bell rings 10 o'clock you are out. The thing has been arranged."

Mr. PECORA. You mean the friend that had told you of the raid that was to be made on Loew's stock?

Mr. Fox. Yes, sir.

9:50—no Clarke—no Rochester. You watch that clock go around by the minute—9:51—52—53—55—56. The damn telephone bell started to ring. [Great laughter.]

Every proof that an atheist is wrong; that there is a God in heaven and that he protects and looks over us and takes care of us. Rogers on the telephone—"There is deposited to the credit of your account

$6,400,000 at the Bankers Trust. Thirteen stock brokers all being called up before 10 o'clock—deliver your stock right over to the Bankers Trust to be paid in full, all of you."

My friend at 10:30—"What happened?" I said "We got the dough." He said, "I thought so. Nothing doing down here."

Mr. Chairman, it is beyond your time and I am really tired.

Mr. PECORA. Before we adjourn, did Clarke show up that Monday?

Mr. FOX. Do you want that now? I will give it to you. Yes, Clarke showed up [turning to Mr. Clarke] at about 10:30; wasn't it, Harley? [Prolonged laughter.]

Senator GORE. One question: The raid, then, did not occur?

Mr. FOX. It did not occur.

Senator GORE. The 6 million averted it?

Mr. FOX. The money was taken. Mr. Clarke appeared later.

I can cut this very short now, and let me conclude with this episode.

Senator GORE. Yes.

Mr. FOX. Mr. Clarke called. Mr. Richard Dwight and I were there to meet him. He made some apology for not being on time.

Senator GORE. You accepted that?

Mr. FOX. I said to Dwight, "Now, don't let's tell him that we have raised this money. Let him tell his story." Dwight said, "No, no; that won't be fair. You must tell him that you have raised the money before he makes an offer." He said, "It will help your offer." I argued that it would be better not to tell him, but finally he persuaded me to tell him.

Dwight said, "Mr. Clarke, that emergency that was on on Saturday that we spoke to you over the telephone is now gone. We have borrowed this money from the Eastman Kodak Co. We have lifted these shares out. That raid is passed now." Clarke said he was happy to hear it. Mr. Clarke says, "I came here prepared to buy these shares", and drew from his pocket a memorandum, copy of which I can produce here. I have it in my folder at home.

Mr. PECORA. Did he explain why he had not appeared before 10 o'clock?

Mr. FOX. I do not think we asked him that, but let me go on and tell you what the proposal was and see how near jail I was if I listened to Clarke very long.

Mr. PECORA. Go ahead.

Mr. FOX. It was drawn to pay $33,000,000. It was a lot of money in those times.

Mr. PECORA. Still is.

Mr. FOX. But of course there was just a little bit of crookedness to it—not much, just a teeny-weeny little bit. All I was supposed to do if I got 33 million from it was to first arrange that the Fox Theaters Corporation sold to his nominee the 660,900 shares of Loew's stock for 33 million. And please bear in mind that within 4 months later Fox Film Corporation paid the Theaters Co. $75,000,000 for those same 660,900 shares of stock, under a plan that Clarke himself arranged.

All I had to do was listen to his proposal that way and pass the resolutions that would be necessary selling him this thing that we

paid 73 million for, for 33 million, and taking 33 million for myself for doing it.

And, by the way, of course the 33 million was to be paid on the installment plan. I probably never would have gotten to the second payment. I think the first payment provided for 3 or 5 million dollars, and then over a period of 3 or 4 years I would get the rest. Of course, Dwight looked at it and said, "That is ridiculous. You can't do that. You must preserve these 660,900 shares. That won't go. That can't be done."

Let us call it a day, Mr. Chairman.

The CHAIRMAN. Very well. We will adjourn now until half past 10 o'clock in the morning.

(Accordingly, at 4:35 p.m., the subcommittee adjourned until 10:30 a.m. on the following day.)

COMMITTEE EXHIBIT No. 167

NOVEMBER 23, 1933

No. ------ NEW YORK, *August 1, 1929.*

Pay to the order of William Fox one million six hundred and twenty-five thousand and no/100 ($1,625,000.00).

H. L. CLARKE.

The Chase National Bank of the City of New York.
Endorsed for deposit:

WILLIAM FOX.

(And bearing certification stamp dated Aug. 2, 1929, and bank-payment stamp Aug. 3. 1929.)

COMMITTEE EXHIBIT No. 168

NOVEMBER 23, 1933

No. ------ NEW YORK, *August 1, 1929.*

Pay to the order of William Fox three hundred seventy-five thousand and no/100 dollars ($375,000.00).

The Chase National Bank of the City of New York.

H. L. CLARKE.

Endorsement on back for deposit:

WILLIAM FOX.

(And bearing bank certification stamp dated Aug. 2, 1929, and bank payment stamp dated Aug. 3, 1929.)

COMMITTEE EXHIBIT No. 169

NOVEMBER 23, 1933

MAY 24, 1929.

Mr. WILLIAM FOX,
Fox Film Corporation, New York City.

DEAR SIR: This will confirm the agreement between you and me as follows:

I agree to cause to be organized a corporation under the laws of the State of Delaware or such other state as shall be mutually agreeable to me, to be known as "Grandeur, Inc.", the chief object of which shall be the purchase, sale, lease and/or license of motion-picture projectors, cameras and/or equipment or devices to be used in connection with motion-picture projectors. The corporation shall have an authorized capital stock of 100,000 shares of common stock of no par value. The form of the charter and the details in connection with the organization of said corporation shall be approved by our respective counsel.

I agree to cause a subscription to be made for one half of such capital stock and you agree to subscribe for the other one half at a cost to each of us of $250,000 in cash.

I agree to cause International Projector Corporation to enter into a contract with said new corporation with the terms, provisions, and to be substantially in the form of the copy annexed hereto, made a part hereof, and marked "Exhibit A."

You agree to cause Fox Theatres Corporation to enter into a contract with said new corporation with the terms, provisions, and to be substantially in the form of the copy annexed hereto, made a part hereof, and marked "Exhibit B."

If the foregoing meets with your understanding and you indicate your acceptance in the space below, this will constitute a contract between us.

Yours very truly,

(Signed) H. L. CLARKE.

Accepted.

(Signed) WILLIAM FOX.

EXHIBIT A

This agreement, made this —— day of May 1929 by and between Grandeur, Inc., a Delaware corporation, first party hereto, hereinafter generally referred to as "Grandeur", and International Projector Corporation, a Delaware corporation, second party thereto, hereinafter generally referred to as "International", witnesseth:

Whereas International has for more than 7 years last past experimented with and has now developed a special motion-picture projector, without lamp and lamphouse, adapted for use in connection with so-called "Grandeur" films (films wider than the regular 35 mm); and

Whereas Grandeur is desirous of securing the exclusive right of handling and selling all such projectors manufactured by International adapted for use in connection with Grandeur films, and International is willing to grant such exclusive right, upon the terms and conditions hereinafter set forth:

Now, therefore, in consideration of the premises and of the mutual covenants herein contained, it is agreed by and between the parties hereto as follows:

1. International agrees that Grandeur shall have the exclusive distribution and sale for all such projectors manufactured by International adapted to the use of Grandeur films, and further agrees that during the period of this agreement it will not manufacture for, or sell, lease, or otherwise dispose of to any other person, film, or corporation, any such projectors.

2. International agrees to manufacture and sell to Grandeur and Grandeur agrees to purchase from International all such projectors desired by Grandeur during the life of this agreement for sale to Fox Film Corporation and/or their subsidiary or affiliated companies or others upon the terms and conditions hereinafter set forth.

3. For the first twelve (12) of such projectors Grandeur shall pay International the sum of six thousand dollars ($6,000) for each of such projectors. For each projector in excess of the said twelve (12) projectors hereinabove mentioned Grandeur shall pay International four thousand dollars ($4,000) for each projector.

Deliveries shall commence on or before, or as soon after February 1, 1930, as practicable.

4. This agreement shall remain in effect until June 1, 1939.

In witness whereof the parties hereto have caused this agreement to be signed by their respective proper officers on the day and date first above written.

GRANDEUR, INC.,

By ——— ———, *President.*

Attest:

———— ———, *Secretary.*

INTERNATIONAL PROJECTOR CORPORATION,

——— ———, *President.*

Attest:

———— ———, *Secretary.*

EXHIBIT B

This agreement, made in triplicate in the city of New York, State of New York, this 24th day of May 1929, by and between Grandeur, Inc., a Delaware corporation (hereinafter called "Grandeur"), licensor, and Fox Theatres Corporation, a New York corporation (hereinafter called "Fox"), licensee.

Witnesseth: That, for and in consideration of the covenants, stipulations, and representations herein set forth, the respective parties hereto agree as follows:

1. (*a*) Grandeur hereby grants to Fox a nonexclusive, nonassignable license to use in the theatres owned, controlled, and/or operated by Fox, Fox Film Corporation, and their respective subsidiary and/or affiliated companies (subject to all the terms, conditions, limitations, and agreements herein contained) special motion-picture projectors, without lamp or lamphouse, adapted for use in connection with so-called "Grandeur" films (films wider than the regular 35 M.M.) in the quanitities and at the times hereafter in this agreement provided and to employ and make use of (to the extent necessarily involved in such use of said projectors) any and all United States patents and applications for United States patents, relating to said projectors or to such use thereof, which are now owned or controlled, or which may during the term of this agreement be owned or controlled by International Projector Corporation, or in respect of which International Projector Corporation has or may hereafter during the term of this agreement have the right to grant such licenses, Grandeur being the licensee of International Projector Corporation, with the right to assign such use of such patents.

(*b*) Grandeur agrees to install in such theaters of Fox, Fox Film Corporation and/or their subsidiary or affiliated companies that Fox may from time to time designate, twelve (12) such special motion-picture projectors, for which Fox shall pay Grandeur on installation thereof the sum of Six Thousand Dollars ($6,000).

Grandeur agrees to supply to Fox, and Fox agrees to accept or cause to be accepted from Grandeur under the terms provided in this agreement, during the period commencing approximately February 1, 1930, but in any event as soon as projectors shall be ready for delivery, and ending 10 years thereafter, all motion-picture projectors using films wider than the regular 35 mm that may be required or desired by Fox, Fox Film Corporation and/or their subsidiary or affiliated companies during such period, it being the agreement of the parties hereto that Fox shall, during such period, use exclusively such projectors as are manufactured by International Projector Corporation. Where hereinafter referred to, Fox shall include not only Fox theaters but also Fox Film Corporation and/or their subsidiary or affiliated companies.

Grandeur agrees that Fox shall have the first call on any such projectors that Grandeur is able to supply, and Grandeur agrees that so long as any orders for such projectors from Fox are unfilled that no orders for such projectors from others than Fox will be accepted on the condition that such orders shall be accepted subject to prior deliveries for Fox as herein provided.

2. Fox agrees that it will use and employ the projectors only in theatres owned, controlled, or operated by Fox and that it will at all times during the period of this license keep and maintain the projectors in good condition.

3. Grandeur agrees to make periodical inspection and minor adjustments in the projectors after they shall have been installed. Grandeur may from time to time install such spare and renewal parts as may, in its opinion, be necessary to the satisfactory operation and maintenance of the projectors.

4. For each such projector in excess of the twelve (12) projectors mentioned in paragraph 1 (*b*) hereof, Fox agrees to pay to Grandeur in New York Exchange an installation charge of four thousand dollars ($4,000) for each such projector, payable upon the shipment of each such projector and the further payments as hereinafter provided. In the event that the established installation charge made by Grandeur for such projectors is less than four thousand dollars ($4,000) at any time during the life of this contract, Fox shall be given the benefit of any such decreased charge from the effective date thereof.

5. In addition to any other payments required to be made by Fox hereunder, Fox agrees to pay to Grandeur throughout the term of the license hereby granted, a monthly payment of $175 in advance. Such payments shall continue for one hundred and twenty (120) months for each projector. Such

monthly payment to be made by Fox to Grandeur, however, shall never be in excess of the amount in effect as the established monthly payment at the time when such monthly payment is due. The first six machines furnished, however, shall be free from such monthly payment.

6. Fox agrees to pay the cost of transporting the projectors from the place of shipment to the theater and to accept delivery thereof from the common carrier and make payment directly to the common carrier of the charges thereon. Fox will also arrange for any necessary loading, trucking, and unloading to put the projectors down inside the theater, and will directly defray the cost thereof.

7. Fox agrees to comply with all local laws and ordinance relating to the use and operation of the projectors, and with any Fire Insurance Underwriters' requirements.

8. Title to and ownership of any and all projectors at any time furnished hereunder shall remain in Grandeur.

9. Fox shall bear and discharge promptly any and all personal property taxes which may be charged or levied in connection with the projectors.

10. Fox will permit Grandeur, through its designated agents, engineers, and mechanics, to have access to the theaters of Fox at all reasonable hours for the purpose of installing and from time to time for the purpose of examining, inspecting, and servicing the projectors, and will grant to Grandeur full opportunity to make such adjustments therein and repairs thereto as, in the opinion of Grandeur, are necessary or desirable.

11. This agreement and the license hereby granted and/or to be granted shall at the option of Grandeur terminate and come to an end upon the happening of any of the following events, hereby designated to be events of default, to wit:

(*a*) Upon failure or refusal of Fox for any reason to pay any of the sums herein agreed to be paid by Fox, within thirty (30) days after such sum is or may become due.

(*b*) Upon a breach by Fox of any of the covenants herein contained relative to the use or maintenance of the projectors continued for more than thirty (30) days after notice thereof by registered mail from Grandeur.

In the event of a default in any of the provisions of this agreement at any time during the first two (2) years of the term of this license, the entire balance of monthly payments for the first five (5) years shall be due and payable forthwith at the option of Grandeur and whether or not it terminates this license or removes the projectors as hereinafter provided. The license hereby granted and all obligations imposed upon Grandeur by virtue of this agreement shall be suspended during the continuance of any event or default.

12. Upon termination of or expiration of this license by lapse of time or otherwise Fox will surrender up and deliver possession of the projectors to Grandeur in good order and condition, reasonable wear and tear and obsolescense due to proper use thereof only excepted, and Grandeur may repossess the projectors and may, for the purpose of reducing the same to possession, enter the theaters of Fox or any other premises where said projectors may be and without any legal proceedings whatever, possess and remove said projectors, and Fox will cooperate in such removal. If this license shall be terminated by default, Grandeur shall thereupon have the right without notice to take immediate possession of said projectors and for that purpose may pursue the same wherever they may be found, and may take and seize the same to its own proper use forever, free from any rights of Fox under this agreement. Fox convenants that in any such event no claim will be made for damage on account of such removal or otherwise, and Fox further agrees that it will hold and save harmless Grandeur from and against any and all claims for damages by any parties whatsoever on account of such removal.

13. In the event of the partial or total destruction of a projector during the term of this license by fire or any other cause, without fault or neglect on the part of Fox, provided Fox shall not be in default under this agreement, and provided Fox shall continue to operate the theater or after any necessary repairs to the theater shall resume its operation, Grandeur will at its own expense repair the projector, or if in the sole judgment of Grandeur such destruction is so extensive as to render repair impracticable, Grandeur will at

its own expense install in the theater a projector as nearly similar as possible to the one destroyed.

14. Grandeur agrees that, subject to the provisions hereof, it will, at its own expense, defend any and all actions and suits which may during the term hereof be brought against Fox for infringement of patents by reason of the use by Fox of any projectors furnished by Grandeur hereunder, and will pay or satisfy all judgments and decrees for profits, damages, and/or costs which may be finally awarded against Fox by a court of last resort in any such action or suit on account of any such infringement; provided that Fox shall give Grandeur prompt notice of such action or suit, full information, and all reasonable cooperation in connection therewith, and full opportunity to defend the same; and provided further, that this agreement shall not extend to any infringement or claim of infringement arising from the use of any projector in combination with any sound apparatus or in combination with anything not furnished by Grandeur, and that the liability of Grandeur under this agreement shall in no case exceed the total amount paid hereunder by Fox to Grandeur.

15. This agreement shall not be assigned by Fox without the written consent of Grandeur. It shall, however, subject to such restriction upon assignment by Fox, be binding upon the parties and their respective successors, assigns, and legal representatives, and shall be interpreted according to the laws of the State of New York.

18. These licenses to be granted hereunder in respect to each projector shall be for a term of 10 years from the day upon which the installation of each respective projector shall have been completed and the projector made available to Fox for use, the last term to expire five (5) years from the date of installation in 1939 of the last projector provided for in paragraph 1 of this agreement.

17. The parties hereto expressly stipulate that this agreement as herein set forth contains the entire understanding of the respective parties with reference to the subject matter hereof, and that there is no other understanding, agreement or representation, express or implied, in any way limiting, extending, defining or otherwise relating to the provisions hereof or any of the matters to which the present agreement relates. No waiver by either party, whether express or implied, of any of the provisions of this agreement shall be construed as constituting a waiver of any other provision or provisions of this agreement or as estopping either party from its right to enforce any provision or all provisions hereof.

In witness whereof the parties hereto have caused these presents to be executed by their duly authorized officers in their behalf the day and year first above written.

GRANDEUR, INC.,
By ——— ———.
FOX THEATRES CORPORATION,
By ——— ———.

MAY 24, 1929.

Mr. WILLIAM FOX,
New York City.

DEAR SIR: With reference to agreement entered into between us, today, concerning the wide film situation, this will confirm our understanding that after Grandeur, Inc., has been duly organized and its business affairs in operation, out of the first profits earned and before any dividends shall have been paid, you shall be reimbursed in the sum of One Million ($1,000,000) Dollars, and I shall be reimbursed in the sum of Five Hundred Thousand ($500,000) Dollars for expenditures, labor, overhead, and services for research work in the development of the wide film art.

Grandeur, Inc., shall cause to be created and delivered to each of us a note or other form of acknowledgment or indebtedness suitable to our respective counsel, evidencing the foregoing arrangements.

Yours very truly,

(Signed) H. L. CLARKE.

I hereby approve the foregoing and acknowledge it as our understanding.

(Signed) WILLIAM FOX.

MAY 25, 1929.

Mr. WILLIAM FOX,
Fox Film Corporation, New York City.

DEAR MR. FOX: This will confirm the understanding between you and me as follows:

I am now negotiating for the purchase of the Mitchell Camera Co. This purchase shall be for the benefit of a corporation to be organized by us, one half of the stock of which is to be owned by each of us. This corporation shall be either independently operated by us or shall be a wholly owned subsidiary of Grandeur, Inc., as shall be mutually agreed upon between our respective counsel.

It is understood that this corporation shall from time to time acquire additional devices, patents, inventions, or businesses to be used in connection with, or relating to, the objects for which the corporation is to be formed, which shall be primarily the manufacture, sale, distribution, leasing, licensing, and generally dealing in cameras. Any such devices, inventions, patents, or businesses that the undersigned may at any time acquire will be immediately assigned to the new corporation. In the event that you shall acquire any devices, inventions, patents, or businesses relating to the objects for which the corporation is to be formed, you shall likewise immediately assign the same to the said corporation.

In the organization and formation of the said corporation, suitable provisions shall be made, by contract or otherwise, that the policy of sales, distribution, leasing, licensing, or dealing in or with any of the devices, apparatus, cameras, or otherwise, embracing the art of photographic negative stock on film commonly known as "Grandeur" film, to wit: film in excess in width of 35 mm, shall be under your direct supervision, management, and control exclusively, without impairment or interference by anybody, and you shall designate the agency or nominee that shall carry on such exclusive sale, leasing, licensing, or other dealing in such wide-film devices as aforesaid.

Your very truly,

H. L. CLARKE.

Approved and agreed to as our understanding.

(Signed) WILLIAM FOX.

STOCK EXCHANGE PRACTICES

FRIDAY, NOVEMBER 24, 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 on yesterday, 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, David Saperstein, and David Schenker, 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; Murry C. Becker, counsel representing William Fox.

The CHAIRMAN. The subcommittee will come to order, please. Mr. Fox, are you ready to proceed?

Mr. FOX. Yes, sir.

TESTIMONY OF WILLIAM FOX—Resumed

Mr. PECORA. Mr. Fox, will you resume the narration of events from the point where you left off at the termination of yesterday afternoon's hearing?

Mr. FOX. Yes, sir.

Mr. PECORA. Do you know where you left off yesterday?

Mr. FOX. I think at the point where we asked Mr. Clarke at what time he got in——

Mr. PECORA (interposing). That Monday morning, about 10:30 o'clock, do you mean?

Mr. FOX. Yes, sir.

Mr. PECORA. Well, resume from that point and go on.

Mr. FOX. Well, perhaps, before we tire, it would be well as a part of this to sort of describe the amount of money that was eventually raised through the public in an effort to reestablish, as they termed it, those companies; and, perhaps, we ought to do that before we go on with anything else.

Senator COUZENS. Mr. Fox, just how does that relate to the conspiracy charge? I should like to get the conspiracy disposed of

before you start in on the management of the companies after the conspiracy had been completed.

Mr. Fox. Well, it is not directly but indirectly it proves conclusively, because a great portion of this new money was not extended for the conduct of the business, but as a reward to those who had made an effort to destroy those companies.

Senator COUZENS. That may be true, but have you completed your picture as to the conspiracy?

Mr. Fox. No, sir; not quite.

Senator COUZENS. There is one feature I should like to call attention to. I should like to have a submission of proof, and up to date I am not charging any misstatements, but there has been no submission of proof of the allegation that these banks charged off all your loans against your balances before the loans were due. That is such an extraordinary charge, and an unusual experience in my observation, that I would think the subcommittee ought to have proof of that charge. And I assume that you have the proof inasmuch as you have made the allegation.

Mr. Fox. Well, now, whether I have the proof with me or not I do not know.

Senator COUZENS. Well, I do not say submit it now, but at some time the subcommittee ought to have proof of that allegation, because it is a most unusual practice, and one that I have not heretofore seen exercised, to the degree at least that you allege.

Mr. Fox. The subcommittee, of course, would have to help me get that proof, because I am no longer in charge of the books of these companies, either the Fox Film or the Fox Theatres. Those facts would have to be extracted from their books.

Senator COUZENS. I assume if there is any difference of opinion than the one you have with respect to the matter, that those who have the records will be glad to avail themselves of the opportunity of presenting them.

Mr. Fox. I suppose so. Or, sir, if you like——

Mr. PECORA (interposing). Or if Mr. Fox, or his attorney, will tell me what proof they think may exist in the possession of persons who were not under their control, I shall be glad to use the subpena power of the subcommittee to make such proofs available here.

Mr. Fox. We shall give you that information so that you can use the subpena power of the subcommittee.

Mr. PECORA. All right.

Mr. Fox. In line, Senator Couzens, with your suggestion, and I will adopt your suggestion, and now rather devote my time, instead of describing what happened to the funds after they had reorganized, I will devote myself to the matter of what those bankers were thinking about prior to the capture of those companies.

Senator COUZENS. I think that would give greater continuity to the story.

Mr. Fox. Therefore, may I, please, offer for the record a letter I had written to Mr. Albert Wiggin, as chairman of the Chase National Bank, on January 2?

Mr. PECORA. Of what year?

Mr. Fox. Of 1930. And a duplicate of this letter was sent to the following banks: The Public National Bank, the Chelsea Ex-

change Bank, the Harriman National Bank, the Bank of the United States, the Bankers Trust Co., the Corn Exchange Bank, the Fidelity Trust Co., the Trust Co. of New Jersey, the National City Bank, the Chemical National Bank, and the Manufacturers Trust Co.; each received a duplicate of this letter. I offer it in evidence, please.

The CHAIRMAN. Did you have business with each of those banks?

Mr. FOX. Yes, sir. We had deposits with all of these banks; yes, sir.

Mr. PECORA. Mr. Fox, let me ask you if the copy of the letter you have just referred to, and which you have just handed to me, is a true and correct copy of a letter sent by you to the various banks you have mentioned, on the date borne by this copy, namely, January 2, 1930?

Mr. FOX. It is. Mr. Pecora, I believe you have one half of a letter there.

Mr. PECORA. I have a part of one letter.

Mr. FOX. No; this is a separate letter. I want the other half back.

Mr. PECORA. Is this the one you want?

Mr. FOX. Yes, sir.

Mr. PECORA. Mr. Chairman, I offer this copy of letter just identified by the witness, in evidence, and ask that it may be made a part of the record.

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

(A carbon copy of a letter addressed to Albert H. Wiggin, dated Jan. 2, 1930, was marked "Committee Exhibit No. 174, Nov. 24, 1933", and will be found immediately following where read by Mr. Pecora.)

Mr. PECORA. The letter received in evidence and marked "Committee Exhibit No. 174", reads as follows:

JANUARY 2, 1930.

ALBERT H. WIGGIN, Esq.
Chase National Bank, 18 Pine Street, New York, N.Y.

DEAR SIR: As chairman of the board of one of the banks holding Fox Film Corporation's demand note, I feel that the accompanying memorandum should be read by you so that your final judgment may be based upon facts as they really are.

At the meeting today our request for a short extension was declined. This is an unusual proceeding in dealing with a corporation of our size and thoroughly solvent condition, especially in the light of our substantial earning history, and the further fact that our business is greater today than ever before.

Not to be helpful at this time would be to do one of this country's great organizations an injustice and to take any action that might further embarrass us would be disastrous in the extreme, and would result in a large sacrifice of the corporation's assets.

This country at the present time needs a feeling of confidence, and any public announcement that the structure of the Fox Film Corporation was about to fall would be so far-reaching that the country as a whole would unquestionably react unfavorably to it.

The Fox Film Corporation has approximately 16,000 outlets, covering practically every city in the world, large and small, with the result that every community newspaper would spread the story on its front page.

It is my earnest request, not so much for myself, but for the thousands of men and women who hold stock in this corporation. and for the best interests of the country at large, that you do not permit your institution to be a party to the destruction of a corporation that is a perfectly solvent and profit-earning organization.

Yours very truly,

Did you sign this letter, Mr. Fox?

Mr. Fox. Yes, sir.

Mr. PECORA. As president of the Fox Film Corporation?

Mr. Fox. Yes, sir; I did.

Mr. PECORA. All right. Have you another one in your hand——

Senator COUZENS (interposing). Mr. Fox testified on yesterday that those notes were not due, and I observe from the reading of that letter that they are demand obligations. So they were due on the demand made on the part of the bank.

Mr. Fox. Some were due and some were not due. This was due December 9, the one that we are talking about here, and the letter was written on January 2.

Senator COUZENS. Yes; but the letter just read in evidence states that they were demand obligations, and yesterday you stated the obligations were not due. I should like to have an explanation of that.

Mr. Fox. I have before me here a chart that I did not have yesterday. I told you those papers were all in New York, as you will remember; and when those notes all became due, and the first one became due on December 9, and the last one became due on February 28, why——

Senator COUZENS (interposing). Well, when you were writing Mr. Wiggin was the note that they had past due?

Mr. Fox. The note of the Chase National Bank, it was past due—well, now, wait a minute. Yes; the Chase Bank's note was past due; yes, sir; becoming due on December 9.

Senator COUZENS. Then the charging of your balance there against that note was perfectly legitimate under those circumstances. But the impression you gave on yesterday was entirely erroneous, because you stated those balances were charged off against your indebtedness before the notes were due. That is not sustained by your testimony here this morning.

Mr. Fox. Well, Senator Couzens, what I would like to do is what I suggested this morning, to permit me to have subpenaed the records of the Fox Film Co., and find out just what banks did take the balances, although the notes were not due. I would have to get that from their books. I haven't that in my file.

Senator COUZENS. Well, why did you send that same form letter to all of the banking institutions that you have just enumerated if the conditions were not identical? The letter says "demand obligations." You said you sent the same letter to all the institutions, when the circumstances were not the same with all of them according to the statement you have just made.

Mr. Fox. Perhaps, Senator Couzens, I am not doing it in the proper routine. Perhaps I ought to tell you what brought about the sending of this letter, what had caused this letter to be sent, and then you will understand that they are practically all in the same category.

Senator COUZENS. All right.

Mr. Fox. May I, please, submit a letter of January 6, which was written 4 days after the letter of January 2?

Senator COUZENS. What relation has that to the former letter, where you say those were demand loans?

Mr. Fox. Well, I do not know the exact language employed in that letter I have just handed over to Mr. Pecora. Suppose we see what it contains.

Mr. PECORA. Is this document you have just handed to me a true and correct copy of a letter you addressed to Mr. Albert H. Wiggin under date of January 6, 1930?

Mr. Fox. Yes, sir. And a copy of that letter had likewise been sent to all the banks I enumerated a short time ago.

Mr. PECORA. A copy of the letter which you have just identified does not contain any signature, nor show who in behalf of the Fox Film Corporation signed it, except that there is the title "President" at the end.

Mr. Fox. I signed it as president.

Mr. PECORA. Did you sign it as president of Fox Film Corporation?

Mr. Fox. Yes, sir.

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

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

(A carbon copy of a letter dated Jan. 6, 1930, addressed to Albert H. Wiggin, was marked "Committee Exhibit No. 175, Nov. 24, 1933", and will be found immediately following were read by Mr. Pecora.)

Mr. PECORA. The copy of the letter just received in evidence and marked "Committee Exhibt No. 175" reads as follows:

JANUARY 6, 1930.

ALBERT H. WIGGIN, Esq.
Chase National Bank, 18 Pine Street, New York, N.Y.

DEAR SIR: I have been informed by General Heppheimer, of the Trust Company of New Jersey, and Mr. B. K. Marcus, of the Bank of the United States, who claim that they were authorized at the last meeting of the unsecured bank creditors to speak for all of the banks who had unsecured notes of the Fox Film Corporation, that unless payment is made at once you or one of the banks in your group will make an application to the courts for receivership.

I am unwilling to believe that you or your banks would be willing to assume the responsibility in this attempt to wreck the Fox Film Corporation. No attempt of such a nature can be made on a fair and truthful showing or with any hope of success.

However, the mere making of such an application would result in serious damage to a great number of innocent people and to the credit of Fox Film Corporation, and without any corresponding benefit to you and other creditors of the company. It would seriously prejudice the efforts of the executives of the company, who at this time are busily engaged in constructive work that will positively result in the continued success of this corporation. Those who lend themselves because of prejudice to an unjust and unwarranted action of this kind must realize that they are willing to further assume the responsibility of a disturbance not only to the stockholders and creditors of this company but to stockholders and investors of securities of most companies whose securities are listed on the Stock Exchange of New York and on the stock exchanges of other cities of this country.

It is unbelievable that anyone can be so shortsighted and can be so forgetful of conditions in the security market that existed as recently as October 29, 1929, and that you and your bank, whose purpose it must be to safeguard and protect your institution as well as this country, would lend themselves to any scheme that may result in the recurrence of Tuesday, October 29, 1929.

It was because of what occurred on that day that our company finds itself in its present position and makes it possible for those who are seeking to destroy this company to take full advantage of that calamity instead of extending a helpful hand to this institution. The writer is certain that neither you nor your good bank is willing to give aid to the destructive force whose only thought and ambition is to destroy this company.

I know that both you and your good bank have during this emergency extended a kindly helpful hand to many persons, firms and corporations and that every effort has been bent in terms of what is good for our nation to prevent receiverships and rather reconstruct those who were not prepared for the calamity that befell our nation on October 29, 1929, which the writer admits that this company could not foresee.

At a recent meeting of unsecured creditors at which your bank was represented we offered Fox Film real estate security for the amount of your obligation for a year's extension. The theory was to make a secured creditor instead of an unsecured creditor. This was declined upon the ground that such security would violate the terms of the Halsey-Stuart gold note issue.

We now offer to you security on real property not owned by Fox Film and, therefore, not covered by the Halsey-Stuart notes for such an extension.

We refer you to our letter of recent date, as well as the records enclosed therein, which establishes the fact that our assets exceed our liabilities by $73,000,000. Our company is in a flourishing condition, with estimated profits of approximately $17,000,000 per annum available for the payment of our obligations.

This letter is written not only with a view to again offering equities in real estate as security for the amount of your indebtedness conditioned upon a year's extension but to establish a documentary record that such an offer was made to you in the real hope that you will see fit to grant us the extension requested on the terms stated in this letter.

Yours very truly,

FOX FILM CORPORATION,
——— ———, *President.*

Mr. PECORA. The name "William Fox" does not appear in the copy, but the witness has stated that he signed the original letter.

Mr. FOX. Yes, sir.

Mr. PECORA. And there is a postscript reading as follows:

P.S. Perhaps you would be interested to know that the activities of our studios are now in full force, not only for the productions for the balance of this year but for productions to be released during the theatrical season of 1930–31.

At no time during the history of the company has our production been so far advanced as this season as well as the season to come, and we enclose you statement being issued to the press by our Vice President, Winfield Sheehan.

Mr. PECORA. Let me ask you at this point, Mr. Fox, did you receive any reply to the letter previously offered in evidence, marked "Exhibit No. 174", being the letter dated January 2, 1930?

Mr. FOX. If there was any reply, it would be in the files of Fox Film Corporation.

Senator COUZENS. Do you recall ever receiving a reply?

Mr. FOX. I do not, sir.

Senator COUZENS. Either to the other one, or to this one just introduced in evidence?

Mr. FOX. No, sir. There may have been replies, but if there were, they were addressed to the company, and are probably in their files.

The CHAIRMAN. What became of this effort?

Mr. FOX. I would like to describe what made necessary the writing of these letters first, sir. Mr. Pecora, I think that I ended yesterday at the point where the voting trust agreement was signed.

Mr. PECORA. You had reached that point, and had also narrated what took place at the first meeting of the trustees, when there was discussion as to who should be the chairman of the trustees.

Mr. FOX. That is right. During that meeting the trustees had arranged for the borrowing of $4,000,000. One million dollars of it was arranged through the sale of certain notes that the corporation had received from Warner Bros. at the sale of the First National shares that I spoke about.

Mr. PECORA. Mr. Fox, in order that we may better follow the chronology of your testimony, will you tell us when that first meeting of the voting trustees was held, or about when?

Mr. FOX. About December 4 or 5.

Mr. PECORA. Of 1929?

Mr. FOX. Of 1929.

Mr. PECORA. Go ahead.

Mr. FOX. The $3,000,000 more was arranged for with two different banks, to make loans of $1,500,000 apiece. However, it was done on collateral owned by the Fox Film Corporation, and the collateral amounted to approximately $5,000,000 for the $3,000,000 loan, so that up to this time the voting trustees had done nothing except to say to two banks "It is now all right again. You may lend this man some money, providing he puts up his collateral."

The next step of the voting trustees was to call together these 11 bankers or the representatives of these 11 institutions, and a meeting was held at the offices of the American Telephone Co. There it was explained that I had entered into a voting trust agreement, and that the representative of the telephone company and the representative of the firm of Halsey-Stuart were acting as voting trustees, and that they hoped to adjust the matters of the Fox Film Corporation.

Mr. PECORA. Have you produced this morning, or can you produce now, a copy of that voting trust agreement?

Mr. BECKER. We have not received it yet, Mr. Pecora.

Mr. FOX. Yes; I have it.

Mr. BECKER. My copy is on the way, and will be here a little later in the morning.

Mr. FOX. I have it, sir; if you would like to have it.

Mr. PECORA. I think we might put it in the record at this time.

Mr. FOX. Mr. Pecora, I have a copy of it here [handing paper to Mr. Pecora]. That is a copy of the original.

Mr. PECORA. Is it a true and correct copy, to your knowledge?

Mr. FOX. Yes, sir.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. It may be admitted.

(The document referred to, voting trust agreement, Dec. 3, 1929, was received in evidence, marked "Committee's Exhibit No. 176", Nov. 24, 1933, and the same will be found on page 3781.)

Mr. PECORA. The document is dated December 3, 1929, made by and between William Fox, party of the first part, and H. L. Stuart, John E. Otterson, and William Fox, as parties of the second part. It is a rather voluminous document, Mr. Chairman, and perhaps it is not necessary to read it at this time.

Mr. FOX. As I said before, the trustees then called a meeting of the banks, and the representatives of the 11 banks that the company was indebted to attended the meeting at the telephone company offices, and there it was explained to them that they had just become trustees under my voting shares, and they hoped to work out the financial problems of the company, and they asked the indulgence of the banks.

It was unanimously agreed by all those present representing the bankers that when these notes matured—and the first one was to

mature on December 9, a few days after this meeting—that they would be indulgent and would await the result of what the voting trustees would do.

Within a day or two after that, Colonel Hartfield, who, as I said yesterday, was retained by me to try to prevent these companies from being thrown into receivership, and who had a definite promise that the two companies would pay him a fee of $1,000,000 if he prevented them from going into receivership, called on me and said, "There seems to be some misunderstanding." I said, "Misunderstanding about what?"

"Well", he said, "You knew yesterday we had written down certain names of these voting trustees before you signed the voting trust agreement, in which they agreed that certain names of certain men would be reelected as directors of the company." He said, "Have you a recollection of that?" I said, "Yes", and I named those who were to be reelected. He said, "That is my recollection, and it is substantiated by the fact that after the meeting I went home and dictated a memorandum, and I have this memorandum with me. I show it to you now, and it confirms what you think. They claim differently. They claim it was never intended that a man by the name of Jack G. Leo, who is your brother-in-law, would be elected a director, because he is too close to you, and you would know everything that was going to occur if he remained with the company."

I said, "Is it the intention of these people not to keep me advised of everything that would occur?" He said, "Well, it appears that way now."

The CHAIRMAN. Who were these people you had reference to?

Mr. FOX. John E. Otterson, the representative of the telephone company, and Mr. H. L. Stuart, of Halsey, Stuart & Co., who became the trustees under the voting shares that I owned.

That evening I went home, and I became ill. I ran a fever of 103 or 104, and I was confined to my bed for 4 or 5 days. During those 5 days I was receiving reports as to what was going on, and I was told that the entire company was being reorganized; that there were changes being made everywhere; that they had sent for a man by the name of Harold B. Franklin, who was employed by a subsidiary of Fox Film called the "West Coast", and who was receiving there a salary, I believe, of $50,000 a year, plus a percentage of the profits. He had been sent for and was told that he would be made president of the Fox Theaters Corporation, and that I would be deposed from that office, and that he would receive a salary of $150,000 a year plus 10 per cent of the profits. This was a job that I was filling without receiving any compensation—and a dozen other vital changes in the organization that Hartfield recited to me were about to be made—that my informants were informing me were about to be made.

On Thursday or Friday of that week Hartfield called at my home and told me of several changes that were taking place in the organization and wanted to know when I could come to New York and attend the meeting.

Mr. PECORA. Mr. Fox, whom was Hartfield representing at that time?

Mr. Fox. Hartfield was representing me, of course. While Hartfield was there on Friday I said, "Look here. I have read this trust agreement again, and there seems to be a variance with our understanding. It was always understood that when the telephone company received the money it had loaned to the Fox Film Corporation, then Mr. John Otterson would no longer be a voting trustee of this company, and that he would transfer that voting trusteeship to Charley Stuart, the brother of Harry Stuart."

He said, "Yes; that has been my understanding." I said, "The trust agreement does not provide for it." He said, "When you come to New York on Sunday we will discuss that matter."

On Sunday night I went to New York, in the company of several other men. Mr. Hartfield appeared, and Mr. Dwight appeared for the voting trustees. I told him that I had insisted that Otterson resign when and if they got their $15,000,000 back. Dwight said he was sure Otterson would not do that. I insisted that it be done, and Dwight said, "Well, if you insist on that, then, for my clients, for Mr. Stuart and Mr. Otterson, I say to you now that they withdraw from this voting trusteeship", and he left the room.

Hartfield at this time tried to prevent Dwight from leaving, and to make peace in the thing, but found he could not. After Dwight had left, Hartfield said, "Now that the thing is all over, I believe I ought to tell you exactly what was in store for you." I said, "Yes; what is it?" He said, "Mr. Stuart told me that the first thing they were going to do was to depose you. Mr. Stuart recommended that you take a trip abroad for a period of at least 6 months, for, with the disgrace and the humiliation that will be showered upon you, you will not be able to stand it here." He said that Leo would not be a director of the company, would not remain with the company, and he enumerated a dozen things that they had explained to him.

Early the next morning the New York Times carried a story showing the reorganization of the entire thing, the dissolving of my voting shares, and giving me the ordinary shares in place of them.

I then reached the conclusion that these men were not trustees of my estate, that they were not protecting my estate as my trustees, and felt no obligation to go forward with the trustee arrangement.

Having done that, it was necessary for me to call the bankers together and explain to them that I had—I beg your pardon. Having done that, the telephone company called the 11 bankers together again in the Telephone Building, and there Mr. Dwight informed them that I had seen fit not to go forward with this trust agreement.

At this point may I say that Hartfield, who was pressing me to go forward with the trust agreement, and Dwight, who was working for the benefit of the trustees, left me again without an attorney, so I decided to look around and find another attorney who perhaps could help my cause, and at this time I had engaged Mr. Clarence Shearn.

Mr. PECORA. Clarence J. Shearn?

Mr. Fox. Clarence J. Shearn, formerly attorney for Mr. William Randolph Hearst, and who later became judge of the appellate division of the city of New York.

Mr. PECORA. He had previously been a justice of the appellate division of the supreme court, had he not, prior to your retaining him?

Mr. FOX. Yes, sir. I had described this whole story to him. This was just at a time when he had met with great misfortune. His wife had died, and his plan was to travel for a year, and to try to forget his troubles. After I had described this story I had been telling you here yesterday, and the balance of which I hope to be able to tell you today, he decided that he did not need any trip, that the case was interesting enough, and that he would be able to forget all his troubles in this case.

The Telephone Co. at this time had called the bankers together, and Mr. Shearn had appeared there in my behalf. Mr. Shearn had read the trust agreement. He was familiar with what the trustees had done since the signing of the trust agreement, and he addressed this group of bankers and said that he had carefully examined the trust agreement and that in his opinion I was neither morally nor legally bound by that agreement any longer. It was at that time that Mr. Dwight publicly declared that the trustees would withdraw.

This meeting that I just described was held in the offices of the telephone company on December 23, 1929.

Mr. PECORA. Did you attend that meeting, Mr. Fox?

Mr. FOX. I did, sir.

Mr. PECORA. With Judge Shearn?

Mr. FOX. Yes, sir.

The CHAIRMAN. Was Mr. Dwight there?

Mr. FOX. Mr. Dwight was there representing the two trustees and, as I said a minute ago, publicly announced that the trustees would withdraw.

In the interim there had become due—that is, between the meeting held by Otterson and Stuart with the bankers, telling them that the trust agreement had been signed, which was on December 4 or 5, or perhaps December 6, and the time of the meeting in which Clarence Shearn had addressed these bankers, there had become due the notes of December 9. One was held by the Public National Bank for $450,000, the Chase National Bank for $400,000, the Chelsea Bank for $150,000, the Harriman National Bank for $150,000, and the Corn Exchange Bank for $450,000.

Following that—as I said before, both these meetings of the bankers were called by the telephone company, and following that I decided to call these bankers together on my own account.

The CHAIRMAN. What did they do at this meeting? You have not stated what they decided.

Mr. FOX. There was just general discussion, and there was no indication as to what they would or would not do. They were perhaps going to think it over.

Mr. PECORA. They reached no decision of importance.

Mr. FOX. At that meeting, no.

It was at that meeting that we offered to collateralize the uncollateralized loans.

Mr. PECORA. Was the collateral which you proposed to offer them real estate?

Mr. FOX. It was real estate belonging to the Fox Film Corporation, and it was there that someone raised the question that that could

not be offered. I believe a representative by the name of Smith, of the Chase Bank, raised the question, and said that could not be offered, because he felt that that belonged under the collateral for the $12,000,000 due to Halsey, Stuart. I believe that resulted in my writing the letter that we read here, dated January 2.

Mr. PECORA. That probably was the letter of January 6, where specific reference is made to the offer of such collateral.

Mr. Fox. No; the letter of January 2.

Then I called the bankers' meeting together, between January 2 and January 6, and I then told them that we had found assets to secure these loans without assets belonging to the Fox Film Corporation, and were going to give them real estate belonging to others than the Fox Film Corporation.

These 11 bank representatives were there, and we talked for an hour or two, and, of course, you might just as well talk with a stone wall. No one would do anything. They wanted no collateral for their loans; as a result of which we wrote the letter of January 6, which you have there.

I had forgotten yesterday an incident in connection with one of the former bankers of the Fox Film Corporation, and their attitude in this matter. The Fox Film Corporation, from the time it was incorporated, in May 1925, following that, had sold some of its authorized stock at two different times, some four hundred thousand and odd shares, and both those transactions were underwritten by the firm Hayden Stone & Co. In connection with one of the underwritings we had purchased from them a group of theaters in California for which we paid some $16,000,000, and they allowed us to pay for it by underwriting some of the authorized Fox stock, and from the proceeds paid the $16,000,000 we owed them.

When this difficulty arose, I sort of felt free to send for a partner of the firm of Hayden Stone & Co., and inquire from them whether or not they could make a temporary loan to the company to tide us over.

Mr. Richard Hoyt, from that firm, came to my apartment, and I told him all the troubles the company had. This was within 2 or 3 nights after the October 29 panic. He listened very attentively, but I realized that I was making no headway with him. He was not paying any real attention to what I was saying at all. Finally I said "Now, Richard, perhaps you would like to have me tell you what you are thinking about." He said "Yes; if you think you can do it, go ahead."

I said "What you have in your mind is not to lend this company any money and help it out of its difficulties, but you are rather happy that we are in this trouble, for some reason or other unknown to me. I thought there was a relationship established between our company and yours. You have earned hundreds of thousands of dollars of commissions as a result of it, and I thought I had a right to send for you. I thought perhaps you were friendly to the Corporation, but I see now that you are not friendly."

I said "What you are thinking about now is that what you would like to do is to cut out one of my kidneys."

"Well", he said, "you have guessed it pretty nearly right, except in one respect, and that is that I do not want to cut out one. I would like to cut them both out."

Of course, later we learned that a member of his firm was a member of the board of directors of the Chase Bank, and it was more than likely that he knew then what the wishes of Mr. Albert Wiggin were in this matter.

During 1928 and 1929, several times I had been visited by people who said they represented Dillon, Read & Co., with proposals for some financing. During 1929 I had been visited by members of the firm of Dillon, Read who expressed their dissatisfaction in the Fox Film Corporation acquiring 400,000 shares of Loew's stock for $50,000,000 without talking to them about it. They claimed to be the bankers for the Loew's Co., and here was $50,000,000 being passed for 400,000 shares of stock, and they were not participating in it. They felt that they had a just claim on that piece of business and that the deal should have been made through them. I had explained to them that perhaps they would have a chance of making money out of this transaction at a later date, when these two companies would be merged.

Mr. PECORA. Who were the partners of Dillon, Read & Co. with whom you had that conversation?

Mr. FOX. A Mr. Phillips and a Mr. Miller. I had explained to Mr. Phillips that we were about to reorganize these companies, and that I pledged to him that when we were engaging bankers for the reorganization I would see that Dillon, Read would be included. So that when this difficulty arose and I was peddling my wares down on the lower end of Broadway, trying to find a method of raising money, I felt free to go to Dillon, Read. I asked for an engagement to meet with Mr. Clarence Dillon, and he arranged for a luncheon at the Bankers Club. There were present myself and one of my associates and half a dozen men from the Dillon, Read office. Dillon said he was interested in financing here, but before his company would do it I would have to dissolve my voting shares; I would have to give up the voting shares and change them to ordinary shares. He said he did not believe in voting shares. I said, "That is rather strange, Mr. Dillon. When you bought the Dodge Co. and resold it again with a profit (then reported) of $30,000,000 or $40,000,000 more than you paid for it, you retained for yourself 500,000 shares of voting stock—all of the voting stock. You must have believed in voting shares then or you would not have taken them."

During that conversation it developed that Dillon said: "Look here, Fox. I would advise you to surrender those voting shares and take ordinary shares in place of them, for if you do not, I make you this prediction now: That very shortly a person not now engaged in the motion-picture business will be the head of your company and will be its president instead of you."

I thought he was talking through his hat, in November. I could not quite understand what that was all about, but I later found that he was a director of the Chase Bank, and probably he and Wiggin had already discussed this matter of the capture of the Fox companies and, as ultimately it turned out, it appeared that there was a definite plan to capture these companies.

Now, during this time there was no misunderstanding between John Otterson and I. In the middle of November, I think then he had submitted the proposal for the telephone company to loan us additional money, and that Mr. Gifford had decided that he was not

going to loan the company any more. And Otterson appeared on the scene and said that he wanted to be of help. While the telephone company couldn't directly loan us any money, he was prepared to find us a group of banks that would refinance our company. You will bear in mind that up to this time in November there was no money due anyone; there was no one that had any claim of any kind; we owed no one anything that was due. Everything that was due had been paid. And perhaps the thought that was running through their mind was to delay the thing until these notes did become due.

However, on or about November the 15th, Otterson suggested that he could help the refinancing, and did I have any choice of bankers. "Well", I said, "we have an agreement with Halsey, Stuart to do financing here."

Mr. PECORA. Was that agreement one that gave Halsey, Stuart & Co. a preferential right to do the financing?

Mr. FOX. Yes, sir. So I called on Mr. Stuart to inquire whether he was prepared to go forward with any financing, and he said no, his company did not want to do any financing. I was at liberty to go wherever I liked.

I reported that to Otterson. And Otterson said "Well, now, what is your second choice?" "Well," I said "now Dillon-Read have been soliciting this business for a long time." I said "I have talked to Clarence Dillon only recently, and he is not inclined to do anything. He only wants to do it on the basis of my surrendering my voting shares." "Oh well," he said "don't worry about that. I can straighten that out." He said "I'll arrange for Mr. Bloom, the president of the Western Electric, to have a talk with Mr. Clarence Dillon and tell him that he mustn't do any funny tricks here. That we are behind you, and that we expect him to shoot straight."

And pursuant to that I was taken into the offices of Dillon-Read, and met with one of the partners, a man by the name of Miller, and he was most anxious to help. And he prepared a plan. Spent an entire day, drew up a plan how this new financing could take place and so forth et cetera.

Mr. PECORA. Did he put that plan in a written form?

Mr. FOX. He did, sir.

Mr. PECORA. Have you a copy of it?

Mr. FOX. I have, sir.

Mr. PECORA. Will you produce it please?

(Mr. Fox handed same to Mr. Pecora.)

Mr. FOX. I think the bottom of this—the description of the new issue will tell you the financing they were about to do. I think it involved about $85,000,000.

Mr. PECORA. Is this the identical copy that he gave you?

Mr. FOX. These are the papers that he gave me, sir.

Mr. PECORA. I offer them in evidence and ask to have them spread upon the record.

The CHAIRMAN. Let them be admitted and placed in the record.

(Statement headed "Fox-Loew Merger. Comparative Balance Sheets Before and After Proposed Financing. Draft No. 3. Nov. 15, 1929", was marked "Committee Exhibit 177 of Nov. 24, 1933", and appears on page 3738.)

The CHAIRMAN. Does it correctly state the indebtedness and the assets and the resources there?

Mr. FOX. I believe so, sir. They were made up very carefully by an accountant for them.

Mr. PECORA. For the benefit of the committee let me say that the document offered in evidence and received as Exhibit No. 177, is entitled "Fox-Loew Merger. Comparative Balance Sheets Before and After Proposed Financing." It bears the inscription "Draft No. 3, November 15, 1929." The second page of exhibit no. 177 is captioned "Earnings Fox-Loew Merger Based on 1929." And there is also another caption reading "Earnings Fox-Loew Merger Based on Present Rate of Earnings."

(Committee exhibit 177 of November 24, 1933, is here printed in the record in full as follows:)

COMMITTEE EXHIBIT NO. 177, NOVEMBER 24, 1933

Fox-Loew Merger—Comparative Balance Sheets Before and After Proposed Financing

[Draft No. 3, November 15, 1929. See notes below]

	Before proposed financing [1]	Adjustments for proposed financing [2]	After financing
Current assets:			
Cash and call loans	$17,523,000	+1,806,000	$19,329,000
Receivables	7,819,000		7,819,000
Inventory	40,926,000		40,926,000
Miscellaneous	3,428,000		3,428,000
Total current assets	69,696,000		71,502,000
Investments and advances	92,601,000		92,601,000
Property, net	94,043,000		94,043,000
Miscellaneous	4,398,000		4,398,000
Deferred charges	6,495,000		6,495,000
Total assets	267,233,000		269,039,000
Current liabilities:			
Notes payable (practically all Fox)	48,744,000	−48,744,000	
Accounts payable, etc	15,944,000		15,944,000
Accruals	3,302,000		3,302,000
Total current liabilities	67,990,000		19,246,000
Deferred credits	1,484,000		1,484,000
Reserve for contingencies	766,000		766,000
Long term notes and accounts	3,008,000		3,008,000
Funded debt:			
Loew 6% Debebtures, due 1931	12,694,000		12,694,000
Fox Film 6s, due April 1, 1930	12,000,000	−12,000,000	
Fox Film 3-Yr. 6½% coll. Trust Notes (new issue)		+60,000,000	60,000,000
Loew subsidiaries	26,313,000		26,313,000
Fox Film-Gaumont purchase, due 1930	16,350,000	−16,350,000	
Other Fox Film subsidiaries	6,196,000		6,196,000
Preferred stock:			
Loew subsidiaries	5,561,000		5,561,000
Loew, Inc. (Parent Co.)	14,024,000		14,024,000
Fox Film 7% Conv. Pfd. Stk. (new issue)		+25,000,000	25,000,000
Common stock and surplus	100,847,000	−6,100,000	[3] 94,747,000
Total liabilities	267,233,000		269,039,000

[1] The column above headed "Before Proposed Financing" is made up of the following: (a) Balance sheet of Loew's, Inc. as at August 31, 1929, actual; (b) Balance sheet of Fox Film Corporation as at August 23, 1929, adjusted to give effect to the issuance of that company's $12,000,000 6s, due 1930, the sale for $10,000,000 of that company's interest in First National Pictures, the advance of substantial sums to Fox Theatres Corporation, and other adjustments, and (c) Balance sheet of Fox Theatres Corporation as at October 31, 1928, with numerous and substantial adjustments including the purchase of 659,900 shares of Loew's common, the creation and assumption of substantial amounts of indebtedness, etc., etc. (Full details available.)

[2] The proposed financing contemplates the issuance of $60,000,000 3-Yr. 6½% Collateral Trust Notes of Fox Film Corporation and $25,000,000 par value of that company's 7% Converticle Preferred Stock, the proceeds of both of which issues, at 94 and 90, respectively, have been applied, as shown above, to the retirement of notes payable, of Fox Film 6s due 1930, and of the Gaumont Loan, also due 1930. For description of new issues see next sheet.

[3] Assuming Fox Film Corporation is used as the parent company for the consolidation, and that its Class A shares are exchanged for Loew's common not heretofore acquired, in the ratio of 1 share for each 1½ shares of Loew, and also in the ratio of 1 share for each 3 shares of Fox Theatres Corporation Class A & Class B stocks, we compute that the total number of Class A & Class B shares (100,000 of the latter) of Fox Film Corporation, upon completion of such exchanges, would be 1,903,755, for which would be available a book net worth, as shown above, of 94,747,000.

Earnings Fox-Loew merger (based on 1929)

	Fox Film	Loew's	Fox Theatres	Combined
Earnings available for common stock (1929 fiscal periods)	$13,000,000	$9,900,000	$5,000,000	
Add Back:				
Interest saving at 6% for 9 mos. on:				
(a) 12,000,000 notes, due 1930	540 000			
(b) 16,350,000 Brit. subs. notes	735,750			
(c) 15,000,000 A. T. & T. notes			675,000	
(d) 15,550,000 bank loans secured by Loew's stock			699,750	
Earnings available for new capital structure	14,275,750	9,900,000	6,374,750	$30,550,500
Maximum interest requirement on $60,000,000 6½% Collateral Trust Notes				$3,900,000
Times earned				7.85
Balance for preferred dividends				$26,650,500
Maximum pfd. div. requirement on $25,000,000 7% preferred				$1,750,000
Times earned				15.25
Balance for Class A and B stock				$24,900,500
Earned per share				$13.08

Earnings, Fox-Loew merger (based on present rate of earnings)

	Fox Film	Loew's	Fox theatres	Combined
Earnings available for common stock (based on present rates)	$13,000,000	$12,000,000	$6,000,000	
Add Back:				
Interest saving at 6% for 9 mos. on:				
(a) 12,000,000 notes, due 1930	540,000			
(b) 16,350,000 Brit. subs. notes	735,750			
(c) 15,000,000 A. T. & T. notes			675,000	
(d) 15,550,000 bank loans secured by Loew's stock			699,750	
	14,275,750	12,000,000	7,374,750	$33,650,500
Estimated merger savings				10,000,000
Earnings available for new capital structure				$43,650,500
Maximum interest requirement on $60,000,000 6½% Collateral Trust Notes				$3,900,000
Times earned				11.19
Balance for preferred dividends				$39,750,500
Maximum pfd. div. requirement on $25,000,000 7% preferred				$1,750,000
Times earned				22.71
Balance for Class A and B stock				$38,000,500
Earned per share				$19.96

DESCRIPTION OF NEW ISSUES

$600,000,000 3-Year 6½% Collateral Trust Notes, to be secured by pledge of all common stocks of Loew's, Fox Theatres, Wesco, and Gaumont. Based on current quotations (Nov. 14), the indicated market value of Loew's and Fox Theatres common stocks alone is over $80,000,000.

$25,000,000 7% Conertible Preferred Stock, to be convertible as follows: During two years, 1 share preferred for 1½ shares Fox Film A; during the next three years, 1 share preferred for 1¼ shares Fox Film A; thereafter, 1 share preferred for 1 share Fox Film A.

Preferred stock is to be entitled on liquidation, if voluntary, to $120 a share and, if involuntary, to $100 a share; to be redeemable at $120 a share; to be entitled to a sinking fund of 10% of annual net earnings after all charges, including preferred dividends. The preferred stock will be offered first (namely, before public offering) to the holders of Fox Film A; proposed banking commissions, 5% on stock taken by holders of Fox Film A, and an additional 5% on all stock unsubscribed by Fox Film A.

NOVEMBER 15, 1929.

Mr. PECORA. Go ahead.

Mr. FOX. I think, Mr. Pecora, I would like to read something from the bottom of that statement which shows what kind of financing was about to be done.

(Mr. Pecora handed committee exhibit 177 to Mr. Fox.)

Mr. FOX. As I said before, this was not made up by me or by people of my firm, but was made up in the office of Dillon, Read by this man Miller; and when he concluded, he showed that the earnings of the consolidated companies would be $43,650,500 per year, and that the new capital structure would be $60,000,000 3-year 6½-percent collateral trust notes and $25,000,000 7-percent convertible stock.

Mr. PECORA. Well, what was your reaction to this plan, Mr. Fox?

Mr. FOX. Well, it sounded like a dream to me. I couldn't quite realize that it would be that easy—that the telephone company could just go to Clarence Dillon and say, "Just do this"—and that it would result in a plan like this being submitted to me. Why, this was the end of everything. There wasn't going to be any more trouble.

Mr. PECORA. What prevented the execution of the plan?

Mr. FOX. Why, I said—of course this was not a definite—of course bear in mind now this was not a definite proposal. This was the manner in which they were dreaming about it, and this was how they were working it out. He was not quite sure. Perhaps he would want to make some changes in it. And the conference was of such a friendly nature that I felt at liberty to say to them: "Now look here. Please bear in mind that although we have these troubles, that there isn't an obligation due that is not paid in Fox Film Corporation or in the Fox Theatres Corporation. Its credit is unimpaired." And I said, "Unfortunately we have a payment due"—I think it was out in—in, I think it was, Milwaukee—"for the acquisition of some properties." And I said, "Tomorrow we have a payment due there of $500,000. It is the first time that we are unable to meet our obligation. And I would like to borrow—I would like to have you advance $500,000, or loan the company $500,000 to take up this obligation." "Well", he said, "what collateral have you got?"

Well, at this time I still had six notes that were issued by the Warner Bros. in connection with their purchase of the First National stock. The purchase price at that time was $10,000,000; 7½ million dollars was paid in cash and 2½ million dollars was paid by their 1-year notes. Four of these notes we had either sold or disposed of, and six of these notes we still had. Each was for $250,000. I said, "I would be glad to have you—if you like, what I would prefer is to have you discount two of these Warner Bros. notes"; I said, "That we have got in connection with the First National sale." He said, "Where are they? May I see them?" I said, "Yes." I put my hand in my pocket, took out an envelope, laid it down on the table, and said "The notes are contained in that envelope." He said, "What are you doing—walking around with these notes in your pocket? How did you come to have them in your pocket?" I said, "I am trying to sell them so I can raise this $500,000 tomorrow." He said, "Yes; we will loan the $500,000, but we will take the six notes as collateral." I said, "I can't let you do that." I said, "That's the last drop of blood that is in

the veins of this corporation." I said, "I couldn't give you the six notes. Warner Bros. are perfectly good. Fox Co. may be in trouble, but they are perfectly good. They just gave me 7½ million dollars in cash less than a week or 10 days ago."

Well, it would be too long to describe all the talks there, but it was clear to me that I was not in the hands of friends at all, and that the proposal that was being made here was not on the level; that they did not hope to do any financing, and that they were not going to do any financing, and the result was that I went home.

Mr. PECORA. Mr. Fox, let me ask you at this point: Do you know where Dillon, Read & Co. got the figures that are embodied in the exhibit last offered in evidence?

Mr. FOX. They got them from statements supplied by our auditors.

Mr. PECORA. Go ahead.

Mr. FOX. A day or two later Mr. John Otterson called on me. He said, "Well, that's a fine thing for you to do. I take you down to Dillon, Read and get you all straightened out and then you get huffed up and you run out." "Well", I said, "John, I don't know. The thing didn't sound right to me. It was all too good to be true." I said, "When this fellow tried to take a million and a half dollars worth of perfectly good notes that you can discount across the counter anywhere at perhaps a slight discount and wanted the whole six of them as collateral for $500,000, that looked fishy to me."

Mr. PECORA. Well, had you succeeded in getting a loan of $500,000 from other sources prior to this conversation with John Otterson that you are talking about?

Senator COUZENS. Not prior to that?

Mr. PECORA. Yes; prior to that, because this conversation with Otterson, as I understood the witness to state, was held 3 or 4 days after his conversation with Mr. Miller, of Dillon, Read & Co., and that, according to the witness's testimony, the discussion was to the effect that the $500,000 obligation had to be met the following day.

Senator COUZENS. Yes; but I understood you asked him if he had succeeded in getting it prior to his offer from Dillon-Read.

Mr. PECORA. No; prior to his conversation with John Otterson.

Mr. FOX. I believe we did discount two of those notes for $500,000 and paid the obligation.

Senator COUZENS. With whom?

Mr. FOX. I think one was at the S. W. Straus Bank and one somewhere else. I do not remember exactly. I think the obligation was paid. I am not any too certain of that. I do know that we discounted two of the notes. I know one with the S. W. Straus for $250,000 and one somewhere else for $250,000.

The CHAIRMAN. Go ahead, Mr. Fox.

Mr. FOX. I said, "No, John, we won't do our business that way." He said, "I think the advisable thing here is—the way for the Fox Co. to help itself out of this trouble is to sell some of its assets before any more of its obligations mature." I said, "The Warner Bros. within a week ago had bought this First National stock for 10 millions of dollars. The man who made that sale told me that they had got all the money that they need for any expansion program. That their bankers will supply them with it." I said,

"We have a piece of property out in California called the West Coast Theaters Corporation, a thing that I had bought from Hayden Stone for 16 million dollars. Ten million dollars of it I just received back in the sale of this First National stock. It cost this company practically 6 million and a fraction dollars. When we bought it it lost money. In the year 1929 it is a clear indication that the earnings there are going to be approximately 5½ million dollars. I am going to try to sell that for 10 times its earnings, and liquidate all the debts everywhere. And the only misfortune that would befall our company is that we have lost this fine organization out in California." I had previously sent for the representative of the gentlemen who had sold the First National stock to Warner Bros. and told him that I wanted him to offer this to Warner Bros. on the basis of 10 times the earnings, and represent to them that we estimated the earnings at 5½ million dollars. That trade was made on the following basis: That when the year was over there would be an adjustment of the purchase price based on the earnings for that year, the final price to be fixed at ten times the earnings. I mean pay either so much less.

Otterson said, "Well, why don't you let me sell this thing for you?" He said, "I wouldn't like to see you dispose of this without letting us try to help you in the matter." He said, "I think the Fox Co. ought to retain this piece of property. It is a fine thing for it." And he says, "What I would like to do is let the telephone company buy it. And it will sell a half interest of it to the Paramount Co., and it will retain the other half interest for your account for a year. At the end of a year when you refinance yourself you pay us back our half and take back your half stock. Then you and the Paramount Co. jointly will own this company."

Well, that sounded mighty good. That sounded almost as good as the Dillon-Read financing. I said, "All right. If you think you can do that, go ahead and do it."

Of course, in the meantime, Greenfield was dealing with Warner Bros. I was perfectly willing to have two strings to my bow on this transaction. John Otterson came back either that day or the next day and said that I was dealing terribly. "Why", he said, "I find now that you have got someone else trying to sell this to Warner Bros." I said, "Yes, John. This company is in difficulty. It needs money and it needs it fast." "Well", he said, "You haven't told me that." I said, "Perhaps I haven't, but the fact is we wanted to sell this property."

Greenfield then informed me that he was not able to find Warner Bros. as readily as he had up to this time. And within a day or two later he told me that the Warner Bros. and Paramount Co. had agreed amongst themselves that neither one of the two would buy this property without each other, and that they would buy half to each, and that the price of 10 times earnings was not satisfactory. They wanted a different basis of price.

Within a few days after that we discovered that neither one of the two wanted to buy anything, or any part of it. And that avenue to get money to help this company from becoming embarrassed was closed.

It was following that that John Otterson and Stuart called on me and asked that I give them a proxy or a power of attorney to vote under my shares.

Mr. PECORA. You told us yesterday that as the result of that visit and the conversations which ensued this voting trust agreement that was produced this morning and marked in evidence was executed?

Mr. FOX. Yes, sir. Well, prior to that—before I had told you that, I had also told you that I was sent for to go to the University Club and there attended the conference in which they asked for certain changes and so forth. I have along with me all of the things that they were then requesting to be done, if you would like to have a copy of that on the record, sir. This is before the voting trust, and, of course, these things are not contained in the ultimate voting trust.

The CHAIRMAN. What is the use of putting it in here, then?

Mr. PECORA. You have covered in substance the facts indicated by the memorandum you have just shown me, have you not?

Mr. FOX. All right. I think so.

Mr. PECORA. Well, then there is no occasion for putting the memorandum in.

Mr. FOX. All right.

Mr. PECORA. May it just appear that the memorandum just shown me by the witness consists of two sheets of paper containing some handwriting in pencil?

The CHAIRMAN. That is all subsequently embodied in the written trust, which speaks for itself.

Mr. FOX. It was somewhere at this point that Mr.—or perhaps a week or two prior to that—that Mr. Huston appeared on the scene and wanted to know whether or not he could not be of service and be of help. I told him all this trouble. And I asked him to "please return to Washington and report it to the President, if you will." When he came back again a day or two later I inquired whether he had done so. He said he had in a general way, but that he thought that he could adjust this matter. He knew Mr. Albert Wiggin very well, of the Chase Bank; in fact, he was going to lunch with him on Christmas Day, he said, on December the 25th, and he would talk the matter over with him. I contended that all Wiggin had to say was "we are not interested in the Fox situation", and every other banker would have gone along with this matter. I felt definitely at this time that Wiggin had sent out the word "Hands off Fox. Don't have anything to do with him."

The following day, December 26, Huston came back. He said he had lunch—he either had noon meal or evening meal at the Wiggin home on Christmas Day, and that Mr. Wiggin had told him to tell the President of the United States to please mind his own business and not interfere in what the bankers were doing in New York; they could take care of their own business; and he resented Mr. Hoover's interference in this matter.

Now, gentlemen, you have all got to have 1929 in your mind when you listen to this story. You cannot look at it with the eyes of 1933, as the result of what happened to the banking fraternity in this Nation from then until now. You have got to bear in mind that in 1929 these men felt their power. They were almighty. They

had the strength to accomplish anything they wanted to do. They were not working under the regime that this Nation is working under now. There was no New Deal talked of then. The common people were just common people at that time. And here was a man, the head of a bank whose deposits and capital and surplus ran to approximately 2 billions of dollars, and he felt himself powerful enough to say to the President of the United States—" You tell him I said I resent his interference in this matter."

Senator ADAMS. That is the statement you got from Mr. Huston?

Mr. FOX. Yes, sir.

Senator ADAMS. So that it is a rather roundabout statement.

Mr. FOX. Well, sir, I have no other way of getting it. Mr. Wiggin would not tell it to me; of course not. But Mr. Huston hadn't any reason for telling me anything but the truth, because he came to New York to help this situation out. The administration did not want a receivership appointed in the Fox companies. It was trying to help that thing from happening. The last thing that Mr. Hoover wanted was to have a corporation with assets of 300 millions of dollars, which was the combined assets of the Loew and the two Fox companies, to be plunged into receivership at this particular time. And that is why Huston came down to find out whether or not he could not adjust the differences that existed. At first he suggested the modification of the voting trust; to go along with the voting trust in a modified form, and one that would guarantee that my voting shares would not be dissolved. He hoped that he could do that. He soon found that that was not possible. After having tried various things to adjust this matter—he had conferences with Mr. Bloom of the telephone company; with Mr. Otterson. He knew Clarence Dillon of Dillon-Read. He knew all of these bankers down there. They were not new to him. And everything he did indicated clearly that he was trying to help. And, as I said before, he did it without compensation, because he was never compensated for it. He did it because I considered him as the agent of the President of the United States who came to New York to prevent this thing from occurring at that time. Receivership then was a thing we were all—we all had a dread of; the Nation had a dread of. Today it seems to be a sort of a pride. A fellow says "What! You aren't in receivership yet? That's awful!"

The CHAIRMAN. Was this after you had seen the President?

Mr. FOX. Sir?

The CHAIRMAN. Was this before you had seen the President or afterward?

Mr. FOX. No, sir. I had seen the President in June 1929, when everything was bright and rosy.

The CHAIRMAN. What did you do then?

Mr. FOX. I am just trying to think, to get the continuity straight, Mr. Chairman.

Mr. PECORA. You were telling us of your talk with Mr. Houston.

Mr. FOX. Houston said, " There is only one bit of help I can give you in this matter." He said, " There is nothing that I can do here now. I can leave Burke down here for window dressing for you, if you want him; but these men whom I thought would comply with

the request, knowing it came from the White House, now that I know they will not do that, there is no need of my staying here any longer." He said, "There is a lawyer in New York, the only one that they are afraid of—there is only one lawyer that they are afraid of." That is the big bugaboo to these men now. He said, "That I did learn from them in confidence, and I tell it to you. The only man that can straighten this whole jam out for you—they went through the whole list of those whom you might engage now, and there is only one man they can't handle, and that is Samuel Untermyer."

Senator COUZENS. Mr. Pecora was not heard of at that time?

Mr. FOX. No, sir. He said, "Bear this in mind: The moment "—well, it is hard to tell. Mr. Untermyer got his reputation just exactly as you are going to yours, Mr. Pecora. He got his in the Pujo investigation. [Applause from the audience.]

He also had the pleasure of examining a member of the House of Morgan.

Some time during the month of December I gave a luncheon in my home, and thought that general counsel ought to get together and discuss this matter a little bit and know we had our lines all straightened out. There were present at this luncheon Mr. Reass of the firm of Hirsh, Newman, Reass & Becker; Colonel Hartfield of the firm of White & Chase, and Mr. Clarence Shearn. We discussed the general things as to how to go along, Hartfield talking for the voting trust agreement, that it ought to be adopted, that that was the proper thing to do; I talking against the voting trust agreement; that I found no way of protecting myself under it; Shearn listening very attentively. When I concluded talking it appeared as though I had convinced Shearn that that would be a wrong step for me to take. Then I left the table and went into the other room to lie down for a half hour or so, figuring that these boys could talk the matter over by themselves. When I got back I found Hartfield just concluding his talk, and Shearn agreeing with Hartfield that the voting trust agreement would be the proper thing. I then took the task of changing Shearn around again, and continued again to tell him why that would be the wrong thing for me to do.

It looked like I had won him over; and then Hartfield began again, and so this kept on for perhaps from 1 o'clock until 5 o'clock in the evening, and then I reached the conclusion definitely and positively—there was no doubt in my mind any more—that Mr. Hartfield was not representing our companies nor me, and I charged him with it. You will bear in mind, as I said before, that when he was engaged he was told that he would get a million dollars if he kept these companies out of receivership. I perhaps lost my temper then. I am sorry I did it then. I perhaps would not have done it if I were as calm as I am now. I called this man all the vile, filthy, dirty names that it was human for one person to call another. I got myself in such a temper that I said I was going into a room and get a pistol and kill him. I said, "Why don't you resign? Why don't you step out of this case?" Then, of course, in the presence of Shearn, he said he would talk to his partners about resigning from the case.

The net result of that was that 2 or 3 days later Shearn resigned from the case; he dropped out. After the performance I gave in his presence to Mr. Hartfield, I presume he was not going to take any chances at representing a client that would do what I had done to Hartfield. Or he resigned for some other good and sufficient reason best known to himself.

It was then came the story from Houston that there was only one lawyer that would represent these companies as against Wall Street; that he had done it before, and he knew he would do it again, and this crowd were all afraid of him; except that the moment that I took Mr. Untermyer into it, he would no longer be able to come to New York to be of any assistance in the matter at all; he would have to drop out of the picture.

It was then that we engaged Mr. Untermyer, sometime in the early part of January, offering him exactly the same proposal that was made to Colonel Hartfield, that if he could save these companies from going into receivership they would pay him a fee of $1,000,000.

My courage had not failed me up to this time; I had plenty of courage left. But I could not quite understand why it is, how it is possible, that if you really have good collateral—why is it necessary to pay this graft to bankers for selling bonds with which they really have not anything to do? Why can't you sell them direct to the public and to your customers? True, it had not been done up to this time; it has not been the practice. But I decided that I was going to establish a new precedent. That was perhaps the only thing, as I see it now, looking back—it was that thought and only that thought that made it possible for me to be here today, to survive at all and not to be obliged to have these companies in the hands of receivers, which enabled me to finally sell out.

I had created a company called the "Fox Securities Corporation"——

Mr. PECORA. When?

Mr. Fox. On January 15, 1930—and had hoped to make a new issue of $35,000,000, 7 percent 3-year gold notes, without a banking group having anything to do with it [handing a document to Mr. Pecora].

The CHAIRMAN. Is that the prospectus?

Mr. PECORA. Did you pursue that plan?

Mr. Fox. Knowing we wanted to do that, we thought we ought to get a great authority on the subject of financing, and we engaged Professor Madden, who was dean of the New York University, to go over, with our accountants, all of our assets and find out just what was the finest collateral security we had to give to a prospective purchaser of these 35 million dollars' worth of——

Mr. PECORA. You mean Professor Madden, dean of the school of finance of New York University?

Mr. Fox. Yes, sir.

Senator COUZENS. Was that the beginning of the use of professors in finance?

Mr. Fox. I really do not know, sir. I would like, this afternoon, if you will permit me, to send to my hotel and get and read Professor Madden's letter that he wrote after he attended a meeting of the

bankers and the telephone company. As a result of that I had engaged him to make this list up. Of course it occurred exactly as it was predicted. All this time traveling Wall Street from one corner to the other trying to find some banker that would loan us a dollar or would help us to sell securities. None was available, just as soon as that circular went out, just as soon as they heard that there was a response to it, just as soon as they felt we could sell these securities and that a new era was coming and you no longer would need bankers to sell bonds.

Mr. PECORA. The circular you have referred to is the one which you have just handed me?

Mr. FOX. Yes, sir. There appeared on the scene Mr. Elisha Walker of the Bancamerica-Blair Co., who was thoroughly familiar with the circular——

Mr. PECORA. Just a moment. Was this circular issued to the public?

Mr. FOX. Yes, sir.

Mr. PECORA. I offer it in evidence.

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

(The circular referred to was received in evidence, marked "Committee's Exhibit No. 178, Nov. 24, 1933", and will be found printed on page 3784.)

The CHAIRMAN. Then what happened?

Mr. FOX. The thing that happened, Mr. Chairman, was that evidently the boys got together and said, "This is going to be all wrong. We have been fussing around with this fellow since November, and this is the middle of January. He is going to establish a new precedent here. Perhaps he will be able to sell these and raise $35,000,000 and do without us. That must not happen at all."

Mr. PECORA. I notice, Mr. Fox, from casually glancing over this circular which has been received in evidence as "Exhibit 178", that the plan was to offer these 3-year bonds or notes to owners of moving-picture theaters, customers of the company?

Mr. FOX. Well, of course, they were to be included in it. They were to be offered to every one. We were not quite that particular as to who was going to buy them. We would sell them to anybody that wanted to buy them. We hoped to sell the greatest portion of them to the customers. What we were trying to do was to follow the Henry Ford plan, if you will recall. He got into trouble with the banking group, and he appealed to his agents who were handling his product to raise money, and he raised money through them. We felt we could reach the theater people who were handling our product, and sell these bonds to them.

Mr. PECORA. Go ahead.

Mr. FOX. And it seemed fairly reasonable to suppose we could have disposed of that 35 million dollars' worth of bonds; but long before the thing got under way Mr. Elisha Walker came. He had talked before and he had been in conference with me a month before that. He sort of felt it was perhaps all right, and he thought his firm could do this financing and that I could abandon this; that there was no use going along with this.

Mr. PECORA. What firm or company was Mr. Elisha Walker connected with then?

Mr. Fox. The Bancamerica-Blair Corporation. Mr. Untermyer was then our attorney. He knew about this; and when I told him that Elisha Walker had called and wanted to do some financing, he suggested that he would go to see his friends, Lehman Bros.; that perhaps they would like to join. He talked to them and they said they would.

I, of course, felt that these two groups were friendly to me, but I felt that I ought to have an enemy in the camp. There was no way of letting our enemies find out indirectly what was going on, and they really ought to be informed; and I said, "Gentlemen, I think you should invite Clarence Dillon into this group." So Clarence Dillon received the invitation, and the group was called "Bancamerica-Blair-Lehman Bros.-Dillon & Read group."

Of course I felt at all times—there never was any doubt in my mind—that when the last ring of the bell came Dillon-Read would not be in the picture. Some way he would get out. And I was justified in thinking that way, for shortly thereafter there became an obligation due in England of $6,000,000, and I called together the Bancamerica Blair-Lehman group and said, "Gentlemen, here is $6,000,000 we have got to pay, because the collateral this man holds is shares that we purchased there for which we paid $20,000,000, and the man in England is now trying to foreclose that note, although he had promised to extend it for 6 months or a year. But now he wants his money. He is trying to recapture his company. We have got to raise $6,000,000."

I must say this for these gentlemen; they were kind enough to do it. They gave me $6,000,000 to send to Europe on a 45-day loan, taking the stock in Europe as collateral, taking this $20,000,000 worth of stock as collateral, and they loaned me the money for 45 days. They made a reasonable charge for it. They charged me $600,000, 10 percent for 45 days, plus 6 percent per annum, or practically 87 percent. You would think that Clarence Dillon would go along with that at that price. But no. He said to the group, "Gentlemen, I am sorry, but I will not go along with that. You fellows can do it. I want nothing to do with it." Not even at 87 percent would he loan this company any money, with plenty of collateral.

So that my judgment was right. The firm of Dillon-Read were serving someone all the time in this matter. The interest was $600,000 for the loan of $6,000,000. The loan was for 45 days. The collateral they received was valued at $20,000,000, and the percentage, as it figures out, was 87 percent.

Mr. Pecora. At the rate of 87 percent?

Mr. Fox. Yes; of course; at the rate of 87 percent per annum.

Mr. Pecora. For the 45-day period of the loan?

Mr. Fox. For the 45-day period of the loan. If the loan ran for 1 year they would have gotten 87 percent more than they loaned.

Mr. Pecora. Those figures are hardly correct, Mr. Fox. You do not mean that they would have gotten 87 percent more than the loan?

Mr. Fox. Oh, yes.

Senator Adams. That 10 percent did not run continuously. There was a 10 percent premium.

Mr. Becker. Mr. Fox said, if the loan had run for a year.

Senator Adams. But that was not the fact, as I got it from your statement. You said the interest rate was 6 percent, and there was a

10 percent commission. You would not have had to pay a 10 percent commission over again.

Mr. Fox. Certainly I would, every 45 days. Whatever it was worth for the first 45 days, it was worth for every 45 days succeeding.

Senator ADAMS. That would not follow.

Mr. Fox. Oh, yes. Any bonus you pay to a banker for 45 days, if you do not repay the loan, but renew it for another 45 days, you will pay at least that much again.

Senator ADAMS. I do not know very much about New York bankers, but that is not surprising.

Mr. Fox. I am not complaining about it. It was cheap at the price. It was necessary that we have that money at that time. It saved the company the difference between the cost of those properties and the amount that this man was about to foreclose for. But my point is not complaining about charging the price they did; the thing I am pointing out is that even at this price Clarence Dillon would not go along.

I will say this for Dillon: He always tried; he never gave up. He always had hopes that he could accomplish that which his boss told him to do. The result was that one day I found we were being invited to Mr. Dillon's home, Mr. Untermyer and I. Dillon had got a new idea. There were present in the room the Lehman Brothers contingent, the Bancamerica-Blair group, and Mr. Dillon, of course, in his home, and their various partners.

When this new group undertook to do this business of course it was on the basis that voting trustees would be created and that a member of each of the three firms would be a voting trustee of my shares, which I consented to rather than to have a receivership. Remember, under the first voting trusteeship I was to be 1 of the voting trustees: Otterson and Stuart were to be the other 2. When it was felt that we could finance ourselves, perhaps, and a new precedent was going to be established of raising money without bankers, a new group came forward to do the financing, on the condition that 3 voting trustees be created, that Clarence Dillon appoint 1, Lehman Brothers appoint another, and that Elisha Walker of Bancamerica-Blair appoint the third.

You would imagine that that would be all anybody ought to want, if there was nothing else to this deal except to do the financing; but there must have been something else, because then there came this invitation to come to Clarence Dillon's home one night, and Mr. Dillon was proposing that it would insure the success of this plan if the voting trustees were increased to 5 instead of 3, and that the fourth voting trustee be Mr. Harry Stuart of Halsey, Stuart & Co., and that the fifth voting trustee be Mr. John Otterson of the New York Telephone Co.

So I was right back where I had started from. Of course that I did not do. Of course not. This meeting broke up at 1 or 2 o'clock in the morning, Dillon realizing that it could not be accomplished that way and they were to hold these three voting trustee shares and there was to be no more.

Following that, this group, to find out whether everything was correct, sent to the Fox Film Corporation and Fox Theaters Corporation a staff of 58 accountants and 22 lawyers who worked there for

30 days, who turned the place upside down from the first resolution ever passed until the last one passed, and every business transaction we had ever had, so as to find out whether or not the thing was as I represented it to be.

Please bear in mind that on December 9 our first bank notes became due, and following that almost every week another one would become due——

Mr. PECORA. December 9, 1929?

Mr. FOX. Yes, sir.

Senator COUZENS. Was it beginning at that time that they commenced to charge your balance against those loans?

Mr. FOX. Well, Senator Couzens, please let me secure that information for you. I want you to have it the correct way, and I would only be giving it to you out of memory again.

Senator COUZENS. That is perfectly all right.

Mr. FOX. Than you. During this time, please bear in mind that the newspapers were carrying all kinds of stories, as you can well imagine, and the boys were playing with the stock as though it was a rubber ball—up and down, down and up—and getting out of it all they could get in the interim. One day the company was safe; the next day it was lost; and the stock would go down, and then it would keep bouncing up along that line, so that interim profits were being made in the meantime. But, strangely enough, not a single law suit from any one; not a single law suit from a stockholder anywhere during all this while; not a single law suit of any kind until Clarence Dillon definitely knew that night at his home that there would not be five voting trustees in this matter and that Stuart and Otterson never would be the voting trustees of my shares. When that was definitely established, then comes the first blackmailing suit by a lawyer in Boston by the name of Berenson. That is the same attorney that started similar action some years ago in connection with the New York, New Haven & Hartford Railroad, and was paid a million or two for the dropping of his suit. I could understand his being in that case; he was a Boston man, and the New York, New Haven & Hartford Railroad ran to Boston; but I could not quite figure out how he fitted in down in New York with the Fox Film Co. This suit was started just at a time when our bankers had decided to formulate a new plan of refinancing.

Mr. PECORA. Will you tell us what that action was brought for?

Mr. FOX. Waste and mismanagement et cetera and so forth.

Mr. PECORA. On behalf of stockholders?

Mr. FOX. On behalf of stockholders.

Mr. PECORA. How many shares did the stockholders who were plaintiffs in that action claim to own?

Mr. FOX. About six hundred and some odd shares.

Mr. PECORA. Out of a total outstanding of what?

Mr. FOX. Out of nine hundred and twenty-odd thousand shares. Well, the curious part about it is that when the wind all blew away the atmosphere cleared, out of the funds of the Fox Film Corporation and the funds of the Fox Theaters Corporation there were issued checks in payment to Mr. Berenson of $500,000.

Mr. PECORA. And then was the action discontinued?

Mr. FOX. Then the action was discontinued, sir; $500,000 paid out of funds of the Fox Film Corporation that had just been reestab-

lished with practically $103,000,000 of new capital, no more in danger, all of its debts paid except the debt of some one to Mr. Berenson. Of course if Mr. Berenson had been the only man that got any money out of this, there would not be anything to complain about at all. For example, from the day that this business was created, which goes back to 1905, right until 1930, the day I sold out, I never did this job alone. From all hours of the morning until all hours at night it was done in the company of my wife, who devoted herself to this business just as though she was running it, who gave her time and application and every bit of energy that she possessed, who in later years took upon herself to see that all these new, beautiful, magnificent buildings we were building would be decorated in good style and without too much expenditure of money. But it was necessary to begin another suit.

So Mr. Isador Kresel was engaged to begin it. Mr. Isador Kresel is attorney and director of the Bank of the United States, to whom the company owes a million six hundred thousand dollars. It is an even chance that if a receiver is going to be appointed his bank would not get 50 cents on the dollar. But that made no difference to him. He knew that there was not going to be any receiver appointed. He knew the master that he was serving. He knew from where he was going to be paid. And of course he brought an action for receivership, and his grounds were that Mrs. Fox was a grafter.

Mr. PECORA. In whose behalf was that?

Mr. Fox. In behalf of a stockholder. Of course, Mr. Kresel when he was paid by check out of the funds, when the thing was all cleared up, the funds of the Fox Film Corporation, his was a more moderate fee. His was only $50,000.

Mr. PECORA. Do you recall how many shares of stock the plaintiff or plaintiffs in that suit owned or claimed to own?

Mr. Fox. Well, this was a more legitimate suit than the other, because this was representing a stockholder that was really in this company from the inception of the company. He was representing a lady who owned shares of stock that her husband got from me as a bonus when he first came into the company prior to the time that there was a Fox Film Corporation.

He had invested $200,000 originally. He had drawn out in dividends a million or more. He had drawn out stock that had a market value of some 8 or 9 million. He had practically made about $10,000,000 on a $200,000 investment, the investment only staying with the firm about 18 months. He had bought preferred stock, and at the end of 18 months the preferred stock was retired. There was the most friendly family our corporation had, and it should have been friendly, from the sums of money they made. How they found Mrs. Kuser, I later discovered, to enter into a thing of this kind, her adviser was Mr. Heppenheimer, the president of the Trust Co. of New Jersey, one of the 11 banks that I have been complaining of.

Senator GORE. Who were the defendants of record now in these two suits?

Mr. Fox. Fox Film Corporation and its officers and directors.

Senator GORE. In both cases?

Mr. Fox. Yes, sir.

Senator GORE. And the attorneys that brought the suit against that concern were paid out of the moneys of the concern?

Mr. FOX. Senator, before you came in—I don't know whether you were here when I said that the first ones that instituted a suit received a sum of $500,000——

Senator GORE. I heard that.

Mr. FOX. The odd part is that he began an action and made the defendant only the Fox Film Corporation and its officers and directors, but when he was paid, mysteriously enough, there was charged on the books $250,000 to the Fox Film Corporation and $250,000 to the Fox Theaters Corporation, the latter of which was not even a defendant in the action.

Senator GORE. And the lawyer that represented the plaintiff who brought the suit against the Fox Film was paid out of the funds of the Fox Film?

Mr. FOX. Yes, sir.

Mr. PECORA. After the refinancing had taken place?

Mr. FOX. Oh, yes; oh, yes. After the company no longer was in trouble and there was not any ground for any more receivership and the stockholders who owned the 600 shares could be happily informed, "Now you needn't worry, Mr. Stockholder. Your company is in funds now. It has no more debts. It has the honorable Chase Bank behind it now. It will take care of it."

But that was not satisfactory to that 600-share stockholder.

Senator GORE. Was there any employment of this Boston attorney by the film company after that?

Mr. FOX. Oh, God, no. Oh, after I sold out, you mean? I don't know, sir, what they did.

Senator GORE. What I am trying to get at is, what reason at the time, what excuse was given for paying this attorney for the plaintiff out of the funds of the defendant?

Mr. FOX. Mr. Clarke, who was the president of the Fox Film Corporation is in this room. Perhaps he could answer why it was paid out of those funds.

Mr. PECORA. That payment was made after you had sold out?

Mr. FOX. Oh, yes, sir. It was not only that sum, gentlemen; it was an amount that runs into a couple of millions of dollars.

Mr. PECORA. You had nothing to do with the making of those payments?

Mr. FOX. Oh, I had nothing to do with that at all. Under my contract they were only to pay those lawyers who were doing the work for the purpose of preventing these companies from going into receivership.

Mr. PECORA. That is, those who represented various parties interested in the refinancing?

Mr. FOX. That is right.

Senator GORE. Now just one question: I do not like to deal in theories, but what is your theory as to why these lawyers were paid out of the funds of the Fox Film Co. when they had been representing an adverse interest to that concern?

Mr. FOX. Why, Senator, early yesterday morning before you came in, I do not believe you were here then when I said——

Senator GORE. I would not want you to go over the same.

Mr. Fox. No; I am not going to go over the same, but I charged then that this was a conspiracy.

Senator Gore. Yes; I understand that, and I must admit there are a good many circumstances pointing to that.

Mr. Fox. Yes, sir.

Senator Gore. I want to get the proof as definite as I can.

Mr. Fox. Yes, sir. Well, now, my theory is that these lawyers were engaged by a group of men whose purpose it was to capture these companies, and their purpose to begin those actions was for the purpose of capturing these companies.

Mr. Pecora. That is, to embarrass you in your efforts, then in the making, for the refinancing of the companies?

Mr. Fox. Yes, sir.

Senator Gore. A sort of a "wrecking crew"?

Mr. Fox. That is right. There is no doubt about that in my mind. If there was any doubt in my mind, Senator, I would not be here.

The Chairman. Are they asking for a receiver in each of these suits?

Mr. Fox. Would you like to know, Mr. Chairman, the number that were filed? Twenty-five of them.

Mr. Pecora. No; the chairman asked you, did the plaintiffs in these two actions ask for receiverships?

Mr. Fox. Oh, yes, they did, and altogether there were 25 of this kind of suits.

Senator Gore. How many different cases did the attorney succeed in collecting from the adverse party in the suit to the one he was representing? How many of them were paid by the Fox Film and the Fox Theatres?

Mr. Fox. There were about 5 or 6 of them. I could get the exact amount. Unfortunately, I haven't that memorandum with me. I do know definitely that Mr. Berenson, who began the first action, received $500,000, and that Isador Kresel, whom they used in the second action, had received $50,000. Now, how many more of those were paid, I think I can get them. I think I can get the exact number. I know the total sum of money runs into a huge sum of money.

The Chairman. Now can we go on with the refinancing?

Mr. Fox. Gentlemen, I am not foolish enough not to realize that to establish a conspiracy is a very, very, very difficult thing, and perhaps I will not be able to do it here, but I am sure of one thing, and that is that every finger will point toward that direction and that some one will have to reach a conclusion as to whether or not there has been a conspiracy.

Senator Gore. Mr. Chairman, I would like this man Berenson to be required to state what services he rendered in return for his compensation.

The Chairman. He brought suit and applied for a receivership of these corporations.

Mr. Fox. He did not represent the corporations suing us.

The Chairman. I know, but the film concern paid a million dollars and the company had some money.

Senator ADAMS. I suggest that you might ask Mr. Clarke what he had to do with hiring Mr. Berenson and what the services were, Mr. Pecora.

Mr. PECORA. Mr. Clarke was president at that time of the film company.

Mr. FOX. I don't think Mr. Clarke knows what services Mr. Berenson had done then, unless Mr. Clarke had hired Mr. Berenson at the time.

Mr. PECORA. I should think he could tell why anyone was paid out of those funds.

Senator GORE. You can ask him before he leaves.

Senator ADAMS. Mr. Clarke is right there. Why not ask him while it is under way?

Senator GORE. Just as it suits the chairman.

The CHAIRMAN. Do you know, Mr. Clarke?

Mr. PECORA. Mr. Clarke, will you take the stand here?

TESTIMONY OF HARLEY L. CLARKE—Resumed

Mr. PECORA. Mr. Clarke, have you heard the testimony given in the last few minutes by Mr. Fox with respect to the bringing of an action by an attorney named Berenson, of Boston, Mass., against the Fox Film Co. sometime in the early part of 1930, in which action he asked, among other things, for the employment of a receiver of the defendant corporation?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Did Mr. Berenson receive or did his clients receive in that action, or at the time of termination of it or discontinuance of it, payment of the sum of $500,000 out of the funds of either the Fox Film Co. or the Fox Theatres Co. or both companies?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Will you explain why such payment was made?

Mr. CLARKE. I personally never saw Mr. Berenson. I don't know the man.

Mr. PECORA. Talk a little louder.

Mr. CLARKE. I say I personally do not know Mr. Berenson; never saw him. The matter was handled by Hughes, Schurman & Dwight.

Mr. PECORA. Were they then the attorneys for the Fox Film Co.?

Mr. CLARKE. They were.

Mr. PECORA. And also for the Fox Theatres?

Mr. CLARKE. Yes, sir. And after many lengthy conferences with Mr. Berenson and his people they thought the suit was serious enough against the Fox Film that they did not want it to go on and thought that Mr. Berenson had grounds on which he could collect a large sum of money for his clients, and they finally made settlement of $500,000 with him.

Mr. PECORA. And that was paid out of the funds of the defendant company?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Has the Fox Film Co. or the Fox Theatres Co. in its possession, to your knowledge, any of the documents relating to the bringing of that suit, the suit itself, and payment of this sum of $500,000?

Mr. CLARKE. Yes, sir; I think very voluminous ones.

Mr. PECORA. Are they in Washington?

Mr. CLARKE. Not to my knowledge.

Mr. PECORA. Can they be produced here on Monday?

Mr. CLARKE. I would assume that Fox Film could produce them; yes, sir.

Mr. PECORA. You are still the president of Fox Film, are you not?

Mr. CLARKE. No, sir.

Mr. PECORA. Are you an officer of the company?

Mr. CLARKE. I am a director.

Mr. PECORA. Who is the president at the present time?

Mr. CLARKE. Mr. Sidney Kent.

Mr. PECORA. As a director will you be able to produce those documents here on Monday?

Mr. CLARKE. I have no control over the records, but I will be very glad to do all I can. The directors no doubt can get them.

Mr. PECORA. All right; we will subpena them. If you will tell me you cannot get them, I will have a subpena served calling for their production.

Mr. CLARKE. Yes.

Mr. PECORA. So I am simply asking you now in order to be guided as to the course I shall pursue.

Mr. CLARKE (after conferring with Mr. Rogers). It is suggested by my counsel that there is no reason why I should assume a responsibility that I may not be able to carry out, and that a subpena be issued for the records.

Mr. PECORA. All right.

Mr. CLARKE. Although I am very glad to volunteer my services to get them.

Mr. PECORA. Now, Mr. Clarke, can you give this committee any reason why any payment of any part of that $500,000 should have been made to Mr. Berenson out of the funds of the Fox Theatres, Inc.? I understand that corporation was not a defendant or other party to that action, and I also understand that $250,000 of this $500,000 which was paid to Berenson in the action that he brought against the Fox Film Corporation came from the Fox Theatres, Inc.

Mr. CLARKE. I do not know that to be true at the moment. It might be so, that half of it came from the Fox Theaters and half from the Fox Film, but I do not know that at the moment.

Senator GORE. If it were true, was there any reason for it?

Mr. CLARKE. The reason the suit was settled was because the attorney who had these many conferences with Mr. Berenson believed that it would damage the company a great deal more than $500,000 not to pay it—or the companies.

Senator GORE. The stockholders represented by Mr. Berenson only held 600 shares of stock—isn't that so?

Mr. CLARKE. Senator, I do not recall the number of shares.

Senator GORE. That is the statement.

Mr. CLARKE. That is the statement that has been made; yes.

Senator GORE. What was the stock worth at that time?

Mr. CLARKE. I do not recall what the stock was worth on the market at that time.

Senator GORE. Do you know when the settlement was made?

Mr. CLARKE. Some 2 or 3 months after the acquisition of the Fox Film and the Fox Theaters.

Senator GORE. It was not worth as much as $100 a share, was it?

Mr. CLARKE. No; I think not.

Senator GORE. If it had been worth $100 a share it would have been worth only $60,000?

Mr. CLARKE. That is correct as to the value of the stock. I do not believe it was settled on that basis.

Senator GORE. The stock was not worth anything hardly at that time, was it?

Mr. PECORA. Now, Mr. Clarke, I now understand that $500,000 in question was paid to the plaintiff or the plaintiff's attorney in that action in the following proportion: $300,000 by Fox Film, Inc., and $200,000 by Fox Theatres, Inc.

Mr. CLARKE. That may be correct. I told you I did not remember the amounts.

Senator GORE. That would have been nearly 10 times the value of the stock if the stock had been worth $100 a share?

Mr. CLARKE. Yes. If it was worth $100 a share it would have been worth $60,000.

Senator GORE. The stockholders would not have been seriously damaged on any ground. If they lost the whole stock they would not have lost that much.

Mr. CLARKE. Senator, the money was paid on the advice of counsel, as I stated, and I think the record will disclose the entire action when we get it.

Senator GORE. Disclose what?

Mr. CLARKE. The entire action that was brought and why the money was paid.

Senator GORE. You think the record will show that?

Mr. CLARKE. Yes, sir.

Senator GORE. As to why a defendant should pay the attorney for the plaintiff a sum like that? It would be interesting as a question of ethics to know why.

I think this ought to go in the record: Do you mean that the $500,000 was not a mere fee for the attorney but to cover damages for the benefit of the plaintiffs in the case?

Mr. CLARKE. I assumed that it included the attorney's fees. What they were I do not know.

Senator GORE. Mr. Clarke, do you recall when this settlement was made with Berenson?

Mr. CLARKE. As I stated, I believe it was within 60 or 90 days after the acquisition of the Fox Film.

Mr. PECORA. That took place on April 7, 1930, didn't it?

Mr. CLARKE. On April 7; that is correct.

Mr. PECORA. According to a statement of the closing market quotations, the market quotation of Fox Film A stock, which has heretofore been referred to in the testimony, for the month of April 1930 ranged from a low of 33¼ on April 2, 1930, to a high of 56 on April 25, 1930. Do you recall that there is other proof that during that month of April 1930, commencing with a few days after April 7, a trading account or pool managed by Pynchon & Co. dealt in the stock in the open market.

Mr. CLARKE. Yes.

Mr. PECORA. You recall that?

Mr. CLARKE. Yes.

Mr. PECORA. I am merely giving that information for the benefit of Senator Gore.

Senator GORE. You do not have the exact date, though, when the settlement was made?

Mr. PECORA. Only as given by the witness here, a few days after the General Theatres Equipment, Inc., acquired control of Fox Film and Fox Theatres. Now that transaction was consummated on April 7, 1930.

The CHAIRMAN. As I understand Mr. Clarke, this $500,000 was paid in settlement of the suit and on the advice and by the direction of counsel?

Mr. CLARKE. On the advice of counsel, Hughes, Schurman & Dwight.

Mr. PECORA. By the way, Mr. Clarke, in connection with the settlement of that action brought by Berenson when this $500,000 was paid to the plaintiff or plaintiffs in that action they did not part with the stock that they claimed to own at the beginning of the action, did they?

(Mr. Rogers at this point whispered to Mr. Clarke.)

Senator ADAMS. Mr. Chairman, I think this ought to be something other than a ventriloquist performance. I think counsel may have recourse to the witness for the purpose of giving advice, but he is continually putting answers into the mouth of witnesses. The committee has been extremely liberal, but this goes on all the time. Now if that is what you want, all right, but it looks like a ventriloquist performance.

Mr. PECORA. Yes; I would like to have the witness testify instead of his lawyer.

Mr. ROGERS. I am very sorry, but that was not intended.

Mr. CLARKE. I do not recall, Mr. Pecora, whether it was transferred or not. I assume it was.

Mr. PECORA. Did you hear the testimony that Mr. Fox also gave this morning, and in fact within a few minutes before you took the stand, with regard to the bringing of an action by a lawyer named Isador Kresel in behalf of a plaintiff named Kuser, which action was also settled upon the payment of $50,000? You heard that testimony of Mr. Fox?

Mr. CLARKE. Yes, I did.

Mr. PECORA. Do you know anything about that action and the settlement thereof?

Mr. CLARKE. I know that there was such a suit, and I know it was settled by the same counsel for $50,000.

Mr. PECORA. Now let me read to you what purports to be a copy of a memorandum addressed to Mr. Wiggin under date of May 1, 1930, which memorandum is signed "M. W. D." which undoubtedly refers to Mr. Murray W. Dodge, who has been a witness here. [Reading.]

MAY 1, 1930.

TO MR. WIGGIN: I have checked on this Kuser matter. For your information the Kuser family and their lawyer, Iselie, were in to see Mr. Clarke yesterday. The family has been promised a directorship. The younger Kuser, Dryden, represents himself and his mother, and they have more B stock than John L. The family will have to fight this out as to who will be represented, but Clarke is inclined to give the directorship to young Dryden as being easier to handle. I have checked this with Reeve Schley, who says that he would

prefer to have Dryden on the board from the bank's standpoint. Am therefore suggesting this form of telegram to John L. Kuser, who I understand is sick in bed. I got Harley Clarke on the phone and at his suggestion have discussed it with Koegel, his lawyer, who approves this form of telegram if you do.

M. W. D.

The Kuser referred to in this memorandum is undoubtedly the Kuser who was the plaintiff in that action brought by Kresel?

Mr. CLARKE. I think not. There was a lot of Kusers in the family. There were two branches of the Kusers, and after we had acquired—the General Theaters I mean had acquired—the Fox Film the family represented by Mr. John Kuser wished to have a directorship on the company, its board; also that portion of the family represented by Mr. Dryden Kuser wished to have a representative. I chose to say to them, "I wish you would decide this among yourselves, and whichever wants to come on the board we will make a place for him."

Mr. PECORA. Now, Mr. Clarke, has the reading of this memorandum refreshed your recollection concerning any conversation you had prior to May 1, 1930, which was the date of this memorandum, with Mr. Murray Dodge on the subject of the Kuser family being given representation on the board?

Mr. CLARKE. Yes, sir; I discussed it with Mr. Dodge.

Mr. PECORA. Did you indicate to Mr. Dodge that you preferred if the Kuser family was to be represented on the board to have it represented by Dryden Kuser because he was "easier to handle"?

Mr. CLARKE. I don't recall it; I may have.

Mr. PECORA. You don't doubt that——

Mr. CLARKE (interposing). I had met both the Kusers, both John Kuser and Dryden Kuser.

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

Mr. CLARKE. I was; yes.

Mr. PECORA. Were you seeking to have its directors persons whom you could handle easily or persons who would direct on the basis of their independent judgment and opinion?

Mr. CLARKE. Naturally I was seeking to have people who would have independent judgments in reference to company matters.

Mr. PECORA. Is that why you preferred Dryden, because he was easier to handle?

Mr. CLARKE. I tell you I don't recall saying that he was easier to handle, but I may have done so. I met both those gentlemen and naturally preferred one to the other.

Mr. PECORA. So that if you preferred Dryden Kuser because he was easier to handle as a director, were you really at that time seeking directors who would direct on the basis of their independent judgment, or were you seeking directors who would be amenable to handling by you?

Mr. CLARKE. We did not seek either of the Kusers. They sought us. And they wanted to have a representative on the board.

Mr. PECORA. We know that, but you expressed your opinion in favor of giving representation on the board to Dryden Kuser because he was "easier to handle." Now that would not indicate at that time you were seeking to have directors elected to the board of the company who would act as directors on the basis of their independent judgment?

Mr. CLARKE. As a matter of fact, I think Mr. John Kuser became a director, not Mr. Dryden Kuser, at that time.

Mr. PECORA. I am not talking about that; I am talking about what you had a preference for, a director with independent judgment or a director who was easy to handle. Which was it?

Mr. CLARKE. I say I had preference for directors who had independent judgment to serve the company. But I may have had preference for one of these other men. I don't doubt that.

Mr. PECORA. According to Mr. Dodge's memorandum to Mr. Wiggin addressed to him the day following his, Dodge's, conversation with you, at which there was discussed a matter of choosing a member of the Kuser family as a director of the company, you expressed to Mr. Dodge a preference to have Dryden Kuser by you chosen as a director because you thought he was easier to handle.

Mr. CLARKE. I said to you that I do not recall saying that, but I may have said it.

Mr. PECORA. Do you question at all that Mr. Dodge was making a correct, accurate, representation of the fact to Mr. Wiggin of his conversation with you?

Mr. CLARKE. I am not questioning that at all. I simply am telling you that I do not recall having made the remark, but I may have done it. Undoubtedly did. Dodge says so.

Mr. PECORA. Who was finally selected from the Kuser family?

Mr. CLARKE. Mr. John Kuser.

Mr. PECORA. Well, now, are you sure of that?

Mr. CLARKE. Yes; he became a director.

Mr. PECORA. I have before me a printed copy of the annual report of the Fox Film Corporation for the year 1930, the year ending December 27, 1930, and the following names are given as the directors for that year:

Harley L. Clarke, Matthew C. Brush, Charles W. Higley, O. E. Koegal, Winfield Sheehan, William Fox, W. C. Michel, John L. Kuser, Dryden Kuser, W. F. Ingold, Murray W. Dodge, S. R. Burns.

Mr. CLARKE. I think I can clear that up for you. I said that Mr. John Kuser became a director for a time to the best of my recollection, and Mr. John Kuser wanted to sell his stock later, and the company bought the stock.

Mr. PECORA. But Dryden found his way on the board of directors?

Mr. CLARKE. He did; yes, sir.

Mr. PECORA. As well as John L. Kuser?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Were they both easy to handle?

Mr. CLARKE. I found them both very nice gentlemen.

Mr. PECORA. That is the conclusion, then, that they were easy to handle?

Mr. CLARKE. No, sir.

Mr. PECORA. Does it lead to that inference?

Mr. CLARKE. No, sir; it is not intended as such.

Mr. PECORA. Well, I asked you if you found them easy to handle. Then why don't you answer my question?

Mr. CLARKE. There is no occasion for handling them for anything. So I could not answer your question.

Mr. PECORA. They never quarreled with you; is that right?

Mr. CLARKE. I think they may have differed in some things, but we never had any quarrels.

Mr. PECORA. This Matthew C. Brush who appears to have been a director of the Fox Film Corporation in 1930 is the same man whose name has figured in the testimony before this committee at various times as being a very prominent stock-market operator, is he not?

Mr. CLARKE. Yes; I believe he is a stock-market operator.

Mr. PECORA. Who caused his selection as a director?

Mr. CLARKE. I cannot tell you who suggested him, but I imagine he may have been suggested by the Chase Bank.

Mr. PECORA. Did you as president of the corporation think it was a good thing for the company to have on its board of directors a well-known stock-market operator instead of one who was familiar with the moving-picture business?

Mr. CLARKE. I never made any complaint about Mr. Brush serving as a director.

Mr. PECORA. What was the business of the Fox Film Corporation, moving picture business or stock market operations?

Mr. CLARKE. Moving picture business.

Mr. PECORA. Outside of Winfield Sheehan and William Fox, was there any member of the board who had had any actual or practical experience in the moving picture business?

Mr. CLARKE. I think not.

Mr. PECORA. You think not? Why were these other members chosen, if they had no knowledge or experience in moving picture business?

Mr. CLARKE. They all had business ability, and I think they are so recognized.

Mr. PECORA. What is that?

Mr. CLARKE. I say they all had good business ability and were recognized as having it.

Mr. PECORA. That business ability did not include experience in the moving picture industry, did it?

Mr. CLARKE. No, but that same report that you have there, if I may interject this, shows that the Fox Film Co. from the time it was acquired by the General Theatres on the 31st of December 1930, had managed to save something over 10 million dollars in the operation of the properties.

Mr. PECORA. Which does not indicate how much more it might have saved if there had been a greater representation on the board of directors of men who were experienced in the moving picture business?

Mr. CLARKE. However, the plans that were in force at that time would have been——

Senator GORE (interposing). Mr. Clarke, doesn't that indicate that perhaps the storm through which the concern went was a sort of manufactured storm? As soon as the storm was over and within 8 months it earned $10,000,000?

Mr. CLARKE. I didn't say that, Senator; I said a saving in operation was made.

Senator GORE. How is that?

Mr. CLARKE. I said a saving in the operations of the company was effected.

Senator GORE. You cut down the expenses?

Mr. CLARKE. Yes, sir.

Senator GORE. But did not realize net earnings?

Mr. CLARKE. No; it did not.

And, if I might inject this, the General Theatres today would not be in receivership had Fox Film been able to pay the dividends of $4 per share that it was supposed and thought by everyone it could continue indefinitely. In fact, it was thought at that time that it would soon be able to pay $5 and $6 per share. The facts are that it was impossible to make savings enough to catch up with the decrease in gross business which came so rapidly at the end of 1930 and during 1931.

Senator GORE. When did it first pass its dividends; do you remember?

Mr. CLARKE. 1931, the second quarter, I believe.

Senator GORE. Was it paying out of surplus?

Mr. CLARKE. No; out of earnings. Might I make a remark while I am here?

Mr. PECORA. Go ahead.

Mr. CLARKE. I make this remark with no animus to anyone, but I think you should be properly informed in reference to the financing of the Fox Film at its acquisition by the General Theatres. I make this statement, that I never at any time approached Mr. Fox to buy his company. My first visit with Mr. Fox in reference to the financing of his company was at Woodmere about 3 weeks after he had his unfortunate accident, and I spent the latter part of an afternoon with him, at which time I suggested that if he were too ill to attend to his financing, I should be very pleased to offer my services, and I believed that within a week I could put a plan together and get a group of bankers together who would finance the entire huge debt of a hundred million dollars, and that if he would permit me to do it, I would do it without cost to him, and our reward would be a contract for all his supplies of every kind and nature at cost plus 10 percent.

Mr. PECORA. In whose behalf did you make that suggestion or offer?

Mr. CLARKE. In behalf of my company that we had at the time.

Mr. PECORA. What companies are you referring to?

Mr. CLARKE. International Projector and National Theater Supply, which company had at that time 50 stores all throughout the United States in the principal cities and was manufacturing motion picture projectors and selling 90 percent of the projectors used in the world and selling every known kind of a supply that a theater uses.

I simply mention it as a preface to what I am going to say, which is that later Mr. Fox, through his representative of the Fox Film in Chicago, got me on the telephone one night—that is, his representative got me and asked me to call Mr. Fox immediately at the Ambassador Hotel, at 3 o'clock on a Sunday morning.

I did so, and Mr. Fox said he was in great difficulty and could I come along and help him.

I went to New York on Sunday, arriving on Monday, saw Mr. Fox, and on the following Monday, having talked the matter over with bankers, presented a plan of financing to Mr. Fox. Mr. Fox said he would like to sell his shares. I said I might be able to buy them, but I did not want to interfere with other negotiations that he might be having at the time.

Mr. PECORA. Mr. Clarke, let me suggest to you——

Mr. CLARKE (interposing). It won't take me two minutes, or three at the outside.

Mr. PECORA. All right.

Mr. CLARKE. Mr. Fox then said that he had negotiations on with other people, and about that time, which was the last part of November, he was getting ready to enter into this voting trust that he has spoken of.

From that time on I had nothing whatever to do with Mr. Fox until he asked me later, that is, in the following year, to purchase his company, and I wanted to say that there is no time during the year 1929 or during the year 1930 when a reasonable plan could not have been worked out by Mr. Fox or his representatives for the funding of the huge debt the company had, and on a fair basis.

The proof of that is that in less than 2 weeks' time when I was given a chance to buy the company I succeeded in raising over a hundred million dollars to pay this company's debts, and in addition pay Mr. Fox $15,000,000 for his stock, plus $3,000,000 worth of claims that he had, plus $2,800,000 for another claim that he had in the syndicate later, which was formed at that time to purchase the 1,600,000 shares of new Fox stock at $30 a share.

I make these remarks simply to show that any conspiracy complex that Mr. Fox may have had or may still have, suffering from hallucinations that he could not finance, is not in accord with what I believe to be the facts, and I say that because of my ability to finance the thing, and he certainly could have done it himself.

Mr. PECORA. Mr. Clarke, does it occur to you that what you point to as proof there is no merit to Mr. Fox's contention advanced here, might also be regarded as proof to support his contention, because his allegation in substance, as I understand it, is that there is an agreement, which he terms a " conspiracy ", on the part of financial and banking interests to withhold financial aid and assistance to him in order to enable them to get control of his companies, and that when those interests got control of his companies you were made president of them, and you, according to the statement you have just made, succeeded in getting over a hundred million dollars in the same banking interests that had turned Mr. Fox down?

Mr. CLARKE. No; not the same interests.

Mr. PECORA. Some of them anyway.

Mr. CLARKE. I say if there was a conspiracy I do not know of it. Certainly I had no part in it, and certainly I did not have any part or anything to do with the Department of Justice. At the time that I called on them after we had acquired the stock of the Fox Film, and talked with Attorney General Mitchell and John Lord O'Brian, was after our acquisition of the property.

Mr. PECORA. Mr. Fox did not say that you had anything to do with that. He merely ventured an opinion that if any such thing

was done as involved a change of the records of the Department of Justice, and that if any person is responsible for it, he preferred to believe that you were that person.

Mr. CLARKE. I do not care what Mr. Fox believes.

Mr. PECORA. He did not state it as a fact.

Mr. CLARKE. I do not care what Mr. Fox believes. He can believe anything he likes. I am merely stating this to clear an impression that might have been given out.

Mr. PECORA. There are a number of things I am going to ask you to clear up before we get through with this investigation. Now, let us go ahead with Mr. Fox's testimony and then you will be given every opportunity to make any statements or challenge any testimony given by him or anybody else.

The CHAIRMAN. We will take a recess until quarter after 2.

(Accordingly, at 1:15 p.m., a recess was taken until 2:15 p.m. of the same day.)

AFTER RECESS

The subcommittee resumed at 2:15 p.m. on the expiration of the recess.

The CHAIRMAN. The subcommittee will come to order. I believe Mr. Fox is on the stand again.

TESTIMONY OF WILLIAM FOX—Resumed

Mr. PECORA. Now, Mr. Fox, will you resume your narration of events at the point where you left off?

Mr. FOX. Yes, sir.

Mr. PECORA. I mean just before Mr. Clarke resumed the stand.

Mr. FOX. Yes, sir. I would like to make a slight comment on what Mr. Clarke said, if I may, because, while it was more or less irrelevant to this testimony, yet it was a very frank admission on his part that there was really a conspiracy here, as I see it.

The CHAIRMAN. Well, that is argumentative.

Mr. FOX. Yes; I know——

Mr. PECORA (interposing). Yes; it is argumentative. Let us not enter upon an argument as to any of the testimony.

Mr. FOX. I did not intend to do that. I am sorry. Therefore I would like to read a letter from the Chase National Bank of date January 8, 1930. May I offer it to you, please?

Mr. PECORA. I have before me the letter which was just handed to me by the witness, and which appears to have been written in reply to his letter of January 6, 1930, a letter which the witness addressed to Mr. Wiggin, and which was read into the record this morning. I offer this letter in evidence, Mr. Chairman.

The CHAIRMAN. Let it be admitted, and the committee reporter will make it a part of the subcommittee's proceedings.

(A letter from C. J. Schmidlapp, vice president, the Chase National Bank, dated Jan. 8, 1930, was marked "Committee Exhibit No. 179, Nov. 24, 1933", and appears immediately below where read by Mr. Pecora.)

Mr. PECORA. The letter, which has been marked "Committee Exhibit No. 179", reads as follows, being on the letterhead of the Chase National Bank of the City of New York:

NEW YORK, *January 8, 1930.*

WILLIAM FOX, Esq.,
President Fox Film Corporation,
New York City.

DEAR SIR: In the temporary absence of Mr. Wiggin I am acknowledging your letter to him of January 6.

If General Heppenheimer and Mr. Marcus made the statement you refer to therein, they did so without authority so far as the Chase National Bank is concerned.

However, we feel obliged to point out to you that the indebtedness of the Fox Film Corporation to this bank cannot be permitted to run along indefinitely. We are informed that efforts made by its bank creditors to work out some satisfactory plan for liquidation of the indebtedness of your company have been defeated by lack of cooperation.

Under these circumstances we have felt obliged to refer our claim against your company to our attorneys, with instructions to take such action thereon as may best protect the interests of this bank.

Very truly yours,

A. J. SCHMIDLAPP, *Vice President.*

Mr. Fox. Now, the only cooperation that I can by the wildest stretch of imagination think he could refer to here, or my lack of cooperation rather, is that I refused to have the voting shares that I had, dissolved, so that the company would have just one class of stock.

Now, as Mr. Clarke has said, when, after he had acquired this company, the Chase National Bank made it possible for him to get 103 million dollars, I say that the Chase National Bank did not make that same condition on Mr. Clarke it had made on me. No indeed. Those shares of stock are still in existence. They were never dissolved.

When I owned those voting shares, and held them, our board of directors was made up of employees of our company, or people who had surrounded the company from its very inception. When these voting shares were acquired by Mr. Clarke, and were made the property of General Theatres Equipment, Inc., not only were those shares not dissolved, the 50,100 shares, a part of the 100,000 shares that controlled the company, but the control was then taken out of my hands, and out of the control of those shares, and placed in the control of General Theatres Equipment.

Now, sirs, it is worth while finding out how that company is controlled, with its 1,800,000 shares outstanding. That is controlled by three shares, by three voting trustees holding shares, so that now Fox Film is not controlled by anyone except those who own the three shares of stock, stock now selling for less than 25 cents a share.

Mr. PECORA. That is, the voting trustees for the holders of the common stock of General Theatres Equipment?

Mr. Fox. Yes, sir.

Senator TOWNSEND. Who were those trustees?

Mr. Fox. Mr. Harley Clarke, and I believe a man named Ingold is another, and I forget the third man's name. Mr. Pecora probably has the papers giving a record of it.

Senator TOWNSEND. Who is the third man? It was Stuart, wasn't it?

Mr. BECKER. It was Hammons.

Mr. PECORA. Oh. It was Mr. Hammons of the firm of W. S. Hammons & Co.?

Mr. Fox. Yes, sir. So this letter is incorrect, that we never cooperated. Or, as it says here:

> We are informed that efforts made by its bank creditors to work out some satisfactory plan for liquidation of the indebtedness of your company, have been defeated by lack of cooperation.

In every case we cooperated. This thing started before the court, and it was continued everywhere else. The thing that they call lack of cooperation is my unwillingness to accept what they wanted done as to the voting shares that belonged to me. They were planned to be destroyed, to be eliminated entirely, so that the control of the company would not be in my hands.

Oh, yes, it was perfectly all right to put it in the control of Harley Clarke, of General Theatres Equipment. And for that purpose the Chase National Bank was ready and willing to loan 103 million dollars.

And, gentlemen of the committee, there is just a little history that goes with that, while on that subject, that Mr. Clarke evidently is not familiar with. In 1929, while this company was under the control of William Fox, and up to September 1, it had recorded on its books net earnings of 9 million dollars, and there was the clear indication that at the end of the year, according to the earnings for the last 3 months of that year, so as to complete the year 1929, would be approximately 5 million dollars, or that the company was to earn that year 14 million dollars. That was while I had charge of those books.

Senator COUZENS. While you had charge of the books or the theaters?

Mr. Fox. While I had charge of the books of the Fox Film Co. In the first quarter of 1930, before I had sold out, our certified accountants, Touche, Niven & Co., said we had earned during the first 3 months $4,700,000, or between January 1, 1929, and April 1, 1930, just exactly 15 months, there were earnings of $18,700,000.

Now, what did they do when they took charge of this company? Did they report those earnings as they were shown on our books? No. They modified them, and when they got through figuring out the 1929 earnings, instead of their being 14 million dollars, they said only 9 million dollars, or a friction less than that, had been earned, leaving in reserve 5 million dollars in case things did not go just right during their regime. They had the 5 million dollars surplus there to apply to profits of the following year.

And what did they do with those 5 million dollars? That added to the $4,700,000 that was earned before I sold out, making $9,700,000, was practically all that the corporation earned in 1930. For as I read the reports now the report for 1930 shows earnings of about 10 million dollars. And from the day that I sold that company, from the day that they took charge and mismanaged it, there has never been a dollar earned in that corporation, not from that day to this, unless they have earned it recently, say, $100,000 or $200,000 that they may have recently reported for a quarter.

So that the lack of cooperation the bankers were complaining about, meant what? Was what I have detailed, lack of cooperation?

No. Was it proper cooperation that they were receiving at the time they loaned $103,000,000, after this stock passed out of my hands?

Isn't this conspiracy in its complete sense? Can there be any doubt about that? Doesn't that show that all that these men wanted was one thing—to wrest control of these companies from my hands, and that they were willing to move heaven and earth to do it? Is Mr. Clarke justified in saying that he came to my home, and visited me, and said that he was my friend, and that he was willing to help me finance the matter? He knows that was not the conversation. He knows that he did not have to hold out the inducement that the Fox Co. shall buy their supplies from him if he arranged it, because he already had the custom of the Fox Film Corporation, who were buying all of their supplies from the National Theater Supply Co., and every projection machine from the International Projector Corporation.

Finally this corporation was purchased with this Chase money, and they agreed to the board of directors. Why, it is clear. Here was a man, the president of the company, who did not know who his directors were. Why didn't he know who his directors were?

And, gentlemen of the committee, I was on that board of directors for a year and was invited to but one meeting, and——

Mr. PECORA (interposing). Do you mean after you sold your stock?

Mr. Fox. Yes, sir. I was elected to that board, and elected under the terms of the contract of sale to them. I was to be retained on the board for 5 years. But I was invited to one single meeting only, and——

Mr. PECORA (interposing). You mean invited?

Mr. Fox. Yes; I was invited to but one single meeting. And then I refused to vote for that resolution they were putting through, and was recorded as not voting. And never again was I allowed to go into the directors' room.

Now, the only other man who understood anything about motion pictures who was on that board of directors that you read off this morning, Mr. Pecora, was a man by the name of Winfield Sheehan, whose duties were in California and he was not in New York to attend board meetings. He was ill at the time anyway, and even if he had been in New York he could not have attended. So the company was left without a single man on that board of directors who ever had any affiliation with motion picture theaters.

Mr. PECORA. And Mr. Sheehan had been a vice president of the Fox Film Corporation under your presidency, I believe?

Mr. Fox. Yes, sir. Now, why was it that Mr. Dryden Kuser was made a director? The record is clear. Dryden's mother was the one who had started suit against the Fox Theatres Corporation, and this was the pay-off. This was the arrangement as shown in Mr. Wiggin's memorandum, or in the note you read from Mr. Dodge to Mr. Wiggin. They could not get rid of Dryden for they had promised to pay him. He would rather have John than Dryden, but there was an agreement made with Dryden that he was to be a director. So what could they do but make them both directors?

There is a bit of history to this company that you gentlemen ought to know. They did not just destroy a mediocre thing, a thing that

amounted to nothing. If it had been that they would not have fought for it that hard. It is not the common thing to do that. If this company were a losing concern they would not want it.

I would like to read into the record what the earnings of this company were: In 1914 they were nothing. In 1915 they were $523,000, and the company did a business of $3,208,000. In 1916 the gross business was $4,244,000 and it earned $365,000. In 1917 it did a gross business of $7,118,000 and earned $593,000. In 1918 it did a gross business of $7,300,000 and earned $270,000. In 1919 it did a gross business of $9,380,000, and there is no sign here [reading from Upton Sinclair's book] that there were any earnings, although I am sure that is incorrect. Evidently the earnings were not supplied for this book. In 1920 the gross business was $12,605,000 and the corporation earned $1,413,000. In 1921 the gross business was $13,755,000 and the net earnings were $1,605,000. In 1922 the gross business was $12,327,000 and the net earnings were $2,660,000. In 1923 the gross earnings were $11,242,000 and the net earnings were $1,808,000. In 1924 the gross business was $9,926,000 and the net earnings were $2,009,000. In 1925 the gross business was $11,750,000 and the net earnings were $2,606,000. In 1926 the gross business was $14,274,000 and the net earnings were $3,030,000. In 1927 the gross business was $17,000,000 and the net earnings were $3,120,000. In 1928 the gross business was $22,626,000 and the net earnings were $5,957,000. In 1929 the gross busines was $30,803,000, and the record the net earnings as $9,469,000, and, gentlemen of the committee, I tell you definitely that before I left that company those earnings were upward of $14,000,000.

Yes; that was why they wanted this piece of property. It looked like Aladdin with his wonderful lamp. They wanted this concern that in 1914 did a gross business of $272,401 and in 1929 did a gross business of $30,803,000, and from no net profit in 1914 to a profit acknowledged by them in 1929 of $9,469,000——

The CHAIRMAN (interposing). That is, you mean the Fox Film Corporation?

Mr. Fox. Yes, sir. And here is the record of the Fox Theatres Corporation: Its net earnings for 1926 were $454,000, and in 1927 they were $823,000, and in 1928 they were $1,522,000, and in 1929 they were $2,660,000. Certainly they wanted this piece of property! Certainly they conspired to get it! Clarke made that quite clear. He could get money whenever he wanted it, but Fox could not get it.

And Fox was not borrowing this money for himself but for the corporation. He had no personal interest other than the fact that he was a stockholder, but he controlled this company by his voting shares, and that was not to be. That was to be put into General Theatres Equipment, Mr. Wiggin's company, where he could earn whatever profits he felt like.

Now, gentlemen of the committee, I am sorry that I raised my voice. I am sorry if I spoke too loud. But you gentlemen must understand that I have been all the way through this thing, and must know how I feel about the results.

Now, as to Mr. Berenson—but I wanted to save that until Senator Gore got back. But, anyhow, Berenson did not get that $500,000

because he represented 600 shares of stock. The owners of those 600 shares of stock said: "We don't want to go along with this deal, but we want that stock purchased. That was not what he got the $500,000 for. That was a part of this conspiracy. Berenson was probably supplied with the 600 shares of stock to begin this action. When Berenson found that his action was of no avail, that Judge Coleman would not appoint a receiver, and that Judge Coleman insisted there be a stockholders' meeting to discover whether or not the stockholders were in sympathy with the Fox management, well, Berenson appears at that stockholders' meeting. He was there with flying colors. Finally the vote was taken. Mr. Becker, may I have the record of that vote?

Mr. BECKER. It shows here 658,322 shares voted in favor of the Fox management and 33,085 voted against it.

Mr. Fox. At any rate, there were 33,000 shares that the Halsey, Stuart crowd voted, which is the Chase National Bank and the Halsey, Stuart crowd, and the balance of the shares were voted by way of an expression of confidence in William Fox to do his banking with this new group of bankers.

Well, when that result was known, do you suppose that Berenson did not have another duty to perform for which he was to receive the $500,000? He promptly ran into a State court and brought another action. This time what did he want to do—I mean in the second action? He asked the court to prevent the financing from going through, in spite of the fact that out of 920,000 shares of stock outstanding only 33,000 shares voted in the negative. As against all the others he wanted their plan put through, just to tie the thing up in a further knot. That is what the gentleman got the $500,000 for, and——

Mr. PECORA (interposing). Did he prevent that plan from going through? In other words, did he bring that action to prevent the corporation from proceeding according to the vote?

Mr. Fox. Yes, sir; the thing which the stockholders had in their annual meeting voted they wanted to be done.

Mr. PECORA. Was that action terminated by consent at the same time the other action was?

Mr. Fox. I do not know when they terminated their action. Now, I wouldn't want to find any fault with Berenson for getting $500,000. That was entirely up to him. And I might say that he is known as the type of lawyer who goes out and does that kind of job. He even boasts of the manner in which he held up the New York, New Haven & Hartford Railroad, and that that was one of his proudest acts. That is what started him on his career. He is a specialist in that kind of thing. Whenever they have a job of that kind they go to Boston and find Mr. Berenson. I have no objection to his getting that $500,000, but what I do resent is its being paid by private stockholders. It should have been paid out of the profits of the bankers. Why should a fellow in this sort of action have gotten his money from the stockholders whose property he was working in court for the destruction of?

The CHAIRMAN. As I understand there was never any receiver appointed for the Fox Film or Fox Theaters?

Mr. Fox. No; the court had better sense.

The CHAIRMAN. Well, was any receiver appointed for either one of them?

Mr. Fox. No, sir.

The CHAIRMAN. But a receiver was subsequently appointed for General Theatres Equipment, Inc.

Mr. Fox. Oh, I beg pardon, Mr. Chairman. May I correct that answer, please?

The CHAIRMAN. Certainly.

Mr. Fox. You asked me whether there was ever a receiver appointed for Fox Film or Fox Theaters. I should like to correct that answer. There was no receiver ever appointed for Fox Film because the Chase National Bank had been holding the bag, had been holding it from its inception up to the present time. Now, as to Fox Theatres, that is rather a little story you ought to know, because I think it is interesting: Fox Theatres Corporation, whose business it was to exhibit motion pictures, and which had a chain of theaters throughout the Nation, found itself acquiring Loew shares for this 73 million dollars we have spoken about here. Gentlemen, that was the greatest error William Fox ever made in his whole career. That brought about this whole confusion, and brought about the fact that these companies were taken away from him. It had made this 73 million dollar acquisition with borrowed money, all borrowed but about 16 million dollars which it had of its own funds. The balance of the money, the difference between 16 million dollars and 73 million dollars, it had borrowed, being 57 million dollars. This may vary a million dollars one way or another, and I am giving it to you from memory now.

When I sold those voting shares the first act of the new board of directors of the Fox Film Corporation—and, by the way, it was a resolution on which I refused to vote—said to the Fox Theaters Corporation: We are going to buy those 660,900 shares of Loew stock. We are going to pay you $75,000,000 for them. In other words, that the Fox Film Corporation was going to buy it for $75,000,000. The market value of those shares at that time in the open market was probably about $48,000,000 or less.

Here they were correcting the only error I consider I have made in my life, and that was the acquisition of the Loew shares. Here they were putting not only the value that I had paid for them but a profit on top of it to the company that had bought them, and actually gave the Fox Theatres Corporation, either in receipt for the indebtedness that it had or in cash, $75,000,000.

Of course, the Fox Theatres Corporation, I presume, then proceeded to liquidate its liability. As I stated before, the only liability it had was for the acquisition of those shares. It owed no bank a dollar, except one bank in Boston that it owed $300,000 to for the acquisition of a piece of property that they could not give us title to. They owed no bank a dollar. They owed very little merchandise creditors, and they took this money and liquidated the balance of those debts and left $15,000,000 or $16,000,000 or $17,000,000 to a company that did not have a dollar's liability in the world, that did not have a bond issue outstanding, that had no preferred stock, and that was controlled entirely by the common stock.

And, Senator, I now come to an answer to your question: In less than 2 years that 15 million dollars disappeared out of the treasury of that company, and that company is now in receivership.

The CHAIRMAN. How many theaters did they own?

Mr. FOX. They owned some 250 theaters, they and their subsidiaries, or at least 200 theaters. It is all gone. There is just a shell left. No one knows where the 15 million dollars or 16 million dollars or 17 million dollars went. No one has ever tried to explain it. It was just wiped out. The 13,000 or 14,000 stockholders that owned the company, who had $25 and more a share for their stock, were all wiped out.

Senator ADAMS. Mr. Becker, may I make the same comment to you that I made this morning: I do not believe Mr. Fox needs prompting all the time.

Mr. FOX. No; and I wish he would not do it. Although, of course, I must ask Mr. Becker occasionally for some information because I do not have the continuity in mind always.

Senator ADAMS. I do not object to your asking him for any information, but do not think he should be constantly prompting you.

Mr. FOX. And this is the corporation that in 1929, the last year that I controlled it, its report showed it earned $2,600,000. Of course, not only is the Fox Theatres Corporation now in receivership, but General Theatres Equipment, Inc., who acquired those voting shares, is likewise in receivership. And if it were not for the Chase National Bank the Fox Film Corporation would also have been in receivership. It was only made possible for it to be kept out by the action of the Chase National Bank. The finest subsidiary that the Fox Film Corporation had, the West Coast Co., and which earned 5½ million dollars in 1929, has since been put in receivership.

The CHAIRMAN. Now, Mr. Fox, may we get to that transaction whereby you sold out under the refinancing plan?

Mr. FOX. Yes, sir; I am coming to that very rapidly now.

The CHAIRMAN. All right.

Mr. FOX. Mr. Pecora, we have here an exact duplicate of the conversation that took place before the court, before Judge Coleman by the attorneys representing Halsey, Stuart & Co., the telephone company, and Mr. Untermyer, representing our companies, in connection with their opposition to the financing which was about to take place, which would present it in full.

Mr. PECORA. Could you give us the substance of it?

Mr. FOX. It is only on two pages, Mr. Pecora, and I would prefer that some one read it instead of me.

Senator COUZENS. That is a matter of public record. We can make reference to it and look it up if we need to.

The CHAIRMAN. The book has been published.

Mr. FOX. Yes.

The CHAIRMAN. Anybody can read it that wants to.

Mr. FOX. Yes.

Mr. PECORA. What is the page?

Mr. FOX. It begins on page 251, and goes to about 254.

The substance is that the new plan of financing—that is, the Bancamerica-Blair-Dillon-Read plan—provided that Halsey, Stuart receive its $12,000,000 on April 1, when due, in full, plus interest,

and that the telephone company receive its $15,000,000, which was past due, and the lawyers for both these concerns appeared in court and said they knew that this plan provided for the refund of their money, but they still opposed the plan. They did not want their money. They wanted a receivership. They thought it was better to have a receivership than to receive their money.

Judge Coleman insisted upon not appointing a receiver here and allowing our bankers to have a chance to work the thing out. The next thing that occurred, Halsey, Stuart & Co.'s attorney, a man by the name of Bogue, had filed an affidavit of prejudice against Judge Coleman of our Federal court in New York and took the case out of his hands. My attorneys tell me that an affidavit of prejudice has not been resorted to in New York for 25 or more years, but it was resorted to for the purpose of capturing these companies and taking them away from me.

Senator GORE. Who succeeded Judge Coleman?

Mr. FOX. I believe Judge Knox got it after that, but he had not any opportunity to do anything in the matter. He left it in status quo until the day that I sold out.

Senator ADAMS. What did the affidavit of prejudice do? How did that serve to change the situation?

Mr. FOX. As I understand the rule on an affidavit of prejudice, the court has not any right to hear the case any further. It has not any defense to the affidavit at all, but must automatically step out of the case. They were removing the judge who had refused to appoint a receiver in this case.

Senator ADAMS. But another judge stepped into his place, necessarily.

Mr. FOX. Necessarily.

Senator ADAMS. But no further action was taken, as I gathered from your testimony.

Mr. FOX. That is right. Judge Knox was appointed.

Senator ADAMS. I was asking in what way the affidavit contributed to that result.

Mr. FOX. To what result, sir?

Senator ADAMS. The result you are complaining of. I understood the filing of the affidavit of prejudice was one of the things that contributed to carrying out, as you allege, of the conspiracy.

Mr. FOX. That is right, sir.

Senator ADAMS. I was just wondering why it contributed.

Mr. FOX. That, you see, took it out of the hands of Judge Coleman, who was definitely empowered to adopt the new financing plan approved by our stockholders, and for fear he would do that they filed an affidavit of prejudice and took him out, and, as I said before—perhaps Mr. Pecora can correct me if I am incorrect—it was the first time in 25 or 30 years that there ever was resort in our district to an affidavit of prejudice against one of the judges in the Federal court.

Mr. PECORA. Mr. Fox, perhaps I can bring out the facts with regard to that by a few questions. Senator Gore wants to ask a question first.

Senator GORE. If Judge Coleman had approved this financing plan, would that have obviated the sale and saved the company?

Mr. Fox. Yes, sir. Of course, the companies would have remained in my charge, and everything would have gone along just as it was before all this difficulty had begun.

Senator Gore. How soon was the sale made after this affidavit of prejudice was filed?

Mr. Fox. The affidavit of prejudice, I believe was about March 27, and the sale was made on April 7.

Senator Gore. When was the sale agreed to?

Mr. Fox. It began on Saturday, April 5, and concluded on Sunday morning or Monday morning, April 7.

Senator Gore. Is it your contention that you were more or less coerced into making this sale, on account of the breakdown of this refinancing plan?

Mr. Fox. Yes, sir. While you were out, Senator Gore, I had recited exactly what had occurred here.

Senator Gore. I do not want you to go over that again. If the court had approved this refinancing plan, and had not been retired by this affidavit of prejudice, then you would have gone ahead with your plan of refinancing, and would not have made the sale, is that the point?

Mr. Fox. That is correct, Senator.

Mr. Pecora. Mr. Fox, was this the situation? The application for receivership first came on for hearing before Judge Coleman.

Mr. Fox. That is right.

Mr. Pecora. And in the course of the oral argument he indicated that he was unwilling to appoint a receiver.

Mr. Fox. That is right.

Mr. Pecora. And then the litigant asking for the appointment of a receiver filed an affidavit of prejudice based upon that expression of feeling or opinion by Judge Coleman.

Mr. Fox. No. Judge Coleman did differently. He said he would not appoint a receiver until the stockholders had a chance to say as to whether or not they approved the Fox plan that was being submitted to them, which meeting, I believe, took place on March 1.

Mr. Pecora. Then, following the filing of the affidavit of prejudice, did Judge Coleman retire from any further consideration of the case?

Mr. Fox. He did, sir.

Mr. Pecora. Then it came on before one of his associates, Judge Knox.

Mr. Fox. Yes, sir.

Mr. Pecora. But before Judge Knox rendered a decision, conferences had been held between you and your representatives, with the representatives of the General Theatres Equipment, which led to the consummation of the transaction of purchase of your interests by General Theaters on April 7.

Mr. Fox. There was just one step in between, Mr. Pecora. When I had contacted the Bancamerica-Blair group to do the financing one of the conditions that they made was that I may not sell my voting shares without their knowledge and consent. In other words, they did not want to find that they were making a contract with me to finance the companies and that in the interim I would sell my stock and they would have to deal with someone else. It was

after the affidavit of prejudice against Judge Coleman that I received a letter from the Bancamerica-Blair group, out of a clear sky, wholly unexpected, which said, "We have a verbal understanding that you are not to sell your B shares."

I do not remember the exact language, but something on that order—that they no longer required that restriction, that from now on I was free to sell the B shares.

That made me pretty suspicious. I said, "What is all this about, now?" I asked Mr. Untermyer to arrange a conference of the banking group, bearing in mind that our contract with them was to do this financing on or before April 15, 1930, and this was March 28 or 29. We had about 2 weeks left.

Mr. PECORA. The banking group you referred to is the one that revolved around Bancamerica-Blair & Co.

Mr. FOX. Yes, sir. We had about 2 weeks left to do our financing in, and I inquired from Mr. Untermeyer whether he thought all these court proceedings could be set aside in that period of time. He thought no. He thought it would take 2 months longer. I said, "We had better call our bankers together and get an extension of this financing agreement for 60 days longer."

There was such a meeting arranged, and all the bankers and their lawyers were present, and I said to Mr. Untermeyer, "Neither your son nor I will do any talking here. You do it all. But I am trying to find out the reason for releasing me from the obligation not to sell my voting shares. That seems to be significant to me."

So Mr. Untermeyer said, "Gentlemen, you know that we cannot complete this court business by the 15th of April. My client would like to know whether you would extend the time for 2 months longer?"

Instead of replying to that, one of the attorneys for the banking group went into a discussion about the legal side of the cases before the court. It lasted about 20 or 25 minutes, and he did not answer what Mr. Untermeyer had asked. I sat alongside of him. I said, "Please ask your question again." He asked it again, and another attorney began talking about the legal side of it, and no answer came.

I said to Mr. Untermyer, "Please ask it once more, and if you get no answer we will take our hats and coats and go home, because I am sure now that this banking group is going to run out on me, that I will not have them after April 15, and that the companies will have to go in receivership."

Mr. Untermyer put his question the third time, and having received no response to the question—in fact, I call it the "Japanese meeting" in this book, because all had faces of Japanese. There was no reply to the question at all, and we withdrew.

I then asked an agent who had been inquiring from me for 3 months prior to that whether or not I wanted to sell these shares—I sent for him and said, "Are you still in the market to buy these shares?" He said, "Yes." I said, "I am ready to sell them."

Senator GORE. What was the date of the "Japanese meeting"?

Mr. FOX. I am looking for it, Senator Gore.

The CHAIRMAN. While you are looking for that, you might state what was Judge Knox's decision.

Mr. FOX. He never heard the case, Mr. Chairman.

The CHAIRMAN. Never heard it?

Mr. FOX. He never heard the case at all. It was discontinued, and Mr. Berenson paid the $500,000.

Mr. PECORA. And the sale of your stock to the General Theatres Equipment was consummated meanwhile.

Mr. FOX. Yes, sir. The Japanese meeting was Monday, March 31. Of course, it did not take long to find out why the Japanese meeting took place, for during the evening—by the way, I called up Mr. Walker a day or two later, and said, "I have authorized an agent to sell my voting shares to Mr. Clarke, of the General Theatres Equipment Co." He said, "Well, now, be sure that you keep for us all of the financing, that you make it a condition before you sell it, that this financing contract go on with us, that we do the financing—either all of it or at least 75 percent of it."

So that during the night Clarke and I were negotiating and this contract was being drawn, we finally reached the point of the financing of his new companies, of this new setup, and I said, "Now, there is one thing I cannot do. I cannot desert the men who have stood by me all this while. These companies would have been in receivership long ago if it were not for the fact that they had this underwriting contract. I want them to be your bankers. They are ready to do your financing as you wish it", and after we wrangled until somewhere near 1 o'clock in the morning, and Mr. Clarke knew definitely he could not change my mind about it, he finally said this. He said, "Now, look here. I am going to tell you something you don't know." He said, "There has been a deal made on this financing."

Remember, now, this is Saturday night, reaching toward Sunday morning. Bear in mind that the Japanese meeting is on Monday, March 31.

Senator GORE. You did not say whether it was before or after this Saturday night.

Mr. FOX. Before. March 31 was the Japanese meeting. Saturday, April 5, is this meeting which I am telling about.

Clarke said, "Now, I think you ought to know it, that last Monday," which was the very date of the Japanese meeting, "last Monday Mr. Tinker"—representing either the Chase Bank or Bancamerica-Blair, I do not know which of the two—"and Walker reached an agreement, in that Halsey-Stuart will take 50 percent of this financing and you group of bankers will get the other 50 percent."

I said, "That cannot be so." He said, "I will prove it to you. I will call Ned Tinker on the telephone." Mr. Clarke then called Ned Tinker on the wire. He said, "Ned, repeat to Mr. Fox what your deal is on this new financing and when you made this deal."

Ned Tinker repeated that on March 31 he made the deal with my group of bankers to do the financing for Clarke. I then called Walker up. Immediately I hung up on Tinker, I called up Walker and said, "Look here, Walker. You gave me a contract to try to get you 100 percent of this financing, and if not, to get you 75 percent. They tell me you have made a deal with Tinker, on March 31, on last Monday. Is that right?"

He said it was not exactly a deal. "We had a little kind of understanding. If you cannot get 75, all right, I will take 50."

My understanding is that they did get something around 50 percent of the financing.

That concludes my story up to the time of the sale of these shares. Whether you want any more from me is entirely up to you, sir.

The CHAIRMAN. The sale of those shares which you mention now, which you sold for how much—$15,000,000?

Mr. FOX. $15,000,000.

The CHAIRMAN. That carried with it your stock and interest in the Fox Theatres and Fox Film?

Mr. FOX. I owned all the voting shares in Fox Theatres. There were 100,000 of them, and I owned 50,100 shares. That is, I had a certificate. I owned a little more than that, and still own it—50,100 shares of the B stock out of 100,000 in the Fox Film Corporation.

Mr. PECORA. Which gave control.

Mr. FOX. Which gave complete control of one—all the voting shares of one and more than the majority of the other.

The CHAIRMAN. These two corporations continued to operate, did they—Fox Film and Fox Theatres—after you sold to General Theatres Equipment?

Mr. FOX. They did, as I described to you before.

The CHAIRMAN. Now, the Fox Theatres are in the hands of a receiver.

Mr. FOX. Fox Theatres Corporation is in the hands of a receiver; yes, sir.

Mr. PECORA. In that agreement whereby General Theatres Equipment purchased from you the stock of the Fox Film and the stock of the Fox Theatres, is it also provided that you were to obtain the resignation of officers and members of the then existing boards of those two corporations?

Mr. FOX. Yes, sir.

Mr. PECORA. Did you obtain such resignations for the purchaser?

Mr. FOX. Yes, sir.

Mr. PECORA. Were any of those directors whose resignations you obtained continued as directors or made directors of Fox Film or Fox Theatres or General Theatres Equipment, Inc.?

Mr. FOX. I had nothing to do with the directorate of General Theatres Equipment, Inc., at all. There were retained in Fox Film Winifred R. Sheehan—not at my suggestion, but at their own suggestion—and myself. The balance of the board were entirely new. I was retained as a director of Fox Theatres Corporation, and the balance of them were all new. I likewise was invited to one meeting of the Fox Theatres Corporation, and never to another.

Mr. PECORA. Was there any change made at that time, at the instance of the purchaser, in the counsel for Fox Film and Fox Theatres?

Mr. FOX. Oh, yes. As a reward for the services rendered, my original set of lawyers, Hughes, Schurman & Dwight first received payment of about $500,000, promptly after I sold out, they remained the

counsel for the company, and, as I understand it, are still counsel for the Fox Film Co., and remained the counsel for the Fox Theatres almost until it went into receivership. They were its counsel up to the time it began to be stripped of all its assets.

Senator GORE. When was that?

Mr. FOX. I have not the exact date of that, Senator. I can get it for you. It is a matter of public record.

The CHAIRMAN. Do you remember the date the receiver was appointed for Fox Theatres?

Mr. FOX. I do not, sir. I can get it for the committee if you wish it.

Mr. PECORA. Can you give it to us, Mr. Clarke?

Mr. CLARKE. About a year ago.

Mr. PECORA. What is that?

Mr. FOX. Mr. Clarke says about a year ago. I am sure Mr. Clarke is wrong. It must be about a year and a half or a year and three quarters ago.

Mr. PECORA. When was a receiver appointed for General Theatres Equipment, Inc., Mr. Clarke?

Mr. CLARKE. The 29th of February 1931.

Mr. PECORA. I do not hear you.

Mr. CLARKE. On the 29th of February.

Mr. PECORA. 1932?

Mr. CLARKE. 1932.

Mr. FOX. I believe Fox Theatres was in receivership prior to that time, was it not?

The CHAIRMAN. That agreement for the sale that you made provided for $500,000 a year to you.

Mr. FOX. The contract provided that I should be the chairman of the advisory board. I had some knowledge about the picture business. I had constructed this company and I really thought they were desirous of having my advice and counsel.

The CHAIRMAN. I am asking for the facts.

Mr. FOX. Yes, sir. That was one of the facts.

The CHAIRMAN. Do you still get that?

Mr. FOX. It was not quite that way. There was something else went for the $500,000 a year. William Fox at that time owned a company that had what I consider the basic patents of all talking motion pictures, and the Fox Film Corporation was receiving a free license during the life of those patents, and in consideration of that they were to pay me $500,000 a year.

The CHAIRMAN. I am not questioning the consideration, or anything of that sort.

Mr. FOX. Mr. Chairman, the contract is so drawn—if you would like to have the language of it read, we will be glad to get it for you.

Mr. PECORA. It is in evidence here.

Mr. FOX. May I have the contract? I will read you the paragraph that refers to it.

Mr. PECORA. There has been some reference to it.

The CHAIRMAN. There were some of these contracts made and never carried out. I am asking the question whether you are still getting the $500,000 a year or not.

Mr. FOX. Unfortunately, I am not, sir.

Mr. Fox. They just wrote a letter and said that they are not going to pay it any longer.

The CHAIRMAN. How long ago was that?

Mr. Fox. Oh, I presume that is two years ago. A year and a half or two years ago.

The CHAIRMAN. That contract provides for a good many things. Among other things they were to take care of certain expenses and lawyers fees and all that.

Mr. Fox. Well, I think they did that.

Senator GORE. Had the patents expired in the meantime?

Mr. Fox. No. The patents are now in adjudication. But there has always been a mistaken impression that I was getting $500,000 a year as a salary, when there wasn't anything of the kind.

The CHAIRMAN. That is what the contract showed. That is what I wanted to ask you about. Is there anything else?

Mr. PECORA. Is there anything else, Mr. Fox?

Mr. Fox. Of course, you can well imagine that my advice was not asked for. And I wrote many times to—I got tired writing to Mr. Clarke offering my services, to which he would write a very polite letter and say that if anything came up he would be sure to send for me, and for some reason nothing ever came up, and I finally sent a copy of all of these communications, one set to Mr. Aldrich and another set to Mr. Wiggin, of the Chase Bank, calling their attention that I was getting $500,000 per year, presumably part of which was a salary, and I was ready to serve, and I wasn't being advised with or consulted, although I was willing to give as much of my time as necesasry.

The CHAIRMAN. Is there anything else? Does any member of the committee wish to ask any questions? If not, that concludes the hearing as far as you are concerned, Mr. Fox.

Mr. PECORA. Mr. Chairman, I would suggest that in view of the nature of the testimony given by Mr. Fox—and if only half of it is true it is of such importance that the committee should invite any person or persons who want to testify with regard to the subject matter of Mr. Fox's testimony, to appear before the committee by making known their desires so to do.

The CHAIRMAN. Does anyone wish to say anything about it?

Senator COUZENS. I think they should make their application in writing, and the committee should decide after receiving the application.

The CHAIRMAN. That would be the more orderly course. Anybody who wishes to be heard about it address a letter to the committee or to Mr. Pecora, and we can arrange it.

Mr. Fox. Mr. Pecora, may I read just one little paragraph out of the testimony you took of Mr. Murray W. Dodge here?

Mr. PECORA. What page is that?

Mr. Fox. Page 3120.

Mr. PECORA. Page 3120 of the stenographers' transcript of the minutes of this investigation?

Mr. Fox. Yes, sir.

The CHAIRMAN. Proceed, Mr. Fox.

Mr. Fox. This is the memorandum in the Chase Bank files from Dodge to Wiggin. I am reading on page 3120. He said:

I have given you all this information so that you may see that we have done and are doing everything to prevent a fight, as the Lord knows this financing is difficult enough without being torpedoed by Harry Stuart. He is evidently bent on getting control of the management of the company through John Otterson, and will use the same methods that the two of them used against Fox to obtain their ends.

Now if that is not an admission of this conspiracy I would not know how to furnish any further proof.

The CHAIRMAN. What is the date of that?

Mr. BECKER. February 7, 1931. Page 3120.

Mr. PECORA. It is a memorandum beginning on page 3116.

Mr. Fox. Yes. Committee Exhibit 165, marked "Strictly confidential. To Mr. Wiggin."

Mr. PECORA. It is dated February 7, 1931. It was received in evidence as Committee's Exhibit No. 165.

Mr. Fox. Now I understand from what I have been reading in the newspapers that Mr. Aldrich has taken the position that he knew nothing about this, but Murray Dodge says differently in this memorandum. In the next paragraph he says:

I am handling this matter in consultation with Aldrich, McCain, and Freeman, and will let you know if there are any developments, * * *

So that at least on this date Mr. Aldrich must have been familiar with the situation.

Mr. ALDRICH. Mr. Chairman, I would like to ask: What date is that?

Mr. PECORA. February 7, 1931.

Senator COUZENS. I want to repeat what I have said before. I think you ought to have Mr. McCain here some time before we conclude the hearings.

Mr. PECORA. Mr. McCain is under subpena to appear before this committee.

Senator GORE. Dodge said something about if Halsey, Stuart wrecked the thing? Is that the point?

Senator COUZENS. That is what he said.

Mr. Fox. Will you repeat it, Senator, please?

Senator GORE. I just want the last point in that memorandum of Dodge's.

Mr. Fox. Yes, sir.

Senator GORE. Read that last part.

Mr. Fox. He says——

Mr. PECORA. I will read it to the Senator.

Senator GORE. If you will, please.

Mr. PECORA. What page was that on? Page 3120?

Mr. BECKER. Page 3120, Mr. Pecora. It is the last sentence in the first paragraph on that page beginning with the word "He" following "Stuart".

Mr. PECORA. Oh, yes. Well, suppose I give the whole context of that.

Senator GORE. Just the last part. I want to base a question on it.

Mr. PECORA. Well, the last sentence is:

I have given you all this information so that you may see that we have done and are doing everything to prevent a fight, as the Lord knows this financing is

difficult enough without being torpedoed by Harry Stuart. He is evidently bent on getting control of the management of the company through John Otterson, and will use the same methods that the two of them used against Fox to obtain their ends.

Senator GORE. Is it your contention Stuart did that thing?

Mr. FOX. What is that, Senator?

Senator GORE. I say, is it your contention that Stuart did the thing that this man claimed he was trying to avert?

Mr. FOX. Yes, Stuart and the rest of them accomplished what they had set out for.

Senator GORE. And did Dodge sit in with him finally?

Mr. FOX. I never met Mr. Dodge. I wouldn't know him if he was in this room. I never knew anything about Mr. Dodge.

Senator GORE. It seemed like Dodge was trying to warn them against Stuart.

Mr. FOX. Yes; it seemed like Dodge was reminding Wiggin exactly how the control was wrested from me, and said that here there was going to be a repetition of that. Now they are trying to get it away from Clarke.

Senator GORE. I do not follow this. Is it your contention that Wiggin took a hand and joined in with Stuart and helped to do it?

Mr. FOX. Originally Wiggin joined in with Stuart and took the control away from me and put it into the control of the General Theatres Equipment. Now here was Stuart refusing to go on with new financing unless Clarke was eliminated from the picture. For some reason he didn't want Clarke any longer.

Senator GORE. Who did not?

Mr. FOX. Stuart.

(At this point Mr. Aldrich took a seat at the committee table.)

Mr. ALDRICH. Mr. Chairman, I think I can make this thing perfectly clear. The memorandum to which Mr. Fox has just referred was a memorandum in regard to the financing that took place in 1931. It had absolutely nothing whatever to do with what Mr. Fox has been testifying about. It was in connection with a financing that took place at the time that Mr. Harley Clarke was the president of the company. At the time that the obligations which were issued at the time of the original financing of General Theatres Equipment matured in 1931.

The memorandum to which he refers simply is a statement on the part of Mr. Murray Dodge that he feels that there is opposition to the management of Mr. Clarke on the part of Mr. Stuart and Mr. Otterson of the Electrical Research Products Co. Now he says in that memorandum, as I understood it from just hearing it, that their situation is similar to the one which existed at the time that Mr. Fox has been referring to, which was in 1929, as I remember.

The CHAIRMAN. That is right.

Mr. PECORA. The latter part of 1929 and the early part of 1930.

Mr. ALDRICH. Yes. Now, Mr. Fox has just said that I knew something about the 1929 financing.

Mr. FOX. No; I did not.

Mr. ALDRICH. That was the inference, as I understood you.

Mr. FOX. No; I did not say that. I said this memorandum says——

Mr. ALDRICH. What I understood you to say was that I had been giving the impression that I knew nothing about this. Now all you have testified about is the transactions which took place in 1929.

Mr. PECORA. And the early part of 1930.

Mr. ALDRICH. At which time I had no connection with the Chase National Bank. I was a lawyer.

Mr. FOX. I knew that.

Mr. ALDRICH. But you gave that impression.

Mr. FOX. No. If you will read this——

Mr. ALDRICH. But you said this took place in 1931.

Mr. FOX. I said this took place in 1931.

Mr. ALDRICH. It had nothing to do with you in any way, shape, or form.

Mr. FOX. It had to do, however, with what this memorandum is calling for.

Mr. ALDRICH. Yes. But why drag my name in here?

Mr. FOX. I did not drag it in. Mr. Murray Dodge dragged it in.

Mr. ALDRICH. What you said was that I had given the impression that I knew nothing about the matters about which you were testifying.

Senator COUZENS. Oh, Mr. Chairman, they can settle this outside of the committee.

The CHAIRMAN. Yes. This refers to the General Theatres Equipment Co.

Mr. ALDRICH. But this memorandum had nothing to do with that transaction.

Senator COUZENS. Except this, that it makes a comparison of the procedure undertaken by Halsey, Stuart & Co., as it was undertaken during the regime of Mr. Fox. That is it.

Mr. ALDRICH. Yes; but as a matter of fact if they had any connotation together at all it seems to me that it would be that at that time Mr. Murray Dodge was trying to prevent Mr. Clarke from being ejected from the management of the Fox Film Co. He seemed to think there was a desire on the part of somebody to put him out.

Senator COUZENS. Well, in the same manner that it was done with Mr. Fox.

Mr. PECORA. By Stuart?

Mr. ALDRICH. But at the same time Mr. Dodge was taking the same position that was taken then.

Senator COUZENS. But I mean he makes the comparison, which is perfectly plain to this committee, that Otterson and Stuart were trying to play the same game with Clarke that they were playing with Fox. That is plain.

Mr. ALDRICH. What I am trying to make plain is that that was prior to 1931.

Mr. PECORA. And that was prior to your becoming active in connection with the Chase Bank.

Mr. ALDRICH. In 1929 I had nothing to do with the Chase Bank.

The CHAIRMAN. We understand that.

You will be excused then, Mr. Fox, unless you have something else.

Mr. FOX. I had entirely completed, except that I thought, using the term of Al Smith, "Let's look at the record" for just a minute and see what happened to some of these men that I have been com-

plaining about here. That is rather interesting. It became necessary for Mr. Wiggin, Mr. Clarence Dillon, and Mr. Clarke to be summoned by this committee for some sort of an investigation. Mr. Stuart and Mr. Insull—Mr. Stuart has been indicted. Mr. Insull is abroad——

The CHAIRMAN. We do not want all that.

Senator ADAMS. No.

Mr. Fox. You do not want that. Yes. I was just letting you know what type of men you were dealing with here. I thought you might have been interested.

Mr. PECORA. Mr. Stuart has been before the committee.

Mr. Fox. Now, Mr. Chairman and gentlemen of the committee and Mr. Pecora, may I express my deep appreciation for the courtesy that you have extended me in having given me an opportunity to tell this story.

May I again make an application to you to please allow this book to become a matter of record, even though I pay for the printing bill? It gives the details.

The CHAIRMAN. No.

Mr. Fox. I thought you objected on account of economy. I would like to pay for it if it is put in the record.

Senator COUZENS. No.

The CHAIRMAN. It is not necessary to encumber the record. The record is too big as it is now. Anybody who wants it can get that book.

Mr. Fox. Yes. It is in the public library.

(Thereupon Mr. Fox was excused as a witness.)

The CHAIRMAN. The committee will stand adjourned until Monday at 10:30. The purpose of the committee is to adjourn on Wednesday afternoon until the following Monday.

(Thereupon, at 3:35 p.m. Friday, Nov. 24, 1933, an adjournment was taken until 10:30 a.m. Monday, Nov. 27, 1933.)

COMMITTEE'S EXHIBIT NO. 176—NOVEMBER 24, 1933

Agreement made this 3d day of December 1929 between William Fox, of the Borough of Manhattan, City and State of New York (hereinafter called "Fox"), party of the first part, and H. L. Stuart, John E. Otterson, and William Fox (hereinafter called the "Trustees"), parties of the second part,

Witnesseth: Fox owns Fifty thousand one hundred and one (50,101) shares, or over Fifty percent (50%) of the Class B voting stock of the Fox Film Corporation, a New York corporation, and One hundred thousand (100,000) shares, or One hundred percent (100%), of the Class B voting stock of Fox Theaters Corporation, also a New York corporation.

Fox has requested the Trustees to assist said corporations in connection with their financial affairs and the Trustees have consented to do so upon the terms and conditions hereinafter set forth.

Now, therefore, the parties hereto in consideration of the premises have agreed as follows:

First. Fox agrees, contemporaneously with the execution of this instrument, to deposit certificates, duly endorsed for transfer and in form to constitute a good delivery under the Rules of the New York Stock Exchange for all of said Class B stock of said corporations owned by him pursuant to and in accordance with the terms of an escrow letter addressed to the Bankers Trust Company, a copy of which is hereto annexed and made a part of this agreement.

Fox further agrees that if under any plan of reorganization and refinancing of said two corporations, or either of them, it should become necessary or proper to deposit under such plan the Class B voting stock of said two corporations that are deposited in escrow with the Bankers Trust Company prior to the termination of the said escrow agreement, Fox will upon the request of the Trustees arrange with the Bankers Trust Company for the release of said stock from the escrow and the deposit by the Bankers Trust Company of the certificates representing the same under said plan of reorganization and refinancing.

If the plan necessitates a loss of voting control now vested in such Class B voting stock, the value assigned to such Class B stock in relation to the value assigned to the Class A stock of said corporations shall be subject to the approval of counsel for the Trustees hereinafter appointed.

Second. Fox agrees to deliver to the Trustees forthwith the resignations of all of the directors and such of the officers of the said two companies as the Trustees may request with the exception of the President, also the resignations of the directors of fully controlled subsidiaries and of the directors representing the interests of Fox Film Corporation or Fox Theaters Corporation in partially controlled subsidiaries.

Third. The Trustees will endeavor to prepare a plan of reorganization and refinancing of the companies and in the meantime will undertake negotiations with a view to preventing the sacrifice of the assets of the companies, including particularly securities pledged. The Trustees will also undertake to negotiate with creditors and other persons interested in the situation with the view of obtaining their forbearance and cooperation during the period of the preparation and submission and adoption of any such plan.

Fourth. The Trustees have retained as their counsel Messrs. Hughes, Schurman & Dwight. No plan of reorganization and refinancing of the companies shall be finally submitted to the creditors and stockholders for approval and adoption until all the legal questions involved therein have been approved by such counsel, and if said plan should be disapproved by such counsel for any reason other than legal reasons, then the Trustees may submit the plan to both classes of stockholders of the said two corporations, whose decision with respect thereto shall be final and conclusive. It is understood that by "plan of reorganization and refinancing" is meant also the sale of any substantial portion of the assets of said companies or either of them.

Fifth. The action of any two of the Trustees with respect to any of the matters embraced in this agreement shall be deemed to be the action of the Trustees.

Sixth. In the event of the death, resignation, or inability to act of John E. Otterson, his successor shall be appointed by Electrical Research Products, Inc., a Delaware corporation, and in the event of the death, resignation, or inability to act of H. L. Stuart, his successor shall be appointed by Halsey, Stuart & Co., Inc., an Illinois corporation. In the event of the resignation or inability to act of William Fox, his successor shall be appointed by Fox, and in the event of his death by his personal representatives. Any Trustee may designate a proxy to act for him in his absence from New York City.

Seventh. In the event that the Trustees shall, within the period specified in the escrow agreement, or any extension thereof that may be agreed to by said Fox, submit a plan for the reorganization and refinancing of said corporations, said Fox agrees that if one of the terms of the said plan of reorganization or refinancing is that he will agree that the voting stock of said two companies shall be deposited under a voting-trust agreement providing for at least three trustees, to continue for a period of five years, in which voting trustees shall be selected by the Trustees, the said Fox will deposit his said Class B voting stock under said voting-trust agreement. It is understood, however, that the said Fox or his nominee is to be one of the Trustees so selected if at that time he owns a substantial amount of Class B stock in said corporations.

In the event that litigation should delay the submission of a plan of reorganization and refinancing and in the judgment of the Trustees an extension of the escrow agreement is desirable, Fox agrees to extend such escrow agreement upon request of the Trustees from time to time, such extension not to exceed in the aggregate six months.

Eighth. In the event that the Trustees shall elect to relinquish their efforts to bring about a plan of reorganization and refinancing of the companies prior to the time fixed in the escrow letter attached hereto, said Trustees shall be at liberty to do so, and agree to notify the Bankers Trust Company and the

said Fox of such intention at least thirty (30) days prior to the date fixed in said notice of intention, and in the meantime agree to continue to act as Trustees hereunder.

Ninth. It is understood and agreed that the Trustees by signing this agreement assume no personal financial responsibility and shall not be liable in any event for any acts or omissions on the part of the Trustees, their agents, attorneys, or employees, or for any cause whatsoever except for their own wilful misconduct.

Tenth. The Trustees are authorized to employ agents, attorneys, and accountants or to engage any other assistants which they deem necessary or proper for the carrying out of the intent and purposes of this agreement, and Fox covenants and agrees that he will pay or cause to be paid all disbursements, expenses, or charges incurred by the Trustees hereunder. The Trustees shall serve without compensation.

Eleventh. It is understood and agreed that the resignations of a majority of the directors of Fox Film Corporation and Fox Theatres Corporation are to be accepted forthwith and Fox covenants and agrees that he will forthwith cause the remaining directors to elect in the place and stead of the directors whose resignations the Trustees request persons nominated by the Trustees.

Twelfth. The Trustees agree to maintain and preserve the organization of the said two corporations and their subsidiaries and agree that they will make only such changes in the officers and personnel of said two corporations as in their judgment may be necessary pending the adoption of a plan of reorganization and refinancing of said two corporations.

Pending the adoption of any plan of reorganization and refinancing Fox shall be continued as President of both of the companies, but the Trustees may in their discretion cause the Board of Directors of both companies to change the duties of the President by transferring the responsibility for the financial affairs of the companies to some other officer or officers, person or persons. It is contemplated that there shall be included in the term "financial affairs" all negotiations for the sale, purchase, or lease of properties.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

(Signed) WILLIAM FOX, [L.S.]
J. E. OTTERSON, [L.S.]
WILLIAM FOX, [L.S.]
H. L. STUART,
By C. B. STUART, [L.S.]
Trustees.

STATE OF NEW YORK,
County of New York, ss:

On this ——— day of December 1929, before me personally appeared William Fox to me known and known to me to be one of the individuals described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

STATE OF NEW YORK,
County of New York, ss:

On this ——— day of December 1929, before me persoally appeared H. L. Stuart, John E. Otterson, and William Fox, to me known and known to me to be three of the individuals described in and who executed the foregoing instrument, and they duly severally acknowledged to me that they executed the same.

NEW YORK, *December 3rd, 1929.*

BANKERS TRUST COMPANY,
14 Wall Street, New York City.

DEAR SIRS: I am handing you herewith, properly endorsed for transfer in accordance with the Rules of the New York Stock Exchange, and duly stamped, the following:

Certificate for 50,101 shares of Class B voting stock of the Fox Film Corporation, and

Certificate for 100,000 shares of the Class B voting stock of the Fox Theatres Corporation, to be held by you in escrow until the 1st day of June 1930, or if this escrow should be extended by me to the date of the termination of such extension or extensions or until this escrow is terminated by notice of intention to you signed by any two of the following three Trustees, namely, H. L. Stuart, John E. Otterson, and William Fox.

In the event of the termination of this escrow by limitation or by notice of intention as hereinabove provided, you are to deliver to me the said certificates, or certificates for an equivalent number of shares properly endorsed for transfer, so as to be a good delivery under the Rules of the New York Stock Exchange, unless, pursuant to instructions from me and a majority of said Trustees, you shall have therefore deposited said certificates under a plan of reorganization and refinancing of either Fox Film Corporation or Fox Theatres Corporation, or both of them.

I hereby nominate, constitute, and appoint the Bankers Trust Company my agent and attorney during the life of this escrow, to execute and deliver proxy or proxies running in favor of said H. L. Stuart, John E. Otterson, and William Fox, or their successors duly appointed as provided in an agreement of even date herewith between William Fox, party of the first part, and said H. L. Stuart, John E. Otterson, and William Fox, parties of the second part, or a majority of them, to vote at any regular or special meeting of the stockholders of said two companies, or either of them, upon any question or for any purpose whatsoever whenever requested so to do in writing by the said Trustees or a majority of them.

You will be fully protected in relying upon any instructions in writing given you by a majority of said Trustees whose signatures you believe to be genuine, and you will be under no liability of any kind except for the safe-keeping and return of the securities herewith deposited with you.

Very truly yours,

WILLIAM FOX.

Accepted.

BANKERS TRUST CO.
By C. W. CAMPBELL,
Assistant Secretary.

NEW YORK, *December 3, 1929.*

WILLIAM FOX, Esq.,
Ambassador Hotel, New York City.

DEAR SIR: Referring to paragraph Tenth of the agreement of even date herewith between yourself, as a party of the first part, and the undersigned and yourself, as parties of the second part, it is mutually understood that although in said paragraph you agree to pay, or cause to be paid, the expenses in carrying out said agreement the said expenses are properly chargeable to the Fox Film Corporation and Fox Theatres Corporation and we will all cooperate to see that proper corporate action is taken by the said corporations to pay their proper proportion of said expenses.

Very truly yours,

J. E. OTTERSON,
H. L. STUART,
By C. B. STUART,
WILLIAM FOX,
Trustees.

Accepted.

WM. FOX.

COMMITTEE EXHIBIT No. 178, NOVEMBER 24, 1933

New issue, Fox Securities Corporation, $35,000,000 seven percent three-year gold notes, dated January 15, 1930, due January 15, 1933. The Broadway National Bank and Trust Company of the City of New York, trustee. Interest payable quarterly April 15, July 15, October 15, and January 15. Principal callable on any interest date upon 30 days' prior notice at: 105 on April 15, July 15, and October 15, 1930, and January 15, 1931; 110 on April 15, July 15, and October 15, 1931, and January 15, 1932; 115 on April 15, July 15, and October 15, 1932, and January 15, 1933; All notes not theretofore called to be payable at 115 on January 15, 1933. Offered at par plus accrued interest, to yield 7% plus callable premium

We offer these Gold Notes "when, as and if issued" subject to allotment or prior sale. Temporary notes or interim certificates deliverable in the first instance. All legal proceedings in connection with this issue are subject to the approval of Messrs, Hirsh, Newman, Reass, and Becker, New York. Ac-

counts of Fox Film Corporation and Fox Theatres Corporation are audited regularly by Messrs. Touche, Niven & Co. Fox Securities Corporation, 729 Seventh Avenue, New York. January 1930.

FOX SECURITIES CORPORATION

This Company has been organized under the laws of the State of New York with an authorized capital of 5,000 shares of no-par-value stock to provide capital for Fox Film Corporation and Fox Theatres Corporation and their respective subsidiary and controlled companies in this and other countries.

The officers of the company are the following: President, David A. Brown (Chairman of the Board, Broadway National Bank and Trust Co. of New York); Treasurer, Alexander S. Kempner (Real Estate); Secretary, Emanuel Newman (Hirsh, Newman, Reass & Becker—Lawyers).

A contract has been entered into between Fox Securities Corporation, on the one hand, and Fox Film Corporation and Fox Theatres Corporation, on the other hand, whereby the provision of capital to the last mentioned corporations and their subsidiary and controlled companies is to be without profit to Fox Securities Corporation and wherein Fox Film Corporation and Fox Theatres Corporation agree to pay all operating expenses, including taxes, of Fox Securities Corporation.

Purpose of offering.—The purpose of the present offering of Seven Per Cent Three-Year Gold Notes is to provide funds for Fox Film Corporation and/or Fox Theatres Corporation and their subsidiary and controlled companies, so that they may be enabled to liquidate certain of their matured and maturing debts including the indebtedness of approximately $18,000,000 of Fox Theatres Corporation to Fox Film Corporation pending the development of a desirable form of consolidation or until conditions warrant the securing of more comprehensive financing.

Security for issue.—The proceeds of the issue will be advanced from time to time to Fox Film Corporation and/or Fox Theatres Corporation, and for each advance Fox Securities Corporation will receive the promissory note or other short-term obligation of the borrower, secured by mortgage or pledge of such stocks, or other securities, assets or equities as, in the opinion of the Board of Directors of Fox Securities Corporation, will be of a value at least equal to twice the amount of the advance based upon a suitable appraisal. It is estimated that approximately $100,000,000 in value of such stocks or other securities, assets, or equities are available.

The earnings of Fox Theaters Corporation for the years ending October 28, 1928, and October 27, 1929, as certified by Messrs. Touche, Niven & Co., Auditors, and the earnings of Fox Film Corporation for the year ending December 29, 1928, as certified by Messrs. Touche, Niven & Co., and for the year ending December 28, 1929, as estimated, are given below in the letter of Mr. William Fox.

It is the purpose of Fox Film Corporation and Fox Theaters Corporation to liquidate unsecured liabilities and to pay or refund the obligations of secured creditors as rapidly as may be practicable: and Fox Film Corporation and Fox Theaters Corporation have agreed with Fox Securities Corporation that, after this purpose has been accomplished, at least seventy per cent (70%) of their surplus earnings (over and above dividends paid at existing rates, but including dividends received from subsidiary or controlled corporations or otherwise) will be utilized in discharging their respective obligations to Fox Securities Corporation. All funds thus paid to Fox Securities Corporation will be used by the latter to retire Notes of this issue.

Description of notes.—The Seven Per Cent. Three-Year Gold Notes will be, in the opinion of counsel, a direct obligation of Fox Securities Corporation. They will be limited to the principal amount of $35,000,000 and will be issued under an Indenture to The Broadway National Bank and Trust Company of New York as Trustee, dated January 15, 1930, in which Fox Securities Corporation will agree that, while any of the Notes are outstanding, it will not issue any obligations (secured or unsecured) unless theretofore there shall have been pledged with the Trustee obligations of Fox Film Corporation or Fox Theatres Corporation in an aggregate principal amount at least equal to the principal amount of the Notes outstanding and secured by mortgage or pledge of stocks or other securities, assets or equities having a value at least equal to twice the principal amount of the pledged obligations to be determined in the manner provided in the Indenture.

The notes will be dated January 15, 1930, will be payable January 15, 1933, will be issued in coupon form and in denominations of $100, $500, and $1,000; and all or any part of the total principal amount may be issued at any time or from time to time. Interest will be payable quarterly on April 15, July 15, October 15, and January 15 at the rate of seven per cent (7%) per annum, without deduction for any federal normal income tax not in excess of two per cent (2%) per annum.

The Notes will be callable, in whole or in part, at the option of Fox Securities Corporation on any interest payment date, upon thirty (30) days' prior notice published once a week for two successive weeks in at least two newspapers of general circulation in New York, Chicago, and San Francisco, at the following prices:

April 15, July 15, and October 15, 1930, and January 15, 1931, at 105;
April 15, July, 15, and October 15, 1931, and January 15, 1932, at 110; and
April 15, July 15, and October 15, 1932, and January 15, 1933, at 115.

The numbers of the Notes to be called will be drawn by lot; and all Notes not theretofore called will be payable at 115 on January 15, 1933.

The Company will agree to reimburse the holders of these Notes upon application within sixty days after payment thereof for personal property and security taxes of any state or territory of the United States or of the District of Columbia, but in no event to exceed 5½ mills per annum on each dollar of taxable value of the Notes and income tax of any state or territory of the United States or of the District of Columbia on the interest, but in no event to exceed six percent per annum of such interest.

There appears below a letter addressed to Fox Securities Corporation by Mr. William Fox regarding the management, business, earnings and capital and surplus of the Fox enterprises:

NEW YORK, *January 15, 1930.*

FOX SECURITIES CORPORATION,
729 Seventh Avenue, New York, N.Y.

GENTLEMEN: With reference to your proposed offering to the public of $35,000,000 principal amount of seven percent three-year gold notes of your corporation, I am summarizing in this letter for use in the circular relating to the offering some of the more important information relative to the management, business, earnings and net worth of Fox Film Corporation and Fox Theatres Corporation and their respective subsidiary and controlled companies:

Management.—Fox Film Corporation and Fox Theatres Corporation are under my management and that of my associates, men of long experience in the motion picture industry. The Fox enterprises cover every branch of that industry including production, distribution and exhibition. There are 131 offices throughout the world for the distribution of the product, and over 780 theatres in the United States besides a substantial interest in over 300 theatres in England.

Business—Fox Film Corporation.—Fox Film Corporation, organized under the laws of the State of New York in 1915, is one of the largest companies in the world engaged in the production, distribution and exhibition of motion pictures. At the time of its organization, Fox Film Corporation, embraced six exchanges (branch sales offices) for the distribution of motion pictures, employing, together with its New York Office, approximately 150 people. Today, in addition to 31 exchanges in the United States, there are operated throughout the world 100 offices. This growth has made possible the distribution of the Company's productions in all parts of the world through branch sales offices located in the United States, Canada and the following foreign countries: England, Spain, Brazil, France, Germany, Japan, Argentina, Cuba, Mexico, Austria, Czecho-Slovakia, Holland, Australia, Sweden, Latvia, Italy, India, Hungary.

The Company's production consists of the highest type of motion pictures, including the distribution of "Fox Movietone News" which has attained great popularity with motion-picture audiences.

Exhibition is engaged in primarily through its wholly owned subsidiary, Wesco Corporation, acquired January 1928, which through subsidiaries, owns, controls, operates, or leases approximately 582 theatres located in the middle and far western sections of the country. All of the theatres operated by Wesco Corporation are the most prominent theatres in their respective cities. This is in keeping with the Fox policy of theatre operation which is based on two clearly defined principles; first, the operation of first-run houses in

metropolitan distribution centers; and second, the acquisition of neighborhood houses so located that they are in a position to profit by the exhibition polices of the first-run houses, which are essentially the "show cases" of the business. With its screen affiliation, Fox Film Corporation comprises a completely integrated unit from the studio to the screen. The total seating capacity of all theatres is approximately 700,000 not including the theatres operated or controlled by Gaumont British Picture Corporation, Ltd., in which Fox Film Corporation has a substantial interest.

Fox Theatres Corporation.—Fox Theatres Corporation was incorporated under the laws of the State of New York in the latter part of 1925, at which time it acquired a circuit of theatres that had been operated for a period of nearly 20 years by myself and my associates. With the acquisition of the circuit of theatres acquired during the past year known as the Metropolitan Playhouses, Fox Theatres Corporation's chain of motion-picture houses, comprising theaters in eight different states, reached a total of approximately 175 theatres, including such de luxe theatres as the Roxy in New York and the "Fox" theatres located in Brooklyn, Detroit, St. Louis, San Francisco, Atlanta, and Washington. The total seating capacity of all theatres is in excess of 200,000.

Fox Theatres Corporation has acquired a substantial stock interest in Loew's, Incorporated, which is one of the outstanding companies in the motion-picture industry and amusement field controlling approximately 200 theatres throughout the country. Its producing unit is Metro-Goldwyn Pictures Corporation, producers of Metro-Goldwyn-Mayer pictures, one of the best known and popular producers of moving pictures. This unit distributes its product through 31 exchanges (branch sales offices) in the United States and through foreign subsidiary companies in practically every other civilized country in the world.

Net earnings—Fox Film Corporation.—Net earnings of Fox Film Corporation and its subsidiary and controlled companies for the year 1928, as certified by Messrs. Touche, Niven & Co., Auditors, and for the year 1929, as estimated, were as follows:

Year 1928 (52 weeks), $5,957,218; year 1929 (52 weeks), $13,000,000.

The above earnings are after full provisions for depreciation and amortization, and deduction for federal income taxes. Earnings for the year 1928 do not fully reflect the employment of funds received by the Corporation from the sale of 153,444 shares of its Class A common stock at $85.00 a share, offered to stockholders of record as of October 1, 1928.

Earnings for the year 1929 have been estimated on the basis of interim reports prepared by the accounting department of the Corporation. There is not included in the estimate the special profit, arising from the sale of the investment of the Corporation and its subsidiary companies in the stock of First National Pictures, Inc., amounting to approximately $6,000,000.00, which as a conservative measure the directors intend to use in part as a reserve for possible obsolescence of silent pictures now included in the inventory. Further, there is not included in the estimate, earnings of theatres acquired during the year for the period prior to the respective dates of acquisition, or earnings accruing to the Corporation on its investments in the capital stocks of Fox Hearst Corporation and Gaumont British Picture Corporation, Ltd.

On the basis of the inclusion for a full year of the income from theatres and investments acquired during the year 1929, and from theatres the acquisition of which was contracted for prior to October 24, 1929, the operations of which have not yet been taken over, it is estimated that the earnings for the year 1930 before interest on the obligations of the Corporation to Fox Securities Corporation and before federal income taxes will amount to approximately $16,273,000. Nothing is included in this estimate in respect of earnings applicable to the Corporation's investment in Gaumont British Picture Corporation, Ltd., or in respect to additional film rentals which the Corporation expects to receive as the result of theatre acquisitions during the year 1929.

Both of the above estimates have been prepared by Messrs. Touche, Niven & Co., Auditors, on the basis of information furnished to them by executives of the Corporation. The auditors state that they are of the opinion that the estimates appear to be within the reasonable expectancy of the Corporation.

Fox Theatres Corporation.—Net earnings of Fox Theatres Corporation and its subsidiary and controlled companies for the years ending October 28, 1928,

and October 27, 1929, as certified by Messrs. Touche, Niven & Co., Auditors, were as follows:

1928, $1,774,996; 1929, $2,748,006.

The above earnings include income arising by reason of a guarantee of profits by the former owner of a theater circuit in the amount of $272,123, in 1928 and $1,284,701 in 1929; and are after full provision for depreciation and amortization and deduction of federal income taxes. The earnings for the year ending October 27, 1929, do not include income accruing to the Corporation on its investments in the common capital stocks of Loew's, Incorporated, and Fox Hearst Corporation or the deduction for interest and carrying charges incurred in connection with the former.

On the basis of the inclusion in income of dividends received on the Corporation's investment in the capital stock of Loew's, Incorporated, at only the present regular rate ($3.00 per share) and the deduction from income of all interest and carrying charges in connection therewith, and on the basis of the inclusion for a full year of the earnings of theaters acquired during the year 1929, based on audited results of operations of such theaters under prior management, it is estimated that the earnings for the year 1930 before interest on the obligations of the Corporation to Fox Securities Corporation and before federal income taxes, will amount to approximately $3,717,000. This estimate has been prepared by Messrs. Touche, Niven & Co., Auditors, on the basis of information furnished to them by executives of the Corporation. The auditors state that they are of the opinion that the estimate appears to be within the reasonable expectancy of the Corporation.

Summary.—In the event that the entire $35,000,000 of Gold Notes now offered should be issued, the annual interest requirement thereon would be $2,450,000. On the basis of the figures given above, the estimated net earnings of Fox Theatres Corporation for the year 1930 are over 1½ times this interest requirement and the estimated net earnings of Fox Film Corporation more than 6½ times this interest requirement.

CAPITAL AND SURPLUS OF FOX ENTERPRISES

The capital and surplus of Fox Film Corporation is more than $70,000,000 and the capital and surplus of Fox Theatres Corporation (taking the stock of Loew's, Incorporated, at cost) is more than $60,000,000.

Yours very truly,

WILLIAM FOX,
President of Fox Film Corporation and Fox Theatres Corporation.

SUBSCRIPTION TERMS

All subscriptions to the above-mentioned Seven Per Cent Three-Year Gold Notes of Fox Securities Corporation must be made on the subscription form herewith enclosed and must be accompanied by bankable funds payble to the order of The Broadway National Bank and Trust Company of New York in an amount equal at least to 25% of the principal amount of the notes subscribed for. The balance of the amount payable in respect to a subscription (plus accrued interest on the notes subscribed for) will be payable upon notice to the subscriber at the address given in the subscription form that temporary notes or interim certificates for said notes are ready for delivery.

The Broadway National Bank and Trust Company of New York will place to the credit of Fox Securities Corporation any and all amounts paid in respect to subscriptions if and when temporary notes or interim certificates for the notes are ready for delivery.

The notes of this issue are also being offered to the theatre-owner customers of Fox Film Corporation (to the number of more than 15,000 throughout the world), to the approximately 15,000 stockholders of Fox Film Corporation and Fox Theatres Corporation, and to the more than 25,000 employees of both companies; and it is the intention of Fox Film Corporation to grant a five-year franchise for motion pictures made by it to such of its theatre-owner customers as shall subscribe to the notes in adequate amounts. Accordingly, Fox Securities Corporation reserves the right to reject any subscription either in whole or in part or to allot a less principal amount of notes than the amount subscribed for.

FOX SECURITIES CORPORATION,
DAVID A. BROWN, *President.*

Dated, JANUARY 15, 1930.

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 ⅓ of a share of preferred and ⅔ 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 ⅓ of a share of preferred and ⅔ 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 prefererd 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 consumated, or the scheme as actually consumated, 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 in 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 Pynchon & 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 deben-

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 33⅓ 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 is 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 became 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 as 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 404,276⅔ 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 purplus.

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 pasisng 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 may 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 collatoral.

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 go 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 dollors; 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 uring 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 depositary, 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 depositary, 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. It 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 (Smtih & 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 lok 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 comeback 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 bookkeeping 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 Theatres 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 Orchestraphone 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 Orchestraphone 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 Theatres 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 Theatres 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 Theatres 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 & 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:

	Percent
Chase Securities Corporation	63⅔
Dillon, Read & Co	3⅓
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 reallow 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 $29,465,000, 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
Total	7,500,000

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
Total	20,699,600

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	147,618

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 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:

	Percent
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
Total	100

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
Total	9,200,000

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
Total	2,300,000

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:

	Amount
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
Total	11,500,000

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:

	Shares
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
Total	51,304.00

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.

STOCK EXCHANGE PRACTICES

TUESDAY, NOVEMBER 28, 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 on yesterday, 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; Eldon Bisbee, Alfred E. Mudge, Julian L. Hagen, and C. Horace Tuttle of Rushmore, Bisbee & Stern, also William Dean Ehbree and A. Donald MacKinnon of Milbank, Tweed, Hope & Webb, counsel representing the Chase National Bank and the Chase Corporation; and Martin Conboy, counsel for Albert H. Wiggin.

The CHAIRMAN. The subcommitee will come to order. Proceed, Mr. Pecora.

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

TESTIMONY OF ALBERT H. WIGGIN—Resumed

Mr. PECORA. Mr. Wiggin, on Thursday and Friday of last week a witness named William Fox gave certain testimony before this subcommittee. Are you familiar with the testimony he gave on those dates, or has the testimony which he gave, in substance, been brought to your attention in any way?

Mr. WIGGIN. It has.

Mr. PECORA. Is there any statement with respect to anything testified to by Mr. Fox that you would care to make to this subcommittee?

Mr. WIGGIN. Yes, sir.

Mr. PECORA. Will you proceed to do it, please?

Mr. WIGGIN. The statement that I sent word to the President of the United States that the matter was not of his affair, is absolutely and entirely false. Mr. Huston, who was mentioned in the testimony, I have met, I do not know how many times, but I can only remember once meeting with him, and that was at a large dinner at the University Club in New York. He was never in my house. The statement that he took a meal with me on Christmas Day in my home is pure imagination on somebody's part. I think that covers the point that I wanted to cover.

Mr. PECORA. Did you ever discuss with Mr. Claudius Huston anything relating to the Fox Film Corporation or the Fox Theatres Corporation?

Mr. WIGGIN. No, sir.

Mr. PECORA. Did you ever have any communication with him on either of those subjects?

Mr. WIGGIN. No, sir.

The CHAIRMAN. Did Mr. Huston undertake to express to you anything about the wish of the administration with reference to the Fox Theatres or Fox Film matter?

Mr. WIGGIN. I do not think I ever talked to Mr. Huston on the subject. I cannot remember meeting him but the once, and then we did not have any conversation at all.

Senator ADAMS. Your talks were personal and not in a business way, I take it.

Mr. WIGGIN. Do you mean with Mr. Huston?

Senator ADAMS. Yes, sir.

Mr. WIGGIN. I had no talk with Mr. Huston at all.

Senator TOWNSEND. What was the occasion on which you met Mr. Huston?

Mr. WIGGIN. At a dinner at the University Club at which were present quite a number of men holding national office. There were present, if I remember, Secretary of Commerce Lamont and Senator Watson, and—well, I have forgotten all of them, but there were some half dozen of noted Washingtonians.

Senator COUZENS. Noted for what? [Laughter.]

Mr. WIGGIN. In the public eye, Senator Couzens.

Mr. PECORA. Mr. Wiggin, is there anything else in connection with the testimony given by Mr. Fox last week before this subcommittee that you want to address the subcommittee about?

Mr. WIGGIN. I do not think of anything. I do not remember that my name was mentioned in any other connection.

Mr. PECORA. I think there was reference to your name in connection with testimony which Mr. Fox gave, concerning correspondence which he addressed to you under date, as I recall it, of January 2 and January 6, 1930, relative to a loan or loans which the Chase National Bank was then carrying against Mr. Fox.

Mr. WIGGIN. I remember now that I did read in the testimony of those letters. They had escaped my mind entirely. I have no doubt those letters were received.

Mr. PECORA. Do you wish to address yourself to the subcommittee on the subject of those letters?

Mr. WIGGIN. No; I have nothing——

Mr. PECORA (continuing). And the disposition that was made of the matter?

Mr. WIGGIN. I only know from the notes of the testimony of last Thursday and Friday, that, as I remember it, one of those letters was answered by Mr. Schmidlapp, wasn't it?

Mr. PECORA. Yes, sir.

Mr. WIGGIN. And, apparently, the other one was not answered at all. I have no recollection of the matter at all.

Senator ADAMS. Did you have any conversation with Mr. Fox in reference to the interest or the attitude of the President in regard to those financial matters?

Mr. WIGGIN. No, sir. I do not think I ever talked to Mr. Fox more than once or twice in my life, and that was years ago.

Mr. PECORA. Mr. Wiggin, can you tell this subcommittee, briefly, the reasons for the Chase National Bank making any loans to the Fox Film Corporation or the General Theatres Equipment, Inc.? There were many loans made to these two corporations, were there not?

Mr. WIGGIN. Several; yes, sir.

Mr. PECORA. And, in addition to that, the investment affiliates of the Chase National Bank were participants in various purchase and underwriting syndicates of securities issued by General Theatres Equipment, Inc., and by the Fox Film Corporation and the Fox Theatres Corporation?

Mr. WIGGIN. Yes, sir.

Mr. PECORA. Will you tell the subcommittee what prompted the Chase National Bank to make those loans, and to have its affiliates enter into those participations and underwritings?

Mr. WIGGIN. I would like to have that question read to me.

Mr. PECORA. The committee reporter will read it to you. [Which was done.]

Mr. WIGGIN. The General Theatres Equipment business, as you know, was a follow through of various other industrial enterprises, such as the Projector Co. and National Theatres, and the business was regarded as desirable industrial business; and it was undertaken just as any banking operation would have been, believing it was a good piece of business and——

Mr. PECORA (interposing). What was that answer?

Mr. WIGGIN. Believing it was a good piece of business, beneficial to the industrial world and beneficial to the Securities Co.

Mr. PECORA. Didn't some of those loans as they went along turn out to be unwise?

Mr. WIGGIN. Yes, sir.

Mr. PECORA. And yet other loans were made thereafter from time to time?

Mr. WIGGIN. Undoubtedly. But each one was considered at the time as being what was for the best interest of the situation and the business. Naturally, after you have got into a piece of business you may make loans that you would not make otherwise.

Mr. PECORA. From evidence introduced here, it appears that the Chase National Bank and its security affiliates have sustained large and heavy losses as a result of those loans and those participations. You are familiar with those facts, aren't you, Mr. Wiggin?

Mr. WIGGIN. Yes, sir.

Mr. PECORA. Now, in the course of the making of those loans, loans were also made to trading accounts that were organized and which were managed principally by Pynchon & Co. Are you familiar with those loans?

Mr. WIGGIN. I have read about them in the testimony and have recalled the matter to my mind.

Mr. PECORA. Did you sanction the making of those loans to those various trading accounts?

Mr. WIGGIN. I must have.

Mr. PECORA. You know that those trading accounts were formed for the purpose of operating in the stock market with respect to securities of General Theatres Equipment and Fox Film Corporation, didn't you?

Mr. WIGGIN. I knew what the purposes of the loans were and thought they were in the best interest of working out that situation.

Mr. PECORA. Well, how did those loans in your opinion operate to work out for the best interests of the situation, as you phrase it?

Mr. WIGGIN. It was all done to help out in the financing of those companies.

Mr. PECORA. Well, how did loans to trading accounts serve to assist in the financing of the companies?

Mr. WIGGIN. Well, I can only—I should have to, in order to answer that question, go back to Mr. Dodge's testimony so as to refresh my memory on it. I cannot recall the details of it myself. Mr. Dodge, as you know, handled that entire matter. I had every confidence in Mr. Dodge, and I think that he has probably covered those points in his testimony; and I would have to refresh my memory by reading his testimony, as I do not recall—I haven't in my memory just what did happen or what the reasons were at the time.

Mr. PECORA. Do you mean that you have no independent recollection as you sit there now of the reasons for approving those loans to the trading accounts?

Mr. WIGGIN. No, sir; except that the matter was presented to me in such a way that I was convinced it was the thing to do.

Mr. PECORA. Well, can you conceive of any circumstances under which loans made to trading accounts operating in the securities of the Fox Film Corporation and General Theatres Equipment, Inc., could beneficially serve the interests of the bank?

Mr. WIGGIN. Yes, sir.

Mr. PECORA. Will you explain that?

Mr. WIGGIN. I can see where, if there were conversion rights or warrants on stock, that a trading account in the stock might be of great benefit to the financing of the company in its issue of bonds or notes.

Mr. PECORA. How could benefits accrue to the company from the operation of trading accounts under those circumstances?

Mr. WIGGIN. So that any bond or note that carried with it a conversion right or a warrant would be more attractive to the public than otherwise.

Mr. PECORA. That it would be converted into stock?

Mr. WIGGIN. If the conditions warranted it.

Mr. PECORA. In other words, the holder of a bond or a debenture would turn in his senior security for an equity of stock?

Mr. WIGGIN. It is not necessary to have it turned in. Perhaps you know the old definition of a convertible bond. A convertible bond is made for the man who has promised his wife he will not speculate. [Laughter.] Now, the very fact that there is a conversion right, or a warrant attached to the bond, gives it a market that a bond without such conversion or warrant does not have.

Mr. PECORA. Well, will you elaborate further on your thesis and tell the subcommittee how the operation of those trading accounts in

the market would help the company that issued those convertible bonds or debentures?

Mr. WIGGIN. Well, as I say, I can only——

Mr. PECORA (interposing). I think I know the reason, but I do not want to give a reason for you. You are much better qualified to do it, and you are the only one who can do it.

Mr. WIGGIN. Will you just read that question there?

Mr. PECORA. The committee reporter will read it for you. [Which was done.]

Mr. WIGGIN. Well, I cannot remember the details of what those trading accounts did or what the warrants or conversion rights were at the time.

Mr. PECORA. Well, the trading accounts traded in the securities of the Fox Film Corporation and General Theatres Equipment and received loans from the Chase National Bank in order to enable them to conduct their trading operations, did it not?

Mr. WIGGIN. Well, as I understand it the trading operations were for the purpose of making the financing of those companies possible.

Mr. PECORA. Well, how could the operation of those trading accounts serve to make the financing of those corporations possible?

Mr. WIGGIN. Well, if I remember correctly, the financing was to be done by means of bonds or notes, that carried with them either warrants or conversion privileges, and the value of the stock in the market had a very definite effect on the ability to sell such securities.

Mr. PECORA. Well, then, were those trading accounts formed for the purpose of exercising an influence upon market quotations for those stocks?

Mr. WIGGIN. I think so.

Mr. PECORA. What influence was it intended they should exert on those market quotations?

Mr. WIGGIN. Undoubtedly to make valuable the warrants or conversion rights that were contemplated in the bond issues.

Mr. PECORA. That is, by giving to the common stock through market operations the appearance of certain values that would be evidenced by the public quotations?

Mr. WIGGIN. To give it value, I should say. I shouldn't say necessarily the appearance of value, but to give it value.

Mr. PECORA. How could the operations of the trading accounts actually give value to the stock as distinguished from giving them the appearance of value? The conduct of trading accounts would not necessarily have increased the asset value of the securities, would it?

Mr. WIGGIN. But the market value is the value as of that time. That is what people look at.

Mr. PECORA. Very well, am I correct in the assumption that those trading accounts were formed for the purpose of influencing the market quotations for those stocks?

Mr. WIGGIN. I think so.

Mr. PECORA. So as to give them the appearance of having certain values which they might not otherwise have?

Mr. WIGGIN. I would say the value, not the appearance of value.

Mr. PECORA. Will you explain the difference between value and the appearance of value?

Mr. WIGGIN. You are getting in pretty deep here. I think the value is what you can get for the thing.

Mr. PECORA. That is market value, isn't it?

Mr. WIGGIN. Well, I think that is the value.

Mr. PECORA. You think market value and asset or intrinsic value are one and the same thing?

Mr. WIGGIN. Not necessarily.

Mr. PECORA. Are they when you use those terms as you have been using them in your testimony now?

Mr. WIGGIN. Not necessarily.

Mr. PECORA. Well, then, how do you distinguish between the two if they are not synonymous?

Mr. WIGGIN. Market value and asset value may be the same, but market value is what you can get for a thing at the moment.

Mr. PECORA. That is, in the open market?

Mr. WIGGIN. Yes, sir.

Mr. PECORA. Well, weren't those trading accounts designed to stabilize market quotations?

Mr. WIGGIN. I think so.

Mr. PECORA. And also to improve the market prices for those securities?

Mr. WIGGIN. I think so.

Mr. PECORA. And that improvement was to be brought about through the trading operations of those accounts?

Mr. WIGGIN. Apparently; yes, sir.

Mr. PECORA. Weren't those really speculative transactions?

Mr. WIGGIN. I think they have been proven so.

Mr. PECORA. Wouldn't they be speculative transactions in any event?

Mr. WIGGIN. If they had turned out successfully?

Mr. PECORA. Yes.

Mr. WIGGIN. Perhaps they would have been speculative, but they would not have been criticized.

Mr. PECORA. Nevertheless, they are a speculation.

Mr. WIGGIN. I think so.

Mr. PECORA. And did you think it was sound banking practice to make loans to syndicates or trading accounts organized for the purpose of maintaining speculative transactions in a security where the security itself seems to have been the only collateral against the loans?

Mr. WIGGIN. I think so.

Mr. PECORA. You think that is a fair use of the bank's funds, do you?

Mr. WIGGIN. It is common practice to make loans where the funds are used for speculative purposes.

Mr. PECORA. We know it is common practice, but I am asking you for your opinion as to whether you regard it as sound practice for banks to indulge in, when the moneys that they use for that purpose are the moneys of depositors.

Mr. WIGGIN. Of course, in the eyes of 1933 we would not have done it.

Mr. PECORA. What was that?

Mr. WIGGIN. We are looking through events of 1929 now, in the year 1933.

Mr. PECORA. Well, looking at it from any——

Mr. WIGGIN (interposing). I certainly agree that we should not have made those loans.

Mr. PECORA. Do you think it is good policy anyway for banks to do that, whether you look at it from the standpoint of 1933 or from the standpoint of 1929? I should like to get your opinion frankly on that subject, Mr. Wiggin, because it is one of the important things that this subcommittee is seeking, which is to ascertain the existence of bank practices and how far those practices may affect the national economy.

Mr. WIGGIN. Well, of course, loans by the millions of dollars are made for speculative purposes, not only in stocks or bonds, but in commodities, and to make a general statement that no loan on security for a speculative purpose should be made would be going too far, I think.

Mr. PECORA. Even with regard to securities speculation as distinguished from speculation in commodities?

Mr. WIGGIN. I think so. I do not think you would want to go so far as to never make a loan on a security that is speculative.

Mr. PECORA. Where would you place the line of limitation on the making of such loans?

Mr. WIGGIN. I do not know.

Mr. PECORA. Well, now, you have had a great many years of very intensive experience in banking, and I should like to get the benefit of your judgment or experience on the question of where the limitation should be placed. You, apparently, recognize that there should be some limitation.

Mr. WIGGIN. I am unable to answer that question, Mr. Pecora.

Senator TOWNSEND. Do you know of any stock or bond that has not proven to have been speculative?

Mr. WIGGIN. No, sir.

Senator TOWNSEND. Either then or now?

Mr. WIGGIN. (Made no audible answer, simply bowing his head.)

Mr. PECORA. Do you feel yourself competent in the light of all the experience you have had in banking, and in the light of 1933 as distinguished from 1929, to suggest where the line of limitation should be in regard to banks loaning depositors' moneys for avowedly speculative purposes in securities?

Mr. WIGGIN. I should not know where to say you should draw the line. I freely admit that in 1933 we are much wiser and more conservative than we were in 1929. But when you ask me where to draw the line, I cannot answer that question.

Senator ADAMS. Isn't it true of every year, that it thinks it is much wiser than the year before, and yet nearly every year has been wrong in that view?

Mr. WIGGIN. I think that its true.

Senator ADAMS. May I return to a further question on a previous matter: Mr. Wiggin, do you recollect that anyone either told you or reported to you that the National Administration was interested

in the financial affairs of the Fox companies or anxious that steps be taken to avoid a receivership?

Mr. WIGGIN. I would like to have that question read.

Senator ADAMS. The committee reporter will read it to you. [Which was done.]

Mr. WIGGIN. No, sir.

Senator ADAMS. You recall from your reading of the testimony that there was evidence to that effect given here on Thursday and Friday last, do you not?

Mr. WIGGIN. Yes, sir; I do recall it, but it is not so.

Mr. PECORA. Now, Mr. Wiggin, the Shermar Corporation engaged in a number of participations in those trading accounts, didn't it?

Mr. WIGGIN. Yes, sir.

Mr. PECORA. And in practically all of them?

Mr. WIGGIN. Well, I am not sure. I would have to——

Mr. PECORA (interposing). Speak up a little louder, please.

Mr. WIGGIN. I would have to refresh my memory to make sure of that. But they were in a number of them, I know.

Mr. PECORA. Now, was any settlement effected between Chase Securities Corporation and the Shermar Corporation with respect to any liability due and owing to Chase Securities Corporation from the Shermar Corporation?

Mr. WIGGIN Yes, sir.

Mr. PECORA. When was that settlement effected?

Mr. WIGGIN. In December of 1932.

Mr. PECORA. Have you a copy of the agreement whereby that settlement was effected?

Mr. WIGGIN. I think I can produce it.

Mr. PECORA. Will you please do so?

Mr. WIGGIN. Yes, sir; I have the copy of it now.

Mr. PECORA. I show you what purports to be a photostatic reproduction of such agreement, dated January 12, 1933, made between Chase Securities Corporation and the Shermar Corporation. Will you be good enough to look at it and tell me if you recognize it to be a true and correct copy of such agreement?

Mr. WIGGIN. Yes, sir; I identify that.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. Let it be marked and entered on the record.

(The document referred to, being an agreement between Chase Securities Corporation and another, was received in evidence, marked "Committee Exhibit No. 186, Nov. 28, 1933.")

Mr. PECORA. The agreement in question, received as exhibit 186 in evidence, reads as follows [reading]:

Whereas Chase Securities Corporation, a New York corporation having its principal place of business at No. 60 Cedar Street, New York, N.Y. (hereinafter referred to as Chase Securities), party of the first part hereto, was and is a participant in General Theatres Equipment, Inc., Common Stock Voting Trust Certificates Purchase Syndicate of April 22, 1930, General Theatres Equipment, Inc., Preferred and Original Group Preferred Stock Syndicates of November 11, 1930, and November 28, 1930, General Theatres Equipment, Inc., Common Stock Original Group Account of April 17, 1930, General Theatres Equipment, Inc., Common Stock Voting Trust Certificates Original Group Trading Account of May 3, 1930, General Theatres Equipment, Inc., Common Stock Voting Trust Certificates Syndicate of June 11, 1930, and General Theatres Equipment, Inc., Common Stock Voting Trust Certificates Syndicate of October 10, 1930, of which

syndicates and accounts Pynchon & Co., formerly of 111 Broadway, New York, N.Y., have been managers; and

Whereas, the Shermar Corporation, having its principal place of business at 20 Pine Street, New York, N.Y. (hereinafter referred to as the participant), party of the second part hereto, was and is a subparticipant through Chase Securities in all of said syndicates and accounts; and

Whereas the Participant has duly paid all of its primary or original obligations, under said agreements; and

Whereas said Chase Securities has claimed that the Participant is also liable for a pro rata share of the amounts due from other Participants in certain of said syndicates who have defaulted or may default in their obligations thereunder, which claim is denied by the participant; and

Whereas the Participant and Chase Securities desire to effect an arrangement whereby the said claims and any and all obligations of the Participant in connection therewith and any and all obligations of the parties hereto to each other except those hereinafter particularly mentioned shall be compromised and settled;

Now, therefore, the parties hereto have agreed and do hereby agree as follows:

1. Simultaneously with the execution and delivery of this instrument, the Participant has paid to Chase Securities the sum of $1,000,000 by assigning and transferring to it or to its nominee 25,000 shares of the capital stock of said The Chase National Bank and 25,000 shares of the capital stock of Chase Securities, which shares have been and hereby are accepted by Chase Securities in lieu of the payment of said $1,000,000 in cash, receipt of which is hereby acknowledged by Chase Securities.

2. The Participant hereby sells, assigns, transfers, and sets over unto Chase Securities, its successors and assigns, forever, all rights, interests, benefits, privileges, claims and demands of every kind and nature and howsoever arising and whomsoever against which the Participant, as a member of or subparticipant in any and all of said syndicates or accounts, now has or may at any time have in or under said syndicates or accounts or any of them and the several agreements constituting the same, except the shares of stock or other securities heretofore delivered to the Participant or to which it may be entitled upon or as the result of the payment of the primary or original obligations or subscriptions assumed or made in connection with its participation in the several syndicates or accounts. In this connection, the Participant hereby irrevocably constitutes and appoints Chase Securities, its successors and assigns, the Participant's true and lawful attorneys or attorney with full power of substitution, in the name of the participant or otherwise and on behalf, for the benefit, and at the expense of Chase Securities, its successors and assigns, to demand and receive from time to time payment of any claims or rights of the Participant hereby sold, assigned, and transferred or intended so to be, and to give releases or receipts for the same or any part thereof, and from time to time to institute and prosecute, in the name of the participant, Chase Securities or otherwise, any proceedings at law or in equity or otherwise, which Chase Securities, its successors and assigns, may deem proper, in order to collect, assert or enforce any such claims or rights of the Participant hereby sold, assigned, and transferred or intended so to be, and further to do any and all lawful acts and things in relation to said claims or rights which Chase Securities, its successors and assigns, shall deem desirable, the Participant hereby declaring that the foregoing powers are coupled with an interest and shall not be revoked in any manner or for any reason.

The Participant further agree that it will, whenever, and as often as required by Chase Securities, its successors and assigns, execute and deliver or cause to be executed and delivered, at the expense of Chase Securities, its successors and assigns, any and all such other and further assignments, and instruments of further assurance, and will do or cause to be done at the expense of Chase Securities, its successors and assigns, all and singular such further acts and things, as Chase Securities, its successors and assigns, may hereafter upon advice of counsel deem to be necessary or proper in order to complete, insure or effect the sale, assignment and transfer covered hereby or intended so to be.

Nothing in the assignment, indemnification and release herein contained shall be deemed to be any warranty or representation by the Participant that it has any right or claim covered by said assignment, it being the intention of the parties hereto to assign to Chase Securities whatever rights and

claims, if any, the Participant now has or may at any time have as a member of or subparticipant in any such syndicate or account other than the shares of General Theatres Equipment, Inc. Preferred Stock and the shares of General Theatres Equipment, Inc. common stock or Voting Trust Certificates therefor heretofore delivered to the Participant, or to which Participant may be entitled by reason of the payment of its original or primary obligations as a subparticipant in any of said syndicates or accounts, the Participant hereby warranting and representing nevertheless that it has not heretofore sold, assigned, or transferred any of the rights or claims covered or intended to be covered by this assignment.

3. Chase Securities agrees to and does hereby indemnify the Participant from and against any and all further liability and obligation of every kind, by whomsoever asserted, arising out of participation by the Participant in any and all such syndicates or accounts, including, without limiting the generality of the foregoing, any claims for contribution by other members of any of said syndicates or accounts, and any claims by creditors of any thereof.

The balance of that paragraph appears to have been stricken out. Is that right, Mr. Wiggin?

Mr. WIGGIN. That is my understanding.

Mr. PECORA (continuing reading):

4. Each of the parties hereto, for itself, its successors, and assigns, has released and forever discharged, and does hereby release and forever discharge the other party of and from all claims, demands, obligations or liabilities of whatsoever kind, nature and description in law or in equity growing out of or in any manner associated with any matter or thing which has transpired from the beginning of the world to the date of these presents except that Participant does not release Chase Securities from any right which it may now or hereafter have to require the delivery to it of warrants for the purchase of the number of shares of Common Stock of Utility Equities Corporation whmich is shall be entitled to purchase under an agreement of November 26, 1928, pursuant to which warrants for the purchase of 29,700 such shares were deposited in escrow with The Chase National Bank and of 12,500 shares of Parana Plantations, Ltd., which are a part of a lot of 25,000 shares held by Lazard Brothers & Co., Ltd., of London for account of Chase Securities, as per its letter to Participant of March 17, 1932; nor does Participant release its right to subscribe for 24,500 shares of common stock of Electric Shareholdings Corporation under an indivisible warrant for the purchase of 52,000 shares now held by Chase Securities or Participant's right to subscribe for 50 shares of the common stock of General Theatres Equipment, Inc., under a due bill delivered to participant by Chase Securities or the right to exercise an option from Chase Securities to purchase on or before March 1, 1933, 10,454 shares of Crown Central Petroleum Company at $1.50 per share.

5. Nothing herein contained shall be construed as constituting any waiver or release by Chase Securities of any rights, claims, or demands of any kind or character against any member or members of any of the said syndicates or accounts, except the Participant.

In Witness Whereof, the parties hereto have severally caused this instrument to be signed, sealed and delivered on their respective behalfs as of the 12th day of January 1933.

CHASE SECURITIES CORPORATION,
By FRANK CALLAHAN,
Executive Vice President.

Attest:
[SEAL]

HENRY HARGREAVES,
Secretary.

THE SHERMAR CORPORATION,
By SHERBURNE PRESCOTT, *President.*

Attest:
[SEAL]

J. F. WERNERSBACH,
Secretary.

Who negotiated this agreement, Mr. Wiggin?

Mr. WIGGIN. It was an agreement that I made in behalf of the Shermar Corporation with a committee of the directors of the bank. Does that answer the question, sir?

Mr. PECORA. Who composed the committee representing the bank?

Mr. WIGGIN. Messrs. Debevoise, Ecker, and Jeremiah Milbank; and Mr. Aldrich also sat in the conference. I do not know if he was a member of the committee or not.

Mr. PECORA. Was that Mr. Frederick Ecker?

Mr. WIGGIN. Yes, sir.

Mr. PECORA. Am I correct in my recollection that this agreement was dated the same day on which you withdrew as executive head of the Chase National Bank and were voted an annual salary for the balance of your life at the rate of $100,000 per year?

Mr. WIGGIN. The date is the same; yes, sir. But I might add that they have nothing to do with each other.

Mr. PECORA. I know that. Mr. Ecker, as I recall it, was the gentleman who introduced the resolution which was adopted at the meeting of the board on that day, voting you this $100,000 annual salary for life, was he not?

Mr. PECORA. What was the amount in controversy that was settled upon the terms fixed by this agreement?

Mr. WIGGIN. I do not know, and I do not think that the amount could be determined.

Mr. PECORA. What claims were made in behalf of the Chase Securities Corporation as being the amount that the Shermar Corporation either actually or potentially was liable for in favor of the Chase Corporation?

Mr. WIGGIN. There was nothing controversial in the matter. I made the suggestion to a committee of directors that if they were not going to press the claims against all participants in the syndicate, it was manifestly unfair for me to pay; but that, regardless of the fact that there was no legal claim, my pride was such in the bank and my desire to do what was generous and right, that I would leave it entirely to the board of directors committee to decide what should be done.

Mr. PECORA. Was there not some amount of actual or potential liability of the Shermar Corporation in favor of the Chase Securities Corporation which was discussed or stated in these negotiations?

Mr. WIGGIN. No, sir; it was left entirely to the board to decide what would be fair to do.

Mr. PECORA. The board fixed as the terms of settlement the payment by the Shermar Corporation to the Chase Securities of the sum of $1,000,000, did it not?

Mr. WIGGIN. Yes, sir.

Mr. PECORA. Now, I assume that when that amount was fixed it was fixed as the result of negotiation between representatives of the Shermar Corporation on the one hand and representatives of the Chase Securities on the other hand?

Mr. WIGGIN. It was fixed as the result of a conference. There was no negotiation; there was nothing controversial. It was simply left to that committee to say how much Shermar should pay.

Mr. PECORA. Did not the committee have before it certain claims on behalf of the Chase Securities Corporation against the Shermar?

Mr. WIGGIN. They undoubtedly did, but there was no telling what those claims would amount to if they collected from others.

Mr. PECORA. Who were the others that you have in mind?

Mr. WIGGIN. All the participants in the syndicate.

Mr. PECORA. They were Pynchon & Co., among others?

Mr. WIGGIN. There were several syndicates, as you know, involved in this settlement.

Mr. PECORA. Pynchon & Co. was the manager for all of these syndicates or accounts that are referred to in this agreement, were they not?

Mr. WIGGINS. Yes.

Mr. PECORA. Pynchon & Co., in addition to being manager of those accounts or syndicates, were also a participant in each and every one of them?

Mr. WIGGIN. I think so.

Mr. PECORA. At the time this agreement of January 12, 1933, was entered into, what was the status of Pynchon & Co.?

Mr. WIGGIN. They were in receiver's hands.

Mr. PECORA. In bankruptcy?

Mr. WIGGIN. Yes, sir.

Mr. PECORA. Was a firm called West & Co. also a participant in each and every one of these syndicates or trading accounts mentioned in this agreement of January 12, 1933?

Mr. WIGGIN. I think so.

Mr. PECORA. What was the status of West & Co.?

Mr. WIGGIN. I cannot tell you the exact status in legal language, but they were unable to pay.

Mr. PECORA. They were in financial difficulties—we will put it that way?

Mr. WIGGIN. Yes.

Mr. PECORA. They were in receivership, were they not?

Mr. WIGGIN. I am not sure. I do not want to be technical, but I do not want to make any mistake on that. [After conferring with an associate:] They were in bankruptcy.

Mr. PECORA. W. S. Hammons & Co. was another participant in each of these syndicates or trading accounts enumerated in this agreement of January 12, 1933?

Mr. WIGGIN. I think so.

Mr. PECORA. What was the status of Hammons & Co. at the time this agreement was made?

Mr. WIGGIN. They were in financial difficulty.

Mr. PECORA. That left virtually as the only other participants or members of these syndicates or trading accounts the Chase Securities Corporation and the Shermar Corporation?

Mr. WIGGIN. No, sir.

Mr. PECORA. Who else?

Mr. WIGGIN. I would have to get the list of those syndicates. There was a long list of participants in some of those syndicates.

Mr. PECORA. In connection with the conference as result of which this agreement of January 12, 1933, was eventually entered into, was not the question raised, discussed, and considered as to whether or not there was a joint and several liability under the agreements under which these trading accounts and syndicates were formed and operated?

Mr. WIGGIN. I think that subject was mentioned.

Mr. PECORA. What was the conclusion arrived at on that point as result of this conference?

Mr. WIGGIN. At that conference there was also present Mr. Bisbee, of Rushmore, Bisbee & Stern; and I think they asked him if there was a joint and several liability.

Mr. PECORA. What did he say?

Mr. WIGGIN. I would rather have him answer for himself.

Mr. PECORA. Well, why can you not answer? You were present at the conference, were you not?

Mr. WIGGIN. I was present at the conference, and the conclusion that we reached from his answer was that there was not a joint and several liability.

Mr. PECORA. Who had prepared the agreement under which those syndicates and trading accounts were formed?

Mr. WIGGIN. Rushmore, Bisbee & Stern.

Mr. PECORA. Was Mr. Bisbee's conclusion on the question of whether or not the liability of each participant in those syndicates or trading accounts was joint and several adopted by those who participated in the conference?

Mr. WIGGIN. I think so.

Mr. PECORA. Then, was this settlement of $1,000,000 predicated upon the assumption that those agreements under which the syndicates and trading accounts were formed and had operated imposed no joint liability on the participants?

Mr. WIGGIN. That is my belief.

Mr. PECORA. Then did this sum of $1,000,000 that was fixed as the amount to which the liability of the Shermar Corporation was settled or compromised in favor of the Chase Securities Corporation represent only an individual liability of the Shermar Corporation under all of these syndicate and trading accounts?

Mr. WIGGIN. There was no liability from Shermar. Shermar had bought and paid for its participations in the various syndicates. It had already put up its money and received its securities. This was simply in settlement of the question of whether there was anything further due. I regarded it as a gift. I did not think there was any further legal liability, but to satisfy my pride I desired to do whatever could be done to avoid any possible criticism.

Mr. PECORA. As a matter of fact, Mr. Wiggin, in those conferences did not the representatives of the Chase Securities Corporation take the position that the syndicate or trading account agreements imposed a joint liability on the participants?

Mr. WIGGIN. I do not remember that they took any such position.

Mr. PECORA. So that in the event of any default on the part of any participant the liability of such defaulting participant would fall on the surviving participants?

Mr. WIGGIN. There was no such question raised. At this conference that question was not raised.

Mr. PECORA. What was the conference called for if there was no dispute or controversy of conflicting contentions?

Mr. WIGGIN. The Shermar Corporation had said to the committee, "We will do anything that is right, anything that you think is right. There is no legal liability here; but you fix it."

Mr. PECORA. What did the representatives of the Chase Securities Corporation advance as their belief or thought as to what was right for the Shermar Corporation to do?

Mr. WIGGIN. I do not think anything was said on the subject; it was left entirely to the committee.

Mr. PECORA. Did the committee conclude merely to accept any offer that you made to the Chase Securities Corporation as a gift?

Mr. WIGGIN. I did not make any offer. I left it to them to say what should be done.

Mr. PECORA. You left it to them to determine what gift you should make, or your corporation should make, to the Chase Securities Corporation?

Mr. WIGGIN. Yes, sir.

Mr. PECORA. Was a conference called for the purpose of determining what amount of gift you should make to the Chase Securities?

Mr. WIGGIN. It was called to settle the question. I had said I would do whatever was right and fair, and left it entirely to them; and it was called to get the answer on that.

Mr. PECORA. Is it your understanding that the Chase Securities Corporation representatives were merely called upon to decide what amount you should give to the Chase Securities Corporation as a gift?

Mr. WIGGIN. It was left entirely to this committee of the directors.

Mr. PECORA. To do what?

Mr. WIGGIN. To make whatever settlement with the Shermar Corporation they thought was right and justified.

Mr. PECORA. Then they concluded, did they, that the Shermar Corporation had contracted certain liabilities in favor of the Chase Securities Corporation, the amount of which should be determined and adjusted as the result of this conference?

Mr. WIGGIN. I do not think that they determined that there was any liability.

Mr. PECORA. You have said that this $1,000,000 that you paid in the manner fixed by this agreement, exhibit no. 186 in evidence, is what you regard as a gift which you or your corporation, the Shermar Corporation, should give the Chase Securities. You stand by that answer, do you?

Mr. WIGGIN. Yes, sir.

Mr. PECORA. Had you proposed to the Chase Securities Corporation that you wanted to make a gift to it?

Mr. WIGGIN. No, sir.

Mr. PECORA. Or that your corporation, the Shermar Corporation, wanted to make a gift to it?

Mr. WIGGIN. No, sir.

Mr. PECORA. Then what was this conference called for? What was it called upon to decide?

Mr. WIGGIN. I think I have already testified to that—that I said to them that manifestly it was not fair, if they were not going to press for payment as to all syndicate participants, that this one should pay anything more, but that I had no desire to stand on any legal question; that as a matter of pride and interest in the bank I wanted to do whatever they said was right and fair.

Mr. PECORA. At the time of this conference and at some time prior thereto two of the principal participants in those syndicate or trading accounts had gone into bankruptcy, namely, Pynchon & Co. and West & Co.; is that right?

Mr. WIGGIN. They were in the various accounts.

Mr. PECORA. And a third participant in those syndicate and trading accounts was at that time in financial difficulties or embarrassments?

Mr. WIGGIN. Yes, sir.

Mr. PECORA. So that the question of the extent to which the Chase Securities Corporation would be able to recover from Pynchon & Co., West & Co., and Hammons & Co. on account of their participations in these syndicate and trading accounts was a question that was considered by this conference, was it not?

Mr. WIGGIN. I do not know whether it was or not. I do not recall that it was. And you must realize that there were several accounts and many participants. I do not want you to get the impression that those were the only three participants in the syndicate; there were many.

Mr. PECORA. You mentioned before that Mr. Bisbee was in that conference or in the conferences that led to this agreement on January 12, 1933?

Mr. WIGGIN. Yes, sir.

Mr. PECORA. Whom did he represent in those conferences?

Mr. WIGGIN. He represented the bank, I think.

Mr. PECORA. Did he also represent the Shermar Corporation?

Mr. WIGGIN. He was not there as a lawyer representing the Shermar Corporation. He was there from his knowledge of the whole situation and of all interests.

Mr. PECORA. Was he there as an officer or director of the Shermar Corporation?

Mr. WIGGIN. He was a director of the Shermar Corporation, but he was not——

Mr. PECORA. He was at the time?

Mr. WIGGIN. Yes; but he was not at that meeting because he was a director of the Shermar Corporation; he was there because of his entire familiarity with the whole subject and all the interests.

Mr. PECORA. Then he was there, so to speak, as a witness?

Mr. WIGGIN. Possibly.

Mr. PECORA. Have you, Mr. Wiggin, with you a copy of any one of these syndicate or trading account agreements that define the rights or liabilities of the respective participants therein?

Mr. WIGGIN. I do not think I have.

Mr. PECORA. Can you produce one of those? May I ask, Mr. Bisbee, whether all these agreements under which the syndicate or trading accounts were formed and operated were similar in form generally?

Mr. BISBEE. Generally, but not entirely.

Mr. PECORA. Were they similar in form insofar as they contained any provision with respect to liability of the participants?

Mr. BISBEE. No. Two of them are similar in that respect; the others are different. I did not prepare those agreements, however.

Mr. PECORA. Could you produce a syndicate or trading account agreement of November 11, 1930?

Mr. BISBEE. We are looking for that. Have you not a copy of that? You have a copy of that, I think.

Mr. PECORA. We had, but I cannot place my hands on it readily, and I thought probably your people could.

Mr. WIGGIN. I think there has been furnished to you a memorandum prepared by Mr. Bisbee on this whole subject of liability.

Mr. PECORA. Are you referring to this document which I now show you?

Mr. WIGGIN. Yes, sir.

Mr. PECORA. Let us have it marked for identification for the time being.

(The document referred to, being memorandum headed "Chase Securities Corporation—Shermar Corporation, Memo. for Mr. Ross" from Eldon Bisbee, dated Oct. 5, 1933, was marked by the reporter for identification "Committee Exhibit No. 187, November 28, 1933.")

Mr. BISBEE. You do not have the November 11 agreement, Mr. Pecora?

Mr. PECORA. Yes; I have it.

Mr. BISBEE. November 11?

Mr. PECORA. Yes; November 11, 1930.

Mr. BISBEE. We do not find that.

Mr. PECORA. 200-81-A. That is, we have printed form of that syndicate agreement, but the one furnished us apparently is the one that was executed by American Brush Co.

I will ask that the committee receive in evidence the memorandum referred to by Mr. Wiggin, as being the memorandum prepared by Mr. Bisbee in connection with this agreement of January 12, 1933. I refer to paper marked "Committee's Exhibit No. 187" for identification.

The CHAIRMAN. It may be received in evidence.

(Memorandum for Mr. Ross, signed Eldon Bisbee, dated Oct. 5, 1933, headed "Chase Securities Corporation—Shermar Corporation", heretofore marked for identification, was received in evidence and marked "Committee Exhibit No. 187 in evidence of Nov. 28, 1933.")

Mr. PECORA. The memorandum just received in evidence as exhibit no. 187 reads as follows [reading]:

CHASE SECURITIES CORPORATION—SHERMAR CORPORATION

Memorandum for Mr. Ross in response to his inquiries of September 7.

(1) For information with respect to any liability of Shermar Corporation to Chase Securities Corporation immediately prior to the date of settlement.

(2) An explanation as to the exclusion from the settlement agreement of the items mentioned on page 4 thereof.

The matters involved arose in connection with Shermar's participation with The Chase Corporation in certain General Theatres Equipment, Inc., stock syndicates and accounts. As the most important is the Preferred Stock Syndicate of November 11, 1930, I will deal more particularly with it.

The Syndicate was composed of approximately 40 participants. Shermar's interest was 6.05 percent, for which it had paid $1,015,029.12. Pynchon & Co. were Managers and had transferred the subscriptions to The Chase National Bank as security for Loans.

During 1931, Pynchon and others holding participations aggregating $4,331,955 of a total of $7,628,311.13 either became bankrupt or were deemed to be insolvent, whereupon the Bank demanded payment of the loans. The insolvents could not pay, others refused to pay and those holding participations agregating $1,188,337.82 did nothing. After applying all sums received and the notes

given by certain participants, a balance of $5,300,016.58 of principal was due on the Bank Loans. At the time the settlement agreement was made, the Bank also held as security for the loans 220,239⅔ shares of General Theatres Equipment preferred and 44,466⅓ shares of General Theatres Equipment common; and claimed the right to apply upon the subscription of West & Co. to one or more of the Syndicates $550,600.74 realized from, and 3,177²⁰⁄₁₀₀ shares of Utilities Power & Light common and 6,100 shares of General Theatres Equipment preferred originally received as security for a loan to that firm. It was, therefore, impossible then to determine the amount of the ultimate loss.

Two conflicting views had been advanced regarding the liability of the Syndicate participants; one that it was "joint and several" and, therefore, that each was responsible for the default of any and all others; the other that the participants had limited their liability by the amount of their subscriptions. If the first theory prevailed, each of the participants would be liable to the Bank for the entire balance of the loan ultimately unpaid by others and, because Shermar had taken over one half of The Chase Corporation's interest, one half of any such liability chargeable to that corporation would have fallen upon Shermar.

When, following the insolvency of Pynchon & Co., West & Co., and other large participants, the Bank sought to collect the subscriptions, controversies arose between The Chase Corporation and a number of participants regarding the operations of the Syndicate and its predecessor Common Stock Syndicate. Various adjustments of such controversies had been made but no participant, whether a party to the controversies or not, *had paid more than the amount of his subscription.* In connection with such adjustments, The Chase Corporation had paid sums aggregating $907,843.90.

The situation was peculiar in that, if the entire loss were to fall either upon the Bank or The Chase Corporation, it was of no importance which assumed it because their stockholders were identical and respectively held the same number of shares in each. If, however, upon the theory of "joint and several liability", The Chase Corporation assumed responsibility for the entire amount due the Bank from the Syndicate, it could justifiably assert similar liability on the part of the other solvent participants and thus recoup itself to such extent as became possible. Obviously, therefore, it was in the interests of the stockholders that it adopt such an attitude.

The portions of the Syndicate agreement bearing upon the responsibility of participants will now be stated and considered:

> In paragraph 8, it is provided that "The managers may in their entire discretion permit any member of the Syndicate (without the necessity of similarly permitting other members of the Syndicate) to withdraw and carry his proportionate part of any stock in the Syndicate account, and to the extent that such member shall carry his proportionate part of such stock he shall not (subject to the provisions of paragraphs 12 and 13 hereof *as to pro rata liability for Syndicate losses*) be liable in connection with *any loans* or carrying or other arrangements effected by the Managers for carrying the balance of the stock in the Syndicate account." (Italics mine.)

As Shermar had paid the entire amount of its subscription, and the loan at the Bank, which was substantially the only Syndicate liability, had been made for the purpose of "carrying the balance of the stock in the Syndicate account", this language seemed to absolve Shermar from further responsibility in connection with the loan unless a basis therefor may be found in paragraphs 12 or 13.

> Paragraph 12 is as follows: "The profits, losses, and expenses of the Syndicate *shall be divided* among the members in accordance with their respective participations and the determination, apportionment and/or distribution by the Managers of the assets, net profits, losses, and expenses of the Syndicate and of each member thereof shall be conclusive and binding upon all members." (Italics mine.)

Keeping in mind that paragraph 8 refers only to a *pro rata* liability under paragraph 12, and that its apparent intent is to determine the manner in which profits, losses, and expenses shall be *divided,* I found it impossible to justify a construction thereof which would impose upon one subscribing a few dollars

ultimate liability for the entire loss, whether resulting from defaults of participants or otherwise.

The pertinent portions of paragraphs 13 are

> "Any loss resulting from the default of any member of the Syndicate shall be charged as a loss to the Syndicate, but the default of any such member shall not operate to relieve any member of his full liability hereunder."

It seemed to me that nothing in this clause definitely indicated an intent to charge any participant with all losses, especially in view of the language of paragraph 8 referring "to the provisions of paragraphs 12 and 13 hereof as to *pro rata* liability for Syndicate losses", and that it left open entirely the question as to the "full liability" of subscribers.

I also found that paragraph 9 of the agreement provides that

> "upon termination of the Syndicate or earlier upon request of the Managers, members of the Syndicate will take up and pay for all or any part of their *pro rata* share of any stock held in the Syndicate account."

Certainly, this language does not necessarily contemplate any obligation beyond that represented by the amounts of the respective subscriptions; and, since Shermar had taken up and paid for its *pro rata* of the maximum number of shares for which the account was formed, it indicated no additional responsibility on the part of that participant.

If the subscribers were to be held to a joint and several liability, not only was it necessary to find some language of the agreement definitely indicating such an intent, but none of its provisions could be inconsistent therewith. As I found nothing therein definitely indicating the intent, whereas clause 14 expressly provides that the participants shall not be partners, which relationship involves joint and several liability, the instrument satisfied neither of the two conditions precedent to such a construction.

I inquired of the officers of Shermar if they had understood that the Company was assuming a joint and several liability when it accepted the participation. Their reply was that they had no understanding of the point one way or the other; that it was not considered and that they assumed that the responsibility of participants was the same as that usual in such transactions.

As between the two theories of liability, the ultimate point to be decided was if a court could properly hold that, in becoming a participant, the smallest subscriber had intended to assume responsibility for all losses, which it then seemed probable would aggregate millions of dollars; and my conclusion was that, in the absence of most direct and positive language indicating such an intent, if I were the judge, the decision would be the other way.

A committee of the Board of Directors of the Bank had been appointed to deal with Shermar in connection with the situation. Mr. Wiggin's attitude was that he was unwilling to approach the matter controversially and, therefore, desired to leave it to the committee. I expressed to the committee the views concerning the agreement which I have indicated herein. If I had correctly construed it, legally, Shermar was under no further obligation in the matter. On the other hand, if I was wrong and a joint and several obligation had been incurred, Shermar's responsibility was the same as that of The Chase Corporation, the exact amount being ultimately dependent upon the sums realized from other subscribers and other collateral held by the Bank.

There were three other so-called joint and several General Theatres Equipment stock syndicates, viz: The Preferred Stock Syndicate of November 28, 1930; the Common Stock Syudicate of June 11, 1930, and the Common Stock Syndicate of October 10, 1930.

The language of the liability portions of the agreement covering the November 28, 1930, Syndicate was identical with that of the November 11, 1930, Syndicate, whereas that of the other two agreements was even less favorable to the joint and several liability theory.

Shermar's interest in the first was 12½ percent, for which it had paid $881,065.68; in the second, 8⅓ percent, for which it had paid $143,850; and in the third, 10 percent, for which it had paid $17,750. Shermar had, therefore, paid $2,057,694.80 for its interests in the four Syndicates.

The Preferred Stock Syndicate of November 28, 1930 had five participants all of whom had become insolvent except The Chase Corporation and Shermar. The Managers had transferred all of the subscriptions to the Bank as security for a loan upon which, solely because of the insolvency of three of the subscribers, $2,849,195.85 of principal remained unpaid. The bank also held as collateral 107,931 shares of General Theatres Equipment preferred and 26,041 shares of its common stock.

Both the Common Stock Syndicate of June 11, 1930, and that of October 10, 1930, had been financed by Pynchon & Co. and, after the bankruptcy of that firm, the balances due on the Syndicate loans were set off against claims of The Chase Corporation against Pynchon & Co.

The committee took into consideration all of the circumstances to which reference has been made herein. After so doing, without applying any particular formula, it concluded that all elements in the situation would be fairly resolved if Shermar paid The Chase Corporation $1.000,000 and that corporation indemnified it against any further liability in connection with the four Syndicates mentioned as well as two other General Theatres Equipment stock syndicates wherein the liability was concededly several and Shermar had paid its commitments in full.

The agreement ultimately took the form of a mutual release because no other matters were known to be open between the two corporations. The Chase Corporation had not made certain deliveries to Shermar to which it was either potentially or actually entitled by reason of the discharge by Shermar of all of its obligations preliminary thereto. Accordingly, all such items were specifically excluded from the operation of the release.

ELDON BISBEE.

OCTOBER 5, 1933.

Mr. PECORA. Now, it is apparent, Mr. Wiggin, from a reading of this memorandum of Mr. Bisbee's, that there were conflicting views advanced and discussed in the conference which eventuates in the agreement of January 12, 1933, is it not?

Mr. WIGGIN. I do not think so. It refers to conflicting views, but I do not think there were any conflicting views of any kind or that there was any discussion on that point at this conference that I spoke of.

Mr. PECORA. Well, had there been in any other conference that related to the same subject?

Mr. WIGGIN. There had been no other conference. But, of course, the question of whether it was joint and several or simply several was a natural question in connection with any syndicate agreement.

Mr. PECORA. Well, now, Mr. Wiggin, is not my point made clear by this statement in Mr. Bisbee's memorandum:

Two conflicting views had been advanced regarding the liability of the syndicate participants; one that it was "joint and several" and, therefore, that each was responsible for the default of any and all others; the other that the participants had limited their liability by the amount of their subscriptions.

Mr. WIGGIN. Perfectly clear, Mr. Pecora. But I want to make the point that as I understood your question before it was that at this conference was that question debated. And my answer was: No, that question did not come up at the conference.

Mr. PECORA. You said this was the only conference held?

Mr. WIGGIN. Yes, sir.

Mr. PECORA. There was only one conference held, as the result of which the agreement of January 12, 1933, was entered into?

Mr. WIGGIN. Correct.

Mr. PECORA. Now then, when were these two conflicting views advanced?

Mr. WIGGIN. I do not know that they ever were advanced, but they must have been conflicting views in Mr. Bisbee's mind from the importance of the question.

Mr. BISBEE. May I say a word, Mr. Pecora?

Mr. PECORA. Yes.

Mr. BISBEE. They had been advanced in connection with controversies which were mentioned in the memorandum, that arose

between Chase Securities and other participants. And they were known to exist.

Mr. PECORA. Do you recall the market quotation of the Chase National Bank stock, 25,000 shares of which you paid or turned over to the Chase Securities Corporation in fulfillment of your obligation imposed upon you by this agreement to pay $1,000,000 by way of settlement?

Mr. WIGGIN. On what date do you want it? On this date of this settlement?

Mr. PECORA. Yes.

Mr. WIGGIN. No; I cannot recall. I can easily ascertain. At the time the $1,000,000 settlement was made and the agreement to take the payment in 25,000 shares of the Chase National Bank stock, the stock was sold I think that day—this was in December before the actual papers went through—the stock had actually sold I think at $38 or $39 a share, and the directors committee fixed $40 as a fair valuation on a block of that size.

Mr. PECORA. As a sort of an upset price?

Mr. WIGGIN. What they thought was a fair price.

Mr. PECORA. I think that is all I want to ask.

Mr. WIGGIN. Have you finished?

Mr. PECORA. Just a moment, Mr. Wiggin. Mr. Wiggin, before you leave the stand I want to show you a typewritten statement entitled "Shermar Corporation. Profit and Loss Summary of Participations in International Projector and National Theater Supply Accounts." Will you please look at it and tell us if you recognize it to be a correct statement of such profits and losses [handing same to Mr. Wiggin]?

Mr. WIGGIN (after examining same). That is correct, sir.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. Let it be admitted in evidence and placed in the record.

(Typewritten statement entitled "Shermar Corporation. Profit and Loss Summary of Participations in International Projector and National Theater Supply Accounts" was received in evidence, marked "Committee Exhibit 188 of November 28, 1933", and is here printed in the record in full, as follows:)

EXHIBIT AA.—*Shermar Corporation—Profit and loss summary of participation in International Projector and National Theatre supply accounts. (These companies were acquired by G.T.E., Inc., in July 1929)*

Date	Issue	Group or syndicate	Gross cash profit or loss to Shermar	Net cash profit or loss to Shermar	Securities acquired		Profit or loss on liquidation of net securities	Total	File
					Gross shares	Net shares			
Nov. 24, 1925	Internat'l Projector Pfd. & Com	Purchase	$37,500	$17,186.44	9,375	4,248	$89,832.66	$107,019.10	#11
Dec. 4, 1925	Internat'l Projector Common	Joint			−300	[1] −136			#11
Apr. 28, 1926	Internat'l Projector Pfd. allot. ctf	Trading	2,073.93	950.49				950.49	#284
Mar. 14, 1929	Internat'l Projector Common	Options			[2] −7,000	[2] −7,000			#296–360
			39,573.93	18,136.93	Com.	Com.	89,832.66	107,969.59	
Sept. 9, 1926	Natl. Theatre Supply Notes Pfd. & Com	Purchase	34,199.25	15,568.38	18,750	8,431	102,833.34	118,401.72	#10
Oct. 22, 1926	Natl. Theatre Supply Pfd. Allot. Ctfs	Banking	None	None					#264
Sept. 22, 1926	Natl. Theatre Supply Notes	Trading	176.48	80.33				80.33	
Feb. 4, 1927	Natl. Theatre Supply Pfd. Allot. Ctfs	do	None	None					
Sept. 9, 1927	Natl. Theatre Supply Common	Option	None	None					#14
Jan. 4, 1928	do	Trading	1,333.65	607.04				607.04	#13
July 16, 1929	Natl. Theatre Supply Rights	do			4,996	3,546	−66,046.90	−66,046.90	#68
May 15, 1930	do	do	None	None					#15
			35,709.38	16,255.75			36,786.44	53,042.19	
	Total		75,283.31	34,392.68			126,619.10	161,011.78	

[1] Net proceeds included in $89,832.66.
[2] Delivered in settlement of options.

NOTE.—488 GTE pfd. still held has been valued at 50¢ per share.

Mr. PECORA. I show you another typewritten statement entitled "Shermar Corporation. Profit and Loss Summary of Participations and Sub-Participations in General Theatres Equipment, Inc. and Fox Film Corporation Syndicate and Trading Accounts." Will you please look at it and tell me if you recognize it as being a true and correct statement of such profits and losses [handing same to Mr. Wiggin]?

Mr. WIGGIN (after examining same). This is correct, Mr. Pecora, except that it does not include the million dollar settlement, which would be that much additional loss to Shermar.

Mr. PECORA. I see. And with that understanding that is correct?

Mr. WIGGIN. Yes, sir.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. Let it be admitted in evidence and placed in the record.

(Typewritten statement entitled "Shermar Corporation. Profit and Loss Summary of Participations and Sub-Participations in General Theatres Equipment, Inc. and Fox Film Corporation Syndicate and Trading Accounts" was received in evidence, marked "Committee Exhibit 189 of November 28, 1933", and is here printed in the record in full as follows:)

COMMITTEE EXHIBIT No. 189, Nov. 28, 1933

Shermar Corporation—Profit and Loss Summary of Participations and Sub-Participations in General Theatres Equipment, Inc. and Fox Film Corporation Syndicates and Trading Accounts

Date	Issue	Group or syndicate	Gross cash profit or loss to Shermar	Net cash profit or loss to Shermar	Securities acquired		Profit or loss of Shermar on liquidation of net securities acquired	Total
					Gross shares	Net shares		
July 9, 1929	G. T. E. Common	Purchase			Com. 7,031	5,027.16	$18,020.81	$18,020.81
July 18, 1929	do	Syndicate	$14,885.52	$10,660.60	Com. 3,592	2,568.28	9,206.50	19,867.10
Oct. 16, 1929	G. T. E. 15-yr. 6's	Trading	−52,217.41	−37,335.45				−37,335.45
Apr. 17, 1930	G. T. E. Common	Original	114,802.47	82,083.77				82,083.77
Apr. 18, 1930	do	Buying	38,724.75	27,688.20				27,688.20
Do	Fox Film "A"	Purchase	399,065.04	261,794.07				261,794.07
Do	do	do	70,616.70	70,616.70				70,616.70
Apr. 17, 1930	G. T. E. Common	Original (Conversion)			Pfd. 1,890½ Com. 3,781	1,351.71 2,703.42	−118,182.62	−118,182.62
May 3, 1930	do	Trading			Pfd. 16,625 Com. 5,875	11,886.87 4,200.63	−722,056.39	−722,056.39
June 11, 1930	do	do			Pfd. 1,666⅔ Com. 3,333⅓	1,191⅔ 2,383⅓	−92,767.10	−92,767.10
Oct. 10, 1930	do	do	−17,750.00	−12,691.25				−12,691.25
Nov. 11, 1930	G. T. E. Pfd	Syndicate	−70,828.65	−50,642.49	Pfd. 23,082½ Com. 1,711½	16,504 1,223.72	−636,721.64	−687,364.13
Nov. 28, 1930	do	Trading			Pfd. 1,946 Com. 1,379	1,391.39 986	−50,020.93	−50,020.93
		G. T. E.	27,616.68	19,763.38			−1,592,521.37	−1,572,757.99
		Fox Film	469,681.74	332,410.77				−332,410.77
			497,298.42	352,174.15				−1,240,347.22

NOTES.—In determining profit or loss on liquidation of securities acquired, (1) where securities have been sold, the net cash proceeds have been used and (2) where securities are still held the following prices as of Sept. 26th have been used. General Theatre Debentures 5; General Theatre Preferred 50¢.

Mr. PECORA. Mr. Wiggin, are there any matters that you would like to address yourself upon to the committee before you are excused?

Mr. WIGGIN. Yes, sir. I will only take a minute.

Mr. PECORA. Go right ahead.

Mr. WIGGIN. I find the impression has gone out that my family sold more Chase Bank stock than they owned. I want to correct that impression. The family never since 1927 owned less than 116,000 shares of Chase Bank stock. That is, the present par value stock. In other words, they always had a minimum amount during that entire period of 116,000 shares, usually more. And at the time of my retirement from the bank the family holdings had been again increased so that there were some 200,000 shares.

On another subject I would like to speak. I refer to the sales of B.M.T. The sales of B.M.T. stock—Brooklyn Manhattan Transit stock—for account of Mr. Dahl were sales made by the bank. It was his——

Mr. PECORA (interposing). By way of liquidation of his loan or reduction of it?

Mr. WIGGIN. By way of liquidation of his loan. The reasons for doing so—for the sales of the stock—were that the stock had been gradually shrinking in price. It had sold at $50 in March, and was then selling at $24. There were $13,000,000 of notes coming due August 1st held by the public, and the condition of the market was such that we did not know how we could handle it. And the bank for its own protection felt that it was the right thing to do. Mr. Dahl did not want that stock sold.

I think I have covered the point.

Mr. PECORA. On that subject. Mr. Dahl, shortly after you testified before this committee concerning the sale of that B.M.T. stock for the account of Mr. Dahl, issued a public statement which was fully carried in the newspapers, did he not?

Mr. WIGGIN. Yes, sir.

Mr. PECORA. Did you read that statement of Mr. Dahl's?

Mr. WIGGIN. I did.

Mr. PECORA. Was it substantially correct?

Mr. WIGGIN. No; I do not think he had it right. He had not seen the testimony, and he said so in his statement. It was correct in the way that he interpreted it, as he thought the newspaper account was correct, but he had not read the testimony when he made that statement. I think the testimony was correct.

Mr. PECORA. The essential fact is that those sales of Dahl's stock were not made by Mr. Dahl, but were made by the bank, which then was carrying the stock as collateral against loans that it had made to Mr. Dahl?

Mr. WIGGIN. Yes, sir.

Mr. PECORA. But the sales were made by the bank without Mr. Dahl's consent? That is, his consent was not sought?

Mr. WIGGIN. They were made without his——

Mr. PECORA (interposing). The bank exercised its rights under the collateral loan agreement?

Mr. WIGGIN. Yes; that is right.

Mr. PECORA. To sell any of the collateral?

Mr. WIGGIN. Yes; that is right. The stock afterwards did sell, as you brought out in the original testimony—it sold down to $11 a share, but it has since sold at $41 a share in the open market. With no change in the—well, I will eliminate that.

Mr. PECORA. Which stock did you say?

Mr. WIGGIN. The B.M.T. stock.

Mr. PECORA. The common?

Mr. WIGGIN. Yes, sir.

Mr. PECORA. Well, has it not since sold at much lower than $41?

Mr. WIGGIN. Well, as I say, as you brought out in the testimony, it sold down to $11 a share, but I want to call your attention also to the fact that it has since sold at $41 a share, and is now selling at, I think, $29 a share.

Mr. PECORA. The references that you made in your statement to sales by your family or your family corporations of stock in the Chase National Bank were references to testimony that you have given before this committee heretofore?

Mr. WIGGIN. Yes, sir.

Mr. PECORA. And all the facts and circumstances with regard to those transactions on the part of yourself and your family corporations in the stock of the Chase National Bank were fully gone into in the course of your examination heretofore, were they not?

Mr. WIGGIN. I think so.

Mr. PECORA. All the facts are on the record?

Mr. WIGGIN. Yes, sir.

Mr. PECORA. You are merely stating now a certain conclusion of yours arising from those facts, are you not?

Mr. WIGGIN. I am merely stating a certain conclusion of mine arising from the fact to correct what apparently has created a wrong impression.

Mr. PECORA. Well, the fact, as I recall your testimony on that subject heretofore, is that when the Shermar Corporation and your other family corporations made the sales of its holdings of Chase National Bank stock it covered those sales by subsequent purchases.

Mr. WIGGIN. Yes, sir.

Mr. PECORA. So if it was short selling it was the kind of short selling that is commonly referred to as "selling against the box"?

Mr. WIGGIN. That is right, sir.

Mr. PECORA. Anything else that you want to address this committee upon, Mr. Wiggin?

Mr. WIGGIN. Just a minute. [After consulting with associates:] Nothing more, sir.

Mr. PECORA. All right, sir.

The CHAIRMAN. You are excused.

Mr. WIGGIN. May I leave now?

Mr. PECORA. Yes, certainly.

(Thereupon Mr. Wiggin left his place at the committee table.)

DETROIT & CANADA TUNNEL CO.

Mr. PECORA. We will now take up the matter of the Detroit & Canada Tunnel Co. Is Mr. Snow here?

(Mr. Snow came forward to the committee table.)

TESTIMONY OF LESLIE W. SNOW, SECOND VICE PRESIDENT, THE CHASE NATIONAL BANK. BUSINESS ADDRESS, 18 PINE STREET, NEW YORK CITY, RESIDENCE, SOUTH ORANGE, N.J.

The CHAIRMAN. Will you be sworn? 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. SNOW. I do.

Mr. PECORA. Please give your full name and address, Mr. Snow, to the committee reporter for the record.

Mr. SNOW. Leslie W. Snow. Business address, 18 Pine Street, New York City. Residence, South Orange, N.J.

Mr. PECORA. Mr. Snow, are you connected with the Chase National Bank?

Mr. SNOW. I am at the present time, sir.

Mr. PECORA. In what capacity?

Mr. SNOW. Second vice president.

Mr. PECORA. How long have you been connected with that institution?

Mr. SNOW. I have been connected with the Chase since 1923. I entered the employ of the Chase Securities Corporation in June 1923. I became an assistant secretary in January 1927, and an assistant vice president in January 1928, and entered the employ of the Chase Harris Forbes Corporation as vice president in July 1931. In June 1933 I resigned from the Chase Harris Forbes Corporation and became a second vice president of the Chase National Bank.

Mr. PECORA. Do you know a company called the Detroit & Canada Tunnel Co.?

Mr. SNOW. Yes, sir.

Mr. PECORA. Did that company issue any securities consisting of 20-year 6½ percent convertible debentures?

Mr. SNOW. Yes, sir.

Mr. PECORA. Did it also issue securities consisting of 6 percent first mortgage sinking fund bonds?

Mr. SNOW. That is correct.

Mr. PECORA. Did the Chase Securities Corporation have anything to do during the time that you were an officer thereof with the issuance and flotation of those securities?

Mr. SNOW. Yes, sir. It was connected with both issues.

Mr. PECORA. Did you in behalf of the Chase Securities Corporation at the time of the issuance of these securities represent the Chase Corporation in connection therewith?

Mr. SNOW. I did, sir.

Mr. PECORA. Tell the committee briefly what the Detroit & Canada Tunnel Co. was.

Mr. SNOW. The Detroit & Canada Tunnel Co. was organized in Michigan in 1927 for the purpose of constructing a vehicular tunnel under the Detroit River between Detroit and the border cities in Canada. Would you like to have me give you the history of the undertaking as far as it concerned ourselves?

Mr. PECORA. Yes. Now the issues of 20-year convertible debentures amounted to $8,500,000 principal amount?

Mr. SNOW. Eight million five hundred thousand dollars principal amount; yes, sir.

Mr. PECORA. And that was also the principal amount of the first mortgage 6 percent bonds issued by that company?

Mr. SNOW. Yes, sir.

Mr. PECORA. Now go ahead, Mr. Snow.

Mr. SNOW. If you will permit me, I have an outline here of the transaction from the time we first became acquainted with it.

Mr. PECORA. Have you a copy of it?

Mr. SNOW. Yes; I have.

Mr. PECORA. Will you let me have a copy of it while you refer to the other?

Mr. SNOW. Yes; I will. [Handing same to Mr. Pecora.]

Mr. SNOW. This is intended to be a recital of the history of our connection with the Detroit and Canada tunnel project, how we first got into the business, the representations which were made to us, and what we did about them.

Mr. PECORA. I think I had better bring out the facts by questions to which you may give answers. When was the Chase Securities Corporation first invited to participate in any financing of the Detroit & Canada Tunnel Co.?

Mr. SNOW. We were first formally invited in March 1928.

Mr. PECORA. Had your attention been called to the possibility of the Chase being invited to participate in this financing at any time prior to March 1928?

Mr. SNOW. I had requested that we might have a chance to look at the financing sometime prior thereto.

Mr. PECORA. When did you make that request, and of whom did you make it?

Mr. SNOW. In the fall of 1927, and of Mr. Chase Donaldson, who was an officer of Bertles, Rawls & Donaldson, investment bankers.

Mr. PECORA. Bertles, Rawls & Donaldson were investment bankers with an office in Detroit as well as in New York.

Mr. SNOW. That is correct.

Mr. PECORA. You learned, sometime in October 1927 of some development or construction operation of the Detroit & Canada Tunnel Co., which required financing.

Mr. SNOW. I think it was prior to that. I had talked off and on with my personal friend, Mr. Donaldson, about it.

Mr. PECORA. Is that Mr. Chase Donaldson?

Mr. SNOW. That is correct.

Mr. PECORA. Give the committee the substance of your earlier talks with Mr. Donaldson on that subject.

Mr. SNOW. Mr. Donaldson was accustomed to talk with me from time to time about matters in which he was interested, and early in the fall of 1927 he told me the whole story regarding the proposed tunnel, the financing for which his associate in Bertles, Rawls & Donaldson, Mr. Huston Rawls, had undertaken to arrange.

Mr. PECORA. You say he told you the whole story regarding the proposed tunnel. Give the committee the substance of what he told you about that.

Mr. SNOW. He told me at that time that a group in Detroit had planned to construct a vehicular tunnel under the Detroit River. A Mr. Charles Miller was the leading spirit; Mr. Miller had proceeded to the point of having secured certain franchises and

orders in council from the State of Michigan and the Province of Ontario for such construction. Mr. Miller had requested Mr. Rawls to undertake to arrange for the financing. Some time prior to Mr. Rawls' introduction into the business, which I believe was in the fall of 1926—December 1926, to be specific—certain engineers had been engaged to make preliminary reports. This engineering firm was Parsons, Klapp, Brinckerhoff & Douglas.

Mr. Donaldson had told me that in 1928, or in 1927—because that was the time we were talking—the two ferries, known as the Windsor ferry and the Walkerville ferry, carried the local traffic, both vehicular and pedestrian, across the Detroit River, one of the most important waterways on the continent. The Windsor Ferry was the most direct method of crossing the river from the center of Detroit to the center of Windsor. At that time the cross-river travel between Detroit and Windsor had increased to approximately 17,000,000 pedestrians and 1,700,000 vehicles per annum, representing to a large extent the daily travel back and forth of individuals living on the Canadian side of the river and working or shopping in Detroit. The term "pedestrians" is used to describe all passengers except the drivers of vehicles. The crossing by the Windsor Ferry, the most direct route, required approximately 25 minutes, and at times there were serious delays due to congestion of traffic and to ice and fog conditions on the river. On Sundays and holidays the congestion frequently became particularly bad and automobiles were often obliged to wait in line for hours until they could be transported across the river. Many times Detroit people who had crossed to Canada preferred to leave their cars on the Windsor side on such occasions and cross on the ferry as pedestrians, returning the next day, when there was less congestion, to bring their cars across.

Detroit had grown rapidly to the fourth city in size in the United States, with a population of approximately 1,800,000 in its metropolitan area, and was the center of automobile production in the United States. The border cities on the other side of the river, including Windsor, Walkerville, Sandwich, Ford City, and Riverside, had a combined population in 1927 of about 110,000 and the rate of population growth in the border cities had paralleled or exceeded Detroit, having increased 350 percent in 16 years. In these cities were located branch plants of many American manufacturers, including such companies as Ford, General Motors, Chrysler, Studebaker, Kelsey Wheel, MacCord Radiator, Detroit Twist Drill, Pratt & Whitney, Truscon Steel, Burroughs Adding Machine, Toledo Scale, Coca-Cola, Postum, Standard Paint & Varnish, and many others.

Mr. PECORA. Mr. Snow, in the course of your conversations with Mr. Donaldson did there come to your notice a letter, or copy thereof, dated October 19, 1927, addressed by Mr. Chase Donaldson, then connected with the firm of Bertles, Rawls & Donaldson, to Mr. Dahl?

Mr. SNOW. Yes, sir. I saw it.

Mr. PECORA. I show you what purports to be a photostatic reproduction of such letter. Will you please look at it and tell me if you recognize it to be a true and correct copy of the letter sent by Mr. Donaldson to Mr. Dahl?

Mr. Snow. Yes, sir.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. Let it be admitted.

(The document referred to, letter, October 19, 1927, Donaldson to Dahl, was received in evidence, marked "Committee's Exhibit No. 190," November 28, 1933, and the same was subsequently read into the record by Mr. Pecora.)

The CHAIRMAN. These plants you mentioned were actually operating in Canada?

Mr. SNOW. Yes, sir. Those were branch plants of the American companies.

Mr. PECORA. The Mr. Dahl to whom this letter marked "Exhibit 190" in evidence is addressed, is Mr. Gerhard Dahl, chairman of the board of the Brooklyn-Manhattan Transit Corporation?

Mr. SNOW. That is correct.

Mr. PECORA. The letter received in evidence reads as follows (reading):

COMMITTEE'S EXHIBIT No. 190

BERTLES, RAWLS & DONALDSON, INC.,
120 BROADWAY, NEW YORK, N.Y.,
October 19, 1927.

FINANCING FOR PROPOSED VEHICULAR TUNNEL BETWEEN BUSINESS SECTIONS OF DETROIT AND WINDSOR, ONTARIO

DEAR MR. DAHL: Mr. Huston Rawls of our firm has recently completed all of the engineering, legal, and legislative arrangements for the construction of a vehicular tunnel, similar to the Holland Tunnel, between the business sections of Detroit, Mich., and Windsor, Ontario.

Engineering reports, designs, borings, etc., have been completed by Messrs. Parsons, Klapp, Brinckerhoff & Douglas.

Conservative earnings estimates by these engineers adequately support proposed financing and indicate that the proposed tunnel is largely non-competitive with the Detroit International Bridge now under construction.

Legal details and the securing of necessary American and Canadian legislation and permits have been supervised by the attorneys for the company, Messrs. Warren, Hill & Hamblen of Detroit, Mich.

The necessary land both in Windsor and Detroit is either owned in fee or under option to the same group of men who own the tunnel company.

The backers of the tunnel company are wealthy and responsible Detroit business men.

The final step needed is the approval by the voters of Detroit on November 8th, of an ordinance already passed by the Council of the City of Deroit.

The public financing involved will be a joint issue of $11,000,000 of first-mortgage bonds of the Canadian and American companies and approximately $5,000,000 debentures of the holding company.

We have the financing for this tunnel firm in hand.

The Chase Securities Corporation seems to me to be the logical bankers to head the picture and to syndicate the issue. We know now that we can form a group of prominent medium-size houses who have already evidenced strong interest in the issue, but should like to approach the Chase first if we are not risking an immediate turndown because of some policy of theirs unknown to us. You know best how their minds work and I should very much appreciate your telling me whether you feel they might be interested.

Very truly yours,

(Signed) CHASE DONALDSON.

At the time of the writing of this letter, Mr. Snow, Mr. Dahl was a director of the Chase National Bank, was he not?

Mr. SNOW. I am not sure about that, Mr. Pecora. We can get the information for you if you want it.

Mr. PECORA. He was at one time a director.

Mr. SNOW. That is correct.

Mr. PECORA. And was a director for a number of years.

Mr. SNOW. I understand that he was a director at that time.

Mr. PECORA. That is, in October 1927.

Mr. SNOW. Yes.

Mr. PECORA. Now, following the receipt of this letter by Mr. Dahl, do you know whether or not he took up, in pursuance of the suggestion embodied in this letter, the consideration of whether or not the Chase would be interested in the financing of this tunnel project?

Mr. SNOW. No, Mr. Pecora. Mr. Dahl had absolutely nothing to do with it. I had talked with Mr. Donaldson prior to the time that letter was written, and had an understanding with Mr. Donaldson that if possible the business would be presented to us for consideration. Mr. Donaldson had been previously in the organization of Hayden-Stone & Co., where Mr. Dahl was a partner. Mr. Donaldson did not know Mr. Freeman, our president, and consequently he wanted to be introduced, and he preferred to have the introduction come through Mr. Dahl. He spoke to me about it at the time, and he wrote this letter to Mr. Dahl, which evidently Mr. Dahl turned over to Mr. Freeman, introducing Mr. Donaldson, but Mr. Dahl never had any connection with the tunnel whatsoever, and it was not because of his introduction that we were considering it.

Mr. PECORA. In this letter Mr. Donaldson said to Mr. Dahl as follows [reading]:

> We know now that we can form a group of prominent medium-size houses who have already evidenced strong interest in the issue, but should like to approach the Chase first if we are not risking an immediate turndown because of some policy of theirs unknown to us. You know best how their minds work and I should very much appreciate your telling me whether you feel they might be interested.

From that language, Mr. Snow, I had assumed that at the time of the writing of this letter Mr. Donaldson, of the firm of Bertles, Rawls & Donaldson, had made no approach to any person connected with the Chase.

Mr. SNOW. That is not correct.

Mr. PECORA. With a view of finding out if the Chase would be interested in this financing.

Mr. SNOW. That is not correct, Mr. Pecora, because I had talked with Mr. Donaldson many times prior to that.

Mr. PECORA. Had you indicated to him that the Chase would be interested in the financing?

Mr. SNOW. I had asked him, if possible, to permit us to look at the business. I told him, however, that we would not be interested unless the business had a strong Detroit banking institution in it. At that time the Guardian Detroit Co. was not interested in the business.

Mr. PECORA. Can you produce from the files of the Chase Corporation a memorandum dated November 1, 1927, or rather a memorandum referring to the progress of negotiations with respect to the Detroit vehicular tunnel, commencing with the date of November 1, 1927, and which is marked by the identifying number "45 40A"?

Mr. SNOW. Yes, sir; I have it.

Mr. PECORA. I show you what purports to be a photostatic copy of that memorandum. Will you look at it and tell us if it is a true and correct copy thereof?

Mr. SNOW. It is.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. Let it be admitted.

(The document referred to, memorandum record of negotiations in re Detroit vehiculuar tunnel, was received in evidence, marked "Committee's Exhibit No. 191", Nov. 28, 1933, and the same will be found at the conclusion of today's proceedings.)

Mr. PECORA. Did you prepare this memorandum which has been received in evidence?

Mr. SNOW. I prepared certain of the memoranda that are recorded on that card. There were several that were not mine.

Mr. PECORA. I want to call your attention to this portion thereof [reading]:

1927, November 1, file No. 2439. Mr. Chase Donaldson, of Bertles, Rawls & Donaldson, 120 Broadway, approached us through Mr. Dahl in regard to financing for a proposed vehicular tunnel running between Detroit, Mich., and Windsor, Ontario. Donaldson also discussed the matter informally with the writer. Engineering reports, etc., were said to be in hand. Public financing was expected to involve about $11,000,000 of first mortgage bonds of the Canadian and American companies and approximately $5,000,000 of debentures of a holding company. Other banking houses in the vicinity of Detroit were said to be interested in this project, but Donaldson wished to secure a house of the standing of the Chase Securities to head it.

Advised Donaldson, at the direction of H. G. F., that we would be glad to hear the story.

Several days later Messrs. Rawls and Donaldson came in and advised us that one of the local groups in Detroit was anxious to handle the financing and head the picture, and that therefore Rawls and Donaldson did not feel free to discuss the matter with us, but we would hear further from them and undoubtedly be offered some position in the business. The Guardian Co. are the Detroit people interested.

(Signed) L. W. S.

The "L.W.S." refers to you.

Mr. SNOW. Those are my initials.

Mr. PECORA. The "H.G.F." is Mr. Halstead G. Freeman.

Mr. SNOW. Yes.

Mr. PECORA. He was then an executive officer of the Chase Securities Corporation.

Mr. SNOW. He was president of the Chase Securities Corporation.

Mr. PECORA. Apparently this memorandum was dictated by you, was it not?

Mr. SNOW. That is correct.

Mr. PECORA. In it you say that Chase Donaldson approached you through Mr. Dahl with regard to financing the proposed vehicular tunnel.

Mr. SNOW. Right.

Mr. PECORA. Is that the fact?

Mr. SNOW. That is the first formal record that I made of the business, and I knew that Mr. Donaldson preferred to have his introduction come through Mr. Dahl. Therefore the record was made in that manner, but the facts are as I stated to you before.

Mr. PECORA. You subsequently did hear from Bertles, Rawls & Donaldson.

Mr. SNOW. Yes, sir.

Mr. PECORA. About the Chase participating in the financing of this project.

Mr. SNOW. That is correct, sir.

Mr. PECORA. Will you give a resume of the communications or conferences you had with Mr. Donaldson, or any other member of the firm of Bertles, Rawls & Donaldson, on the question of the Chase taking a participation in the financing of this tunnel?

Mr. SNOW. At the time we were formally approached, it was not by Bertles, Rawls & Donaldson alone but rather by a group of bankers who had at that time, upon the invitation of Bertles, Rawls & Donaldson, become interested in the business.

Mr. PECORA. Who were those bankers?

Mr. SNOW. Those bankers were: Harris Trust & Savings Bank of Chicago, Guardian Detroit Co. of Detroit, and Bertles, Rawls & Donaldson. They approached us formally in March 1928. There were several meetings with Mr. Freeman, and I presume other executive officers of the Chase Securities Corporation, and I attended those meetings personally. I cannot tell you how many times we met, but the result of the meetings was a memorandum agreement which was signed on March 26, 1928. In my opinion, Mr. Pecora, that agreement is one of the most important documents in our files, and for some reason your investigators did not take it.

Mr. PECORA. Have you a copy?

Mr. SNOW. I have a copy, which you may have [producing paper].

Mr. PECORA. What you have given me as an agreement is in the form of a memorandum.

Mr. SNOW. It is a memorandum agreement, yes, sir. It was signed on that day.

Mr. PECORA. The photostatic copy thereof which you have given me is, to your knowledge, a true and correct copy of such memorandum agreement?

Mr. SNOW. Yes, sir.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. Let it be admitted.

(The document referred to, memorandum agreement, Mar. 26, 1928, in re Detroit vehicular tunnel, was received in evidence, marked " Committee's Exhibit No. 192," Nov. 28, 1933, and the same will be found at the conclusion of today's proceedings.)

Mr. SNOW. Mr. Pecora, the understanding which is set forth in this agreement was in substantially that form when these bankers called upon us. In other words, the form of the financing, the investigations to be made, and so forth, had been fairly well crystallized at the time they approached us. There were a few changes made in the draft memorandum they submitted to us, resulting in this memorandum which you have in your hand, which was signed.

Mr. PECORA. Following the signing of this so-called memorandum agreement, was a more formal agreement entered into?

Mr. SNOW. In May.

Mr. PECORA. In May of 1928?

Mr. SNOW. Yes, sir.

Mr. PECORA. Can you produce a copy of that?

Mr. SNOW. Yes, sir. You have that in the records.

Mr. PECORA. You have jumped from November 1927 to March 1928.

Mr. SNOW. Yes.

Mr. PECORA. There are, I think, two or three items, probably, of some interest, about which I shall want to examine you, that are alluded to in this record of progress of negotiations that has been received in evidence here as committee's exhibit 191.

I find on that exhibit, under date of November 22, 1927, the following memorandum (reading):

Information appeared in the press several days ago to the effect that the financing of the construction of the vehicular tunnel had been arranged for with New York bankers. The writer immediately got in touch with Mr. Chase Donaldson, who advised that the Guardian Trust Co. of Detroit had undertaken to head the financing and that Harris Trust & Savings Bank of Chicago and Bertles, Rawls & Donaldson of New York would be in the business. The financing is now expected to take the form of $8,500,000 first mortgage bonds and $8,500,000 debentures. The writer reminded Donaldson of his previous conversation with us and told him that we would like to be offered a position in the business.

This memorandum item is signed "L.W.S."—yourself.

Mr. SNOW. Yes, sir.

Mr. PECORA. Then I find there is this further entry, under date of November 23, 1927 [reading]:

Donaldson came in today and advised that he had phoned Mr. Rawls, his Detroit partner, twice in connection with securing a position in the business for the Chase Securities, and that although the matter was more or less completely in the hands of the Guardian Trust of Detroit he believed that there was little doubt but that the Guardian would accede to their urgent request that the Chase be offered a position in the business. There will probably be only one other New York house in it, although they have had requests from several others including Hayden, Stone & Co.

In that item the memorandum is signed "L.W.S."

Mr. SNOW. The mention of the Guardian Trust Co. is in error, Mr. Pecora. It should be the Guardian-Detroit Co.

Mr. PECORA. The Guardian-Detroit Co. is a holding company, is it not?

Mr. SNOW. No, sir. The Guardian-Detroit Co. was an investment banking house in Detroit affiliated with the Guardian Trust Co. and the Guardian-Detroit Bank.

Mr. PECORA. From these two entries of November 22 and November 23, 1927 on this card of the progress of negotiations, it would seem to be apparent that you, in behalf of the Chase Securities Corporation, were quite concerned, at or about the time of the making of these entries, as to whether or not the Chase would be given an opportunity to participate in the financing of this tunnel.

Mr. SNOW. I would not express it exactly that way, Mr. Pecora. I was very much interested in it because the business did look attractive.

Mr. PECORA. In the memorandum of November 23, 1927, you say [reading]:

Donaldson came in today and advised that he had phoned Mr. Rawls, his Detroit partner, twice in connection with securing a position in the business for the Chase Securities, and that although the matter was more or less completely in the hands of the Guardian Trust of Detroit he believed that there was little doubt but that the Guardian would accede to their urgent request that the Chase be offered a position in the business.

Mr. SNOW. You see, Mr. Donaldson had practically promised me before that if possible we would have a chance to look at the business.

Mr. PECORA. You had looked at it, and felt quite satisfied it was a good venture for the Chase Securities to undertake?

Mr. SNOW. We felt at that time that it was worthwhile investigating.

Mr. PECORA. When, in November, you heard or learned from the press that the financing had been arranged for with New York bankers, you got busy and got in touch with Donaldson?

Mr. SNOW. Yes.

Mr. PECORA. And reminded him of your former conversations with him, in which you sought to indicate that the Chase would be interested in the financing of this vehicular tunnel?

Mr. SNOW. Interested in investigating the project; yes, sir.

Mr. PECORA. When you learned that arrangements had been made with New York bankers for financing the tunnel——

Mr. SNOW. That is a press account, Mr. Pecora. I had been in touch with Donaldson, and I knew that the arrangements were not completed. They were merely on the verge of starting a real investigation.

Mr. PECORA. When you learned that from the press, whether the press reports were true or not, you got in touch, as you said here—you immediately got in touch with Mr. Chase Donaldson, who advised that the Guardian-Detroit Co. of Detroit had undertaken to head the financing, and that Harris Trust & Savings Bank of Chicago and Bertles, Rawls & Donaldson of New York would be in the business.

Mr. SNOW. That is right.

Mr. PECORA. Does not that indicate a rather earnest desire on your part, in behalf of the Chase, to be permitted to participate in what the press had reported to be the completion of arrangements for financing?

Mr. SNOW. That language may indicate that, but the facts are otherwise.

Mr. PECORA. I am being guided by the language in asking you the question.

Mr. SNOW. The facts are otherwise. We were not ready to jump in and commit ourselves to any financing until we had investigated it.

Mr. PECORA. This memorandum was your own memorandum made at the time.

Mr. SNOW. That is correct.

Mr. PECORA. You made a memorandum that was not in accordance with the facts as you understood them?

Mr. SNOW. I think it is entirely in accordance with the facts.

Mr. PECORA. You just now said the facts were otherwise than those indicated in the memorandum.

Mr. SNOW. I meant your understanding of the facts, or rather your understanding of the meaning of the memorandum.

Mr. PECORA. I am possibly wrong.

The memorandum agreement that you have produced here, and which has been offered in evidence as exhibit 192, appears to have been dated on March 26, 1928; is that correct?

Mr. SNOW. That is correct.

Mr. PECORA. And the formal loan agreement respecting the financing was entered into some time in May, 1928.

Mr. SNOW. In May, yes, sir. Mr. Pecora, I think this memorandum agreement, which you have before you, is a complete answer to the question you raised a few moments ago about our eagerness to go into the financing, because it indicates clearly that the bankers were willing only to make a complete investigation. The last few pages of that disclose that fact.

Mr. PECORA. I show you what purports to be a photostatic reproduction of the final agreement with respect to the financing of the Detroit & Canada Tunnel Co.'s project, bearing date May 10, 1928. Please look at it and tell me if you recognize it to be a true and correct copy thereof.

Mr. SNOW. Yes, sir.

Mr. PECORA. I offer it in evidence. I do not care to have it spread on the record in view of its voluminous character.

The CHAIRMAN. Let it be admitted and filed.

(The document referred to, agreement May 10, 1928, for sale of first mortgage six percent sinking fund gold bonds, Detroit & Canada Tunnel Co. was received in evidence, marked "Committee's Exhibit No. 193," Nov. 28, 1933, and the same is not printed here for the reasons stated above.)

Mr. PECORA. The contract just received in evidence as committee's exhibit No. 193 refers only to the issuance of the first mortgage six percent sinking fund gold bonds, does it not?

Mr. SNOW. Yes, sir.

Mr. PECORA. At the same time, was there another agreement entered into with respect to the issuance of the 20-year 6½-percent convertible debentures?

Mr. SNOW. Yes, sir; a similar contract.

Mr. PECORA. I show you what purports to be a photostatic reproduction of such agreement. Will you look at it and tell me if it is a true and correct copy thereof?

Mr. SNOW. It is.

Mr. PECORA. I offer that in evidence but do not think it necessary to have it spread on the record.

The CHAIRMAN. Let it be admitted and filed.

(The document referred to, agreement May 10, 1928, for sale of 20-year 6½ percent convertible sinking fund gold debentures, Detroit & Canada Tunnel, Co., was received in evidence, marked "Committee's Exhibit No. 194," Nov. 28, 1933, and the same is not printed here for the reasons stated above.)

Mr. PECORA. Let me go back to this record of the progress of negotiations which you have identified, and which has been received in evidence as committee's exhibit 191. I find an entry under date of March 23, 1928, reading as follows [reading]:

> The business was originated by Bertles, Rawls & Donaldson. The Guardian of Detroit is heading the business and the Harris Trust & Savings will probably be in it. Reports of three engineering firms, including Ford, Bacon & Davis, are in hand and are favorable. Contracts for the construction are being let and the general plan of financing has been determined upon. The financing will consist of $8,500,000 first mortgage 6's and $8,500,000 convertible debentures. About $1,800,000 of common stock (part of a substantially larger issue) is also to be sold for the purpose of providing equity money.

At the writer's request Donaldson has insisted that the Chase Securities Corporation have an opportunity to look at the business, and at his request Grier of the Guardian has agreed to get in touch with you in regard to the matter of participation. (Signed L. W. S. to H. G. F.)

That means this memorandum was transmitted by you to Mr. Freeman——

Mr. SNOW. Correct, sir.

Mr. PECORA. Who was then the head of the Chase Securities Corporation?

Mr. SNOW. That is right.

Mr. PECORA. So that on March 23, 1928, you were still requesting Donaldson to insist that the Chase Securities Corporation have an opportunity to look at this business?

Mr. SNOW. That is correct, sir.

Mr. PECORA. And the business had at that time progressed to the point where, 3 days later, a memorandum agreement marked in evidence here as exhibit 192, had actually been signed by the parties contemplating the financing of the Detroit & Canada Tunnel Co.?

Mr. SNOW. I believe all the parties to that memorandum agreement were in New York at that time in connection with this business, and this memorandum of mine to Mr. Freeman was merely a formal record.

The CHAIRMAN. The committee will now take a recess until 2:15.

(Whereupon at 1 p.m., Tuesday, Nov. 28, 1933, a recess was taken until 2:15 p.m. of the same day.)

AFTER RECESS

The subcommittee resumed at 2:15 p.m. on the expiration of the recess.

The CHAIRMAN. The subcommittee will resume. You may proceed, Mr. Pecora.

TESTIMONY OF LESLIE W. SNOW, SECOND VICE PRESIDENT THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK—Resumed

Mr. PECORA. Mr. Snow, from the evidence already given with regard to financing the Detroit & Canada Tunnel Co., a sort of preliminary agreement, in the form of a memorandum, was entered into by the financiers, or the bankers group with the Detroit & Canada Tunnel Co., on March 26, 1928, was there not?

Mr. SNOW. That is correct, except that the agreement was between the bankers and not with the company.

Mr. PECORA. Oh, this is an understanding among the bankers?

Mr. SNOW. That is correct.

Mr. PECORA. As to the proportions in which they shall participate in the financing?

Mr. SNOW. That is included in the agreement.

Mr. PECORA. I notice that your company, namely, Chase Securities Corporation, was a party to this memorandum agreement.

Mr. SNOW. That is correct, sir.

Mr. PECORA. So that, apparently, by March 26, 1928, all the essential terms and conditions under which the various members of the bankers' syndicate were to participate, had been agreed upon and

reduced to writing by means of this memorandum, by that date, I say?

Mr. SNOW. That is correct, sir.

Mr. PECORA. Meanwhile had the Chase Securities Corporation been making a definite study and survey of the whole project with a view to determining whether or not it would participate in the financing?

Mr. SNOW. No; not up to that time. As I testified earlier, this was the first formal presentation, and theretofore our conversations had been purely informal, and had been between Mr. Donaldson and myself.

Senator COUZENS. Was Mr. Donaldson the first one to draw it to your attention?

Mr. SNOW. Yes, sir; in the early fall of 1927.

Senator COUZENS. When this was drawn to your attention was the fact that the Ambassador Bridge had recently been opened drawn to your attention also?

Mr. SNOW. Yes, sir—no, excuse me, Senator Couzens. It had not been opened. It was underway but had not been opened.

Senator COUZENS. You did not know, then, at the time what the revenues were from the Ambassador Bridge?

Mr. SNOW. Well, there was no way of telling, because the bridge was not then completed.

Senator COUZENS. Then I should have asked you: Had estimates of the revenues from the Ambassador Bridge been made available to you?

Mr. SNOW. The engineers for the Tunnel Co., Parsons, Klapp, Brinckerhoff & Douglas had made a report, and they had the Coverdale and Colpitts report.

Senator COUZENS. How soon was the Ambassador Bridge opened, I mean before the tunnel was opened?

Mr. SNOW. About a year.

Senator COUZENS. How long was it that you started the tunnel after the bridge was opened?

Mr. SNOW. The tunnel construction was started about June of 1928, and the bridge was opened I believe in December or November of 1929.

Mr. PECORA. Did you learn at the time that this memorandum agreement among the bankers was entered into, March 26, 1928, what had been done with respect to acquisition of the real estate necessary for the construction of the tunnel?

Mr. SNOW. We were informed at that time that a group of Detroit people had acquired necessary options on the real estate. I am not certain whether any of the real estate had been actually purchased, but I think not. I think it was largely a case of acquiring options on real estate.

Mr. PECORA. Were any of the members of the firm of Bertles, Rawls & Donaldson, Inc., interested in any of those options?

Mr. SNOW. It is my impression, or my recollection I should say, that Mr. Huston Rawls may have had some interest in it. I am not certain, however, about that.

Senator COUZENS. Have you among your files any traffic surveys made by those engineers?

Mr. SNOW. Yes, sir. I have the Ford, Bacon & Davis report, and I have the Daniel L. Turner report, and I have an intermediate report by Parsons, Klapp, Brinckerhoff & Douglas.

Senator COUZENS. Did they make a survey of the traffic, and make what might be called a probable estimate of the traffic to be expected?

Mr. SNOW. Yes, sir.

Senator COUZENS. And as a result of those surveys it was indicated that the tunnel should be operated at a profit, as well as the bridge, was it?

Mr. SNOW. Yes, sir; it was. The bridge was taken into full consideration in all the estimates of our engineers.

Senator COUZENS. Well, I want to say that that ought to be a warning to investors hereafter to be on their guard about these engineers' reports.

Mr. PECORA. Mr. Snow, did you learn at any time that any of the parcels of real estate that necessarily had to be acquired in order to construct this tunnel had been acquired or were held under option by Mr. Huston Rawls, or by the firm of Bertles, Rawls & Donaldson, Inc., and by a man named Judson Bradway, who was the president of the tunnel company.

Mr. SNOW. I have no definite knowledge of that, Mr. Pecora.

Mr. PECORA. Well, Mr. Snow, the matter of acquiring real estate was an item of considerable value to be considered in connection with this project, was it not?

Mr. SNOW. It was very important; yes, sir.

Mr. PECORA. And millions of dollars were devoted to the acquisition of the real estate necessary for the tunnel construction?

Mr. SNOW. It is my understanding that a syndicate had been formed at some time prior to March of 1928, to acquire options on property. Now, the membership of that syndicate I do not know.

Mr. PECORA. Do you know how much was spent for the purpose of acquiring real estate for this tunnel?

Mr. SNOW. Yes, sir.

Mr. PECORA. How much?

Mr. SNOW. Approximately $3,400,000, including all commissions.

Senator COUZENS. Did you check up the cost of this real estate to the syndicate before it was admitted into the assets of the tunnel company?

Mr. SNOW. We did not check back the original title, Senator Couzens, but we satisfied ourselves that the property was acquired at reasonable prices.

Senator COUZENS. Regardless of what the syndicate had paid for it?

Mr. SNOW. Well, we were given to understand definitely that no profit was made by the syndicate except the profit disclosed to us.

Mr. PECORA. Were profits disclosed to you as having been made by the syndicate in acquiring the real estate?

Mr. SNOW. That is correct.

Mr. PECORA. Do you recall the amount of such profit?

Mr. SNOW. Yes, sir.

Mr. PECORA. What was it?

Mr. SNOW. May I explain that situation?

Mr. PECORA. Yes.

Mr. SNOW. The original plan was that the syndicate would get a 10 percent profit in cash, plus a 25 percent profit in preferred stock. Later the plan of financing was changed, and the preferred stock was eliminated. So the plan was amended to give the syndicate 35 percent in cash, with the understanding that they would immediately reinvest that profit in the common stock of the company, purchased from the company at $3.25 a share.

Senator COUZENS. That is, the whole amount?

Mr. SNOW. Yes, sir; and all except $30,000 was so reinvested. I do not know what the explanation of the $30,000 is.

Senator COUZENS. So, in effect, you permitted an addition of 35 percent to what it cost the syndicate, which was an additional charge to the tunnel company.

Mr. SNOW. That commission was taken in common stock.

Mr. PECORA. Do you call that 35 percent a commission on the acquisition of the real estate? You say that commission was allowed. Now, was it a commission?

Mr. SNOW. I do not know how else you would define it.

Mr. PECORA. Wasn't it a profit as distinguished from a commission?

Mr. SNOW. Oh! I see your point. Yes; I think you should call it a profit rather than a commission in the usual sense.

Mr. PECORA. And did the Chase Securities Corporation know that this profit of 35 percent upon the cost to the promoters of the real estate——

Mr. SNOW (interposing). Cost to the company.

Mr. PECORA. Cost to the company of the real estate had been allowed?

Mr. SNOW. Yes, sir; it was fully disclosed.

Mr. PECORA. Who were the persons who shared that 35-percent profit?

Mr. SNOW. I do not believe I can give you the names. I think Mr. Bradway was one of them.

Mr. PECORA. And Mr. Bradway was the president of the Detroit & Canada Tunnel Co., wasn't he?

Mr. SNOW. I think so.

Mr. PECORA. Who else? Was Mr. Huston Rawls one of them?

Mr. SNOW. I am not certain of that, Mr. Pecora. I do not think he was in the original syndicate.

Mr. PECORA. What was that?

Mr. SNOW. I say I do not think he was in the original syndicate.

Mr. PECORA. Did he participate in this 35 percent profit?

Mr. SNOW. I am not sure.

Mr. PECORA. Which was allowed to those who had acquired the real estate that the tunnel company eventually acquired in order to construct the tunnel?

Mr. SNOW. I am not sure.

Mr. PECORA. Can you give us the name or the names of any person or persons other than Mr. Judson Bradway who participated in that 35-percent profit?

Mr. SNOW. Well, Mr. Pecora, attached to the escrow agreement, being exhibit 46-44A, there is a list of names in which the stock was originally issued. That list, I understand, includes all those who received the profits in the syndicate.

Mr. PECORA. Have you that list before you?

Mr. SNOW. Yes, sir.

Mr. PECORA. Just give us the names.

Mr. SNOW. It probably includes those who received stock for other reasons, and therefore it is not fair to say, I believe, that these names are the names of people all of whom received a portion of this profit.

Mr. PECORA. Is Mr. Judson Bradway in the room? [A pause, without response.] Is Mr. Chase Donaldson here?

Mr. DONALDSON. Yes, sir.

Mr. PECORA. Will you kindly step forward, Mr. Donaldson?

Mr. DONALDSON. All right.

Mr. PECORA. Now will you just, off the record, point out the names on that list in Mr. Snow's hand, who participated in that profit?

Mr. DONALDSON. Fred Martin was one who participated; and Judson Bradway, Anderson, and Gardner. That is all that I can recall, Mr. Pecora.

Mr. PECORA. Fred Martin, Judson Bradway, and who else?

Mr. DONALDSON. Anderson and Gardner. They do not appear on this list.

Mr. PECORA. Is that Arthur Gardner?

Mr. DONALDSON. Yes, sir.

Senator COUZENS. What were Anderson's initials?

Mr. DONALDSON. Wendell Anderson.

Mr. PECORA. I do not see it.

Mr. DONALDSON. He might have participated in Gardner's name. They were partners.

Mr. PECORA. Did Fred W. Martin have any connection with the tunnel company?

Mr. DONALDSON. I believe he was one of the original promoters.

Mr. PECORA. And how about Mr. Gardner?

Mr. DONALDSON. Mr. Gardner was interested in the real estate only, as I recall.

Mr. PECORA. He was the president of the tunnel company.

Mr. DONALDSON. No. Mr. Bradway was the president. You were then talking about Mr. Gardner.

Mr. PECORA. How about Judson Bradway?

Mr. DONALDSON. He eventually became the president of the tunnel company.

Mr. PECORA. All right, Mr. Donaldson. That is all for the present.

(Thereupon Mr. Donaldson, who had been standing at the side of the witness, Mr. Snow, left the committee table and took a seat in the room.)

Mr. PECORA. Mr. Snow, do you know what the amount of that profit was estimated to be in dollars and cents?

Mr. SNOW. Yes, sir. It was $755,650, and all except $30,000 of it was reinvested in the common stock.

Mr. PECORA. Now, referring to the exhibit known as "no. 193", in evidence here, and which consists of the agreement between the Detroit & Canada Tunnel Co. and the bankers, for the issuance of the eight and one half million dollars principal amount of first

mortgage gold bonds, I notice attached to and forming a part of that agreement, and marked "Exhibit A", a statement entitled:

Cash disbursements to be made by or on behalf of Detroit & Canada Tunnel Co. at time of closing.

You will find it at page 23 of the printed agreement, Mr. Snow.

Mr. SNOW. Yes, sir.

Mr. PECORA. Now, there is a payment referred to there of $1,564,650 for Detroit real estate, with this notation under it:

See syndicate agreement—Judson Bradway, syndicate manager—dated January 31, 1928, and agreement between Huston Rawls and Detroit & Canada Tunnel Co., dated May 1, 1928.

Are you familiar with those two agreements?

Mr. SNOW. I have seen the last-mentioned agreement, but I do not have a copy of it. I do not recall that I ever saw the first agreement.

Mr. PECORA. Well, what was the substance of the agreement that you did see, namely, the one between Huston Rawls and the Detroit & Canada Tunnel Co.?

Mr. SNOW. If I remember correctly, Mr. Pecora, that is the agreement by which the stock is issued to "Huston Rawls and associates."

Mr. PECORA. For real estate?

Mr. SNOW. For all purposes for which the stock was issued. That is, real estate——

Mr. PECORA (interposing). Does that include the acquisition of the real estate?

Mr. SNOW. That is correct.

Mr. PECORA. Huston Rawls did have some interest in the real estate which was acquired by the tunnel company, then?

Mr. SNOW. He managed the syndicate I believe. I do not know, as I stated before, whether he had any personal interest in it or not.

Mr. PECORA. Now, you will find another item on that exhibit A forming a part of that agreement, reading as follows:

Windsor real estate, $1,365,000, per option agreement of February 4, 1928, between Fred W. Martin and Bertles, Rawls & Donaldson, Inc., and the agreement of May 1, 1928, between Huston Rawls and Detroit & Canada Tunnel Co.

Are you familiar with the option agreement of February 4, 1928, there referred to?

Mr. SNOW. No, sir.

Mr. PECORA. Have you a copy of the agreement of May 1, 1928, made between Huston Rawls and the Detroit & Canada Tunnel Co.?

Mr. SNOW. No, sir.

Mr. PECORA. Now, who is Mr. B. C. Lingle?

Mr. SNOW. I believe Mr. Lingle was an officer of the Harris Trust & Savings Bank of Chicago.

Mr. PECORA. I show you what purports to be a photostatic reproduction of a so-called "sales letter", referring to the issue of 8½ million dollars principal amount of first-mortgage bonds, issued by the Detroit & Canada Tunnel Co., which letter is dated May 11, 1928, and is signed by B. C. Lingle. We obtained this photostatic reproduction from the files of the Chase Harris Forbes Corporation. Will you please look at it and tell us if you can identify it as a true and correct copy of such letter or sales circular?

Mr. SNOW. Yes, sir.

Mr. PECORA. Mr. Chairman, I offer it in evidence and ask that it may be made a part of the record.

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

(The sales letter dated May 11, 1928, and signed "B. C. Lingle" in regard to $8,500,000 Detroit & Canada Tunnel Co. first-mortgage 6-percent sinking-fund gold bonds, was marked "Committee Exhibit No. 195, November 28, 1933", and will be found immediately following where read by Mr. Pecora.)

Mr. PECORA. Now, this sales letter——

Mr. SNOW (interposing). This letter, Mr. Pecora, did not concern us in any way. This was a sales letter prepared by the Harris Trust & Savings Bank of Chicago, I believe, and the copy happened to be in our files.

Mr. PECORA. Well, it was a sales letter that was circulated among the investing public?

Mr. SNOW. I do not know that. We did not issue it.

Mr. PECORA. What was that answer?

Mr. SNOW. I say, we did not issue it.

Senator COUZENS. Did you issue a sales letter marketing the bonds?

Mr. SNOW. My recollection is that we used only a circular to distribute the first-mortgage bonds.

Senator COUZENS. Were they all sold at retail, or at wholesale?

Mr. SNOW. They were retailed. They were sold both wholesale and retail.

Senator COUZENS. Have you the circular that you issued at the time those bonds were marketed?

Mr. SNOW. Yes, sir.

Senator COUZENS. May we see it?

Mr. SNOW. Yes, indeed.

Mr. PECORA. Senator Couzens, we have a copy of it. I will come to it in a minute.

Senator COUZENS. All right.

Mr. PECORA. The copy of the sales letter of Mr. Lingle, received in evidence as Committee Exhibit No. 195, reads as follows:

COMMITTEE EXHIBIT No. 195, NOVEMBER 28, 1933

MAY 11, 1928.

SALES LETTER: (C. & B.) $8,500,000 DETROIT AND CANADA TUNNEL COMPANY FIRST MORTGAGE 6% SINKING FUND GOLD BONDS

This is one of the most interesting and constructive pieces of financing which has been presented to us in a long time. It involves the construction of a vehicular and passenger tunnel under the Detroit River, connecting the business center of Detroit with Windsor, Canada. Messrs. Fenton, MacLean, and Corey and the executives in New York have spent a great deal of time threshing the situation out thoroughly with bankers, contractors, traffic experts, engineers, and others. Our former vice president, Robert O. Lord, now president of the Guardian Detroit Bank, is one of the originators of the deal and has been "living with it" from the start. Some of the directors of the "Guardian Group" are among the most prominent business men in Detroit. Their enthusiastic support of this project is highly significant. Among the directors are Edsel B. Ford, Frank Couzens, Roy D. Chapin, chairman of board of Hudson Motor Car Co., Charles B. VanDusen, president S. S. Kresge Co., Charles S. Mott, vice president, General Motors Corporation, W. Ledyard Mitchell, director and vice president, Chrysler Corporation, and

Alvan D. Macawley, president Packard Motor Car Co. The Guardian group stands squarely behind this project and is taking an interest not only in the first mortgage bonds but also in the debentures. Three independent traffic surveys and estimates of income were made by engineers of wide experience, Ford, Bacon and Davis, Inc., Parsons, Klapp, Brinckerhoff and Douglas and Daniel L. Turner. Mr. Turner is a well known traffic expert who has made special studies of traffic conditions in Detroit. The bankers have retained W. S. Kinnear, who was the chief engineer in charge of construction for the Michigan Central Railroad Tunnel at Detroit which was built in 1910 and the company has retained the chief engineer of the Holland Vehicular Tunnel under the Hudson River in New York City. These engineers will take no part in the actual construction of the tunnel but will be valuable advisors and a constant check on the progress of the work.

The growth of Detroit has been one of the most remarkable in the history of the United States. Since 1910 the population has increased from 465,766 to 1,473,600, or 210 percent. The assessed valuation of property has increased by 800 percent, bank clearings 950 percent and bank and trust company deposits 470 percent. In fact since the 1910 census Detroit, next to Los Angeles, has shown the greatest percentage of growth of any of the 10 largest cities in the country. The border cities across the river. Windsor, Ford City, Riverside, Tecumseh, Sandwich, and Ojibway, in the last 17 years have experienced even a more rapid rate of expansion. In 1911 their population was 23,711; in 1927, 105,000, an increase of 330 percent. Likewise the assessed valuation increased 500 percent. Windsor is the largest of the Border Cities, with a population of 66,893, and Ford City is the site of the main plant of the Ford Motor Co. of Canada.

The present traffic between Detroit and Windsor, with the exception of railroad traffic, is handled by two ferry companies. These facilities are wholly inadequate. Congestion at the ferry docks during the rush hours causes long delays and in the non-rush hours ferry schedules cannot provide for swift or continuous transportation. New facilities are so much needed that those who are familiar with the situation assert that the new tunnel and the new Detroit International Bridge which will be placed about a mile and a half down the river from the tunnel will both have adequate traffic.

Our traffic surveys show that there was an increase in vehicular traffic over the river of 130 percent since 1922 and 60 percent in passenger crossings. Commuting between the two cities is becoming more and more popular. The completion of the tunnel should undoubtedly enlarge the practice. It is estimated that the City Hall of Detroit will be only about twenty minutes distant by bus via the tunnel from the residential section of Windsor. In a traffic survey in Detroit several years ago it was established that in four employment districts 57 percent of the workers canvassed consumed more than thirty minutes in reaching their homes by bus or street cars, and 33 percent of those using their own cars required more than thirty minutes. It is reasonable to suppose that many more Detroiters will live in the border cities when the new transportation facilities are created. In fact the development of any transportation facilities such as paved roads, boulevards, tunnels, and bridges is in itself a stimulation to traffic, as we all realize. This "stimulation factor" is quite apart from the normal increase in traffic in such centers as Detroit and border cities, brought about by increasing population and numbers of automobiles and trucks, and by the growing community of interests, business, and otherwise between the two cities.

The location of the tunnel is exceptionally favorable and will be the principal factor in its ability to draw traffic. The Detroit terminus will be situated a block from the foot of Woodward Avenue, the principal thoroughfare of the city, and is almost at the axis of a fanlike system of boulevards, radiating from the center of the city. The tunnel could not be in a better position to tap the business and industrial section of the city. The Windsor terminus at the foot of Ouelette Avenue is practically in the business district and is within easy reach of the residential parts of the city. The Detroit International Bridge will be over a mile and a half down the River and in not as favorable a location for business traffic. In fact, from the City Hall of Detroit to the business district of Windsor by way of the bridge is four or five miles and only a mile and a half by the tunnel. It is conceded by the experts, however, that most of the tourist traffic will go to the bridge. Tolls on the bridge and tunnel will be approximately the same and are about equal to the present tolls charged

by the ferries. It is the present intention of the Tunnel Company to charge fifty cents to sixty cents for cars and drivers and 5¢ for car and bus passengers.

Because the Detroit River is an international boundary tourists and others crossing from one country to the other are subject to immigration and customs inspections. For commuters and regular crossers this is perfunctory. The Tunnel Company has provided adequate facilities for the inspection of tourists so that ordinary traffic will not be interrupted.

The feasibility of a tunnel under the Detroit River has been fully demonstrated by the Michigan Central Railroad tunnel, which is only a short distance from the site of our tunnel. The Bankers' consulting engineer was in charge of the construction of the railroad tunnel and will have an excellent appreciation of the problems involved in building the new one. The Holland Vehicular Tunnel is a practical guide to the solution of problems of ventilation, traffic control, and terminal facilities. The Detroit Tunnel is not a piece of pioneer construction work, but is based on the experience gleaned from similar projects. A tunnel at this point was decided upon rather than a bridge principally because of the expense of acquiring and maintaining bridge approaches. Large ore and grain boats ply up and down the river, necessitating a high bridge, which in turn necessitates long approaches. The land thus acquired for a bridge can be used for no other purpose, whereas land acquired for a tunnel is only temporarily out of use. Upon the completion of the tunnel this land can be leased. The "air rights" of the Detroit and Canada Tunnel Company are expected to be very valuable as they are located in sections of both cities where property values are high.

We are advised that the cash proceeds of the bonds, debentures, and stock will total $17,720,000, which is more than enough to complete the tunnel on the basis of contracts actually signed, plus other charges and interest during the construction period including due allowance for contingencies. This entire amount will be on deposit with the trustee to be paid out in accordance with a carefully prepared schedule, which will be supervised by the consulting engineers. Ford, Bacon and Davis, Inc., have appraised the tunnel as a going concern at $23,000,000. $8,500,000 first mortgage bonds have been underwritten by the following group of which we will be syndicate managers:

Harris Trust and Savings Bank, Guardian Detroit Company, Chase Securities Corporation, Bertles, Rawls and Donaldson. $8,500,000 6½ percent Twenty Year Debentures have been underwritten and will be offered by the following group, of which the Chase Securities Company will be managers:

Chase Securities Corporation, Guardian Detroit Company, Bertles, Rawls and Donaldson.

In addition to this funded debt, Bertles, Rawls and Donaldson have secured underwriting commitments in Detroit for a substantial amount of the stock of the company, the proceeds of which will be paid over to the trustee at the time that the bonds are delivered.

We are all familiar with the tremendous amount of money which has been spent by the Federal Government and the various States on road construction during the last few years. These large systems of good roads are of no value for through traffic unless facilities for crossing the great natural barriers of the country are also provided, and it is therefore a natural sequence that the road construction program should be followed by the building of bridges and tunnels to provide facilities for crossing large rivers. Of necessity these improvements must be made where there are large centers of population and where the density of traffic is sufficient to make a fair return on the amount invested.

There are few localities in the country which lend themselves to a tunnel of the size and importance of this Detroit-Windsor project. Next to the Holland Tunnel recently completed and connecting New York City with New Jersey, this will be the largest vehicular tunnel on the North American continent. It is an extremely interesting and constructive piece of financing, carefully thought out and backed by a very strong representative group of bankers, and including some of the strongest interests in the City of Detroit, where the project is best known and where its importance is naturally the most appreciated.

B. C. LINGLE.

Mr. PECORA. Now, Mr. Snow, are the statements contained in the exhibit which I have just read, statements that you will take any exception to?

Mr. SNOW. I hardly think so, Mr. Pecora. I did not have that thought in mind as you were reading it, but I do not recall any statements made there that we did not have in our possession and consider to be accurate at the time.

Mr. PECORA. Prior to the agreement by Chase Securities Corporation to participate in the financing of this project, what traffic facilities were there between the City of Detroit and the so-called border cities on the Canadian side of the Detroit River?

Mr. SNOW. Only two ferries.

Mr. PECORA. That is, there were two ferry companies?

Mr. SNOW. Yes, sir.

Mr. PECORA. Operating more than two ferry boats?

Mr. SNOW. Correct.

Mr. PECORA. Was there also at that time in course of construction, or in contemplation, an international bridge over the Detroit River?

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

Mr. PECORA. That is the bridge that is alluded to in this so-called sales letter that has just been read by me?

Mr. SNOW. Yes, sir.

Mr. PECORA. Now, in March of 1928 when the Chase Securities Corporation entered into this memorandum agreement with the other bankers to finance this tunnel project, what was the status of the international bridge construction we have just been referring to?

Mr. SNOW. I do not know exactly. It was completed in November of 1929, so it must have been pretty well under way at that time.

Mr. PECORA. Do you know how many traffic lanes this tunnel project was designed to accommodate or have?

Mr. SNOW. Yes, sir.

Mr. PECORA. How many?

Mr. SNOW. Two.

Mr. PECORA. And how many traffic lanes was this bridge designed to have or accommodate?

Mr. SNOW. The bridge was designed to have five lanes and a sidewalk.

Mr. PECORA. To have five lanes and a sidewalk?

Mr. SNOW. Yes, sir.

Mr. PECORA. The lanes for vehicular traffic and the sidewalk for pedestrian traffic; is that right?

Mr. SNOW. Yes, sir.

Mr. PECORA. And, of course, there was no provisions for sidewalk traffic or pedestrian traffic in the case of the tunnel project?

Mr. SNOW. No, sir.

Mr. PECORA. This tunnel was to come into competition not only with the operating ferry companies, which operated a number of boats, but also with this five-lane vehicular traffic bridge?

Mr. SNOW. Only to a certain extent so far as the bridge was concerned.

Mr. PECORA. Well, what do you mean by that? I do not quite understand your statement.

Mr. SNOW. I mean this: The bridge was located a mile and a half out of Detroit, and in order to go from the center of Detroit to the center of Windsor, Canada, where the majority of commuters

desired to go, it would be necessary in order to go via the bridge to go slightly over 5 miles, taking about 20 minutes or something of that kind. The tunnel was designed to connect the two centers directly, and the distance was about a mile and a quarter, and the time less than 6 minutes.

Senator COUZENS. Do you know who built the bridge?

Mr. SNOW. Yes, sir.

Senator COUZENS. Who built the bridge?

Mr. SNOW. The Detroit International Bridge Co., of which Mr. Bower was president; the biulders were McClintic-Marshall, I believe, and the engineers were Modjeswi & Chase, and Coverdale & Colpitts in regard to traffic.

Senator COUZENS. Who headed this other group for the financing of the bridge?

Mr. SNOW. The group was headed by Hemphill, Noyes & Co. and Peabody, Houghteling & Co., and it included quite a number of other bankers.

Senator COUZENS. Did it include the Union Trust Co., of Pittsburgh?

Mr. SNOW. I believe not, sir. I will be glad to read the list. I have the list of names which appeared on the circular.

Senator COUZENS. It is hardly necessary, I think, because I understood that the McClintic-Marshall Co., who had the contract for building the bridge, is a Mellon institution, and I was wondering if you consulted Mr. Mellon before you went ahead with the tunnel.

Mr. SNOW. No, sir; I am sure we did not.

The CHAIRMAN. Did this bridge have a draw?

Mr. SNOW. No, sir. By the requirements of the War Department the bridge is high enough so that all vessels that use that body of water can pass under it. I think it is 150 feet, or something approximating that, above the water.

Mr. PECORA. I have here what purports to be a photostatic reproduction of a letter from the files department of the Chase Corporation, addressed to Mr. R. J. Whitfield by one of the officers of the Detroit and Security Trust Co., under date of October 6, 1928. Will you look at this photostatic copy and see if you can identify it as a true and correct copy of your letter in the files of your company?

Mr. SNOW. Yes, sir.

Mr. PECORA. I offer it in evidence.

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

(The letter referred to, Mr. R. J. Whitfield, dated Oct. 6, 1928, was received in evidence, marked "Committee Exhibit No. 196, Nov. 28, 1933.")

Mr. PECORA. This is written on the letterhead of the Detroit and Security Trust Co., of Detroit, dated October 6, 1928, and reads as follows [reading]:

DETROIT & SECURITY TRUST CO.

DETROIT, *October 6, 1928.*

MR. R. J. WHITFIELD,
Assistant Vice President, National Park Bank,
New York City.

DEAR MR. WHITFIELD: Mr. Hart has asked me to reply to your letter regarding the tunnel and bridge situation in Detroit, as I have been a little closer to the picture than he has.

This is a pretty big subject to cover adequately in a letter, so I will just hit the high spots.

Early in the bridge financing we were quite interested in the project, working at that time with Hayden, Stone & Co. The prospects for a bridge looked feasible, but the proposition did not progress very far when competition in the form of a tunnel appeared. This dampened our interest and that of Hayden, Stone & Co., because the surveys which we studied did not indicate that the volume of traffic would be sufficient to make both propositions pay. At present the two ferry lines adequately take care of transportation on all but Saturdays and Sundays during the summer time. Whether or not enough more people will cross, with facilities made more easy, to make the thing pay is problematical.

You say that your client has first mortgage and debenture bonds. Off hand I would think the first mortgage bonds would be satisfactory, but I would not care to own the debentures of either the bridge or the tunnel. The bridge is much farther along and will have a jump on the tunnel by about a year.

Further, you wanted to know what relative merits their position would have from a tourist standpoint. The bridge is better located. It is on the west side of the business district, and all of the main highways from the south and west reach the bridge without getting into the congestion of downtown and connect directly with the Montreal-Quebec highway in Canada. The tunnel comes in to Detroit in the heart of the downtown district and will probably have certain advantages from the commuting standpoint. In our preliminary survey of the bridge situation we did not give much thought to commuting service. I believe the tunnel people count on it quite strongly. I am probably prejudiced, but I believe I would rather have the first mortgage bonds on the bridge than I would on the tunnel. I think they will work out all right. Of course, the history of toll bridges has been quite satisfactory.

This has been a rather rambling letter, but it attempts to give you the general picture. If you want some additional and more specific information, do not hesitate to call on us.

With kind regards, I am

Sincerely,

(Signed) E. F. CONNELY,
Vice President.

Looking at the situation now in the year 1933, Mr. Snow, would you say that the writer of this letter used a prophetic kind of ink?

Mr. SNOW. No; I would say he was wrong.

Mr. PECORA. Has the tunnel turned out well?

Mr. SNOW. Better than the bridge.

Mr. PECORA. How much better?

Mr. SNOW. I do not have the figures to make any statement of comparison, but as far as traffic is concerned, the tunnel has secured a larger percentage than the bridge has.

Mr. PECORA. As a matter of fact, both of these propositions are in the hands of receivers, are they not?

Mr. SNOW. That is correct, sir.

Mr. PECORA. Which construction was first commenced, the bridge or this tunnel, if you recall?

Mr. SNOW. The bridge.

Mr. PECORA. Did your engineers, or the engineers whose estimates and reports were of any guidance to you, report definitely that traffic conditions were such that they would support profitably both the bridge enterprise and the tunnel enterprise and also competition with the two ferry companies?

Mr. SNOW. They said just that. They gave very careful consideration to the bridge under construction and to the ferry. As a matter of fact, our engineers estimated that 90 percent of our tourist travel would go via the bridge.

Mr. PECORA. That was their estimate?

Mr. SNOW. Yes, sir.

Mr. PECORA. And the commuting traffic would use the tunnel?

Mr. SNOW. Yes, sir.

The CHAIRMAN. How did it turn out?

Mr. SNOW. It turned out that the bridge got less of the vehicular traffic than our engineers estimated they would get.

Senator COUZENS. Did any of the engineers comment on the abandonment of the ferry companies?

Mr. SNOW. Yes; they all did; they all considered the ferry companies.

Senator COUZENS. In arranging their figures did they contemplate the ferry companies going out of business?

Mr. SNOW. They contemplated, I believe, that the Walkerville ferry would continue. That is removed some little distance from the center of Detroit. But they all believed that the competition with the Windsor ferry would result in the traffic using the Windsor ferry being reduced to very small proportions, and the ferry ultimately going out of business, I assume.

Senator COUZENS. That has not happened, has it?

Mr. SNOW. That has not happened; but that has been the experience in other places, and the engineers had plenty of examples to show what had happened elsewhere. They expected the same thing to happen here, but the depression interfered, and as the result of that the ferry company continued.

Senator COUZENS. Do you contemplate the success of the tunnel when the ferry company goes out of business?

Mr. SNOW. I can only express a personal opinion.

Senator COUZENS. That is all I expect of you.

Mr. SNOW. It is expected that the company ultimately will be very successful insofar as carrying traffic across the river is concerned.

The CHAIRMAN. When was the tunnel completed?

Mr. SNOW. November 3, 1930.

Mr. PECORA. When was the bridge completed?

Mr. SNOW. In November 1929.

Mr. PECORA. So that the writer of this letter was right when he said that the bridge would have about a year's jump on the tunnel?

Mr. SNOW. That is correct; yes.

Mr. PECORA. I show you what purports to be a photostatic reproduction of a memorandum signed by L. W. Snow and addressed to Mr. Freeman, dated April 11, 1928. Your identification number of this document is 46-37A. Will you please look at the photostatic copy which I hand you and tell me if it is a true and correct copy of a memorandum which you addressed to Mr. Freeman on that date?

Mr. SNOW. Yes, sir.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. Let it be admitted.

(The memorandum referred to, signed by L. W. Snow, addressed to Mr. Freeman and dated Apr. 11, 1928, was received in evidence marked "Committee Exhibit No. 197, Nov. 28, 1933.")

Mr. PECORA. Before I read this exhibit I want to ask you this. The two ferry companies that have been referred to are not only operating, but operating profitably, are they not?

Mr. SNOW. I do not know, sir.

Mr. PECORA. They are not in receivership, are they?

Mr. SNOW. I do not think so.

Mr. PECORA. The memorandum introduced in evidence and marked "Exhibit No. 197" reads as follows [reading]:

MEMORANDUM

APRIL 11, 1928.

TO MR. FREEMAN:

DETROIT VEHICULAR TUNNEL

At the suggestion of Mr. Joseph A. Bower, Vice President of the New York Trust Co. and President of the Detroit International Bridge Co., two engineers (Mr. George W. Burpee, of Cloverdale & Colpitts, and Mr. Clement E. Chase, of Modjeski & Chase, the latter the engineers for the Philadelphia-Camden bridge and also the Detroit International bridge) came in and talked to the writer about the relative merits of bridge and tunnel construction for Detroit. Both gentlemen were very frank in their discussion and went into considerable detail with respect to comparative figures on the bridge and tunnel projects. They advised that a tunnel had been considered by the present Detroit Bridge Co., but the bridge was determined to be superior. The writer could not help gaining the impression that Mr. Bower was somewhat worried over the competition of the tunnel, particularly as the latter entered the heart of Detroit while his bridge was slightly removed from the center of the city. The engineers did not maintain that the tunnel could not be profitably operated; in fact, they stated definitely that after a few years they expected that there would be plenty of business to tax the capacity of both the bridge and the tunnel during rush hours.

The two main objections to the tunnel project as explained by the engineers were, first, congestion during rush hours due to smaller number of lanes of traffic in the tunnel, and second, congestion due to inadequate terminal area at the entrance of the tunnel in Detroit.

The bridge is to have five lanes of traffic, three of which will be used in one direction when the flow of traffic is heaviest in that direction. The tunnel, as planned, will have only two lanes, or one in each direction. In the event that a fire or other accident occurs in one lane of the tunnel, the engineers stated that there was almost certain to be a tie-up of traffic. The cost of the bridge is approximately $20,000,000, and the cost of the tunnel approximately $16,000,000. Reduced to terms of traffic lanes this amounts to $4,000,000 for each bridge lane and $8,000,000 for each tunnel lane, or twice the cost per bridge lane. The cost of operation and maintenance is figured at $325,000 per annum for the bridge and $500,000 per annum for the tunnel. Reducing these figures to terms of traffic lanes the cost of operation of each bridge lane is $65,000 per annum, and of each tunnel lane $250,000 per annum.

One of the principal causes of congestion in either a bridge or a tunnel over an international boundary is the necessity for customs inspection. The amount of traffic which can be handled depends directly on the customs inspection capacity. The engineers advised that a very large area has been provided for at both ends of the bridge in order that traffic can "fan" out and pass by a large number of customs booths. The engineers advised that the terminal area on the Windsor side of the tunnel was adequate but on the Detroit side, due to the fact that the tunnel came into the congested part of the city, there was insufficient terminal area. They said that the figures showed that the bridge would have 138 percent more terminal area on the Detroit side than the tunnel. Worked out in terms of area per car, figured on capacity operation of each, the tunnel area allows 14 square feet per car and the bridge 32 square feet per car. This situation is further complicated in the tunnel terminal due to the fact that the company plans to construct an office building over the terminal, still further restricting the space; also by the fact that in order to rise to the street level from the depth which it is necessary to go under the river, a comparatively steep grade (about 5 percent) is necessary on the Detroit end of the tunnel. This was said to be objectionable.

Mr. Chase left with the writer the attached comparative figures of the Holland Tunnel (between New York and New Jersey) and the Delaware River bridge (between Philadelphia and Camden) which are said to be comparable since the New Jersey end of each was built by the State of New Jersey and both are controlled by the same commission. This comparison of course is quite favorable to the bridge.

With respect to traffic, the engineers stated that the bridge was not expected to take care of more than a small percentage of the pedestrian traffic which now travelled daily across the river on the ferries. They believed that this traffic would largely go to the tunnel provided it was in a position to take care of such traffic during rush hours. They were of the impression, however, that the congestion would be so great during rush hours due to the inadequate tunnel area and congestion in the streets leading to the tunnel entrance, that a great deal of the traffic which the tunnel would expect to get would continue to patronize the ferries, and a part of it would be diverted to the bridge.

None of the tunnel figures given above have been checked with the tunnel engineers' reports in our possession.

The writer suggests that these facts be brought to the attention, at the proper time, of the Guardian Detroit Company in order that the tunnel engineers may answer the objections suggested.

L. W. SNOW.

The New York State Bridge & Tunnel Commission and the New Jersey Interstate Bridge & Tunnel Commission operate the Holland Tunnel

Average daily traffic, December 1927	vehicles	18,180
Average daily revenues, Nov. 13 to Dec. 31, 1927	dollars	10,770
Average toll per vehicle	cents	59
Average daily expenses Nov. 13 to Dec. 31, 1927	dollars	3,932
Average operating expense per vehicle	cents	21.6
Approximate interest charge per vehicle	cents	31.7
Interest and operating expense per vehicle	cents	53.3

The New Jersey Interstate Bridge & Tunnel Commission and a Pennsylvania Commission organized as the Delaware River Bridge Joint Commission operate the Delaware River Bridge

Average daily traffic, December 1927	vehicles	20,875
Average daily traffic year ending Dec. 31, 1927	vehicles	23,543
Average daily revenues, 1927	dollars	6,680
Average toll per vehicle	cents	28.4
Average daily expenses, 1927	dollars	950.0
Average expense per vehicle	cents	4.0
Approximate interest charge per vehicle (December)	cents	20.8
Interest and operating expense per vehicle	cents	24.8

Was your suggestion carried out?

Mr. SNOW. It was carried out in this way, Mr. Pecora—may I explain that it has always been my custom, where possible, to write a memorandum of a meeting immediately after the meeting. This was written the day the meeting was held. I subsequently checked the statements made by these engineers with the engineers' reports in our files. I discussed the matter at great length with Mr. Lehman of the Guardian-Detroit Co., Mr. Donaldson and Mr. Rawls of Bertles, Rawls & Donaldson, and, I believe, with Mr. Brinckerhoff of Parsons, Klapp, Brinckerhoff & Douglas. I found these same questions had been raised time and time again by Mr. Bower of the Detroit International Bridge, and also by Peabody Houghteling & Co., and Hemphill, Noyes & Co., and the other bankers of the group. I found that all of the questions were completely answered, and there was no basis for any of the arguments presented by these engineers. If you wish, I would be very glad to go into the details of that.

Mr. PECORA. I notice that in this memorandum, in your conversation with Mr. Chase who was one of the engineers for the bridge company, comparison is made with the Holland Tunnel connecting New York and New Jersey, which runs under the Hudson River. As

a matter of fact, the Holland Tunnel has no bridge competition in the downtown section of New York, has it?

Mr. SNOW. No, sir.

Mr. PECORA. Its only bridge competition is 10 or more miles distant, north, up across Washington Heights?

Mr. SNOW. That is correct.

Mr. PECORA. And taps two different areas; is that right?

Mr. SNOW. That is right, sir.

Mr. PECORA. Now, do you think it was fair to take the operation of the Holland Tunnel as a basis for comparison in making estimates on the feasibility of the Detroit Tunnel?

Mr. SNOW. No; I do not think it was, and we had never made any such comparisons.

Mr. PECORA. Were you able to make any comparison with any similar situation where a tunnel was coming in direct competition not only with a bridge operating in the same general locality or area, but also with a ferry company?

Mr. SNOW. I do not know of any similar situation where a tunnel competed with a bridge, but there were plenty of illustrations where a tunnel competed with a ferry.

Mr. PECORA. But was not the disturbing factor in this situation the competition of the bridge?

Mr. SNOW. No, sir. It was not so considered and it has not proved to be so. Mr. Pecora, may I have permission to present some information regarding competition of the Holland Tunnel and the existing ferries in competition with it?

Mr. PECORA. Do you think it is a parallel situation?

Mr. SNOW. I do; very decidedly.

Mr. PECORA. They are not parallel, in view of the fact that the ferries and the Holland Tunnel do not come in competition with any bridge.

Mr. SNOW. But the ferries that plied across the Hudson River to approximately the same points as the tunnel competed directly with the tunnel, and have since been closed as the result of competition. That is the Desbrosses Street Ferry of the Pennsylvania Railroad; and also the Cortland Street Ferry has lost a very large proportion of its traffic.

Mr. PECORA. Are you familiar with the capital structure of the Detroit & Canada Tunnel Co.?

Mr. SNOW. Yes, sir.

Mr. PECORA. What was it?

Mr. SNOW. It consisted of $8,500,000 first-mortgage 6-percent bonds maturing May 1, 1953; $8,500,000 20-year 6½-percent debentures maturing May 1, 1948, and 3,100,000 shares of common stock.

Mr. PECORA. Three million one hundred thousand shares?

Mr. SNOW. Yes, sir; authorized.

Mr. PECORA. No par value?

Mr. SNOW. No par value.

Mr. PECORA. What were the convertible features of the debentures, the 20-year debentures that were issued?

Mr. SNOW. The debentures were convertible into common stock at the rate of 125 shares of stock for each $1,000 debenture for the first 2 million of debentures converted. The next 2 million re-

ceived 100 shares for each $1,000 debenture, the next 2 million received 90 shares, and the remainder 80 shares.

The CHAIRMAN. What was the par value of the stock?

Mr. SNOW. No par value, Senator.

Mr. PECORA. Under the contract marked in evidence here as exhibit no. 193, between the Detroit & Canada Tunnel Co. and the bankers, who were the Guardian Detroit Co., Harris Trust & Savings Bank, Chase Securities Corporation, and Bertles, Rawls & Donaldson, Incorporated, the bankers took over the entire issue of 8½ million dollars principal amount of those first mortgage bonds, did they not?

Mr. SNOW. Yes, sir.

Mr. PECORA. At what price?

Mr. SNOW. They were purchased from the company at 90.

Mr. PECORA. And the debentures which were covered by the agreement in evidence marked "Exhibit No. 194" were taken over by the same interests, with the exception of the Harris Trust & Savings Bank of Illinois, also at 90 and interest?

Mr. SNOW. That is right.

Mr. PECORA. Did the banking groups apportion these debentures among themselves in any fixed proportion or ratio?

Mr. SNOW. Yes, sir.

Mr. PECORA. What were they?

Mr. SNOW. With respect to the first mortgage, Harris Trust & Savings Bank had a 35.3-percent participation in the purchase group. The Guardian Detroit Co., 35.3 percent. Chase Securities Corporation, 23½ percent, and Bertles, Rawls & Donaldson, 5.9 percent.

Mr. PECORA. How were the debentures apportioned among the three banking members?

Mr. SNOW. The Guardian Detroit Co. had 40 percent; Chase Securities Corporation, 40 percent; Bertles, Rawls & Donaldson, 20 percent.

Senator COUZENS. Did they retail those out by forming sellers groups?

Mr. SNOW. There were bankers' groups formed, Senator, which acquired these securities from the purchase groups, and they, through selling groups, sold them to others.

Senator COUZENS. What did the second group pay to the originating group?

Mr. SNOW. The bankers' group, for the first mortgage bond issue, purchased them at 97, and the debenture group at 95½. The first-mortgage bonds were sold, then, by the bankers' group through a selling group at 100, and the debentures were offered publicly at 99½.

The CHAIRMAN. Sold to the public, you mean?

Mr. SNOW. Retailed, I mean, Senator.

Senator COUZENS. So the originating group took off a big chunk, if they bought them at 90 and sold them at 97?

Mr. SNOW. The purchase price of these securities is fixed in the memorandum agreement of March 26, which is now in evidence, but the bonds were not publicly sold—the contracts were not signed—until nearly 2 months later. In the meantime there had been a substantial appreciation in the bond market, and the selling prices fixed

on May 15 and 16, the dates of the offering of those securities, were the prices at which securities of that type were selling at that time.

Mr. PECORA. What are those first mortgage bonds now selling for?

Mr. SNOW. I think as of a recent date they were bid 6 and offered at 10, approximately.

Mr. PECORA. Less than the amount of the spread the original purchasing group paid?

Mr. SNOW. That is correct, sir.

Mr. PECORA. What are the debentures now selling at?

Mr. SNOW. No bid, and offered about 1.

Mr. PECORA. Which is certainly less than the spread.

The CHAIRMAN. What is the name of the corporation issuing the bonds?

Mr. SNOW. Detroit & Canada Tunnel Co.

The CHAIRMAN. Incorporated under the laws of what State?

Mr. SNOW. Michigan.

Mr. PECORA. At about the time of the issuance of these mortgage bonds and these debentures, was any arrangement entered into for the purchase of a certain number of shares of common stock of the Detroit & Canada Tunnel Co. by Bertles, Rawls & Donaldson, Inc.?

Mr. SNOW. Yes, sir. One of the conditions of the financing as outlined in the memorandum agreement was the acquisition of 560,000 shares of common stock at $1,820,000.

Mr. PECORA. By Bertles, Rawls & Donaldson, Inc.?

Mr. SNOW. Yes, sir.

Mr. PECORA. That is at the rate of how much per share?

Mr. SNOW. $3.25.

Mr. PECORA. Was there also a block of 1,690,000 shares of the common stock issued to organizers and property owners in part payment for property and franchises valued at $5,254,566?

Mr. SNOW. I am not sure of the figure you mention, Mr. Pecora, but the amount of stock is correct.

The CHAIRMAN. How much did the corporation realize from its capital stock?

Mr. SNOW. $1,820,000 in cash, Senator, and it paid in that manner for the services of the organizers and the syndicate which acquired the property for the tunnel company.

The CHAIRMAN. What did the tunnel cost?

Mr. SNOW. It cost $17,459,000 up to August 31, 1933, everything included.

Senator COUZENS. In other words, that included interest on the securities for a number of years?

Mr. SNOW. Yes, sir. It is customary to include interest during construction.

Senator TOWNSEND. Was there not a bridge built across the river at about the same time you were building this tunnel?

Mr. SNOW. That was prior to the construction of the tunnel.

Mr. PECORA. Did any of the members of the original bankers' purchasing group acquire any of the common stock of the Detroit & Canada Tunnel Co.?

Mr. SNOW. Yes, sir.

Mr. PECORA. From whom?

Mr. SNOW. From the company. That is, Bertles, Rawls & Donaldson acquired in payment for the work they had done, their services and their out-of-pocket expenses from December 1926, until May 1928, 750,000 shares of common stock. They in turn sold——

Mr. PECORA. What did you say was the consideration for those 750,000 shares of common stock issued to Bertles, Rawls & Donaldson?

Mr. SNOW. That organization had worked almost exclusively on this piece of business from December 1926 until May 1928. They got no reimbursement for their out-of-pocket expenses and no pay for their services other than in common stock, and they received for that 750,000 shares.

Mr. PECORA. Do you know what the amount of their outlays was?

Mr. SNOW. I do not, sir.

Mr. PECORA. Well, the services that you refer to were their services in connection with the promotion of the project?

Mr. SNOW. It included that; yes, sir.

Mr. PECORA. Did it include anything else than that?

Mr. SNOW. The arrangement for the financing.

Mr. PECORA. Well, were they not participants in the purchase group?

Mr. SNOW. That is correct.

Mr. PECORA. Both of the mortgage bonds and the debentures?

Mr. SNOW. That is right.

Mr. PECORA. And as a result of their participation in those two groups they made rather handsome profits in the participation of the spread?

Mr. SNOW. They made a proportionate share of profits or losses, as the case may have been.

Mr. PECORA. I show you what purports to be a photostatic reproduction of a memorandum signed "L. W. Snow", dated January 31, 1930, with respect to this Detroit & Canada Tunnel Co. common stock issue. Will you please look at it and tell me if you recognize it to be a true and correct copy of such memorandum prepared by you.

Mr. SNOW. I do, sir.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. It may be admitted in evidence and marked as an exhibit.

(Memorandum with respect to Detroit & Canada Tunnel Co. signed "L. W. Snow", dated Jan. 31, 1930, was received in evidence and marked "Committee Exhibit 198 of November 28, 1933.")

Mr. PECORA. The memorandum reads as follows (reading):

The capitalization of the company is as follows:

	Authorized	Outstanding
First-mortgage 6-percent sinking fund gold bonds, due 1953	$8,500,000	$8,500,000
20-year 6½ percent convertible sinking fund gold debentures, due 1948	$8,500,000	$8,500,000
No par value common stock (shares)	[1] 3,100,000	2,250,000

[1] 850,000 shares of no par value common stock reserved for conversion of the debentures.

The 2,250,000 shares of common stock were originally issued as follows:

To Bertles, Rawls & Donaldson (for sale to public) 560,000 shares for cash	$1,820,000
To first-mortgage-bond bankers, 185,000 shares for cash	170,000
To convertible-debenture bankers, 355,000 shares for cash	170,000
To organizers and property owners, 1,150,000 shares for property and franchises valued at	5,254,566
Total, 2,250,000 shares	7,414,566

I have only read part of the memorandum. This memorandum also includes the following statement:

The book value of the common stock, based upon the Public Utility Commission's valuation, is approximately $4.20 per share.

Also the following statement:

A market has been maintained in the free stock on the Produce Exchange. It has sold as high as 6½ on the Produce Exchange and 7½ on the over-the-counter market. The market on the exchange is at present 4¾—4⅞.

Dated January 31, 1930.

(Committee exhibit no. 198 of Nov. 28, 1933, is here printed in the record in full as follows):

MEMORANDUM, DETROIT & CANADA TUNNEL CO., COMMON STOCK

The capitalization of the company is as follows:

	Authorized	Outstanding
First-mortgage 6-percent sinking-fund gold bonds, due 1953	$8,500,000	$8,500,000
20-year 6½-percent convertible sinking-fund gold debentures, due 1948	$8,500,000	$8,500,000
No par-value common stock (shares)	[1] 3,100,000	2,250,000

[1] 850,000 shares of no par-value common stock reserved for conversion of the debentures.

The 2,250,000 shares of common stock were originally issued as follows:

To Bertles, Rawls & Donaldson (for sale to public), 560,000 shares for cash	$1,820,000
To first mortgage bond bankers, 185,000 shares for cash	170,000
To convertible debenture bankers, 355,000 shares for cash	170,000
To organizers and property owners, 1,150,000 shares for property and franchises valued at	5,254,566
Total, 2,250,000 shares	7,414,566

NOTE: Of the total outstanding common stock, approximately [1] 813,412 shares (stock sold to the public) is represented by free stock, and the balance, approximately [1] 1,436,588 shares, is deposited in escrow with the Guardian Trust Co. of Detroit as trustee and will not become free stock until 60 days after completion of the tunnel. The stock owned by the Chase Securities Corporation is so deposited.

The shares issued to first mortgage bond and debenture bankers as above shown formed part of the consideration for the financing. The stock owned by Chase Securities Corporation was received from this source.

The above value of $5,254.566 is the estimate of Mr. Manfred K. Toeppen, engineer, who valued the property for the Public Utility Commission. Mr. Toeppen estimated that the value of real estate turned over to the tunnel company was $4,156,064, for which $3,264,420 was paid in cash and the balance of $1,891,644 was paid for in stock. He also valued the franchises, charter

[1] Figures changed by Bertles, Rawls & Donaldson, Feb. 5, 1930.

rights, etc., at $3,811,280, of which $448,358 was paid for in cash and the balance of $3,362,922 was paid for in stock. Consequently, the above figure of $5,254,566 is the aggregate of the value of property and franchises received in exchange for stock. Including the above figures the total present value of the tunnel (assuming completion) was estimated to be $26,453,219, which was the valuation upon which the Public Utility Commission based its authorization for the issuance of securities.

The book value of the common stock, based upon the Public Utility Commission's valuation is approximately $4.20 per share.

Messrs. Parsons, Klapp, Brinckerhoff & Douglas, engineers, in their report dated September 5, 1928, estimated that net earnings based on the fully developed capacity of the tunnel, will amount to $4,009,000, or a balance of $2,946,500 before taxes and depreciation, but after deducting the maximum interest on bonds and debentures. This indicates earnings in excess of $1 per share per annum on the common stock. This estimate was made before the success of the Holland Tunnel had been fully demonstrated and it is our understanding that the engineers are inclined to revise their estimates upward as a result of the experience with the Holland Tunnel.

A market has been maintained in the free stock on the Produce Exchange. It has sold as high as 6½ on the Produce Exchange and 7½ in the over-the-counter market. The market on the Exchange is at present 4¾-4⅞.

L. W. SNOW.

JANUARY 31, 1930.

Senator COUZENS. To whom is that addressed?

Mr. PECORA. It does not seem to be addressed to anybody. Do you know to whom this memorandum was directed, Mr. Snow?

Mr. SNOW. It was made for my own information, Mr. Pecora, for purposes of reference.

Mr. PECORA. Just for purposes of future reference?

Mr. SNOW. That is right.

Mr. PECORA. Who actually received the $170,000 that was paid by the first mortgage bond purchasing syndicate members for the 185,000 shares of the common stock of the company?

Mr. SNOW. Both that and the other $170,000 were received by "Huston, Rawls and associates." To that extent this memorandum is misleading, as it gives the impression that the money all went to the company, which is not the case. I was writing this for another purpose at the time; arriving at the total valuation in that column rather than trying to set forth who received the money.

Mr. PECORA. Now the banking group that purchased the first mortgage bonds got from Bertles, Rawls & Donaldson out of their holdings of the common stock 185,000 shares of $170,000 cash?

Mr. SNOW. It was acquired actually from "Huston, Rawls and associates." Practically that was the firm—Bertles, Rawls & Donaldson.

Mr. PECORA. Yes. And the same banking group, with the exception of the Harris Trust & Savings Bank, took over the debentures, and at the same time were enabled to purchase 355,000 shares of the common stock for $170,000?

Mr. SNOW. Yes, sir.

Mr. PECORA. Or at the rate of a little less than 50 cents a share?

Mr. SNOW. That is correct.

Mr. PECORA. Do you know why that transaction was had?

Mr. SNOW. Yes. That was part of the original understanding at the time the financing was proposed to us. Those 340,000 shares of stock which Bertles, Rawls & Donaldson received they wished to sell, and the bankers agreed to buy them at these prices. I think that is covered in that memorandum agreement of March 26, 1928.

Mr. PECORA. Were those $340,000 paid for shares which Bertles, Rawls & Donaldson acquired in payment for their services in promotion, and so forth?

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

The CHAIRMAN. Did the syndicate dispose of all these first-mortgage bonds and all of the debentures, or did they have some left?

Mr. SNOW. The entire issues of first-mortgage bonds and debentures were sold by the purchase group to the banking group and distributed through the selling group.

The CHAIRMAN. So they were all disposed of?

Mr. SNOW. Yes, sir.

Mr. PECORA. At the time the banking group acquired this common stock was any agreement entered into to keep that stock off the market for any period of time?

Mr. SNOW. There was an arrangement that the 1,690,000 shares should be escrowed with the Guardian Trust Co., I believe, for a period of 60 days beyond the completion of the tunnel.

Mr. PECORA. That is, beyond the completion of the construction work of the tunnel?

Mr. SNOW. That is correct.

Mr. PECORA. Why was that done, Mr. Snow?

Mr. SNOW. That was done because Bertles, Rawls & Donaldson had undertaken to distribute 560,000 shares of common stock, to net the company $1,820,000, and they were not agreeable to doing that unless the balance of the stock would be escrowed for that period.

Mr. PECORA. Well, the escrowing of the stock was done to enable Bertles, Rawls & Donaldson the better to control the market for the stock, was it not?

Mr. SNOW. I think it was done because they were a small house and could not handle a larger issue, and had all the stock been on the market at one time they would not have been able to distribute the 560,000 shares.

Mr. PECORA. You state in this memorandum of January 31, 1930, that "A market has been maintained in the free stock on the Produce Exchange." What was the quantity of that free stock? How many shares?

Mr. SNOW. I really do not know.

Mr. PECORA. It was very small in comparison to the total number of the outstanding shares, was it not?

Mr. SNOW. Well, it was a part, of course, of the 560,000 shares.

Mr. PECORA. And was it not done to enable this banking firm of Bertles, Rawls & Donaldson to dispose of the shares which they got for $1,820,000, or at the rate of about $3 a share, at a profit?

Mr. SNOW. Do you mean was that the reason for the market on the Produce Exchange?

Mr. PECORA. Yes. And was it also the reason for escrowing the other stock which the bankers acquired?

Mr. SNOW. Why, I assume the reason for listing the stock on the Produce Exchange was the same reason that all stocks are listed, so as to provide a medium through which the stock could be purchased and sold other than in the over-the-counter market.

Mr. PECORA. Was not this escrow agreement entered into virtually to enable that banking firm to dispose of the shares of the common stock which it had acquired?

Mr. SNOW. Why, I assume that it had a good deal to do with the marketing of the stock.

Mr. PECORA. Sir?

Mr. SNOW. I assume it had a good deal to do with the marketing of the stock, because this was a construction project, and the value of the stock would not be evidenced until the tunnel was built.

Mr. PECORA. How many shares did the Chase Securities acquire from Bertles, Rawls & Donaldson of the common stock?

Mr. SNOW. A total of 175,950 shares.

Mr. PECORA. At what total cost to the Chase?

Mr. SNOW. $107,950. Or an average of 61.35 cents per share.

Mr. PECORA. What did the Chase do with that stock?

Mr. SNOW. It sold under option to Bertles, Rawls & Donaldson 41,348 shares for an aggregate amount of $153,076.

Mr. PECORA. That is, it sold less than one quarter of the number of shares that it got from Bertles, Rawls & Donaldson for a price of about 50 percent in excess of what the Chase paid for all of the shares, amounting to 175,950, that it originally obtained from Bertles, Rawls & Donaldson?

Mr. SNOW. That is correct, sir. The stock was acquired very cheaply from Bertles, Rawls & Donaldson in the first instance.

Mr. PECORA. Did Bertles, Rawls & Donaldson at that time operate a syndicate trading account in the stock?

Mr. SNOW. I do not know, sir.

The CHAIRMAN. They paid nearly $3 a share for it and sold it to you at 60 cents.

Mr. PECORA. Sixty-one and a fraction cents.

Now on the question of whether or not Bertles, Rawls & Donaldson were operating a trading account in the common stock of the company, let me refer you to a letter addressed to you under date of October 8, 1929, by Chase Donaldson, of Bertles, Rawls & Donaldson, which bears your identification number 45-27. Have you got it?

Mr. SNOW. Yes, sir.

Mr. PECORA. I show you what purports to be a photostatic reproduction of such a letter. Will you look at it and tell me if you identify it as a true and correct copy of a letter received by you?

Mr. SNOW. I do, sir.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. Let it be admitted.

(Letter dated Oct. 8, 1929, from Chase Donaldson, of Bertles, Rawls & Donaldson, to Leslie W. Snow was received in evidence and marked "Committee Exhibit 199 of Nov. 28, 1933.")

Mr. PECORA. The letter reads as follows [reading]:

BERTLES, RAWLS & DONALDSON, INC.,
New York, October 8, 1929.

Mr. LESLIE SNOW.
Chase Securities Corporation,
60 Cedar Street, New York City.

DEAR LESLIE: I thought you might like to read over the agreement on tunnel receipts this evening so that we can talk about it tomorrow.

The other members in the syndicate will most likely include a number of people in Detroit who were originally interested in the Tunnel, including the Guardian Detroit people. In New York some of our other friends who were in the original syndicate will in all probability participate in this one.

The syndicate, I believe, can obtain some Tunnel Receipts around $4 a share at the present time, although the most that could be obtained at this time is limited to about 20,000.

If you would please read this over and discuss it with Mr. Freeman and any of your other associates who might care to go into the syndicate, I will go farther with you tomorrow. Should you care to purchase for yourself a small block of the receipts, I will still sell you the 2,000 which I offered you a couple of weeks ago from my own account, but at a price of $4, as this is more in line with what the first block would cost the syndicate. So far as you personally are concerned it is six of one and half a dozen of another as to whether you buy receipts or participate in the syndicate, and I am a little reluctant to turn my own personal receipts into the syndicate.

This is entirely a cash syndicate, you will note, and no stock will be turned into the syndicate in lieu of cash.

Very truly yours,

CHASE DONALDSON.

Does that recall to your mind that Bertles, Rawls & Donaldson were operating a syndicate account in the stock of this company?

Mr. SNOW. I recall this transaction very clearly, but it is not my understanding of a trading or a syndicate account such as you have reference to.

Mr. PECORA. Well, what kind of syndicate does this refer to?

Mr. SNOW. If my recollection is right—and if not, Mr. Donaldson is here and can check it—I believe certain people in Detroit were very anxious to raise some money on their trustees receipts for common stock, and the idea was conceived of organizing a syndicate which would acquire from those holders a certain amount of trustees receipts and carry them until such time as the tunnel was completed and the free stock could be delivered against the receipts. Now, what was to be done at that time I do not know. But Mr. Donaldson did show me copy of an agreement which he had prepared, and suggested that we might like to participate in it; that is, the Chase Securities Corporation. You will note from my notation on the side of this letter that I consulted Mr. Freeman and Mr. McKee, who concluded not to go along, and so advised Rawls.

Mr. PECORA. I show you what purports to be a photostatic copy of another letter addressed to you by Chase Donaldson under date of October 30, 1929, known by your identifying number of 45-28-B. Will you look at it and tell me whether it is a true and correct copy of such a letter received by you?

Mr. SNOW. Yes, sir.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. Let it be received in evidence.

(Letter dated Oct. 30, 1929, from Chase Donaldson to Leslie W. Snow was received in evidence and marked "Committee Exhibit No. 200 of November 28, 1933.")

Mr. PECORA. The exhibit reads as follows [reading]:

BERTLES, RAWLS & DONALDSON, INC.,
INVESTMENT SECURITIES
15 Broad Street, New York, October 30, 1929.

MR. LESLIE SNOW, CHASE SECURITIES CORPORATION,
60 Cedar Street, New York City.

DEAR LESLIE: Many thanks to you for your various checks which have helped materially. I hope that all of you will make a substantial profit on this stock.

We have had extraordinary success with the market in the tunnel stock during the past few days and have also been particularly fortunate in that

we have sold the stock we have accumulated in this market to Harris, Forbes & Co.'s Paris office. In other words, we have bought over the past week about 8,000 shares of stock and have made one sale to Harris, Forbes of 11,000, which in effect removes most of the weak stock in this market.

This morning there are a few scattered offerings at 5 and the rest up to 6½. If the market does not break any worse, I think the tunnel market will give a good account of itself.

Incidentally, Harris, Forbes' Paris office has taken a total of about 30,000-odd shares of tunnel stock and distributed it abroad.

Sincerely yours,

(Signed) CHASE DONALDSON.

Does that refresh your recollection as to whether or not in October 1929 Bertles, Rawls & Donaldson were operating a syndicating account in this Tunnel Co. common stock?

Mr. SNOW. The second paragraph would indicate they were buying and selling common stock. I know nothing further about it than this letter indicates.

The CHAIRMAN. What was the stock selling at at that time, do you know?

Mr. SNOW. Well, I judge from this letter, Senator, that it was selling at between 5 and 6.

Senator COUZENS. Did you invest your money in the stock?

Mr. SNOW. I did, sir.

Senator COUZENS. Did you make any money out of it or lose any money out of it?

Mr. SNOW. No, sir.

The CHAIRMAN. That does not answer.

Mr. SNOW. I lost it.

Senator GOLDSBOROUGH. He said he lost it.

Mr. PECORA. Can you produce from the files of your company a letter dated May 5, 1931, addressed as follows:

To Owners Who Are Receiving Detroit & Canada Tunnel Common Stock for Their Harris Forbes "Pool" Certificates:

photostatic copy of which I show you? [Handing same to Mr. Snow.]

Mr. SNOW. Yes, sir.

Mr. PECORA. Do you recognize that photostatic copy of letter of May 5, 1931, signed by Lloyd W. Smith, as a true and correct copy of such letter?

Mr. SNOW. Yes, sir.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. Let it be admitted, and marked.

(Photostatic copy of letter dated May 5, 1931, from Lloyd W. Smith addressed "To Owners Who are Receiving Detroit & Canada Tunnel Common Stock for their Harris Forbes 'Pool' Certificates" was received in evidence and marked "Committee Exhibit No. 201, of Nov. 28, 1933.")

Mr. PECORA. This letter reads as follows [reading]:

MAY 5, 1931.

TO OWNERS WHO ARE RECEIVING DETROIT & CANADA TUNNEL COMMON STOCK FOR THEIR HARRIS FORBES "POOL" CERTIFICATES:

The market for the Detroit & Canada Tunnel Common Stock is handled by Bertles, Rawls & Jennings, 63 Wall Street, New York City, Mr. Rawls being the man who brought the business to our group and through whom we originally received the above stock as a bonus.

The stock, as you know, has been subject to an Agreement, the object of which was to prevent the sale of this and certain other stock, and the consequent demoralization of the market. Market conditions have, of course, worked against the market for the stock, and the results of the Tunnel operation have naturally been affected by the extreme business depression in the City of Detroit.

Mr. Rawls has written asking if "25% of the shares that holders desire to sell be optioned" to his firm as follows:

Two Dollars and Fifty Cents ($2.50) per share for any or all of _____ shares of the total for which this option is given, if exercised on or before May 31st, 1931.

Three Dollars ($3.00) per share for any or all of _____ shares of the total for which this option is given, if exercised on or before June 30th, 1931.

Three Dollars and Fifty Cents ($3.50) per share for any or all of _____ shares of the total for which this option is given, if exercised on or before July 31st, 1931.

Four Dollars ($4.00) per share for any or all of _____ shares of the total for which this option is given, if exercised on or before August 31st, 1931.

If orderly marketing is made possible under this Agreement the present market can probably be maintained or somewhat improved. Without an Agreement among these stockholders permitting proper handling of the situation, no reason would exist for continuing efforts to maintain or improve the market. Having in mind how all, or almost all, of this stock was acquired, Mr. Rawls' request seems entirely reasonable.

If it is not your intention to sell any of your stock before September 1st, 1931—and I am quite sure that will be the decision of most of us—Mr. Rawls will appreciate very much having a line from you to that effect. A number of us have already written to him.

(Signed) LLOYD W. SMITH.

Mr. PECORA. Who is Lloyd W. Smith?

Mr. SNOW. He was at that time, I believe, president of Harris, Forbes & Co.

Mr. PECORA. Was that a subsidiary of Chase?

Mr. SNOW. I believe it had been acquired. It had not been merged, however.

Mr. PECORA. Well, was Harris, Forbes & Co. operating a pool in the market at that time in this stock?

Mr. SNOW. No, sir; not to my knowledge.

Mr. PECORA. Well, it was seeking to acquire options on large blocks of the stock, was it not, so that it might market them?

Mr. SNOW. Not as I read the memorandum, Mr. Pecora. I think this relates to the stock that Harris, Forbes & Co. purchased from "Huston Rawls and associates" in accordance with the original agreement. And I believe that stock was distributed in some manner in the Harris, Forbes organization and this memorandum written to them. It refers to a request for an option from Bertles, Rawls & Donaldson. We also received a similar request, and we did option some of our stock to them, I believe, under this agreement.

Mr. PECORA. Did they sell it as the result of their market operations?

Mr. SNOW. I believe this was a subsequent request for an option which we did not grant. We had granted options on prior requests which were exercised in part.

Mr. PECORA. By Harris, Forbes & Co.?

Mr. SNOW. No; by Bertles, Rawls & Donaldson.

Mr. PECORA. By Bertles, Rawls & Donaldson?

Mr. SNOW. Yes.

The CHAIRMAN. What is the market for the common stock now?

Mr. SNOW. I believe the common stock has no market at the present time, sir.

Mr. PECORA. What are the certificates referred to in this document as Harris, Forbes pool certificates?

Mr. SNOW. As I explained, I believe that that is the stock that Harris, Forbes purchased in the form, of course, of trustees' receipts, because the stock had not been originally issued as free stock.

Mr. PECORA. Does not the reference to those certificates as "pool" certificates indicate there was a pool formed which was operating in the market to distribute these common shares of the Detroit & Canada Tunnel Co.?

Mr. SNOW. No; I do not know, Mr. Pecora. I have assumed right along this referred only to their own stock.

Senator COUZENS. How would you interpret the word "pool" in the heading of that letter?

Mr. SNOW. I cannot explain that, Senator.

Mr. PECORA. Now, this letter refers to the stock in question, namely, this common stock, as having been received as a bonus. Do you notice that in the first paragraph of the letter?

Mr. SNOW. Yes, sir.

Mr. PECORA. Who received that stock as a bonus?

Mr. SNOW. Harris Forbes & Co. And I think that was merely the method they used in setting it up on their books, because the stock was not bonus stock.

Mr. PECORA. Had they received it as a bonus?

Mr. SNOW. No. The stock was not bonus stock.

Mr. PECORA. Why is reference made to it by an officer of Harris Forbes & Co. as a bonus stock?

Mr. SNOW. I cannot answer that, Mr. Pecora.

Mr. PECORA. You see he specifically says, "Mr. Rawls being the man who brought the business to our group and through whom we originally received the above stock as a bonus." Now, the "our group" that he refers to there is the Chase Securities group, which included the Chase Harris Forbes Corporation, is it not?

Mr. SNOW. It included Chase Securities Corporation at that time.

Mr. PECORA. And also Chase Harris Forbes?

Mr. SNOW. Chase Harris Forbes had not been formed.

Mr. PECORA. They came in later.

Mr. SNOW. Yes, sir.

Mr. PECORA. Mr. Smith apparently knew what he was talking about when he referred to that stock as stock that had been received as a bonus by the Chase Securities, or by what he calls "our group."

Mr. SNOW. As a matter of fact, Mr. Pecora, there was no bonus stock received by the bankers. The contracts are very clear in that respect.

Mr. PECORA. That is the stock which is acquired at a cost of about 61 cents a share.

Mr. SNOW. That is right, sir.

Mr. PECORA. When the banking group acquired the first-mortgage bonds at 90 and accrued interest, a selling group was formed to distribute those bonds to the public, was it not?

Mr. SNOW. Yes, sir.

Mr. PECORA. And that selling group caused those bonds to be sold to the public at 100 and accrued interest.

Mr. SNOW. That is correct.

Mr. PECORA. I show you what purports to be a photostatic copy of a circular or prospectus relating to this issue of $8,500,000 first-mortgage bonds of the Detroit & Canada Tunnel Co., dated May 15, 1928. Will you please look at it and tell me if it is a true and correct copy of either a circular or an advertisement which was caused to be published when offering those bonds to the public?

Mr. SNOW. I believe this was a copy of an advertisement, Mr. Pecora. I recognize it.

Mr. PECORA. Any circular that was issued contained virtually the same language as that advertisement?

Mr. SNOW. It contained exactly the same.

Mr. PECORA. I offer it in evidence.

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

(The document referred to, prospectus, May 15, 1928, in re $8,500,000 first-mortgage bonds Detroit & Canada Tunnel Co., was received in evidence, marked "Committee's Exhibit 202," Nov. 28, 1933, and the same will be found at the conclusion of today's proceedings.)

Mr. PECORA. Out of the proceeds of the sale of these bonds a certain sum was set aside for payment of interest to the bondholders, was it not?

Mr. SNOW. Correct.

Mr. PECORA. How much?

Mr. SNOW. $3,187,000.

Mr. PECORA. Of that amount, was $1,530,000 set aside for payment of interest to the holders of the mortgage bonds and $1,657,500 set aside for payment of interest to the debenture holders?

Mr. SNOW. I do not have that information before me, but I assume those figures are correct.

Mr. PECORA. The aggregate amount of $3,187,500, as we calculate it, represents nearly one fifth the total net proceeds received by the tunnel company from the issuance of these securities, does it not?

Mr. SNOW. Yes, sir.

Mr. PECORA. So that, instead of the proceeds from the sale of the securities going into the construction of the tunnel and the financing of it generally, and the construction of improvements, about one fifth of it was set aside to pay back in the form of interest to the bondholders and debenture holders.

Mr. SNOW. As is customary in every construction project, Mr. Pecora.

Mr. PECORA. That interest was about the only interest that these holders of these bonds ever received, was it not?

Mr. SNOW. About; yes, sir.

The CHAIRMAN. Was that for 1 year?

Mr. SNOW. That was for 3 years. It covered the period of construction.

Mr. PECORA. When were those bonds first in default?

Mr. SNOW. The first-mortgage bonds first defaulted May 1, 1932, and the debentures defaulted November 1, 1931.

Mr. PECORA. Mr. Snow, can you point out any statement in this advertisement which informed the public that approximately one fifth of the proceeds from the issuance and sale of those securities was to be set aside for payment of interest to these debenture and mortgage bondholders?

Mr. SNOW. Not the amount, but I can point out the statement which says that interest during construction is provided.

Mr. PECORA. Does it say that interest was provided out of the proceeds of the sale of these bonds?

Mr. SNOW. I think it indicates, Mr. Pecora, that the proceeds of financing include the various things mentioned here.

Mr. PECORA. Where do you find that? Just read out the portions that you think serve to inform the public that out of the proceeds of the issuance of these bonds nearly 20 percent thereof was to be set aside for payment of interest to the bond holders.

Mr. SNOW. Under the "security" paragraph, this language appears:

Excluding all costs of financing and cash for working capital, the Detroit & Canada Tunnel, upon completion, will represent cash expenditures, including interest during construction, in an amount more than twice its bond issue.

Mr. PECORA. Is that the language that you refer to as serving to apprise the investing public that nearly one fifth the proceeds from the sale of these securities was being set aside for payment of interest?

Mr. SNOW. I do not think there is any clear statement of that in this advertisement. It is not customary.

Mr. PECORA. Is there even an obscure statement to that effect?

Mr. SNOW. It is not customary, Mr. Pecora, to set that forth, because it is generally understood.

Mr. PECORA. It is now requisite under the securities law to set just that sort of thing forward.

Mr. SNOW. I believe it is.

Mr. PECORA. To that extent the securities law provisions are a good thing for the public, are they not?

Mr. SNOW. I subscribe to the securities law.

Mr. PECORA. You have to whether you want to or not.

The CHAIRMAN. Was there any interest allowed on this $3,000,000?

Mr. SNOW. Yes, sir. All the funds were escrowed with the Guardian Trust Co., and interest was paid on those escrowed funds. That included, of course, this $3,000,000 odd which was set aside for interest.

Mr. PECORA. What were the profits that accrued to the Chase Securities Corporation from its participation in the purchase of the first-mortgage bonds?

Mr. SNOW. The net profit resulting from the purchase of the first-mortgage bonds was $169,037.

Mr. PECORA. And what were the profits that accrued to the Chase Securities from its participation in the purchase of the debentures?

Mr. SNOW. From the direct purchase and sale of the debentures, $192,024. In addition to that, however, there were substantial losses incurred in connection with debenture trading accounts.

Mr. PECORA. With what accounts?

Mr. SNOW. Debenture trading accounts.

Mr. PECORA. There was a trading account for the debentures, was there?

Mr. SNOW. Yes, sir.

Mr. PECORA. When was that formed, and who were the members of it?

Mr. SNOW. There was a trading account formed on September 12, 1928, the members of which were Chase Securities Corporation, managers, with a 40 percent interest; Guardian-Detroit Co., with a 40 percent interest; and Bertles, Rawls & Donaldson, Inc., with a 20 percent interest.

Mr. PECORA. What was the purpose of the formation of that trading account?

Mr. SNOW. I am not able to give you any information on that, Mr. Pecora. In my 10 years' connection with the Chase I have never had anything to do with the syndicate department work or with retail selling, and this is a function of the syndicate department.

The CHAIRMAN. What was the loss there?

Mr. SNOW. I beg your pardon?

The CHAIRMAN. You said there was a loss there.

Mr. SNOW. Yes, sir. The amount of it——

Mr. PECORA. About $35,000?

Mr. SNOW. No; the loss was greatly in excess of that. The total loss was $792,389.

Mr. PECORA. As a matter of fact, did not the loss exceed that, in view of the fact that the Chase Securities Corporation had to take up a liability which had fallen on the Northeastern Shares Corporation, formerly Bertles, Rawls & Donaldson, Inc., which defaulted in its obligation?

Mr. SNOW. No; the figure representing the loss last mentioned is $130,917. That is included in the total figure which I just gave you.

Mr. PECORA. There was a second trading account formed, was there not, to deal in these debentures?

Mr. SNOW. There was the usual trading account in the bankers' group, I believe. That preceded this September 12, 1928, trading account.

Mr. PECORA. To establish a market for the bonds?

Mr. SNOW. I do not know the purpose.

Mr. PECORA. Don't you really know the purpose, Mr. Snow?

Mr. SNOW. I have heard so much about trading accounts——

Mr. PECORA. Could you not even guess at it?

Mr. SNOW. No, sir.

The CHAIRMAN. As I have it, you gave the total loss, but you did not give the Chase loss.

Mr. SNOW. That was the Chase loss that I was giving.

The CHAIRMAN. The total?

Mr. SNOW. The total Chase loss.

Mr. PECORA. Is Mr. Addinsell here?

TESTIMONY OF HARRY M. ADDINSELL, NEW YORK

The CHAIRMAN. You solemnly swear that you will tell the truth, the whole truth, and nothing but the truth, regarding the matters now under investigation by the committee. So help you God.

Mr. ADDINSELL. I do.

Mr. PECORA. Give your full name and address please, Mr. Addinsell.

Mr. ADDINSELL. Harry M. Addinsell; business address, 60 Cedar Street; home address, Glen Cove, Long Island.

Mr. PECORA. Mr. Addinsell, were you connected at any time with a corporation known as Harris, Forbes & Co. of New York?

Mr. ADDINSELL. Yes; I was connected with it for about 25 years.

Mr. PECORA. Were you connected with it during the month of December 1930 and the months of January, February, and March 1931?

Mr. ADDINSELL. Yes; I was.

Mr. PECORA. Did you receive, as an officer of Harris, Forbes & Co., a cablegram signed by a man named Chapin under date of December 31, 1930, of which I show you what purports to be a photostatic copy?

Mr. ADDINSELL. Yes; I did.

Mr. PECORA. I offer it in evidence.

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

(The decument referred to, cablegram, Dec. 31, 1930, Chapin to Addinsell, was marked "Committee's Exhibit No. 203," Nov. 28, 1933, and received in evidence, and the same was subsequently read into the record by Mr. Pecora.)

Mr. ADDINSELL. May I amend that, Mr. Pecora? I recall this cable from the files——

Mr. PECORA. I do not hear you very well.

Mr. ADDINSELL. I say, I recall this cable, but I do not know whether I was away at the time it arrived or not. I might have been.

Mr. PECORA. I think you were down at Aiken, S.C., at the time, with Mr. Rawls. The cable was telephoned to you, I understand.

Mr. ADDINSELL. Was it?

Mr. PECORA. You recall seeing the cable.

Mr. ADDINSELL. Yes. I recall seeing the cable, but I do not think I answered it myself.

Mr. PECORA. The cable reads as follows [reading]:

RECEIVED DECEMBER 31, 1930.

From LONDON, DETROIT & CANADA TUNNEL.

ADDINSELL

Notice appears in the London Times this morning dated Ottawa to the effect that American Immigration Officials have imposed important restriction upon residents of Canada who have been in the habit of crossing River to Detroit Michigan Stop

It further states residents of Canada who have found employment in Detroit Michigan have declined from 16,000 to 3,000 and that a campaign has begun in Detroit to prevent Americans from shopping in Windsor Stop

Further that border cities in Canada are feeling effect of these tactics and that as a result it is proposed that Canada should impose rigid restrictions upon American immigration Stop This article created feeling here that Detroit & Canada Tunnel bonds and common stocks have been sold without full statement factors surrounding the situation as these factors must have been known for some time Stop

It is essential we have promptly a full statement of the situation and we consider that Rawls should publish his figures Stop This matter is very serious in view of wide spread publicity given to Detroit & Canada Tunnel.

CHAPIN.

Mr. Chapin was connected with the London office of Harris, Forbes & Co., was he not, at that time?

Mr. ADDINSELL. Yes; he was the head of it.

Mr. PECORA. What reply, if any, was sent to Mr. Chapin?

Mr. ADDINSELL. Mr. Wenzell, who had been following the matter, replied to it.

Mr. PECORA. What was his reply?

Mr. ADDINSELL (reading).

Unable reach Rawls until today Stop He states that for last 3 or 4 months regular employed commuters crossing daily have numbered approximately three thousand instead of nine thousand last year This due lack of employment as immigration restrictions have resulted in canceling only 300 visas of persons not using them sufficiently according to the statement of the immigration chief at Detroit Stop According to complete count by Detroit Street Railway Commission total pedestrians crossing river now average twelve thousand daily instead of over fifty thousand daily last year this is result of unemployment not immigration restrictions now effective Stop Have heard nothing about campaign to prevent Americans shopping in Windsor or Windsor people shopping in Detroit any new immigration restrictions contemplated in Washington not expected to reduce traffic created by those now holding identification cards Stop Company issuing complete traffic and income figures for nineteen thirty either Monday or Tuesday will cable.

That is signed by Wenzell.

The CHAIRMAN. What is the date?

Mr. ADDINSELL. January 2, 1931.

Mr. PECORA. Now, under date of March 7, 1931, did you send or cause to be sent to Chapin in London, a cable replying to this inquiry, of which the paper which I now show you purports to be a photostatic reproduction?

Mr. ADDINSELL. Yes; I did.

Mr. PECORA. I offer it in evidence.

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

(The document referred to, cablegram, Mar. 7, 1931, Addinsell to Chapin, was received in evidence, marked "Committee's Exhibit No. 204", Nov. 28, 1933, and the same was subsequently read into the record by Mr. Pecora.)

Mr. PECORA. The cable identified by the witness and just offered in evidence reads as follows (reading):

DETROIT & CANADA TUNNEL,
MARCH 7, 1931.

LONDON
CHAPIN

Based on first four months of operation through February 28th. Tunnel Company covered interest charges on first mortgage bonds at annual rate of about twice Stop Just failing by very narrow margin to cover full interest charges on bonds and debentures together Stop Company has approximately one million dollars cash on hand enough to cover next May 1st and November 1st interest coupons on bonds and debentures therefore will be one year from next May 1st before Company will have to use own earnings substantially for fixed charges by which time earnings should be better established Stop

On basis of operating results to date present market on first mortgage bonds of Tunnel Company seems somewhat low but probably represents reflection of cautious attitude of investors on projects which have not yet fully demonstrated their earning capacity Stop Common shares of this company represent frank speculation for future and have no way of judging immediate course of market but believe that over five or ten year period should prove to be profitable.

ADDINSELL.

Senator COUZENS. You did not expect repeal of the Eighteenth Amendment when you wrote that, did you?

Mr. ADDINSELL. No; I did not.

Senator COUZENS. Seriously, will that not affect your revenues?

Mr. ADDINSELL. I should suppose it might, Senator; yes.

Mr. PECORA. Mr. Addinsell, when you sent this cable to Chapin, of the London office of Harris, Forbes & Co., on March 7, 1931, did you correctly set forth the fact, when you said that based upon the first four months of operation through February 28th, the tunnel company covered interest charges on first mortgage bonds at annual rate of about twice?

Mr. ADDINSELL. I do not recall who gave me those figures. Obviously some of the men in our statistical or corporation department gave them to me. Since this question was brought up—I mean since this wire was brought up— I have endeavored to find out who did supply me with that information, and how it was arrived at. That has been a little difficult because, as you know, our company now is in dissolution, and there are only a handful of people there, as compared with the big organization we used to have. The only explanation of it that I can give you—because I do not remember myself, and I do not offer that as an explanation, but it might have been the assumption that, applying to the gross earnings of the first 4 months, which we did have, the seasonal variations that were expected by the engineers—in other words, they expected heavier traffic in the summertime, and lighter in the winter—but that is the way they must have been made up, and I cannot tell you any more than conjecture, because I do not remember.

Mr. PECORA. The statement in the cable is that based upon the first 4 months of operations, through February 28, the tunnel company covered interest charges on first-mortgage bonds at annual rate of about twice. That was not the fact, was it?

Mr. ADDINSELL. I do not say it was a fact, but I say that the person who made up that statement for me undoubtedly took those 4-month figures, weighted them, if you want to call it that, by the seasonal variations that were expected on account of more traffic in the summertime, and in that way arrived at that conclusion.

Mr. PECORA. Have you since learned what the actual gross earnings were for the month of November 1930, of this tunnel company?

Mr. ADDINSELL. I have not got the figures in my head; no.

Senator COUZENS. Was that statement of yours to Mr. Chapin published in London?

Mr. ADDINSELL. No, sir. That was a personal statement from me to Mr. Chapin, and I think it was in response to an inquiry as to how the company was coming along. It was an interoffice communication between one individual in the New York office and one in the London office.

Senator COUZENS. So you are quite sure it was not published for the benefit of the shareholders or the bondholders in London?

Mr. ADDINSELL. To the best of my knowledge it was not, Senator.

Mr. PECORA. This information was given to your London office for their purposes in dealing with the securities, was it not?

Mr. ADDINSELL. I do not recall what the occasion of this wire was. I think there must have been a wire from Chapin asking me how the tunnel was getting along, but I have not seen that wire.

Mr. PECORA. They were marketing both the bonds and the debentures, as well as common stock, abroad, were they not?

Mr. ADDINSELL. They were not doing any debentures, I think. They got some orders for the common stock, which I think they had filled on a commission basis only.

Mr. PECORA. But they were marketing some of the bonds and debentures?

Mr. ADDINSELL. So far as the debentures were concerned, not to my knowledge. Maybe they were. I don't recall that they were. We had no interest in the original debenture syndicate. We were part of the Harris organization at the time this business was originated, and got our interest in it through the Harris Trust & Savings Bank, and we only had an interest, therefore, in the marketing of the first-mortgage bonds.

Mr. PECORA. What did the interest charges for that 4-month period amount to on the first-mortgage bonds?

Mr. ADDINSELL. I will have to figure it out.

Mr. PECORA. It amounted to $170,000.

Mr. ADDINSELL. Yes.

Mr. PECORA. What were the actual gross earnings of the tunnel company during that 4-month period?

Mr. ADDINSELL. As I recall it, they were $260,000 odd.

Mr. PECORA. Where do you get that information?

Mr. ADDINSELL. The figures that we had, that I think the answer to this cable was built up on, were based upon this statement that early in March we had received weekly gross operating revenues for the months of November, December, January, and February, and the total gross revenue for those four months, according to the reports we received, amounted to $268,095.

Mr. PECORA. I asked you for the gross earnings available for the bondholders' interest charges.

Mr. ADDINSELL. I misunderstood your question. I thought you meant the total earnings, in the sense of the gross.

Mr. PECORA. No.

Mr. ADDINSELL. I do not know the answer to that question.

Mr. PECORA. Is not the answer $33,765.02 for the month of November; and was there not a loss of $968.15 for the month of December; net income of $4,262.95 for the month of January 1931, and a loss of $3,453.33 for the months of February 1931; or a total net income for the 4-month period of $33,606.49?

Mr. ADDINSELL. I do not know that myself; the point being—I do not defend that statement, but I say that the man that made it up must have weighted the earnings as received for those 4 months based upon the idea that there was expected to be a seasonable variation.

Mr. PECORA. He must have weighted them by about 10 times their actual amount, must he not?

Mr. ADDINSELL. Perhaps so. What I mean, Mr. Pecora, is this, that Mr. Brinckerhoff, the engineer who advised the banking group in this matter, esimated that the earnings would produce, or rather would be produced, in various percentages of the total in the different months of the year—for example, 3.93 percent in January, as compared with 15.39 percent in August, and I presume they applied those percentages to these figures, although I do not know.

Mr. PECORA. Mr. Addinsell, in your reply to Chapin of March 7, 1931, you made the specific statement that, based upon the first 4 months of operation, through February 28, the tunnel company covered interest charges on first-mortgage bonds at annual rate of about twice.

Mr. ADDINSELL. The annual rate, I think, is the thing——

Mr. PECORA. At the annual rate for those 4 months, those interest charges amounted to $170,000. That is only on the first-mortgage bonds, and there was almost a corresponding amount on the debentures, was there not?

Mr. ADDINSELL. Yes.

Mr. PECORA. The debentures were 6½ percent securities.

Mr. ADDINSELL. Yes; a little more.

Mr. PECORA. The mortgage bonds were 6 percent. Now, as a matter of fact, the actual earnings for the tunnel company for that 4-month period were only a little over $33,600, so that whoever gave you the figures on which you based this cable to Chapin must have weighted them, as you call it, out of all proportion to the facts.

Mr. ADDINSELL. I am inclined to agree with you.

Mr. PECORA. Was there ever a correcting cable or advice sent to Chapin?

Mr. ADDINSELL. Not that I know of.

Mr. PECORA. Do you know what the actual net loss for the year 1931 was, that this tunnel company incurred in operation?

Mr. ADDINSELL. I do not remember the figures; no.

Mr. PECORA. $1,772,000, wasn't it? That loss of $1,772,138.48 appears in the annual report, which contains a consolidated balance sheet and a consolidated income statement for the year ended December 31, 1931, a copy of which I show you, and which we obtained from the file department of the Chase Harris Forbes Corporation. Will you look at it and see if that is not correct.

Mr. ADDINSELL (after examining paper). Yes.

Mr. PECORA. That is correct, is it not?

Mr. ADDINSELL. Yes.

Mr. PECORA. Do you know the present status of these mortgage bonds?

Mr. ADDINSELL. Yes; I do.

Mr. PECORA. What is it?

Mr. ADDINSELL. The company is in receivership and the bonds are not paying interest, and a bondholders' committee has been formed to see what can be done to protect the interests that they represent.

Mr. PECORA. That is true also of the debentures?

Mr. ADDINSELL. Yes.

Mr. PECORA. Do you know a Mr. George Ramsey?

Mr. ADDINSELL. I do.

Mr. PECORA. He was an officer of the Chase Harris Forbes Corporation in May of this year, was he not?

Mr. ADDINSELL. That is right.

Mr. PECORA. Is he a member of the protective committee for the bondholders?

Mr. ADDINSELL. For the first-mortgage bonds; yes.

Mr. PECORA. I show you what purports to be a photostatic copy or reproduction of a letter addressed to him by Mr. L. V. Bower, secretary of the protective committee of the Detroit & Canada Tunnel Co. first-mortgage sinking-fund gold bonds. Will you look at it and tell me if you know it to be a true and correct copy of such a letter received by Mr. Ramsey from Mr. Bower?

Mr. ADDINSELL. I do not know that I can answer that. I have not seen the original [after examining paper:] Yes; that is correct.

Mr. PECORA. I offer that in evidence.

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

(The document referred to, letter May 11, 1933, Bower to Ramsey, was received in evidence, marked "Committee's Exhibit No. 205, Nov. 28, 1933", and the same was subsequently read into the record by Mr. Pecora.)

Mr. PECORA. The letter received in evidence as committee's exhibit 205 reads as follows. It is written on the letterhead of the Protective Committee, Detroit & Canada Tunnel Company, First Mortgage 6% Sinking Fund Gold Bonds, dated May 11, 1933. (Reading:)

Mr. GEORGE RAMSEY,
Vice President Chase Harris Forbes Corporation,
60 Cedar Street, New York City, N.Y.

DEAR GEORGE: I think it has been out of deference to Dr. Murphy's important interests in the complicated Detroit banking situation that we have failed to call a meeting and seek some action on the part of the Detroit and Canada Tunnel Company First Mortgage Bondholders' Committee.

Your idea of outlining a plan which the Committee could adopt, if the bondholders approve, is exactly in accord with conversations I have had with Mr. MacLean.

Do you still feel it is desirable or necessary to offer some kind of a right or piece of paper to the debenture holders? As time goes on it seems to us less and less likely that the first mortgage bondholders will ever recover their investment, let alone having anything left over for the Debenture holders. Based upon your comments on this phase of the matter, we will endeavor to prepare a plan to submit to the committee along the lines of your suggestions.

With kind regards,
Very truly yours,

(Signed) L. V. BOWER, *Secretary.*

What was the right, or piece of paper, that was referred to here?

Mr. ADDINSELL. I do not know what he had in mind, Mr. Pecora.

Mr. PECORA. Mr. Chairman, we have prepared, and I understand there has been submitted for approval or confirmation to representatives of the Chase Securities Corporation a profit and loss summary of the participations of that securities corporation in the General Theatres Equipment, Inc., syndicates and trading accounts. This has been checked up, has it not, Mr. Hargreaves?

Mr. HARGREAVES. Yes, sir.

Mr. PECORA. And it is correct?

Mr. HARGREAVES. Yes, sir.

Mr. PECORA. I offer it in evidence.

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

(The document referred to, summary of Chase Securities Corporation participations in General Theatres syndicates and trading accounts, was received in evidence, marked "Committee's Exhibit No. 206, Nov. 28, 1933", and the same will be found at the end of today's proceedings.)

Mr. MUDGE. With your permission, I would like to observe that these are not new losses. They were covered very largely by the statement put in the other day.

The CHAIRMAN. I understand.

Senator TOWNSEND. And they have all been charged off?

Mr. Mudge. They have all been written off.

Mr. PECORA. Yes.

The CHAIRMAN. The committee will now adjourn until 10:30 tomorrow morning.

(Whereupon, at 4:30 o'clock p.m., an adjournment was taken until tomorrow, Wednesday, Nov. 29, 1933, at 10:30 o'clock a.m.)

COMMITTEE EXHIBIT No. 191, NOVEMBER 28, 1933

RECORD OF NEGOTIATIONS

Name: Detroit Vehicular Tunnel, C.S.C., representative, L.W.S., H.G.F.
Brought in by Chase Donaldson

Date	File no.	Progress of Negotiations
1927 Nov. 1	2439	Mr. Chase Donaldson of Bertles, Rawls & Donaldson, 120 Broadway, approached us thru Mr. Dahl in regard to financing for a proposed vehicular tunnel running between Detroit, Mich., and Windsor, Ontario. Donaldson also discussed the matter informally with the writer. Engineering reports, etc., were said to be in hand. Public financing was expected to involve about $11,000M of first-mortgage bonds of the Canadian and American companies and approximately $5,000M of debentures of a holding company. Other banking houses in the vicinity of Detroit were said to be interested in this project, but Donaldson wished to secure a house of the standing of the Chase Securities to head it. Advised Donaldson, at the direction of H. G. F., that we would be glad to hear the story. Several days later Messrs. Rawls and Donaldson came in and advised us that one of the local groups in Detroit was anxious to handle the financing and head the picture, and that therefore Rawls and Donaldson did not feel free to discuss the matter with us, but we would hear further from them and undoubtedly be offered some position in the business. The Guardian Co. are the Detroit people interested.—L. W. S.
Nov. 22	2444	Information appeared in the press several days ago to the effect that the financing of the construction of the Vehicular Tunnel had been arranged for with New York bankers. The writer immediately got in touch with Mr. Chase Donaldson, who advised that the Guardian Trust Company of Detroit had undertaken to head the financing and that the Harris Trust & Savings Bank of Chicago and Bertles, Rawls & Donaldson of New York would be in the business. The financing is now expected to take the form of $8,500M first mortgage bonds and $8,500M debentures. The writer reminded Donaldson of his previous conversation with us and told him that we would like to be offered a position in the business.—L. W. S.
Nov. 23	2445	Donaldson came in today and advised that he had 'phoned Mr. Rawls, his Detroit partner, twice in connection with securing a position in the business for the Chase Securities, and that although the matter was more or less completely in the hands of the Guardian Trust of Detroit he believed that there was little doubt but that the Guardian would accede to their urgent request that the Chase be offered a position in the business. There will probably be only one other New York house in it, although they have had requests from several others including Hayden, Stone & Co.—L. W S.
1928 Mar. 23	Memo	The business was originated by Bertles, Rawls & Donaldson. The Guardian of Detroit is heading the business and the Harris Trust & Savings will probably be in it. Reports of three engineering firms, including Ford, Bacon & Davis, are in hand and are favorable. Contracts for the construction are being let and the general plan of financing has been determined upon. The financing will consist of $8,500M First Mtge. 6's and $8,500M Convertible Debentures. About $1,800M of common stock (part of a substantially larger issue) is also to be sold for the purpose of providing equity money. At the writer's request Donaldson has insisted that the Chase Securities Corp. have an opportunity to look at the business and at his request Grier of the Guardian has agreed to get in touch with you in regard to the matter of participation.—L. W. S. to H. G. F.
May 15	Bull	We have an interest of 23.5% in the purchase of $8,500M Detroit & Canada Tunnel Company 1st Mortgage 6% S.F. Gold Bonds and an interest of 40% in the purchase of $8,500M 20-Yr. 6½% Convertible Sinking Fund Gold Debentures of the Company. The purchase price of the 1st Mortgage Bonds is 90 and accrued interest and the purchase price of the Debentures is 90 and accrued interest. The 1st Mortgage Bonds are being offered on May 15, 1928, at 100 and accrued interest. The Debentures will be offered at a later date.—Officers Daily Bull.

Name: Detroit Vehicular Tunnel, C.S.C., representative, L.W.S., H.G.F. Brought in by Chase Donaldson—Continued

Date	File no.	Progress of Negotiations
May 15	Bull	The $8,500M Detroit & Canada Tunnel Co 20-Yr. 6½% Conv. S.F. Debentures are being offered thru a Selling Group at 99½ and accrued interest. Selling commission 3%, of which ½% may be reallowed. Expenses up to ¼% may be charged against selling commission. Selling Group will terminate July 14, 1928, but may be extended for 60 days. We have purchased $1,000M of Debentures on Selling Group terms.—Officers Daily Bulletin.
		We have purchased $1,000M principal amount Detroit & Canada Tunnel First Mtge. 6's on Selling Group terms. Public offering price 100 and accrued interest —Off Daily Bulletin.
Sept. 12	Bull	We have an interest of 40% in an account formed to trade in Detroit & Canada Tunnel Company 20-Yr 6½% Convertible S. F. Debentures with the understanding that the maximum commitment of the account shall at no time exceed $750M principal amount. The account will be undivided as to selling and liability and will terminate November 12, 1928, unless sooner terminated or further extended for 60 days.—Officers' Daily Bulletin.

COMMITTEE EXHIBIT No. 192, NOVEMBER 28, 1933

MEMORANDUM COVERING THE BASIS OF FINANCING THE CONSTRUCTION OF THE DETROIT & CANADA TUNNEL COMPANY

The Detroit & Canada Tunnel Company, a corporation organized under the laws of the State of Michigan, which will own all of the capital stock of a Canadian subsidiary, will of itself, or through the Canadian subsidiary, build a vehicular tunnel connecting downtown Detroit with the business center of Windsor. Terminals in Detroit and Windsor will be built on land to be owned by the Detroit & Canada Tunnel Company, or its Canadian subsidiary, this property comprising two blocks of unusual size, a large portion of each being available for developments such as office buildings, stores, hotels, and auditoriums. So far as the public are concerned, the capital structure of the Detroit & Canada Tunnel Company will be as follows:

First Mortgage 25-Year 6% Bonds:	
Authorized	$8,500,000
Issued	8,500,000
Twenty-Year Convertible 6½% Debentures:	
Authorized	$8,500,000
Issued	8,500,000
Common Stock:	*Shares*
Authorized	3,100,000
Outstanding	2,250,000

NOTE.—The unissued shares amounting to 850,000 are reserved for the conversion of Debentures at some rate to be agreed upon by the bankers, the average of which rate over a period of years will be 100 shares of Common stock for each $1,000 of Debentures converted.

DETAILS OF PROPOSED ISSUES

First Mortgage 6's—Trustee, Guardian Trust Company of Detroit:

Authorized	$8,500,000
Issued	8,500,000

Dated as of April 1, 1928. Due April 1, 1953. Interest and principal payable in New York, at either Harris, Forbes & Company or Chase National Bank; Chicago, at Harris Trust and Savings Bank; Detroit, at Guardian Trust Company of Detroit; Canada (if deemed desirable).

Interest payable without deduction of Federal Income Tax up to 2%.

Company to refund upon application:

Pennsylvania, California and Connecticut State tax not in excess of 4 mills;

Tennessee, Kentucky, Virginia, Michigan and District of Columbia tax not in excess of 5 mills;

Maryland securities tax not in excess of 4½ mills;

Massachusetts Income Tax not in excess of 6 mills;
and such other State taxes as are ordinarily included.

Coupon bonds in denomination of $1,000 and $500 registerable as to principal and interest or as to principal alone and in form capable of lisring on New York Stock Exchange.

Bonds to be subject to redemption as to whole or in part on 30 days' notice on any interest payment date at 105 and interest for the first 15 years and thereafter at ½ of 1 percent less each year until maturity. Mortgage to contain a provision for a Sinking Fund beginning not later than April 1, 1933, in amounts to be agreed upon with Bankers, which Sinking Fund shall be sufficient to retire the entire issue at maturity.

Twenty-year Convertible 6½% Debentures—Trustee, Guardian Trust Company of Detroit. Authorized, $8,500,000; Issued. $8,500,000.

Dated as of April 1, 1928. Due April 1, 1948. Interest and principal payable in—

New York at Chase National Bank,

Chicago at Harris Trust and Savings Bank, or at some other satisfactory bank.

Detroit at Guardian Trust Company of Detroit.

Canada (if deemed desirable.)

Company to agree to refund various state taxes on Debentures the same as in case of First Mortgage Bonds.

Debentures to be issued in fully registerable form, registerable as to principal only and in form capable of listing on New York Stock Exchange. Denominations $1,000 and $500. Debentures to be convertible into Common stock on a basis satisfactory to Bankers and which will allow conversion of entire issue by Company issuing not to exceed 850,000 shares of Common stock.

Debentures subject to redemption on any interest date upon 30 days' notice at 105 and interest for Sinking Fund the first 15 years, at 1% less each year for the last 5 years, and at 110 and interest for other purposes for the first ten years, 1% less each year thereafter.

Debenture agreement to provide for Sinking Fund beginning not later than April 1, 1933, which will retire the entire issue by maturity.

SECURITY FOR FIRST MORTGAGE 6'S

These bonds will be the direct obligation of the Detroit and Canada Tunnel Company and will be secured by a first direct lien on the entire property of that Company. On the property of the Canadian Company the bonds will be secured either by a direct first mortgage or by a pledge of $5,000,000 (First Mortgage) bonds of the Canadian Company and by all of its stock. The Canadian Company will obligate itself not to incur any obligations except to the parent company.

SECURITY FOR DEBENTURE 6½'S

These debentures will be the direct unsecured obligations of the Detroit and Canada Tunnel Company, which Company will give proper covenants against issue of any securities ahead of debentures and against incurring any floating indebtedness except month-to-month current obligations for ordinary operating expenses.

COMMON STOCK

Of the 2,250,000 shares of Common stock to be issued forthwith, the Bankers are to receive 540,000 shares, and the organizers and others interested in the project are to receive 1,150,000 shares. Common stock to the amount of 560,000 shares is to be sold at $3.25 per share to produce not less than $1,820,000, which amount shall be available simultaneously with the payment by the Bankers for the bonds and debentures and shall be deposited with the Trustee to be paid out from time to time for the cost of the construction of the tunnel.

ALLOTMENT OF DEBENTURE 6½'S AMONG BANKERS

Total amount issued	$8,500,000
Guardian Detroit Company (35.3%)	3,000,000
Harris Trust & Savings Bank (35.3%)	3,000,000
Chase Securities Corporation (23.5%)	2,000,000
Bertles, Rawls & Donaldson (5.9%)	500,000

ALLOTMENT OF DEBENTURES 6½'S AMONG BANKERS

Total amount issued	8,500,000
Guardian Detroit Company (40%)	3,400,000
Chase Securities Corporation (40%)	3,400,000
Bertles, Rawls & Donaldson (20%)	1,700,000

ALLOTMENT OF COMMON STOCK AMONG BANKERS

	Bonds	Bonus with debentures	Total
Guardian Detroit Company	60,010	136,000	196,010
Chase Securities Corporation	39,950	136,000	175,950
Harris Trust & Savings Bank	60,010	0	60,010
Bertles, Rawls & Donaldson	10,030	68,000	78,030
Total	170,000	340,000	510,000
To be given to Guardian Detroit Co. for services			30,000
Total Stock to Bankers			540,000

The Company is to receive 90 and accrued interest for both the First Mortgage 6's and for the Debenture 6½'s. Bertles, Rawls & Donaldson are to receive from the Bankers a 2% finders profit to cover their expenses and for their services. The Bankers will therefore pay for each issue 92 and interest.

MATTERS WHICH MUST BE ARRANGED BEFORE BANKERS CAN MAKE A DEFINITE COMMITMENT OR TO WHICH ANY COMMITMENT WOULD NECESSARILY HAVE TO BE SUBJECT

1. Legality of all questions as to—
   (a) Organization of the Company or Companies.
   (b) Legality as to debt and its issuance.
   (c) Titles to real estate.
   (d) Sufficiency of governmental and/or municipal rights, franchises, and/or permits and emigration and immigration requirements and restrictions.
   (e) Approval of issuance of bonds, debentures, and stock by any commission or commissions having jurisdiction.
   (f) Approval of Blue Sky Commissions in all States required by Bankers.
2. Legality and Sufficiency to Bankers' satisfaction of—
   (a) Contracts for construction.
   (b) Surety and Insurance for completion of project and its operation and maintenance.
3. Bankers to be satisfied that funds provided by financing will cover all costs, taxes, and expenses of every kind and nature including three years' interest during construction, and will provide the Company working capital for operations of not less than $500 000.
4. Bertles, Rawls & Donaldson shall satisfy the other bankers of their ability to dispose of 560,000 shares of common stock to provide $1,820,000 through this source.
5. Bankers shall be furnished with the final reports of Daniel L. Turner and of Ford, Bacon & Davis, which reports shall be satisfactory to the Bankers.
6. The Company shall supply the Bankers with sufficient funds from the proceeds of the financing to employ Wm. S. Kinnear or some other engineer or engineers satisfactory to the Bankers to supervise the plans and general construction of the tunnel, approve the payments by or withdrawals of funds from the Trustee and to generally represent the Bankers for a period by which the tunnel is, in the opinion of the Bankers, in satisfactory commercial operation. The Company shall recognize such authority of such engineer and shall arrange with the contractors to that end also.

7. All expenses of engineers (including D. S. Turner and Wm. S. Kinnear), accountants, attorneys, trustees' fees, cost of preparing the indentures and mortgages, recording the same, engraving of the bonds and debentures, and all other expenses incident to the issuance of the securities shall be borne by the Company, or if paid by the Bankers, the Company shall reimburse the Bankers for such expenses.
8. The Guardian Detroit Company shall be allowed $5,000 as a part of the expenses of the Syndicate to reimburse said Guardian Detroit Company for its traveling and other expenses incurred in connection with this deal.

GENERAL

The form of mortgage and the Indenture under which the First Mortgage 6's and the Debenture 6½'s are issued shall be satisfactory to the Bankers and to their counsel.

All funds realized from the sale of First Mortgage bonds, Debentures, and Common Stock shall be deposited with the Guardian Trust Company of Detroit, which shall make its own separate arrangement with the Company as to the interest to be paid on such deposit.

The Bankers' proposal to purchase the bonds and debentures is based on a continuation of present market and business conditions and there shall be no obligation legal or moral for the Bankers to go through with the financing in case of material change in such market or business conditions.

The within memorandum approved 3/26/28.

GUARDIAN DETROIT CO.,
(Signed) By R. C. LEHMAN, *Secretary.*
BERTLES, RAWLS & DONALDSON.
(Signed) By HUSTON RAWLS, *President.*
CHASE SECURITIES CORPORATION,
(Signed) By H. G. FREEMAN, *President,*
HARRIS TRUST & SAVINGS BANK,
(Signed) By H. A. FENTON, *President.*

COMMITTEE EXHIBIT No. 202, NOVEMBER 28, 1933

$8,500,000 (CLOSED ISSUE) DETROIT & CANADA TUNNEL COMPANY FIRST MORTGAGE 6% SINKING FUND GOLD BONDS

To be dated May 1, 1928; to mature May 1, 1953.

(Interest payable May 1 and November 1 in New York, Chicago, Detroit, or Montreal, without deduction for Federal Income Tax not exceeding 2%. Pennsylvania and Connecticut Four Mills Tax refundable. Redeemable on thirty days' published notice, on any interest payment date prior to May 1, 1943, at 105 and accrued interest, thereafter at various reductions in the redemption price. Coupon bonds of $1,000 and $500 registerable as to principal, Guardian Trust Company of Detroit, Trustee. Issuance approved by Michigan Public Utilities Commission)

Sinking Fund commencing September 1, 1932, sufficient to retire entire issue at or prior to maturity.

For information regarding the Company, these Bonds and the security therefor, attention is called to the letter of Mr. William A. Comstock, President of the Company, copies of which will be furnished on request and from which it will be noted among other things, that:

Property: Detroit & Canada Tunnel Company (a Michigan corporation) will build a vehicular tunnel, about one mile long, under the Detroit River, which will provide a direct highway connecting the heart of Detroit's business and shopping district with that of Windsor, Ontario. The Company, directly or through a wholly owned Canadian subsidiary, will own and operate the entire tunnel development, including downtown real estate in both cities to be used for terminal facilities.

Security: These $8,500,000 Bonds (closed issue) will, in the opinion of counsel, be a direct obligation of the Company and will be secured by closed first mortgages on all of the real estate, terminal buildings, tunnel sections, and franchises of the Company and the Canadian subsidiary.

Excluding all costs of financing, and cash for working capital, the Detroit and Canada tunnel upon completion will represent cash expenditures, including interest during construction, in an amount more than twice this bond issue.

Ford, Bacon & Davis, Inc., have estimated the value of the tunnel, completed and in operation, at $23,000,000. These Bonds will be followed by $8,500,000 Twenty-Year 6½% Convertible Sinking Fund Gold Debentures, and by 3,100,000 shares of no par Common Stock, all to be presently issued with the exception of 850,000 shares of Common Stock to be reserved for conversion of Debentures.

Surety bonds, for the performance of contracts for the construction and completion of the entire tunnel and terminal buildings, will be deposited with the Trustee.

Estimated Earnings: Thorough traffic surveys, taking into account the existing ferries and the bridge under construction, have been made independently by Ford, Bacon & Davis, Inc., Parsons, Klapp, Brinckerhoff & Douglas, and Mr. Daniel L. Turner, Consulting Engineer, New York. The lowest of the above-mentioned estimates of earnings for the first year of operation of the tunnel indicates total net income (after allowance for all local taxes and including estimated miscellaneous earnings of $185,000) of $1,666,000, or more than 3¼ times the maximum annual interest requirements of $510,000 on this issue of First Mortgage 6% Sinking Fund Gold Bonds. Corresponding earnings for the fifth year of operation are estimated at $2,402,000, or nearly 4¾ times the maximum annual interest requirements on these bonds.

We recommend these bonds for investment.

Price 100 and interest, to yield 6 percent.

We offer these Bonds for delivery when, as and if issued and received by us and subject to the approval of our counsel. It is expected that temporary Bonds or interim receipts will be ready for delivery on or about May 29, 1928.

HARRIS, FORBES & CO.,
GUARDIAN DETROIT CO., Incorporated,
CHASE SECURITIES CORPORATION,
BERTLES, RAWLS & DONALDSON, Incorporated.

COMMITTEE EXHIBIT No. 206, NOVEMBER 28, 1933

Chase Securities Corporation—Profit & loss summary of participations in General Theatres Equipment, Inc., syndicates and trading accounts

Date	Issue	Syndicate or Group	Participation of C.S.C. (Net)	Shs. or Deb. taken down by C.S.C. (in terms of stock as now classified)			Cash Profit or Loss of C.S.C.	Proceeds of Sales or present Market	Profit or Loss on Liquidation of Securities	Total Profit or Loss
				Pfd. or Com.	Debentures	Cost				
July 9, 1929	G.T.E. 15 yr. 6% Deb.	Purchase	20%				$50,579.05			$50,579.05
July 9, 1929	do	Selling	1,235,000				30,727.75			30,727.75
July 9, 1929 & 7/18	G.T.E. 300,000 shs. com.	Purchase	11¼%	[1] C 10,623			14,885.51	$42,710.14	$42,710.14	57,595.65
Oct. 16, 1929	G.T.E. 15 yr. 6's	Trading	100,000				*52,217.41*			*52,217.41*
Apr 17, 1930	G.T.E. 10 yr. 6's	Purchase	24%				433,458.02			433,458.02
Apr. 18, 1930	G.T.E. Common	Buying	11¼%				38,724.75			38,724.75
Apr. 22, 1930	G.T.E. 10 yr. 6% Deb.	Selling	7,200,000				149,056.25			149,056.25
Apr. 22, 1930	G.T.E. Common	Purchase	20,587½ shs.	[2]	[2] 831,500	[2] $739,026.51		41,575.00	*697,451.51*	*697,451.51*
Apr. 23, 1930	G.T.E. 10 yr 6% Deb.	Trading	24%							
Apr. 17, 1930	G.T.E. Common	Original	11¼%	P 1,890½ C 3,781		181,290.59	114,802.46	16,147.25	*165,143.34*	*50,340.88*
Apr. 29, 1930	G.T.E. Common	Purchase	13,350 shs.	C 10,590⅔ P 2,759⅓		500,625.00		43,959.81	*456,665.19*	*456,665.19*
May 3, 1930	G.T.E. Common	Orig. Grp. Trad.	11¼%	C 5,875		287,279.57		23,621.19	*263,658.38*	*263,658.38*
June 11, 1930	G.T.E. Common	Trading	5,000 shs.	P 1,666⅔ C 3,333⅓		143,850.00		14,235.43	*129,614.57*	*129,614.57*
Oct. 10, 1930	G.T.E. Common	Trading	2,500 shs.			17,750.00			*17,750.00*	*17,750.00*
Nov. 11, 1930	G.T.E. Preferred	Syndicate	17,543 shs.	P 23,082½ C 1,711½		979,743.30		18,422.56	*961,320.74*	*961,320.74*
Nov. 28, 1930	G.T.E. Preferred	Syndicate	16,625 shs.	P 18,571 C 1,379		830,716.66		14,829.95	*815,886.71*	*815,886.71*
				C 37,293½ P 47,970	831,500	3,680,281.63	780,016.38	215,501.33	*3,464,780.30*	*2,684,763.92*
							In addition, C.S.C. sustained a loss of about on advances to defaulting members of the Apr. 17, 1930 Common stock Original Group (Conversion Account).			*730,000.00*
							and uncollected accounts receivable against defaulting members of the Apr. 23, 1930 Debenture Trading account, were about			*936,000.00*
							and C.S.C. has been unable to collect from Halsey, Stuart, also on this account, about			*781,000.00*

						and has paid to Chase *Bank*, on the Bank's loans to Pynchon & Co., as Managers of the Preferred Stock Syndicates	*6,531,000.00*
						and has reserved for possible further losses on the Preferred Stock Syndicate accounts	*2,092,145.00*
						indicating its total losses on flotations of and trading in G.T.E. securities were about	*13,754,908.92*

NOTE.—Common all sold at average price of $4.0206—per share. Following prices as of September 26, 1933, have been used in determining other values: Debentures, $5; Preferred, 50 cents.

C.S.C. holds 47,970 shs. G.T.E. *Pfd.*, valued at 50 cents a share and $831,500 of G.T.E. debentures of 1940, valued at $5 per $100 in determining the loss of $2,684,763 stated above. It also holds $1,939,000 more of debentures against the uncollected accounts receivable and 25,000 shs. (or proceeds) of Chase National Bank stock received under a certain settlement agreement.

[1] 7/9, 7031 @ $30 ..... $210,930
7/18, 3592 @ $30 107,760
$318,690

[2] See Nov. 11, 1930 Syndicate.

STOCK EXCHANGE PRACTICES

WEDNESDAY, NOVEMBER 29, 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 on yesterday, 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 and C. Horace Tuttle of Rushmore, Bisbee & Stern, also William Dean Embree and A. Donald MacKinnon of Milbank, Tweed, Hope & Webb, counsel representing the Chase National Bank and the Chase Corporation.

The CHAIRMAN. The subcommittee will come to order. You may proceed, Mr. Pecora.

Mr. PECORA. Mr. Bradway.

The CHAIRMAN. You will please come forward to the committee table, hold up your right hand, and be sworn: You solemnly swear that you will tell the truth, the whole truth, and nothing but the truth, regarding the matters now under investigation by the subcommittee. So help you God.

Mr. BRADWAY. I do.

TESTIMONY OF JUDSON BRADWAY, DETROIT, MICH.

Mr. PECORA. Mr. Bradway, will you give your full name and address to the committee reporter, please?

Mr. BRADWAY. Judson Bradway, 533 Majestic Building, Detroit.

Mr. PECORA. What is your business or occupation?

Mr. BRADWAY. Real estate.

Mr. PECORA. Are you connected with the Detroit & Canada Tunnel Co.?

Mr. BRADWAY. No, sir; not now.

Mr. PECORA. Have you been so connected in the past?

Mr. BRADWAY. Yes, sir.

Mr. PECORA. In what capacity were you so connected?

Mr. BRADWAY. I was one of the vice presidents of the Tunnel Co. until June 4, 1928, and then I became president. I was president until May 20, 1931.

Mr. PECORA. At what time was a receiver for the Tunnel Co. appointed?

Mr. BRADWAY. A receiver was appointed in April of 1932, or I believe it was in April. That is a guess, but is about right.

Mr. PECORA. Then you were the president of the Tunnel Co. at the time of the flotation of its mortgage bonds and debentures, weren't you?

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

Mr. PECORA. You became president in June of 1928?

Mr. BRADWAY. June 4, 1928.

Mr. PECORA. The bonds were floated a month before, I believe.

Mr. BRADWAY. A month before; yes, sir.

Mr. PECORA. Were you familiar with the negotiations that led to the issuance and flotation of its bonds and debentures?

Mr. BRADWAY. Only in a very general way. I had nothing to do with it whatever, and all that I know about the flotation of securities was what I heard in meetings that I might have attended.

Mr. PECORA. Now, Mr. Bradway, are you familiar with the agreement that was entered into on or about January 31, 1928, between Bertles, Rawls & Donaldson, Inc., and a syndicate of which you were designated as the syndicate manager?

Mr. BRADWAY. Yes, sir.

Mr. PECORA. Have you a copy of the agreement in question?

Mr. BRADWAY. I have.

Mr. PECORA. Will you produce it, please?

Mr. BRADWAY. Well, your man in Detroit has photographed this.

Mr. PECORA. I know.

Mr. BRADWAY. Here it is.

Mr. PECORA. Mr. Bradway, I show you what purports to be a photostatic reproduction of such syndicate agreement. Will you please look at it and tell me if you recognize it to be a true and correct copy of the agreement in question?

Mr. BRADWAY. You will let me see the original, please.

Mr. PECORA. Here it is.

Mr. BRADWAY (after looking at the photostatic reproduction). It looks very much like it; yes, sir.

Mr. PECORA. Will you be good enough to look at it and tell us whether it is a true and correct copy?

Mr. BRADWAY (after comparing, page by page, the photostatic reproduction with the original). Without reading it I would say it is a true and correct copy.

Mr. PECORA. I beg pardon?

Mr. BRADWAY. I say, without reading it I would say it is a true and correct copy.

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

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

(The syndicate agreement dated Jan. 31, 1928, between Bertles, Rawls & Donaldson, Inc. and Judson Bradway, syndicate manager, was marked "Committee Exhibit No. 207, Nov. 29, 1933", and a part of it appears immediately below where read by Mr. Pecora,

and the complete Agreement, if not sooner read by Mr. Pecora, will be found at the end of the day's proceedings.)

Mr. PECORA. Let me ask you what occasion there was for this agreement.

Mr. BRADWAY. The occasion was that on the 31st day of December 1927, Mr. Comstock, who was the president of the Tunnel Co., indicated, or rather notified the men interested that he would not be able—either would not be able or was not willing—or at least that he would not put up the necessary money required to hold the options, money required on January 1, 1928.

Mr. PECORA. Do you mean options on the real estate that was considered would have to be acquired in order to provide the tunnel with terminal facilities?

Mr. BRADWAY. In Detroit; yes. He had already expended about $30,000, and there was another $35,000 or so required on the 1st of January, and the syndicate was born at that time. The agreement was drawn 1 month later in its final form, although it had been tentatively drawn almost immediately after the 1st of January 1928.

Mr. PECORA. Now, this agreement marked in evidence as "Committee Exhibit No. 207", contains, among other things, the following recital——

The CHAIRMAN (interposing). What is the date of it?

Mr. PECORA. It is dated January 31, 1928, and was made—

By and between Bertles, Rawls & Donaldson, Inc., referred to in the agreement as the bankers, as parties of the first part, and such corporations and individuals as became syndicate members by signing this agreement, referred to herein as participants, parties of the second part; and the parties so signing as participants are Judson Bradway, Bertles, Rawls & Donaldson, Inc., by Huston Rawls, president, and James—

What is that name?

Mr. BRADWAY. That is James Vernor, Jr.

Mr. PECORA (continuing reading):

and Anderson & Gardner, Inc., James Vernor, Jr., and Judson Bradway, yourself also signed it.

Mr. BRADWAY. I am on there twice.

Mr. PECORA. This agreement contains this recital, among other things:

Whereas the bankers—

And that refers to Bertles, Rawls & Donaldson, Inc.

Together with certain associates, have obtained and hold options and/or contracts for the purchase of parcels of real estate included in the city block of the city of Detroit, Wayne County, Mich., bounded on the north by Woodbridge Street, and on the east by Randolph Street, and on the south by Atwater Street, and on the west by Bates Street, which said options and/or contracts provide for the purchase of said property for the total purchase price of $1,159,000 payable as set forth in said options and/or contracts; and

Whereas said options and/or contracts were obtained and are now being held for the purpose of providing terminal facilities in the city of Detroit for the proposed Detroit-Windsor Tunnel; and

Whereas the participants are desirous of purchasing the interest of said bankers and associates in and to said property as represented by said options and/or contracts, and of placing the entire beneficial right, title, and interest therein and thereunder in the syndicate formed hereby:

Now, therefore, in consideration of the sum of $1 each to the other in hand paid, the receipt of which is hereby acknowledged, and of the mutual promises and agreements herein contained, it is agreed as follows:

First. The amount to be paid hereunder upon the formation of this syndicate is the sum of $175,000.

What was that to be paid for?

Mr. BRADWAY. Well, that was to be paid into the syndicate.

Mr. PECORA. By the participants?

Mr. BRADWAY. Yes, sir.

Mr. PECORA. Well, for what? Was it for their interest in the syndicate?

Mr. BRADWAY. Well, for their interest in the syndicate, and to provide money with which to carry on the option on the property of the Detroit terminal. In other words, that was the capital of the syndicate.

Mr. PECORA. Now, this tunnel project was proposed originally by whom?

Mr. BRADWAY. It was proposed originally—it is a long story—I think a man named Miller in Toronto originally proposed it.

Mr. PECORA. I mean, who proposed it as it finally took form and effect through the formation of the Detroit & Canada Tunnel Co., and its issuance and sale of securities for the purpose of providing funds for the construction of the tunnel?

Mr. BRADWAY. Well, a man named Miller got the Canadian charter, which was considered the most valuable thing, I believe. And then a man named Martin got control of that. And then I think Mr. Rawls got some kind of contract with him in Detroit.

Mr. PECORA. When were the negotiations or transactions initiated which led to the formation of the company which eventually constructed the tunnel?

Mr. BRADWAY. I think the first company—well, in order that you may understand my position I wish to say that I was subpoenaed night before last, at 4 o'clock, and I haven't been connected with the Tunnel Co. for 2 years, and some of these things are a little rusty in my mind, but I will do the best I can. I think the original Tunnel Co. was organized in the middle of the summer of 1927, the Detroit & Ontario Subways Co. I think it was called, which later became the Detroit & Canada Tunnel Co.

The CHAIRMAN. Incorporated under the laws of Michigan?

Mr. BRADWAY. I could not tell you that, sir.

Mr. PECORA. Yes, sir; it was.

The CHAIRMAN. All right.

Mr. PECORA. When did Bertles, Rawls & Donaldson, Inc., assemble the real estate which was needed for the terminal facilities in the tunnel?

Mr. BRADWAY. Well, our office obtained options for them. The original options were obtained during the summer of 1927.

Mr. PECORA. Were you at that time one of the brokers or agents who helped to assemble the property in question?

Mr. BRADWAY. Yes, sir. Our office was employed at that time to assemble the property.

Mr. PECORA. Who employed you for that purpose?

Mr. BRADWAY. Mr. Rawls.

Mr. PECORA. Mr. Rawls of this banking firm?

Mr. BRADWAY. Yes, sir.

Mr. PECORA. And were you assisted in the assembling of the property by any other broker?

Mr. BRADWAY. Yes, sir; several.

Mr. PECORA. And not connected with your office?

Mr. BRADWAY. Yes, sir. We assembled, first, two blocks in another location, which was found not to be adequate. And then it was, in the summer of 1927, that this final block was assembled.

Mr. PECORA. Now, it is correct to say that you did that at the instance of Bertles, Rawls & Donaldson, Inc., is it not?

Mr. BRADWAY. Well, I did it at the instance of a committee composed of Bertles, Rawls & Donaldson and Anderson & Gardner. In other words, they had this tunnel project, and were interested in obtaining a Detroit terminal, and it was understood if the tunnel deal went through they would want this property, and so we assembled options on it on that basis. I don't know——

Mr. PECORA (interposing). Now, for what individuals or corporations did you assemble those parcels of real estate that were needed for the terminal facilities of the tunnel? You have mentioned Bertles, Rawls & Donaldson, Inc. You have also referred to others. I want to get them if you can give them.

Mr. BRADWAY. Mr. Rawls and Mr. Gardner and Mr. Anderson were the people whom I met at the time this project was outlined to me, and I was requested to obtain options. There wasn't any written contract of employment, and you will have to decide that for yourself, but these are the facts. I don't know who employed me exactly. They were there and said: "We are going to build a tunnel here, we think, and we are going to have to have a Detroit terminal, and if you want to handle this we will be glad for you to do it."

Mr. PECORA. Did you use dummies or nominees for the purpose of obtaining those options, or were they obtained in the names of the actual parties in whose behalf you were obtaining them?

Mr. BRADWAY. They were obtained in the names of dummies, all of them.

Mr. PECORA. Whose dummies were they? Were they selected by you?

Mr. BRADWAY. Yes, sir.

Mr. PECORA. Or persons connected with your office in some subordinate capacity?

Mr. BRADWAY. Yes, sir. The assembling of the block was left entirely to us.

Mr. PECORA. Were any payments required to be made, of any substantial character, on the obtaining of those options?

Mr. BRADWAY. Yes, sir.

Mr. PECORA. Or were the payments purely of a nominal character?

Mr. BRADWAY. The payments made up to the 1st of January were made by Mr. Comstock, who was president of the company. And Mr. Comstock, by the way, was present at those meetings. I forgot to mention him.

Mr. PECORA. Was he interested in obtaining the options?

Mr. BRADWAY. Yes, sir. Wait a minute. Do you mean in obtaining them, if so, no—but he put up the money that was paid previous to the 1st of January 1928. It was all put up by Mr. Comstock then.

Mr. PECORA. How much was put up in that fashion?

Mr. BRADWAY. Approximately $30,000.

Mr. PECORA. That was all that was necessary in order to acquire options on the real estate needed for the terminal facilities, was it?

Mr. BRADWAY. Well, yes, up to that time. A great deal more was required thereafter.

Mr. PECORA. Now, was the total of the option prices for the real estate that was assembled for the purpose of turning it over to the Tunnel Co. for terminal facilities, or what was that total?

Mr. BRADWAY. It was $1,159,000.

Mr. PECORA. That included the prices actually paid, or agreed to be paid, did it?

Mr. BRADWAY. Yes, sir.

Mr. PECORA. When you were asked to acquire this property or to assemble it?

Mr. BRADWAY. Yes, sir.

Mr. PECORA. At what price was that real estate turned over to the Tunnel Co.?

Mr. BRADWAY. At the price of $1,159,000 and 125,000 shares of the stock of the Tunnel Co., just as this agreement states.

Mr. PECORA. And 125,000 shares of the common stock of the Tunnel Co.?

Mr. BRADWAY. Yes, sir; out of 3,100,000 shares that were issued.

Mr. PECORA. Were those 125,000 shares given to the members of the group that employed you to acquire the options on the real estate. as a profit upon the transaction involving the real estate?

Mr. BRADWAY. It was our understanding that the promoters of the tunnel would receive a certain amount in stock, and that we would receive for carrying this property, if we carried it until it was taken over by the Tunnel Co., 125,000 shares of common stock.

Mr. PECORA. By the way, do you mean the persons named——

Mr. BRADWAY (interposing). The syndicate.

Senator TOWNSEND. Then your profits were to be in the stock?

Mr. BRADWAY. Entirely in the stock, and were received in stock.

Mr. PECORA. At what price was the stock issued?

Mr. BRADWAY. At what price was it issued?

Mr. PECORA. Yes.

Mr. BRADWAY. Why, it was no par value stock as I remember it.

Mr. PECORA. Well, it was set up as being worth $3.25 a share at the time of issuance, wasn't it?

Mr. BRADWAY. Yes, sir: at the time of closing.

Mr. PECORA. That valuation was given to it then?

Mr. BRADWAY. Yes, sir; that is right.

Mr. PECORA. To whom were those 125,000 shares distributed?

Mr. BRADWAY. At the time of closing we received a receipt from the Central Union Trust Co. of New York to the effect that they held those 125,000 shares of stock and $405,650, and that within 60 days, they would either deliver the money to us or deliver the stock. And ultimately, on the 16th day of July, 1928, the syndicate received $202,827.25 for approximately half of the stock, and on the 8th of October, 1928, received the balance of the money for the sale of the stock.

The CHAIRMAN. Which totaled how much?

Mr. BRADWAY. I beg pardon?

The CHAIRMAN. A total of how much? Four hundred thousand and some odd dollars?

Mr. BRADWAY. It was $405,650.

The CHAIRMAN. What did you do with that?

Mr. BRADWAY. Distributed it to the syndicate holders pro rata to their investment.

Mr. PECORA. Now, the agreement under which those 125,000 shares were paid as a profit to persons in whose behalf you had acquired the real estate, or obtained options thereon, that agreement was made with them by the company, or eventually was ratified by the Tunnel Co., was it?

Mr. BRADWAY. Do you mean this syndicate agreement?

Mr. PECORA. Yes.

Mr. BRADWAY. Why, I don't remember that the Tunnel Co. ever had anything to do with it.

Mr. PECORA. The Tunnel Co. had to issue the stock, didn't it?

Mr. BRADWAY. The Tunnel Co. had to issue the stock, but——

Mr. PECORA (interposing). Now, what consideration did the Tunnel Co. receive for the stock? Was it the real estate?

Mr. BRADWAY. My recollection is that there were 560,000 shares of stock underwritten at $3.25 per share.

Mr. PECORA. By whom?

Mr. BRADWAY. By Bertles, Rawls & Donaldson, Inc. They agreed to purchase——

Mr. PECORA (interposing). They were the financial promoters of this enterprise, weren't they?

Mr. BRADWAY. I think it is proper to say that that is true; yes, sir.

Mr. PECORA. Now, I am referring particularly to the 125,000 shares which under this agreement of January 31, 1928, were to be turned over to the persons in whose behalf the options on the real estate had been obtained, upon the acquiring of that real estate by the Tunnel Co. Now, the Tunnel Co. agreed to the issuance of that stock, didn't it?

Mr. BRADWAY. Undoubtedly.

Mr. PECORA. At the time the Tunnel Co. agreed to do that wasn't its board of directors composed of persons who had been selected in large part by the banking promoters of the enterprise?

Mr. BRADWAY. I would say that the directors were composed at that time of people who had been interested in it. I suppose it could be said that they were selected in large part possibly, or at least that they were satisfactory to, I will put it that way, the bankers.

Mr. PECORA. And included the bankers themselves, didn't it, among their number, or the nominees of the bankers?

Mr. BRADWAY. Let me see now. The directors you are talking about now?

Mr. PECORA. The directors of the Tunnel Co.

Mr. BRADWAY. Yes, sir. Mr. Rawls was a director of the Tunnel Co.

Mr. PECORA. And the president of the Tunnel Co. at that time was Mr. Comstock?

Mr. BRADWAY. Yes, sir. I practically had nothing to do with the whole proposition except the real estate end of it until I was elected president on the 4th of June, which was several days after the

actual closing of the project. I attended a great many meetings, and I was in a general way familiar with it, but have no intimate knowledge of the financing or anything else that was going on, except my end of it.

Mr. PECORA. Whom did the Tunnel Co. pay the cash consideration to, of $1,159,000, which it paid for this real estate, in addition to the 125,000 shares of common stock?

Mr. BRADWAY. At the time of the closing these property owners came in and were paid the balance coming to them, which had not been paid to them by the syndicate. And the balance of the money, that had been paid to them, was paid to me as syndicate manager, making up the——

Mr. PECORA (interposing). Then you disbursed it among the previous owners whose property had been acquired for the purposes of the Tunnel Co.?

Mr. BRADWAY. Well——

Mr. PECORA (interposing). Or had the syndicate managers succeeded to the rights and interests of these original owners? How was it done?

Mr. BRADWAY. Let me get it tied up here now. On the 1st of January, when the syndicate was formed, immediately the syndicate paid to Mr. Comstock approximately $30,000, which he had invested at that time in the matter, and the syndicate——

Mr. PECORA (interposing). For the purpose of acquiring options on the property?

Mr. BRADWAY. Yes, sir.

Mr. PECORA. All right.

Mr. BRADWAY. At that time the options called for further payments of approximately $450,000, on the 16th of March.

Mr. PECORA. To whom were those further payments to be made?

Mr. BRADWAY. Well, to all property owners. The total payment to all property owners amounted to approximately $450,000. Those options had been extended in the last few days of December of 1927, to March 15, that being the date that the bankers and everyone connected with it felt that the deal would be closed. And at that time there was approximately $450,000 required as payments on those properties. And the information had gotten out that this property was to be used as a tunnel terminal, and none of us had any hope that we could avoid having to pay that. This syndicate agreement states right in here that it is anticipated $450,000 will be required if the property is carried beyond March 10. You will find it on page 5.

The CHAIRMAN. And you paid that, did you?

Mr. BRADWAY. We were able finally, by going to those property owners and convincing them that the tunnel project was almost certain to go through, we were able to reduce those payments down so that the total amount we paid in was approximately $165,000 on those properties, as the deposit on the properties by the syndicate before the deal was taken over by the Tunnel Co.

Mr. PECORA. Well, to whom were the deeds made to the property in consideration of the $1,159,000?

Mr. BRADWAY. The deeds were made to the Detroit & Canada Tunnel Co. in every case except two—well, I think one case is all,

and in that case the syndicate had to take title to the property in order to hold it, this piece of property, which was under foreclosure, and in order to hold it the syndicate had to purchase it and take title to it.

Mr. PECORA. Now, on May 7, 1928, there was another agreement entered into between the Detroit & Canada Tunnel Co. and Houston Rawls, was there not?

Mr. BRADWAY. It may have been. I do not know.

Mr. PECORA. It covered the acquisition of all the rights and title and interest to the real estate on both the Canadian and American sides of the Detroit River?

Mr. BRADWAY. I do not happen to remember it.

Mr. PECORA. Well, I show you what purports to be a copy of such agreement.

Mr. BRADWAY. What is the date of the agreement again, Mr. Pecora?

Mr. PECORA. May 7, 1928.

Mr. BRADWAY. What does it purport to do? Do you want me to read it or——

Mr. PECORA. No. Just look at it. Read it sufficiently to enable you to say whether or not that is a copy of an agreement that was entered into on or about the date that it bears. [Handing same to Mr. Bradway.]

Mr. BRADWAY. As I understand this agreement, without reading it thoroughly, it was the proposition of Mr. Rawls to turn over all of the property, rights, charters, and everything whatsoever necessary to construct the tunnel to the Tunnel Co. Is that what it is? I have not read it sufficiently. As I remember, there was such an agreement, and this looks like the one. I do not know without reading it. It would take me 10 minutes to read it, or 15.

Mr. PECORA. Well, it would not take that long, would it?

Mr. BRADWAY. Well, there are seven or eight pages.

Mr. PECORA. Have you an independent recollection of that agreement?

Mr. BRADWAY. I have not—what kind of a recollection?

Mr. PECORA. An independent recollection. That is, a recollection that does not have to be refreshed by looking at a copy of the agreement?

Mr. BRADWAY. No; I have not.

Mr. PECORA. Well, then, consult the copy that you have there.

(The witness examined the paper.)

Mr. BRADWAY. I remember this agreement generally only as being the agreement which was drawn up at the time and presented to me for signature, and being the agreement which I understood to be the agreement on the part of Mr. Rawls to turn over to the Tunnel Co. all of the required rights, properties, and what not, necessary to the construction of the tunnel.

Mr. PECORA. Well, an agreement of which this is a copy was duly executed and consummated, was it not?

Mr. BRADWAY. Well, I have not seen it since I signed it, and if I signed it—and apparently I did—and I do not remember it well enough to say, to be frank with you. But I do remember that some

such an agreement was drawn up at the time; and if my signature is attached, undoubtedly that is it.

Mr. PECORA. Well, it appears that you did execute the agreement as vice president of the Detroit & Canada Tunnel Co.

Mr. BRADWAY. If I did so execute it, then it is the agreement that I have in mind.

Mr. PECORA. Well, subject to any correction that you may want to make, or anyone else may want to make, I am going to offer this in evidence as a copy of the agreement.

The CHAIRMAN. It may be received in evidence.

(Copy of agreement dated May 7, 1928, between the Detroit & Canada Tunnel Co. and Huston Rawls was received in evidence and marked "Committee Exhibit No. 208 of Nov. 29, 1933.") (Committee exhibit 208 is printed in full at the close of today's hearing.)

Mr. PECORA. This agreement provides in substance that Mr. Rawls, member of the firm of Bertles, Rawls & Donaldson, Inc., was to receive from the Detroit & Canada Tunnel Co. a cash consideration of $3,526,971 and 1,690,000 shares of the capital common stock of the Detroit & Canada Tunnel Co. for all the rights in and to the real estate, and so forth, described in this agreement, which he turned over to the Detroit & Canada Tunnel Co., does it not?

Mr. BRADWAY. Well, I do not remember, but if it does, why it does.

Mr. PECORA. Well, whether you remember it or not, let me read these brief excerpts from the instrument:

In consideration of the above there is to be paid or delivered to the undersigned or his associates—

that is, referring to Rawls—

as may be specified and authorized in the written order or direction of the undersigned the following:

1. One million six hundred ninety thousand shares of the fully paid non-assessable no-par value common shares of said Detroit-Ontario Subways, Inc. (now Detroit & Canada Tunnel Co.);

2. A sum in cash in full payment for the above-described Detroit real estate including all commissions and/or trustee's fees, to wit: $1,599,900;

Then it provides:

3. A sum in cash in full payment for the above-described Canadian real estate including all commissions and/or trustee's fees, to wit: $1,365,000.

Also provides for the payment in cash of the sum of $55,000 to the executors of the estate of Charles Miller and to E. G. Engholm.

Provides further:

5. All cash payments required to be made by Bertles, Rawls & Donaldson, Inc., to H. W. Noble & Co. and F. W. Martin, in consideration of the assignment to the undersigned by said parties of said Miller-Engholm agreement, to wit: Not to exceed the sum of $76,071.

And then it provides for the further cash payments of the following items:

Engineering and administration	$190,000
Legal fees	200,000
Appraisals	6,000
Traffic report	5,000
Daniel L. Turner traffic report	10,000
Preorganization expenses refunded	20,000

Those various cash items total $3,526,971. Is it your recollection that that was about the sum which was paid in cash for the rights acquired by the Tunnel Co. under this agreement?

Mr. BRADWAY. Yes, sir.

Mr. PECORA. And in addition to that the company also issued as a part consideration for those rights 1,690,000 shares of its capital common stock?

Mr. BRADWAY. Yes, sir.

Mr. PECORA. To Huston Rawls?

Mr. BRADWAY. That is my recollection.

Mr. PECORA. Now, again that common stock was allocated a value for the purpose of this transaction at $3.25 per share, was it not?

Mr. BRADWAY. I do not remember that. That was the price that 560,000 shares was to be sold for; I remember that.

Mr. PECORA. Well, now, what were the 1,690,000 shares of stock issued for? As a profit upon the transaction?

Mr. BRADWAY. That was my understanding; yes, sir. That was the promotion stock.

Mr. PECORA. The promotion stock. That is in addition to the 125,000 shares that were issued under the agreement of January 21, 1928?

Mr. BRADWAY. No, sir. I do not think so. It was my understanding 125,000 shares was coming out of that.

Mr. PECORA. I do not see anything in the agreement which so provides.

Mr. BRADWAY. It could not come from any other place that I know of. There were 850,000 shares set aside to go with the debentures; 560,000 shares to be sold. And it is my recollection that that other figure that you mentioned makes up the balance of it. I have not figured it out. I think if you will, you will find that out.

Mr. PECORA. Now, at the time this agreement of May 7, 1928, was entered into, Rawls as a member of the firm of Bertles, Rawls & Donaldson was still one of the promoters of the company, was he not?

Mr. BRADWAY. Well, he was considered to be the man in charge of the whole proposition.

Mr. PECORA. The guiding spirit of the company?

Mr. BRADWAY. Yes, sir. No doubt about it.

Mr. PECORA. Now, the day after this agreement was entered into were the articles of incorporation or association of the Detroit & Canada Tunnel Co. amended so as to include therein a provision known as article no. 9, paragraph 3, which reads as follows:

No contract or other transaction between the corporation and any other corporation or firm shall be affected or invalidated by the fact that any one or more of the directors of this company is or are interested in, or is a member, director, or officer, or are members, directors, or officers of such other corporation or firm, and any director or directors, individually or jointly, may be a party or parties to or may be interested in any contract or transaction of this corporation or in which this corporation is interested.

No contract, acts, or transaction of this corporation with any person or persons, corporations, or firms shall be affected or invalidated by the fact that any director or directors of this corporation is a party or are parties to or interested in such contract, act, or transaction, or in any way connected with such person or persons, corporations, firms, or associations, and each and every

person who may become a director of this corporation is hereby relieved from any liability that might otherwise exist from contracting with the corporation for account of himself or any corporation, firm, or association in which he may be in any wise interested.

Mr. BRADWAY. What is your question?

Mr. PECORA. Were the articles of association of this corporation amended the day following the making of this agreement of May 7, 1928, so as to include in such articles the provision that I have just read to you?

Mr. BRADWAY. I have no recollection of that.

Mr. PECORA. Have you a copy of the articles of association or incorporation of the company with you?

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

Senator ADAMS. Was that amendment to the articles the day following?

Mr. PECORA. The day following; yes, sir.

Mr. BRADWAY. At that time I was supposed to be present and was present at some of the meetings, but as to knowledge, by being present—I had very little to do with that end of it at that time. If the minutes say that, why undoubtedly such a resolution was passed. I have tried to get hold of the minute book in Detroit. but your men had it subpenaed and I have not seen it for 5 years.

Mr. PECORA. Well, we have not had it subpenaed for 5 years: you know that, do you not?

Mr. BRADWAY. Well, I have not had occasion to look at it.

Mr. PECORA. Is the minute book here?

Mr. BRADWAY. I haven't the slightest idea.

Mr. PECORA. When did you last see it?

Mr. BRADWAY. I have not seen it for 3 years. Since before I resigned as president. Maybe 2 years. Back in 1931.

The CHAIRMAN. How did the corporation get those 3 million dollars to pay Rawls?

Mr. BRADWAY. Where did the corporation get the 3 million dollars to pay Rawls?

The CHAIRMAN. Yes.

Mr. BRADWAY. Well, the corporation, of course, got all of this money from the sale of bonds, debentures, and common stock.

The CHAIRMAN. And this was paid to him, and he deeded these properties to the corporation?

Mr. BRADWAY. That is as I understand it; yes, sir.

The CHAIRMAN. The proceeds of bonds, mortgage bonds, do you mean?

Mr. BRADWAY. How is that?

The CHAIRMAN. Bonds secured by mortgage? The proceeds of the sale of bonds?

Mr. BRADWAY. There were $8,500,000 first mortgage and $8,500,000 debentures sold, and 560,000 shares of stock which Mr. Rawls purchased at $3.25 a share, and the money went into the Tunnel Co. That was the money provided for the construction of the project.

The CHAIRMAN. And that money went to pay for this property? This $3,526,000 came out of that?

Mr. BRADWAY. Well, apparently the $1,820,000 which Bartles, Rawls & Donaldson raised from the sale of stock was part of the money—that is, the $1,820,000 went in to the trustee for the con-

struction of the tunnel project. I do remember just before the final closing that—I do not remember when or how long before—that this question came up that additional funds were thought desirable by the bankers or the engineers or somebody, and this stock, this 560,000 shares, had to be sold for cash and the money put in the Tunnel Co. before the deal went through. And Rawls purchased that stock—Mr. Rawls himself, or his company—560,000 shares.

Mr. PECORA. Now, Mr. Bradway, I have here what purports to be a copy of the certificate of amendment to the articles of association of the Detroit & Canada Tunnel Co., by which amendment the provision that I read to you a few moments ago was made part of the articles of association of the Tunnel Co. It appears that that certificate was executed by you as vice president of the company, and by Mr. A. Gardner, as secretary, on the 30th of April 1928, and was filed in Lansing, Mich.—I take it the office of the Secretary of State there—on May 8, 1928, and in the office of the clerk of Wayne County, Mich., on May 9, 1928. Will you look at it and see if it refreshes your recollection as to the making of that amendment [handing paper to Mr. Bradway]?

Mr. BRADWAY (after examining same). I do not remember the amendment at all. The fact that I signed it indicates very definitely that it was one of the various papers which the attorneys presented to me to be signed between the time of January the 1st and the time I became president on June the 4th, and which I probably looked over and thought was all right, and believed was all right, and signed. Mr. Comstock was still president, although he was out of town a great deal and was not around, and I was there, and while I was only a vice president, I was signing papers a great deal.

Mr. PECORA. You were also a director, were you not, at that time?

Mr. BRADWAY. Yes, sir.

Mr. PECORA. Now this amendment could not have been made without the approval of the directors?

Mr. BRADWAY. Undoubtedly.

Mr. PECORA. And probably the stockholders as well?

Mr. BRADWAY. Undoubtedly.

Mr. PECORA. Do you not recall any action taken by the board whereby this amendment was adopted?

Mr. BRADWAY. I do not recall, but if you have got the minute book and the records, sir, why do you not put it in here?

Mr. PECORA. That was furnished to us as a copy of the certificate of amendment of the articles of association.

Mr. BRADWAY. Well then you probably know if it is. I do not remember. I have not seen that book for so long, and I do not remember it. That is all there is to it.

Mr. PECORA. Is the Mr. Comstock that you refer to the gentleman who is now the Governor of the State of Michigan?

Mr. BRADWAY. Yes, sir.

Mr. PECORA. Are you familiar with the fact, as I understand it to be the fact, that under date of October 29, 1927, a letter was addressed by one Henry E. Bodman to Mr. Robert O. Lord, Guardian-Detroit Bank, Detroit, Mich., reading as follows (reading):

DEAR MR. LORD: In regard to the matter that we were discussing yesterday—if the engineers' report is correct, the project is, of course, sound. The impor-

tant thing is to be sure of the facts and that the estimates of the future are conservative.

I have frequently seen work turned out by firms of high standing which has not had the personal attention of the chief officers or members of the firm. I should want to be very sure that this report is the work of either Mr. Brinkerhoff or someone who is just as good as he is, and especially I would want to know that they were not relying on the judgment of any member of their staff who is down the scale—either in the middle or towards the bottom.

In any case I should think an independent investigation and report should be made and submitted by an engineering firm whose standing was equal to that of the one engaged by the promoters, and I should also think that it might be well not to let this independent firm see the report which is now in your hands.

From a superficial examination, I have this criticism to offer, which may or may not be well founded.

The competition which this project has got to meet makes it necessary that the facilities exceed the competing facilities. One of the most important items is despatch. The annoyance of being held up for customs and immigration inspection is a serious one at very best, and if there occurs an undue congestion, with subsequent delay at Woodward Avenue, and if, owing to the fact that additional ground space could be more cheaply obtained further down the river, the bridge traffic should be more speedily handled, I believe the traveling public would much prefer to drive 2 miles down the river and use the bridge.

I do not think the facilities which are contemplated are sufficient to give the desired despatch in handling and getting rid of the traffic. There is no time like the present for securing additional ground for this purpose. If it were my project I think I would make sure now that my facilities were going to be at least as good as and if possible better in this respect than my competitor's.

Yours truly,

HENRY E. BODMAN.

Mr. BRADWAY. I never heard of the letter.

Mr. PECORA. Do you know who Mr. Henry E. Bodman is?

Mr. BRADWAY. Yes.

Mr. PECORA. Who is he?

Mr. BRADWAY. Well, he is a very prominent lawyer in Detroit, and at that time was connected with the Guardian. I don't remember—he may have been chairman of the board at that time.

Mr. PECORA. Of the Guardian-Detroit Bank?

Mr. BRADWAY. Yes, sir.

Mr. PECORA. And Mr. Lord was then president, was he not, of the Guardian-Detroit Bank?

Mr. BRADWAY. Yes, sir.

Mr. PECORA. Do you know whether the suggestion made by Mr. Bodman in this letter was ever followed?

Mr. BRADWAY. It is a pretty long letter. What particular suggestion do you mean, Mr. Pecora?

Mr. PECORA. Well, the only suggestion that he makes: That an independent engineering firm be asked to make a survey and a report without first having had access to the reports already submitted by some other engineering firm.

Mr. BRADWAY. Well, I do not know whether it was the result of that or not, but I know that Daniel L. Turner was requested to make a complete report. Whether his report was made before that or afterwards, or whether the Ford, Bacon & Davis report was obtained—there were three reports obtained of supposedly the very best consulting engineers in the United States without any question. I remember at the time that we decided to go into the syndicate,

looking into the possibility of having either to buy that block or lose the money invested, we made an investigation as to who these engineers were, and were of the opinion that there were no better engineers in the United States than these three firms, all of which had given these reports.

Senator COUZENS. Did any of these reports warn you about the ferry traffic?

Mr. BRADWAY. Well, every one of these reports considered the ferry still to be in operation. Contrary to all the publicity that has been in the papers, every one of these reports gave to the ferry company their allotted amount, and to the bridge their allotted amount, and to the tunnel their allotted amount, and the engineers said it did not make any difference how many bridges they built 2 miles from the center of this town, that the tunnel in the heart of this city would still make money.

Senator COUZENS. Did not any of these engineers' reports suggest that it would be necessary for these various companies to get ferry business?

Mr. BRADWAY. No, sir; none of them suggested that.

Senator COUZENS. None of them suggested that?

Mr. BRADWAY. Not in their final reports.

Senator COUZENS. In any of their reports, whether final or otherwise, did they ever refer to that?

Mr. BRADWAY. No. The first report of course made by Brinckerhoff, as I remember, was before the bridge had definitely decided to go ahead, and their report was amended afterwards.

The CHAIRMAN. There was some suggestion made yesterday that one of the ferries would probably have to go out of business.

Mr. BRADWAY. Well, of course, it is just a question of price. Both ferries would have to go out of business if the Tunnel Co. met their competition in price.

Mr. PECORA. Do you know the law firm of Warren, Cady, Hill & Hamblen of Detroit, Mich.?

Mr. BRADWAY. Yes, sir.

Mr. PECORA. Were they counsel in any way whatsoever for the Tunnel Co.?

Mr. BRADWAY. They were counsel for the Tunnel Co.

Mr. PECORA. I show you what purports to be a copy of an agreement, or rather of a letter, with certain schedules annexed thereto, addressed to the Detroit & Canada Tunnel Co. and Guardian Trust Co. of Detroit, Mich., under date of May 28, 1928, which I may tell you was furnished to us by the law firm of Warren, Cady, Hill & Hamblen of Detroit, Mich. Will you look at it and tell us if you recognize it as being a true and correct copy of a letter or agreement which was entered into and consummated? [Handing paper to Mr. Bradway.]

Mr. BRADWAY (after examining same). I remember such an agreement being signed at the date of closing, and on the occasion of the closing.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. Let it be admitted.

(Letter dated May 28, 1928, to Detroit & Canada Tunnel Co. and Guardian Trust Co. of Detroit, Mich., from Huston Rawls for him-

self and his associates, together with schedules A to J thereto attached, was received in evidence and marked "Committee Exhibit No. 209, of Nov. 29, 1933." Committee exhibit no. 209 is printed in full at the close of today's hearing.)

Mr. PECORA. I will read into the record the following portions of this exhibit marked "Committee Exhibit 209" in evidence.

MAY 28, 1928.

DETROIT & CANADA TUNNEL CO., AND GUARDIAN TRUST CO.,
Detroit, Mich.

GENTLEMEN: Enclosed herewith you will find itemized schedules for the payment and delivery of the cash and shares of stock to which the undersigned is entitled under the provisions of the letter agreement of May 7, 1928, between the undersigned and his associates and Detroit & Canada Tunnel Co., and you are authorized and requested to issue the 1,690,000 shares of no par value common stock to which the undersigned and his associates are entitled under the aforesaid agreement to the undersigned and his associates and in the amounts as set forth in the annexed schedules, and also to take the necessary steps under the provisions of article II, section 2 of the trust indentures for the release of sufficient of the deposited cash to pay the amounts to the persons as set forth in the annexed schedules, a summary of these schedules being as follows:

Schedule A. Detroit Terminal Block	$1,564,650.00
Schedule B. St. Mary's Academy property	1,365,000.00
Schedule C. Purchase of Millar and Engholm rights	32,500.00
Schedule D. Purchase of Noble-Martin rights	76,071.00
Schedule E. Detroit & Canada Tunnel Co., franchise fees, broker's commissions, taxes, trustee's fees and other incidental costs of reorganization and administration	122,345.10
Schedule F. Detroit & Windsor Subway Co., franchise fees, taxes and other incidental costs of organization and administration	54,550.00
Schedule G. Engineering, appraisals, and traffic reports and administration	101,803.74
Schedule H. Legal fees, including all fees of Warren, Hill & Hamblen for company, Sullivan & Cromwell, and Beaumont, Smith & Harris for bankers, and Kilmer, Irving & Davis, of Toronto, for company and bankers	200,000.00
Schedule I. Construction contracts, premium on bonds	147,495.00
Schedule J. Distribution of 1,690,000 shares of stock.	

HUSTON RAWLS,
(For himself and his associates).

Now the cash items that I have enumerated total $3,664,414.78.

Senator COUZENS. Do you know how those legal fees of $200,000 were divided, Mr. Bradway?

Mr. BRADWAY. No; I do not, Senator.

Mr. PECORA. There may be a schedule here that shows. Schedule H attached to this agreement gives the information, Senator, that you have just asked of the witness. Schedule H attached to this exhibit, no. 209, and made a part thereof, reads as follows:

Legal fees.—Including all fees of:	
1. Warren, Hill & Hamblen, for Co.	$150,000
2. Sullivan & Cromwell, for bankers	30,000
3. Beaumont, Smith & Harris, for bankers	10,000
4. Kilmer, Irving & Davis of Toronto, for company and bankers	10,000
In all	200,000

Mr. PECORA. The schedule J which I want to call your attention to, which is attached to exhibit no. 209, is a schedule indicating the apportionment to be made of the 1,690,000 shares of common stock, which reads as follows [reading]:

SCHEDULE J—DIVISION OF STOCK BETWEEN HUSTON RAWLS AND ASSOCIATES

	Shares
Guardian Detroit Co	226,010
Chase Securities Corporation	175,950
The N. W. Harris Co. (Harris Trust & Savings Bank)	20,003
J. P. Rinckhoff	40,007
Bertles, Rawls & Donaldson, Inc	76,780
Huston Rawls	105,000
Judson Bradway	75,000
William C. Allee, trustee	1,000
Sherwin A. Hill	6,080
Sherwin A. Hill	4,560
Joseph G. Hamblen, jr	3,800
Carl V. Essery	2,280
Charles E. Lewis	2,280
Public Securities, Ltd	52,500
Arthur Gardner	30,000
Chase Donaldson	26,250
Robert E. Jennings	26,250
Parsons, Klapp, Brinckerhoff & Douglas	20,000
William A. Comstock	10,000
H. W. Noble & Co	1,250
Sherwin A. Hill	40,000
Huston Rawls, trustee	4,500
Kilmer, Irving & Davis	20,000
F. G. Engholm	64,381
Estate of Charles Millar, deceased	104,619
H. W. Noble & Co	96,250
F. G. Engholm	12,000
G. R. Sproat	10,000
A. W. Hunter	10,000
Mabel V. Brower	56,000
E. H. Brower	63,000
Fred W. Martin	304,250
Total	1,690,000

Do you know why the Guardian Detroit Co. received 226,010 shares out of this block?

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

Mr. PECORA. Do you know why the Chase Securities received 175,950 shares?

Mr. BRADWAY. I do not.

Mr. PECORA. Do you know why any persons listed on this schedule received the number of shares that I have indicated or any number of shares out of this block of 1,690,000?

Mr. BRADWAY. I know why Judson Bradway received his.

Mr. PECORA. Judge who?

Mr. BRADWAY Judson Bradway.

Mr. PECORA. You received 75,000 shares?

Mr. BRADWAY. Yes.

Mr. PECORA. What did you receive those shares for?

Mr. BRADWAY. As promotion stock for my activities, and more or less as a donation, as far as I knew at the time.

Mr. PECORA. From whom did the donation come, as far as you knew at that time or knew at any time since then?

Mr. BRADWAY. From Mr. Rawls who had the deal. It was my understanding he had the distribution of this stock, and of course, on account of being around there, I was interested in the thing and I got 70,000 shares, incidentally. That other 5,000 was given to me because I purchased it from one of the other parties. Previously I had purchased the rights to 5,000 shares of that stock from Fred Martin for $7,500, and paid him cash for it.

Mr. PECORA. Do you know why Fred W. Martin received 304,250 of those shares?

Mr. BRADWAY. I do not. I had nothing whatever to do with that end of it and had no idea of being president at that time, but was pressed into duty on the closing day to sign a whole stack of papers which I only had a chance to read over and most of which I had not a copy of and have not seen them since. From the time I became president of the company I took charge of the construction work and I know what went on after the 6th of June 1928, and not before that.

Mr. PECORA. At the time this common stock was issued it was understood to have a value of $3.25 a share. You have said that before?

Mr. BRADWAY. No; I said that the 560,000 shares were sold for $3.25 a share and that went into the Tunnel Co. This other stock, including my stock that I received, was tied up in some kind of an escrow agreement. I have forgotten now what it was, but I could not sell it, I know, for some time.

Mr. PECORA. Those 560,000 shares sold by the Tunnel Co. at $3.25 a share about the same time these 1,690,000 shares were issued, did they not?

Mr. BRADWAY. I do not remember when they were sold.

Mr. PECORA. They were sold, according to our records, in May 1928, to Bertles, Rawls & Donaldson, Inc.

Mr. BRADWAY. I would say they were sold previous to the close of May 1928, but I do not know when; I do not remember. Your records are probably correct.

Mr. PECORA. Allocating the valuation of $3.25 a share to these 1,690,000 shares it would seem that the financial promoters and their associates in this tunnel enterprise received as a bonus shares of stock having a value or regarded as having a value of $5,492,500. Were those shares issued as a bonus to the promoters?

Mr. BRADWAY. That is my understanding.

Senator COUZENS. Did you ever see the contract that was made with the Brinckerhoff engineering firm?

Mr. BRADWAY. Originally, when they made their survey?

Senator COUZENS. Yes.

Mr. BRADWAY. No, sir.

Senator COUZENS. You do not know where the contract is now?

Mr. BRADWAY. No; I do not. Do you mean the contract of employment?

Senator COUZENS. Yes.

Mr. BRADWAY. No; I do not.

Senator COUZENS. The reason I asked that is that it seems rather strange that an engineering firm should participate in bonus stock.

Mr. BRADWAY. Well, I do not know anything about it except that all those men whose names were read there gave a lot of time to the thing, and I suppose that Mr. Rawls felt that was an additional payment that they were entitled to for their additional services.

Senator COUZENS. If they had not made a favorable report on the tunnel proposal they would not have had any bonus stock, would they, in all probability?

Mr. BRADWAY. I could not answer that, having had nothing to do with the distribution of the stock. I do not know anything about it.

Senator COUZENS. Would you consider it ethical for an engineering concern who gave a favorable engineering report on a project of that sort to receive bonus stock?

Mr. BRADWAY. Well, I am not passing on anybody's ethics; but if they received their stock as I did—I had no idea that I was going to receive any stock or how much stock; I expected I would be given some stock in this thing; how much I did not know until just before this matter was closed up——

Senator COUZENS. That is the part that makes me curious, because I wondered if Brinckerhoff had the same expectations.

Mr. BRADWAY. I feel very certain that Brinckerhoff did not know what he was going to get, any more than I did. But I could not answer that, naturally.

Senator ADAMS. You were not disappointed with the allotment they made to you, were you?

Mr. BRADWAY. Well, 70,000 shares out of 3,100,000 is not an awful lot.

Senator ADAMS. Figured on the selling price it is about $250,000. Considered as a donation it was not bad?

Mr. BRADWAY. Not bad; no.

Mr. PECORA. For your service that consisted of the assembling of two parcels of real estate for the promoters?

Mr. BRADWAY. And carrying it and——

Mr. PECORA. I thought Mr. Comstock carried it.

Mr. BRADWAY. Carried it until the 1st of January, and the syndicate carried it after that.

Mr. PECORA. The syndicate was really managed by Rawls, was it not—Huston Rawls?

Mr. BRADWAY. The real estate syndicate?

Mr. PECORA. Yes.

Mr. BRADWAY. No, sir; it was not; it was managed by me.

Senator ADAMS. You had $30,000 in that syndicate?

Mr. BRADWAY. Before we got through with it I had $75,000 in, practically.

Senator ADAMS. Is there any objection to answering what your contribution was to it?

Mr. BRADWAY. No. It is set forth right here. The contribution of myself and wife to this was $69,500.

Senator ADAMS. All of which you got back in addition to the stock?

Mr. BRADWAY. No. The syndicate lost $8,843.49 on the carrying of that property. In other words, when we turned it over for $1,159,000 it had actually cost us $8,843.49 in excess of that.

Mr. PECORA. Mr. Bradway, it appears from schedule H of exhibit no. 209 in evidence that three groups of lawyers representing bankers received out of a total of $200,000 paid for legal fees sums aggregating $50,000. Do you know why the company should have paid fees of attorneys for the bankers?

Mr. BRADWAY. This is in that schedule at the time of closing?

Mr. PECORA. Yes.

Mr. BRADWAY. No, I do not; I do not know anything about that.

Mr. PECORA You were a director as well as vice president of the Tunnel Co. at the time this was done, were you not?

Mr. BRADWAY. Yes.

Mr. PECORA. Do you not know any reason why it was done?

Mr. BRADWAY. Well, if I did I do not recall it now.

Mr. PECORA. You know, do you not, that the bankers underwrote $17,000,000 worth of first-mortgage bonds and the debentures at 90 and sold them to the public at around 100?

Mr. BRADWAY. Yes, sir. We thought that 90 was a very good bid, as far as we could find in connection with everything else. Everybody thought it was pretty good.

Mr. PECORA. The spread was very, very fair to the company?

Mr. BRADWAY. We thought so at the time. I remember I thought so in the light of the information I had acquired at the time we got into this syndicate.

Mr. PECORA. You mean, the company got a good price for those bonds?

Mr. BRADWAY. We thought so at the time.

Mr. PECORA. What do you think the public got that paid $100?

Mr. BRADWAY. I had had very little experience in matters of that kind; in fact, none before or since, but it was my understanding that 10 points was a very reasonable amount for the people who bought and distributed the bonds.

Mr. PECORA. And the people who bought and distributed the bonds at profits represented by the difference between 90 and the price at which they sold those bonds to the public, which was around par, also had the fees of their attorneys paid by the Tunnel Co. amounting to at least $50,000?

Mr. BRADWAY. I do not know anything about that.

Mr. PECORA. Were you not voting on these proposals as they were presented to the directors of the company?

Mr. BRADWAY. I attended some of those meetings but not all of them. I was signed up as being present, and I looked over the minutes, but I was very inactive, until I became president, on any of the tunnel business except the assembling of the property.

Senator COUZENS. When those matters were approved by the board of directors, who was the leading spirit?

Mr. BRADWAY. I would say that the leading spirit was the president, Mr. Comstock, until the first of January. After that he was away a great deal, and Mr. Rawls and Mr. Anderson and Mr. Gardner, and I was at some of the meetings, although I never did have anything to do with the financing.

Senator COUZENS. I wondered who the leading spirit was in the financing and in the passing of these resolutions which paid bankers' lawyers fees out of the company's funds.

Mr. BRADWAY. Of course, the whole transaction, Senator, the whole deal was Mr. Rawls' deal. It was his project, and the rest of us——

Senator COUZENS. So, in answer to my question, you would say that Mr. Rawls was the leading spirit in the passing of all these resolutions?

Mr. BRADWAY. I would say that whether he was the leading spirit or whether the attorneys were, the attorneys were supposed to go through all these resolutions.

Senator COUZENS. They must have done it under the instructions of somebody, because I do not assume they would do it without receiving instructions, and I am trying to find out who issued the instructions to draft those resolutions.

Mr. BRADWAY. I would say that Mr. Rawls was the one.

The CHAIRMAN. Does Mr. Rawls live in Detroit?

Mr. BRADWAY. Not now.

Mr. PECORA. Did he at that time?

Mr. BRADWAY. Yes, sir. He had an office in New York, I believe, at the time.

Mr. PECORA. Do you know anything about the payment of $405,650 directed to be paid by the Tunnel Co. to the Central Union Trust Co. to the account of Huston Rawls, as appears from schedule A of exhibit 209 in evidence?

Mr. BRADWAY. I know there was such an amount paid to the Union Central, to the account of Mr. Rawls.

Mr. PECORA. Do you know the origin of that payment and the reason for it?

Mr. BRADWAY. I understood it was part of the profit.

Mr. PECORA. Part of the price paid for the real estate?

Mr. BRADWAY. Part of our option to Bertles, Rawls & Donaldson to deliver the property for $1,159,000 and 125,000 shares of stock and that was supposed to be profit. Of course the syndicate—

Mr. PECORA. Supposed to be what?

Mr. BRADWAY. The profit made by Bertles, Rawls & Donaldson on the deal.

Mr. PECORA. In the acquisition of the real estate?

Mr. BRADWAY. In the acquisition of the real estate. This syndicate agreement gives to Bertles, Rawls & Donaldson an option on this property. That is, we agreed to deliver it for $1,159,000, plus 125,000 shares of stock, and that real estate was turned in to the Tunnel Co. at $405,000 in excess of that.

Mr. PECORA. Then in addition to the 125,000 shares of common stock there were other profits that were paid to the financial promoters in cash?

Mr. BRADWAY. No.

Mr. PECORA. For this real estate?

Mr. BRADWAY. The syndicate received 125,000 shares as its profit less eight thousand and some dollars on the handling of the real estate, and turning it over, in accordance with this agreement, to Bertles, Rawls & Donaldson. It was turned in by Bertles, Rawls & Donaldson to the company at $1,500,000.

Mr. PECORA. Which included a profit of $405,650 in cash?

Mr. BRADWAY. Yes, sir.

Senator ADAMS. Mr. Rawls was the directing spirit of the board of directors of the company that bought the property from his own firm?

Mr. BRADWAY. You, mean, the Tunnel Co. bought the property from his firm?

Senator ADAMS. Yes. I gathered from your answer to a question by Senator Couzens that he was the directing mind?

Mr. BRADWAY. That is right.

Senator ADAMS. And his company had taken the options over from the syndicate?

Mr. BRADWAY. That is right.

Senator ADAMS. And his company sold the property, that is, his firm sold the property, to the company of which he was the directing head?

Mr. BRADWAY. The Tunnel Co.?

Senator ADAMS. Yes.

Mr. BRADWAY. Yes, sir.

Senator ADAMS. And the profit of approximately half a million dollars was realized from that transaction?

Mr. BRADWAY. Yes. But Mr. Rawls, as I understand it—that particular amount, together with the amount on the other side, was part of the money that he put into the Tunnel Co. by the purchase of the common stock. He paid $1,820,000 for 560,000 shares of the stock.

Senator ADAMS. He used some of his profits out of this transaction to buy common stock?

Mr. BRADWAY. That is correct, I assume.

Mr. PECORA. Schedule B of this exhibit no. 209 in evidence is entitled "St. Mary's Academy Property, purchase price $1,365,000." That was part of the real estate on the Canadian side, was it not?

Mr. BRADWAY. Yes, sir.

Mr. PECORA. Item 1 in that schedule reads as follows:

Central Union Trust Co. of New York for account of Bertles, Rawls & Donaldson, Inc., as per Martin agreement, April 27, 1928, $320,000.

Was that amount also a cash profit on the acquisition of St. Mary's Academy property for the tunnel?

Mr. BRADWAY. I do not know anything about that; I have no idea. I had nothing to do whatsoever with the purchase of our Canadian property, the St. Mary's Academy property.

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

(Witness temporarily excused.)

TESTIMONY OF CHASE DONALDSON, SOUTHPORT, CONN.

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

Mr. DONALDSON. I do.

Mr. PECORA. Please state your name and address for the record.

Mr. DONALDSON. Chase Donaldson, 63 Wall Street, New York City.

Mr. PECORA. What is your business or occupation?

Mr. DONALDSON. Investment banker.

Mr. PECORA. Are you connected with any banking firm in that business?

Mr. DONALDSON. Yes; I am.

Mr. PECORA. What is it?

Mr. DONALDSON. Distributors' Group.

Mr. PECORA. Were you connected in the past with a firm called Bertles, Rawls & Donaldson, Inc.?

Mr. DONALDSON. I was until February 1930.

Mr. PECORA. That was a private banking corporation, was it not?

Mr. DONALDSON. Yes, sir.

Mr. PECORA. With offices both in New York and Detroit?

Mr. DONALDSON. Yes, sir.

Mr. PECORA. That was the banking firm that promoted the Detroit & Canada Tunnel?

Mr. DONALDSON. Mr. Rawls was the individual who promoted the tunnel, acting for the firm.

Senator COUZENS. Were you the Donaldson referred to in the firm name?

Mr. DONALDSON. Yes, sir.

Mr. PECORA. Do you know what profits in cash, stock, or in any other form, the firm of Bertles, Rawls & Donaldson obtained in connection with the acquisition of real estate needed for the terminal facilities of the Detroit & Canada Tunnel?

Mr. DONALDSON. Yes, sir.

Mr. PECORA. What were those profits?

Mr. DONALDSON. The profits that the firm received were 750,000 shares of common stock of which 540,000 shares were sold to the other bankers for a total of $340,000. Out of that $340,000, $110,000 was disbursed to the firm of H. N. Noble & Co., for what purpose I do not know. In addition $44,000 was expended to purchase 78,000 shares (part of the 540,000 shares).

Mr. PECORA. What business were they in?

Mr. DONALDSON. They were investment bankers in the city of Detroit. That left $186,000 cash profit to Bertles, Rawls & Donaldson, plus 288,000 shares of common stock, which was all the profit that Bertles, Rawls & Donaldson made out of the transaction other than their participation in the debentures and the bond financing.

Mr. PECORA. What was the profit they made from participation in the bonds and debentures?

Mr. DONALDSON. I would have to give it to you approximately, but they had a 6 percent interest in the first-mortgage bond financing and 20 percent interest in the debenture financing. I believe we may have made $100,000 out of that. It was not net, however.

Senator COUZENS. Based on your answer, then, you did not make any profit on the real estate transaction?

Mr. DONALDSON. I have been checking up on those figures, Senator, and the firm of Bertles, Rawls & Donaldson at the last minute had approximately a 10 percent interest in the purchase of the real estate.

Mr. PECORA. What do you mean by that?

Mr. DONALDSON. They had a 10 percent interest in the real estate syndicate which Mr. Bradway was a member of, and the profits of that particular syndicate were four hundred and some odd thousand

dollars which they took in stock. Therefore, the firm of Bertles, Rawls & Donaldson had approximately a $40,000 profit in stock on its participation in the real estate.

Mr. PECORA. It appears from the evidence here that the Detroit & Canada Tunnel Co. paid for the acquisition of real estate known as the Detroit Terminal Block a total of $1,564,650 in cash.

Mr. DONALDSON. That is right.

Mr. PECORA. And of that amount the sum of $405,650 was turned over to the Central Union Trust Co. for the account of Huston Rawls?

Mr. DONALDSON. That is correct.

Mr. PECORA. What did that item represent?

Mr. DONALDSON. Mr. Bradway's testimony was incorrect in one particular. The contract covering the real estate initially called for the payment of $1,150,000 in cash and 125,000 shares of common stock. That was later amended to read one million five hundred and some thousand dollars.

Mr. PECORA. $1,564,650?

Mr. DONALDSON. That is right; with the stipulation as between the syndicate managed by Mr. Bradway that they would take their profit, which was four hundred and some odd thousand dollars, in common stock at $3.25 per share. The firm of Bertles, Rawls & Donaldson underwrote 560,000 shares of common at $3.25 per share; and the profit which the syndicate managed by Bradway made was four hundred and some odd thousand dollars which was expended by them to purchase stock at $3.25 from this syndicate which Bertles, Rawls & Donaldson had formed to underwrite the stock.

Senator ADAMS. I understood Mr. Bradway to say that this syndicate lost $8,000 in cash but received 125,000 shares. I understood him to say that was all of their profit; and I understand you to say there was a profit of $480,000.

Mr. DONALDSON. I would like to clear up that point, because it has been correctly given so far. The real estate syndicate managed by Judson Bradway received one million five hundred and some odd thousand dollars——

Mr. PECORA. $1,564,650?

Mr. DONALDSON. Thank you—of which $1,150,000 represented their actual cost which they turned over to the property owners and on which I understand Mr. Bradway says they lost $8,000.

Mr. PECORA. And that represented this profit paid by the Tunnel Co. to the assemblers of that real estate?

Mr. DONALDSON. It was deposited in the Central Hanover Bank to the account of Mr. Rawls, and it was subsequently expended in the purchase of common stock from the company at $3.25 a share, 125,000 shares of stock. In other words, instead of delivering to the real estate promoters 125,000 shares of stock there was delivered four hundred and fifty odd thousand dollars which they turned over to purchase common stock with at $3.25 a share. The transaction in effect was paying them their promotion profit or their real estate profit in stock rather than in cash.

Senator COUZENS. I note that Mr. Bradway shakes his head no.

Mr. PECORA. I was going to remark the same thing.

Mr. DONALDSON. May I continue? Subsequently, however, these 125,000 shares of stock, which the real-estate syndicate purchased

and paid cash for out of their profit, was resold by Bertles, Rawls & Donaldson to the public over a period of time; so ultimately they realized a cash profit on their real-estate investment. But initially they realized only a stock profit.

Mr. PECORA. What was the amount of cash profit that accrued to them on the real-estate investment?

Mr. DONALDSON. $3.25 a share on 125,000 shares.

Mr. PECORA. This item of $320,000 that appears under schedule B of the agreement of May 28, 1928, marked in evidence here as Exhibit No. 209, indicates that there was turned over to the Central Union Trust Co. of New York, for the account of Bertles, Rawls & Donaldson, the sum of $320,000 in connection with the acquisition of property on the Canadian side of the tunnel, called the St. Mary's Academy property. Do you know anything about that?

Mr. DONALDSON. That is correct. It was a parallel transaction involving Canadian real estate in the method that the Detroit syndicate was handling it. Mr. Martin, who had assembled the pieces of the Canadian property, received $1,100,000 and a profit of $325,000 in cash, or whatever the figure is——

Mr. PECORA. $320,000.

Mr. DONALDSON. $320,000 in cash, which was deposited to the account of Bertles, Rawls & Donaldson in the Central Hanover Bank and was expended by them in the purchase of stock.

Mr. PECORA. To whom was that stock given?

Mr. DONALDSON. To Mr. Martin. In other words, he received his real-estate profit in stock just as the Detroit syndicate had received theirs in stock.

Senator ADAMS. Was Mr. Martin also on the board of directors of the Tunnel Co.?

Mr. DONALDSON. I believe not.

Mr. PECORA. Why were those profits paid in that fashion?

Mr. DONALDSON. Mr. Pecora, I cannot speak from personal knowledge, because I was not involved in the negotiation, but the original intent was to pay them their excess profit in stock so that the company's treasury would not be depleted of additional cash. The effect of having, them place the cash back in the treasury of the company was, as I have indicated before, to pay them their profit in stock.

Mr. PECORA. Why was any profit amounting to $750,000 paid by the Tunnel Co. to the promoters for assembling the real estate?

Mr. DONALDSON. Do you want my own comment on that? I have no personal knowledge of it.

Mr. PECORA. Yes.

Mr. DONALDSON. The land was assembled over a period of a year at a time when no one know that the tunnel was going to be projected. If it had been assembled later, when the tunnel news was out, it undoubtedly would have cost the company more. Whether it would have cost them $750,000 more is anybody's guess.

Senator GOLDSBOROUGH. Do I understand that 30 percent commission was paid for the purchase of this real estate?

Mr. PECORA. That was the testimony given yesterday by Mr. Snow. He fixed the percentage at 35 percent.

Mr. DONALDSON. It was 35 percent measured in stock at $3.25 a share.

Mr. PECORA. It was 35 percent that was paid in stock at $3.25 a share?

Mr. DONALDSON. Yes, sir.

Mr. PECORA. This real estate was assembled by the promoters of the Tunnel Co. with a view of having the Tunnel Co. apply for terminal facilities?

Mr. DONALDSON. Yes.

Mr. PECORA. And the promoters were the bankers?

Mr. DONALDSON. No, sir.

Mr. PECORA. Your firm was one of them.

Mr. DONALDSON. The promoters of the real estate were Mr. Comstock and Mr. Bradway and Mr. Rawls and Anderson and Gardner, not the bankers.

Mr. PECORA. Mr. Rawls was a member of your firm, and your firm participated in the financing of the company?

Mr. DONALDSON. Yes, sir. But I wanted to make it clear that it was not the bankers alone that assembled the real estate. Our participation in the assembly of the real estate was only 10 percent.

Mr. PECORA. All of the persons who assembled real estate were in substance the promoters of the Tunnel Co., were they not?

Mr. DONALDSON. If you like.

Mr. PECORA. And that included some of the bankers?

Mr. DONALDSON. Yes, sir.

Mr. PECORA. When they received this profit which has been estimated to have been 35 percent they virtually gave it to themselves as the officers and directors of the Tunnel Co., did they not?

Mr. DONALDSON. The firm of Bertles, Rawls & Donaldson received 3½ percent profit on the real estate that was acquired by the real-estate syndicate.

Mr. PECORA. I am not speaking of your firm alone. I am speaking of the general situation. The promoters acquiring the real estate for the Tunnel Co. organized the Tunnel Co., officered it and controlled it through membership on its board of directors, and made this deal with themselves?

Mr. DONALDSON. May I ask who were the directors of the Tunnel Co. at that time? I do not remember them.

Mr. PECORA. I have not the minute book here.

Mr. DONALDSON. Mr. Rawls was one member.

Mr. PECORA. Mr. Bradway has already stated that the bankers and the promoters in effect controlled the board of directors through their nominees and through their own presence on the board.

Mr. DONALDSON. I cannot answer that. I would like to know who controlled it. Mr. Rawls was one member of the firm of Bertles, Rawls & Donaldson, and the only banker on the board that I think consisted of 7 or 8 people.

Mr. PECORA. Do you know who the controlling members were in April and May 1928, Mr. Bradway?

Mr. BRADWAY. I am not sure that I can name all of them.

Mr. PECORA. Name as many as occur to you now.

Mr. BRADWAY. There were Mr. Rawls, myself, Mr. Anderson, Mr. Gardner, Mr. Hill, and Mr. Martin.

Senator ADAMS. Mr. Martin was on the board then?

Mr. BRADWAY. I think he was at that time.

Senator TOWNSEND. And Comstock?

Mr. BRADWAY. Comstock; and then later there were other members. Mr. Noble was on the board also.

Mr. PECORA. I have just received by air mail information to the effect that the board for the year 1928 consisted of the following persons: William A. Comstock, Huston Rawls, Arthur Gardner, Judson Bradway, Wendell W. Anderson, Fred W. Martin, S. A. Hill, and Eugene Klapp. That agrees with your recollection, does it not?

Mr. BRADWAY. Yes, sir.

Senator COUZENS. Who was Eugene Klapp?

Mr. BRADWAY. Of the engineering firm.

Mr. PECORA. Of the firm who made the report favorable to the project?

Mr. BRADWAY. They made the original report.

The CHAIRMAN. How much stock did your firm get out of 750,000 shares?

Mr. DONALDSON. We had 210,000 shares of stock left plus 78,000 shares, about 288,000 shares of common stock, which is now worthless.

Senator COUZENS (interposing). Well, let me ask you—or had you completed your answer?

Mr. DONALDSON. That is all right.

Senator COUZENS. May I ask Mr. Bradway when these officers and directors referred to by Mr. Pecora were elected, or were on the board, had the Parsons, Klapp, Brinckerhoff & Douglas report been accepted and approved by the board or by any other agency of the Tunnel Co.?

Mr. BRADWAY. My understanding is that their first report was made way back in the end of 1926, or the early part of 1927.

Senator COUZENS. Who paid for that report?

Mr. BRADWAY. I cannot tell you. But, you see, Mr. Turner was asked for a report over at the end of 1927 somewhere, and also Ford, Bacon & Davis were asked for their report in December. I think their report was requested then, and that that was the last one obtained. I am sure of that.

Senator COUZENS. Were all of those reports paid for by the Tunnel Co. or were they paid by the promoters and then were they later reimbursed by fees and common stock?

Mr. BRADWAY. Yes, sir; they were.

Mr. PECORA. Now, Mr. Donaldson, you knew, didn't you, that Mr. Huston Rawls of your firm received a 2 percent commission on the face amount of the 17 million dollars aggregate amount of mortgage bonds and debentures that were issued by the Detroit & Canada Tunnel Co.?

Mr. DONALDSON. I recall that he did; yes, sir.

Mr. PECORA. And that 2 percent amounted to $340,000 in cash. What did he receive that for?

Mr. DONALDSON. I am afraid I cannot answer that question. I do not really know. It seems to me that that particular item was a part of the cash that we received in connection with the sale of the stock to the other bankers. They purchased 540,000 shares of stock and paid over $340,000 in cash, which represented the 2 percent

item that you mentioned. In other words, it was not paid to the firm in cash—well, I beg pardon, it was paid in cash, and we delivered stock for that cash. And it was included in the figures already given to you.

Mr. PECORA. No. My information is that that $340,000 was remitted to the Guardian Trust Co. of Detroit, which company in turn issued its check to Huston Rawls for that amount, on the 28th of May 1928.

Mr. DONALDSON. That is correct, and the Guardian received in exchange therefor 540,000 shares of stock, which Bertles, Rawls & Donaldson, Inc., sold to other bankers, out of the 750,000 shares that Bertles, Rawls & Donaldson, Inc., originally received. It was not an additional profit for Bertles, Rawls & Donaldson, Inc.

Mr. PECORA. I do not understand the reason for that transaction.

Mr. DONALDSON. The other bankers, as I recall, agreed to pay the firm of Bertles, Rawls & Donaldson, Inc., an origination fee.

Mr. PECORA. A sort of finders' fee?

Mr. DONALDSON. Yes; a finders' fee.

Mr. PECORA. Of 2 percent on the total amount of the mortgage bond and debenture issues?

Mr. DONALDSON. Provided Bertles, Rawls & Donaldson, Inc., would sell them 540,000 shares of common stock.

Mr. PECORA. Was this $340,000 paid to them, or paid to Huston Rawls, against the 540,000 shares of stock, against that stock?

Mr. DONALDSON. Yes, sir. To Huston Rawls for the account of Bertles, Rawls & Donaldson, Inc.

Mr. PECORA. And no separate payment was made for the stock by the bankers?

Mr. DONALDSON. No, sir.

Mr. PECORA. Are you sure of that?

Mr. DONALDSON. Yes, sir.

Mr. PECORA. Was that a part of the bonus stock issued by the Tunnel Co.?

Mr. DONALDSON. It was a part of the 750,000 shares received originally by Bertles, Rawls & Donaldson, Inc., for their origination work, which was extended over a year and a half.

Mr. PECORA. What were the 1,690,000 shares of stock issued for?

Mr. DONALDSON. In the contract between the company and Bertles, Rawls & Donaldson, Inc., calling for the issuing of 1,690,000 shares, there is recited various considerations.

Mr. PECORA. In what way?

Mr. DONALDSON. Will you let me have a copy of the contract?

Mr. PECORA. As I recall it, it was for real estate and other rights acquired by the Tunnel Co. from Mr. Rawls.

Mr. DONALDSON. Mr. Rawls assembled over a period of a year and a half——

Mr. PECORA (interposing). That is, this stock was issued in addition to the cash consideation of over 3 million dollars?

Mr. DONALDSON. Yes, sir. But Mr. Rawls assembled over a period of a year and a half, orders in Council from Canada, and franchises in Detroit—plans for the tunnel—and assisted in the assembling of the real estate. The 1,690,000 shares were issued to compensate him for all of his efforts, extending over that period, in arranging it.

Mr. PECORA. Was the public ever told when asked to subscribe for the bonds and debentures, of those promotion costs?

Mr. DONALDSON. Yes, sir.

Mr. PECORA. How?

Mr. DONALDSON. The offering circular for the debentures, as I recall, indicated that 560,000 shares of common stock were being sold for cash, and that the total issue was 2,250,000 shares, the balance of it having been issued for—now, let me see——

Mr. PECORA. For what?

Mr. DONALDSON. For financing and promotion costs. It was clearly set forth in the circular how many shares were sold for cash.

[Note: My recollection was incorrect; subsequent reference to circular discloses it showed 2,250,000 shares total issue, but no designation of amount sold for cash.

Contracts for financing clearly set forth shares sold for cash and shares issued for promotion. I confused facts in contracts with statements in circular.]

Mr. PECORA. Well, the circular is in evidence and will speak for itself on that. All right, that is all, Mr. Donaldson.

Mr. DONALDSON. Thank you.

(Thereupon Mr. Donaldson was excused.)

Mr. PECORA. Now Mr. Aldrich will take the stand.

Mr. BRADWAY. Might I say just a word?

The CHAIRMAN. Are you through, Mr. Bradway?

Mr. BRADWAY. I should just like to say a few words.

The CHAIRMAN. All right. Come forward.

TESTIMONY OF JUDSON BRADWAY—Resumed

The CHAIRMAN. You may proceed, Mr. Bradway.

Mr. BRADWAY. I should like to say just this: There seems to be a discrepancy between the testimony of Mr. Donaldson and myself in connection with the tunnel matter. We received, in accordance with the syndicate agreement which you have, 125,000 shares of stock. We gave an option on that stock and we received pay for it 60 days later, for half of it, and we received pay for the other half of it 4 months later. At the time of closing the syndicate was not sure they were going to get any money. But we hoped that this stock would be sold the same as the other, because of the market being maintained. And at the time of closing we received a receipt from the Central Union Trust Co. to the effect that they held either the stock or the money and that they would turn either the one or the other over to us within 60 days. And the syndicate did not know until the 12th of July whether they were getting stock or were getting cash.

Senator COUZENS. And what did they get?

Mr. BRADWAY. They got cash because the stock was then selling for more than $3.25 a share, and the stock was sold and we got the money. But there was no agreement, and I think Mr. Donaldson is mistaken in his testimony about that; there was no agreement entered into by the syndicate whatsoever to receive cash, not at any time. We hoped that this stock would be sold and that we would get cash, but we didn't know——

Senator ADAMS (interposing). Was this stock sold on the open market or was it sold generally; I mean, or what was the character or method of sale of the stock?

Mr. BRADWAY. At the time we closed I had to sign a receipt in full as syndicate manager for the Detroit terminal. At the time that receipt was signed we insisted upon having something to show we were going to get our 125,000 shares of stock, that it would be deposited somewhere.

Senator ADAMS. Who got the 125,000 shares when it was sold? Did it go out to the public, or did it go into the hands of a limited group of persons or corporations, or to somebody connected with the concern?

Mr. BRADWAY. I cannot answer that. We gave an option on it, and got a receipt from the Central Union Trust Co. that they held the stock for us, and would either give us the stock or cash at $325 a share. And we got the cash, half of it in 60 days and half of it 4 months later. I just wanted to make that point clear.

The CHAIRMAN. Is that all?

Mr. BRADWAY. Another point that I think is important about a matter that has been brought out here, possibly, is this: Mr. Pecora has asked the question: "What was the excuse for anybody paying any profit on this Detroit tunnel?" As far as the syndicate is concerned, we felt that the 125,000 shares that we received, and even if later it should be possible that the 125,000 shares could be turned into cash, that in that event the syndicate was not actually paid for the work of assembling and holding and carrying this property, and taking the chance on the Tunnel Co. deal not going through, and having to lose $175,000, as it looked at the time we made the deal; it looked like $450,000, or else buy $1,159,000 worth of property. Personally, I had considerable difficulty getting Mr. Vernor and others connected with the syndicate to pay up their money at the time.

Mr. PECORA. As a matter of fact, all that you got were options, weren't they?

Mr. BRADWAY. We got options, and we had to buy 2 or 3 pieces of property; before this deal was closed we had to buy 2 or 3 pieces of property outright.

Mr. PECORA. Under those options you wouldn't have to buy the property unless you desired to do so?

Mr. BRADWAY. We had paid up $175,000, and had to either lose the money or buy the property.

Mr. PECORA. Well, then, confine yourself to $175,000, and not tell the subcommittee that you would have to either lose $450,000 or pay $1,159,000 and take up this real property. You had no form of contract that obligated you to pay in full those properties, but you had options?

Mr. BRADWAY. We could have lost $175,000.

Mr. PECORA. Oh, yes. Of course, if you had been foolish enough to buy the property before you knew the Tunnel Co. was going to take it over, you would have lost the other sum no doubt, but your options did not require you to do that, and you know that?

Mr. BRADWAY. The options did not require us, but in order to acquire the property we had to make those payments.

The CHAIRMAN. Well, is that all, Mr. Bradway?

Mr. BRADWAY. I believe so.

(Thereupon Mr. Bradway was excused.)

Mr. PECORA. Now, Mr. Aldrich will be heard. He has already been sworn.

TESTIMONY OF WINTHROP W. ALDRICH, PRESIDENT THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK—Resumed

Mr. ALDRICH. Mr. Chairman, with your permission, I should like to make a statement on the record which has two purposes: One is, to try to be of assistance to the committee in suggesting certain remedies that have occurred to me for certain practices that have been brought out before this committee. And the second purpose is, to show by this statement how I personally feel about a great many of the matters that have come out here.

I might say that ever since I have become a banker I have been actuated at all times by the principles that are set forth in this statement, and wherever I have found practices that I felt were contrary to the principles enunciated in this statement, I have taken action as strongly as I could to terminate and put an end to such practices.

Senator COUZENS. Might I inquire at the opening if this statement of yours is approved by your board of directors?

Mr. ALDRICH. It has not been. I have not submitted it to the board.

Senator COUZENS. I assume that in explaining your position you feel confident you have the complete support of your board of directors?

Mr. ALDRICH. I feel sure I will have; yes, sir.

The CHAIRMAN. Does your statement include some recommendations or suggestions as to legislation, Mr. Aldrich?

Mr. ALDRICH. Yes, sir.

The CHAIRMAN. You may go ahead with your statement.

Mr. ALDRICH. Mr. Chairman, as I understand it, the purpose of the banking phases of the investigation which your committee is now conducting is to obtain information which will serve as a basis for the drafting of legislation supplementing or revising existing laws, designed—

First, To prevent a repetition of mistakes and abuses which have been incident to the conduct of both commercial and investment banking in recent years; and

Second, To reconstruct our financial machinery so that it may be most effective in bringing about a business revival and in assuring a sound financial basis for the future conduct of industry, trade and agriculture.

The importance of attaining these ends cannot be exaggerated, for the soundness and efficiency of our banking structure affect the very foundations of the economic welfare of the Nation.

No one who has observed events or who is familiar with the testimony presented to your Committee during the past year can have failed to be impressed by the necessity of change. This must be true, whether one be an officer of a commercial banking institution charged with the responsibility of giving effect in practice to the banking

laws of the United States, or a member of your committee, which has the duty of so formulating those laws that they will work to the best interests of the community as a whole. This change must occur not only in the manner and spirit in which the laws have been observed by certain bank officials, but also should be embodied in legislation which it is the function of your committee to initiate.

The immediate and direct responsibility for preventing the recurrence of faulty conditions which have been disclosed here and elsewhere rests upon those of us who are engaged in the management of commercial banking institutions. It is obvious that the character necessary to qualify an executive officer of a bank to meet the obligations imposed upon him cannot be created by legislation. The daily operation of a commercial banking institution requires of its officers above all things the education to perceive and the character to live up to the highest standards of the trust relationship. This fiduciary relationship extends not only to the stockholders and depositors of the bank, but also to all who come to the institution for financial accommodation or advice.

Beyond all this, the officers of our commercial banking institutions should have constantly before them a realization of their great responsibilities to the public. The bank officer's usefulness to his bank and to the community is dependent upon public confidence in his integrity of purpose. His actions must be of such character that when they are fully exposed to public view, no doubt can arise as to his motives. If our financial institutions are to be preserved, the public is not entitled to expect, but it must have absolute assurance that the business of our commercial banks is being carried on in a manner which commands complete confidence.

As for the Chase National Bank, I can say without qualification that it is our purpose to be governed at all times by the standards I have just outlined.

In this statement I shall seek to point out respects in which I believe your committee can be of help in remedying the situation. In doing so it will be necessary to imply criticism of certain practices which have arisen in American banking. But I would like first to pay tribute to that great number of American banks and bankers who, during the past 10 years, have done their duty to their stockholders, their depositors, and their communities.

There is one very important objective which the Congress can attain, and that is to so amend our banking legislation as to protect the sound bankers of this country from the unfair competition of bank management which fails to measure up to the high standard of conduct which their profession calls for. This result should be accomplished by legislation which will not only prohibit specified practices, but which also will bring about above all else complete divorcement in interest between commercial and investment banking. The Congress, by the enactment of the Glass-Steagall bill, now known as the Banking Act of 1933, has already taken action designed to eliminate many bad practices. The Banking Act of 1933 does not, however, fully accomplish the purposes which the Congress had in view—purposes which I believe are demanded by both sound banking experience and enlightened public opinion. It is accordingly necessary to address further efforts to that end.

I

THE WISDOM OF SEPARATING COMMERCIAL BANKING FROM INVESTMENT BANKING

My experience as a bank official commenced at the end of the year 1929, when I became president of the Equitable Trust Co. From June 1930 upon the amalgamation of that institution with The Chase National Bank, until January 1933 I was president of the Chase National Bank but not its executive head. In January, 1933, I became its executive head, upon my election as chairman of the governing board. This experience as a bank official, coupled with the testimony which was presented to your committee in February of this year had convinced me that many of the abuses in the banking situation had arisen from failure to discern that commercial banking and investment banking are two fields of activity essentially different in nature. I came to believe that while it was essential that there should be coordination between these two types of banking, such coordination could best be protected from abuse and thus enhanced in usefulness through absolute separation of interest between the two fields.

On March 8, 1933, therefore, I issued a public statement suggesting the following provisions, among others, which experience indicated should be enacted into law. These were in addition to the provisions of the Glass-Steagall bill as it then stood, which required the divorcement by commercial banks of their investment affiliates:

1. No corporation or partnership should be permitted to take deposits unless such corporation or partnership is subjected to the same regulations and required to publish the same statements as are commercial banks.

2. No corporation or partnership dealing in securities should be permitted to take deposits even under regulation.

3. No officer or director of any corporation nor any member of any partnership dealing in securities should be permitted to be an officer or director of any commercial bank or bank taking deposits, and no officer or director of any commercial bank or bank taking deposits should be permitted to be an officer or director of any corporation, or a partner in any partnership engaged in the business of dealing in securities.

4. Boards of directors of commercial banks should be limited in number by statute so as to be sufficiently small to enable the members to be actually cognizant of the affairs of their banks and in a position really to discharge their responsibility to stockholders, depositors, and the business community.

The spirit of speculation should be eradicated from the management of commercial banks, and commercial banks should not be permitted to underwrite securities except securities of the United States Government and of states, territories, municipalities and certain other public bodies in the United States."

Immediately following the issuance of the foregoing statement, the Chase National Bank undertook for itself to carry these policies into effect.

On March 8, 1933, the executive committee of the bank appointed a special committee to advise and recommend a plan for the separation from the bank, at as early a date as practicable, of its affiliated securities corporations. Following action by the executive committee, a meeting of the stockholders on May 16, 1933, authorized the discontinuance of the securities business by the bank's affiliates, and on the same date the securities affiliate, the Chase Harris Forbes Corporation, formally voted to engage thenceforth in no new business, and to liquidate its affairs. The Chase Securities Corporation thereafter became the Chase Corporation, simply a holding and liquidating company, relinquishing its power to engage in the securities business. The bank itself took over in its bond department that part of the business of the Chase Harris Forbes Corporation relating solely to Federal, State, and municipal bonds, and other limited classes of securities approved by law as proper for national banks to deal in.

It was also voted at the meeting of the shareholders of the bank held May 16th that the size of the bank's board of directors should be reduced from 72 to 36 members. In the reconstruction of the board of directors under that decision all members of investment banking houses who had been directors retired from the board.

Such changes as the foregoing obviously involved a break with tradition. There are sincere differences of opinion as to the wisdom of these changes. There is, as every one recognizes, a very influential body of banking opinion which honestly and seriously believes that the functions of investment banking and commercial banking can, with great advantage to the public, be performed by the same institution or private banking firm. That view is entitled to respect.

The thought, however, that the overlapping of interest as between commercial banking and investment banking might be subject to grave danger was not in any sense a new one. The hearings and the report of the Pujo committee, dated February 28, 1913, had pointed out the desirability for such changes. Any wise observer must realize that investment banking, as a self-contained enterprise, not only should not be destroyed or superseded by any governmental agency, but also should be allowed to operate with as little restriction as is commensurate with due protection of the investing public. Normal investment banking should, however, be improved if separated from any direct interest in commercial banking.

A principal difficulty in the past has been that commercial banks doing an investment banking business have been paralleled in operation by private bankers doing a deposit and investment business. As there was no clear definition of function or differentiation in interest between the two types of banking, it was not unnatural that officers of commercial banks should have at times failed to appreciate the distinction between their own position and that of members of private banking firms. The system itself which permitted overlapping of function and interlocking of interests between these two types of banking has been responsible for much that the public now condemns.

A commercial bank, whether or not it is a member of the Federal Reserve System, is an essential and integral part of the monetary and credit machinery of the Nation. Of course the commercial banks

are under obligation to endeavor to earn a fair return upon the money entrusted to them as capital by their stockholders. The desire to protect that capital and to earn a return upon their investment for the stockholders has the effect of making the commercial banks not only anxious to extend credit but also cautious and conservative in seeking to assure as far as possible that the credit so extended shall be repaid. It is accordingly obvious that the commercial banker should have the utmost encouragement by the Government to exercise all of the sound judgment, the constructive imagination, and the creative thinking which he can bring to the stimulation of private enterprise in extending credit.

The commercial bank's credit function is very definitely governed by its responsibility to meet its deposit liabilities on demand. It must not seek excessive profits by taking undue credit risks and it can not wisely tie up its funds in long-term credits however safe they may be. Its primary credit function is performed by lending money for short periods to finance self-liquidating commercial transactions—largely in the movement of goods and crops through the various stages of production and distribution; and in the making of short-term loans against good collateral. The commercial bank cannot safely make loans to a borrower who lacks capital of his own or who cannot in the normal course of his business repay the loan within a reasonable period of time. It is within this framework that the commercial bank renders sound and constructive service to the industry, trade and agriculture of the country.

The investment banker also renders necessary and effective service to the industry, trade and agriculture of the country. He does it by meeting long-term needs, providing funds for plant and equipment or for permanent working capital. He does, and should, take speculative risks of a sort unsuitable to the commercial bank in providing capital funds for new and promising enterprises, even though the major volume of his transactions is naturally to be found in providing additional capital for industries well established and less uncertain in their prospects. With every new issue, moreover, he takes the risk that the public may not readily absorb the new securities which he brings out and that his own capital may be tied up for a long period of time. This last distinction between investment and commercial banking emphasizes the wisdom of the legislation forbidding investment bankers from taking deposits.

Although there should be a sharp delineation between the activities of commercial banks and those of investment bankers, there are certain points of contact between them, whereby they complement each other. It is perfectly proper, for example, that commercial banks should lend to investment bankers, on short term, funds necessary to carry a new issue of securities while it is in the process of being marketed. Such a loan, always secured by collateral and carefully scrutinized by the commercial bank, performs an essential service. The commercial bank or banks making such a loan, however, should be absolutely free from interest in the issue, and immunized from possible influence arising from interlocking interests with the investment bankers participating in it.

Again, a commercial bank frequently finds that its own customers require permanent financing. A rapidly growing business needs

additional permanent working capital. The commercial bank properly affords temporary financing to the enterprise, but permanent provision for adequate working capital or for plant or equipment requires long-term credit. When such long-term credit is required, the services of the investment banker are needed. But in such cases the investment banker himself should be free from control or influence by the commercial bank which suggests or introduces the business. The investment banker should be in a position to form an absolutely independent judgment as to the wisdom of issuing the credit and as to the conditions under which it shall be issued. The commercial bank should not be in a position to exert any pressure whatever arising out of a dual financial interest.

What I have said with regard to the relationship between commercial and investment banking does not imply that such influence as I have described would necessarily or even usually be exercised in a manner detrimental to the public interest either by the investment bankers in the one case or the commercial banks in the other. Nor does it suggest that there are not conscientious investment bankers, meticulously careful of both the interests of their customers and of the investing public.

Nor is what I have said intended as a sweeping criticism of the motives or practices of investment bankers generally. Any such criticism would be most unjust. But in considering legislation aimed at prohibiting practices contrary to the public interest, it is impossible to draw a distinction between the careful and conscientious banker who would never consciously permit his influence to be misused or his allegiance to be divided, and the banker, who, through recklessness or even because of his private interests, might exercise his influence improperly, if opportunity is permitted to exist.

Should I stop here, Mr. Chairman, for recess?

Senator COUZENS. Mr. Aldrich, before you proceed with the next chapter of your statement: I notice you mention a fair return for stockholders of banks. What do you consider a fair return under the circumstances?

Mr. ALDRICH. Well, I haven't thought that out, Senator Couzens. I think that question is a very difficult one to answer, because of the fact that the necessity of building up reserves at a time when banks are making money, so that they may have such reserves in case of a crisis, such as we have been going through in recent years, makes it very difficult to determine just how much should be paid out at any given time to stockholders.

Senator COUZENS. What would you say was a fair dividend if you were to have a continuous dividend policy, letting the peaks take care of the valleys, so to speak?

Mr. ALDRICH. I really could not answer that question. The earning power of a bank at all times depends upon the money market, and that of course depends upon the credit available and the demands for credit, and the interest rate. Of course that is primarily the function of the Federal Reserve Board, to determine the interest rate. I think the amount of dividend on a bank's stock would be undoubtedly higher in good times, when interest rates were high, than it would be in a case where the interest rates were low. I do not believe you could formulate a definite policy in regard to that.

Senator COUZENS. You have just stated that a certain function was the duty of the Federal Reserve Board. Do you approve the Federal Reserve Board as at present set up?

Mr. ALDRICH. Well, now——

Senator COUZENS (interposing). I do not mean as to its personnel, but as to its activities and its functions and its responsibilities.

Mr. ALDRICH. Well, Senator Couzens, that question is a very difficult one, too. I should like to make my answer to that in the form of a general answer: I think the manner in which the Federal Reserve System functioned during the period of 10 years prior to 1930 was most unfortunate, because of the fact that a money market situation was created which, I think, is very largely responsible for the difficulties of bankers that occurred. But I am touching on that a little bit later in my statement.

Senator COUZENS. Well, if I am anticipating in these questions anything that you are going to cover, you may suspend your answer.

Mr. ALDRICH. You are to that extent.

Senator COUZENS. Mr. Chairman, hadn't we better suspend at this point?

The CHAIRMAN. The subcommittee will stand in recess until 2 p.m.

(Thereupon, at 1 p.m., Wednesday, Nov. 29, 1933, the subcommittee recessed until 2 p.m. the same day at the same place.)

AFTERNOON SESSION

The committee reconvened at the expiration of the recess, at 2 p.m., Wednesday, November 29, 1933.

The CHAIRMAN. The committee will come to order. Mr. Aldrich, you may proceed.

TESTIMONY OF WINTHROP W. ALDRICH—Resumed

Mr. PECORA. Will you resume, Mr. Aldrich?

Mr. ALDRICH. Mr. Chairman, I have reached the point where I was about to take up the changes necessary to make the Banking Act of 1933 accomplish its declared objectives.

II

CHANGES NECESSARY TO MAKE THE BANKING ACT OF 1933 ACCOMPLISH ITS DECLARED OBJECTIVES

The wisdom of effecting a clear differentiation of function and separation in interest between commercial banking and investment banking was recognized in the Glass-Steagall Bill, passed last June and now known as the Banking Act of 1933. The history of that act and its general provisions indicate a clear intent on the part of the Congress to effect, once and for all, a complete separation between commercial banks and investment bankers. I believe that the public is likewise under the impression that the act effectively accomplished that purpose.

Careful analysis of the act and observation of its subsequent operation, however, show that all the purposes intended are not effectively achieved, and that further amendments to the act will be necessary if its purposes are to be accomplished.

I submit that the provisions of the Banking Act of 1933 and of section 8 of the Clayton Act show that the legislative policy of the Congress is—

1. That there be a divorcement of the commercial banking business from the investment banking business;

2. That there be no interlocking of management between the commercial banking business and the investment banking business;

3. (Based in part upon another policy) that there shall be no interlocking of management between commercial banks themselves operating in the same community; and

4. That the enforcement of this legislative policy shall not work in a discriminatory manner unfavorable to the successful operation of national banks, or of member banks of the Federal Reserve System;

The Banking Act of 1933 only partially realizes these purposes. It is true:

1. That it requires the divorcement of security affiliates by commercial banks which are either national banks or member banks of the Federal Reserve System;

2. That it prohibits persons, partnerships or corporations engaged in the securities business from receiving deposits;

3. That it prohibits anyone from receiving deposits unless such person, firm or corporation is subject to examination and regulation under State or Federal law, or submits to periodic examination by the Comptroller of the Currency or by the Federal Reserve Bank of the district and publishes periodic reports of condition;

But, it is also true:

1. That the present statute law (that is, section 8 of the Clayton Act and the provisions of sections 32 and 33 of the Banking Act of 1933) leaves wide open the opportunity for an interlocking of management on the one hand between investment bankers and commercial banks, both national and State. It also leaves open opportunity for interlocking management between commercial banks themselves, so long as they are not national banks; and

2. That the present statute law leaves wide open the opportunity to an individual who may actually be engaged in the securities business through a corporation (so long as he is not a director or officer of the corporation doing such business but employs other people for those offices) to act as a director of a commercial bank without even the necessity of obtaining a permit from the Federal Reserve Board.

It is not my desire to burden your committee with a long and technical analysis of these omissions in the present statute law. A study of regulation L, series of 1933, and of regulation R, series of 1933, of the Federal Reserve Board, issued on October 31, 1933, which regulations I desire to put in the record at this point, and of section 8 of the Clayton Act and of the provisions of the Banking Act of 1933, will disclose the situation. If your committee desires I will have prepared and submitted to it a detailed study of the matter.

May I introduce those in evidence? I have given them to the reporter, and I think perhaps each member of the committee may like to have a copy of them.

The CHAIRMAN. Are you offering these without reading them, or do you care to read them?

Mr. ALDRICH. I am offering them in evidence. I am not going to read them, because they are so long.

Mr. PECORA. They are all statutory provisions.

Mr. ALDRICH. They are all statutory provisions. They are constructions of the statutory provisions.

Senator ADAMS. They come from the Treasury Department.

Mr. ALDRICH. Yes, sir. These particular documents came from the Treasury Department. They are not things that I prepared. I am about to analyze the provisions of the act, as shown by these interpretations.

(The documents referred to, a study of regulation L, series of 1933, and of regulation R, series of 1933, Federal Reserve Board, Oct. 31, 1933, were received in evidence, marked, respectively, "Committee's Exhibits Nos. 210 and 211", Nov. 29, 1933, and the same will be found at the end of today's proceedings.)

Mr. ALDRICH (continuing). It is clear that in spite of the general prohibitions set forth in the act and the obvious legislative intent to separate investment and commercial banking, the statute law [1] actually in force today—

1. Allows any individual (investment banker or otherwise) to act as a director, officer or employee of any number of commercial banks, so long as no one of them is a national bank.

2. It allows any individual to act as a director, officer or employee of a national bank as well as of two other banks—if the Federal Reserve Board issues a permit therefor.

3. It allows a member of a partnership engaged in the investment banking business or an officer or director of a corporation engaged in such business to act as a director, officer or employee of any member bank, provided only that he obtains a permit therefor from the Federal Reserve Board.

4. It allows anyone engaged in the securities business as a controlling stockholder in an investment banking corporation (so long as he does not act as a director or officer of such corporation) to act as a director, officer or employee of any bank without the necessity of a permit from the Federal Reserve Board.

Although section 8-A of the Clayton Act as contained in section 33 of the Banking Act of 1933 does not by its terms expressly authorize the Federal Reserve Board to issue permits to avoid certain prohibitions therein contained, the Federal Reserve Board has ruled (and I understand that such ruling is, as a matter of law, a sound one) that certain of the prohibitions against interlocking management contained in section 8-A of the Clayton Act may be avoided subject only to the permission of the Federal Reserve Board.

[1] See section 8 of the Clayton Act, section 32 of the Banking Act of 1933, and section 8(a) of the Clayton Act, as added by section 33 of the Banking Act of 1933, as analyzed in the Federal Reserve Board regulations referred to.)

The fact is that under the present law any of the prohibitions contained in section 32 of the Banking Act and sections 8 and 8-A of the Clayton Act, can actually within certain limitations be avoided with the permission of the Federal Reserve Board. The Federal Reserve Board must only determine that such exceptions as it makes are in its judgment "compatible with the public interest."

To state the situation in another relation: The Banking Act of 1933 in section 21(a) (1) prohibits unconditionally an investment banker from at the same time engaging in commercial banking. No provision is contained in this section of the act even permitting the Federal Reserve Board to authorize an avoidance of this prohibition, and yet section 32 of the same act, as indicated above, permits the Federal Reserve Board to authorize indirectly an evasion of this prohibition by permitting an interlocking directorate between an investment banker and a commercial bank.

The foregoing observations are not to be interpreted as criticism of the Federal Reserve Board; nor to imply that the Federal Reserve Board will not proceed conscientiously in discharging the duties imposed upon it by law. The point here made is that the necessities of so vital a situation should not be subject, once Congress has determined public policy, to the discretion of the Federal Reserve Board or of any other authority. It is only natural (as was pointed out when the Kern amendment was first added to section 8 of the Clayton Act whereby the Federal Reserve Board was given power by permit to excuse from the prohibitions against certain interlocking directorates) that if the Federal Reserve Board is given such power the Federal Reserve Board will interpret this as a mandate from the Congress to exercise such power. The fact is that Congress, having acted to prohibit certain relationships, presumably because in its judgment they were contrary to the public interest, has apparently delegated the power to the Federal Reserve Board to determine whether Congress was itself right. I submit that Congress was wise in its legislative purpose, and that its wisdom in that regard should be expressed in mandatory rather than permissive terms.

To accomplish the purpose and intent of the Congress to effect a complete termination of interlocking directorates between commercial banks and investment bankers, I urge that the Banking Act of 1933 should be amended by incorporating in the National Bank Act a provision expressly disqualifying anyone engaged, directly or indirectly, in the investment banking business from acting as a director or officer of a national bank.

Similar provisions should expressly disqualify any director, employee or officer of a national bank from acting as a director, officer or employee of any other bank in the same community. There should also be incorporated in the Federal Reserve Act (which is the organic legislation dealing with State member banks) an appropriate provision applying the same canons of eligibility with regard to the officers, directors and employees of State member banks, so that there shall be no unfair discrimination against national banks.

The present law contains an obvious anomaly. Under it a director of a national bank may, with permission of the Federal Reserve

Board, act as director of not more than two other banks which "make loans secured by stock or bond collateral." But a director of a national bank may not, even with permission of the Federal Reserve Board, serve as director of a corporation not engaged in the banking business which may as an incidental matter occasionally "make loans secured by stock and bond collateral", to others than its own subsidiaries.

Taking the law literally, a man may be a director of a national bank and of another bank if he obtains a permit therefor, but he cannot be, and cannot obtain dispensation to be, at the same time a director of a national bank and of some other corporation, if such corporation should occasionally and as an incident to its primary business "make loans secured by stock or bond collateral" to others than subsidiaries. I have no doubt that in the complexities of modern business, such loans are occasionally made by practically all of the business, public utility and railroad corporations of the country.

This particular type of disqualification of a director of a national bank does not apply to a director of a State member bank. Although the language of sections 8 and 8-A of the Clayton Act refers in this connection to directors of any "bank, banking association or trust company organized or operating under the laws of the United States", nevertheless, this language has been construed (by the Federal Reserve Board on the authority of an opinion by the Acting Attorney General of the United States dated Sept. 10, 1917) to apply only to national banks and not to include State member banks.

The entire subject of the qualification of directors, officers and employees of national banks and State member banks should be comprehensively covered by the elimination of the provisions in sections 31, 32, and 33 of the Banking Act of 1933, the repeal of section 8 of the Clayton Act, and the making of appropriate amendments to the National Bank Act and the Federal Reserve Act in accordance with principles indicated above.

In making such amendments to the Banking Act designed to separate absolutely the business of commercial and investment banking, you will of course take account of the fact that there are varying definitions of investment banking embodied in the present law.

I suggest accordingly the wisdom of drafting a carefully phrased definition of the business of dealing in securities. For the sake of clarity, such definition should be so drawn as to exclude any organization which sells, either through itself or through a subsidiary, no securities other than those issued by itself. Likewise, it should exclude, for the same reason, those buying and selling securities solely as brokers or agents.

The law now undertakes to exclude certain interlocking relationships between banks. In reclassifying the qualifications of directors which may involve such overlapping of interests, directors of banking institutions should not be prohibited from at the same time acting as directors of corporations, such as, for example, the District Corporation of New York, which deal primarily in the obligations of the United States Government in bankers acceptances or trade acceptances. Such corporations assist in the functioning of an important part of the machinery of the Federal Reserve Act. Likewise an American bank director should not be forbidden from serv-

ing as a director of the Bank for International Settlements which functions in connection with the foreign commerce of the United States. Parenthetically, I would also suggest that national banks be expressly permitted to hold the stock of these banking institutions.

There is another reason leading to my suggestion for eliminating the provisions of section 32. Section 21 of the Banking Act of 1933 contains a sweeping provision against anyone engaged in the securities business at the same time and to any extent whatever engaging "in the business of receiving deposits." Nevertheless section 32 of the act permits a dealer in securities to "hold on deposit" funds on behalf of a member bank if the Federal Reserve Board decides that such receiving and holding on deposit is "not incompatible with the public interest" and consequently issues a permit therefor. An irreconcilable inconsistency such as this should be corrected by the elimination of this provision of section 32.

Furthermore, the provisions in this section 32 as to the correspondent relationship between a commercial bank and a firm or institution engaged in the securities business are of doubtful meaning. They should certainly be eliminated or clarified.

III

SUGGESTED ADDITIONS TO THE BANKING ACT OF 1933 TO PREVENT CERTAIN PRACTICES

As I have mentioned in an earlier portion of this statement, one very important contribution which the Congress can make toward the improvement of commercial banking is to so amend our legislation as to protect the sound bankers of the country from a type of competition involving certain undesirable banking practices which have been brought to the attention of this committee and which experience shows should be outlawed. In line with this the following suggestions are made:

A. The banking act undertakes to legislate against a certain practice out of which much embarrassment and at times abuse has arisen The act prohibits an executive officer of a member bank from borrowing from another bank without reporting the fact to the chairman of the board of directors of his own bank. Parenthetically, it is not very clear just what the chairman of the board is to do with this information, nor what he must do if he himself is an executive officer and desires to borrow, nor is the situation covered where there is no chairman of the board. The important point is that the act refers to borrowing only from another bank. An officer may borrow from any other source without making a report. There is no provision covering borrowing from brokers, private bankers or others. It would seem that the rule should be that all executive officers of a member bank should report to the board of directors all of their borrowings above say, some nominal minimum, related to the size of their salaries. Thus the board will be informed of the obligations such officers may be under to all those who are lending them money.

B. The act should be so amended as specifically to prohibit executive officers of member banks from participating directly or indirectly in syndicates which are offering securities to the public, or in trading accounts or pool operations in securities which are dealt in publicly. As such executive officers may be called upon to make syndicate loans, and may be responsible for the formulation of the policies of their banks in connection with loans on stock and bond collateral, they should be prohibited from having any interest in or subscribing to any such syndicate or in joining in any such trading accounts or pool operations. Banking experience has conclusively demonstrated the undesirability of participation by bank officers in transactions of this kind.

C. This act should also prohibit both executive officers and directors of Federal Reserve banks from participating directly or indirectly in similar syndicates or trading accounts or pool operations. Directors of Federal Reserve banks occupy a very delicate relationship to the whole credit machinery. Their decisions profoundly affect both the money market and the securities market; consequently they should have no interest in syndicates which are offering securities to the public or in trading accounts or pool operations in securities dealt in publicly.

D. The act should be so amended as to require an executive officer of a member bank to report to his board of directors every case where any such officer becomes a director, officer or member of the firm of or financial adviser to any outside interest, whether an individual, corporation or partnership, and, if any fee or salary is paid for such service, other than ordinary director's fee, the amount thereof.

It is desirable that a bank officer, particularly in large cities, should have his primary interest, and usually his exclusive interest, in the bank for which he works. Many exceptions to this rule may, of course arise—especially in small communities. The important thing is that his board of directors should know and approve of any outside interest on the part of a bank officer. There are many occasions when an executive officer without question should be permitted to have an interest in and take a salary from an outside activity, but the law should require that his board of directors should be apprised of the details of every such instance, except in the case of ordinary directors' fees, and should approve thereof.

E. The act should contain a provision covering loans made for reasons of policy. Banking in America is competitive and it should remain competitive. It should always be open to a good customer who feels that he is not being treated properly by one bank to take his business to another bank. But the level of competition in banking, as in every other business, should be so regulated by custom, by professional standards and where necessary and possible by law, that banks will not do unsound things in their effort to get new business or to keep the business which they have.

One rather serious and widespread outgrowth of competition between banks has been the making of loans which a bank would prefer not to make on the strict merits of the loans themselves, but which none-the-less it may be tempted to make because borrowers are in a position to influence other important business of the lending

bank or to bring important business to the bank. Such loans are made chiefly in the following three connections:

1. Loans to an officer of a depositor bank;
2. Loans to an officer of a depositor business corporation;
3. Loans to the financial agent of an important individual or partnership depositor.

In a large percentage of cases it is perfectly proper to make such loans. These borrowers may present entirely acceptable collateral, may handle their loans in a wholly proper way, and may have individual accounts which justify every consideration. But the situation would be less subject to abuse if there were added to the Banking Act a provision that in every case where a loan is made by a member bank to individuals in relations such as those specified above, a report should be made by the lending bank to the board of directors of the customer bank or corporation of which the borrower is an officer, or to the individual depositor or partnership for whom the borrower acts as financial agent, excluding, of course, cases where an individual acts as financial agent for the members of his family. The provision suggested should not apply to existing loans, or renewals thereof, but only to new loans or to existing loans if they are to be increased.

The lending bank would in such cases naturally inform the borrower in advance that the law required the making of these reports, and the knowledge that the law existed would largely prevent improper requests from being made. Objection cannot be made to a provision of this sort that it robs the officer of the depositor bank or corporation or the financial agent of the individual depositor or partnership of his privacy in financial transactions. He need not borrow from the same bank that his principal deals with if his loan can stand on its own merits.

IV

SUGGESTED REVISIONS OF THE BANKING ACT OF 1933 TO OBVIATE CERTAIN PRACTICAL DIFFICULTIES

In two respects the Banking Act of 1933 has placed upon member banks, I believe unintentionally, a number of immediate practical burdens which have had and will continue to have most injurious results. Relief from these burdens would in no way weaken the effectiveness of the legislative policy in requiring divorcement of commercial banks and investment affiliates. The difficulties are created, first, by the unhappily sweeping definition of the term "affiliate" and, second, by the apparent failure of the act to afford a reasonable opportunity, in these abnormal times, to salvage to the best advantage assets involved in the liquidation of a securities affiliate.

A. DEFINITION OF AFFILIATE

The banking act requires that in cases where a member bank owns or controls another corporation regular reports of such controlled or affiliated corporation must be forwarded to the authorities and published, and that the loans and investments of a member bank to and in certain kinds of affiliated corporations shall be restricted as set

forth in section 13. This is an entirely wise provision of law insofar as it relates to corporations which are controlled by banks through deliberate choice. The case is wholly different, however, where such control is forced upon the bank as a result of accidental conditions which it could not itself govern. This may be brought about, for example, from the necessity of reducing collateral to possession to realize upon a loan, or through or from participation in a reorganization as a means of salvaging a loan.

Another process whereby what may be called "accidental" affiliates may be acquired is the control of stock by a bank in the exercise of its trust powers as executor, administrator, depositary, etc.

The law does not appear to exclude, either expressly or by implication, any of such "accidental" affiliates from the operation of its requirements. Presumably, therefore, not only must regular reports be published of this innumerable group of "accidental" affiliates but also loans to, investments in, such corporations must be taken into account in determining the limit of loans and investments permitted to member banks in connection with their affiliates.

A number of incidental hardships have been created in connection with the preparation and furnishing of these required reports (not to mention the advertising and other expense involved) by reason of this sweeping inclusion into the fold of bank affiliates of the countless number of corporations which may be within the class of "accidental" affiliates. The accounting difficulties in preparing financial statements of all different kinds of corporations, perhaps scattered all over the world, contemporaneously with a call by the Comptroller for a statement of condition by the bank in question should not be underestimated.

Most important of all, however, particularly at present when debtors in one form or another are in dire need of credit assistance, is the fact that a member bank may very well be seriously embarrassed in endeavoring to work out its loans (let alone the even greater embarrassment to debtors) if the loan and investment limitations of section 13 are applied (as the law now apparently applies them) to this great number of "accidental" affiliates coming within the act's unhappily sweeping definition. Correction of this situation can only be made by congressional action taken promptly.

To cure this condition, as well as expressly to exclude from the term "affiliate" corporations, the stock of which is held by the bank in some fiduciary capacity, it is suggested that the definition of the term "affiliate" as contained in the act be qualified by a proviso that the term shall not be deemed to include corporations or businesses which shall be controlled by a bank in a fiduciary capacity or control of which shall have been acquired in one form or another in connection with the salvaging of a bona fide loan.

B. OPPORTUNITY TO LIQUIDATE IN PRUDENT MANNER THE ASSETS OF A SECURITIES AFFILIATE

The act prescribes a time limit of 1 year from June 16, 1933, for the complete separation of commercial banking from the securities business. Every effort should indeed be made to effect such a separation or the termination of the securities business of an affiliate at the earliest possible date. As I have heretofore stated, the securi-

ties business of the securities affiliate of the Chase National Bank had been terminated prior to the enactment of the law. We have also determined upon the complete liquidation and winding up of our securities affiliate at the earliest possible date.

The period of 1 year for the termination of the securities business of a securities affiliate allowed by the Glass-Steagall bill is indeed needlessly long. A securities affiliate can cease over night to do new business, as was the case with the Chase Harris Forbes organization. But the period of 1 year is exceedingly short for the liquidation of such an organization, under present conditions. Even though the affiliate has ceased engaging in the securities business, nevertheless, a liquidation of the assets of such affiliate, consisting largely of unsold securities, should be pursued in a prudent manner. For the purpose of permitting a prudent and orderly termination of a securities affiliate, without disturbance to market conditions and without incurring unnecessary losses, I suggest that the act be amended. Such amendment might well permit a member bank one of two options to minimize or avoid loss; namely, either—

1. To continue the corporate existence of its affiliate and its affiliation with the bank beyond June 16, 1934, solely for the purpose of effecting prudent liquidation of its assets, and of course without conducting any new business; or

2. To take over such assets from its affiliate at their fair value and hold them pending the opportunity to make a prudent disposition thereof.

Exercise of either of these options should be subject to the approval of the Comptroller of the Currency or of the Federal Reserve Board as to the length of time of the continuance of the affiliated relationship and also of the corporate existence of such affiliate, as well as to the retention by the member bank of such assets as a member bank would not normally be permitted to invest in.

V

GENERAL

In the foregoing discussion I have confined myself to suggestions for legislation intended to prevent unsound banking practices and to remedy certain omissions. I have said nothing about a number of other problems which are of vital importance, and the solution of which must be found before any program of strengthening the banking system of the country can be completed. I have failed to touch upon these problems not because I have overlooked them, but because it does not seem to me that they are germane to that phase of the inquiry which is at the moment before you.

In considering legislation it should never be overlooked that the whole mechanism of trade is as delicate as it is complicated. The law cannot wisely establish too rigid grooves within which business transactions shall be conducted. To prohibit specific practices which are clearly injurious is sound and to impose all necessary public supervision is also wise. But business enterprise, initiative and courage flourish in an atmosphere of the utmost freedom compatible with protection of the public interest.

The banks and bankers of the country have sometimes been held primarily to blame for the economic catastrophe of the past few years. Indefensible transactions were indeed entered into in the period of the speculative mania. But many more transactions, which in the light of subsequent events, have proved unfortunate or even disastrous, were warranted on the basis of the situation as it seemed to be at the time the transactions were undertaken. Banks and bankers in the United States were responsible for specific acts and for certain abuses, but they did not create the unsound money market situation which undermined so many of these transactions. The banks did not create the great excess of member bank reserves which were characteristic of the greater part of the period from the middle of 1922 through early 1928, and they did not cause the gigantic expansion of commercial bank credit which in a competitive banking system is the automatic consequence of a prolonged excess of reserves in a time of general confidence. Between the middle of 1922 and April of 1928 the deposits of the commercial banks of the United States increased by $13,500,000,000 while their loans and investments increased by $14,500,000,000. That great increase in commercial bank credit, unneeded by commerce, flowed into capital uses, generating an immense speculation in real estate and securities.

Many people are too prone to blame all financial evils upon bankers—either commercial or investment. Bankers have enough to atone for without being held responsible for orgies of gambling upon stock or commodity exchanges or for the rapacity of individuals who seek to gain inordinate financial profits by reckless speculation. I undertake to condone no improper practices, but do suggest that a proper sense of perspective is necessary.

Banks themselves were responsible when they took improperly secured mortgages, unseasoned, high-yield, narrow-market bonds, or loans against securities inadequately margined, inadequately diversified, or which otherwise failed to satisfy sound banking standards. But they did not create the general money-market situation which meant for the banking system as a whole such an excess in the number of mortgages taken, the number of bonds purchased and the total of credit going into securities, that it undermined the entire fabric and made the ordinary standards of safety, even when applied in individual cases with due care, no longer adequate.

In looking back upon the events of the past few years, we should not permit ourselves, therefore, to overlook the innumerable acts of courage and foresightedness which individual bankers did for the relief of their customers and the community, nor should we allow the mistakes now freely admitted to obscure the merit of resourceful and constructive action effectively taken.

A banker's courage, and public confidence in the banker, are interdependent. Given public confidence in him and in the general situation, the banker can safely and properly do many things of constructive importance and value to the community which he dare not do if that confidence is low. To enjoy public confidence the banker must, of course, deserve that confidence. His principles and practices must command public approval. Law and public opinion must support him in the maintenance of high standards and in the courageous exercise of his opportunities for usefulness.

It is clear that our banking system should be modified and strengthened. To do so will require a most thorough and dispassionate examination of the entire problem. Under a banking system wisely improved and coordinated, the country's financial system should be able effectively and permanently to foster the national welfare.

Mr. PECORA. Mr. Chairman, may I say for the record that last evening Mr. Aldrich submitted a draft of this statement, the reading of which he has just completed, to me. I suggested to him that it be placed in the record at today's hearing and that copies of this statement be made available by Mr. Aldrich to members of the committee and to counsel, as well as to the press.

I also suggested last evening to Mr. Aldrich that he hold himself in readiness to submit to examination by the committee and its counsel at such hearings as are to be held in the very near future, with respect to the statements and proposals embodied by him in this statement. Mr. Aldrich indicated his willingness to do that. At the same time I recognize that perhaps at the present time it might be desired to question Mr. Aldrich with regard to any of these proposals.

The CHAIRMAN. The committee is very glad to have this statement and these suggestions and recommendations proposed by Mr. Aldrich. We have planned to recess from today until next Tuesday, and we will carefully examine this data and we will perhaps by that time be prepared to ask Mr. Aldrich some questions about it.

Mr. ALDRICH. I will be very glad to come back, Mr. Chairman, if you wish to have me do so.

The CHAIRMAN. That will give us an opportunity to look into the matters that have been set forth herein, and we may wish to ask Mr. Aldrich some questions about it.

Does any member of the committee desire to ask any questions now? If so, it would be in order to do so at this time.

Mr. PECORA. I might call Mr. Aldrich's attention to the paragraph in the middle of page b-5 of his typewritten statement. The paragraph I refer to is the one reading as follows:

> To accomplish the purpose and intent of the Congress to effect a complete termination of interlocking directorates between commercial banks and investment bankers, I urge that the Banking Act of 1933 should be amended by incorporating in the National Bank Act a provision expressly disqualifying anyone engaged, directly or indirectly, in the investment banking business from acting as a director or officer of a national bank.

It occurred to me as Mr. Aldrich was reading that portion of this statement that an investment banker or one engaged, directly or indirectly, in the investment banking business could be in a position to exercise an influence over the acts of directors and officers of a national bank without being an officer or director, but by being a substantial stockholder of such national bank. I do not know whether you have given any thought to that, Mr. Aldrich. If you have not, I suggest that you might.

Mr. ALDRICH. I had in mind, Mr. Pecora, this, that the evasion of that prohibition would be apt to be accomplished in the other way. I should think it would be very unusual for an investment banking institution to be in control of the stock of a national bank.

Mr. PECORA. Well, he would not have to be in control to exercise an influence; that is such control as is represented by an ownership

of stock that would give him either the majority of the stock or management control.

Mr. ALDRICH. Well, of course, I have covered in this statement the case of where the investment banker incorporates his investment banking business, remains in control, is not either an officer or director of it, and then sits on the board of a commercial bank. I have not covered the case of an investment banker owning a controlling interest in a commercial bank. I overlooked that.

Mr. PECORA. You see the point I have in mind, do you not, Mr. Aldrich?

Mr. ALDRICH. Yes; I do. Of course both of those cases are very difficult to really cover, because anything short of actual control by holding a majority of the stock is so difficult to define. I remember at this hearing the discussion as to what did constitute control. And once you get into that discussion it is very difficult to put into a statute provisions which would cover the situation. So my suggestion in regard to the case of where the investment banker has incorporated his business and ceased to be a director or officer of the concern was where the investment banker actually controlled that through a majority of stock ownership. I have not gone any further than that in either way. And I quite agree with you that both aspects of that situation ought to be covered in legislation.

Senator GOLDSBOROUGH. Mr. Chairman, it is my understanding that Mr. Aldrich has prepared amendments to give effect and force to the suggestions contained in his statement. Would you want those left with the committee now, or is it expected to take those up later on when Mr. Aldrich returns?

Mr. ALDRICH. I have not prepared any such thing which I have with me. In order to express this statement correctly it was necessary for me to visualize this in the form of actual amendments to the act which if we were going into any detailed discussions of the terms of the act itself it would be well for me to have with me. I have not them with me today as a matter of fact.

Mr. PECORA. You might bring them next week.

The CHAIRMAN. We would be very glad to have those.

Senator GOLDSBOROUGH. That was your idea, Mr. Pecora?

Mr. PECORA. Yes, sir.

Mr. ALDRICH. I think it would clarify the discussion if I did that, because if one gets down to the actual consideration of the terms of the act the most intelligent way to consider it is by seeing what would actually be done about it if it were amended, and how that would be done.

Mr. PECORA. I observe, Mr. Aldrich, that in this statement which you have read into the record no reference is made to the question of whether or not a commercial bank should be permitted to act in a trust capacity. I wondered if you had given any consideration to that point?

Mr. ALDRICH. I have given very serious consideration to it, as a matter of fact. I have come to this conclusion. In small communities—and of course there are thousands of such communities—it is practically impossible to carry on the business of the trust company standing alone. It is impossible, as I understand it—and I have given considerable thought and quite a little investigation to it—to

support a trust company standing alone in a small community. This is true in every respect of this banking problem. You have got to meet the competition of State banks. In a small community, as I say, it would be impossible to support a trust company unless it were given the right to function also as a commercial bank. So I have been advised. In larger communities, I believe, the national banks were given trust powers to meet the competition of the State trust companies. And I personally have not seen any abuse of the mingling together of the commercial banking and trust functioning.

The CHAIRMAN. The national banks are doing that now to a very considerable extent, are they not?

Mr. ALDRICH. Oh, yes; most decidedly. But the power was originally given to the national banks, as I understand it, because the State trust companies had the power to engage in the commercial banking business as well as the trust business. I think that is historically so.

Mr. PECORA. Might I call your attention to the last paragraph on page c-7 of your prepared statement, about the fifth or sixth page from the end, where, referring to the divorcement of affiliates from banks, you say:

> To cure this condition, as well as expressly to exclude from the term "affiliate" corporations the stock of which is held by the bank in some fiduciary capacity, it is suggested that the definition of the term "affiliate" as contained in the act be qualified by a proviso that the term shall not be deemed to include corporations or businesses which shall be controlled by a bank in a fiduciary capacity or control of which shall have been acquired in one form or another in connection with the salvaging of a bona-fide loan.

Are you not leaving the door wide open there by the latter portion of that paragraph to an evasion of the principle of the present Banking Act which requires a divorcement of affiliates from banks, by making it possible for a bank through the mere process of acquiring, in one form or another, the stock of a corporation in connection with the salvaging of a so-called "bona-fide loan"?

Mr. ALDRICH. Well of course that is the reason I put in the word "bona fide." I meant a loan which was made not for the purpose of acquiring the stock, but in the salvaging of which the stock was acquired bona fide. That is the reason the word is in there—to cover that point. Of course that would be a question of the phraseology of the act. I short-cut the phrase by just using the word "bona fide."

Mr. PECORA. A loan not in itself bona fide might be given all the surface indications and appearances of a bona fide loan by the adoption of certain forms and artifices and devices, as you probably know.

Mr. ALDRICH. Yes; that is quite true. But this is really a very serious consideration. The fact that in so many instances the bank through a bona fide loan in salvaging a corporation finds itself in the position of owning the majority of the stock. Then it is limited in the amount that it can loan that company under the same limitations that it is in the case of an affiliate. And of course the company cannot go to some other bank and borrow the money if all the stock is owned by the bank. It can, but from the point of view of competition it is a situation that is very difficult to handle. I think that that situation does require very serious consideration on the part of Congress from a practical point of view. I realized the difficulty and I tried to meet it by saying "bona fide."

Senator COUZENS. Do you find any reason, Mr. Aldrich, for a bank controlling a company through fiduciary relations referred to in the same paragraph?

Mr. ALDRICH. No; except for the fact that in a great many cases there might be a will under which a bank might be acting as trustee, where the individual had incorporated his business, and the bank might be holding all of the stock of it, and under the definition of an affiliate, as now contained in the act, statements of that company would have to be published along with the bank's statements. As a practical matter it presents a lot of very difficult problems. Of course, generally speaking, a corporation which is controlled by a bank in fiduciary capacity is a small corporation. Usually a corporation which is carrying on a small business. And very few large corporations, of course, are controlled in that way. I do not know if any are, as a matter of fact.

Senator COUZENS. As a matter of fact, I think the national banks ought not to be placed in the position to act in a fiduciary capacity to control any corporation. It seems to me that the same pressure for undue loans and considerations of that sort are applicable there as though you engage in investment banking or have an affiliate.

Mr. ALDRICH. Well, it is a practical situation; not only a theoretical one. Obviously the national bank in its fiduciary capacity does not go out to try to control anything. It obtains that control because of the fact that it is made trustee or executor or guardian for some estate which happens to itself own or control some corporation.

Senator ADAMS. Mr. Aldrich, is not this in substance the distinction that you are making, that the bank acquires its fiduciary control by the act of somebody else?

Mr. ALDRICH. By the act of somebody else.

Senator ADAMS. Not by its own act?

Mr. ALDRICH. Exactly.

Senator ADAMS. Which is quite a different thing than if it goes out and does it voluntarily.

Mr. ALDRICH. Yes. As a matter of fact it is what I call for simplicity an accidental affiliate, where the bank has not intended to control. And that would be true where a third party had given its stock in the corporation in trust.

Senator ADAMS. It might be an executor, an administrator, or trustee.

Mr. ALDRICH. It might be an executor, an administrator, or trustee of any kind. That is all I had in mind.

Senator ADAMS. That same question is involved in this question whether or not a national bank is going to have trust powers.

Mr. ALDRICH. Yes.

Senator ADAMS. That is, if they are going to have trust powers it is hard to escape permitting them to control trust properties.

Mr. ALDRICH. That is right. And it is true I believe that it would be a very serious thing for the small community to separate trust companies from commercial banks. I have been advised of that fact by people in whom I have great confidence. I do not know it myself, but they tell me that that is so.

Senator COUZENS. I think that can be overcome, and that is what I was going to suggest. That can be arranged by population

restrictions. I rather inherently object to a commercial bank acting as a trustee or in a fiduciary capacity in other than the small communities which you have emphasized.

Mr. ALDRICH. I think you will find that there has been very little abuse—in fact, I do not know of any—of that. There has been very careful action taken for years to prevent it.

Senator COUZENS. That may very readily grow, however, by the elimination of the affiliates. The temptation would be to have it grow because of the elimination of the affiliates. That is my judgment of it.

Mr. ALDRICH. Of course, I am not at all sure that if you had in mind the actual divorcement of those two businesses it would not be better to regulate by specific provision. Of course there are certain practices, methods of procedure, which have been adopted to avoid the possibility of criticism or any abuse in the trust departments not purchasing securities from affiliates. I personally believe that the trust business is much less apt to be abused today since the investment affiliates have been divorced from banks than it was before. The criticism which was leveled at it before was that there was danger that the trust department should purchase from the security affiliate. Today that danger has been entirely eliminated because of the fact that there are no longer any security affiliates of the commercial banks. As a matter of fact, inasmuch as commercial banks are now forbidden to be in the securities business at all, except for Government bonds and similar obligations, I should think the danger of abuse was at an end. And I personally believe that the trust departments of these large banks are conducted in an extremely good manner.

The only embarrassment that I have seen in that connection is where a bank makes a commercial loan and its trust department is trustee under an issue of securities of that corporation. There is a difficult situation. Embarrassment does arise. We have in effect today in the Chase National Bank a memorandum to our credit officers which specifies in each case our relations to every corporation as trustee under the terms of the indenture. So that we will not get into the position, as has been done in the past in a good many instances, where a bank finds itself wondering whether it can take the collateral—it would have the same problem in every case whether it was trustee or not—but wondering whether the negative pledge clauses of an indenture would prevent us taking collateral. It would have that same condition whether it was trustee itself or someone else was trustee. It is a more difficult question if it is itself a trustee. But that is the principal case I think now, since elimination of the security affiliate, where there is any embarrassment in having a trust business connected with the commercial business.

The CHAIRMAN. Do you see opportunities to devise ways and means of practically avoiding that requirement in the law about eliminating affiliates? Will there not be resort to practices and procedures which will almost be certain to continue in effect these very evils we have been trying to correct?

Mr. ALDRICH. I should not think so. I think you can phrase your amendments so that you can cover that.

The CHAIRMAN. I think that would be well.

Mr. PECORA. I would suggest, Mr. Aldrich, you give some thought to it too between now and your next appearance before the committee, which I think will be some day next week.

Mr. ALDRICH. I have given very serious thought to it. As I say, I have used the word "bona fide" there to indicate that I have that very thing in mind.

Mr. PECORA. May I call your attention to another portion of your statement, one to be found on next to the last page of it, where you say as follows: "Bankers have enough to atone for without being held responsible for orgies of gambling upon stock or commodity exchanges or for the rapacity of individuals who seek to gain inordinate financial profits by reckless speculation."

As I recall a good deal of the evidence that has been presented to this committee with regard to the operation of trading and pool accounts in the stock market, those operations were largely financed by bank loans.

Mr. ALDRICH. You are perfectly right. If a banker makes a loan for that purpose he is responsible.

Mr. PECORA. So that to the extent to which those accounts have been financed by banks, and to the extent that those orgies of gambling have been indulged in and have passed on their economic evils to the country at large, bankers are called to a share of responsibility for the making of those loans, are they not?

Mr. ALDRICH. I agree with that entirely. In so far as bankers have made loans for those purposes they certainly are.

Mr. PECORA. In almost every instance where proof has been submitted to this committee of such a trading account or pool, as I remember the evidence, the operations were financed by bank loans very largely. Would you give some thought between now and your next appearance to the matter of placing some limitation upon the power of banks to make loans under those circumstances?

Mr. ALDRICH. Of course the act as it is drawn at present puts very severe restrictions on loaning on stock exchange collateral.

Mr. PECORA. What is that?

Mr. ALDRICH. I say, the act as drawn at present puts very severe restrictions on the loaning on stock exchange collateral. I will be glad to look into that. But I think you will find that the act has gone pretty far along that line already.

The CHAIRMAN. Tomorrow is a holiday, and it would hardly be fair to bring witnesses here only for Friday. The committee will now stand adjourned until next Tuesday at 10:30.

(Thereupon, at 3:10 p.m., Wednesday, Nov. 29, 1933, an adjournment was taken until 10:30 a.m., Tuesday, Dec. 5, 1933.)

COMMITTEE EXHIBIT No. 207, NOVEMBER 29, 1933.

Syndicate Agreement made and entered into as of January 31st 1928 by and between *Bertles, Rawle & Donaldson, Inc.* a Michigan corporation (hereinafter referred to as the Bankers), party of the first part, and *such Corporations and Individuals as become Syndicate Members by signing this Agreement* (all of whom are hereinafter described as Participants), parties of the second part, Witnesseth:

Whereas, the Bankers, together with certain associates, have obtained and hold options and/or contracts for the purchase of the parcels of real estate included in the city block in the City of Detroit, Wayne County, Michigan, bounded on the north by Woodbridge Street; on the east by Randolph Street;

on the south by Atwater Street; and on the west by Bates Street, which said options and/or contracts provide for the purchase of said property for the total purchase price of One Million One Hundred Fifty-nine Thousand Dollars ($1,159,000.00) payable as set forth in said options and/or contracts; and,

Whereas, said options and/or contracts were obtained and are now being held for the purpose of providing terminal facilities in the City of Detroit for the proposed Detroit-Windsor Tunnel; and,

"Whereas the Participants are desirous of purchasing the interest of said Bankers and associates in and to said property as represented by said options and/or contracts and of placing the entire beneficial right, title, and interest therein and thereunder in the Syndicate formed hereby:

"Now, therefore, in consideration of the sum of One Dollar ($1.00) each to the other in hand paid, the receipt of which is hereby acknowledged, and of the mutual promises and agreements herein contained, *it is agreed* as follows:

"First. The amount to be paid hereunder upon the formation of this Syndicate is the sum of One Hundred Seventy-five Thousand Dollars ($175,000.00).

"Second. The Participants hereunder shall contribute each the amount set after his signature, the same to be paid within two (2) days after the Syndicate Manager hereinafter named shall have notified the Participants of the completion of the Syndicate, and the Syndicate Manager shall forthwith cause to be paid over to the Bankers upon due assignment and transfer of said options and/or contracts to the Syndicate Manager or his nominee, the sum of Fifty-six Thousand Seven Hundred Dollars ($56,700.00)—(said sum being the amount invested in said options and/or contracts at the date hereof)—which said payment shall be in full settlement of all of the interest of said Bankers and associates in and to said options and/or contracts or the property described therein.

Third: The affairs of this Syndicate shall be managed by a management committee of three (3) who shall be elected by the Participants from among their number, each Participant being entitled to cast one vote for each One Thousand Dollars ($1,000) which he has undertaken to contribute to the Syndicate; providing, however, that such Committee shall consist of Participants who shall in the aggregate own not less than fifty percent (50%) of the then total amount of investment in the Syndicate. Any officer of any corporation which is a Participant shall be eligible to election as a member of such Committee. Any authorized act of the Committee shall be taken upon a majority vote of its members, cast either in person or by mail or telegram. Vacancies in the Committee shall be filled by election by the Syndicate Participants. The said Committee may appoint a Syndicate Manager who shall serve during the pleasure of the Committee. In the first instance and until further action of the Committee, Judson Bradway, of Detroit, Michigan, shall act as Syndicate Manager. The said Committee is hereby given the following specific power and duties, to wit:

(1) To make and perform or cause to be made and performed all payments and covenants to be made in, on, and under the options and/ or contracts covering the property aforesaid.

(2) To cause deeds and/or contracts to be taken in the name of the Syndicate Manager as trustee, or otherwise, as the Committee may direct as and when the various options and/or contracts are accepted or paid or as and when the purchasers are entitled to receive the same.

(3) To mortgage or sell said property in part or as a whole, for cash or on time, or the interest therein of this Syndicate.

(4) During the life of this Syndicate to make any and all arrangements and to perform any and all acts not specifically mentioned herein in the exercise of their unrestricted discretion which they may deem expedient in order to consummate the purposes of this agreement and to promote or protect the interests of this Syndicate. The enumeration of specific powers herein shall not be construed as abridging the general powers intended to be conferred on the Committee, and the Committee shall not be liable hereunder except for failure to exercise good faith in carrying out the obligations herein imposed.

(5) The Committee shall have authority for the account of the Syndicate to employ counsel, depositaries, and agents, and to incur and discharge any and all expenses which they may deem proper for the purposes of this agreement or for carrying out or attempting to carry out the same.

Fourth. The Participants shall, except as hereinafter provided, share ratably in the profits or losses upon the Syndicate transaction, in accordance with

the investment made by each, but nothing contained herein shall constitute the said Participants hereto partners.

Fifth. The life of this Syndicate shall be thirty (30) years, unless sooner terminated by the Committee.

Sixth. Upon the termination of the Syndicate the Committee shall distribute to the Participants pro rata the property or cash of the Syndicate, in accordance with the investment made by each, or as herein expressly provided.

Seventh. It is understood and agreed that said property, or the rights of purchase under said options and/or contracts, are to be held by said Syndicate for conveyance and transfer to the Detroit-Ontario Subways, Inc., a Michigan corporation, or such other company as said Bankers may direct, for use in connection with the Detroit-Windsor tunnel project, upon the terms and conditions hereinafter set forth, providing the right of acquiring said property for such purpose is exercised by notice in writing to the Syndicate Manager by said Bankers and the purchase price as hereinafter set forth paid on or before March 10th, 1928, or there shall have been delivered to the Guardian Trust Company of Detroit or such other corporate trustee as shall act as trustee under the indenture securing the first-mortgage bonds on account of such tunnel project, a commitment or commitments satisfactory to said corporate trustee, to the amount of not less than Fifteen Million Dollars ($15,000,000.00) for the providing of finances for the building and completion of said tunnel. In the event said property is not purchased by said Detroit-Ontario Subways, Inc., or other corporation organized for the building and/or financing of said tunnel project, or commitments arranged as aforesaid, within the time above limited, then this Syndicate shall be under no further obligation, except as hereinafter provided, to hold said property for said tunnel project, and the same may be held, sold, disposed of, or in anywise dealt with as said Syndicate may in its discretion decide.

It is further agreed that in the event said tunnel project is financed and consummated and said syndicate continues to carry said terminal property until such time, and shall convey, transfer, and assign or cause to be conveyed, transferred, and assigned said property and all rights therein, by proper deeds of conveyance, free and clear of all liens and encumbrances (except certain leases now held by tenants of said property, and leases which certain vendors have the right to retain), and containing the usual warranties of title, all as may be approved by counsel for the Bankers, to Detroit-Ontario Subways, Inc., its successors and assigns, said Bankers agree that they will pay and deliver or cause to be paid and delivered to said Syndicate in consideration of such conveyance and transfer the sum of One Million One Hundred Fifty-nine Thousand Dollars ($1,159,000.00), together with one hundred twenty-five thousand (125,000) shares of the fully paid nonassessable common shares of the Detroit-Ontario Subways, Inc. (or such other corporation as shall do said Tunnel financing), in full payment for all of said property. It is understood that said number of shares so to be delivered as part of the consideration price payable to said Syndicate is based upon Three Dollars Twenty-five Cents ($3.25) per share net to the Company, being the price that any of the common shares of the Company are underwritten by the Bankers: and in the event said shares are underwritten at a higher or lower price, the number of shares deliverable hereunder shall be lowered or raised accordingly.

Eighth. It is contemplated that additional funds will be needed in advance of March 15th, 1928, to the amount of approximately Four Hundred Fifty Thousand Dollars ($450,000.00) to meet further payments required at such time on account of said property, under and in accordance with the options and/or contracts covering same, providing said tunnel project is not financed in the meantime and said property conveyed and transferred to said Detroit-Ontario Subways, Inc., or other corporation as aforesaid. In the event any Participant shall fail to pay or contribute his ratable proportion of any such additional funds so required within two (2) days after any call therefor made by the Syndicate Manager in the manner for the giving of notices hereunder, such Participant shall release and forfeit any and all profit or profits on account of the Syndicate or in anywise accruing hereunder, providing, however, that the investment of said defaulting Participant shall be returned and repaid to him by the Syndicate, but without interest, in the event—

(*a*) said property or the interest of the Syndicate therein shall be sold or disposed of at a profit within one (1) year from the date hereof; or—

(*b*) said Syndicate shall determine in its discretion to hold said property and continue said Syndicate beyond the period of one (1) year from the date hereof.

In the event said property or the interest of the Syndicate therein shall within one (1) year from the date hereof be sold or in anywise disposed of or relinquished, resulting in a loss to the Syndicate, such loss shall be borne and absorbed ratably by all original Participants hereto in the proportion that his investment herein prior to the call for additional funds to meet the March 15th, 1928, payments bears to the total amount contributed hereunder prior to such call, providing, however, that there shall be no liability in excess of or beyond the amount paid in by any Participant.

In the event additional moneys may at any time or times be required by the committee to carry out the purposes of this Syndicate the amount thereof as and when so required shall be determined and called for by the committee, and each of the then Participants notified thereof by mail or telegram, which said Participants shall be entitled to pay to the Committee a ratable part of such call in proportion that the then total amount of capital paid in by each bears to the investment of all; any part or all of such call not paid in by the Participants under their pro rata privilege as aforesaid may be obtained from any other Participant or from such other party or parties as the Committee may in its discretion deem advisable, it being expressly agreed that any such party so paying in and investing in this enterprise shall thereupon become a Participant ratably to the extent of such investment.

Ninth. It is understood and agreed that there is no obligation on the part of this Syndicate to continue to hold and protect said property under said options and/or contracts for said tunnel project beyond March 10th, 1928, but if the same continues to be held and protected by said Syndicate thereafter and until June 10th, 1928, the obligation to convey and transfer same on the terms and conditions hereinbefore set forth shall continue so long as it holds said property, and until June 10th, 1928, but no longer.

Tenth. Each Participant shall furnish the Committee his address to which notices, calls and other communications may be sent, and any notice, call or other communication sent to the Participant at such address shall be deemed to have been received by him.

Eleventh. The Syndicate Manager, who for the time being shall be Judson Bradway, of Detroit, Michigan, is hereby appointed the agent of the Syndicate to receive and disburse all funds of the Syndicate, and said Judson Bradway hereby accepts such appointment and agrees to keep accurate books of account and to account to the Syndicate for all receipts and disbursements made by it from the date hereof.

Twelfth. The Bankers hereby specifically agree that upon payment to them of said sum of Fifty-six Thousand, Seven Hundred Dollars ($56,700) that they will duly and legally sell, assign, transfer and set over to the Syndicate, in the manner hereinbefore provided, all of the interest of themselves and their associates in the options and/or contracts and the property hereinbefore described, and specifically declare that upon such transfer they will have no interest in said property or said options and/or contracts, other than as a Participant of this Syndicate, and that they will at the request of the Committee hereinbefore set forth, or said Syndicate Manager, execute such instruments from time to time as may be necessary or advisable in the judgment of the Committee to further carry forward the interests of the Participants herein.

Thirteenth. The Syndicate hereby agrees to convey and transfer said property to said Detroit-Ontario Subways, Inc., or other corporation organized for said tunnel project as aforesaid, upon written request of said Bankers, within the time and for the considerations as hereinbefore set forth.

Fourteenth. The Syndicate further agrees with the Bankers that common shares of said Company, deliverable to it hereunder as part of said purchase price, shall not be sold or offered for sale for a period of three (3) months from the date of transfer unless sooner released by said Bankers.

In witness whereof, Bertles, Rawls & Donaldson, Inc., has caused this instrument to be signed by its duly authorized officers, and its corporate seal to be hereunto affixed; and the Participants have hereunto set their respective hands and seals, as of the day and year first above written.

BERTLES, RAWLS & DONALDSON, INC.,
(Signed) By HUSTON RAWLS, *Pres.*
And ——— ———

Name of Participants:	Amount
Judson Bradway (L.S.)	$40,000.00
Bertles, Rawls & Donaldson, Inc., Huston Rawls, Pres. (L.S.)	18,000.00
James Vernor, Jr. (L.S.)	40,000.00
Anderson & Gardner, Inc., by A. Gardner, Pres. (L.S.)	18,000.00
James Vernor, Jr. (L.S.)	29,500.00
Judson Bradway (L.S.)	29,500.00

COMMITTEE EXHIBIT No. 208, NOVEMBER 29, 1933

AGREEMENT BETWEEN HUSTON RAWLS AND DETROIT & CANADA TUNNEL COMPANY

DETROIT, MICH., *May 7, 1928.*

DETROIT AND CANADA TUNNEL COMPANY,
Detroit, Mich.

GENTLEMEN: The undersigned, Huston Rawls, of Detroit, for himself and associates, for and upon the consideration hereinafter mentioned, herewith offers to convey, sell, transfer, assign, and deliver, or cause to be conveyed, sold, transferred, assigned, and delivered to Detroit and Canada Tunnel Company (formerly Detroit-Ontario Subways, Inc.) all of the following real and personal property, franchises, and rights:

1. All the shares applied for, allotted, or issued, or to which any person has any claim, of the capital stock of The Detroit & Windsor Subway Company, a Canadian Corporation, duly endorsed in blank.

2. All monies deposited by subscribers for shares of the stock of the foregoing company, amounting to at least Twenty-five Hundred Dollars ($2,500), free of any outstanding liabilities of said company.

3. Resignations of all officers and directors of the foregoing company, together with the minute book, seal, and records of the same.

4. All of the right, title, and interest, including the foregoing, of H. W. Noble & Company and F. W. Martin in and to a certain agreement entered into between the said parties and the Executors of the Estate of the late Charles Millar, deceased, and F. G. Engholm, under date of December 5, 1926, as modified by a certain agreement between said parties under date of February 10th, 1928, and as further modified by a certain agreement between said parties under date of April 7th, 1928 (hereafter sometimes referred to as "Millar-Engholm Agreement"), and all rights, benefits, and advantages to be derived from said agreements.

5. All of the following described real property situated and located in Section 4, Governor & Judges' Plan, City of Detroit, Wayne County, Michigan, to wit:

Beginning at the intersection of the easterly line of Bates Street, at this date and established highway 50 feet wide, and the northerly line of Atwater Street, at this date an established highway 50 feet wide; thence north 30 degrees, 12 minutes, 37 seconds west along the easterly line of Bates Street 200.00 feet to a point, said point being the intersection of the easterly line of Bates Street with the southerly line of Woodbridge Street at this date an established highway 50 feet wide; thence north 59 degrees, 49 minutes, 23 seconds east along the southerly line of Woodbridge Street 214.15 feet to a point, said point being the intersection of the southerly line of Woodbridge Street with the westerly line of Randolph Street, at this date an established highway 60 feet wide; thence south 30 degrees, 8 minutes east along the westerly line of Randolph Street 250.00 feet to a point, said point being the intersection of the westerly line of Randolph Street with the northerly line of Atwater Street; thence south 68 degrees 44 minutes, 58 seconds west along the northerly line of Atwater Street 322.04 feet to a point; thence continuing along the northerly line of Atwater Street south 59 degrees, 50 minutes, 23 seconds west 93.17 feet to the place of beginning;

being the block of land bounded by Atwater, Randolph, Bates, and Woodbridge Streets, subject to the rights of the public in the alley now existing in this block of property, together with all and singular the rights, easements, estates, franchises, interests, privileges, liberties, hereditaments, and appurtenances whatsoever thereunto belonging.

6. All of the following described real property situated in the City of Windsor, being composed of Block "A" shown on a plan of parts of Lots 81 and 82 in the First Concession of what was formely the Township of Sandwich, now the City of Windsor, which plan is registered in the Registry Office for the City of Windsor as Plan 195, and which parcel of land has a frontage on Ouellette Street in the City of Windsor of 470 feet 2 inches, and a depth on Park Street, Windsor, of 285 feet, and a length along the east limit of said Block "A" from Maiden Lane to Park Street of 435 feet, and being all of said Block "A", without guaranty of precise measurements, by excepting thereout any land upon which the Rectory of St. Alphonse Church in Windsor is now situated: together with all and singular the rights, easements, estates, franchises, interests, privileges, liberties, hereditaments, and appurtenances whatsoever thereunto belonging.

7. All issued, outstanding, or subscribed shares, duly endorsed in blank, of the capital stock of Detroit and Canada Tunnel Company (formerly Detroit-Ontario Subways, Inc.), a Michigan corportion, including all shares applied for, allotted or issued, or to which any person has any claim, excepting only qualifying shares of directors.

In consideration of the above there is to be paid or delivered to the undersigned or his associates as may be specified and authorized in the written order or direction of the undersigned, the following:

(1) One Million Six Hundred Ninety Thousand (1,690,000) shares of the fully paid, nonassessable No Par Value Common Shares of said Detroit-Ontario Subways, Inc. (now Detroit & Canada Tunnel Company);

(2) A sum in cash in full payment for the above described Detroit real estate including all commissions and/or trustee's fees, to wit; One Million Five Hundred Ninety-nine Thousand, Nine Hundred Dollars ($1,599,900.00);

(3) A sum in cash in full payment for the above described Canadian real estate including all commissions and/or trustee's fees, to wit: One Million Three Hundred Sixty-five Thousand Dollars ($1,365,000.00);

(4) All payments in cash required to be made to said executors of the Estate of Charles Millar and to F. G. Engholm, pursuant to the terms of said agreement between said parties and H. W. Noble & Company and F. W. Martin, of December 5th, 1926, as modified, to wit: Fifty-five Thousand Dollars ($55,000.00);

(5) All cash payments required to be made by Bertles, Rawls & Donaldson, Inc. to H. W. Noble & Company and F. W. Martin, in consideration of the assignment to the undersigned by said parties of said Millar-Engholm Agreement, to-wit: Not to exceed the sum of Seventy-six Thousand Seventy-one Dollars ($76,071.00);

(6) The payment by yourselves of all preorganization costs and organization and administration expenses payable to the date hereof, composed of the following items, to wit: Engineering and Administration, $190,000.00; Legal Fees, $200,000.00; Appraisals, $6.000.00; Traffic Report, $5,000.00; Daniel L. Turner Traffic Report, $10,000.00; Preorganization expenses refunded, $20,000.00, you to furnish the undersigned with evidence of payment or provision for the payment of said items.

It is specifically understood that the considerations above specified, in addition to constituting full satisfaction and payment for the sale, transfer, assignment, and delivery to yourselves of all the above property and rights, shall constitute full satisfaction to the undersigned and his associates on account of all preorganization services rendered yourselves in connection with the development of the project which it is your purpose to consummate, and all services rendered by the undersigned and his associates in that connection to the date hereof, including, among other things, the following:

The obtaining, in the name of yourselves, from the Common Council and Voters of the City of Detroit, of an Ordinance of the City of Detroit approved by the Common Council September 20th, 1927, and adopted at a general election of the Voters of the City of Detroit held on November 8th, 1927, granting to said corporation the necessary rights and franchises underneath the public streets, alleys, municipal river front property and the subsoil of the Detroit River between the Detroit Terminal and The International Boundary Line:

The obtaining of the necessary license of the President of the United States and permit of the War Department of the United States, and all other rights, franchises, easements, and licenses which the undersigned and his associates have been instrumental in procuring for the benefit of yourselves;

Services of the undersigned and his associates for a period of seventeen (17) months in the promotion of, negotiating, and arranging general construction contracts, directing engineering and development work, administrative and financial details, etc., of said tunnel project.

Delivery and payment hereunder shall be concurrently with the time and place for closing as expressed in the agreements of even date between your company and certain Bankers covering the purchase and sale of the Company's bonds, debentures and certain of its no par value stock, and subject to the contingencies, happenings and pre-requisites as set forth in said agreements.

This offer is subject to your immediate acceptance to be endorsed below and upon acceptance hereof the same shall constitute an agreement between and shall be binding upon our respective personal representatives, successors, and assigns.

Very truly yours,

Accepted:

DETROIT AND CANADA TUNNEL CO.,
By JUDSON BRADWAY, *Vice President.*

COMMITTEE EXHIBIT No. 209, NOVEMBER 29, 1933

DETROIT, MICH., *May 28, 1928.*

DETROIT & CANADA TUNNEL COMPANY AND GUARDIAN TRUST COMPANY,
Detroit, Michigan.

Gentlemen: Enclosed herewith, you will find itemized schedules for the payment and delivery of the cash and shares of stock to which the undersigned is entitled under the provisions of the letter agreement of May 7th, 1928, between the undersigned and his associates and Detroit & Canada Tunnel Company, and you are authorized and requested to issue the 1,690,000 shares of No Par Value Common Stock to which the undersigned and his associates are entitled under the aforesaid agreement to the undersigned and his associates and in the amounts as set forth in the annexed schedules, and also to take the necessary steps under the provisions of Article II, Section 2 of the Trust Indentures for the release of sufficient of the deposited cash to pay the amounts to the persons as set forth in the annexed schedules, a summary of these schedules being as follows:

Schedule A. Detroit Terminal Block, Total	$1,564,650.00
Schedule B. St. Mary's Academy Property, Total	1,365,000.00
Schedule D. Purchase of Millar and Engholm Rights, Total	32,500.00
Schedule E. Detroit & Canada Tunnel Company, Franchise fees, Brokers' Commissions, Taxes, Trustee's fees, and other incidental costs of preorganization and administration, Total	122,345.10
Schedule F. Detroit & Windsor Subway Company, Franchise Fees, Taxes, and other incidental costs of organization and administration, Total	54,550.00
Schedule G. Engineering, Appraisals, and Traffic Reports and Administration	101,803.74
Schedule H. Legal Fees, including all fees of Warren, Hill & Hamblen for Company, Sullivan, and Cromwell and Beaumont, Smith & Harris for Bankers, and Kilmer, Irving & Davis, of Toronto, for Company and Bankers	200,000.00
Schedule I. Construction Contracts—Premium on Bonds	147,495.00
Schedule J. Distribution of 1,690,000 shares of Stock.	

(Sgd.) HUSTON RAWLS,
(For himself and his associates.)

SCHEDULE A. DETROIT TERMINAL BLOCK

1. Hudson-Webber Land Company	$95,048.01
2. Helen Bagley Anderson	16,865.96
Security Trust Company, Admr. W.W.A. of the estate of Mary Sherman Woodruff, Dec'd	16,865.97
3. Alfred Mason, individually and as Attorney-in-Fact for Mary Mason, Ella L. Lupfer, and Mary Mason	49,027.82
4. J. C. Goss Company	39,000.00

5. Union Trust Company	$126,250.00
6. Robert Henkel	273,620.91
7. Julia Elizabeth Buhl	245,545.08
8. Carl F. Raiss	78.685.97
9. Alfred J. Stecker and Ethel B. Stecker	6,120.08
Charles A. Stecker and Ethel B. Stecker	6,120.08
E. Raymond Field and Ida Mae Field	6,120.08
Leonard F. Wineman and Margaret A. Wineman	6,120.08
Anita H. Stecker	2,040.03
Anita H. Stecker and Union Trust Company, Guardians of Barbara F. Stecker and Walter G. Stecker	4,080.07
Leo Landow	42,899.60
10. Judson Bradway, Syndicate Manager	144,590.26
11. Central Union Trust Company, for account of Huston Rawls	405,650.00
Total	1,564,650.00

SCHEDULE B. ST. MARY'S ACADEMY PROPERTY PURCHASE PRICE $1,365,000.00—RAWLS LETTER

1. Central Union Trust Company of New York for account of Bertles, Rawls & Donaldson, Inc., as per Martin Agreement, April 27th, 1928	$320,000.00
2. Bank of Montreal for account of La Communaute Des Soeurs Des Saints Noms de Jesus et de Marie and the Roman Catholic Episcopal Corporation of the Diocese of London	990,000.00
3. Wendell W. Anderson, as per Martin-Bertles, Rawls & Donaldson Option and Martin Letter	8,510.00
4. Fred W. Martin and William H. Morrey, as per Martin Bertles, Rawls & Donaldson Option and Martin letter	15,000.00
5. Fred W. Martin, as per Martin-Bertles, Rawls & Donaldson Option and Martin letter	31,489.40
Total	1,365,000.00

SCHEDULE C. PURCHASE OF MILLAR AND INGHOLM RIGHTS

$32,500.00 to Trustees of the Estate of Charles W. Millar, Deceased, and F. G. Engholm, computed as follows:		
Original Cash Purchase Price (not including stock) as per Millar, Engholm-Noble, Martin Agreement	$85,000.00	
Paid by Noble and Martin	30,000.00	
		55,000.00
Added to original cash purchase price account paid in subscription shares, Detroit & Windsor Subway Company, as per supplemental agreement		2,500.00
		57,500.00
Deduct $25,000.00 in hands of Millar Estate as per receipt from Millar Estate and F. G. Engholm		25,000.00
		$32,500.00

SCHEDULE D. PURCHASE OF NOBLE-MARTIN RIGHTS

$76,071.00 as per Noble, Martin-Bertles, Rawls & Donaldson Option and Martin letter directing payment:	
1. H. W. Noble & Company	$13,303.40
2. Kilmer, Irving & Davis	18,000.00
3. Fred W. Martin	20,525.90
4. Judson Bradway	2,000.00
5. Fred W. Martin	22,241.64
	76,071.00

SCHEDULE E. DETROIT & CANADA TUNNEL COMPANY—FRANCHISE FEES, BROKERS COMMISSIONS, TAXES, TRUSTEE'S FEES, AND OTHER INCIDENTAL COSTS OF PRE-ORGANIZATION AND ADMINISTRATION

1. Guardian Detroit Company, on account advance Franchise and Filing Fees and Michigan Public Utilities Commission, with interest	$15,413.68
2. Mortgage Tax	18,959.00
3. Trustee's Fees upon clearance	25,500.00
4. Murphy, Rosborough & Maree, Commission	12,020.00
5. Central Union Trust Company, for account of Bertles, Rawls & Donaldson, Inc	22,750.00
6. Judson Bradway, Trustee Carrying Charges	27,202.42
7. Michigan Insurance Agency, for premium on $100,000.00 Surety Bond of Columbia Casualty Company to City of Detroit	500.00
Total	122,345.10

SCHEDULE F. DETROIT & WINDSOR SUBWAY COMPANY—FRANCHISE FEES, TAXES, AND OTHER INCIDENTAL COSTS OF ORGANIZATION AND ADMINISTRATION

1. Dominion Treasurer (Par. 7, Sub. 5, Special Act)	$50,000.00
2. Kilmer, Irving & Davis, for refund re License in Mortmain for Detroit & Windsor Subway Company	675.00
3. Guardian Trust Company for refund re License in Mortmain for Guardian Trust Company	675.00
4. Taxes on deed from Church to Company	2,700.00
5. National Surety Company, Premium on $100,000.00 Indemnity Bond to City of Windsor	500.00
Total	45,550.00

SCHEDULE G. ENGINEERING, APPRAISALS AND TRAFFIC REPORTS, AND ADMINISTRATION

1. Ford, Bacon & Davis, Traffic Report	$9,908.52
2. Parsons, Klapp, Brinckerhoff & Douglas, Initial payment of Engineers' Fees included in costs of Parklap Construction Corporation contract	70,000.00
3. Guardian Trust Company, account advanced to Daniel L. Turner, Engineer's Fees	10,158.33
4. Ford, Bacon & Davis, Appraisal	2,641.72
5. Judson Bradway, reimbursement for fee to Manfred K. Toeppen for Public Utilities Commission Appraisal	1,760.17
6. W. H. Morrey, Real Estate Appraisal	1,250.00
7. Paterson Bros. & Company, Real Estate Appraisal	1,160.00
8. W. S. Kinnear, Engineering and consulting services for April 1928	2,500.00
9. Central Banknote Company, for preparation for Temporary First Mortgage 6% Sinking Fund Gold Bonds	1,075.00
10. Central Banknote Company for preparation of Temporary Twenty-Year 6½% Convertible Sinking Fund Gold Debentures	1,350.00
Total	101,803.74

SCHEDULE H. LEGAL FEES

Including all fees of:

1. Warren, Hill & Hamblen, for Company	$150,000.00
2. Sullivan & Cromwell, for Bankers	30,000.00
3. Beaumont, Smith & Harris, for Bankers	10,000.00
4. Kilmer, Irving & Davis, of Toronto, for Company and Bankers	10,000.00
In all	200,000.00

SCHEDULE I. CONSTRUCTION CONTRACTS—PREMIUM ON BONDS

1. Premium on Bond, Parklap Construction Corporation, National Surety Company	$70,650.00
2. Premium on Bonds, Porter Brothers and Robert Porter, United States Fidelity & Guaranty Company	76,845.00
Total	147,495.00

SCHEDULE J. DIVISION OF STOCK BETWEEN HUSTON RAWLS AND ASSOCIATES

	Shares
Guardian Detroit Company	226,010
Chase Securities Corporation	175,950
The N. W. Harris Co. (Harris Trust & Savings Bank)	20,003
J. P. Rinckhoff	40,007
Bertles, Rawls & Donaldson, Inc	76,780
Huston Rawls	105,000
Judson Bradway	75,000
William C. Alle, Trustee	1,000
Sherwin A. Hill	6,080
Sherwin A. Hill	4,560
Joseph G. Hamblen, Jr	3,800
Carl V. Essery	2,280
Charles E. Lewis	2,280
Public Securities, Ltd	52,500
Arthur Gardner	30,000
Chase Donaldson	26,250
Robert E. Jennings	26,250
Parsons, Klapp, Brinckerhoff & Douglas	20,000
William A. Comstock	10,000
H. W. Noble & Co	1,250
Sherwin A. Hill	40,000
Huston Rawls, Trustee	4,500
Kilmer, Irving & Davis	20,000
F. G. Engholm	64,381
Estate of Charles Millar, Dec'd	104,619
H. W. Noble & Co	96,250
F. G. Engholm	12,000
G. R. Sproat	10,000
A. W. Hunter	10,000
Mabel V. Brower	56,000
E. H. Brower	63,000
Fred W. Martin	304,250
Total	1,690,000

STATE OF MICHIGAN, }
County of Wayne, } *ss:*

The undersigned, being duly sworn, depose and say that the items listed in the foregoing detailed Schedules A to J, inclusive, constitute obligation heretofore assumed by Detroit & Canada Tunnel Company, and hereby request the release of funds for A to I under the provisions of Article II, Section 2-A of the Bond and Debenture Trust Indentures between Detroit & Canada Tunnel Company and Guardian Trust Company, Trustee, dated May 1st, 1928.

[SEAL.] DETROIT & CANADA TUNNEL COMPANY.
By (Sgd.) JUDSON BRADWAY,
Its Vice President.
And (Sgd.) A. GARDNER,
Its Secretary.

Subscribed and sworn to before me this 28th day of May, A.D., 1928.
(Sgd.) RICHARD A. FORSYTH,
Notary Public, Wayne County, Michigan.

My Commission expires Jan. 19, 1931.

COMMITTEE EXHIBIT No. 210, NOVEMBER 9, 1933

REGULATION L, SERIES OF 1933 (SUPERSEDING REGULATION L, SERIES OF 1930). INTERLOCKING BANK DIRECTORATES AND OTHER RELATIONSHIPS UNDER THE CLAYTON ACT.

SECTION I. STATUTORY PROVISIONS

Sections 8 and 8A of the Clayton Antitrust Act approved October 15, 1914, as amended by the Acts of May 15, 1916, May 26, 1920, March 9, 1928, March 2, 1929, and June 16, 1933.[1]

SEC. 8. That from and after two years from the date of the approval of this Act no person shall at the same time be a director or other officer or employee of more than one bank, banking association, or trust company organized or operating under the laws of the United States, either of which has deposits, capital, surplus, and undivided profits aggregating more than $5,000,000; and no private banker or person who is a director in any bank or trust company organized and operating under the laws of a State, having deposits, capital, surplus, and undivided profits aggregating more than $5,000,000, shall be eligible to be a director in any bank or banking association organized or operating under the laws of the United States. The eligibility of a director, officer, or employee under the foregoing provisions shall be determined by the average amount of deposits, capital, surplus, and undivided profits as shown in the official statements of such bank, banking association, or trust company filed as provided by law during the fiscal year next preceding the date set for the annual election of directors, and when a director, officer, or employee has been elected or selected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter under said election or employment.

No bank, banking association, or trust company organized or operating under the laws of the United States, in any city or incorporated town or village of more than two hundred thousand inhabitants, as shown by the last preceding decennial census of the United States, shall have as a director or other officer or employee any private banker or any director or other officer or employee of any other bank, banking association, or trust company located in the same place: *Provided*, That nothing in this section shall apply to mutual savings banks not having a capital stock represented by shares, to joint-stock land banks organized under the provisions of the Federal Farm Loan Act, or to other banking institutions which do no commercial banking business: *Provided further*, That a director or other officer or employee of such bank, banking association, or trust company may be a director or other officer or employee of not more than one other bank or trust company organized under the laws of the United States or any State where the entire capital stock of one is owned by stockholders in the other: *And provided further*, That nothing contained in this section shall forbid a director of class A of a Federal reserve bank, as defined in the Federal Reserve Act, from being an officer or director, or both an officer and director, in one member bank: *And provided further*, That nothing in this Act shall prohibit any private banker from being an officer, director, or employee of not more than two banks, banking associations, or trust companies, or prohibit any officer, director, or employee of any bank, banking association, or trust company, or any class A director of a Federal reserve bank, from being an officer, director, or employee of not more than two other banks, banking associations, or trust companies, whether organized under the laws of the United States or any State, if in any such case there is in force a permit therefor issued by the Federal Reserve Board; and the Federal Reserve Board is authorized to issue such permit if in its judgment it is not incompatible with the public interest, and to revoke any such permit whenever it finds, after reasonable notice and opportunity to be heard, that the public interest requires its revocation.

The consent of the Federal Reserve Board may be procured before the person apply therefor has been elected as a class A director of a Federal reserve bank or as a director of any member bank.

* * * * * * *

When any person elected or chosen as a director or officer or selected as an employee of any bank or other corporation subject to the provisions of

[1] Amended by sec. 25 of the Federal Reserve Act as amended Sept. 7, 1916, and by act approved Dec. 24, 1919, amending the Federal Reserve Act, as to corporations engaged in foreign banking and financial operations. See secs. 25 and 25(a) of Federal Reserve Act.

this Act is eligible at the time of his election or selection to act for such bank or other corporation in such capacity his eligibility to act in such capacity shall not be affected and he shall not become or be deemed amenable to any of the provisions hereof by reason of any change in the affairs of such bank or other corporation from whatsoever cause, whether specifically excepted by any of the provisions hereof or not, until the expiration of one year from the date of his election or employment.

S53. 8A. That from and after the 1st day of January 1934 no director, officer, or employee of any bank, banking association, or trust company, organized or operating under the laws of the United States, shall be at the same time a director, officer, or employee of a corporation (other than a mutual savings bank) or a member of a partnership organized for any purpose whatsoever which shall make loans secured by stock or bond collateral to any individual, association, partnership, or corporation other than its own subsidiaries.

SECTION II. DEFINITIONS

Within the meaning of this regulation—

The term "bank" shall include any bank, banking association, or trust company organized or operating under the laws of the United States or of any State thereof.

The term "national bank" shall be construed to apply not only to national banking associations, but also to banks, banking associations, and trust companies organized or operating under the laws of the United States, including all banks and trust companies doing business in the District of Columbia, regardless of the sources of their charters.

The term "resources" shall be construed to mean an amount equal to the sum of the deposits, capital, surplus, and undivided profits, and, in the case of a bank, banking association or trust company, shall be determined by the average amount of deposits, capital, surplus, and undivided profits as shown in the official statements of such bank, banking association or trust company filed as provided by law during the fiscal year next preceding the date set for the annual election of directors.

The term "State bank" shall include any bank, banking association, or trust company incorporated under State law, except banks doing business in the District of Columbia, referred to above.

The term "private banker" shall apply to any uuincorporated individual engaging in one or more phases of the banking business as that term is generally understood and to any member of an unincorporated firm engaging in such business.

The term "Edge corporation" shall mean any corporation organized under the provisions of section 25 (a) of the Federal Reserve Act, as amended.

The term "city of over 200,000 inhabitants" includes any city, incorporated town, or village of more than 200,000 inhabitants, as shown by the last preceding decennial census of the United States. Any bank located anywhere within the corporate limits of such city is located in a city of over 200,000 inhabitants within the meaning of the Clayton Act, even though it is located in a suburb or an outlying district at some distance from the principal part of the city.

SECTION III. PROHIBITIONS OF CLAYTON ACT

(a) Under section 8 of the Clayton Antitrust Act, except as noted below under section IV (a).

(1) No person who is a director or other officer[2] or employee of a national bank having resources aggregating more than $5,000,000 can legally serve at the same time as director, officer, or employee of any other national bank, regardless of its location.

(2) No person who is a director in a State bank or trust company having resources aggregating more than $5,000,000 or who is a private banker having resources aggregating more than $5,000,000 can legally serve at the same time as director of any national bank, regardless of its location.

(3) No person can legally be a director, officer,[2] or employee of a national bank located in a city of more than 200,000 inhabitants who is at the same time

[2] The Federal Reserve Board has ruled that a Conservator of a national bank is not a director, officer, or employee of such bank within the meaning of the Clayton Antitrust Act.

a private banker in the same city or a director, officer, or employee of any other bank (State or national) located in the same city, regardless of the size of such bank.

(b) Under section 8A of the Clayton Antitrust Act, except as noted below under section IV (b)—

From and after January 1, 1934, no person can legally be director, officer, or employee of a national bank who is at the same time a director, officer, or employee of a corporation (other than a mutual savings bank) or a member of a partnership organized for any purpose whatsoever which shall make loans secured by stock or bond collateral to any individual, association, partnership, or corporation other than its own subsidiaries.

(c) The prohibitions of section 8 and section 8A are cumulative, i.e., the prohibitions contained in section 8A of the Clayton Antitrust Act are in addition to those contained in section 8 thereof.

SECTION IV. EXCEPTIONS

There are certain exceptions to section 8 and certain exceptions to section 8A, but they are not identical. Therefore, all the exceptions applicable to each section are stated separately below in order to avoid confusion.

(a) The provisions of section 8 of the Clayton Act—

(1) Do not apply to mutual savings banks not having a capital stock represented by shares.

(2) Do not apply to joint-stock land banks organized under the provisions of the Federal Farm Loan Act.

(3) Do not apply to banking institutions which do no commercial banking business.

(4) Do not prohibit a person from being at the same time a director, officer, or employee of a national bank and not more than one other national bank, State bank, or trust company, where the entire capital stock of one is owned by stockholders in the other.

(5) Do not prohibit a person from being at the same time a class A director of a Federal Reserve bank and also an officer or director, or both an officer and a director, in one member bank.

(6) Do not prohibit a person who is serving as director, officer, or employee of a national bank, even though it has resources aggregating over $5,000,000, from serving at the same time as director, officer, or employee of any number of State banks and trust companies, provided such State institutions are not located in the same city of over 200,000 inhabitants as the national bank and do not have resources aggregating in the case of any one bank more than $5,000,000.

(7) Do not prohibit a person from serving at the same time as director, officer, or employee of any number of national banks, provided no two of them are located in the same city of over 200,000 inhabitants and no one of them has resources aggregating over $5,000,000.

(8) Do not prohibit a person who is not a director, officer, or employee of any national bank from serving at the same time as officer, director, or employee of any number of State banks or trust companies, regardless of their locations and resources.

(9) Do not prohibit a person who is an officer or employee but not a director of a State bank from serving as director, officer, or employee of a national bank, even though either or both of such banks have resources aggregating over $5,000,000, provided both banks are not located in the same city of over 200,000 inhabitants.

(10) Do not prohibit a person who is an officer or employee but not a director of a national bank from serving at the same time as director, officer, or employee of a State bank, even though either or both of such banks have resources aggregating over $5,000,000, provided both banks are not located in the same city of over 200,000 inhabitants.

(11) Do not prohibit a director, officer, agent, or employee of a member bank which has invested in the stock of any corporation principally engaged in international or foreign banking or financial operations or banking in a dependency or insular possession of the United States, under the provisions of section 25 of the Federal Reserve Act, from being at the same time a director,

officer, agent, or employee of any such foreign bank or financial corporation, if the Federal Reserve Board has granted its approval.[3]

(12) Do not prohibit any officer, director, agent, or employee of any member bank from being at the same time a director, officer, agent, or employee of any Edge corporation in whose capital stock the member bank shall have invested under the provisions of section 25 or section 25(a) of the Federal Reserve Act, if the Federal Reserve Board has granted its approval.[3]

(13) Do not prohibit an officer director, agent, or employee of an Edge corporation from being at the same time a director, officer, agent, or employee of any other corporation in whose capital stock such Edge corporation shall have invested under the provisions of section 25(a) of the Federal Reserve Act, if the Federal Reserve Board has granted its approval.[3]

(14) Do not prohibit a private banker or an officer, director, or employee of any bank or a class A director of a Federal reserve bank from being at the same time an officer, director, or employee of not more than two other banks within the prohibitions of the Clayton Act, if there is in force a permit therefor issued by the Federal Reserve Board.

The above exceptions are cumulative: but apply only to the prohibitions of section 8. The exceptions to section 8A are stated below.

(*b*) The provisions of section 8A of the Clayton Act—

(1) Do not prohibit a person who is a director, officer, or employee of a national bank from being at the same time a director, officer, or employee of a mutual savings bank.

(2) Do not prohibit a person who is a director, officer, or employee of a national bank from being at the same time a director, officer, or employee of a corporation or a member of a partnership which shall make loans secured by stock or bond collateral only to its own subsidiaries.

(3) Do not prohibit a person who is a director, officer, or employee of a national bank from being at the same time a director, officer, or employee of a corporation or a member of a partnership which does not actually make loans secured by stock or bond collateral, even though such corporation or partnership is permitted by law to make such loans.

(4) Do not prohibit a person who is not a director, officer, or employee of any national bank from serving at the same time as an officer, director, or employee of any number of State banks or trust companies, whether members of the Federal Reserve System or not.

(5) Do not prohibit a private banker or an officer, director, or employee of any bank or a class A director of a Federal Reserve bank from being at the same time an officer, director, or employee of not more than two other banks within the prohibitions of the Clayton Act, if there is in force a permit therefor issued by the Federal Reserve Board.

The above exceptions are cumulative, but apply only to the prohibitions of section 8A. The exceptions to section 8 are stated separately in section IV (a) of this regulation.

SECTION V. PERMISSION OF THE FEDERAL RESERVE BOARD

(*a*) *In general.*—Section 8 of the Clayton Antitrust Act, as amended by the acts of May 15, 1916, May 26, 1920 and March 9, 1928, authorizes the Federal Reserve Board to permit any private banker or any officer, director, or employee of any bank, banking association, or trust company, or any class A director of a Federal reserve bank to serve as director, officer, or employee of not more than two other banks, banking associations, or trust companies coming within the prohibitions of the Clayton Act, if in the judgment of the Federal Reserve Board it is not incompatible with the public interest, and permits may be issued covering relationships between banks which are prohibited by section 8A as well as those prohibited by section 8.

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[3] If a director, officer, agent, or employee is affected only by section 8 of the Clayton Act, informal application for the approval of the Federal Reserve Board under section 25 or 25(a) of the Federal Reserve Act may be made in the form of a letter addressed to the Board either by the director, officer, agent, or employee involved or in his behalf by one of the banks which he is serving, such application to be delivered to the Federal Reserve agent at the Federal Reserve bank of the district in which the bank now served by the applicant is located. However, if a director, officer, or employee is affected by section 8A of the Clayton Act, it is necessary for him to apply for and obtain a formal permit in accordance with the provisions of section V of this regulation, since the above exceptions do not apply to section 8A of the Clayton Act.

The Federal Reserve Board is authorized only to issue permits covering private bankers and directors, officers, and employees of banks, banking associations and trust companies, and therefore cannot issue a permit to a director, officer, or employee of a national bank or a class A director of a Federal reserve bank to be a director, officer, or employee of a corporation other than a bank, banking association or trust company, or to be a member of a partnership other than a firm of private bankers.[4]

(*b*) *When obtained.*—Inasmuch as this exception to the prohibitions of the Clayton Act applies only when "there is in force a permit therefor issued by the Federal Reserve Board", it is a violation of the law to serve two or more banks in the prohibited classes before such a permit has been obtained. A permit should be obtained, therefore, before becoming an officer, director, or employee of more than one bank in the prohibited classes. It may be procured before the person applying therefor has been elected a director or appointed an officer or employee of any bank in the prohibited classes.

(*c*) *Applications for permission.*—A person wishing to obtain a permit from the Federal Reserve Board to serve banks coming within the prohibitions of the Clayton Act should—

(1) Make formal application on F. R. B. Form 94, or, if a private banker, on F. R. B. Form 94d.

(2) Obtain from each of the banks involved a statement on F. R. B. Form 94A showing the character of its business, together with a copy of its last published statement of condition, and, if a private banker, make a statement on F. R. B. Form 94e showing the character of his or his firm's business.

(3) Forward all these papers, *in duplicate*, to the Federal reserve agent of his district, who will attach his recommendation on F. R. B. Form 94b and forward them to the Federal Reserve Board.

Each of the forms referred to in this subsection is made a part of this regulation.

(*d*) *Compatibility with the public interest.*—In determining whether the issuance of such a permit would be compatible with the public interest, the Federal Reserve Board will consider—

(1) Whether the banks involved are natural competitors;

(2) Whether their having the same directors, officers, or employees would tend to lessen competition or to restrict credit;

(3) The condition and the character of the management of the banks with which the applicant is connected and the extent of his responsibility therefor;

(4) Whether the applicant discharges the duties and responsibilities of his office by attending directors meetings or otherwise;

(5) Whether the applicant, his family or his interests have abused the credit facilities of the bank or banks he is already serving;

(6) Whether the applicants influence upon the banks involved in his application is likely to be helpful or harmful to such banks;

(7) The nature and extent of the loans made by each of such banks secured by stock or bond collateral and the policy of each bank with respect to making such loans; and

(8) Any other factors having a bearing upon the effect which the issuance of the permit may have upon the public interest.

(*e*) *Burden is upon applicant and banks involved.*—In view of the fact that sections 8 and 8A of the Clayton Antitrust Act forbid interlocking relationships between banks of certain classes except in cases where the Federal Reserve Board finds the specific interlocking relationships not incompatible with the public interest and grants permits therefor, the burden must rest upon each applicant for such a permit, and upon the banks involved, to show to the satisfaction of the Board that it would not be incompatible with the public interest to permit him to serve the banks involved.

(*f*) *Approval or disapproval.*—As soon as an application is acted upon by the Board, the applicant will be advised of the action taken.

If the Board approves the application, a formal permit to serve the banks involved will be issued to the applicant.

(*g*) *Hearing.*—If it appears to the Board that it would be incompatible with the public interest to grant such a permit, the Board will so notify the applicant and will afford him every opportunity to present any additional facts or arguments bearing on the subject before making final decision in the case.

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[4] See, however, exceptions nos. 11, 12, and 13 on p. 8.

(*h*) *Effect of permits.*—A permit once granted continues in force until revoked and need not be renewed.

(*i*) *Revocation.*—All permits, however, are subject to revocation whenever the Federal Reserve Board, after giving reasonable notice to the persons to whom they were issued and affording them an opportunity to be heard, finds that the public interest requires their revocation.

COMMITTEE EXHIBIT No. 211, NOVEMBER 29, 1933

Regulation R, Series of 1933. Relationships with Dealers in Securities (Under Section 32 of Banking Act of 1933)

SECTION I. STATUTORY PROVISIONS

Section 32 of the Banking Act of 1933 provides as follows:

"Sec. 32. From and after January 1, 1934, no officer or director of any member bank shall be an officer, director, or manager of any corporation, partnership, or unincorporated association engaged primarily in the business of purchasing, selling, or negotiating securities, and no member bank shall perform the functions of a correspondent bank on behalf of any such individual, partnership, corporation, or unincorporated association and no such individual, partnership, corporation, or unincorporated association shall perform the functions of a correspondent for any member bank or hold on deposit any funds on behalf of any member bank, unless in any such case there is a permit therefor issued by the Federal Reserve Board; and the Board is authorized to issue such permit if in its judgment it is not incompatible with the public interest, and to revoke any such permit whenever it finds after reasonable notice and opportunity to be heard, that the public interest requires such revocation."

SECTION II. DEFINITIONS

Within the meaning of this regulation, the term—

"*Member bank*" shall include any national bank, State bank, savings bank, trust company, Morris Plan bank, mutual savings bank, or other banking institution which is a member of the Federal Reserve System.

"*Securities*" shall include stocks, bonds, debentures, and other similar obligations.

"*Dealer in securities*" shall include any corporation, partnership, unincorporated association, or individual engaged[1] primarily in the business of purchasing, selling, or negotiating securities.

"*Manager*" shall include any person who manages, controls, or directs the business of a dealer in securities, or participates in such management or control, either at the main office or at any branch, agency, or other office of such dealer, and shall include any general partner in a partnership which is a dealer in securities; *but shall not include* a partner in such a partnership who has no voice in the management of control of its business and whose liability is limited to the amount of his contribution to the partnership.

"*Correspondent bank*" shall include any member bank which shall act as the medium or agent or in any similar capacity for, or shall be regularly associated with, a dealer in securities in connection with the purchasing, selling, underwriting, flotation, or negotiation of securities; *but shall not include* (1) a member bank which shall merely purchase or sell securities without recourse solely upon the order and for the account of its customers, and/or which shall merely purchase or sell investment securities for its own account as authorized by applicable law, through such a dealer in securities, or (2) a member bank which shall merely accept deposits of funds, handle items for collection (with or without securities attached) or perform other ordinary banking functions for such dealer.

"*Correspondent dealer*" shall include any dealer in securities which shall perform any banking functions, including the holding on deposit of any funds, on behalf of any member bank, or which shall act as the medium or agent or in any similar capacity for a member bank in connection with the underwriting,

[1] This definition does not include organizations which were formerly engaged in such business, but which are not currently engaged in it; because the statute has reference only to the business presently transacted by the organization in question.

flotation, or negotiating of securities, *but shall not include* a dealer who shall merely execute orders received from or through such member bank for the purchase or sale of securities.

SECTION III. PROHIBITIONS OF SECTION 32

From and after January 1, 1934, unless there is a permit therefor issued by the Federal Reserve Board:

(1) No officer or director of a member bank can legally serve at the same time as an officer, director, or manager of any corporation, partnership, or unincorporated association engaged primarily in the business of purchasing, selling, or negotating securities.

(2) No member bank can legally perform the functions of a correspondent bank on behalf of a dealer in securities.

(3) No dealer in securities can legally perform the functions of a correspondent dealer for any member bank, or hold on deposit any funds on behalf of any member bank.

SECTION IV. PERMISSION OF THE FEDERAL RESERVE BOARD

(a) *In general.*—Section 32 of the Banking Act of 1933 authorizes the Federal Reserve Board to issue a permit covering any of the relationships which are prohibited by the provisions of that section, if in the judgment of the Federal Reserve Board it is not incompatible with the public interest.

(b) *When obtained.*—Inasmuch as this exception to the prohibitions of Section 32 applies only when "there is a permit therefor issued by the Federal Reserve Board", a permit should be obtained before the prohibited relationship is entered into, or before January 1, 1934, whichever is later.

(c) *Application for permission.*—

(1) *An officer or director of a member bank* wishing to obtain a permit from the Federal Reserve Board to serve as an officer, director, or manager of a dealer in securities should—

(i) Make formal application on F.R.B. Form 99a.

(ii) Obtain from each member bank a statement on F.R.B. Form 99b.

(iii) Obtain from the dealer in securities a statement on F.R.B. Form 99c.

(iv) Forward all of these papers to the Federal reserve agent of his district, who will attach his recommendation on F.R.B. Form 99d and forward them to the Federal Reserve Board.

If the applicant desires to serve as an officer, director, or manager of more than one dealer in securities, a separate application should be filed with respect to each such dealer in securities. If the applicant desires to serve only one dealer in securities, only one application is necessary even though the applicant desires to serve more than one member bank.

(2) *A member bank* wishing to obtain a permit from the Federal Reserve Board to act as correspondent bank for a dealer in securities should—

(i) Make formal application on F.R.B. Form 99e.

(ii) Submit a statement on F.R.B. Form 99b.

(iii) Obtain from the dealer in securities a statement on F.R.B. Form 99c.

(iv) Forward all of these papers to the Federal reserve agent of its district who will attach his recommendation on F.R.B. Form 99d and forward them to the Federal Reserve Board.

If the applicant member bank desires to act as correspondent bank for more than one dealer in securities, a separate application should be filed by the member bank with respect to each such dealer in securities.

(3) *A dealer in securities* wishing to obtain from the Federal Reserve Board a permit to perform the functions of a correspondent dealer for a member bank should—

(i) Make formal application on F.R.B. Form 99f, if incorporated, or on F.R.B. Form 99g, if unincorporated.

(ii) Submit a statement on F.R.B. Form 99c.

(iii) Obtain from the member bank a statement on F.R.B. Form 99b.

(iv) Forward all of these papers to the Federal reserve agent of its district, who will attach his recommendation on F.R.B. Form 99d and forward them to the Federal Reserve Board.

If the applicant dealer in securities desires to act as correspondent dealer for more than one member bank, a separate application should be filed, covering each such member bank.

(d) *Papers to be filed in diplicate.*—All papers filed with the Federal reserve agent pursuant to this subsection should be filed *in duplicate.*

The form referred to in this subsection are made a part of this regulation.

(e) *Compatibility with the public interest.*—In determining whether the issuance of such a permit will be compatible with the public interest, the Federal Reserve Board will consider—

(1) Whether the proposed relationship may tend to result in the undue use of bank credit in connection with the purchasing, selling, underwriting, flotation, or negotiation of securities.

(2) Whether the proposed relationship will have any undesirable effect upon the member bank's financial condition, its credit, or investment policies, or its policies in dealing with its other customers.

(3) Any other facts having a bearing upon the effect which the issuance of the permit may have upon the public interest.

(f) *Burden is on applicant.*—In view of the fact that Section 32 of the Banking Act of 1933 forbids relationships of certain kinds except in cases where the Federal Reserve Board finds the specific relationships not incompatible with the public interest and grants a permit therefor, the burden must rest upon each applicant for such a permit to show to the satisfaction of the Board that it would not be incompatible with the public interest to permit the relationship covered by the application.

(g) *Approval or disapproval.*—As soon as an application is acted upon by the Board, the applicant will be advised of the action taken.

If the Board approves the application, a formal permit will be issued to the applicant.

(h) *Hearing.*—If the Board is not satisfied that it is compatible with the public interest to grant such permit, the Board will so notify the applicant and will afford him or it every opportunity to present any additional facts or arguments bearing on the subject before making any final decision in the case.

(i) *Continuing effect of permits.*—A permit once granted continues in force until revoked, and need not be renewed, unless otherwise stated therein.

(j) *Revocation.*—All permits, however, are subject to revocation whenever the Federal Reserve Board, after giving reasonable notice to the holder and affording him or it an opportunity to be heard, finds that the public interest requires their revocation.

STOCK EXCHANGE PRACTICES

TUESDAY, DECEMBER 5, 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 on Wednesday, November 29, 1933, in room no. 301 of the Senate Office Building, Senator Duncan U. Fletcher presiding.

Present: Senators Fletcher (chairman), Glass, 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; William Dean Embree, William M. Evarts, and A. Donald MacKinnon of Milbank, Tweed, Hope & Webb, and C. Horace Tuttle of Rushmore, Bisbee & Stern, counsel representing The Chase National Bank and The Chase Corporation.

The CHAIRMAN. The subcommittee will come to order. Mr. Aldrich is present this morning. He was requested, when we adjourned last, to be here in order to be available for any questions any member of the subcommittee might want to propound in regard to his statement, because in the meantime his statement could be read over carefully. Now, if any member of the subcommittee desires to ask Mr. Aldrich any questions, he may proceed.

TESTIMONY OF WINTHROP W. ALDRICH, PRESIDENT THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK—Resumed

Senator GLASS. Mr. Chairman, I want to venture to ask Mr. Aldrich some questions. I also wish to make a statement on my own account to go in the record.

The chairman of the committee and I are agreed, if I may say so, that Mr. Aldrich's statement to the subcommittee was not particularly pertinent to this investigation of stock-exchange practices, and general dealing in stocks by banks, bankers, and others.

Of course, Mr. Aldrich undertook to view and to criticize the National Banking Act of 1933, some of the provisions of which have not yet gone into effect, and consequently have not yet been tested as to their merits. There is the plain intention from Mr. Aldrich's statement I think, or the impression that the public would get is that the Banking Act of 1933 was a haphazard legislative contrivance, adopted in haste and without due consideration, and

that it does not measurably deal with banking malpractices that have been developed by this subcommittee, and by the subcommittee which had in charge the framing and presentation of the Banking Act of 1933. For that reason I desire to make a statement concerning the provisions which are technical in their nature and which the general public will never read, and the most of them will never understand after having read the act.

In the first place, I should like the subcommittee and the public to understand that Mr. Aldrich, as was true of every other interested person, was given ample opportunity to make any presentation of his views to our subcommittee that he might desire to make. He not only had the opportunity to present his views to the subcommittee in public, as scores of business men and bankers did, as is evidenced by this one batch of the public hearings held, but as the chairman of that subcommittee I personally gave Mr. Aldrich two extended interviews, certainly two as I recall, and perhaps three interviews, and we heard very patiently and interestedly his views on banking problems, and I am sure that Mr. Aldrich will confirm that statement.

Mr. ALDRICH. Yes, sir.

Senator GLASS. I also received from the Department of Commerce a letter concerning matters we had in hand, and while I did not understand then, as I do not understand now, why the Department of Commerce should have projected itself into the consideration of problems which are within the exclusive jurisdiction of the Banking and Currency Committee of the Senate, I made no technical objection and gave due consideration, as the subcommittee did, to Secretary Roper's letter on the subject.

Now, I want to point out to this subcommittee and to the public, Mr. Chairman, some of the things that were done with respect to banking legislation, and to insist that your other subcommittee not only went as far as legal advice warranted the subcommittee in going in the way of restrictive legislation, but in several instances we exceeded and went beyond the judgment kindly offered to us by some of the most experienced and outstanding lawyers of the Senate, including the late Senator Walsh of Montana, who had been nominated by the present occupant of the Presidency as his Attorney General.

There are some provisions of the bill which go so far as to have led some of us to fear at least that their validity might not be sustained in the courts, because they undertook to regulate private bankers and State banking institutions in a way that inevitably was going to invite litigation.

I might say, incidentally, to this subcommittee that I got the impression from Mr. Aldrich's statement that he would expiate the irregularities and the shocking maladministrations of certain bankers in New York and in one or two other large metropolitan districts, by proposing now to put the whole banking community into a straight-jacket, on the assumption that bankers generally are addicted to those excesses and those exhibitions of immoral greed. And having had to do with the banking community for 32 years while I have been in Congress now nearly 33 years, as a member of the Banking and Currency Committees of the two Houses, I do not think

that is a fair assumption. I do not think that bankers generally, and particularly bankers in the smaller communities of the United States, are stock gamblers or members of those infernal pools which have been disclosed by the investigation made by this subcommittee, to either press down or extend market quotations. I do not think they have anything to do with those matters. And I do not think that their directors in any sense sympathize with such transactions, and therefore I do not think that the Congress may be induced upon that assumption to put the whole banking community into a straight-jacket, as is proposed it seems to me by the newspaper accounts of Mr. Aldrich's statement made before this subcommittee.

No law may be enacted, at least so my observations teach me, which may not be evaded. I am sure Mr. Aldrich realizes that. And I should like at this point to ask Mr. Aldrich if he was not a member of the board of directors of the Chase National Bank when, for example, this $100,000 pension was voted to Mr. Wiggin.

Mr. ALDRICH. Well, Senator Glass, that question is one which requires something more than a yes or no answer. In the first place, that was not a pension. The circumstances under which that was voted go back some distance into the past, and if you want me to go into that matter I will be very glad to do it. It is somewhat embarrassing to me, because it brings up personal relationships between myself and Mr. Wiggin, which I had hoped to find unnecessary to discuss. But I will be very glad to do it if you desire.

Senator GLASS. I do not care to reveal any personal relationships, but I want disclosed for the record, and for the public, this fact: That the voting of that $100,000 to Mr. Wiggin was in absolute contravention of the statutes of New York State, and of the decisions of the courts of New York State, and that the Chase National Bank board of directors had no right to vote it. Nevertheless, the board of directors did vote it, and that goes to confirm my statement that no statute may be enacted that cannot be evaded if banking officials are disposed to do so.

Mr. ALDRICH. Well, Senator Glass, since you have brought that question up I think I should like to make a statement in regard to it.

Senator GLASS. I supposed you would desire to do so.

Mr. ALDRICH. In the first place, the vote in regard to that matter was taken under the advice of counsel that it was a perfectly legal thing to do.

Senator GLASS. Oh; you can get any sort of advice you want from counsel.

Mr. ALDRICH. And, in the second place——

Senator GLASS (continuing). That is demonstrated here in Washington.

Mr. ALDRICH. If you will examine the vote you will see that it was in the nature of a contract running from year to year for services to be rendered. Now, the way in which that matter came up was this: In the first place, the board of directors of the Chase National Bank did not know anything about the facts that have been disclosed here, and I think this statement is literally true, with the exception of the various matters concerned with the General Theatres

Equipment Syndicates, which has been brought out before this subcommittee.

At the time that Mr. Wiggin retired from the Chase National Bank there was a very real feeling on the part of a great many members of the board of directors that it was absolutely essential the bank should have the benefit of his advice and his guidance in the future. Now, it has been brought out here that at the time when he retired a settlement was made with him in connection with certain liabilities it had been urged he was under in connection with certain of these General Theaters Equipment Syndicates, which required a settlement by him with Chase Securities Corporation, and that settlement was entered into by him at the time of his retirement, involving the payment of $1,000,000 by him to the Chase Securities Corporation, and——

Mr. PECORA (interposing). Pardon me, Mr. Aldrich, but wasn't that settlement made with the Shermar Corporation and not Chase Securities Corporation?

Mr. ALDRICH. Yes. I beg pardon. It was with the Shermar Corporation.

Mr. PECORA. And not with Mr. Wiggin individually, but with his so-called "family corporation", called the "Shermar Corporation."

Mr. ALDRICH. Yes, sir. That was a settlement by the Shermar Corporation with Chase Securities Corporation. It was quite obvious and had been for a long time past that differences in policy between Mr. Wiggin and myself as to how the bank should be conducted, were of such a character that it made a situation which could not continue. Now, it is unquestionably true that a large number of the members of the Board of Directors still felt it was very desirable for the purposes of the Chase National Bank, in order to get his advice and his guidance in the future, that we should have an absolute call on his advices whenever those services were needed. And that was the reason why that vote was passed. And I venture to say that it was not in violation of law.

Senator GORE. What salary did Mr. Wiggin get as president of the Chase National Bank?

Mr. ALDRICH. The top salary was $250,000 a year.

Senator GLASS. Well, I am advised by the—and of course there are many best constitutional lawyers, but I am advised by a man who is universally regarded by the legal profession and by his associates in the Congress, that the action of the Board was in absolute contravention of the statutes of the State of New York, and of the decisions of the courts.

Mr. ALDRICH. What statutes are those?

Senator GLASS. What was that?

Mr. ALDRICH. Do you know what statutes they are?

Senator GLASS. I sent a copy of the statutes to the chairman of this committee, and I had hoped to be able to present them here this morning.

Mr. PECORA. They are in the files of our office in New York.

Senator GLASS. And if I may be permitted to insert that matter here, in my statement, Mr. Chairman, I should like to do so.

The CHAIRMAN. That will be all right. I might explain that it was turned over to Mr. Pecora.

(The matter referred to by Senator Glass is as follows:

HOUSE OF REPRESENTATIVES,
Washington, D.C., October 23, 1933.

Hon. CARTER GLASS,
United States Senate, Washington, D.C.

MY DEAR SENATOR:

* * * * * * *

Turning to another subject, I have been following with some interest the investigation of your Banking Committee, and I am wondering whether its members know that the highest court of New York decided that no corporation had a right to vote an annuity to any officer after he resigns, even though the gift was camouflaged by the statement that the beneficiary would be subject to call for future duties and service.

The case I have in mind is *Beers* v. *The New York Life Insurance Co.* (or possibly the New York Equitable). Beers was its president, and upon his retirement was voted a pension of $50,000 a year on the ground that he would continue to act in an advisory capacity. The court held that the act was not only beyond the power of the corporation, but that it was opposite to public policy.

How the directors of the Chase Bank, in view of this decision—of which they must have been advised—voted the extraordinary annuitly to Mr. Wiggin whose services to the bank could hardly be regarded as beneficial, passes my comprehension.

Yours very truly,

JAMES M. BECK.

Senator GLASS. Well, I can only say this about that——

Mr. ALDRICH (interposing). If I may be permitted, I can only say that we were advised by counsel that it was a proper resolution to pass. And I can further say that it was the sincere belief of the board of directors at the time that action was taken, that it was for the best interests of the bank, and it was done in order that the bank might have the right to call on Mr. Wiggin at any time for his advice and services if they were needed in connection with the operation of the bank in the future.

Senator GLASS. Well, in view of recent disclosures I imagine it has somewhat aggravated the case.

Mr. ALDRICH. There is no doubt at all that the board at the present time considers it was a mistake to have voted that resolution. But you must remember that a great many things have been brought out here that the board did not know about at the time when it passed that resolution.

Senator GLASS. Well, it seems to me that the board of directors should have known about them.

Mr. ALDRICH. Well, I did not have the great number of investigators such as Mr. Pecora has.

Senator GLASS. Beside that, Mr. Chairman, I want to point out some things contained in the Banking Act of 1933 that are of an extremely restrictive nature, one or two of them having been suggested by Mr. Aldrich himself. And in this connection I want to say that, either with or without the knowledge of Mr. Aldrich, officials of the Chase National Bank were among those who came to Washington and violently opposed those provisions of the law;

and one of the officials of the Chase National Bank is alleged, although I do not say it is a fact, but is alleged to have been in constant communication with the man who made the most vituperative and violent assault on those provisions of the law that were made by anybody. And I have been informed by trustworthy persons, and it is partially sustained by the record itself, that this man, without waiting to vote on the banking bill, boasted that he had practically filibustered it to death, left his place in the Chamber, and took the next train out of Washington for New York for an interview with this official of the Chase National Bank.

Senator COUZENS. And is that official Mr. McCain, who is the chairman of the board?

Senator GLASS. Yes; it was Mr. McCain.

Senator COUZENS. And he is the man who for some reason or other we have never been able to get on the witness stand here.

The CHAIRMAN. He will be here tomorrow.

Senator GLASS. Now, what was the substance of that interview I do not undertake to assert.

Mr. ALDRICH. Senator Glass, might I make a statement at that point?

Senator GLASS. Yes.

Mr. ALDRICH. I do not think there is any doubt on anybody's part that there has been a very distinct difference of opinion during the past year or two in the management of the Chase National Bank. Now, I think you will find that my own position in regard to affiliates for the last—well, for over a year, has been absolutely the same as yours. I think in every conversation I have had with you that was the position I took.

Senator GLASS. I am sure that is so, yes. Nevertheless it is a fact that officials of the Chase National Bank, and of other banks of New York, came here to Washington, threatened the committee with the defeat of this legislation should the committee not modify some of its restrictive provisions, and inspired opposition to the bill in both Houses of Congress; and joined forces with—well, to be plain, with those who were violently opposed to branch banking; joined forces with them to defeat this bill when they themselves believed in branch banking.

Mr. ALDRICH. Senator, I do not like to interrupt your statement, but may I say right here——

Senator GLASS (interposing). Go ahead.

Mr. ALDRICH. My own feeling about this Banking Act of 1933 is this: Far from thinking that it is an ill-considered piece of legislation, I have the highest admiration, not only for this act but for your conduct in regard to it. Now, as far as I am concerned you have treated me with the greatest consideration every time I have come down to Washington. And I certainly think that you will in justice to me say that in my conversations with you I have not taken any position inconsistent with the position I am now taking. As a matter of fact I have had every opportunity to present my views to the subcommittee and to you, and I appreciate that very much. And in making the suggestions I have just made to this subcommittee I have not intended to be critical of the bill as it stands, but to suggest there being put into the bill a number of things that have come to my mind through the hearing of the testimony that has been taken

down here in Washington during the past month and a half. A great many of the suggestions I have just made have not been up for discussion before. And I agree with you entirely, Senator Glass, in fact I say in my statement, that it is not possible to indict the whole banking community for evils that may have grown up through the action of individuals. I carefully pointed that out in my statement.

Senator GLASS. The point I make is that if you, or anybody else, should desire to modify the Banking Act of 1933, you can make the representations to the full Banking and Currency Committee, which would gladly give you a hearing, and that we should proceed in an orderly way to consider such matters, so that those who had a part in drafting that legislation, and who for 2 years and 4 months, as is indicated by the hearings before me, conducted the most thorough banking investigation that was ever conducted by the United States Congress, or either branch thereof: that you or they would be given an opportunity to present any such suggestions and that we would then have an opportunity to review those suggestions and to act on them. I do not think they were pertinent to this investigation that we are holding here on stock-exchange practices.

Mr. ALDRICH. Well, sir, I presented them in absolutely good faith, and because I thought they were pertinent in connection with exactly what this subcommittee was doing, investigating the Chase National Bank. The subcommittee was trying to find abuses, if any existed, which might be corrected by legislation. And so it seemed to me that it was extremely pertinent for me to say to this subcommittee that I felt some of the practices disclosed here should be prevented by specific legislation.

Senator GLASS. I think the most of them should be.

Mr. ALDRICH. It was what I thought the subcommittee wanted me to do, to make suggestions.

Senator GLASS. I think the most of them should be considered, but they ought to be presented in the regular and orthodox way, and not precipitated in this hearing.

Well, now, Mr. Chairman, I should like to go on and say——

The CHAIRMAN (interposing). If the Senator from Virginia will allow me to say in that connection, inasmuch as he mentioned me as somewhat agreeing with the view that Mr. Aldrich's statement had reference to banking laws generally rather than to specific subjects under inquiry by this subcommittee, I think your statement is entirely appropriate and pertinent here, whereas the National Banking Act refers to affiliates, there is a connection between affiliates and stock exchanges, those very points that we have shown by the testimony heard here. Mr. Aldrich in his statement deals very largely with affiliates, and goes into some detail and specifies that he thinks there ought to be something done to more clearly define them. But it is in connection with affiliates and the operations on stock exchanges of those affiliates that makes me think that the statement belongs here, and it has to do with the National Banking Act; as to brokers' loans, and the separation between commercial banks and affiliates. That subject is dealt with in Mr. Aldrich's statement, and it is pertinent here, because that is a thing we are uncovering—the operations of commercial banks, and their affiliates,

and through affiliates the formation of pools and syndicates in the matter of operations on the stock exchange.

Senator GLASS. Yes; but Mr. Aldrich in that statement is dealing with the carcass rather than something alive, because we have abolished affiliates in this bill.

The CHAIRMAN. Yes.

Senator GLASS. We have literally abolished them, and done so over the protest of the most of the New York banks, and of a great many other banks.

And now, Mr. Chairman, if I may, I should like to point out, briefly, some of the restrictive provisions of this bill.

Incidentally, may I apologize, Mr. Chairman, for not being here, because I have been ill and unable to appear. Really I am unable to appear now, but I am unwilling, even at some risk, to have the impression go abroad that this act was hastily adopted and without complete consideration of all these problems, including the suggestions of Mr. Aldrich, some of which were presented to us and very seriously considered by us. Those that were rejected were rejected for reasons, and those that were adopted were adopted for reasons.

In section 3 of the Banking Act of 1933, I call Mr. Aldrich's attention to the fact that for the first time in the history of the Federal Reserve System we charged the Federal Reserve Board and banks not only with the power, but with the duty of surveying the transactions of all member banks, particularly those transactions that relate to stock loans and investment loans generally. It reads [reading]:

> The Federal Reserve Board may prescribe regulations further defining within the limitations of this act the conditions under which discounts, advancements, and the accommodations may be extended to member banks.

That is, individual banks. [Continuing reading:]

> Each Federal Reserve bank shall keep itself informed of the general character and amount of the loans and investments of its member banks with a view to ascertaining whether undue use is being made of bank credit for the speculative carrying of or trading in securities, real estate, or commodities, or for any other purpose inconsistent with the maintenance of sound credit conditions; and, in determining whether to grant or refuse advances, rediscounts, or other credit accommodations, the Federal Reserve bank shall give consideration to such information. The chairman of the Federal Reserve bank shall report to the Federal Reserve Board any such undue use of bank credit by any member bank, together with his recommendation. Whenever, in the judgment of the Federal Reserve Board, any member bank is making such undue use of bank credit, the Board may, in its discretion, after reasonable notice and an opportunity for a hearing, suspend such bank from the use of the credit facilities of the Federal Reserve System and may terminate such suspension or may renew it from time to time.

That was a provision never before contained in any bank bill, and it was very desperately opposed by many of the New York banks, including officials of the Chase National Bank, and by Mr. Guy Emerson.

Mr. ALDRICCH. Senator, I do ont think we ever opposed that provision.

Senator GLASS. I do not know that you officially did that.

Mr. ALDRICH. Mr. Guy Emerson has never spoken for us.

Senator GLASS. I have indicated his status. You may indicate it.

Mr. ALDRICH. I am not sure that I know, but he does not represent us.

Senator GLASS. Mr. McCain represents you, does he not?

Mr. ALDRICH. Yes, sir. I would like to say a word about that before I get through.

Senator GLASS. That provision of the bill was most violently and vituperatively assailed on the floor of the Senate by the very member who is alleged to have been in constant communication with Mr. McCain. It was spoken of as an invasion of the rights of member banks to transact that business as they might please and according to their best judgment. The committee unanimously thought that it was a restrictive measure that ought to prove very wholesome.

Mr. ALDRICH. Senator, may I say that that is the provision of the act that I referred to when Mr. Pecora was speaking to me on Friday as to the limitation on the use of credit which was already in the act.

Senator GLASS. I am not so much finding fault with you personally, Mr. Aldrich, except that I do not want the impression to be made throughout the country that the excesses of certain New York bankers and other bankers can be condoned by criticizing this act.

Mr. ALDRICH. Senator, I regret very much that I have given that impression. It certainly was the last thing in the world I had in my mind. I have the highest admiration for this act and for the way it has been drawn. I thought I was simply making some suggestions for additional features of the act which might strengthen it along the lines that seemed to me to be necessary from the testimony which had been adduced before this committee.

Senator GLASS. That is permissible to anybody. Anybody can propose amendments to the act.

Mr. ALDRICH. If I have given the impression that I thought the act was hastily or improperly drawn, I would like to withdraw that as strongly as I possibly can, because I do not think so.

Senator GLASS. Very well, then. On that point you and I are not in disagreement.

The next restrictive measure of the act was one that became rather famous, in the view of some of us, and infamous in the view of New York bankers generally. It was originally known as section 13, as you will recall, Mr. Chairman. It is now section 9. It is somewhat different from the original draft, and is different because the New York bankers came down and threatened the defeat of the legislation if we did not make certain modifications. I do not think any of my associate members of the committee have any less courage than I have, but some of them are less pertinacious and less pugnacious than I.

Senator COUZENS. That does not include me, Senator?

Senator GLASS. You were not a member of the subcommittee; no. You agreed to these things. You did not agree particularly to this modification. No; it does not include you by any means. You are the only member of the Senate whom I know that exceeds me in pertinacity. [Laughter.]

The background of this provision was that, contrary to the explicit text as well as the spirit of the Federal Reserve Act, Federal Reserve facilities were used to an enormous extent in New York for stock-gambling purposes. As I say, it was done in defiance of the text and spirit of the act, because there was no penalty attached.

and here we undertook to attach a penalty for such abuses. The section reads [reading]:

Any Federal Reserve bank may make advances for periods not exceeding 15 days to its member banks on their promissory notes secured by the deposit or pledge of bonds, notes, certificates of indebtedness, or treasury bills of the United States, or by the deposit or pledge of debentures or other such obligations of Federal intermediate credit banks which are eligible for purchase by Federal Reserve banks under section 13 (a) of this act; and any Federal Reserve bank—

And this was a modification that never should have been made—

Any Federal Reserve bank may make advances for periods not exceeding 90 days—

Which was an extension of the time in which gambling might go on—

to its member banks on their promissory notes secured by such notes, drafts, bills of exchange, or bankers' acceptances as are eligible for rediscount or for purchase by Federal Reserve banks under the provisions of this act. All such advances shall be made at rates to be established by such Federal Reserve banks.

That was a modification of the original draft, because in the original draft we provided that no advance should be made at a less rate of discount than 1 percent above the ordinary rate of discount, because if people were to use this facility for stock speculation purposes, we wanted them to pay a higher rate of interest than would be required from a merchant or a business man of any description who wanted accommodations at the Federal Reserve bank.

The New York banks finally prevailed, and that was stricken out. (Continuing reading):

If any member bank to which any such advance has been made shall, during the life or continuance of such advance, and despite an official warning of the reserve bank of the district or of the Federal Reserve Board to the contrary, increase its outstanding loans secured by collateral in the form of stocks, bonds, debentures, or other obligations, or loans made to members of any organized stock exchange, investment house, or dealer in securities, upon any obligation, note, or bill, secured or unsecured, for the purpose of purchasing and/or carrying stocks, bonds, or other investment securities (except obligations of the United States) such advance shall be deemed immediately due and payable, and such member bank shall be ineligible as a borrower at the reserve bank of the district under the provisions of this paragraph for such period as the Federal Reserve Board shall determine.

Mr. ALDRICH. Senator, may I say that that also was one of the provisions of the act which I had in mind when I spoke to Mr. Pecora Friday?

Senator GLASS. Yes. I want to relate a little interesting history to you. A gentleman came down from New York, who was the attorney for one of the banks—I cannot say of which of the banks, whether it was the Chase bank or the National City, or the Guaranty Trust Co.—a man of some distinction in his profession, and he argued with me for an hour, as chairman of the committee, as some of the New York bankers had done theretofore, to change that word "or" to "and." It seemed to him so perfectly reasonable and so simple to change that word from "or" to "and."

Mr. ALDRICH. Where is that? Is it in the next to the last line?

Senator GLASS. (Reading:)

And despite an official warning of the reserve bank of the district or of the Federal Reserve Board.

Do you see that?

Mr. ALDRICH. Yes; I see.

Senator GLASS. He wanted that changed to "and of the Federal Reserve Board", and he thought it was very simple. I said to him "Well, suppose you have a board of directors of the New York Federal Reserve Bank dominated by Mr. Mitchell, who told the Federal Reserve Board to go to hell, that he was going to do as he pleased about these matters. Do you think it ought to be necessary to get the consent of a board of directors like that exclusively, and to deny the Federal Reserve Board, the central supervising power here in Washington, the right to put a stop to this stock gambling?"

That would have been the result of changing that little word "or" to the conjunctive "and", you will observe.

Mr. ALDRICH. Yes.

Senator GLASS. I was not simple enough to do it, nor was the committee.

Then, on page 22 of the act, section 11, we provide [reading]:

No member bank shall act as the medium or agent of any nonbanking corporation, partnership, association, business trust, or individual in making loans on the security of stocks, bonds, and other investment securities to brokers or dealers in stocks, bonds, and other investment securities.

Then it provides a severe penalty for the violation of this provision of the act. You will know, of course, that that relates to this vicious practice of making loans for others.

Mr. ALDRICH. I am heartily in favor of that.

Senator GLASS. Corporations throughout the country were making loans for stock-gambling purposes in New York. At least I call it stock gambling. Some people of a milder nature call it speculation, and others, of a still milder nature, call it investment. Corporations were known to have issued stocks ostensibly for extensions of their plants, and to have used the larger part of the revenue derived from selling these stocks for speculative purposes on the stock exchange, and that was protested against, but not so vehemently. After seeing that the committee was intent upon that provision, the stock exchange made a virtue of necessity and adopted a resolution of its own against loans for others. You will recall that. [Continuing reading:]

No member bank shall, directly or indirectly by any device whatsoever, pay any interest on any deposit which is payable on demand.

You will realize the meaning of that. The interior banks of this country have for years and years been bundling up all of their surplus funds and dumping them into the money centers for stock speculative purposes, upon a nominal interest rate of 2 percent. You know that is so, do you not, Mr. Aldrich?

Mr. ALDRICH. Yes. I know that the deposits had been centralized.

Senator GLASS. When we originally passed the Federal Reserve Act, we only succeeded in rescuing the reserve funds of the country

from that sort of misuse. We hoped the bankers themselves would see that that was a declaration of independence for the independent banks of the United States, and that they would no longer think that it was necessary for them to have correspondent banks at the money centers to grant them rediscount privileges when they might get rediscount privileges from the Federal Reserve banks of their respective districts. But they did not seem to have taken the lesson at all, and they sent their funds there. They never give the business man or the industrialist the advantage of the law of supply and demand. They have what they call a standard rate of discount, and they contend that they cannot depart from it, and they would rather bundle up their surplus credits and funds and send them to New York for stock gambling purposes, on demand, at a nominal rate of 2 percent, than to accord accommodations to the business men of their respective communities. That was intended to prevent that, and I think it will prevent it.

Here is a new restrictive section, on page 23, section 12, subsection (g) [reading]:

No executive officer of any member bank shall borrow from or otherwise become indebted to any member bank of which he is an executive officer, and no member bank shall make any loan or extend credit in any other manner to any of its own executive officers.

That was a new proposition entirely. It was bitterly opposed by the banks. When we first got in the Senate with our bill Senator Gore proposed as an amendment, which was adopted by the Senate and which horrified the bankers, that nobody remotely related to any executive officer or director of a bank might borrow any money; but, Senator, they prevailed upon us—I do not think they experienced as much difficulty as they did in other instances—to omit that from the bill. [Continuing reading:]

If any executive officer of any member bank borrow from or if he be or become indebted to any bank other than a member bank of which he is an executive officer, he shall make a written report to the chairman of the board of directors of the member bank of which he is an executive officer, stating the date and amount of such loan or indebtedness, the security therefor, and the purpose for which the proceeds have been or are to be used.

Then there is a very severe penalty of $5,000 fine or imprisonment not exceeding a year.

Mr. ALDRICH. That is one of the sections that I did not think went far enough.

Senator GLASS. A great many people think it goes too far.

Mr. ALDRICH. What I said was that it seemed to me that it ought to cover borrowing from any source; that any borrowing by an executive officer should be reported to his board of directors.

Senator GLASS. In other words, if an executive officer of the bank were to borrow temporarily ten dollars from Senator Couzens, he must make a written report?

Mr. ALDRICH. No; I said in the statement that some minimum should be set, depending upon the amount of the salary. I did think you ought to cover brokers' loans and borrowing from private bankers, and things of that kind.

Senator GLASS. That was proposed, I will say, Mr. Aldrich, and we considered it with the utmost care from all angles, and we thought that this provision went far enough.

Mr. ALDRICH. All I had in mind, Senator, was that it seems to me that an executive officer of a bank, if he were borrowing from a broker, or if he were borrowing from a private banker, should report to his board of directors, and I thought that the chairman of the board of directors should also report to the board of directors.

Senator GLASS. Would you include directors of banks there?

Mr. ALDRICH. No; I would include executive officers only.

Senator GLASS. It was proposed that we should include directors of banks.

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

Senator GLASS. If you were to include directors of banks there, you would not have any directors.

Mr. ALDRICH. That is right. I do not think we should.

Senator GLASS. It is very difficult in many communities to get directors now.

Mr. ALDRICH. I agree with you entirely on that.

Senator GLASS. But I simply want this committee to understand, and I want the country to understand, that that very proposition was presented to us and very seriously considered. If there are to be any proposals for amendments to this act, they ought to come in due form, and those of us who were associated with the drafting and presentation and management of the bill through Congress should be given an opportunity to let the public understand that those things had been proposed, and for good and sufficient reasons—at least so thought by the committee—they were not embodied in that section of the bill.

As you know, section 18, on page 27, separates affiliates from national and member banks.

The CHAIRMAN. Mr. Aldrich suggests that there might be a clearer and more extended definition of affiliates.

Senator GLASS. As I gather from the newspaper account of Mr. Aldrich's statement, he wants a more restricted definition of affiliates than is contained in the bill, and I agree with him. I think a very foolish mistake was made there. For example, who of the Banking and Currency Committee, or of the Senate, or what sensible man anywhere ever supposed that we were to require reports from the steel corporation, or, worse than that, from a newspaper? They actually have required a newspaper to publish the account of its circulation, and its subscription account, and all of its business accounts, upon the theory that that newspaper is an affiliate of a bank, because two of its executive officers happen to be executive officers of the bank. Nobody ever had anything of that sort in mind, and I agree with Mr. Aldrich that the definition is too comprehensive, and ought to be made somewhat more specific. I have contemplated offering an amendment to the bill as soon as Congress convenes, to that effect, and we would be very glad to have—I say "we"—I am sure the Banking and Currency Committee would be very glad to have Mr. Aldrich prepare an amendment if he desires to do it, and we will give it consideration.

Mr. ALDRICH. I shall be very glad to do it.

Senator GLASS. Section 20 likewise relates to the separation of affiliates from parent banks. The public cannot conceive of the harm done by these affiliates. One of them was your bank, too. I am not

trying to embarrass you. You know that. Everybody else knows it, for that matter. Nobody can conceive of the damage done by these affiliates. They literally loaded the portfolios of interior banks with foreign securities approved by this abominable State Department here, which had not anything more to do with it than my stable boy—not a bit.

Mr. ALDRICH. Senator, may I say a word at this point? I think it may make my position somewhat more clear in regard to this act. Take this question of affiliates. I am frank to say that when I originally began to study this matter, when I first became a banker, and when I saw the evils in connection with it, I thought that it would be better to have these affiliates remain as they were, and have the Federal Government regulate all dealings between the affiliates and the bank, because I thought that would be the better way to do it.

Senator GLASS. That is a defensible view. Some of us entertain that view.

Mr. ALDRICH. That is what I thought. May I just finish the statement, because it will show you my attitude toward this legislation to which you are referring?

I felt that for a long time as a matter of fact, and at the time when Mr. McCain and Mr. Potter came down here—they were representing, as I remember, the clearing house banks as a committee appointed by the clearing house banks to discuss various questions that came up in connection with the proposed legislation—at the time they came down here I still felt that way personally. It was not until along toward the end of the year 1932 that I came fully to the conclusion that you were right on what you were trying to do in connection with affiliates, and from that time on I have taken the position consistently that you were right, and the Chase National Bank has taken a separate position on all these matters from any other bank in New York. We have been standing on our own feet.

Senator GLASS. Yes. That I know.

Mr. ALDRICH. I am perfectly glad to say that you converted me to the theory that the affiliates should be divorced rather than to remain where they were, and to be strictly regulated.

Senator GLASS. Well, that I know. I think the action taken in separating the affiliate of the Chase National Bank from the parent bank was very commendable. But nevertheless it is a fact that Mr. McCain and others——

Mr. ALDRICH (interposing). That is correct. I know it.

Senator GLASS (continuing). Came down here and were positively offensive, some of them, in threatening members of the committee with the defeat of this bill, and in consequence of their efforts and of their opposition to the separation of affiliates there was a filibuster of 21 days in the Senate against the bill.

Mr. ALDRICH. I did not know that.

Senator GLASS. You did not? Well, I tell you now.

Senator GORE. Senator Glass, I would like to interject at this point to make this observation with reference to these affiliates unloading their securities on other banks. I think we all know that there was a practice on the part of the affiliates of these big banks and these big underwriting houses of unloading foreign bonds on other banks throughout the country.

Senator GLASS. With the approval of the State Department.

Senator GORE. Yes. I am afraid a little more than that. The little banks took the word of the big banks that these securities were good.

Senator GLASS. And they were afraid not to take them.

Senator GORE. They were afraid not to take them. At the same time the bank examiners were going to and fro in this country uring these little banks to establish secondary reserves and to buy bonds, bonds, bonds. Those two things worked together, and I have no doubt there was a conspiracy going on.

Senator GLASS. I felt disposed to come out of the sick bed and to indicate to this committee and to the country that we were doing the best we could under the circumstances, and we have been met at every restrictive point by the opposition of many bankers. I do not mean merely individual bankers, but the American Bankers Association itself, the Advisory Council of the Federal Reserve Board, composed exclusively of bankers. And they actually induced the United States Chamber of Commerce to take positions against many of the restrictive provisions of this bill. It was that sort of fight we had on our hands down here. As I said a while ago, this bill received more consideration, it was attended with more investigation than any bank bill that was ever devised in the whole history of the United States. It is not a haphazard thing.

Mr. ALDRICH. Well, Senator, you do not still feel that I think that it was?

Senator GLASS. No; not after what you said, I do not think that you think so; but I think your statement gave that impression to the country.

Mr. ALDRICH. Well, I regret that very much.

Senator GLASS. Section 21 on page 30 of the act:

* * * it shall be unlawful—

(1) For any person, firm, corporation, association, business trust, or other similar organization, engaged in the business of issuing, underwriting, selling or distributing, at wholesale or retail, or through syndicate participation—

I call your attention to that particularly—

stocks, bonds, debentures, notes, or other securities, to engage at the same time to any extent whatever in the business of receiving deposits subject to check or to repayment upon presentation of a passbook, certificate of deposit, or other evidence of debt, or upon request of the depositor; * * *

Mr. ALDRICH. Senator, I think that section is admirable. The thing that I pointed out in connection with that section——

Senator GLASS. Do you think it is valid?

Mr. ALDRICH. Yes, I do.

Senator GLASS. Some lawyers do not.

Mr. ALDRICH. I know that. I know there is a difference of opinion on that.

Senator GLASS. And I say that to indicate that we went way beyond the considered judgment of some of the best lawyers in the United States Senate when we inserted that restrictive clause.

Mr. ALDRICH. I know that. But may I point out to the Senator that section 32 says that—

From and after January 1, 1934——

Senator GLASS. Yes. I will get to that in a minute.

Mr. ALDRICH. There is an inconsistency between that section and section 21.

Senator GLASS. Maybe so. I have not discovered it. [Continuing reading section 21:]

* * * It shall be unlawful—

(2) For any person, firm, corporation, association, business trust, or other similar organization, other than a financial institution or private banker subject to examination and regulation under State or Federal law, to engage to any extent whatever in the business of receiving deposits subject to check or to repayment upon presentation of a passbook, certificate of deposit, or other evidence of debt, or upon request of the depositor, unless such person, firm, corporation, association, business trust, or other similar organization shall submit to periodic examination by the Comptroller of the Currency or by the Federal Reserve bank of the district and shall make and publish periodic reports of its condition, exhibiting in detail its resources and liabilities, such examination and reports to be made and published at the same times and in the same manner and with like effect and penalties as are now provided by law in respect of national banking associations transacting business in the same locality.

Then follows the penalty of imprisonment for not more than 5 years nor more than $5,000 fine. Do you think that is valid?

Mr. ALDRICH. I do; yes, sir.

Senator GLASS. You will admit that it is going to be the subject of litigation, will you not?

Mr. ALDRICH. I expect it will be; yes.

Senator GLASS. Yes.

Mr. ALDRICH. Of course, I am inclined to believe that in order to get a unified banking system it may be necessary to have a constitutional amendment, but I do not think we have come to that point yet.

Senator GLASS. Well, you cannot get a unified banking system if the opponents of restrictive legislation of this kind contest a law that is not based on the existing Constitution?

Mr. ALDRICH. No. That is perfectly true. It may be necessary to have a constitutional amendment. I think that legislation in this section is the most constructive step that has been taken in two generations, but I admit that——

Senator GLASS. It undoubtedly is the most restrictive step that has been taken in any generation.

Mr. ALDRICH. I think that the question of its constitutionality is one which is perhaps doubtful, but I believe myself that it is constitutional.

Senator GLASS. It was very doubtful according to the best legal advice that we could get, but so intent were we upon curing the abuses that have been developed since 1927 up to the preliminary revelations of this committee, which have been greatly accentuated by subsequent disclosures before this committee—so intent were we upon doing that, that we risked the validity of that restrictive legislation.

Mr. ALDRICH. I appreciate that fully.

The CHAIRMAN. Mr. Aldrich is himself a lawyer of distinction, and we are very glad to have these opinions from the standpoint of a banker and lawyer.

Mr. ALDRICH. As a matter of fact I submitted to Senator Glass a legal brief upon that subject.

Senator GLASS. Yes.

The CHAIRMAN. The question arises in connection with this portion of section 21:

Other than a financial institution or private banker subject to examination and regulation under State or Federal law, * * *.

Suppose you have a financial institution or private banker that is not required to be examined?

Senator GLASS. Exactly. But in section (2) there they make it subject to the periodic examination by the Comptroller of the Currency or by the Federal Reserve bank of the district. What right has the Comptroller of the Currency or the Federal Reserve bank, and what right has the Federal Reserve Board, except as to member banks, to do that sort of thing? I hope they have the right. I do not think they have. But I do hope that they would have.

Mr. ALDRICH. I agree with you. I think it is doubtful.

Senator GLASS. Yes. Just one or two more observations and I will have finished. I read rather hastily the newspaper account of your appearance, Mr. Aldrich, and the one that I read seemed to convey the impression that you were proposing an amendment to the act that put a limitation upon the number of members of the board of directors, and, of course, you know that we have that provision in the bill.

Mr. ALDRICH. No. I was not doing that, sir. I agreed entirely with the provisions you have in the bill in regard to the number of the members of the board of directors.

Senator GLASS. Yes. For the record, we require that the number shall be not less than 5 nor more than 25. That appears on page 36 of the act.

The CHAIRMAN. Yes.

Senator GLASS. Not less than 5 nor more than 25. In that connection I may say—it is not particularly pertinent but it is a matter of interest—that some few banks are experiencing a good deal of difficulty in complying with that portion of this section which requires that a member of the board of directors of the banking association, State bank or trust company to be "the bona fide owner in his own right of shares of stock of such banking association, State bank or trust company having a par value in the aggregate of not less than $2,500." In some localities, small localities, we experienced some difficulty in getting or in continuing members of that board with as much as $2,500 of stock par value. In one instance that I recall, among many others, the stock of the bank is worth $2,500. In other words, the par value is only $100 and it is worth $2,500. The members of that board cannot afford to buy 25 shares of that stock. They would have to buy 25 shares of that stock having a par value of $100, but the book value of each share of the stock is $2,500. It seems to me we will have to make some change.

The CHAIRMAN. There are not many of those banks.

Senator GLASS. No, not many of those.

We come now to section 32, which Mr. Aldrich thinks is somewhat inconsistent with the section read a while ago.

Mr. ALDRICH. Yes. That was section 21.

Senator GLASS. Section 21; yes. Section 32 reads as follows:

From and after January 1, 1934, no officer or director of any member bank shall be an officer, director, or manager of any corporation, partnership, or unincorporated association—

You drew this, and if there is any inconsistency between this section and section 21 you are responsible for it.

Mr. ALDRICH. Senator, this is not in the form I drew it.

Senator GLASS. I think it is.

Mr. ALDRICH. No; it is not.

Senator GLASS (continuing reading):

or unincorporated association engaged primarily in the business of purchasing selling, or negotiating securities, and no member bank shall perform the functions of a correspondent bank on behalf of any such individual, partnership, corporation, or unincorporated association and no such individual, partnership, corporation, or unincorporated association shall perform the functions of a correspondent for any member bank or hold on deposit any funds on behalf of any member bank, unless in any such case there is a permit therefor issued by the Federal Reserve Board; and the Board is authorized to issue such permit if in its judgment it is not incompatible with the public interest, and to revoke any such permit whenever it finds after reasonable notice and opportunity to be heard, that the public interest requires such revocation."

It seems to me that that is an extremely severe provision, though I personally inserted it in the act at your request.

Mr. ALDRICH. Senator——

Senator GLASS. And some of the large private bankers, not only of New York but of other big metropolitan cities, are very vehement in their opposition to that provision in the law.

Mr. ALDRICH. Senator, I think you are in error in saying that I suggested that section. Section 21, which prevents firms engaged in the securities business from taking deposits, contains an absolutely sweeping prohibition against the taking of such deposits, and it is that section that I had the privilege of assisting in drafting. Section 32——

Senator GLASS. Confines the authority to the Federal Reserve Board.

Mr. ALDRICH. Yes. There is an absolutely sweeping prohibition in section 21 against the taking of deposits by anybody engaged in the investment banking business. Section 32 as drawn permits institutions engaged in the investment banking business to hold deposits on behalf of member banks if the Federal Reserve Board grants the permit to do so. It is that feature which, it seems to me, should be eliminated.

Senator GLASS. I do not think so. Meaning those that are primarily engaged in the business of purchasing, selling, or negotiating securities.

Mr. ALDRICH. But if the principle of absolute divorcement of commercial and investment banking is correct, as I have felt that you have felt it was, it seems to me that it is inconsistent with that to permit anybody engaged in the investment banking business to take deposits in any form even with the consent of the Federal Reserve Board.

Senator GLASS. What do you think the Federal Reserve Board was formed for, Mr. Aldrich? It is a supervising authority. In this particular instance it would be a supervising authority in the public interest. It so textually states. You cannot enact general legislation that will suit itself to every conceivable situation.

Mr. ALDRICH. I agree with that.

Senator GLASS. The Federal Reserve Board should have discretion—I am willing to concede it does not always exercise sound discretion—but it should have discretion to meet exceptional cases.

Senator COUZENS. Could you mention an exceptional case, Senator? Have you any knowledge of any exceptional cases?

Senator GLASS. Yes; I could mention a good many, but I do not want to do that now.

Senator COUZENS. I do not call to mind any instance where the Federal Reserve Board would be justified in issuing a permit. I just thought if you could illustrate a case I would like to have it.

Senator GLASS. Well in this case the statute specifies that it was in the public interest. It explicitly has to be in the public interest.

Senator COUZENS. Yes; but I am trying to conceive one that is itself in the interest of the public service.

Senator GLASS. I know some, but I do not care to go into that.

Senator COUZENS. I do not compel an answer because the Senator is not under oath.

The CHAIRMAN. In other words, you can not conceive of a case where it would be in the public interest for investment bankers to receive deposits?

Senator COUZENS. No; not in the way it has been illustrated in that section. Maybe Mr. Aldrich can tell me. I do not care whether you mention names or not. But I can not visualize such a case.

Mr. ALDRICH. Senator, I do not think that is in my——

Senator COUZENS. Maybe the Senator can tell me on the quiet some cases; but I do not get the point yet.

Mr. ALDRICH. Senator Glass, may I say this, that I have here a very careful analysis of the history of section 8 and section 8-A of the Clayton Act, starting with the Pujo investigation, and showing what was intended by that section originally, and showing the modification of it by the Kern amendment, and by the McFadden amendment which has brought about the present situation allowing the Federal Reserve Board to give these permits, and showing also that the present situation creates a situation in which the State banks are not regulated in this respect, and the national banks are. And it is a form of competition which is most disadvantageous to the National banks. I point that out in my statement. But I have here a very elaborate memorandum of the history of these acts which I would like to submit, and which I think throws a very great light on the matter that we are discussing.

Senator GLASS. I want to present one other matter and make a remark or two. Section 8 (a) on page 37:

> That from and after the 1st day of January, 1934, no director, officer, or employee of any bank, banking association, or trust company, organized or operating under the laws of the United States shall be at the same time a director, officer, or employee of a corporation (other than a mutual savings bank) or a member of a partnership organized for any purpose whatsoever which shall make loans secured by stock or bond collateral to any individual, association, partnership, or corporation other than its own subsidiaries.

I accidentally skipped over one of the most important restrictive amendments on page 25, section 16. This section explicitly prohibits member banks of the Federal Reserve System from underwriting any issue of securities, and that section contains other exceedingly restrictive provisions. Now with the exception of the affiliates, and of the provisions preventing the use again of Federal Reserve facilities for stock-gambling purposes, that provision was more vehemently fought by the large bankers of the country and by the Amer-

ican Bankers Association and others, than any other provision of this bill.

Mr. ALDRICH. Do you mean section 33?

Senator GLASS. No. The underwriting of securities and the limitation as to the percentage of loans that might be made to corporations, and the like. Let me say this, Mr. Aldrich, in conclusion. You are in favor of a unified banking system.

Mr. ALDRICH. Yes, sir.

Senator GLASS. So am I. But you and I are very much in the minority on that point. Particularly in the Congress of the United States. There have been—there are not now, but there have been three State banks for every national bank in the country, with their consequent numerical influence upon Congressmen who do the voting. Besides being questionable whether we can without a constitutional amendment secure a unified banking system, it has been practically impossible legislatively to even approach a unified banking system in this country, because the State banks almost as a unit opposed it. The almost insuperable difficulty with which the committees of Congress have invariably been confronted when they attempt legislation is involved in the dual banking system, the national banks insisting that they are put upon a plane of great disadvantage in their competition with State banks, and the State banks, many of them, unwilling to be elevated up to what ought to be the sound standards of national banking.

Therefore the subcommittees that drafted this bill and considered it for a period of 2 years and 4 months had always in mind a desire to prevent national banks from surrendering their charters and going into the State banking system. Hundreds of them have already done that, and repeatedly during the consideration of the bill before it was enacted into law thousands of them threatened to do that. We had to determine our course in the face of threats of that description, which were not idle threats. And I think that with these severe restrictive provisions that I have undertaken to go into here, that we may cause many national banks to go out of the Federal Reserve System, and we may cause thousands of State banks to stay out of the Federal Reserve System, not caring to submit to these severe restrictions. And in any amendments proposed to this act we must inevitably always have that matter in perspective.

Mr. ALDRICH. I realize that.

Senator GLASS. We have included in this bill a provision to which I have not made reference, that may operate tremendously in the direction that I have indicated—the insurance of deposits provision of the bill. The only thing on earth that ever induced me to come to that provision of the bill, as cautiously and conservatively drawn as we could possibly make it, and done to avert unwise legislation on the same problem—many banks are protesting and threatening to go out of the system because we not only put an assessment upon them, but we put an unrestricted assessment upon them; the authority is granted to this insurance deposit board to levy assessments without restriction and to carry that provision into effect—the only thing that ever brought me to consent to that provision was the thought that it might bring us approximately to a unified banking system. In other words, that it might bring into the Federal Reserve System many desirable State banks.

Mr. ALDRICH. Senator, when I originally wrote this statement I had in it a section on the unified banking system; also a section on the guaranty of bank deposits. But I felt that it might be thought it was not germane to the subject matter of this particular part of the investigation now before the subcommittee. Nevertheless I felt that was important, and I should like myself, if you feel that it may possibly be helpful to you, to give you my views on those two points, because I think what you have just said is one of the most vital questions that comes before the Senate in connection with the whole banking matter: The question of the unification of the system, with danger on the one hand that it might be so restricted that you would drive State banks out of the Federal Reserve System and back into the State system; and, on the other hand, the desire to bring those banks into the Federal Reserve System through a guaranty of bank deposits in its temporary form. I have my remarks on that subject and will be glad to give them to you if you desire.

Senator GLASS. It is my view, but the subcommittee may decide that matter, that that is not exactly pertinent to this investigation.

Mr. ALDRICH. Well, Senator Glass, I should like the opportunity of talking to you about it at least.

SENATOR GLASS. And if I am living, and if we ever have occasion to enact any banking legislation at the next session of Congress, I personally would be very glad to have your views on it. I may say this, and it may be of interest to the subcommittee, that although we set up a capital fund of half a billion dollars under the insurance of deposits provision, and although we authorized the board to issue its debentures in the sum of 1½ billion dollars, making the total capital set-up of 2 billions of dollars, I have already been notified semiofficially, and I might say also officially, that Congress is to be asked right away, before there has been any test of the provision at all, to increase that capital set-up by at least 400 million dollars. That portends, if it is official, or if it is sought in official circles, that that provision is in danger of breaking down even before it goes into operation.

The CHAIRMAN. Well, I do not think they need as much as they now have. And I will ask the Senator from Virginia if it isn't true that State banks are coming in by reason of that provision.

Senator GLASS. State banks are coming in under the temporary shelter of the deposit provision, but that does not necessarily signify that they are going to become members of the Federal Reserve System within the required time.

Senator GOLDSBOROUGH. Which is July next, is it not?

Senator GLASS. No; not July next, but July of 1936. And it is a very serious question. Now, if I may ask Mr. Aldrich another impertinent question, or question that is not necessarily pertinent as I conceive it to this investigation——

Senator GORE (interposing). Senator Glass, may I ask Mr. Aldrich, before you do that, a question?

Senator GLASS. Certainly.

Senator GORE. I should like to ask the leave of the chairman to insert in the record at this point the constitutional amendment that I offered at the extra session last spring, looking to the establishment

of a unified banking system, the authorization of the Congress to establish that system, but the provision is not mandatory.

The CHAIRMAN. I see no objection to that.

[S. J. Res. 18, 73d Cong., 1st sess.]

JOINT RESOLUTION Proposing an amendment to the Constitution of the United States relative to banking laws

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is hereby proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures in three-fourths of the several States:

"ARTICLE —

SECTION 1. Hereafter no State shall without the consent of Congress charter a bank, and all State laws on the subject of banking shall be subject to the revision and control of Congress.

SEC. 2. The Congress shall have power to make all laws which shall be necessary and proper to provide for a more uniform system of banking throughout the United States."

Senator GLASS. I want to ask Mr. Aldrich if he has any well-considered notions about branch-banking.

Mr. ALDRICH. Yes, sir; I think so. That was what I meant when I referred to the unified banking system. I will be glad to give that to you on the record, or off the record, just as you please.

Senator GLASS. Well, if this subcommittee is as much interested in it as I am you might briefly state it.

The CHAIRMAN. I think it is in order.

Mr. ALDRICH. I should like to read this if I may, because I want to be sure that I get my thoughts exactly correct.

The CHAIRMAN. All right.

Mr. ALDRICH. Now, this is in written form, and was originally a part of the statement I made on Friday last. I should like to read it because of the fact that I will be sure I will get it exactly correct.

The CHAIRMAN. You may proceed, Mr. Aldrich.

Mr. PECORA. Mr. Aldrich, it is a trivial matter, but when you referred to last Friday you meant last Wednesday.

Mr. ALDRICH. Yes, sir.

The CHAIRMAN. You may go ahead, Mr. Aldrich.

Mr. ALDRICH. With separation duly obtained between commercial and investment banking and with sound investment banking supported by law and by public confidence, attention should be given to so improving the operation of our commercial banking system as a whole that it shall be in a position to provide for each community the banking service which is essential to the proper conduct of current business.

Nothing, obviously, is of more importance in this particular than a system which shall provide the utmost protection against bank failures. The view is widely held that the adoption of the Canadian banking system, or the English banking system of branch banking, would prevent bank failures in the future, and that either the English system or the Canadian would be appropriate for the United States. It is to be observed, first, however, that each of these systems is a system of long growth and was not suddenly devised and imposed by statute upon England or Canada; and, second, that England

is a country small in area, and that Canada, although large in area, has a total population smaller than that of the State of New York. Nation-wide branch banking in the United States would be a vastly more difficult thing to handle than nation-wide branch banking in either England or Canada. And nation-wide branch banking, suddenly applied to the United States, would be a haphazard assembling of vast numbers of banks by energetic promoters, rather than a carefully considered articulation and organization by sound bank administrators.

It must be remembered, moreover, that since the days of Andrew Jackson we have had in the United States a strong political tradition adverse to banking concentration and to branch banking, and favorable to so-called "free banking", under which any group of individuals of reasonably good character, whether they had banking experience or not, who could bring together the minimum capital required by law—often a very small minimum, indeed—have the right to establish banks, and under which any community, however small has the right to an independent bank. It was this tradition, of course, which prevented us from having a central bank and led to the system of regional Federal reserve banks instead of one central bank.

The American people are apparently now prepared to make a very substantial modification of this political tradition regarding banking, but they would probably be very restive if we should suddenly transform our system on a Nation-wide basis into the highly concentrated British system or the highly concentrated Canadian system.

Instead of a sweeping acceptance of the whole British or Canadian system, therefore, it would seem wise, first, to correct the weakest part of our system, and that part of our system which differs most from the British and Canadian models, namely, the excessive number of small banks with inadequate capitalization.

Senator GLASS. Mr. Aldrich, may I interject there?

Mr. ALDRICH. Certainly.

Senator GLASS. So far as I know, and I have been here 33 years, nobody has ever proposed a Nation-wide system of branch banking for the United States.

Mr. ALDRICH. Well, I do not know that it has been suggested in Congress, but there have been a number of articles in various periodicals urging that the English or the Canadian system be adopted.

Senator GLASS. Oh, yes. There have been quite a few references that I have read, and I have made the statement myself to the effect that not a single bank has failed in Canada, nor one in Great Britain, under their branch-banking systems, but with no intention on earth of suggesting a Nation-wide system. In fact, our subcommittee rejected the urgent recommendation of the Comptroller of the Currency, in which I think you concurred, to make the Federal Reserve System one of district-wide establishment of branch banking.

Mr. ALDRICH. That is quite true. As a matter of fact, you will see that this recommendation I am now making does not go so far as that, even. But I did not mean to imply that there had been any suggestion, or that anybody in Congress had urged at least that we adopt Nation-wide branch banking in the United States.

Senator GLASS. No. There has been no suggestion that we could possibly do that, or that we should do it.

Mr. ALDRICH. And I did not mean to imply that, but there have been in certain periodicals intimations of that.

The CHAIRMAN. All right. You may proceed, Mr. Aldrich.

Mr. ALDRICH. A first step should be to forbid the creation of inadequately capitalized banks either by the Federal Government or by the States. Now, if I may say parenthetically, your bill does raise that amount very substantially.

Senator GLASS. Yes; it raises the minimum to $100,000.

Mr. ALDRICH. That is right.

The CHAIRMAN. You may proceed, Mr. Aldrich.

Mr. ALDRICH. There should be some sort of tax, it seems to me—or it would be wise to try to devise some method, either by the imposition of a tax or otherwise—upon the creation of new State banks, chartered with less than the amount of capital that is provided as to national banks or member banks. I do not know whether that is constitutionally possible but I do think it is worthy of serious consideration. Second, the action of the Reconstruction Finance Corporation in recapitalizing inadequately capitalized banks should be accompanied by a policy of encouraging consolidation of small banks wherever possible.

Senator GLASS. Well, the Reconstruction Finance Corporation can do anything regardless of the Constitution or the statutes, for that matter. [Laughter.]

Mr. ALDRICH. Third, while the Banking Act of 1933 already permits national banks to establish branches in a given State on the terms affirmatively permitted by statute to State banks and trust companies in that State, the act should go further, and irrespective of the provisions of the laws of the States:

(*a*) It should permit national banks in all States to establish branches in the city where the main office is located. That is, regardless of the State law.

Senator GLASS. Well, if you are going to disregard State laws why not do it and authorize them to establish branches anywhere in the State under certain restrictions and limitations?

Mr. ALDRICH. That is really what I am defining. But I have not yet come to the restrictions and limitations. There wouldn't be any restrictions as to opening branches in the city where the main office is located.

Senator GLASS. We allow the establishment of them anywhere in the State now under this act, provided the State law permits.

Mr. ALDRICH. But I am suggesting that it be done whether or not the State law permits in the case of——

Senator GLASS (interposing). And that Congress permit it to be done?

Mr. ALDRICH. Well, it should permit it in all States, I mean national banks of a large minimum capitalization to establish branches throughout the State in cities of a certain maximum population of, say, 15,000. The purpose of this limitation is to concentrate attention first on the smaller places, where the need is greatest, and to avoid a competition among the great city banks for control of strong banks in other large cities. The establishment of branches

outside the city of the head office by national banks should, however, be limited to the taking over of existing institutions, except in communities where no banking institution exists. It would be harmful to have metropolitan banks establish new branches in small places in competition with local banks.

(*c*) In all States national banks with a smaller but adequate capitalization might be permitted to establish branches in groups of adjacent counties, including, of course, the county of the head office, again in communities of a maximum population of, say, 15,000.

The difference in size of counties and size of communities in different States makes a general scheme difficult to draw, because what is a very large center for one State might be relatively small in another. It might be best, therefore, for the legislation to be so drawn that the Comptroller of the Currency, studying each individual State, could himself designate the maximum for national bank capitalization and the maximum size of communities in which branches could be established.

After the smallest banks had been brought together in substantial systems on a large scale, as suggested above, it would then be possible to take the further step of bringing together into larger organizations the substantial units already created. Legislation along the lines proposed would go far toward facilitating the transformation, it seems to me so much desired, of group and chain bank systems into branch bank systems. It would not in all cases make it possible to transform a large group into a single branch-bank system, but it would at least make it possible to unite many of the units in the group into a small number of branch-bank systems, and in the case where a large national bank is the parent bank it would make possible a State-wide system of branch banks throughout the smaller communities of the State.

The question as to how far we should go in trying to make all deposit banks members of the Federal Reserve System is one on which a sweeping recommendation is not justified. It is, however, an ideal toward which we should work. Such a result would be greatly facilitated, of course, by the growth of branch banking along the lines indicated. No branch-banking system, extending over a group of counties, ought to be outside the Federal Reserve System.

This type of proposal will probably not satisfy those who believe it is possible to make everything safe by putting into effect a sweeping plan immediately, but it seems to me that we would build more soundly by moving carefully, and that the ultimate banking system would be much stronger if it grows by stages in that way.

Senator GLASS. That does not go as far as we go in this act.

Mr. ALDRICH. Yes; it does, I think. It is intended to do this: It is intended to add to the provisions of the act as they now stand, and I assume it may be politicaly impossible, but——

Senator GLASS (interposing). And it is intended to disregard in certain respects State laws.

Mr. ALDRICH. That is right.

Senator GLASS. Well, we have so completely disregarded them in every other respect that such a thing as State rights do not exist any longer.

The CHAIRMAN. Mr. Aldrich, what do you mean by group banking?

Mr. ALDRICH. The law as at present permits branch banking as far as it is in conformity with State law, and it might go further than that in regard to national banks and permit them to exist whether State laws provide for them or not.

The CHAIRMAN. Do you mean as to group banking?

Mr. ALDRICH. I think it would be better if they were converted into branch banks.

Senator GLASS. It would be better if they would go out of existence.

Mr. ALDRICH. Well, that is probably an inaccurate way of expressing my thought, but I think branch banking is better than group banking.

Senator GLASS. Yes; group and chain banking as they at present exist are vicious. Now, Mr. Aldrich, I am sorry to have diverted you on this matter, but when the time comes, I, for one, as probably everyone else here, will be glad to hear you.

Now, Mr. Chairman, I brought a series of these banking bills over here with me, bills that were drafted from time to time, in order to show the subcommittee that at various periods we had bills containing more restrictive provisions than the act actually contains. But owing to the lobby of the New York bankers, and other bankers, why, we were not able to prevail. In other words, we got through the best bill we could under the circumstances.

Mr. ALDRICH. I regret very much if anything I have said has indicated that I think the bill was not prepared with due consideration. As a matter of fact, Senator Glass, I think we are in accord on practically everything in this bill.

Senator GLASS. Oh, well, I was saying that good-humoredly. But, perhaps, Senator Couzens does not agree with that.

Senator COUZENS. I always take your impeachments, Senator Glass.

The CHAIRMAN. I notice, Mr. Aldrich, that you suggest officers and directors shall not be officers and directors of another commercial bank in the same community. I suppose you would not be in favor of group-banking.

Mr. ALDRICH. I did not go into that matter in detail in this memorandum, because I felt that I would undoubtedly have an opportunity of discussing it with the members of the committee separately. But take the case of a corporation organized under the Edge law, under which a bank is permitted to——

Senator GLASS (interposing). Oh, well, there was never but one organized under the Edge law, and I think that has gone out of existence.

Mr. ALDRICH. We have one.

Mr. ALDRICH. I don't know. But, as a matter of fact, we are permitted under section 25 (a) of the Federal Reserve Act to own stock of a banking corporation which does business in foreign countries. Now, under section 25 (a) of the Federal Reserve Act that is expressly made not subject to section 8 of the Clayton Act, and because section 8A is added as an additional section, the Federal Reserve Board has held that the Edge Act corporation comes under the provision of section 8A. Now, I should like to see that clarified

if this other legislation goes into effect, as I think it should. But that is a minor detail. I agree with you, Mr. Chairman, except where we have specific legislation permitting a national bank to own stock of another corporation, which is a banking corporation——

Senator GORE (interposing). Which is what?

Mr. ALDRICH. Which is a banking corporation, that in all other cases the officers and directors of the first bank should not be officers and directors of the second bank.

Senator GLASS. It only does it in the matter of this Edge law, designed for corporations to engage in foreign contracts.

Mr. ALDRICH. I think the same principle would apply all the way through, namely, that if the policy of the Government permitted a bank to own stock in another corporation, such as a safe deposit corporation or an Edge Act corporation, why, then the prohibitions of the law with regard to directors should not apply as to the matter of interlocking directors.

Senator GORE. Would you mind inserting at this point your definition of group banking, chain banking, and branch banking? I do not mean at this moment but before you close.

Mr. ALDRICH. I will be glad to do that. As a matter of fact, I think group banking and chain banking are terms used in different senses by different people.

Senator GORE. That is just the point.

Mr. ALDRICH. Group banking as I understand it—well, perhaps I had better not try to explain it here now, until I have a chance to look it up, because I want to give the best opinion on it I can, and possibly my own use of words is very colloquial.

Senator GLASS. There are very pointed differences in the matter of responsibility and what you may do.

Mr. ALDRICH. Oh, absolutely.

Senator GLASS. And in the matter of double stock liability, and a good many other things.

Mr. ALDRICH. I might say that as I understand group banking the banks are owned by a holding company. In the case of chain banking the banks are owned not by a holding company but the stock ownership is in the hands of individuals, who act together in voting the stock.

Senator GLASS. And some of whom are in the penitentiary now. [Laughter.]

Senator COUZENS. As to the chain groups.

Senator GORE. And, I might say, are in the chain gang.

Senator GLASS. Mr. Chairman, I wish to thank you for this opportunity to come here and make this statement, for having the opportunity of coming and doing my part in the matter.

The CHAIRMAN. And we have been very glad to have you.

The subcommittee will now take a recess until 2 p.m.

(Thereupon, at 1 p.m., Tuesday, December 5, 1933, the subcommittee adjourned to meet at 2 p.m. the same day in the same place.)

AFTERNOON SESSION

The subcommittee reconvened at the expiration of the recess on Tuesday, December 5, 1933.

TESTIMONY OF WINTHROP W. ALDRICH—Resumed

The CHAIRMAN. Mr. Aldrich, in view of some observations made this morning I would like to say that in my judgment your statement is entirely appropriate and that the grounds covered are entirely within the functions of this committee. Under our resolution of March 12 or 13 it was provided that this committee had authority and it was directed to make a thorough and complete investigation into the business of banking, financing, and the extending of credit. There were other resolutions in reference to stock exchanges and that sort of thing. Therefore I think it is in order to ask you some questions regarding some matters stated in your report; and I would like to ask you to what extent commercial banks should be permitted to invest or deal in securities.

Mr. ALDRICH. Senator, I feel that the investment in securities is properly covered by the Banking Act of 1933. I myself have been a little bit concerned with that limitation of 10 percent of any issue which is contained in the Banking Act of 1933. I think that at times it might be desirable to invest in more than 10 percent of an issue. You remember the provision that a bank cannot invest in any more than 10 percent of an issue unless it is under $100,000. The provisions of the Banking Act plus the provisions of the Revised Statutes really define banking institutions, and as I remember it, the Comptroller's office has the right to define what investment securities are. It seems to me that those provisions are all right as they stand.

The CHAIRMAN. Then you state that no corporation or partnership dealing in securities should be permitted to take deposits even under regulations. Do you intend for us to infer that commercial banks should not have any investment departments for the accommodation of their customers?

Mr. ALDRICH. No; that is not what I had in mind. I was referring to the provisions of the Banking Act of 1933 as they stand, which say that dealers in securities, that is investment bankers, who are bringing out issues, should not take part in the purchase or sale of securities for account of others. A bank acting entirely for others I do not think is included in that category. I do not by that mean to imply that I think commercial banks should issue securities, because I take it that the whole purpose of this is to get rid of that, except in so far as concerns dealing in United States Government, municipal, and other securities that are authorized by the Banking Act of 1933.

Does that answer what you had in mind, Mr. Chairman?

The CHAIRMAN. Yes. Do you know of any reason why the clearing house associations throughout the country should not be subjected to the supervision of the Comptroller of the Currency?

Mr. ALDRICH. That is a matter, Senator, that I have not really given any consideration to at all. I would not want to venture an opinion on it, offhand.

Senator ADAMS. What sort of supervision do you have in mind?

The CHAIRMAN. Supervision that the Comptroller might feel was necessary and important.

Senator ADAMS. The true, strict function of a clearing house would be merely the interchange of checks.

Mr. PECORA. But the clearing house association in New York City, for instance, Senator Adams, under its rules and regulations, to which all member banks subscribe, makes periodic examinations of the member banks in the same fashion generally as the State superintendent of banks makes of State banks and the Comptroller of the Currency makes of national banks. Those examinations are not a matter of public record; that is, the reports of those examinations are not. They are kept in the files of the clearing house association, and I believe copies are furnished to the banks that are subject to such examinations. Is not that so, Mr. Aldrich?

Mr. ALDRICH. Yes. Of course prior to the passage of the Federal Reserve Act and prior to the time that various members of the clearing house association were members of the Federal Reserve System, clearing-house examinations were made for the purposes of the clearing house members themselves, and were in addition to the examinations made by the State and Federal authorities. I should say that there was no need for regulation of clearing houses. I feel, myself, that clearing houses of course have become much less important than they used to be prior to the enactment of the Federal Reserve Act.

Senator COUZENS. There are some points, of course, where there is no Federal Reserve bank.

Mr. ALDRICH. I was speaking of New York particularly.

Senator COUZENS. I was wondering why the clearing house should not be restricted by law to the mere matter of clearance which the name indicates, rather than getting involved, as they did in the Harriman National Bank case, in other matters which seem to be foreign to strictly clearing house work.

Mr. ALDRICH. I think that the primary purpose of the clearing house association was the clearing of checks among the members.

Senator COUZENS. Why should they not stick to that?

Mr. ALDRICH. It is unnecessary, now, as a matter of fact, where clearance is done through the Federal Reserve bank where there are Federal Reserve banks.

Senator COUZENS. And where there are no Federal Reserve banks, why should they not be required by law to stick to mere clearing processes rather than engage in other activities, such as the New York Clearing House Association did in the case of the Harriman Bank, as I understand it?

Mr. ALDRICH. Of course, that is the subject of litigation at the present time, and I would not like to comment on that.

Senator COUZENS. No; I am not asking you to comment on that specific case. I used that as an instance in connection with the probable desirability of limiting the powers of clearing houses.

The CHAIRMAN. I just wanted to get your ideas. I have no clearly defined plan at this time. But the impression prevailed at one time that the clearing house association was dominating all the banks, practically.

Mr. ALDRICH. Yes; I think that in the hearings in the Pujo investigation a great deal was said about that, but I think that today, since the passage of the Federal Reserve Act, the functions of the clearing house—certainly that is true in New York—are very minor. I doubt very much if clearing houses anywhere have any very great power. They are places where the banks get to-

gether to discuss matters. Where joint action is necessary it is taken after consultation in the clearing house. I do not know of any clearing house that has any great power.

The CHAIRMAN. It is reported that in Chicago the clearing-house association had some two hundred banks, and they were practically run out of business at one time.

Mr. ALDRICH. My own feeling is that the importance of the clearing house has been very much modified by the passage of the Federal Reserve Act.

Mr. PECORA. In the case of the clearing-house association in New York is it not a fact, as has been illustrated by the experience of the Harriman National Bank, that the clearing-house association in years past virtually held itself to be more or less the guarantor of deposits in banks that were members of the clearing-house association? That is one of the moot questions in the pending litigation; and I am not going to ask you to express any opinion about that in view of the fact that that subject has now been drawn into the courts; but I have personal recollection of the advertisements published for years past in the New York newspapers at the instance of the clearing-house association, wherein they pointed out to the public the advantages of being depositors in banks that were members of the clearing-house association. One of their favorite sentences in those advertisements was that no depositor in a clearing-house bank had ever lost a dollar.

Mr. ALDRICH. I think one reason why they had the examination that they did is that the clearing house should be advised as to the condition of its member banks.

The CHAIRMAN. Are there any other questions that any member of the committee wishes to ask?

Mr. PECORA. I have a line of questions that I want to submit to Mr. Aldrich. I had not intended going ahead with the examination of Mr. Aldrich today, my program being to present the committee evidence of another underwriting transaction of an affiliate of the Chase Bank and, at the conclusion of the evidence, to ask Mr. Aldrich to resume the stand for the purpose of being examined by members of the committee and by counsel with respect to the statement which he read into the record last Wednesday. I would like to adhere to that course if it would be pleasing to the committee to do so. Senator Glass this morning indicated that he wanted to question Mr. Aldrich with regard to Mr. Aldrich's statement of last Wednesday, and I suggested that he proceed to do it this morning, in view of the condition of his health.

The CHAIRMAN. Will that be agreeable to you, Mr. Aldrich?

Mr. ALDRICH. I was wondering if it would be possible for me to answer those questions at this time. I have been here so long that I am very anxious to get away if I can.

Senator ADAMS. Mr. Aldrich, have you had any reaction to the provision in the banking act regarding interest on demand deposits?

Mr. ALDRICH. No, I have not; but my feeling about that, Senator, is this: The payment of interest on demand deposits might very well be permitted under the guidance of the Federal Reserve Board for this reason that it seems to me that that is a method of attracting bank balances to places where they are needed. I appreciate fully

the point that Senator Glass makes of the possibility of their being drawn into stock-market speculation. At the same time, as it stands today, there is no method of attracting deposits from one Federal Reserve district to another where the needs of commerce may require their being placed.

Senator ADAMS. The reason for my inquiry is this: That in the small banks of the interior, where my acquaintance is, that provision has had an unfortunate reaction. It has tended to keep deposits out of savings accounts, for instance, because the savings bank that has been in the habit of carrying those balances is not getting interest. Savings banks and all banks carrying savings accounts in our section of the country are reducing interest rates upon deposits because of the fact that they can no longer get any return on their reserves. The result is that by reducing the interest rates on their deposits they are at the same time reducing the aggregate of deposits; and as you know, the deposits furnish the basis of the real practical currency of the country. That is what business is done with. Out our way that result has been unfortunate rather than beneficial.

Mr. ALDRICH. The natural result of inability to pay interest on demand deposits is that deposits remain immobilized where they originate. That is to say, they do not tend to go to a center where they are needed for the purpose of trade.

As I say, I am in accord with Senator Glass' idea that deposits should not be siphoned into speculative channels.

Senator ADAMS. Would not the other provision of the law forbidding such speculation cover that very point?

Mr. ALDRICH. That is what I was going to say. My own opinion is that the law will eventually be modified so as to permit the Federal Reserve Board to allow the payment of interest on demand deposits at certain rates of interest in certain Federal Reserve districts so that they will be able to permit deposits to be drawn to places where they are needed.

Senator ADAMS. That means less cash reserve, does it not?

Mr. ALDRICH. Yes, sir. The cash reserves at the present time, the excess reserves, are scattered throughout the country and are not centralized in any particular place. They remain where they were originally, which I think is unfortunate.

Senator COUZENS. Senator Adams said a while ago that it tended to diminish deposits. Where does the money go?

Senator ADAMS. Into the purchase of bonds and stocks.

The CHAIRMAN. And Postal Savings?

Senator ADAMS. Yes.

Senator COUZENS. The savings are there, but they are not in the savings banks?

Senator ADAMS. They are not available for commercial purposes, the very thing Senator Glass had in mind, that by denying the payment of interest you were making money available for use in local communities. As a matter of fact, if you decrease the amount of deposits you defeat the very purpose.

Senator GOLDSBOROUGH. The funds that go into Postal Savings are redeposited in commercial banks throughout the country.

Senator ADAMS. Out our way, in Denver, for instance, a bank has deposits which it might have carried in Kansas City or in Omaha.

If they do not have an outlet that gives them some interest they will not put up the securities required by the Postal Savings.

Senator GOLDSBOROUGH. Your thought is that it keeps it at home?

Senator ADAMS. Yes.

The CHAIRMAN. Is it not true that one idea was that this was to prevent competition among them, to prevent the temptation of depositors to take their money to banks offering higher rates of interest in competition with other banks, and probably not sound banks? Any bank can procure a lot of business by raising its rate of interest.

Mr. ALDRICH. There have been a great many reasons advanced for it. One is that the fact that it is not necessary to pay interest on demand deposits sets up a fund which can be used by the bank to guarantee deposits. The large banks are thereby enabled to get larger earnings. I think the answer to that is that the general interest rates should be adjusted, and interest rates that the banks charge are adjusted in accordance with the total amount of interest payable to the depositors.

Senator ADAMS. The rates that the New York banks have paid in late years have not been particularly alluring to outside banks?

Mr. ALDRICH. No; they have not. I think, also, that the Federal Reserve Board can very properly fix what those rates should be.

Senator GOLDSBOROUGH. Does not the clearing house association fix the interest rates that may be charged by banks belonging to that association?

Mr. ALDRICH. You see, now the Banking Act of 1933 prevents the paying of any interest rates on demand deposits. Also it provides that the Federal Reserve Board shall have the power to fix interest rates on time deposits.

The CHAIRMAN. Will it be agreeable to you, Mr. Aldrich, to be here tomorrow morning?

Mr. ALDRICH. I will if you would like to have me. I wish it could be arranged so that I do not have to be present.

Mr. PECORA. I wish I had known before, Mr. Aldrich. I thought you were going to remain here anyway until the sessions of the committee had been concluded with regard to any Chase Bank matter or any Chase Bank affiliate matter.

Mr. ALDRICH. All right; I shall be glad to do so.

Mr. PECORA. One thought occurred to me, though, Mr. Aldrich, when Senator Glass this morning was discussing that provision of the banking bill of 1933, in regard to the limitation on the number of directors, whether there should be any limitation imposed by law as to the maximum amount of deposits which any one bank might obtain?

Mr. ALDRICH. I do not think that there should be any such limitation.

Mr. PECORA. Without any limitation it might be possible for a group composing the board of directors of any one bank to obtain a certain measure of control over a large aggregation of depositors. While I do not know that any necessity has heretofore appeared for placing any such limitation, I was wondering whether you had given any thought to the wisdom of such a step or the lack of wisdom of it?

Mr. ALDRICH. No; I have not. I should not say it was necessary to have any such limitation as that. As I said in my statement, I

think that banking should be competitive. I think there should be a number of banks competing. That is one reason why I have the feeling that there should not be interlocking boards of directors between the banks themselves.

Senator COUZENS. What is your judgment as to the relation of capital and surplus to total deposits?

Mr. ALDRICH. I understand that 10 to 1 has been the general rule. I am not really familiar with that, Senator, but I have that impression about it.

Senator COUZENS. Of course, if you use that as a rule or if it were made a statutory provision, almost every bank in the country exceeds 10 to 1.

Mr. ALDRICH. You mean, in their capital?

Senator COUZENS. Yes. I mean, almost every bank in the country has more than 10 times its capital in deposits.

Mr. ALDRICH. I do not know that.

Senator COUZENS. I think so, from my observations.

Mr. PECORA. I think so, too.

Senator COUZENS. I could not prove it, but that is my general observation. What is the relation of your capital to your deposits?

Mr. ALDRICH. Our capital is $148,000,000 and our deposits are $1,200,000,000. Our capital funds are over $200,000,000.

(Witness temporarily excused.)

The CHAIRMAN. Mr. Pecora, you may take up your line of examination that you have in mind.

TESTIMONY OF LESLIE W. SNOW—Resumed

Mr. PECORA. Mr. Snow, are you familiar with the issuance and sale to the public of $16,000,000 par value of 5½ percent first-mortgage loan certificates covering the building of a property known as the Lincoln Building on Forty-second Street in the Borough of Manhattan, city of New York?

Mr. SNOW. Yes, sir.

Mr. PECORA. The Chase Securities Corporation participated in that issue, did it not?

Mr. SNOW. That is correct.

Mr. PECORA. And about the same time, did the same corporation also offer to the public $5,500,000 par amount of 6½ percent debentures?

Mr. SNOW. Yes, sir.

Mr. PECORA. Will you go back to the commencement of that project, when it was first conceived, and by whom, and tell the committee what you know about it?

Mr. SNOW. The plot of land formerly owned by the Lincoln Safe Deposit Co., the Athens Hotel Co., and the estate of Joanna C. Riker, fronting on Forty-second Street, Forty-first Street and Madison Avenue, New York City, on which the Lincoln Building was subsequently built, had been acquired some time prior to the fall of 1927 by Frederick Brown, a large owner of and dealer in real estate. Our records do not show when this property was so acquired or at what price.

Real-estate values in the Forty-second Street zone in New York City had appreciated tremendously over a period of years up to

1928, and in 1928 such values, as determined by competitive bidding for properties, were still increasing.

It is my understanding that in the fall of 1927 or some time prior thereto, Messrs. John H. Carpenter and J. E. R. Carpenter conceived the idea of acquiring the plot of land to which I have referred and constructing a building thereon. Mr. John H. Carpenter was engaged in the real estate business and Mr. J. E. R. Carpenter, his brother, was an architect. Dwight P. Robinson & Co., Inc., likewise became interested in this project with the Carpenters, whether jointly with them at the beginning or subsequently on the invitation of the Carpenters, I do not know.

Mr. PECORA. Dwight P. Robinson & Co., Inc., is a corporation engaged in the real estate business in the city of New York, is it not?

Mr. SNOW. They were engineers and constructors primarily. I do not think their real estate operations were very extensive.

It was proposed at first to arrange with the Radio Corporation of America to sign a long-term lease for a substantial part of the new building and to name the building after that corporation. The files of the Chase Securities Corporation contain letters to Mr. Dodge, vice president of Chase Securities Corporation, and memoranda referring to that proposal.

Mr. PECORA. Have you copies of those letters and memoranda, Mr. Snow?

Mr. SNOW. Yes, sir. Such copies were taken by your investigators.

Mr. PECORA. I call your attention to a memorandum bearing date December 29, 1927, and addressed to Mr. Wiggin by Mr. Dodge, who at that time was an officer of the Chase Securities Corporation, and I show you what purports to be a photostatic reproduction of such memorandum. Will you look at it and tell me if you can identify it as a true and correct copy of such memorandum?

Mr. SNOW. Yes, sir.

Mr. PECORA. I offer it in evidence.

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

(The document referred to, memorandum, December 29, 1927, Dodge to Wiggin, in re Lincoln Building, was received in evidence, marked "Committee's Exhibit No. 212", December 5, 1933, and was subsequently read into the record by Mr. Pecora.)

Mr. PECORA. The memorandum received in evidence as committee's exhibit no. 212 reads as follows [reading]:

COMMITTEE EXHIBIT NO. 212, DECEMBER 5, 1933

DECEMBER 29, 1927.

RE RADIO CORPORATION OF AMERICA BUILDING

To Mr. WIGGIN:

I am enclosing herewith papers received from Dwight P. Robinson & Co. in regard to new building at Forty-second Street between Madison and Park Avenues. I am asking you to take these home over the week-end and read them. This appears to me to be the best proposition of its kind that I have yet seen.

As you will note, the Radio Corporation probably would have taken this deal on with Dwight P. Robinson if Mr. Cravath had not vetoed it. The locality, the cheapness of rental, and the smallness of risk in the preferred stock, considering

the size of the deal, all should go to make this attractive either to a syndicate composed of private individuals or to some corporation that not only wants ample space for itself but the advertisement of having a building like this with its name on it.

(Signed) MURRAY W. DODGE.

Mr. PECORA. Have you with you either the original papers or or copies thereof that accompanied this memorandum from Mr. Dodge to Mr. Wiggin?

Mr. SNOW. I am not certain, Mr. Pecora, just what papers did accompany that memorandum. I have tried to identify them from our files. I suspect they were probably the papers that you have labeled "40-94A, 40-94B, and 40-94C." However, I am not certain that those were the papers that Mr. Wiggin took home with him to read.

Mr. PECORA. I show you what purports to be a photostatic reproduction of a memorandum from the files of what is now the Chase Corporation, which is the successor of the Chase Securities Corporation, bearing date, December 7, 1927, captioned "Memorandum Re-Proposed R.C.A. Office Building." This memorandum is not signed, nor does it appear to be addressed to any particular individual or person. Will you look at it and tell us if you recognize it to be a true and correct copy of a memorandum in the files of the Chase Corporation?

Mr. SNOW. Yes, sir.

Mr. PECORA. Pertaining to this project?

Mr. SNOW. Yes, sir.

Mr. PECORA. I offer it in evidence.

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

(The document referred to, memorandum, December 7, 1927, entitled "Memorandum Re Proposed R.C.A. Office Building" was received in evidence, marked "Committee's Exhibit No. 213", December 5, 1933, and the same will be found at the conclusion of today's proceedings.)

Mr. PECORA. The plan proposed in this memorandum just offered in evidence and marked "Committee's Exhibit No. 213", was not consummated, was it, Mr. Snow?

Mr. SNOW. No, sir.

Mr. PECORA. It fell through?

Mr. SNOW. That is correct.

Mr. PECORA. It was not approved by the Radio Corporation of America?

Mr. SNOW. That is correct.

Mr. PECORA. Eventually was another plan having relation to the acquisition of this property known as the Lincoln Building site, and the construction of a modern office building thereon, entered into by agreement dated the 17th day of May, 1928, a photostatic reproduction of which I now show you?

Mr. SNOW. Yes, sir.

Mr. PECORA. I offer that in evidence.

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

(The document referred to, agreement, May 17, 1928, in re Lincoln Building, was received in evidence, marked "Committee's Exhibit No. 214", December 5, 1933, and the same was subsequently read into the record by Mr. Pecora.)

Mr. SNOW. This agreement of May 17 was one of a series of agreements.

Mr. PECORA. Let me show you what purports to be a photostatic reproduction of another memorandum produced from the files of the Chase Corporation, dated March 22, 1928, entitled "Memorandum, Real Estate Corporation", and which relates to this Lincoln Building project, so called. Will you look at it and tell me if you can identify that as a true and correct copy of such memorandum in the files of the Chase Corporation?

Mr. SNOW. Yes, sir.

Mr. PECORA. I have been informed, informally, that that memorandum which I have just shown you, which is not signed, was prepared by Mr. Murray W. Dodge, or rather, it is a memorandum addressed to Mr. Dodge by Mr. Bean. Have you any way of confirming that?

Mr. SNOW. It might very well have been, but I have no method of identifying it.

Mr. PECORA. I offer it in evidence.

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

(The document referred to, memorandum, March 22, 1928, Bean to Dodge, entitled "Memorandum, Real Estate Corporation", was received in evidence, marked "Committee's Exhibit No. 215", December 5, 1933, and was subsequently read into the record by Mr. Pecora.)

Mr. PECORA. The memorandum just offered in evidence and marked "Committee's Exhibit No. 215" reads as follows [reading]:

COMMITTEE EXHIBIT No. 215

MEMORANDUM

REAL ESTATE CORPORATION,
March 22, 1928.

"It is proposed to form a company of the following capitalization: No-par-value common stock, 100,000 shares authorized; 50,000 shares issue; managers' shares, nominal amount.

The managers' shares shall have 20 percent of the profits.

The no-par-value shares shall receive in liquidation $50 a share first, and the management shares shall be entitled to 20 percent of the profits and in liquidation 20 percent of the surplus, after the common has received $50 a share. No distribution shall be made on the management shares unless the net worth of the company is maintained at all times at $50 a share of the common stock paid in. The company shall have the right to issue collateral-secured notes to the extent of three times the amount of the net value of the common shares.

The purpose of the company: The company is to be formed to assist in the financing of building propositions—constructing, under construction or to be constructed. The company will handle for these projects the sale of first-mortgage bond issues and will finance during construction and invest in the equity in the propositions. Collateral-trust notes can be issued when secured by second mortgages or notes of the companies doing the construction work. The engineering firm of D. P. Robinson & Co. will handle the management and engineering of the company, and ——— will have the handling of the finances.

It is understood that D. P. Robinson & Co. will purchase one third of the common stock of the company and will receive the management shares for the handling of operation and engineering. Interests connected with ——— are prepared to take one third of the stock and it is proposed to offer one third of the stock to 1, and not more than 3, distributing firms who would participate in the handling of the first-mortgage bonds, and when possible, in the collateral notes on the originating basis.

It has been demonstrated to us by D. P. Robinson & Co., on work that they have already done and has been checked through projects outside of this firm's operations that the profits to be derived from financing the equities in these buildings have been large, equivalent in cases to 33⅓ percent of the total risk and in most cases the actual amount required has been one half of the total risk, so that the profits have been over 60 percent of the total equity funds required. These profits are now being made by individuals who are in the real-estate business and know the opportunities, and it is felt that this is the right time to enter into this new class of business in a more permanent way, provided that the best and most experienced management and engineering is acquired, which has been done in the case of this proposed company. As an illustration we will take one project of D. P. Robinson & Co. recently completed.

Total cost of building	$3,000,000
First mortgage loan	1,500,000
Sales value	3,500,000
Profit	500,000

In this operation, while the syndicate underwriting was $1,500,000, at no time was it necessary to provide in excess of $300,000 cash to carry out the operation. The total amount of money employed in the business of the new company would be raised through collateral trust notes, so that none of the actual capital of the company would be employed.

It is not proposed at first to issue any collateral trust notes, but it is proposed that 50,000 shares of common stock shall be sold at $40 a share realizing $1,600,000 and this money will then be employed until such a demonstration has been made of profits that it will be possible to sell the notes and enlarge the company's business.

Mr. PECORA. This memorandum is addressed to Mr. Dodge by Mr. Bean. Mr. Bean was one of the members of the original syndicate who conceived this project, brought it to the notice of the Chase, and then collaborated with the Chase in its financing. That is correct, is it not?

Mr. SNOW. Mr. Bean was a member of Dwight P. Robinson & Co. The particular plan outlined in the memorandum which you have just read, however, was not carried into effect at any time.

Mr. PECORA. The agreement which has been marked in evidence as "Committee's Exhibit No. 214", which is the one of May 17, 1928, did become effective, did it not?

Mr. SNOW. That is correct, sir.

Mr. PECORA. I do not want to take the trouble to read this agreement, which is rather lengthy. Can you give the committee the essential features or provisions of this agreement of May 17, 1928?

Mr. SNOW. Yes, sir.

Mr. PECORA. Mr. Snow, you have in your files an exhibit labeled "38-2A", which I think will give the essential particulars.

Mr. SNOW (after examining papers). The exhibit labeled "38-2A" which I have is something else altogether.

Mr. PECORA. 38-2B.

Mr. SNOW. I am not sure of the accuracy of the statements in this memorandum. It was not prepared by me.

Mr. PECORA. I understand that it is a correct analysis of the agreement of May 17, 1928.

Mr. SNOW. The memorandum to which you refer reads as follows (reading):

The initial syndicate agreement was dated February 24, 1928, the members thereof agreeing to contribute up to $1,000,000 to be used in connection with the purchase of the property on which the present Lincoln Building now stands. The second agreement, dated May 17, 1928, assumed the obligations

of the first syndicate, canceling the February 24 agreement, and provided for the formation of a new syndicate for the purpose of acquiring the property and erecting a building.

The members agreed to contribute $3,150,000 for such purpose, and for which they received @ 90 preferred stock, $3,500,000; common stock, 435,000 shares. John H. Carpenter and Louis H. Bean were designated syndicate managers.

Included in the terms of the agreement is a provision for the assumption by the syndicate members, severally in their respective proportions, of Dwight P. Robinson & Co.'s liability in guaranteeing interest for 3 years on the 6½ percent debentures.

The members of this syndicate and their subscriptions are as follows:

J. H. Carpenter, 22.5 percent	$708,750
J. E. R. Carpenter, 12 percent	378,000
Dwight P. Robinson & Co., Inc., 32.8 percent	1,033,250
L. H. Bean, 1.59 percent	50,000
Dwight P. Robinson, 5 percent	157,500
Enjay Holding Co., Inc. (N. J. Hess), 5 percent	157,500
Chase Securities Corporation, 5 percent	157,500
General Farms & Realty Corporation. E. R. Tucker, 3.17 percent	100,000
Murray W. Dodge, 3 percent	94,500
Comrades Realty Corporation (Pease & Elliman), 7.94 percent	250,000
H. L. Clarke, 2 percent	63,000
Total, 100 percent	3,150,000

That describes the main features of that agreement, and I think it is correct in all essential particulars.

Senator COUZENS. Is that Mr. Harley L. Clarke?

Mr. SNOW. Yes, sir. Mr. Dodge gave him a portion of his participation of 5 percent.

Mr. PECORA. When did the syndicate that proposed this project acquire the land?

Mr. SNOW. The land was acquired on February 18, 1928, from Frederick Brown, or rather, a contract to acquire the land was made at that time. The syndicate of February 24, 1928, made the payment of $1,000,000 on account of that option. That payment had to be made on or before March 1, 1928, and was so made. Then the syndicate of May 17 took over the rights of the February 24 syndicate and proceeded to form a corporation to erect the building.

Mr. PECORA. What was the name of that corporation?

Mr. SNOW. The Lincoln Forty-second Street Corporation.

Mr. PECORA. Do you know who the officers were, the executive officers?

Mr. SNOW. Mr. J. H. Carpenter was president; Mr. L. H. Bean, vice president; and J. E. R. Carpenter, vice president, in the first instance, I believe.

Mr. PECORA. Were they succeeded by other officers?

Mr. SNOW. In 1931 they were; I think not prior to that time, however.

The CHAIRMAN. What did the corporation pay for the land?

Mr. SNOW. It paid $11,600,000.

Mr. PECORA. They deposited $1,000,000 on March 1 toward that purchase.

Mr. SNOW. That is correct.

Mr. PECORA. Who furnished that $1,000,000?

Mr. SNOW. That was furnished by the syndicate of February 24.

Mr. PECORA. That is, the two Carpenters and Dwight P. Robinson & Co. and Bean?

Mr. SNOW. There are quite a number of members to that syndicate. It included the names you mentioned and some others.

Mr. PECORA. The members of that syndicate were carried into the new syndicate that was formed under the agreement of May 17. 1928, were they not?

Mr. SNOW. Yes, sir.

Mr. PECORA. That agreement of May 17, 1928, which is in evidence as exhibit no. 214, I think, is of sufficient importance to justify my reading it to the committee [reading]:

COMMITTEE'S EXHIBIT NO. 214, DECEMBER 5, 1933

Agreement made this 17th day of May 1928 by and between John H. Carpenter and Louis H. Bean, hereinafter called "Syndicate Managers", parties of the first part, and the Syndicate Members hereto, whose names are subscribed to this agreement or to a counterpart hereof (all such counterparts together being considered one agreement), parties of the second part, and all of whom, together with said John H. Carpenter and Louis H. Bean, constitute the Syndicate, and are hereinafter sometimes referred to, collectively, as Syndicate Members,

Whereas the Syndicate Members or some of them, have heretofore entered into a syndicate agreement, dated the 24th day of February 1928, wherein and whereby they agreed together to contribute several respective sums of money, aggregating the total sum of One Million Dollars, to be used in connection with the purchase of certain real property in the Borough of Manhattan, City of New York, now or formerly owned by the Lincoln Safe Deposit Company, the Athens Hotel Company, and the Estate of Joanna C. Riker, on the south side of 42nd Street, the north side of 41st Street, and the east side of Madison Avenue, under a certain contract dated February 18, 1928, between 1928 Holding Corporation as Seller, and 539 Corporation as Purchaser, and which real property is more particularly described in said contract, and

Whereas, pursuant to the power and authority to them given in said agreement, the Syndicate managers therein named have caused the sum of One Million Dollars to be paid to 1928 Holding Corporation pursuant to such contract of sale and have also, pursuant to like power and authority, elected to complete said contract, take title thereunder, in a corporation to be formed, and to erect the building therein contemplated and referred to, and

Whereas the parties to said syndicate agreement of February 24th, 1928, have agreed to modify the same as hereinafter provided, and all of the Syndicate Members whose names are subscribed hereto, have agreed together as follows:

Now, therefore, this agreement witnesseth: That the respective parties, in consideration of their respective and mutual agreements herein contained, hereby agree with each other as follows:

First. The agreement of February 24th, 1928, is hereby annulled and canceled, except as to all acts done and contracts and commitments made thereunder by the Syndicate Managers therein named, all of which acts, contracts, and commitments are hereby ratified and confirmed.

Second. The parties hereto form a Syndicate for the purpose of acquiring said real property and erecting the building contemplated by such contract upon terms and prices satisfactory to the Syndicate Managers, and having acquired the title in a corporation to be formed to finance the enterprise and to hold and/or dispose of the premises in a manner satisfactory to the Syndicate Managers.

Third. John H. Carpenter and Louis H. Bean shall be the Syndicate Managers, and their decision shall be final and binding on all parties to this agreement. John H. Carpenter shall be the Active Manager, and for his services shall receive 2% of the structural cost of the new building, exclusive of Architects' and builders' fees, to be erected on said premises referred to, as hereinafter provided which is to be paid by the syndicate out of the profits thereof before distribution to the Syndicate Members. The Syndicate Managers shall have the sole direction, management, and the entire conduct of the Syndicate, and the enumeration of particular or specific powers in this agreement shall not be considered as in any way limiting or abridging the general

power of discretion intended to be conferred upon and reserved to the Syndicate Managers in order to authorize them to do any and all things proper, necessary, and expedient, in their discretion, to carry out the purposes of this agreement. Neither shall they or either of them be liable under any of the provisions of this agreement or in or for any matter connected therewith, except for want of good faith and the failure to exercise reasonable diligence.

Said Syndicate Managers shall have full power and authority to do any and all acts, and enter into any and all agreements or other instruments necessary or proper or by them deemed expedient in the premises to carry out and perform the full purposes of this agreement.

Fourth. The total amount which the parties hereto agree to contribute to the Syndicate is Three Million One Hundred and Fifty Thousand Dollars, and each of the Syndicate Members agrees to contribute and pay to the Syndicate Managers, on demand as hereinafter provided, the several amounts set opposite his or its name as hereinunder subscribed.

Fifth. A corporation shall be organized under the laws of the State of New York, or other state with such amount and classes of capital stock, and with or without par value, as the Syndicate Managers shall determine, who shall also determine the number of directors, the name of the Company, the manner of issuance of the stock, and all other matters necessary and proper in and about the incorporation.

Sixth. The Syndicate managers may and shall make all necessary contracts for a building loan or loans and/or permanent loan or loans to assist in financing the purchase of such land and the erection and finishing of such building, as they may think best, which loans may be secured by mortgage or otherwise, and all their actions in this regard shall be binding upon the Syndicate Members in proportion to their several subscriptions as hereinbefore set forth. Such loans may be obtained upon such terms as to repayment, interest, discount, and cost as the Syndicate Managers may determine.

Seventh. The contract dated February 18, 1928, hereinbefore referred to and any and all contracts for loans may be assigned to said corporation to be formed, at a price and upon terms to be fixed by the Syndicate Managers, and any or all of the capital stock of said corporation shall be issued to the Syndicate Managers as such, or to such other person or persons and in such amounts as the Syndicate Managers shall determine, in payment for the contracts and other property so assigned and transferred to said corporation.

Eighth. The parties hereto hereby subscribe for the number of shares allotted to each, and at a price fixed by such Syndicate Managers, provided, that the total subscription of each party hereto shall not exceed the amounts of his or its contributions and subscriptions made or to be made pursuant to Paragraph "Fourth" of this agreement; and provided further, that there shall be credited to such subscription the amounts theretofore furnished and paid in by the several parties hereto as in said paragraph provided. No stock certificate shall be issued to any of the parties hereto other than the Syndicate Managers until the Syndicate Managers shall determine, or until said building is completed and fully paid for, unless the Syndicate Managers shall hereafter waive and release some part of such subscription and the parties shall have fully paid the amount not so waived.

Ninth. All the subscriptions under this agreement shall be called and shall be payable in such amounts and proportions and at such times as the Syndicate Managers shall from time to time determine. The parties agree they will make payment within ten days after notice of call shall have been mailed to them at their respective addresses set forth below or at any other address given by the party to the Syndicate Managers, or to the Secretary of said Corporation, except that the first call made by the Syndicate Managers shall be paid within three days after mailing of the notice of call. Syndicate participation receipts shall be given for each and all payments made, which receipts shall be nonnegotiable.

Tenth. If any party hereto shall fail to make payment as and when called for as aforesaid, the stock certificates to which such party might be entitled, and all rights as a stockholder, subscriber to stock, and as a party hereto, shall be withheld until there shall have been returned to all other subscribers and/or parties hereto not in default, the amounts which they shall have paid into the Corporation, and/or pursuant to this agreement; it being hereby intended that such defaulting party shall, by his default, be subordinated as to his rights and as to the return of his investment to the rights and claims of all other nondefaulting parties. Also as another right to the subscribers not in

default, in case of failure of any party as aforesaid, the other parties hereto shall have the right to make such payment in the proportions of their respective subscriptions and to have a certificate of participation issued to them therefor.

Eleventh. Said Corporation and/or the Syndicate Managers may and shall employ J. E. R. Carpenter and his associates to be the architect of said proposed building and to furnish all usual architectural services, including supervision and engineering services, and said Corporation shall pay him and them for such services in usual installments 6% of the actual constructive cost of the erection of such building, excluding financing and carrying charges, and may also employ Warren & Wetmore as Supervising Architects at a compensation to be agreed upon by the Syndicate Managers.

Twelfth. Said Corporation may and shall employ Dwight P. Robinson & Company, Incorporated, as General Contractor to erect such building, such employment to be upon such terms as are usually contained in said last named Company's usual construction contracts, and to provide for a fee to it equal to 6½% of the actual constructive cost of the erection of such building, excluding financing and carrying charges and architects' fees.

Thirteenth. Said Corporation may and shall employ Pease & Elliman, Inc., as rental agents for the building until the completion of the same, or until such further time as the Syndicate Managers may hereafter determine upon; such employment to be upon such terms as to duties, powers, and compensation as are usually contained in said last-named Company's usual rental management contracts and to contain a cancellation clause in form satisfactory to the Syndicate Managers and/or the Board of Directors of the building-owning corporation.

Fourteenth. Said Corporation may and shall employ Stoddard & Mark to be its attorneys and pay them reasonable fees for the services which they render.

Fifteenth. The Syndicate Managers may, in their discretion, borrow such amounts of money from time to time at such rates of interest, and on such terms of repayment and otherwise as they may deem advisable, and may pledge any of the syndicate assets, as well as the agreements of the respective subscribers, as security for any such advances, or the Syndicate Managers may themselves make such advances or any part thereof upon the like pledge and security, and may charge interest on such advances at not more than six per cent per annum; but no personal liability, either to the Syndicate Managers or to anyone making such advances, shall be incurred by or imposed upon the subscribers for the payment of such advances except to the amounts of the unpaid balances of the respective subscriptions of such subscribers.

Sixteenth. The participation and subscription of the parties hereto, evidenced by this agreement, shall be nonnegotiable and nonassignable by the participant or by his executor, administrator, or by his or its successor in interest, except with the consent in writing of the Syndicate Managers.

Seventeenth. Any or all of the stock of the Corporation formed to take title to said premises shall or may be issued to the Syndicate Managers as such, and they shall thereupon have all the powers of a stockholder to vote such stock, as required or permitted by law, to pledge such stock as security for loans to such Corporation or to or for the syndicate or Syndicate Members or otherwise, with the same force and effect as if they were sole owners of such stock. In particular they shall have power to pledge such stock to or for the benefit of the lender or lenders of the building loan, as security for the performance by the Syndicate Members of their agreements hereunder; and to borrow thereon moneys for the account of the syndicate.

Eighteenth. Whereas in connection with the borrowing of money to finance the enterprise, it has or may become necessary for Dwight P. Robinson & Company, Incorporated, and/or the Syndicate Managers in their name, or in the name of the Syndicate Members, to enter into guaranties of completion of the building and payment for the same, free from all liens, and also guaranties of payment of interest for three years after completion upon debenture bonds not exceeding in amount Five Million, Five Hundred Thousand Dollars given for money so borrowed, and whereas Dwight P. Robinson & Company, Incorporated, have agreed to give such guaranties of completion and of payment of interest at six and one half percent per annum for three years, upon such debenture bonds, each of the parties hereto hereby assumes such proportion of the liability of said last-named corporation as guarantor as the amount of the subscription of each of the parties under and pursuant to this agreement bears to the whole

amount subscribed hereunder to wit, Three Million, One Hundred and Fifty Thousand Dollars.

"Nineteenth. Each Syndicate Member hereby ratifies, assents to, and agrees to be bound by any and every action of the Syndicate Managers taken under this agreement, and agrees to perform all of his undertakings hereunder, from time to time, upon call of the Syndicate Managers to the full extent of his subscription, and also as provided in paragraph Eighteenth. Each subscriber shall, upon reasonable request, execute and deliver all further writings, which may be necessary or proper to carry this agreement into effect. Nothing herein contained, or otherwise, shall constitute the Syndicate Members partners to the Syndicate Managers or to each other, or render them liable to contribute more than the amounts set opposite their subscriptions.

Twentieth. This agreement shall be binding upon and enure to the benefit of the executors, administrators and successors of the respective parties.

In witness whereof the parties have signed this agreement and appended their addresses for notices, and the amount of their respective subscriptions.

Then the signatures of the parties thereto are as follows: J. H. Carpenter. J. E. R. Carpenter, Dwight P. Robinson & Co. Inc., L. H. Bean, Dwight P. Robinson, Enjay Holding Co., Inc., Chase Securities Corp., General Farms & Realty Corp., Murray W. Dodge, Comrades Realty Corp., H. L. Clark."

J. H. CARPENTER and L. H. BEAN,
Syndicate Managers.

By (Signed) J. H. CARPENTER.

The CHAIRMAN. What did the building cost? Do you know?

Mr. SNOW. Including the land, Senator——

The CHAIRMAN. No. Just the building.

Mr. SNOW. Just the building itself?

The CHAIRMAN. Yes.

Mr. SNOW. The total cost of the building and equipment, including the financing expenses, was $13,037,000.

The CHAIRMAN. Do you mean that that also includes the land?

Mr. PECORA. No, Mr. Chairman; that does not include the land.

Mr. SNOW. No; that does not include the land. The land cost $11,600,000.

The CHAIRMAN. The building cost how much?

Mr. SNOW. $13,037,000.

Mr. PECORA. The site cost $11,600,000, did it not?

Mr. SNOW. Yes.

Mr. PECORA. And that is exclusive of financing charges?

Mr. SNOW. That includes the financing charges.

Mr. PECORA. That makes the total cost of land and building $24,637,000.

Senator COUZENS. What did some one say it sold at auction for?

Mr. PECORA. $4,750,000. That is correct, is it not?

Mr. SNOW. That is the price bid at the foreclosure sale.

Mr. PECORA. That is the price at which it was sold. That is the highest bid?

Mr. SNOW. That had nothing to do with the value of the building, Mr. Pecora. That was merely the price that the bondholders paid for the building.

Mr. PECORA. Well, that was the highest bid at the public foreclosure sale that was made?

Mr. SNOW. There were no higher bids; that is true. Had there been the bondholders would have bid more. The bondholders would have bid up to the total of the face amount of the certificates.

Mr. PECORA. It had to be sold due to the foreclosure of this first mortgage?

Mr. SNOW. Yes.

Mr. PECORA. And at this public sale the highest bid was made by Mr. Batchelder of the Chase Securities, and his bid was $4,750,000, and the property was knocked down at that figure?

Mr. SNOW. That is a correct statement. Of course it was known that the committee would bid for the building up to the face amount of the certificates.

Senator COUZENS. What was the face amount of the certificates?

Mr. SNOW. $16,000,000.

Mr. PECORA. That is the first-mortgage certificates you are referring to?

Mr. SNOW. Yes.

Senator COUZENS. Do I understand that all of the $16,000,000 first-mortgage certificates are secured by this property now?

Mr. SNOW. That is correct; yes, sir. All of those who deposited their certificates with the committee.

Mr. PECORA. All of those who deposited their certificates with the committee.

Senator COUZENS. What percentage of the aggregate did deposit their certificates?

Mr. SNOW. It was in excess of 95 percent.

Senator COUZENS. So substantially all of the holders of these $16,000,000 of first-mortgage certificates have the building in their acquisition?

Mr. SNOW. That is true; yes, sir.

Senator COUZENS. The $16,000,000 that was invested in first-mortgage certificates?

Mr. SNOW. Yes.

Senator COUZENS. Is the building sufficiently profitable to justify a return on that amount?

Mr. SNOW. It is my understanding that the building is operating profitably at the present time. I do not have the current figures here. I can get them for you if you like.

Senator COUZENS. So we gather from the picture, summarizing it, that even though the $16,000,000 first-mortgage certificates pay out, the difference between that and what it was alleged to have cost—some $24,637,000—has been lost? Is that correct?

Mr. SNOW. I think that is a correct statement, Senator; yes, sir.

Mr. PECORA. What did the nondepositing holders of the first-mortgage certificates receive in cash?

Mr. SNOW. They received their pro rata share, which in dollars amounted to $337 per $1,000 first-mortgage certificate, and in addition to that there will be a slight additional amount paid.

Mr. PECORA. And there were 5½ million dollars of debentures issued and sold at the same time as the first-mortgage certificates were issued and sold. They have been wiped out by this foreclosure, have they not?

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

The CHAIRMAN. How much stock was sold in connection with this? How much stock was issued by the corporation?

Mr. SNOW. The total capital stock issued was $3,500,000 par value preferred stock and 600,000 shares of common stock. The $3,500,000 preferred stock and 435,000 shares of the common stock were sold to the syndicate, which paid therefor $3,150,000 in cash.

Mr. PECORA. That was the originating syndicate, was it not?

Mr. SNOW. Yes, sir.

Mr. PECORA. And that was the amount of money that the originating syndicate put into this whole enterprise?

Mr. SNOW. Initially.

Mr. PECORA. Yes; $3,150,000?

Mr. SNOW. Yes.

The CHAIRMAN. Did they sell the stock to the public for that?

Mr. SNOW. No, sir. There was no stock sold to the public.

Senator COUZENS. But this entire $3,150,000 originating syndicate investment has been lost; is that correct?

Mr. SNOW. That is entirely lost; yes, sir; plus the additional moneys that the syndicate put out.

Mr. PECORA. I notice that in this agreement a Mr. Murray Dodge is one of the original syndicate members?

Mr. SNOW. That is correct.

Mr. PECORA. In his individual right?

Mr. SNOW. In his individual right; yes, sir.

Mr. PECORA. Was he a member of the originating syndicate before the financing of the project was undertaken by the Chase Securities Corporation?

Mr. SNOW. No, sir. He was a member first of the February 24, 1928, syndicate.

Mr. PECORA. Was he not a member of the syndicate that was formed some time in December 1927?

Mr. SNOW. It is my understanding that he was not. I think he first came into the picture in February.

Senator COUZENS. After all these securities had been issued and were out what happened to the building that it did not pay a return on those investments?

Mr. SNOW. The building was completed on time, Senator, and it was rented in large part; that is, over 50 percent of the building was filled, but just at that time, which was shortly after 1929, the complete demoralization of the real-estate business in New York caused decline in real-estate values and in rental rates, and the rental agents were simply unable to complete the renting of the building. Consequently the income never did suffice to meet the fixed charges.

Senator COUZENS. Were there any fixed charges other than those on the $16,000,000 first-mortgage participation?

Mr. SNOW. In addition to that the interest on the $5,500,000 debentures and on the $1,600,000 purchase money notes.

Senator COUZENS. They were all in default?

Mr. SNOW. They were all in default; yes.

Mr. PECORA. How about the preferred stock?

Mr. SNOW. Well, the preferred stock, of course, did not bear any fixed rate of return, but it never did pay any dividends.

Mr. PECORA. Whatever money was paid for the preferred stock was lost?

Mr. SNOW. Oh, yes. That is correct, sir.

Mr. PECORA. And do you know the accurate amount paid for the preferred stock?

Mr. SNOW. The preferred and common together, $3,150,000.

Mr. PECORA. I now show you what purports to be a photostatic reproduction of the financing agreement or contract entered into

under date of May 21, 1928, between the Lincoln Forty-second Street Corporation, John H. Carpenter and Louis H. Bean, as syndicate managers, and Chase Securities Corporation, E. H. Rollins & Sons, and Continental National Co. Will you look at it and tell me if you recognize it to be a true and correct copy of such a financing agreement as was actually executed and entered into? [Handing same to Mr. Snow.]

Mr. SNOW (after examining same). Yes, sir.

Mr. PECORA. I offer that in evidence.

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

(Financing agreement, Lincoln Forty-second Street Corporation, dated May 21, 1928, between John H. Carpenter and Louis H. Bean as syndicate managers, and Chase Securities Corporation, E. H. Rollins & Sons, and Continental National Co., was received in evidence, marked "Committee Exhibit No. 216, of Dec. 5, 1933", and is printed in full at the close of today's hearing.)

Mr. PECORA. What are the essential features—in order to abbreviate the record—with respect to this financing agreement, Mr. Snow?

Mr. SNOW. This was an agreement dated May 21, 1928, between John H. Carpenter and Louis H. Bean, syndicate managers, and the Chase Securities Corporation, E. H. Rollins & Sons, and Continental National Co., the bankers. The agreement confirmed the formation of the syndicate of May 17, 1928, and set forth the steps which had been taken or would be taken to organize the corporation and acquire the Lincoln building site and to erect the building thereon. Evidently at this time the papers had been prepared, because the certificate of incorporation, the first-mortgage indenture, debenture-trust indenture, the completion bonds and the deposit agreements were attached to the agreement. The agreement then provided that in consideration of the bankers undertaking to arrange for the purchase of the first-mortgage certificates and debentures the syndicate agreed to assign to the bankers 165,000 shares of the company's common stock.

Those are the essential provisions.

Mr. PECORA. The fact is that the originators of this project were required to put up not more than $3,150,000 as their equity money in the project?

Mr. SNOW. And to undertake additional obligations, however.

Mr. PECORA. The bankers undertook to sell to the public $16,000,000 of first mortgage certificates bearing 5½ percent interest, $5,500,000 of debentures bearing 6½ percent interest; is that right?

Mr. SNOW. That is right.

Mr. PECORA. Or $21,500,000 on an equity of not more than $3,150,000 to be put up by the originators?

Mr. SNOW. Plus the guarantee of the interest on the debentures for 3 years.

Mr. PECORA. That was the engineering firm of Dwight P. Robinson & Co.?

Mr. SNOW. Yes; and their relative proportions were also assumed by the other members of the syndicate. They also guaranteed completion of the building and agreed to provide additional money that might be required:

Mr. PECORA. That guarantee of the payment of 3 years' interest only ran in favor of the debenture holders?

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

Mr. PECORA. Did the Lincoln Forty-Second Street Corporation, which was the corporation organized in pursuance of the terms of this syndicate agreement of May 17, 1928, thereafter issue these $16,000,000 of first mortgage certificates?

Mr. SNOW. Yes, sir.

Mr. PECORA. And also the $5,500,000 of debentures?

Mr. SNOW. Yes, sir.

Mr. PECORA. To whom were they issued?

Mr. SNOW. They were issued to the bankers previously mentioned.

Mr. PECORA. Under this agreement of May 21, 1928, which has been received in evidence as exhibit no. 216; is that right?

Mr. SNOW. Yes.

Mr. PECORA. At what price were they issued to the members of that banking syndicate?

Mr. SNOW. The first-mortgage certificates were acquired at 96, and the debentures at 94.

Mr. PECORA. At what price were they then sold to the public? Do you know?

Mr. SNOW. The first mortgage original group sold to the bankers' group of 76 members at 97½, and through a selling group the bankers' group offered to the public at 100.

Mr. PECORA. What common stock was issued by this corporation, and upon what terms?

Mr. SNOW. There were 600,000 shares of common stock authorized, of which 55,000 shares were reserved for debenture warrants; 435,000 shares were purchased by the syndicate, together with the preferred stock, and the balance——

Mr. PECORA. When you say they were purchased by the syndicate do you mean that they were included as a bonus to the syndicate for the purchase of the preferred stock?

Mr. SNOW. No, sir; it was not bonus stock.

Mr. PECORA. Was there any allocation of price between the two classes of stock?

Mr. SNOW. There was no allocation between the two. The preferred stock and the common together, that is the 435,000 shares of common, were acquired for the flat price of $3,150,000.

Senator COUZENS. Bought en bloc?

Mr. SNOW. Bought en bloc; yes, sir. The balance of the common stock, namely, 110,000 shares, was distributed among the bankers in consideration for their undertaking to do the financing.

Mr. PECORA. Well, that was bonus stock, was it not?

Mr. SNOW. That was bonus stock.

Senator COUZENS. And did they sell that?

Mr. SNOW. No, sir. That was retained by the bankers.

Senator COUZENS. And they still have it?

Mr. SNOW. Yes sir.

Mr. PECORA. Fifty-five thousand shares of the common stock were set apart for those who purchased the $5,500,000 of debentures, were they not?

Mr. SNOW. Yes, sir.

Mr. PECORA. On the original set-up of this corporation, and even after the completion of the building, Mr. Snow, did any value actually attach to that common stock?

Mr. SNOW. No; I think not.

Mr. PECORA. At no time?

Mr. SNOW. At no time.

Senator COUZENS. Was there a prospectus issued when these securities were offered?

Mr. SNOW. Well, there was an offering circular issued in connection with the first-mortgage certificates and also the debentures. None in connection with the common stock.

Senator COUZENS. Have you that, Mr. Pecora?

Mr. PECORA. Yes. I have a photostatic reproduction of the prospectus.

I now show you, Mr. Snow, what purports to be a photostatic reproduction of the circular or prospectus that accompanied the offering to the public of the $16,000,000 of first-mortgage certificates Will you please look at it and tell me if you recognize it to be a true and correct copy of such a circular or prospectus? [Handing same to Mr. Snow.]

Mr. SNOW (after examining same). Yes, sir.

Mr. PECORA. I offer that in evidence.

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

(Prospectus of $16,000,000 Lincoln Building, Lincoln Forty-second Street Corporation, first mortgage 5½ percent sinking fund gold loan, was received in evidence, marked "Committee Exhibit 217, of December 5, 1933", and is printed in the record in full at the close of today's hearing.)

Senator COUZENS. Was there any difficulty in selling these bonds?

Mr. SNOW. Yes there was, Senator. Neither the first mortgage bonds nor the debentures went very well.

Senator GORE. What did the building cost. I missed that.

Mr. SNOW. The building by itself, including financing charges, Senator, cost $13,037,000. The land was an additional $11,600,000.

Mr. PECORA. The Chase Securities Corporation became a party to the financing of this project on or about May 21, 1928, that being the date of the agreement with respect to the financing, that has been offered in evidence?

Mr. SNOW. Yes, sir.

Mr. PECORA. Have you in the files of the Chase Corporation a memorandum addressed to H. G. F., who, I understand, is Mr. Halstead G. Freeman, then the president of the Chase Securities Corporation, by A. H. W.? I understand those initials to refer to Mr. Albert H. Wiggin; dated June 14, 1928, a photostatic copy of which I now show you. (Handing same to Mrs. Snow.)

Mr. SNOW (after examining same). Yes, sir.

Mr. PECORA. Do you recognize that to be a true and correct copy of such memorandum?

Mr. SNOW. Yes.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. Let it be admitted.

(Memo to H. G. F. from A. H. W. dated June 14, 1928, was received in evidence and marked "Committee Exhibit No. 218, of December 5, 1933.")

Mr. PECORA. The memorandum in question, received as committee exhibit no. 218, reads as follows [reading]:

Memo. To H. G. F.:
We have on the Board of the Bank two Directors who are the best posted individuals on real estate values in New York—Mr. Ecker and Mr. Lee. I know that Mr. Ecker rather disapproves of the financing we have done in connection with the Lincoln Building. I think Mr. Lee does also, but he has not expressed himself to me. The Chase Securities Corporation is in a position to get the benefit of the judgment of these two experts at any time. We should hesitate to enter into a banking operation that does not meet with their approval.

(Signed) A. H. W.

June 14, 1928.

Mr. PECORA. Mr. Snow, it would seem from this memorandum that the Chase Securities Corporation lent itself to this financing without having first obtained the judgment of two members of the board of directors of the Chase National Bank, whose wholly owned subsidiary the Chase Securities Corporation was, and who it was considered possessed expert knowledge on real-estate operations in New York. Is that so?

Mr. SNOW. Well, from this memorandum, Mr. Pecora, I assume that is true, certainly with respect to Mr. Ecker. Mr. Lee, however, did not become a director of the Chase National Bank until sometime in April 1928.

Mr. PECORA. Well, but the financing contract was not entered into until May 21, 1928?

Mr. SNOW. That is very true.

Mr. PECORA. At which time Mr. Lee was a member of the board of the Chase Bank?

Mr. SNOW. That is true. But the financial set-up had been prepared and the investigation made and all prior to that time, and experts had been consulted who were considered to be authorities in this field.

Mr. PECORA. Who were the experts who had been so consulted?

Mr. SNOW. George R. Read & Co., Albert B. Ashforth, Charles F. Noyes Co.

Mr. PECORA. And had an appraisal been made or been furnished by each of those so-called "experts"?

Mr. SNOW. Yes, sir. Charles F. Noyes Co., Inc., is one of the largest real estate organizations in New York City, and on April 18, 1928, they estimated that the value upon completion, including land, building, taxes, insurance, interest during construction, etc., would be $25,870,000.

George R. Read & Co., one of the oldest real estate firms in New York City, was consulted, and estimated on May 10, 1928, that the cost of the completed property would be approximately $26,000,000.

Albert B. Ashforth, an independent real estate expert, estimated on May 1, 1928, that gross earnings, after allowing for 10 percent vacancies, should approximate $3,224,000, and after the deduction of operating expenses and property taxes, the net earnings from operations should be $2,302,000.

That was the lowest estimate of earnings which was received, and was the one that was used in the offering circulars.

Mr. PECORA. You mean that Ashforth submitted an estimate of a total rental income of $3,224,000, which included an allowance for only 10 percent of vacancies?

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

Mr. PECORA. Well now, at that time there had been for just a few years prior to 1928 considerable office building construction in the so-called "Grand Central District, the Borough of Manhattan, the city of New York", had there not?

Mr. SNOW. There had been, but those office buildings had been very rapidly filled and space was being consumed at a very substantial rate.

Mr. PECORA. Do you know whether any of those buildings had been rented up to 90 percent of their capacity at the time Ashforth made this estimate?

Mr. SNOW. I am not sure as to the exact date, Mr. Pecora, but it is my understanding that the Graybar Building was over 90 percent rented.

Mr. PECORA. Which building?

Mr. SNOW. The Graybar.

Mr. PECORA. The Graybar Building?

Mr. SNOW. Yes.

Mr. PECORA. You are mentioning only one building now.

Mr. SNOW. That is correct.

Mr. PECORA. Do you know how the rental income per square foot, which constituted the basis of Mr. Ashforth's estimate, compared with the rental values which were being currently obtained from similar office structures in that locality?

Mr. SNOW. Why, I think they coincided with the rental values that were obtained.

Senator COUZENS. You stated a while ago that there was difficulty in selling those securities. How many were actually sold, all of them, and over what period of time?

Mr. SNOW. I can give it to you. I have it right here among my papers.

The CHAIRMAN. Senator Couzens, you mean the $16,000,000 of mortgage bonds?

Senator COUZENS. Yes. One reason why I ask this question, I observe from the advertisement itself that it shows the first mortgage bonds amounted to 63½ percent of the appraised value. That seems to be a high percentage of appraised value for first mortgage bonds.

Mr. SNOW. The appraised valuation upon completion of the building was over $26,667,000. The figure that I quoted a moment ago was the valuation given by the experts prior to its construction.

Senator COUZENS. Well, according to the advertisement that appeared in the New York Times on May 23, it says 63½ percent of the appraised value.

Mr. SNOW. That is correct as of the time the financing was done.

Mr. PECORA. Now, referring to the——

Senator COUZENS (interposing). The witness is going to tell how many were sold.

Mr. PECORA. All right.

Senator COUZENS. Go ahead and tell us.

Mr. SNOW. With respect to the first mortgage certificates, 332 members of the selling group subscribed for an aggregate of $15,577,500. That was substantially all of the first-mortgage certificates, leaving an unsold balance of $422,500. Now, with respect to the debentures, it was a different situation. The selling group members subscribed for an aggregate of $1,730,500, leaving an unsold balance of $3,769,500.

Senator COUZENS. And who held those?

Mr. SNOW. They were held by the original bankers, namely, Chase Securities Corporation, E. H. Rollins & Sons, and Continental National Co.

Mr. PECORA. Was anything done about the action embodied in Mr. Wiggin's memorandum to Mr. Freeman, which has just been offered in evidence?

Mr. SNOW. I cannot answer that. I do not know what action was taken subsequent to the receipt of this memorandum. I did not see this memorandum personally until some time after June 14, 1928.

Mr. PECORA. Have you the circular that was issued, or the prospectus that was issued by the banking group which took over the 5½ million dollars par amount of debentures?

Mr. SNOW. Yes, sir.

Mr. PECORA. I show you what purports to be a photostatic reproduction of such circular or prospectus. Will you look at it and tell us if you can identify it as being a true and correct copy thereof?

Mr. SNOW. This copy, Mr. Pecora, was a subsequent circular. This was dated in December 1929. It was not the original offering circular.

Mr. PECORA. Where is the original? Have you a copy of the original circular?

Mr. SNOW. Yes, sir.

Mr. PECORA. Will you produce it, please?

Mr. SNOW. Here it is.

Mr. PECORA. Mr. Chairman, I offer this in evidence and ask that it may be made a part of the record.

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

(A prospectus for $5,500,000 of Lincoln Building 20-year 6½ percent sinking fund gold debentures was marked "Committee Exhibit No. 219, Dec. 5, 1933", and will be found at the end of the day's proceedings.)

Mr. PECORA. Now, Mr. Snow, these debentures were sold at par to the public, were they not?

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

Mr. PECORA. As a matter of fact these debentures according to the circular or prospectus that was issued to accompany their offering to the public, were secured by a trust indenture under which The Chase National Bank was named as trustee.

Mr. SNOW. That is correct.

Mr. PECORA. And under the terms of that trust indenture these debentures were virtually secured by a second mortgage on the property, were they not?

Mr. SNOW. Yes, sir.

Mr. PECORA. Was there any reason why they were not described in the prospectus to the public as second-mortgage bonds instead of gold debentures, sinking-fund gold debentures?

Mr. SNOW. I do not recall any reason, Mr. Pecora.

Mr. PECORA. Do you think it was because if they had been characterized or designated as second-mortgage bonds instead of as gold debentures, that the public might not have subscribed so freely for them at par?

Mr. SNOW. On the contrary, I would think the public would have been more likely to subscribe for a second-mortgage bond than for a debenture.

Mr. PECORA. Do you think the public would have been likely to subscribe for a second mortgage at 100 or par?

Mr. SNOW. I would think so.

Mr. PECORA. Where the lien of the second mortgage was subsequent to the lien of a first mortgage of $16,000,000?

Mr. SNOW. Well, certainly a debenture would be subsequent to that lien.

Mr. PECORA. Well, the public has one idea of debentures and another idea of second mortgages. Second mortgages, as you know, are usually sold at quite a discount, aren't they?

Mr. SNOW. I am not very familiar, Mr. Pecora, with the public attitude with respect to debentures and second mortgages, and I frankly do not know why it was, at least at this time, that those were not called second-mortgage bonds.

Mr. PECORA. Second-mortgage bonds would have been a more correct designation of them, would it not?

Mr. SNOW. I am not certain about that. I know that this was done under legal advice at the time, and there must have been some reason why these were called debentures rather than second-mortgage bonds.

Mr. PECORA. I am trying to find out what the reason was. I merely suggested a reason why they were called gold debentures and not second-mortgage bonds. In other words, in order to make them more attractive on their face to the public, wasn't it?

Mr. SNOW. May I see if I can get the answer for you?

Mr. PECORA. It is rather amazing that these second-mortgage bonds, which is what they really were, were sold to the public under the name of gold debentures.

Mr. SNOW. Might I consult with attorneys here?

Mr. PECORA. Yes.

Mr. SNOW (after consulting with attorneys). I am sorry that I cannot answer that question completely. I do not know why it was that these were not set forth as second-mortgage bonds. The circular, however, does clearly set forth that these were preceded by $16,000,000 of first-mortgage certificates, and certainly the term "debentures" is more conservative than the term "second mortgage." Debentures ordinarily indicate no lien at all on specific property.

The CHAIRMAN. Under what procedure was the property sold and bought at the sale at $4,750,000? Was that under one of these trusts or mortgages?

Mr. SNOW. It was under foreclosure sale.

The CHAIRMAN. And there was this $16,000,000 mortgage?

Mr. SNOW. Yes, sir.

The CHAIRMAN. It was at a foreclosure sale.

Mr. SNOW. Yes, sir.

The CHAIRMAN. And that wiped out the second mortgage entirely.

Mr. SNOW. That resulted, of course, in the second mortgage being wiped out.

Senator COUZENS. And all the capital stock, both preferred and common, was wiped out.

The CHAIRMAN. Yes.

Mr. PECORA. Now, referring for the moment to the prospectus that accompanied the offering of the 16-million-dollar first-mortgage bonds to the public, under the caption "valuation" the following statement appears:

> The value of the land as represented by the cost thereof, together with the estimated cost of the building, with carrying charges, including interest and taxes during construction but exclusive of discounts on securities, is estimated by Dwight P. Robinson & Co., Inc., at $25,200,000. Charles F. Noyes Co., Inc., representing the bankers, has estimated the value of the land and the building when completed at $25,869,000.

Now, Dwight P. Robinson & Co., Inc., referred to therein, is of course a company that was a member of the originating syndicate.

Mr. SNOW. Yes, sir.

Mr. PECORA. And the public was not informed of that fact in this circular, was it? I mean when it was asked to place some reliance upon the appraisal made by Dwight P. Robinson & Co., Inc.

Mr. SNOW. Dwight P. Robinson & Co., Inc., were referred to in the circular as members of the syndicate which would control the Lincoln Forty-second Street Corporation. That paragraph appears on the inside of the circular and reads as follows:

> Lincoln Forty-second Street Corporation will be controlled by a syndicate composed of Dwight P. Robinson & Co., Inc., and John H. Carpenter and associates. The management of the building will be under the direction of Dwight P. Robinson & Co., Inc., and John H. Carpenter. The leasing of space will be handled by Pease & Elliman, Inc. Dwight P. Robinson & Co., Inc., is one of the leading engineering and construction companies in the United States, and has had wide experience in the construction and management of office and apartment buildings in New York City. All of the voting stock of Dwight P. Robinson & Co., Inc., is owned by United Engineers and Constructors, Inc., which company in turn is owned by United Gas Improvement Co., Public Service Corporation of New Jersey, and Day & Zimmermann, Inc. United Engineers and Constructors, Inc., also owns or controls United Gas Improvement Contracting Co., Public Service Production Co., and Day & Zimmermann Engineering & Construction Co., Inc.

Mr. PECORA. Well, there is nothing in that statement that indicates that Dwight P. Robinson & Co., Inc., were members of the originating syndicate that conceived this project and furnished some of the equity money, or $3,150,000.

Mr. SNOW. There was no direct reference to equity money, but certainly there was the inference that they were largely interested in the building.

The CHAIRMAN. The subcommittee will now stand adjourned until 10.30 o'clock tomorrow morning.

(Thereupon, at 4 p.m., Tuesday, Dec. 5, 1933, the subcommittee adjourned to meet at 10.30 o'clock the following morning.)

COMMITTEE EXHIBIT No. 213, DECEMBER 5, 1933

DECEMBER 7, 1927.

MEMORANDUM RE PROPOSED R.C.A. OFFICE BUILDING

Southerly side of 42nd Street, between Madison and Park Avenue; having a frontage of 181' 6" on 42nd Street and 179' 6" on 41st Street, by 200' on the westerly and easterly line; approximately 40,000 sq. ft. On this plot it is proposed to erect a modern office building of probably 60 stories, 30 stories of which will probably be in the form of a tower. It is proposed that this tower will be architecturally and structurally superior to any building tower in upper New York, but will be so designed as to be commercially profitable from an operating standpoint, its base being 10,000 square feet.

The building with its central location and with the surrounding shops, department stores, banking institutions, hotels, railroad terminals, enjoys every transportation facility, giving it a permanence and advertising value which will attract leading corporations and other desirable class of tenants, such as engineering concerns, architects, insurance companies, legal firms, etc., who have been moving north during the last ten years, precluding the possibility of suspended income such as might be possible in a structure not so desirably located or having a highly specialized class of tenancy, such as 5th Avenue and most downtown office buildings.

The ground floor will be devoted to shops. Available for that purpose after allowing for entrance of 25 feet on 42nd and 41st Streets, there is remaining frontage of 156 feet on 42nd Street and 155 feet on 41st Street, and it is felt that the earnings anticipated are conservative.

The 41st Street stores frontage should produce the rental expected, it being the entrance and access to the numerous activities housed within the proposed structure.

While the 23'9" Madison Avenue frontage will be used for entrance purposes, not all of this space is lost as to revenue, as it will be possible to have shops on both sides of the corridor leading from Madison Avenue.

It is proposed that the level below the ground floor will have several parallel arcades for the location of restaurants, cafeterias, barber shops, telegraph offices, telephone booths, cigar stands, newspaper stands, theatre ticket offices, drug stores, candy shops, steamship ticket companies, cable companies, tourist agencies, and similar concessions and corporations that require central and accessible locations for contact with their customers.

One not familiar with the location and its advantages might question the rentals expected for ground floor space. The answer is that tenants are paying that and in excess of that for locations in the immediate vicinity. For example, directly across the street Childs Restaurant is located on the ground floor of the Liggett Building. It has 25-foot frontage on 42nd Street running through to 43rd Street and is rented on a 10-percent basis of the gross income. In this space it is reported that an annual business was done last year of $900,000, the landlord receiving $90,000, or $3,600 per front foot, for the 25 feet facing 42nd Street. Rentals will increase with the increased patronge of the restaurant.

Another example is the ground floor directly opposite the building, 51 E. 42nd Street, leased at in excess of $20 per square foot ten years ago, which space, if now available, would readily command $40 per square foot.

The ability to obtain rentals anticipated in this estimate cannot be compared with the obtainable rentals for like businesses in lower Manhattan. Obtainable ground floor rent is based upon the tenants' ability to earn; in so-called lower Manhattan this ability to earn is probably confined to the hours between 9 a.m. and 5 p.m., 300 days in the year, and it might be termed a "quiet village" for twenty-four hours per day for at least 65 days in the year. This location, if any in New York, is alive twenty-four hours daily, 365 days yearly.

The second and third floors, or banking space, of which there are 29,166 square feet, should bring the rentals anticipated, $16.00 per square foot. This is based on obtainable rate for like space, although the nearest example of second floor banking space as used by the Bank of Manhattan in the Prudence Building at 43rd Street and Madison Avenue, not as favorably located, is rented, I understand, at a rate of $63,000 for less than 4,000 feet.

It is felt that the earning power of the ground floor and lower level space and upper floor space in this building is more properly balanced than in any

other building in the zone. On 5th Avenue, for example, it is the understanding that the landlord is compelled to derive in excess of 50 percent of his income from ground and 2nd floor tenants to carry the project. In this case, the proposed building has all the advantages of 5th Avenue ground floor shops and at the same time is located in a block where high class office space is in constant demand. The adjoining Heckscher Building, we are informed, averages $4.70 above the 2nd floor, the Vanderbilt Avenue Building across the street, $4.52.

I believe in this particular building that before the completion a substantial portion of the upper floor space will be leased. I wish to point out that during the years 1922–25 the most intensive office building activity ever projected in the Grand Central Zone was actively under way.

There were being erected at that time the following: Marlin-Rockwell, Heckscher Tower, National City Bank Building, Liggett, Pershing Square, Canadian Pacific, N.E. Corner 46th St. and Madison Avenue, Park-Lexington, Postum Borden, 51 E. 42nd St., 11 E. 45th Street Buildings and 13 floors added to the N.Y. Central Express offices and the American Bond & Mortgage Building.

During the period 1922–25 approximately 4 million square feet of not rentable space were added to this zone. Nevertheless, a large part of this space was contracted for during construction and within a year after completion, these buildings were substantially filled.

At the present time the average vacancies in these buildings are less than 2 percent. Since that time a number of other office buildings have been erected on Fifth, Madison, and Lexington Avenues, all of which found ready occupancy. Prediction was made at the time that the space would be a drug on the market and entail losses to the builders and investors. As a matter of fact, in every instance, the builders and owners have realized a profit if they have sold.

As to the tower portion of the building: While many towers are erected for their advertising value and are correspondingly inadequate from an income point of view, the tower space in this building, due to the size of its base is of commercial proportions and will yield even a higher profit return per square foot than the lower part of the structure.

If the ability to readily rent the additional upper floor space is questioned, it might be mentioned that at the present time there are only two structures in the course of construction in the Grand Central Zone; one of them the N. Y. Central Building, and the other the Chanin at 42nd Street and Lexington Avenue. In reference to the former, the New York Central Building, all the ground floor and arcade space is taken up for traffic purposes and will therefore not compete as to ground floor space. With respect to the Chanin Building, it will not compete with this building because it is of a loft-structure type, and both will be completed within a year prior to this contemplated structure.

"In view of the fact that the 4 million square feet added in the three years between 1922 and 1925 were completely absorbed in the period between the time of completion and present date and established a new high rental value for upper floor office space, it is reasonable to assume that this structure, finished a year after the 800,000 feet now in course of construction will have been completed and absorbed, will have no difficulty in finding occupants.

COMMITTEE EXHIBIT No. 216, DECEMBER 5, 1933

LINCOLN FORTY-SECOND STREET CORPORATION, FINANCING AGREEMENT, DATED, MAY 21, 1928, BETWEEN JOHN H. CARPENTER AND LOUIS H. BEAN AS SYNDICATE MANAGERS, AND CHASE SECURITIES CORPORATION, E. H. ROLLINS & SONS, CONTINENTAL NATIONAL COMPANY

MAY 21, 1928.

CHASE SECURITIES CORPORATION,
E. H. ROLLINS & SONS,
CONTINENTAL NATIONAL COMPANY,
New York City.

DEAR SIRS: As Managers of the Syndicate formed under Syndicate Agreement dated May 17, 1928, (hereinafter called the Syndicate), we write to confirm the agreement between such Syndicate and yourselves as to your participation as Bankers in financing the purchase of the real property in the City of New York hereinafter mentioned and the erection of a large office building thereon as follows:

1. The Syndicate has been duly formed under the above-mentioned Syndicate Agreement, a copy of which has been delivered to you, by subscriptions for the full amount of the Syndicate by participants, a list of whom has also been delivered to you. As you are interested in the continuing ability of the Syndicate to perform its obligators as hereinafter set forth, it is understood that the Syndicate Agreement will not be modified without your approval and that no releases or substitutions of participants therein will be made or consented to without your approval.

2. The Syndicate has a contract right by assignment to purchase the real property now or formerly occupied by the Lincoln Safe Deposit Company, the Athens Hotel Company and the Estate of Joanna C. Riker, on the south side of 42nd Street and north side of 41st Street and the east side of Madison Avenue, in the City of New York, at a cost of not exceeding $11,600,000, of which $1,600,000 is payable to the vendor by the delivery of the 6% Purchase Money Notes hereinafter referred to. The Syndicate plans to complete the purchase of said real property and to erect thereon an office building, estimated to cost, including interest and taxes during construction but exclusive of cost of financing, approximately $13,600,000.

3. A corporation to be known as the Lincoln Forty-Second Street Corporation (hereinafter called the Company) has been organized under the laws of the State of New York, with the powers and with the authorized shares of preferred and common stock as set forth in the copy of the Certificate of Incorporation delivered herewith as Exhibit 1 and made a part hereof.

4. The Company will acquire, on June 1, 1928, a good and marketable title to said real estate, free annd clear of all liens and encumbrances (except such minor restrictions as you may approve and the mortgages hereinafter mentioned), and will thereafter erect on said site a 52-story office building, to be known as the Lincoln Building, with approximately 915,000 square feet of rental area, under the supervision of J. E. R. Carpenter, as architect, who will have associated with him E. J. Willingdale, Kenneth B. Norton and William Harmon Beers. The building is to be constructed by Dwight P. Robinson & Company, Inc., and it is understood that Messrs. Warren & Wetmore, as supervising architects, will represent you as Bankers. The estimated time for the completion of the building is eighteen months, and it is agreed that the same will be completed in any event not later than June 1, 1930.

5. The Company, by appropriate action of its Board of Directors and stockholders will be authorized to issue:

600,000 shares of its Common Stock, without nominal or par value.

35,000 shares of its Preferred Stock of the par value of $100 each, entitled to the rights, preferences and privileges set forth in the charter delivered herewith as Exhibit 1.

$16,000.000 principal amount of First Mortgage 5½% Sinking Fund Loan, to be secured by and to be represented by certificates issued under a closed first mortgage to The Chase National Bank of the City of New York as Trustee in the form of the proposed mortgage delivered herewith as Exhibit 2 and made a part hereof, with such changes therein as you may approve.

$5,500,000 principal amount of 20-Year 6½% Sinking Fund Debentures issued under and secured by an Indenture of Trust to The Chase National Bank of the City of New York as Trustee, in the form of the proposed Indenture of Trust delivered herewith as Exhibit 3 and made a part hereof, with such changes therein as you may approve.

$1,600,000 principal amount of 6% Purchase Money Notes, to be issued under and secured by the above-named Indenture of Trust securing the above-mentioned Debentures delivered herewith as Exhibit 3, but by a lien subordinate in all respects to the lien securing said Debentures, as provided in said Indenture of Trust.

6. The title to said real property, when acquired by the Company, will be insured as a good and marketable title, free from all liens and encumbrances, (except as to such minor restrictions and exceptions as you may approve) by a policy or policies of title insurance issued by Lawyers Title and Guaranty Company to the aggregate amount of not less than $21,500,000, such policies to be made out in favor of and to be delivered to the Trustee under the above-mentioned First Mortgage securing the First Mortgage 5½% Sinking Fund Loan of the Company and to the Trustee under the Indenture of Trust securing the above-mentioned 20-Year 6½% Sinking Fund Debentures.

7. The Syndicate will furnish the bond of Dwight P. Robinson & Company, Inc., in favor of the Trustee under the mortgage securing the above-mentioned

First Mortgage 5½% Sinking Fund Loan, in the amount of $16,000,000, guaranteeing the completion of the proposed new office building in substantial accordance with the plans and specifications, heretofore delivered to you and appropriately identified, by not later than June 1, 1930, in the form of the proposed completion bond delivered herewith as Exhibit 4 and made a part hereof, and also a similar completion bond in the amount of $5,500,000 in favor of the Trustee under the Indenture of Trust securing the above-mentioned 20-Year 6½% Sinking Fund Debentures, in the form of the proposed completion bond delivered herewith as Exhibit 5 and made a part hereof, with such changes in each of such bonds as you may approve.

8. The Syndicate will furnish the written guarantee of Dwight P. Robinson & Company, Inc., in favor of the Trustee under the Indenture of Trust securing the above-mentioned 20-Year 6½% Sinking Fund Debentures and the holders thereof, guaranteeing the payment when due of the interest on such Debentures becoming due and payable at any time during the period from the date of such Debentures to the expiration of three years after the completion of the new buildings, the form delivered herewith as Exhibit 6 and made a part hereof, with such changes therein as you may approve.

9. The Company will execute and deliver to The Chase National Bank of the City of New York, as Depositary, a Deposit Agreement in the form of the proposed agreement delivered herewith as Exhibit 7 and made a part hereof, with such changes therein as you may approve, and will, when received, pay over to said depositary an amount equal to the entire proceeds received by the Company from the sale of its First Mortgage 5½% Sinking Fund Loan and an amount equal to the entire proceeds received by the Company from the sale of its 20-Year 6½% Sinking Fund Debentures; the amounts so paid to such Depositary to be received, held and disposed of in accordance with the provisions of said agreement.

10. The Syndicate is to enter into an agreement with the Company in form and substance satisfactory to you, whereby said Syndicate

(a) Transfers to the Company its contract right for the purchase of said real property for the total consideration of $11,600,000, of which $1,600,000 is to be payable by the execution and delivery of the above-mentioned 6% Purchase Money Notes:

(b) Transfers to the Company all rights under this Financing Agreement; and

(c) Agrees to pay to the Company in installments from time to time as required under the provisions of the escrow agreement provided for under paragraph 11 hereof the aggregate amount of $3,150,000; in consideration of which the Syndicate is to be entitled to receive under such contract

(1) 600,000 shares of the Common Stock, without par value, of the Company, issuable for the consideration mentioned in the preceding subparagraphs (a), (b) and (c) and deliverable upon the transfer to the Company of the contract rights referred to in such subparagraphs (a) and (b) above; and

(2) 35,000 shares of the Preferred Stock of the Company issueable for the consideration mentioned in the preceding subparagraphs (a), (b) and (c) and deliverable by the Depositary under the escrow agreement below mentioned from time to time in proportion as the Syndicate shall pay installments of the above-mentioned aggregate sum of $3,150,000, in accordance with the provisions of the escrow agreement provided for under paragraph 11 hereof.

11. The Syndicate and the Company will execute and deliver to Manufacturers Trust Company, as Depositary, an escrow agreement in the form of the proposed agreement delivered herewith as Exhibit 8 and made a part hereof, with such changes therein as you may approve, under which 435,000 shares of the Company's Common Stock without par value, deliverable to the Syndicate as above provided, and all of the 35,000 shares of the Company's Preferred Stock, deliverable to the Syndicate as above provided, are to be deposited in escrow, subject to release *pro rata*, in accordance with the terms and provisions of such escrow agreement, as the Syndicate makes payment to the Company of instalments of the cash payment of $3,150,000 provided to be made in paragraph 10 hereof.

12. The Company will supply to you and/or your associates letters signed by its President, correctly describing the proposed First Mortgage 5½% Sinking Fund Gold Loan and the certificates for interests therein and the proposed issue of 20-Year 6½% Sinking Fund Gold Debentures, and also setting forth the pertinent data in reference to the ral proprty to be acquird by the Company and the office building to be erected thereon, and the income therefrom, for

the purpose of incorporation in circulars descriptive of said issues for distribution purposes. The form of such letters and the summaries thereof, also to be supplied by the Company, are to be substantially in the forms to be delivered herewith as Exhibit 9 and made a part hereof.

13. The Company will furnish such information, statements and certificates, and execute such consents and other documents as may be required or convenient in connection with compliance with the so-called Blue Sky Laws of any state in which any certificates in the First Mortgage 5½% Sinking Fund Gold Loan or any of the 20-Year 6½% Sinking Fund Gold Debentures to be purchased by you, as hereinafter provided, are to be distributed by you or your associates.

14. The Company will, if requested by you, make application at its own expense for the listing of the certificates representing interests in the First Mortgage 5½% Sinking Fund Gold Loan and/or the 20-Year 6½% Sinking Fund Gold Debentures of the Company, to be purchased by you as hereinafter provided, on the Boston and/or New York Stock Exchange, as you may request.

15. All legal details in connection with the formation of the Company, the form, execution and delivery of the mortgages, trust indentures, completion bonds, guaranty, deposit agreement, escrow agreement, title policies and all other documents required in connection with any of the matters herein provided for, and all other legal details shall be subject to the approval of your counsel, whose reasonable compensation and expenses the Syndicate will cause to be paid by the Company.

16. The Syndicate agrees to do or cause to be done all of the things herein provided for by not later than June 1, 1928, and on said date to cause the Company to execute and deliver to you or on your order

(a) $16,000,000 in principal amount of said First Mortgage 5½% Sinking Fund Gold Loan, represented by certificates of participation provided to be issued under the indenture of mortgage securing said loan, upon receipt by the Company of an amount equal to 96% of the principal amount of such loan and accrued interest; and

(b) $5,500,000 principal amount of its 20-Year 6½% Sinking Fund Gold Debentures, upon receipt by the Company of an amount equal to 94% of the principal amount of such Debentures and accrued interest.

All of such certificates and debentures are to be deliverable in temporary form, in such denominations as you may require, against payment therefor at the rates aforesaid, at the office of Chase Securities Corporation, 61 Broadway, New York City, or, if you approve, at the Branch of The Chase National Bank of the City of New York, located at Madison Avenue and 41st Street, New York City. You agree upon performance of all of the matters required hereunder to be done and performed by the Syndicate and/or the Company, and upon approval of all legal details by your counsel, to purchase or to cause a group or syndicate formed by you to purchase all of the certificates and debentures above mentioned and to make payment therefor at the prices aforesaid on June 1, 1928, as above provided. In case for any reason any of the matters required to be performed by the Syndicate or the Company cannot be completed to your satisfaction by June 1, 1928, as herein contemplated, you shall have the right, in addition to any other remedies you may have, to an extension of the delivery date of such certificates and debentures, for such period or periods as you may approve. In case as a result of any such extension it may become necessary for you or any group or syndicate formed by you to deliver interim receipts against sales on a when-issued basis of such certificates or debentures, you or any such group or syndicate shall have the right so to do, and in such event the Company agrees to reimburse you or such group or syndicate for all expenses incurred by you, including any loss of interest in connection with the preparation, execution, issuance and redemption of such interim receipts. It is also understood that all expense incident to the preparation, printing, execution, delivery, recording or filing of any of the mortgages, indentures of trust, bonds, certificates, guarantees, and all other agreements and documents herein contemplated, shall be for the account of the Company, and any portions of any such expenses which may be met by you in the first instance are to be reimbursed to you by the Company.

17. In consideration of your agreeing to purchase or cause the group or syndicate formed by you for such purpose to purchase all of the certificates of interest in the First Mortgage 5½% Sinking Fund Gold Loan and all of the 20-Year 6½% Sinking Fund Gold Debentures of the Company, as provided in paragraph 16 hereof, and in consideration of the consummation of such purchase, the Syndicate agrees to transfer and assign to you or to your nominee

or nominees and/or to those who may purchase the debentures from you, as you may designate, 165,000 shares of the Company's Common Stock, without par value, being part of the entire issue of said stock to be received by the Syndicate, as provided in paragraph 10 hereof, such assignment and transfer to be made by the Syndicate without expense to you or the payment by you of any additional consideration.

18. The Syndicate agrees that in case the new building as now planned shall be fully completed and paid for without utilizing all of the $3,150,000 required to be paid by the Syndicate to the Company, as provided in paragraph 9 hereof, the balance of said fund shall nevertheless be paid in to the Company. For a period of at least five years after June 1, 1928, no part of said fund shall be used directly or indirectly, without your consent first given in writing, for the purchase or retirement of any of the shares of the preferred or common stock of the Company or for the payment of any of the principal of the Purchase Money Notes of the Company then outstanding, nor shall the Company reduce its capital stock during said period, and at least 50% of said balance of such fund shall be used, unless otherwise consented to by you, to reducing within said period the amount of the First Mortgage Loan or the Debenture Bonds of the Company. The Syndicate agrees to cause the Company, if requested by you, to execute such supplemental agreement or instrument as you may deem necessary to give effect to this provision.

19. This agreement, or any portion thereof, may be assigned by the Syndicate to the Company, and thereupon all of the provisions hereof, or such thereof as may be so assigned, shall inure to the benefit of and be binding upon the Company; but no such assignment shall relieve the Syndicate of any of the obligations assumed by it hereunder.

If the foregoing is in accordance with your understanding of the agreement arrived at between us, will you please execute the acceptance at the foot of a duplicate of this letter enclosed herewith for the purpose, which together with this letter will constitute the agreement between us in respect of the matters herein provided for.

Very truly yours,

(Signed) JOHN N. CARPENTER,
(Signed) LOUI. H. BEAN,
Syndicate Managers.

The foregoing is hereby approved and accepted:

CHASE SECURITIES CORPORATION,
By (signed) MURRAY W. DODGE, *V. President.*
E. H. ROLLINS & SONS,
By (signed) EDW. S. ARNOLD, *V.P.*
CONTINENTAL NATIONAL COMPANY,
By (signed) RAY O. JUNOD, *V.P.*

COMMITTEE EXHIBIT NO. 217, DECEMBER 5, 1933

NEW ISSUE, $16,000,000 LINCOLN BUILDING—LINCOLN FORTY-SECOND STREET CORPORATION—FIRST MORTGAGE 5½% SINKING FUND GOLD LOAN (CLOSED MORTGAGE) TO BE DATED JUNE 1, 1928; TO MATURE JUNE 1, 1953

Semiannual interest payable June 1 and December 1 and principal also payable at the principal office of the Trustee. Participation certificates in coupon form issued by the Trustee in interchangeable denominations of $1,000 and $500, registerable as to principal. Redeemable at the option of the Corporation, as a whole or in part, on any interest date on thirty days' published notice at 103 prior to June 1. 1938, at 104 on June 1, 1938 and thereafter until June 1, 1943, at 103 on June 1, 1943 and thereafter until June 1, 1948, and at 102 on June 1, 1948 and thereafter until maturity, plus accrued interest in each case. Interest payable without deduction for normal Federal income tax not in excess of 2%. The Corporation will agree to refund personal property taxes in Pennsylvania and Connecticut up to 4 mills, in Maryland up to 4½ mills, in Michigan, California and District of Columbia up to 5 mills, and the Massachusetts income tax on interest not exceeding 6% per annum, upon application as provided in the Mortgage.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, TRUSTEE

These certificates, upon completion of the building, will, in the opinion of counsel, be legal for the investment of trust funds under the laws of the State of New York.

Mr. John H. Carpenter, President of the Corporation, has summarized in part his accompanying letter as follows:

Construction and Location: Lincoln Forty-Second Street Corporation, incorporated under the laws of the State of New York, will own in fee simple one of the largest office building sites in the City of New York, located on the south side of 42nd Street between Madison and Park Avenues, directly facing Vanderbilt Avenue and diagonally across from the Grand Central Terminal. This site has an area of 42,051 sq. ft. with frontage of 181.5 feet on 42nd Street, 179.75 feet on 41st Street, and 49.75 feet on Madison Avenue.

Lincoln Forty-Second Street Corporation will erect on the site a fifty-two story office building of most modern fireproof construction, to be known as the Lincoln Building, which will tower approximately 640 feet above the 42nd Street level and be one of the tallest and most imposing structures in the city. The building will contain approximately 915,000 sq. ft. of rentable area, and is designed to be one of the finest office buildings in the country. It will be located in the center of the rapidly developing 42nd Street zone in the heart of the uptown business and banking district, with proposed underground connections with the subway and Grand Central Terminal, thus avoiding the necessity of crossing 42nd Street at one of the most congested points in the city. It is officially reported that for the year 1927 the passenger traffic of the New York Central and the New York, New Haven & Hartford Railroads in and out of the Grand Central Terminal exceeded 43,900,000 passengers. The demand for high grade office building space and for shops and stores in this very accessible location has been definitely established. The building will be constructed by Dwight P. Robinson & Company, Inc.

Valuation: The value of the land, as represented by the cost thereof, together with the estimated cost of the building, with carrying charges, including interest and taxes during construction but exclusive of discounts on securities, is estimated by Dwight P. Robinson & Company, Inc., at $25,200,000, so that this $16,000,000 First Mortgage 5½% Sinking Fund Gold Loan will be equivalent to less than 63½% of this cost. Charles F. Noyes Company, Inc., representing the Bankers, has estimated the value of the land and the building when completed at $25,869,000.

Security: This Loan will be secured, in the opinion of counsel, by a first closed lien on the land and building. The Trustee will issue its certificates representing shares or parts in the Loan and in the Mortgage securing the Loan. On or prior to the execution of the Mortgage, Dwight P. Robinson & Company, Inc., will deliver to the Trustee its guaranty of the completion of the building in accordance with architect's plans and specifications. This Loan will be followed by $5,500,000 Twenty-Year 6½% Sinking Fund Gold Debentures due 1948, $1,600,000 6% Purchase Money Notes (with Sinking Fund) due 1935, $3,500,000 7% Preferred Stock, and 600,000 shares of no par value Common Stock.

Earnings: Separate estimates of the earnings of the completed building have been made by Dwight P. Robinson & Company, Inc., Pease & Elliman, Inc., and Albert B. Ashforth, Inc. An average of all three estimates shows, after allowing for 10% vacancies and property taxes, net revenue available for interest and depreciation of $2,440,027, or over 2.7 times the annual interest requirements of $880,000 of this Loan. The lowest estimate is that of Albert B. Ashforth, Inc., representing the Bankers, and shows, after allowing for 10% vacancies and property taxes, net revenue available for interest and depreciation of $2,302,500, or over 2.6 times the annual interest requirements of this Loan.

Sinking fund: The Mortgage will provide for a cumulative sinking fund, commencing June 1, 1933, which is calculated to retire more than $5,200,000 principal amount of Certificates of this issue by maturity.

These Certificates have been listed on the Boston Stock Exchange.

These Certificates are offered when, as and if issued and received by us and subject to approval of counsel, Messrs. Rushmore, Bisbee & Stern, for the Bankers, and Messrs. Stoddard & Mark, for the Corporation. It is ex-

pected that temporary Certificates will be ready for delivery on or about June 5, 1928.

Price 100 and accrued interest, to yield 5.50%.

(This information, while not guaranteed, has been taken from sources which we believe to be reliable.)

LINCOLN FORTY-SECOND STREET CORPORATION,
New York City, May 22, 1928.

CONTINENTAL NATIONAL COMPANY.
CHASE SECURITIES CORPORATION,
E. H. ROLLINS & SONS,
HARRIS, FORBES & COMPANY,

DEAR SIRS: Referring to the $16,000,000 Lincoln Forty-Second Street Corporation First Mortgage 5½% Sinking Fund Gold Loan, to be dated June 1, 1928, and to mature June 1, 1953, I am pleased to submit the following information:

CONSTRUCTION AND LOCATION

Lincoln Forty-Second Street Corporation, incorporated under the laws of the State of New York, will own in fee simple one of the largest office building sites in the City of New York, located on the south side of 42nd Street between Madison and Park Avenues, directly facing Vanderbilt Avenue and diagonally across from the Grand Central Terminal. This site has an area of 42,051 sq. ft. with frontage of 181.5 feet on 42nd Street, 179.75 feet on 41st Street, and 49.75 feet on Madison Avenue.

Lincoln Forty-Second Street Corporation will erect on the site a fifty-two story office building of most modern fire proof construction, to be known as the Lincoln Building, which will tower approximately 640 feet above the 42nd Street level and be one of the tallest and most imposing structures in the city. The building will contain approximately 915,000 sq. ft. of rentable area, served by 27 high-speed passenger elevators, and is designed to be one of the finest office buildings in the country. It will be located in the center of the rapidly developing 42nd Street zone in the heart of the uptown business and banking district, with proposed underground connections with the subway and Grand Central Terminal, thus avoiding the necessity of crossing 42nd Street at one of the most congested points in the city. It is officially reported that for the year 1927 the passenger traffic of the New York Central and the New York, New Haven & Hartford Railroads in and out of the Grand Central Terminal exceeded 43,900,000 passengers. Arcades will extend through the building from 42nd Street to 41st Street and to Madison Avenue, and thus the entire ground floor of the building will be available for stores and shops, which can be reached easily from the three streets. The demand for high grade office building space and for shops and stores in this very accessible location has been definitely established.

The architect of the building is J. E. R. Carpenter, who has associated with him E. J. Willingale, Kenneth B. Norton, and William Harmon Beers. The building will be constructed by Dwight P. Robinson & Company, Inc. Messrs. Warren & Wetmore have been approved by the Bankers as supervising architects. It is estimated that about eighteen months will be required for construction. At the request of the supervising architects the plans and specifications of the building have been reviewed by the National Association of Building Owners and Managers.

CAPITALIZATION

Upon completion of the proposed financing the outstanding capitalization of the Corporation will be as follows:

First Mortgage 5½% Sinking Fund Gold Loan, due 1953 (this issue)	$16,000,000
Twenty-Year 6½% Sinking Fund Gold Debentures, due 1948	$5,500,000
6% Purchase Money Notes (with Sinking Fund), due 1935 *	$1,600,000
7% Preferred Stock (Par Value $100) Cumulative from June 1, 1931	$3,500,000
Common Stock (no par value) shares	600,000

* Purchase money notes subordinated to rights of Twenty-Year 6½% Sinking Fund Gold Debentures in land and building.

VALUATION

The value of the land, as represented by the cost thereof, together with the estimated cost of the building, with carrying charges, including interest and taxes during construction but exclusive of discounts on securities, is estimated by Dwight P. Robinson & Company, Inc., at $25,200,000, so that this $16,000,000 First Mortgage 5½% Sinking Fund Gold Loan will be equivalent to less than 63½% of this cost. Charles F. Noyes Company, Inc., representing the Bankers, has estimated the value of the land and the building when completed at $25,869,000. On the above basis the land and building, when completed, will have a valuation of over 150% of the Loan, and the certificates described below, in the opinion of counsel, will thereupon be legal for the investment of Trust Funds under the laws of the State of New York. The location of this property reduces to a minimum the risk of depreciation in the value of land over the life of the Mortgage. The sinking fund on the Loan is designed to reduce the amount of the Loan at maturity below the present value of the land alone.

SECURITY

This Loan will be secured, in the opinion of counsel, by a first closed lien on the land and building. The Trustee will issue its Certificates representing shares or parts in the Loan and in the Mortgage securing the Loan. Each Certificate will bear an endorsement by the mortgagor Corporation unconditionally guaranteeing to the Certificate holder prompt payment of principal and interest thereon. On or prior to the execution of the Mortgage, Dwight P. Robinson & Company, Inc., will deliver to the Trustee its guaranty of the completion of the building in accordance with architect's plans and specifications. The proceeds of the Certificates will be lodged with The Chase National Bank of the City of New York as Depositary and will be paid out during the course of construction only upon certificate of Messrs. Warren & Wetmore, supervising architects. Lawyers Title and Guaranty Company will issue its policy insuring that the Mortgage is a valid first lien on the property.

EARNINGS

Separate estimates of the earnings of the completed building have been made by Dwight P. Robinson & Company, Inc., Pease & Elliman, Inc., and Albert B. Ashforth, Inc. An average of all three estimates, shows, after allowing for 10% vacancies and property taxes, net revenue available for interest and depreciation of $2,440,027, or over 2.7 times the annual interest requirements of $880,000 of this Loan. The lowest estimate is that of Albert B. Ashforth, Inc., representing the Bankers, and shows, after allowing for 10% vacancies and property taxes, net revenue available for interest and depreciation of $2,302,500, or over 2.6 times the annual interest requirements of this Loan.

SINKING FUND

The Mortgage will provide that, commencing June 1, 1933, the Corporation will pay to the Trustee as a cumulative sinking fund, $160,000 in each year in equal semi-annual instalments, the monies to be applied by the Trustee to the purchase of Certificates at or below the redemption price prevailing at the next succeeding interest payment date, or, if not so purchasable, to the redemption by lot at such redemption price on such interest payment date. All Certificates so purchased or redeemed are to be kept alive by the Trustee and the interest in respect thereof is to be added to the sinking fund. It is calculated that this sinking fund will retire more than $5,200,000 principal amount of Certificates of this issue by maturity.

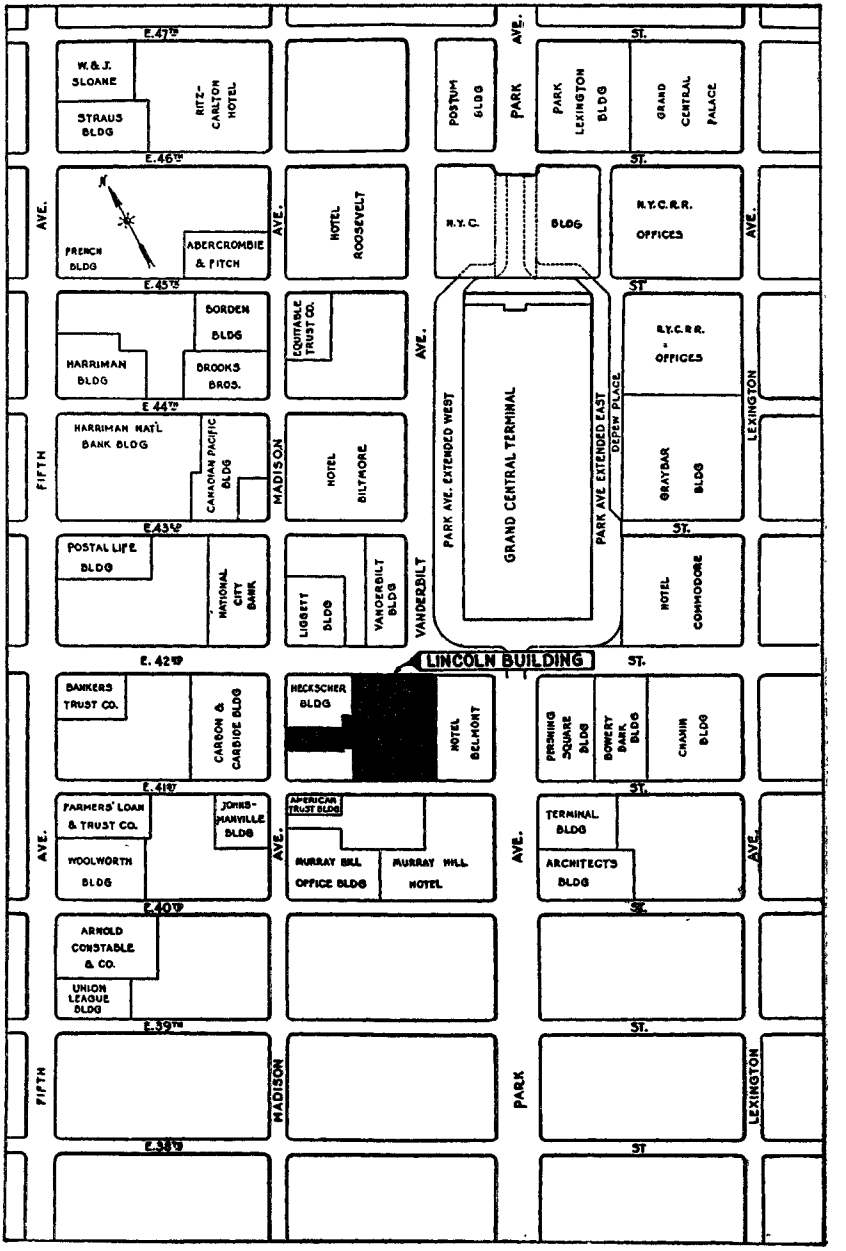
OWNERSHIP AND MANAGEMENT

Lincoln Forty-Second Street Corporation will be controlled by a syndicate composed of Dwight P. Robinson & Company, Inc., and John H. Carpenter and associates. The management of the building will be under the direction of Dwight P. Robinson & Company, Inc., and John H. Carpenter. The leasing of space will be handled by Pease & Elliman, Inc. Dwight P. Robinson & Company, Inc., is one of the leading engineering and construction companies in the United States, and has had wide experience in the construction and management of office and apartment buildings in New York City. All of the voting stock of Dwight P. Robinson & Company, Inc., is owned by United Engineers

and Constructors, Inc., which company in turn is owned by United Gas Improvement Company, Public Service Corporation of New Jersey, and Day & Zimmermann, Inc. United Engineers and Constructors, Inc., also owns or controls United Gas Improvement Contracting Company, Public Service Production Company, and Day & Zimmermann Engineering & Construction Company, Inc.

Very truly yours,

JOHN H. CARPENTER, *President.*



COMMITTEE EXHIBIT No. 219, DECEMBER 5, 1933

NEW ISSUE, $5,500,000 LINCOLN BUILDING—LINCOLN FORTY-SECOND STREET CORPORATION—TWENTY-YEAR 6½% SINKING FUND GOLD DEBENTURES TO BE DATED JUNE 1, 1928; TO MATURE JUNE 1, 1948

Semi-annual interest payable June 1 and December 1. Principal and interest payable at the principal office of The Chase National Bank of the City of New York, Trustee. Coupon debentures in interchangeable denominations of $1,000 and $500, registerable as to principal. Redeemable at the option of the Corporation, as a whole or in part, on any interest date on thirty days' published notice at 101 and accrued interest on December 1, 1928, the premium increasing ½ of 1% for each year or fraction thereof thereafter elapsed to and including December 1, 1937, at which time the premium will have reached a maximum of 105½; thereafter the premium decreasing ½ of 1% for each year or fraction thereof thereafter elapsed until maturity. Interest payable without deduction for normal Federal income tax not in excess of 2%. The Corporation will agree to refund personal property taxes in Pennsylvania and Connecticut up to 4 mills, in Maryland up to 4½ mills, in Michigan, California and District of Columbia up to 5 mills, and the Massachusetts income tax on interest not exceeding 6% per annum, upon application as provided in the Trust Indenture.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, TRUSTEE

Common Stock Privilege: Under arrangements with The Chase National Bank as Depositary, 55,000 shares of the fully paid no par value common stock of the Lincoln Forty-Second Street Corporation will be delivered to such Depositary, against which it will issue to the holders of these Debentures, on the exchange of the temporary Debentures for the definitive Debentures, on or after June 1, 1929, its Stock Warrants, in bearer form, on the basis of one such share for each $100 principal amount of Debentures. Such warrants will entitle the holders upon surrender thereof on or after June 1, 1930, without additional payment, to receive stock certificates for the number of shares represented by the respective stock warrants. The Debentures to be delivered on this offering will carry with them this common stock privilege.

Mr. John H. Carpenter, President of the Corporation, has summarized in part his accompanying letter as follows:

Construction and Location: Lincoln Forty-Second Street Corporation, incorporated under the laws of the State of New York, will own in fee simple one of the largest office building sites in the City of New York, located on the south side of 42nd Street between Madison and Park Avenues, directly facing Vanderbilt Avenue and diagonally across from the Grand Central Terminal. This site has an area of 42,051 sq. ft. with frontage of 181.5 feet on 42nd Street, 179.75 feet on 41st Street and 49.75 feet on Madison Avenue.

Lincoln Forty-Second Street Corporation will erect on the site a fifty-two story office building of most modern fireproof construction, to be known as the Lincoln Building, which will tower approximately 640 feet above the 42nd Street level and be one of the tallest and most imposing structures in the city. The building will contain approximately 915,000 sq. ft. of rentable area, and is designed to be one of the finest office buildings in the country. It will be located in the center of the rapidly developing 42nd Street zone in the heart of the uptown business and banking district, with proposed underground connections with the subway and Grand Central Terminal, thus avoiding the necessity of crossing 42nd Street at one of the most congested points in the city. It is officially reported that for the year 1927 the passenger traffic of the New York Central and the New York, New Haven & Hartford Railroads in and out of the Grand Central Terminal exceeded 43,900,000 passengers. The demand for high grade office building space and for shops and stores in this very accessible location has been definitely established. The building will be constructed by Dwight P. Robinson & Company, Inc.

Valuation: These 6½% Debentures, to be issued under and secured by a Trust Indenture with The Chase National Bank of the City of New York, as Trustee, will be a direct obligation of Lincoln Forty-Second Street Corporation, subject only to the $16,000,000 First Mortgage 5½% Sinking Fund Gold Loan due 1953, and will be followed by $1,600,000 6% Purchase Money Notes (with sinking fund) due 1935, $3,500,000 7% Preferred Stock and 600,000 shares of no par value Common Stock. On or prior to the execution of the Trust

Indenture, Dwight P. Robinson & Company, Inc., will deliver to the Trustee its guaranty of the payment of the interest on these 6½% Debentures for a period from June 1, 1928, to the expiration of three years after the completion of the building, and also its guaranty of the completion of the building in accordance with architect's plans and specifications. The value of the land, as represented by the cost thereof, together with the estimated cost of the building, with carrying charges, including interest and taxes during construction but exclusive of discounts on securities, is estimated by Dwight P. Robinson & Company, Inc. at $25,200,000. Charles F. Noyes Company, Inc., representing the Bankers, has estimated the value of the land and the building when completed at $25,869,000.

Earnings: Separate estimates of the earnings of the completed building have been made by Dwight P. Robinson & Company, Inc., Pease & Elliman, Inc., and Albert B. Ashforth, Inc. An average of all three estimates shows, after allowing for 10% vacancies and property taxes, and after deduction of interest on the First Mortgage Loan, net revenue available for Debenture interest and depreciation of $1,560,027, or 4.36 times the annual interest requirements of $357,500 of these 6½% Debentures. The lowest estimate is that of Albert B. Ashforth, Inc., representing the Bankers, and shows, after allowing for 10% vacancies and property taxes, and after deduction of interest on the First Mortgage Loan, net revenue available for Debenture interest and depreciation of $1,422,500, or 3.98 times the annual interest requirements of these 6½% Debentures.

Sinking Fund: The Indenture will provide for a cumulative sinking fund of different rates, commencing June 1, 1933, which is calculated to be sufficient to retire more than $4,000,000 principal amount of Debentures of this issue by maturity.

These Debentures have been listed on the Boston Stock Exchange.

These Debentures are offered when, as and if issued and received by us and subject to approval of counsel, Messrs. Rushmore, Bisbee & Stern, for the Bankers, and Messrs. Stoddard & Mark, for the Corporation. It is expected that temporary Debentures will be ready for delivery on or about June 6, 1928.

Price 100 and accrued interest to yield 6.50%.

CHASE SECURITIES CORPORATION,
61 Broadway, New York.

(This information, while not guaranteed, has been taken from sources which we believe to be reliable.)

LINCOLN FORTY-SECOND STREET CORPORATION,
New York City, May 22, 1928.

CHASE SECURITIES CORPORATION.
E. H. ROLLINS & SONS.
CONTINENTAL NATIONAL COMPANY.

DEAR SIRS: In connection with your purchase of $5,500,000 Lincoln Forty-Second Street Corporation Twenty-Year 6½% Sinking Fund Gold Debentures, to be dated June 1, 1928 and to mature June 1, 1948, I am pleased to submit the following information:

CONSTRUCTION AND LOCATION

Lincoln Forty-Second Street Corporation, incorporated under the laws of the State of New York, will own in fee simple one of the largest office building sites in the City of New York, located on the south side of 42nd Street between Madison and Park Avenues, directly facing Vanderbilt Avenue and diagonally across from the Grand Central Terminal. This site has an area of 42,051 sq. ft. with frontage of 181.5 feet on 42nd Street, 179.75 feet on 41st Street, and 49.75 feet on Madison Avenue.

Lincoln Forty-Second Street Corporation will erect on the site a fifty-two story office building of most modern fireproof construction, to be known as the Lincoln Building, which will tower approximately 640 feet above the 42nd Street level and be one of the tallest and most imposing structures in the city. The building will contain approximately 915,000 sq. ft. of rentable area, served by 27 high speed passenger elevators, and is designed to be one of the finest office buildings in the country. It will be located in the center of the rapidly developing 42nd Street zone in the heart of the uptown business and banking

district, with proposed underground connections with the subway and Grand Central Terminal, thus avoiding the necessity of crossing 42nd Street at one of the most congested points in the city. It is officially reported that for the year 1927 the passenger traffic of the New York Central and the New York, New Haven & Hartford Railroads in and out of the Grand Central Terminal exceeded 43,900,000 passengers. Arcades will extend through the building from 42nd Street to 41st Street and to Madison Avenue, and thus the entire ground floor of the building will be available for stores and shops, which can be reached easily from the three streets. The demand for high grade office building space and for shops and stores in this very accessible location has been definitely established.

The architect of the building is J. E. R. Carpenter, who has associated with him E. J. Willingale, Kenneth B. Norton and William Harmon Beers. The building will be constructed by Dwight P. Robinson & Company, Inc. Messrs. Warren & Wetmore have been approved by the Bankers as supervising architects. It is estimated that about eighteen months will be required for construction. At the request of the supervising architects the plans and specifications of the building have been reviewed by the National Association of Building Owners and Managers.

CAPITALIZATION

Upon completion of the proposed financing the outstanding capitalization of the Corporation will be as follows:

First Mortgage 5½% Sinking Fund Gold Loan, due 1953	$16,000,000
Twenty-Year 6½% Sinking Fund Gold Debentures, due 1948 (this issue)	$5,500,000
6% Purchase Money Notes (with Sinking Fund), due 1935 *	$1,600,000
7% Preferred Stock (Par Value $100), cumulative from June 1, 1931	$3,500,000
Common Stock (no par value)	600,000 shares

VALUATION

These 6½% Debentures, to be issue under and secured by a Trust Indenture with The Chase National Bank of the City of New York, as Trustee, will be a direct obligation of the Lincoln Forty-Second Street Corporation, subject only to the $16,000,000 First Mortgage 5½% Sinking Fund Gold Loan due 1953, and will be followed by $1,600,000 6% Purchase Money Notes (with Sinking Fund) due 1935, $3,500,000 7% Preferred Stock and 600,000 shares of no par value Common Stock. On or prior to the execution of the Trust Indenture, Dwight P. Robinson & Company, Inc. will deliver to the Trustee its guaranty of the payment of the interest on these 6½% Debentures for a period from June 1, 1928, to the expiration of three years after the completion of the building, and also its guaranty of the completion of the building in accordance with architect's plans and specifications. The value of the land, as represented by the cost thereof, together with the estimated cost of the building, with carrying charges, including interest and taxes during construction but exclusive of discounts on securities, is estimated by Dwight P. Robinson & Company, Inc. at $25,200,000. Charles F. Noyes Company, Inc., representing the Bankers, has estimated the value of the land and the building when completed at $25,869,000. The proceeds of the Debentures will be lodged with The Chase National Bank of the City of New York, as Depositary, and will be paid out during the course of construction only upon certificate of Messrs. Warren & Wetmore, supervising architects.

EARNINGS

Separate estimates of the earnings of the completed building have been made by Dwight P. Robinson & Company, Inc., Pease & Elliman, Inc., and Albert B. Ashforth, Inc. An average of all three estimates shows, after allowing for 10% vacancies and property taxes, and after deduction of interest on the First Mortgage Loan, net revenue available for Debenture interest and depreciation

* Purchase Money Notes subordinated to rights of Twenty-Year 6½% Sinking Fund Gold Debentures in land and building.

of $1,560,027, or 4.36 times the annual interest requirements of $357,500 of these 6½% Debentures. The lowest estimate is that of Albert B. Ashforth, Inc., representing the Bankers, and shows, after allowing for 10% vacancies and property taxes, and after deduction of interest on the First Mortgage Loan, net revenue available for Debenture interest and depreciation of $1,422,500, or 3.98 times the annual interest requirements of these 6½% Debentures.

SINKING FUND

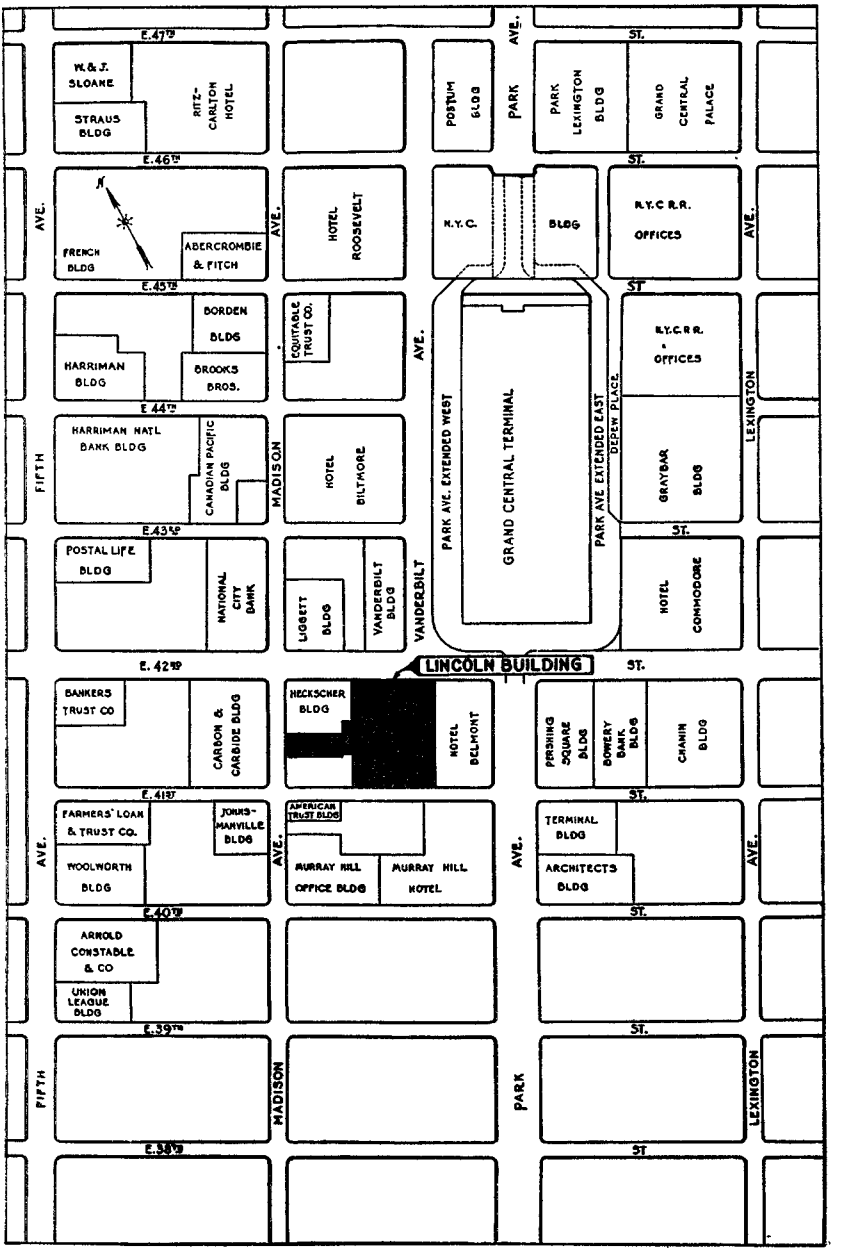
The Indenture will provide that, commencing June 1, 1933, and continuing to and including December 1, 1942, the Corporation will pay to the Trustee as a cumulative sinking fund, $165,000 in each year in equal semi-annual instalments, and commencing June 1, 1943 to and including December 1, 1947, $220,000 in each year in equal semi-annual instalments, the monies in each case to be applied by the Trustee to the purchase of Debentures at or below the redemption price prevailing at the next succeeding interest payment date, or, if not so purchasable, to the redemption by lot at such redemption price on such interest payment date. All Debentures so purchased or redeemed are to be kept alive by the Trustee and the interest in respect thereof is to be added to the sinking fund. It is calculated that this sinking fund will retire more than $4,000,000 principal amount of Debentures of this issue by maturity.

OWNERSHIP AND MANAGEMENT

Lincoln Forty-Second Street Corporation will be controlled by a syndicate composed of Dwight P. Robinson & Company, Inc., and John H. Carpenter and associates. The management of the building will be under the direction of Dwight P. Robinson & Company, Inc., and John H. Carpenter. The leasing of space will be handled by Pease & Elliman, Inc. Dwight P. Robinson & Company, Inc., is one of the leading engineering and construction companies in the United States, and has had wide experience in the construction and management of office and apartment buildings in New York City. All of the voting stock of Dwight P. Robinson & Company, Inc., is owned by United Engineers and Constructors, Inc., which company in turn is owned by United Gas Improvement Company, Public Service Corporation of New Jersey, and Day & Zimmermann, Inc. United Engineers and Constructors, Inc., also owns and controls United Gas Improvement Contracting Company, Public Service Production Company, and Day & Zimmermann Engineering & Construction Company, Inc.

Very truly yours,

JOHN H. CARPENTER, *President.*



STOCK EXCHANGE PRACTICES

WEDNESDAY, DECEMBER 6, 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 on yesterday, 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; William Dean Embree, William M. Evarts, and A. Donald MacKinnon of Milbank, Tweed, Hope & Webb, and C. Horace Tuttle of Rushmore, Bisbee & Stern, counsel representing the Chase National Bank and the Chase Corporation.

The CHAIRMAN. The subcommittee will come to order, please. Mr. Snow is on the stand.

TESTIMONY OF LESLIE W. SNOW, SECOND VICE PRESIDENT, THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK—Resumed

Mr. PECORA. Mr. Snow, with respect to the financing of the Lincoln Building proposition, about which you were examined yesterday, will you tell the subcommittee what distribution was made of the common stock that was issued by the corporation that owned the property?

Mr. SNOW. There were altogether 600,000 shares of common stock authorized, and——

Mr. PECORA (interposing). Yes.

Mr. SNOW (continuing). Of which 55,000 shares were reserved for the warrants which accompanied the debentures; 435.000 shares were purchased by the syndicate; and the remainder, 110,000 shares, were divided among the bankers.

Mr. PECORA. Were devided among whom?

Mr. SNOW. Among the bankers.

Mr. PECORA. As a bonus?

Mr. SNOW. It was given to them in consideration of their undertaking the financing.

Mr. PECORA. Is that what you call a bonus stock in the ordinary parlance?

Mr. SNOW. I think it might be classed as bonus stock.

Mr. PECORA. Now, 435,000 shares went to the members of the syndicate that put up $3,150,000 for the preferred stock?

Mr. SNOW. Yes, sir; they acquired the common stock with the preferred stock.

Mr. PECORA. And 55,000 shares went to those who put up $5,500,000 for the debentures?

Mr. SNOW. That is correct.

Mr. PECORA. That was for the profits?

Mr. SNOW. Yes, sir.

Mr. PECORA. So that had this venture been a profitable one the equity stock, or the profits, would have been in the proportions in which the common stock or equity stock was distributed?

Mr. SNOW. That is correct.

Mr. PECORA. That means that a little more than one-sixth would have gone to the bankers for financing the venture, about or less than one-tenth would have gone to the public that put up $5,500,000 for the debentures, and the balance, 435,000 shares out of the total of 600,000 shares, would have gone to the syndicate that furnished $3,150,000 in the original acquisition of the property?

Mr. SNOW. Which syndicate in addition undertook a further liability, and altogether the syndicate did put up $4,865,000, or 19 percent of the total money provided by the public and the syndicate.

Mr. PECORA. Is that considered to be a fair distribution of the equity stock to those who furnished the money to finance this venture?

Mr. SNOW. I think it was considered so; yes, sir.

Mr. PECORA. By whom?

Mr. SNOW. By the bankers.

Mr. PECORA. Considered so by the bankers?

Mr. SNOW. Yes, sir.

Mr. PECORA. How much money did the bankers actually put up?

Mr. SNOW. Do you mean the bankers as distinct from the syndicate?

Mr. PECORA. By the bankers as distinct from the syndicate, yes.

Mr. SNOW. The bankers purchased the first mortgage certificates and the debentures, and to the extent that those securities were not sold——

Mr. PECORA (interposing). Well, that is just what I want to get. How much did they actually supply of the cash that went into that property?

Mr. SNOW. In the first instance they supplied——

Mr. PECORA (interposing). No; I mean eventually, all told.

Mr. SNOW. I do not believe I can give you that figure, Mr. Pecora.

Mr. PECORA. How many first-mortgage bonds remained unsold to the public?

Mr. SNOW. I think I testified yesterday that all except $422,500 of the principal amount of the first-mortgage certificates were sold in the first instance. And with respect to the debentures, there were only $1,730,500 subscribed for, leaving an unsold balance of $3,769,500.

Mr. PECORA. Now, you said on yesterday, as I recall your testimony, and I believe it was in answer to a question put to you by Senator Couzens, that the first-mortgage certificate holders, or rather

95 percent of them, representing the proportion who deposited their certificates with the protective committee that was organized in connection with the foreclosure of the property, virtually had had their equity preserved by the buying in of the property by the representatives of the protective committee.

Mr. SNOW. That is correct, sir.

Mr. PECORA. As a matter of fact, what did the certificate holders get after the property was purchased at auction in connection with the foreclosure?

Mr. SNOW. I am not very familiar with the situation subsequent to the formation of the protective committees, and consequently I cannot give you a complete description of what happened. It is my understanding that a new company was formed, which received, or by means of which they received new securities representing their interest in the property after it was purchased.

Mr. PECORA. What was the form of these new certificates?

Mr. SNOW. It is my understanding that the former certificate holders who deposited their certificates with the protective committee received first-mortgage income debentures bearing a 5½ percent coupon.

Mr. PECORA. You say first-mortgage income debentures. I do not understand you.

Mr. SNOW. I am advised that they are income debentures, but not first mortgage debentures.

Mr. PECORA. They are not first mortgage, but so-called "30-year income bonds", aren't they?

Mr. SNOW. That is correct.

Mr. PECORA. And not guaranteed.

Mr. SNOW. No, sir. And they also received 10 shares of stock with each $1,000 principal amount of debentures.

Mr. PECORA. What were those income bonds that they received for their first mortgage certificates selling for, I mean in the open market today what are they selling for?

Mr. SNOW. On November 21, the last date that I have here, they were selling at 38–39½.

Senator GOLDSBOROUGH. Mr. Pecora, you mean that they are not a lien upon the property, but are only a call upon the income, if there is any.

Mr. PECORA. Yes; over and above the carrying charges.

Mr. SNOW. Mr. Pecora, there is nothing ahead of those income debentures at the present time.

Mr. PECORA. Is there anything to prevent the company from placing a first mortgage, a second mortgage, or as many mortgage liens on the property as they might wish to place on it?

Mr. SNOW. It is my understanding that there is nothing to prevent it.

Mr. PECORA. And they would come in ahead of the income bonds in event any such liens were placed on the property?

Mr. SNOW. Yes, sir.

Mr. PECORA. In view of the kind of security that those original first mortgage certificate holders got upon depositing their first mortgage certificates with the protective committee, would you still say that their rights in the property had been fully preserved?

Mr. SNOW. I think they have been. They own everything. They have all the stock and all the bonds.

Senator ADAMS. That is, the amount of stock that went with those debentures?

Mr. SNOW. They received all of that.

Senator GOLDSBOROUGH. Do you mean that it has been deposited with the protective committee?

Mr. SNOW. It has been distributed to the former certificate holders, as I understand.

Mr. PECORA. Has the income from the property been sufficient to meet the carrying charges?

Mr. SNOW. It is my understanding that it has; yes, sir.

Mr. PECORA. What percentage of the building is rented, if you know?

Mr. SNOW. Well, I am not certain what the percentage is at the present time. There are various ways of computing the percentage of a building rented. It all depends upon what the total anticipated revenue is when completely rented. But I understand that it is about 60 percent rented at the present time.

Mr. PECORA. The new stock which you say was issued to the first mortgage certificate holders who turned in their certificates, is in the form of voting trust certificates, isn't it?

Mr. SNOW. I believe that is correct.

Mr. PECORA. Who are the voting trustees?

Mr. SNOW. I shall have to get that information for you. I am not posted on that phase of it.

Mr. PECORA. All right, if you will please do so.

Mr. SNOW. The voting trustees are Mr. James T. Lee, and——

Mr. PECORA (interposing). Who is a director of the Chase National Bank?

Mr. SNOW. Yes, sir.

Mr. PECORA. And William DeBost?

Mr. SNOW. Mr. William DeBost, and Mr. Charles F. Batchelder, and——

Mr. PECORA (interposing). And Mr. Batchelder is also an officer of the Chase Bank?

Mr. SNOW. Yes, sir.

Mr. PECORA. Who composed that protective committee that was organized for the purpose of taking care of the interests of the first mortgage certificate holders?

Mr. SNOW. The protective committee for the first mortgage certificate holders was headed by Mr. Charles F. Batchelder——

Mr. PECORA (interposing). Of the Chase Bank?

Mr. SNOW. Yes, sir; and included Mr. Charles G. Edwards, Mr. Douglas Gibbons, Mr. Arthur W. Loasby, Mr. George Ramsey, and Mr. William R. Spratt, Jr.

Mr. PECORA. How many members of that committee represented the bankers?

Mr. SNOW. Mr. Batchelder and Mr. Ramsey represented the Chase interest. Mr. Edwards and Mr. Gibbons were independent real-estate men. Mr. Arthur Loasby was an independent banker. And Mr. Spratt represented E. H. Rollins & Son.

Mr. PECORA. You say Mr. Loasby was an independent banker?

Mr. SNOW. Yes, sir.

Mr. PECORA. Hadn't Mr. Loasby been connected in an executive capacity with the Equitable Trust Co. for some time prior to its consolidation with the Chase National Bank?

Mr. SNOW. That is correct.

Mr. PECORA. Now, these gentlemen served without compensation, didn't they?

Mr. SNOW. I understand that they did not serve without compensation.

Mr. PECORA. What compensation did they receive?

Mr. SNOW. A compensation to be fixed. It has not yet been determined.

Mr. PECORA. Well, what are they going to be paid out of, and who is going to fix their compensation?

Mr. EMBREE. Mr. Pecora, perhaps these questions could better be propounded to Mr. Ramsey, who is familiar with that matter.

Mr. PECORA. I am willing to call Mr. Ramsey to the stand if he has knowledge superior to that of Mr. Snow in this transaction.

Mr. SNOW. Mr. Pecora, may I make one correction of a statement I made a moment ago?

Mr. PECORA. Certainly.

Mr. SNOW. Mr. James T. Lee is not a director of The Chase National Bank at the present time.

Mr. PECORA. Was he at the time he was appointed a member of this protective committee?

Mr. SNOW. I believe he was at the time when he was appointed as one of the voting trustees. No; I am informed I am mistaken in that, that he was not a director at the time when he was made a voting trustee. He was a vice president of The Chase National Bank.

Mr. PECORA. If you feel, Mr. Embree, that Mr. Ramsey is more familiar with this matter I will call him to the stand.

Mr. EMBREE. If you have other questions along that line I think Mr. Ramsey could answer them more accurately than Mr. Snow, because he is familiar with that phase of it.

The CHAIRMAN. Before you change witnesses, let me ask this question: What is the customary charge for a trustee in the position of the Chase National Bank in connection with this trust?

Mr. SNOW. That is a question I cannot answer offhand either, Mr. Chairman. I can get that information for you, if you would like to have it?

The CHAIRMAN. I think it would be well to have that in the record, as to what are the charges and expenses of this trustee outfit.

Mr. EMBREE. Mr. Pecora, Mr. Ramsey could also answer the chairman's question better than anyone else.

Mr. PECORA. All right. I am willing to have Mr. Ramsey take the witness stand.

Senator COUZENS. May I ask Mr. Snow before he leaves, what was the information you sent to the bondholders when you asked them to deposit their bonds with the protective committee? Have you any circular or letter or anything that you sent out at that time?

Mr. SNOW. Yes, sir. There were various letters.

Mr. EMBREE. Mr. Ramsey also had charge of that matter.

Mr. PECORA. Then, suppose we replace Mr. Snow with Mr. Ramsey.

The CHAIRMAN. Mr. Ramsey, please stand, hold up your right hand, and be sworn: You solemnly swear that you will tell the truth, the whole truth, and nothing but the truth, regarding the matters now under investigation by the subcommittee. So help you God.

Mr. RAMSEY. I do.

The CHAIRMAN. Suppose you change seats at the table with Mr. Snow.

TESTIMONY OF GEORGE RAMSEY, OF CHASE HARRIS FORBES CORPORATION, NEW YORK CITY

Mr. PECORA. Mr. Ramsey, will you give your full name and address to the committee reporter?

Mr. RAMSEY. George Ramsey.

Mr. PECORA. What is your business or occupation?

Mr. RAMSEY. Investment banking.

Mr. PECORA. With what firm or corporation are you connected?

Mr. RAMSEY. With the Chase Harris Forbes Corporation.

Mr. PECORA. How long have you been identified with that company or its predecessor?

Mr. RAMSEY. I have been identified with it or its predecessor for altogether 12 years.

Mr. PECORA. And its predecessor was what?

Mr. RAMSEY. Harris Forbes & Co., so far as I am concerned.

Mr. PECORA. And it is now a subsidiary of the Chase National Bank?

Mr. RAMSEY. Yes, sir.

Mr. PECORA. Are you familiar with the Lincoln Building proposition that has been discussed here in the examination of Mr. Snow?

Mr. RAMSEY. Yes, sir; I am.

Mr. PECORA. By the way, did you give your address a moment ago?

Mr. RAMSEY. It is 60 Cedar Street, New York City.

Mr. PECORA. Did you have anything to do with the organization of a protective committee to represent the first-mortgage certificate holders of that building?

Mr. RAMSEY. Yes, sir.

Mr. PECORA. Who selected the members of that protective committee?

Mr. RAMSEY. They were selected more or less by considering who would be available, by getting in touch with the investment banking houses that had sponsored those bonds, and by seeking to find men outside of banking houses who were well acquainted with real estate in New York City, by mutual agreement.

Mr. PECORA. Yes; but who selected them?

Mr. RAMSEY. I cannot answer that question in the sense of any one individual.

Mr. PECORA. What group or interest selected them.

Mr. RAMSEY. In order to answer that question I will say that the Chase group was largely responsible for the formation of this committee.

Mr. PECORA. And for the selection of the members thereof?

Mr. RAMSEY. I presume that is true.

Mr. PECORA. Now, can you answer the question that Senator Couzens put to the last witness, Mr. Snow, respecting the kind of notices or letters or information given to the holders of the first mortgage certificates in connection with the request that was made on them to deposit their certificates with this protective committee?

Mr. RAMSEY. Well, I don't know just how the Senator expects me to answer that question, but I have here available copies of all notices sent to the bondholders by the committee.

Mr. PECORA. Can you produce them?

Mr. RAMSEY. Yes, sir.

Mr. PECORA. Meanwhile, reference has been made to the inclusion on that committee of Mr. Loasby.

Mr. RAMSEY. Yes, sir.

Mr. PECORA. Who was formerly an executive officer of the Equitable Trust Co. Do you know a man named Robert S. Brewster, of No. 52 Vanderbilt Avenue?

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

Mr. PECORA. Is there in the files of the Chase, Harris, Forbes Corporation a letter addressed to Mr. Brewster by Mr. Loasby, dated December 15, 1931, a phostatic reproduction of which I now show you?

Mr. RAMSEY. Yes, sir.

Mr. PECORA. Is that a true and correct copy of such letter?

Mr. RAMSEY. Yes, sir.

Mr. PECORA. Mr. Chairman, I offer the letter in evience, and ask that it may be made a part of the record.

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

(A photostatic copy of a letter dated Dec. 15, 1931, from Arthur W. Loasby to Robert S. Brewster, was marked "Committee Exhibit No. 220, Dec. 6, 1933", and will be found immediately following where read by Mr. Pecora.)

Mr. PECORA. The letter which has just been received in evidence and marked "Committee Exhibit No. 220", reads as follows:

DECEMBER 15, 1931.

Mr. ROBERT S. BREWSTER,
52 Vanderbilt Avenue, New York City.

DEAR MR. BREWSTER: In reply to your letter of December 14th, the Lincoln Building is strictly a Chase Bank proposition, and I was asked to serve on the committee by them. I would suggest that you get in touch with Mr. Lee of the Chase Bank. I think, however, that the building is pretty well organized with the supervision of the Chase Bank.

Sincerely yours.

A. W. L.

And the signature "A. W. L." is undoubtedly the signature of Mr. Loasby, as indicated by his initial letters.

Mr. RAMSEY. Yes, sir.

Mr. PECORA. This letter indicates pretty well that the members of that committee were chosen really by the Chase Bank representatives, doesn't it?

Mr. RAMSEY. Well, certainly Mr. Loasby's letter indicates that he was selected by the Chase representatives.

Mr. PECORA. Will you produce from your files, and I mean the files of the Chase Harris Forbes Corporation, a letter dated January

5, 1932, addressed to Morris F. Fox & Co., Milwaukee, Wis., in respect to this bondholders' protective committee for the Lincoln Forty-Second Street Building Corporation? The identifying number in your files is 40-15A.

Mr. RAMSEY. Yes, sir.

Mr. PECORA. Have you now got it?

Mr. RAMSEY. Yes, sir.

Mr. PECORA. I show you what purports to be a photostatic copy of such letter. Will you look at it and tell me if you recognize it to be a true and correct copy thereof?

Mr. RAMSEY. It is.

Mr. PECORA. Mr. Chairman, I offer it in evidence, and ask that it may be made a part of the record.

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

(A letter dated Jan. 5, 1932, to Morris F. Fox & Co., Milwaukee, Wis., was marked "Commitee Exhibit No. 221, Dec. 6, 1933", and will be found immediately following where read by Mr. Pecora.)

Mr. PECORA. The letter which has just been received in evidence and marked "Committee Exhibit No. 221", reads as follows:

JANUARY 5, 1932.

MORRIS F. FOX & CO.,
North Water at Mason, Milwaukee, Wisconsin.

DEAR SIRS: This will acknowledge receipt of your letter of December 17. The Bondholders' Committee consists of six individuals. Mr. Batchelder and Mr. Ramsey are Vice Presidents of Chase Harris Forbes Corporation, Mr. Spratt is Secretary and Treasurer of E. H. Rollins & Sons, Incorporated. These three individuals therefore are connected with institutions which took part in "originating" the First Mortgage Certificates of Interest and the second mortgage Debentures. Mr. Edwards, Mr. Gibbons, and Mr. Loasby, the other members of the Committee, do not represent and are in no way connected or ever were connected with any organization that took part in the "origination" or sale of either of the issues.

At this point, Mr. Ramsey, I will interrupt my reading of the letter in order to ask you this question: You say in this letter that Mr. Loasby, one of the three remaining members of the protective committee, did not represent and is in no way connected, or ever was connected, with any organization that took part in the origination or sale of either the first mortgage or the debenture issues. The fact of the matter is that he was a former officer of a bank absorbed by the Chase National Bank, and was asked to serve by the representatives of the Chase Bank on this protective committee.

Mr. RAMSEY. That is true, Mr. Pecora. As I understand it, however, Mr. Loasby was an officer of the Equitable Trust Co., and I may be mistaken but think I am correct, that this was prior to the merger between the Equitable Trust Co. and the Chase National Bank.

Mr. PECORA. And as Mr. Loasby himself stated in a letter by him to Mr. Brewster, which has been offered in evidence, he at least regarded the Lincoln Building proposition as a Chase Bank proposition, and that he was asked to serve on the committee by them, meaning the Chase National Bank.

Mr. RAMSEY. That is correct.

Mr. PECORA. I will now resume the reading of the letter:

Neither Chase Harris Forbes Corporation nor any of its affiliated companies, nor E. H. Rollins & Sons Incorporated, nor any member of the committee are "interested in the equity and of the enterprise" in any way whatsoever.

Was that a truthful statement?

Mr. RAMSEY. From what I have heard in the evidence, that the bankers received some of the common stock, it would appear that instead of saying they were not interested in the equity, the secretary should have said the Chase Bank, or the Chase Corporation, owned some of the common stock.

Mr. PECORA. They owned a good deal more than the general public received for subscribing for the 5½ million dollar debentures.

Mr. RAMSEY. They owned their share in that.

Mr. PECORA. I will resume the reading of the letter:

The rumor that you have heard as to another committee has not reached my ears nor, so far as I know, the ears of any member of our Committee, and I have heard nothing whatsoever of any other committee formed or in process of formation.

The Committee's counsel advise me that a foreclosure proceeding in New York State can proceed in normal course and, if no defense is interposed, to a rapid conclusion and that there is no redemption period after the decree of foreclosure is entered. The Committee's counsel further advise me that there is no provision under the laws of New York for a strict foreclosure by which process it might be possible to "turn the property over to the first-mortgage bondholders." When the decree of foreclosure is entered, the property is offered for public auction and knocked down to the highest bidder. The Committee would plan at that time to be present at the sale and to bid for the property in behalf of the Certificates of Interest then deposited with it—but not in behalf of *undeposited* Certificates of Interest. The ability of the Committee to make a successful bid, however, is obviously in a large part dependent upon the cooperation it receives from the holders of Certificates of Interest by the deposit of them with the Committee.

The Committee has no intention of "paying exorbitant fees to lawyers and committeemen for expenses and services", or to anyone else. The Committee, however, will not pay compensation to anyone for depositing Certificates of Interest or for procuring the deposit of Certificates of Interest. The only money that the Committee has or can possibly obtain is money belonging in effect to the holders of Certificates of Interest who from time to time have deposited with the Committee—funds being obtained by the Committee only by borrowing money against the pledge of deposited Certificates of Interest. It does not feel justified in using that money to pay compensation for procuring the deposit of additional Certificates of Interest. The Committee believes that it is to the best interests of the individual holders of Certificates of Interest to deposit them with the Committee and that by so doing they will come out far better than if they do not deposit. If that is the case and your organization also believes it to be the case, then your organization, being primarily interested in serving your customers, should for their best interests advise them to deposit without your organization being compensated from funds of the Committee for so doing.

The writer, being the secretary for the Committee, and acting only in that capacity, cannot very well discuss with you some of the other observations in your letter. The Committee's sole function and purpose is to protect the holders of Certificates of Interest and it cannot, of course, have regard to the question of whether the sale in the first instance of these Certificates of Interest has or has not proved profitable to the various investment houses that sold them. I have, however, referred your letter to the Chase Harris Forbes Corporation.

Very truly yours,

_____ _____,
Secretary.

PEA AHD

Mr. PECORA. I assume from the statements in this letter that the persons to whom it is addressed are investment bankers in Milwaukee?

Mr. RAMSEY. I am quite certain that that is correct.

The CHAIRMAN. Do you know what total amount of certificates were turned in?

Mr. RAMSEY. Almost exactly 95 percent.

The CHAIRMAN. And those people are now really the owners of the property?

Mr. RAMSEY. They are; yes, sir.

The CHAIRMAN. Those people who had certificates that were not turned in——

Mr. RAMSEY. They were paid off at the pro rata share of the bid price, which amounted to $337 per thousand dollar bond, plus.

Mr. Pecora, may I say that on January 16——

Mr. PECORA. Of what year?

Mr. RAMSEY. January 16, 1932—about 11 days after the January 5 letter which you have just read, Mr. Allen, the secretary of the committee, wrote a correcting letter to Morris F. Fox & Co., in which he stated:

> I subsequently learned, and was about to write you before I received your letter of January 8, that the Chase Securities Corporation does hold a small percentage of the outstanding common stock and preferred stock of Lincoln Forty-second Street Corporation which they have entirely written off and consider of no value.

Senator ADAMS. There is one portion of that letter which indicates that the people to whom the letter was written had been expecting some compensation for inducing holders of the certificates to deposit them. Is that a customary thing?

Mr. RAMSEY. It is very often done.

Senator ADAMS. So that those that have any of these bonds, if somebody writes to us to turn them in, we may wonder if they are being paid for doing it?

Mr. RAMSEY. You may, very rightly; but not in this case.

Mr. PECORA. Mr. Ramsey, reference was made in the testimony given by Mr. Snow before this committee with regard to this Lincoln Building project, to the fact that three appraisals were obtained as to the cost and value of the property and the building to be erected thereon. I show you photostatic copies of what purport to be appraisals made, respectively, by Dwight P. Robinson & Co., George R. Read Co., and Charles F. Noyes Co., Inc. I have stated them in their chronological order. Will you look at them and tell us if they constitute true and correct copies of the appraisals in question?

Mr. RAMSEY. Yes, sir.

Mr. PECORA. I offer those in evidence as separate exhibits, and ask that they be marked in chronological order.

(Photostatic copy of appraisal made by Dwight P. Robinson & Co. was received in evidence, marked "Committee's Exhibit No. 222, December 6, 1933.")

(Photostatic copy of appraisal made by George R. Read Co. was received in evidence, marked "Committee's Exhibit No. 223, December 6, 1933.")

(Photostatic copy of appraisal made by Charles F. Noyes Co., Inc., was received in evidence, marked "Committee's Exhibit No. 224, December 6, 1933.")

Mr. PECORA. The first one of these appraisals, the one made by Dwight P. Robinson Co., which has been received in evidence as committee's exhibit no. 222, is dated May 2, 1928, and gives a total

appraised value of $25,200,000 for the property known as the Lincoln Building. That is divided as follows: Land values, $11,600,000; building, including architects' and builders' fees, $10,920,000; interest during construction, $2,250,000; taxes during construction, 2 years, $430,000.

The second appraisal, the one made by George R. Read & Co. dated May 10, 1928, marked in evidence "Exhibit 223", states it as their opinion

That the cost of this land and the proposed building if built in accordance with the usual practice of buildings of high type and location, with interest charges and taxes during construction and cost of financing, will be in excess of $26,000,000.

I have quoted literally from the appraisal. That is what that appraisal consists of.

The third appraisal, the one made by Charles F. Noyes Co., Inc., marked in evidence "Exhibit 224," is dated May 22, 1928, and reads as follows [reading]:

CHASE SECURITIES CORPORATION,
61 Broadway, New York, N.Y.

GENTLEMEN: Our valuation of $25,869,925 on the property situated 60 East 42nd Street, on which a 52-story building, to be known as the "Lincoln Building", is to be constructed, is arrived at as follows:

Land value:	
Madison Avenue—42nd Street parcels, 23,894 sq. ft.—$300 square foot	$7,168,200
41st Street parcel, 18,157 sq. ft. @ $150	2,723,550
	9,891,750
10% plottage	989,175
	10,880,925
Building—52 Stories high:	
Cube—14,200,000 @ 75¢	$10,650,000
Architects' Fees, 6%	637,000
Builder's Fees, 6%	637,000
Taxes, 2 Years—Assessed over $6,000,000	325,000
Interest during construction, 2 years:	
1st mortgage $17,000,000, 5½%	1,870,000
2nd Debentures, 6%, $6,000,000	720,000
Insurance—with liability, attorney's fees, and incidentals	150,000
	$25,869,925

Very truly yours,

CHARLES F. NOYES COMPANY, INC.,
(Signed) E. C. BENEDICT, *Vice President.*

Now, the estimate of value of this property that was set forth in the prospectus issued to the public in connection with the offering of the first-mortgage certificates and debentures was an estimate based on these rates, was it not?

Mr. RAMSEY. Yes.

Mr. PECORA. And I note that in the appraisals of Dwight P. Robinson & Co. and Charles F. Noyes Co. they included in the appraisals as part of the value of the property, going to make up the value of the property, items amounting to more than $2,000,000 in both instances, covering interest on the proposition during the construction of the building; to be specific, in Robinson & Co.'s appraisal an item of $2,250,000 is included representing interest during construction,

and an item of $430,000 is included representing taxes during construction for 2 years—$2,680,000 for those two items. Do you think those two items are proper items to be included in an appraisal of the property?

Mr. RAMSEY. I am not an appraiser, Mr. Pecora, but I know that those are usually considered as perfectly legitimate parts of the cost of a building enterprise.

Mr. PECORA. Cost of the building does not necessarily mean value, does it?

Mr. RAMSEY. Not in these days; no, sir.

Mr. PECORA. Or at any time?

Mr. RAMSEY. It may or it may not. The cost may be excessive. In this case it was not.

Mr. PECORA. Why do you say "in this case it was not", in the light of what we know concerning the price the property sold for at foreclosure?

Mr. RAMSEY. But I do not believe—in fact, I know that the price that the property brought at foreclosure had no reference to the value of the building.

Mr. PECORA. It was the highest price bid for it at the public sale?

Mr. RAMSEY. That is right.

Mr. PECORA. Why do you say it has no reference or no relationship to the actual value of the property?

Mr. RAMSEY. At the present time, and, I might say, for the past, in the past 2 or 3 years, in the demoralized condition of real estate, there is no particular market value that I can place or that I know anybody else can place on real estate; and obviously the protective committee which made this bid was trying to buy it in for the least price possible.

Mr. PECORA. There was another bid made by independent interests of $4,500,000 for the property, was there not?

Mr. RAMSEY. I understand that there was.

Mr. PECORA. And that bid was made by a representative of a well-known real-estate firm or syndicate in New York?

Mr. RAMSEY. I understand it was; yes, sir. I was not there.

Mr. PECORA. That was a syndicate represented by Mr. Robert Dowling?

Mr. RAMSEY. Yes, sir.

Mr. PECORA. He is regarded as one of the best operators or judges of real-estate values, particularly of business properties, in New York City, is he not?

Mr. RAMSEY. I think he is.

Mr. PECORA. That is his common reputation?

Mr. RAMSEY. Yes, sir.

Mr. PECORA. And has been for over a quarter of a century?

Mr. RAMSEY. I understand that he is a very well regarded real estate man.

Mr. PECORA. And the highest bid made by anyone other than Mr. Batchelder representing the protective committee was four and a half million dollars?

Mr. RAMSEY. That is my understanding.

Mr. PECORA. And that was the bid on behalf of Mr. Dowling?

Mr. RAMSEY. So I understand. Of course, Mr. Dowling knew that the committee could bid up to $16,000,000.

Mr. PECORA. How could he know that?

Mr. RAMSEY. He is a real estate man.

Mr. PECORA. How could he know that the committee could bid up to $16,000,000?

Mr. RAMSEY. I perhaps cannot answer that question.

Mr. PECORA. As a matter of fact, was the committee prepared to bid up to the principal amount of the first mortgage?

Mr. RAMSEY. Yes, sir.

Mr. PECORA. And had the funds available for that purpose?

Mr. RAMSEY. Yes, sir.

Mr. PECORA. And would have bid that much?

Mr. RAMSEY. I do not know that; I could not tell you that.

Mr. PECORA. What is the best appraisal that the committee has been able to get of the value of the property at any time since the purchase of it at the foreclosure sale?

Mr. RAMSEY. It has had no appraisal made. The building is assessed for sixteen and a quarter million dollars.

Mr. PECORA. What was the land assessed at without the building or improvements?

Mr. RAMSEY. I do not know.

Mr. PECORA. I understand it is $6,000,000?

Mr. RAMSEY. I do not know.

Mr. PECORA. Mr. Ramsey, did not Mr. Noyes, subsequent to his appraisal of May 22, 1928, submit another appraisal to the Chase Securities Corporation?

Mr. RAMSEY. I am told that he did. I do not know.

Mr. PECORA. His appraisal under date of May 22, 1928, as we have seen, is $25,869,925. It was proposed to issue, and there was issued originally sixteen million dollars first mortgage certificates, which is more than 60 percent of the appraised value of the property. Were any steps taken by the Chase Securities Corporation eventually to try to have those first mortgage bonds considered a legal investment for trust funds?

Mr. RAMSEY. They were considered legal for trust funds.

Mr. PECORA. In order to obtain such consideration for them, was not Mr. Noyes asked to submit another appraisal at a figure which was increased above his original estimate?

Mr. RAMSEY. I cannot answer that.

Mr. PECORA. Who can answer that?

Mr. SNOW. I think I can answer that question.

Mr. PECORA. All right, if you will do that.

Mr. SNOW. Mr. Noyes' original appraisal was in excess of 66⅔ percent of the first mortgage issue. At the time the building was completed we asked our attorneys if the various requirements had been complied with to make the certificates legal for trust funds. They told us at that time that they had been, except that they did not wish to take the responsibility of stating that the building was then worth what the original appraisal showed. Consequently at their suggestion I wrote to, I believe, the Corporation, and suggested that they get from Mr. Noyes a confirming letter in regard to the valuation. Mr. Noyes replied and gave us a valuation in excess of the original valuation. I believe the revised valuation was over $26,667,000. However, the first valuation was in excess of 66⅔ percent, which was all that was required.

Mr. PECORA. Now I show you what purports to be a photostatic copy of a letter addressed to the Chase Securities Corporation by Charles F. Noyes Co., dated March 20, 1930. Will you please look at it, Mr. Snow, and tell us if you recognize it to be a true copy of a letter sent to the Chase Securities Corporation by Charles F. Noyes Co., and which contains his subsequent appraisal that you have just referred to?

Mr. SNOW. Yes, sir.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. Let it be admitted and placed upon the record.

(Photostatic copy of letter from Charles F. Noyes Co. to Chase Securities Corporation, dated Mar. 20, 1930, was received in evidence and marked "Committee Exhibit No. 225, Dec. 6, 1933.")

Mr. PECORA. The letter marked "exhibit 225" reads as follows [reading]:

MARCH 20, 1930.

CHASE SECURITIES CORPORATION,
60 Cedar Street, New York City.

GENTLEMEN: Under date of March 22nd, 1928, we valued the land and building when completed of the then proposed Lincoln Building. This figure was based upon the plans and specifications submitted to us.

We are pleased to advise that we have recently inspected said land and building, and in our opinion the present value of the land owned in fee and the said Lincoln Building as now completed is in excess of $26,667,000.

Yours very truly,

CHARLES F. NOYES COMPANY, INC.,
(Signed) E. C. BENEDICT.

On this valuation of $26,667,000, the amount of the first mortgage being $16,000,000, the company was enabled to get an opinion that the first mortgage was then 60 percent of the appraised value of the property and, hence, legal for trust investment?

Mr. RAMSEY. The figure was 66⅔ percent.

Mr. PECORA. But the figure commonly used is 60 percent, is it not?

Mr. RAMSEY. No; I do not believe so.

Mr. PECORA. Is not that the practice?

Mr. RAMSEY. I am not sure that I understand your question, now.

Mr. PECORA. In determining what trust funds may be invested in a first mortgage, is it not customary to use the figure of 60 percent?

Mr. RAMSEY. That I do not know.

Mr. PECORA. Mr. Ramsey, I show you what purports to be a letter addressed to the New York Real Estate Securities Exchange, Inc., under date of July —, 1931, signed by a vice president of the Chase Securities Corporation, apparently. Will you please look at it and tell me if you recognize it to be a true and correct copy of such a letter sent in behalf of the Chase Securities Corporation to the New York Real Estate Securities Exchange?

Mr. RAMSEY. Yes, sir. It was written by Mr. Snow.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. Let it be admitted and made a part of the record.

(The letter referred to, dated July (blank), 1931, addressed to New York Real Estate Securities Exchange from Mr. Snow, was received in evidence, marked "Committee's Exhibit No. 226, Dec. 6, 1933.")

Mr. PECORA. The letter referred to, which has been marked "Committee's Exhibit No. 226", reads as follows [reading]:

"JULY —, 1931.

NEW YORK REAL ESTATE SECURITIES EXCHANGE, INC.,
12 East 41st Street, New York, N.Y.

(Attention Mr. Truman S. Mersereau, executive secretary.)

GENTLEMEN: We are in receipt of your letter of June 30th, inquiring in regard to the legality for investment of trust funds in New York State of Lincoln Forty-Second Street Corporation First Mortgage 5½'s.

Under date of March 28, 1930, we were advised by counsel that the $16,000,000 principal amount of Certificates of Interest in the First Mortgage 5½% Sinking Fund Gold Loan were legal investments for trust funds under the present laws of the State of New York. This opinion was based upon the appraisal of Charles F. Noyes & Company, Inc., appraising the mortgaged property as of March 20, 1930, at a value in excess of $26,667,000.

We have not had occasion to review the question of such legality, since we would not care to recommend the certificates of this loan for such investment until the earnings of the building have become better established.

Very truly yours,

——— ———, *Vice President.*

Mr. RAMSEY. I show you what purports to be a photostatic reproduction of a letter addressed by the Chase Harris Forbes Corporation to Wile, Oviatt & Gilman under date of March 14, 1933. Will you please look at it and tell me if you recognize it to be a true and correct copy of a letter so sent to the persons to whom the copy is addressed?

Mr. RAMSEY. Yes, sir.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. Let it be admitted.

(The letter referred to, dated Mar. 14, 1933, from Chase Harris Forbes Corporation to Wile, Oviatt & Gilman was received in evidence, marked "Committee Exhibit No. 227, Dec. 6, 1933.")

Mr. PECORA. The letter received in evidence as exhibit 227 reads as follows [reading]:

MARCH 14, 1933.

MESSRS. WILE, OVIATT & GILMAN,
1252 Lincoln Alliance Bank Building, Rochester, N.Y.

(Attention Mr. J. E. O'Brien.)

DEAR SIRS: This reply to your letter of February 24th has been delayed pending an attempt to ascertain whether any of the Lincoln Building bonds were sold for trust accounts as referred to below. Your letter to the Chase National Bank has been referred to Chase Harris Forbes Corporation with respect to your third and fourth questions.

Regarding your third question, "Were they (Lincoln Building First Mortgage 5½% Bonds) ever legal investments for trust funds in New York State?", it is our understanding that these bonds were legal investments for trust funds in New York State for a period of time. For your purposes I believe that you should preferably have official confirmation of this fact from the Savings Bank Commissioner in Albany. It will probably be found that they were put on the official list of legal investments issued by the Commissioner on a specific date, and that they were later removed. We believe that you will probably wish to write the Savings Bank Commissioner direct for this information; but should you desire us to follow the matter further for you, we will be pleased to do so.

Your fourth question is, "While the corporation was in operation, did savings banks or trust companies, acting as executors or trustees or other trustees, invest estate or trust funds in these securities? If so, what was the approximate number and if it would not be too much trouble, I would appreciate the names of some of them." We can confirm to you that while the Corporation was in operation a few executors or trustees did purchase Lincoln Building First Mortgage 5½'s from the former Harris, Forbes & Company of New York, and that insofar as our sales records indicates these purchases were ostensibly for the investment of trust funds. We have with difficulty identified a few sales of this nature, but have not gone to the extended clerical labor of making

a complete check of our records to obtain the approximate total number and the further work of checking with our salesmen as to their information regarding the accounts.

Respecting the names of certain of these customers of ours, we beg to advise that it appears to be a breach of the ethics of our profession and in conflict with our policy to divulge the name and nature of the purchases of one customer to another.

Kindly advise if we can be of further assistance.

Very truly yours,

CHASE HARRIS FORBES CORPORATION,
By ——— ———.

Now who was the trustee for the debentures?

Mr. RAMSEY. Chase National Bank.

Mr. PECORA. When the time came to institute foreclosure suit the Chase Bank represented both the first mortgage holders and the debenture holders?

Mr. RAMSEY. No, sir.

Mr. PECORA. Well, the Chase Bank or the Chase Securities Corporation undertook to organize the protective committee to represent the first mortgage certificate holders?

Mr. RAMSEY. But the Chase Bank had resigned as trustee for the debenture issue.

Mr. PECORA. In favor of the Chemical Bank?

Mr. RAMSEY. Chemical Bank & Trust Co., yes.

The CHAIRMAN. Maybe you can answer the question there as to the fees of these trustees?

Mr. RAMSEY. I just checked the fee of the trustee as far as the work it did in connection with this foreclosure. It amounted to approximately $18,000, for the first mortgage certificates.

The CHAIRMAN. Was that fee fixed by statute or by decree of the court?

Mr. RAMSEY. I believe it is approved by the court. I am not certain. I believe it is.

Mr. PECORA. Mr. Chairman, I want to offer on the record an original copy of a letter dated August 31, 1933, by the Investment and Statistical Bureau of the Banking Department of the State of New York, in reply to a letter that we addressed to them with regard to these first-mortgage certificates being regarded as proper investments for trust funds.

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

(Letter dated Aug. 31, 1933, from Investment and Statistical Bureau of Banking Department of State of New York to Julius Silver, associate counsel, Committee on Banking and Currency, was thereupon designated " Committee Exhibit No. 228, Dec. 26, 1933.")

Mr. PECORA. The letter received in evidence as exhibit no. 228, written on the letterhead of the New York State Banking Department and dated August 31, 1933, is as follows [reading]:

NEW YORK, *August 31, 1933.*

JULIUS SILVER, ESQ.,
Associate Counsel, Committee on Banking and Currency,
285 Madison Avenue, New York City.

DEAR SIR. Your letter of the 29th instant addressed to our Albany office has been forwarded to this Bureau for attention and reply.

Under section 21 of the Personal Property Law, investments of trust funds may be made in securities similar to those in which savings banks of this state are authorized to invest moneys deposited therein but the restrictions imposed upon savings banks do not apply in their entirety to trust-fund investments.

There is no provision in the Banking Law whereby participating real-estate mortgage bonds are legal investments for New York State savings banks, real-estate bond and mortgages having to conform to the provisions of subdivision 6 of section 239.

The law regulating trust-fund investments being outside the jurisdiction of the Banking Law, we are referring you to section 21 of the Personal Property Law and section 111 of the Decedent Estate Law, under which we believe you will be able to determine whether or not the Lincoln Building certificates ever qualified as a legal investment for trust funds.

Yours very truly,

INVESTMENT AND STATISTICAL BUREAU,
Per (Signed) E. C. RYDER.

Who is Mr. F. M. Totton, Mr. Ramsey?

Mr. RAMSEY. Mr. F. M. Totton is an officer of the Chase National Bank.

Mr. PECORA. I show you what purports to be a photostatic reproduction of a memorandum addressed by Mr. Totton to Mr. Charles F. Batchelder, vice president of the Chase Securities Corporation, dated May 4, 1928, known by your identification number as 41-34. Will you please look at it and tell me if you recognize it as a true and correct copy of such a memorandum?

Mr. RAMSEY. Yes, sir.

Mr. PECORA. I offer it in evidence.

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

(Photostat of memordandum dated May 4, 1928, from F. M. Totton to Charles F. Batchelder was thereupon designated "Committee Exhibit No. 229, Dec. 6, 1933.")

Mr. PECORA. The memorandum received in evidence as exhibit no. 229, addressed to Charles F. Batchelder, vice president Chase Securities Corporation, and dated May 4, 1928, is as follows [reading]:

In answer to your inquiry this morning, I telephoned Mr. Hugh S. Robertson treasurer of both Todd, Robertson and Todd Engineering Corporation and Eastern Offices, Inc., and he told me in confidence that they pay a ground rental on the leasehold of $300,000 per annum. The rental area is figured at 1,250,000 square feet. Mr. Robertson asked me to keep the rental figure in confidence for he said he understood that we were interested in the site of the Lincoln Storage Warehouse and he would speak very frankly to me in acknowledging that this was a highly competitive deal as far as the Graybar Building was concerned. He said he felt that the knowledge which his folks had gained over a rough road of twenty-two years experience was a very valuable asset as shown by the fact that he was offered 2,000 shares of stock if he would consent to go on the Board. This he refused to do, however, as he did not consider it a good set-up and he felt the price of the ground ($7,000,000 to $8,000,000) was too high. He said that the matter of the Lincoln site was an old one to him as he had figured on it once a year for the last 20 years and, in fact, at one time—about twelve years ago—he was on the verge of signing a contract to go ahead. It that time he said the ground value was given as $3,500,000.00.

He said that he had been very fortunate in the matter of Graybar rentals, for now he only had 6% vacancies and this was a better record than most of the similar buildings could show. He said that the fact that the Chase Bank was in the ground floor had helped him in at least three cases to secure tenants who wished close proximity to the Chase.

I assured Mr. Robertson that I would keep the information which he had given me confidential, for he said he had spoken very frankly as he wished to lay all the cards on the table.

(Signed) F. M. TOTTON.

From this memorandum it would appear, would it not, that Mr. Totton was sounding a note of warning to the Chase Securities

Corporation about participating in the financing of this Lincoln Building proposition?

Mr. RAMSEY. I do not know that that is true, Mr. Pecora. As I understand it, this amount of property that was under discussion here did not represent the total amount of property that was finally assembled for the Lincoln Building.

Mr. PECORA. You mean the property the ground value of which was given as 3½ million dollars?

Mr. RAMSEY. Yes, sir.

Mr. PECORA. Twelve years ago?

Senator COUZENS. While you are waiting for Mr. Pecora, will you send up the first notice that you sent out to the bondholders or holders of certificates of ownership in the bonds?

(Mr. Ramsey passed a document to Senator Couzens.)

Mr. PECORA. Mr. Ramsey, I show you what purports to be a photostatic reproduction of a letter addressed as follows: "Executive Personal, Chicago and Boston", dated May 9, 1931, and accompanying which is a photostatic reproduction of a memorandum "Re: Lincoln 42nd Street Building", dated May 8, 1931, signed by the initials "G. R.", which I assume are your initials.

Mr. RAMSEY. Yes, sir.

Mr. PECORA. Will you look at these photostatic reproductions and tell me if you recognize them to be true and correct copies of originals that were prepared by you and forwarded?

Mr. RAMSEY. Yes, sir.

Mr. PECORA. I offer them in evidence.

The CHAIRMAN. Let them be admitted and spread on the record.

(Photostat of letter dated May 9, 1931, captioned "Executive Personal, Chicago and Boston", but unsigned, together with attached photostat of memorandum "Re: Lincoln 42nd Street Building", dated May 8, 1931 and signed "G. R.", were thereupon designated "Committee Exhibit No. 230, Dec. 6, 1933.")

Mr. PECORA. The exhibit marked "No. 230" in evidence, apparently letter dated May 9, 1931, reads as follows [reading]:

MAY 9, 1931.

EXECUTIVE PERSONAL,
Chicago & Boston.

Gentlemen: I am enclosing herewith a rough memorandum referring to the Lincoln 42nd Street Building. The discussion which took place the other day was not conclusive and there is some possibility yet that ways and means will be developed to take care of interest due in June. It is my best judgment, however, that there is a better than even chance that the money will not be found and that a Bondholders' Protective Committee will be necessary. As developments take place I will keep you advised.

Very truly yours,

——— ———.

This letter was signed by you, wasn't it?

Mr. RAMSEY. Yes, sir.

Mr. PECORA. The accompanying memorandum attached to the letter reads as follows [reading]:

MAY 8, 1931.

MEMORANDUM, RE: LINCOLN 42ND STREET BUILDING

I attended a meeting yesterday afternoon in the office of Chase Securities Corporation, at which were present Messrs. Robert L. Clarkson, Frank Callahan, Jonas Anderson and Leslie Snow, of Chase Securities, and John H. Stuart, Vice-President Continental National Bank.

From a brief description of the general situation it is apparent that figures which have been given to the Chase by both the owners and Pease and Elliman, renting managers, now prove to have been untrue. At the present time leases actually signed are for $1,934.000, which is about 49% rented, whereas we have been informed that the building was 65% rented. In addition to this, there is a verbal agreement with the National City Bank whereby it has agreed to lease space for $240,000. This lease, however, has not been signed and there seems to be considerable question that it ever will. In addition to the above, the Building Company has assumed leases for a total of $150,000 in connection with securing tenants from other buildings. Deducting this figure from the income for leases actually signed, leaves a net rent roll of $1,784,000 on an annual basis. Operating expenses are $439,000, administrative expenses $100,000, and real-estate taxes $537,500. These expenses amount to $1,076,500, leaving a total available for interest charges, depreciation, etc., of $708,000. Interest charges on the first-mortgage bonds alone amount to $880,000, and on the total bonds and notes outstanding $1,388,500.

It is obvious from the above that the building is far from earning its interest charges, and a more disquieting feature is that the spring renting season is now passed and Pease & Elliman hold out no hope for additional rentals to amount to anything until this fall, or more probably a year from this spring.

The Chase National Bank is now lending $1,000,000 to the Syndicate which owns the equity in this building. The money is in turn loaned to the Building Corporation, the note being endorsed by either Dwight P. Robinson or United Engineers and Constructors. We have been told that the $1,000,000 mentioned above would be all the money that would be required by the building to carry it through the balance of the year. It now develops that they will need approximately $600,000 on June 1st to pay interest which becomes due on that date and will need an additional $900,000 to carry the building until it becomes self-supporting.

No one in the meeting yesterday had the slightest hope that this money could be found, and, as a consequence, it appears that we are now brought down to the immediate consideration of a probable default on June 1st. While the conversation was very general, Mr. Snow said that he had discussed this matter with Mr. James T. Lee, Real Estate Vice President of the Chase Bank, and found him doubtful about the possibility of the building being successful under the present capitalization. He believed that the building and land is at present worth about $20,000,000 and that perhaps a first mortgage could be secured on it from one of the insurance companies for say eleven or twelve million dollars. If this is possible, the idea was proposed of reorganizing on the basis of paying first mortgage bondholders cash for 70 to 75% of their first mortgage bonds—balance in debentures, and giving the present debenture holders, which debentures, are incidentally secured by a second mortgage, preferred stock and perhaps giving the noteholders common stock. There is a complication due to the fact that the debenture interest is guaranteed for two or three years longer by United Engineers and Constructors.

The meeting broke up without any final conclusion being reached, everyone present agreeing to discuss the situation with his associates. It was suggested that Mr. Snow make further inquiries as to the exact status of the National City lease on the theory that if this lease was good, the amount of money available on an annual basis for interest charges would be just sufficient to pay the charges on the first mortgage bonds. Even if it is good there still remains the problem of raising $600,000 by June 1st.

G. R.

Now, what took place as a result of the discussions and conferences alluded to in this memorandum of yours, Mr. Ramsey?

Mr. RAMSEY. I do not remember exactly, Mr. Pecora, but money was found to pay the interest on June 1st on the first mortgage certificates.

Mr. PECORA. How was it found? It was not found from the income derived from the property, was it?

Mr. RAMSEY. It must have been borrowed. I am not familiar, as a matter of fact with what source or how it was obtained, but it was obtained and the interest was paid on June 1st.

Mr. PECORA. Have you a copy of prospectus that the Chase Securities Corporation issued with regard to another offering of the first mortgage bonds on January 12, 1931, identified by the number 38-21?

Mr. RAMSEY. January 12, 1931; yes.

Mr. PECORA. I show you what purports to be a photostatic reproduction of such a prospectus. Will you look at it and tell me if it is a true and correct copy of the one which was issued on or about the date which it bears, namely, January 12, 1931?

Mr. RAMSEY. Yes, sir.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. Let it be received and entered on the record.

(Prospectus dated Jan. 12, 1931, and headed "Lincoln Building First Mortgage 5½ Percent Sinking Fund Gold Loan, dated June 1, 1928, due June 1, 1953", was thereupon designated "Committee Exhibit No. 231, Dec. 6, 1933", and appears in full at the end of today's record.)

The CHAIRMAN. In connection with your estimate there don't you give an item of operating expenses so much and then administration expenses so much? What is covered by that?

Mr. RAMSEY. That I do not know. Those were the figures that were given to me at that time, Senator, and I do not know what they were.

The CHAIRMAN. A hundred thousand dollars I think you estimated as administration expenses in addition to the operating expenses. I was wondering how that came in.

Mr. PECORA. Now, the prospectus of January 12, 1931, received in evidence as exhibit no. 231 sets forth, among other things, as follows, does it not, Mr. Ramsey, under the caption of "Rentals":

> The Lincoln Building contains 915,000 square feet of rentable area. In terms of gross rental income the building was 60 percent rented as of December 1, 1930. Messrs. Pease & Elliman, Inc., rental agents for the building, advise that rentals are progressing satisfactorily, and they estimate that the building will be 80 percent rented by June 1, 1931, the end of the first year of operation. Based on present 60 percent rental, the income is more than sufficient to cover interest on the first mortgage gold loan after providing for maximum estimated operating expenses and taxes.

Is that statement a true statement, Mr. Ramsey?

Mr. RAMSEY. It is the statement as I understand it—I cannot vouch for this, because I had nothing to do with the preparation of that circular—it is a statement, as I understand it, that was received from Pease & Elliman and Dwight P. Robinson.

Mr. PECORA. Was the statement a true statement, namely, that the "building was 60 percent rented as of December 1, 1930?"

Mr. RAMSEY. I do not believe that it was.

Mr. PECORA. What was the percentage of rental on December 1, 1930?

Mr. RAMSEY. Nearer 50 percent. But you get into a lot of trouble on the theory of what you mean by "rental", whether you are taking into consideration the area or prospective income.

Mr. PECORA. Well, I am using the term "rental" as it used in this prospectus. I am not indulging in any theory about it. I am simply referring to the language of the prospectus itself.

Mr. RAMSEY. Yes.

Mr. PECORA. Where it says: "In terms of gross rental income the building was 60 percent rented as of December 1, 1930."

Now, the fact is it was not 60 percent rented as of that date; it was nearer 50 percent rented?

Mr. RAMSEY. Yes, sir.

Mr. PECORA. And it never became 60 percent rented?

Mr. RAMSEY. No, sir.

Mr. PECORA. And you knew, as appears from the exhibit offered in evidence as exhibit no. 230, as early as May 9, 1931, that the rentals that had been established were wholly insufficient to meet the carrying charges on the property?

Mr. RAMSEY. Yes, sir.

Mr. PECORA. Now, in this prospectus of January 12, 1931, marked "Exhibit No. 231," this other statement is made under the caption of "Valuation":

Charles F. Noyes & Co., Inc., representing the Bankers, report under date of March 20. 1930, as follows: "We have recently inspected said land and building, and in our opinion the present value of the land owned in fee and the said Lincoln Building as now completed is in excess of $26,667,000." The First Mortgage 5½% Sinking Fund Gold Loan outstanding in the amount of $16,000,000 would therefore be equivalent to approximately 60% of this valuation.

How do you account for the fact, Mr. Ramsey, that the previous appraisal made by Mr. Noyes or by the Charles F. Noyes Co., expressed a valuation for the property of $25,869,925, whereas in this circular of January 12, 1931, the public is informed that he has made an appraisal of the property in excess of $26,667,000, or approximately $800,000 in excess of the first appraisal?

Mr. RAMSEY. Mr. Pecora, I cannot answer that question. I do not know.

Mr. PECORA. What occasion was there in March 1930 for getting this appraisal from Charles F. Noyes Co.?

Mr. RAMSEY. I do not know. I guess Mr. Snow knows.

Mr. PECORA. Can you answer that question, Mr. Snow?

Mr. SNOW. That was the question, Mr. Pecora, that has already been testified to.

Mr. PECORA. No; the question that you testified to before brought out the fact that Mr. Noyes did make the subsequent appraisal, or his firm did.

Mr. SNOW. Yes.

Mr. PECORA. Now, I am asking you what was the occasion in March 1930 for getting an increased appraisal from Noyes Co.

Mr. SNOW. We secured the new appraisal from Charles F. Noyes Co. for the purpose of determining the legality for trust funds. That was the only reason why the appraisal was secured.

Mr. PECORA. Was it in order to make the first-mortgage certificates considered as legal investments for trust funds that Mr. Noyes gave this increased appraisal in March 1930?

Mr. SNOW. No, sir; it was in order to satisfy ourselves and our counsel about the value of the building upon completion, that it was at least as great as the value given to us by Charles F. Noyes initially.

Mr. PECORA. What was the actaul cost of the building?

Mr. SNOW. With the land?

Mr. PECORA. No; the building.

Mr. SNOW. Thirteen million and thirty-seven thousand.

Mr. PECORA. And the actual cost of the land?

Mr. SNOW. Eleven million six hundred thousand.

Mr. PECORA. Making a total cost of both land and building of what?

Mr. SNOW. Of $24,637,000.

Mr. PECORA. Now, you do not consider, do you, that there had been any appreciation in real-estate values in this section of New York City between May 1928 and March 1930?

Mr. SNOW. No, sir; not in that period.

Mr. PECORA. There had been a depreciation, if anything, had there not?

Mr. SNOW. I would say so; yes.

Mr. PECORA. On what basis were you justified in telling the public in March 1930 that the cost or value, according to an appraisal made by Mr. Noyes or his firm, was in excess of $26,667,000?

Mr. SNOW. That was the appraisal that was given to us by Charles F. Noyes Co.

Mr. PECORA. Well, you adopted that appraisal as a basis of information to the public concerning the value of the property and also in order to assure the public a first mortgage was an investment for trust funds?

Mr. SNOW. We quoted this valuation, together with the date on which the valuation was made, March 26, 1930.

Mr. PECORA. Yes; but this information concerning that valuation was given to the public under date of January 12, 1931?

Mr. SNOW. Yes, sir; that was the most recent valuation we had.

Mr. PECORA. Didn't you know that there had been a further depreciation in property values between March 1930 and January 1931?

Mr. SNOW. I cannot recall now exactly what information we had at that time.

Mr. PECORA. Don't you now recall the fact to have been that between March 1930 and January 1931 there had been a substantial depreciation in property value in the section in which the Lincoln Building was located?

Mr. SNOW. I believe that to be true, Mr. Pecora.

Mr. PECORA. Then why was this circular put out setting forth a valuation for the property as of March 1930 being in excess of $26,667,000?

Mr. SNOW. Only for the reason that that was the most recent information which we had, and I judge that we did not know at that time that there had been any substantial depreciation in real-estate values.

Mr. PECORA. Are you sure of that, Mr. Snow?

Mr. SNOW. No.

Mr. PECORA. That you did not know at that time?

Mr. SNOW. As I testified before, I do not recall exactly what was in our minds at that time.

Mr. PECORA. And to your knowledge there were men sitting on the board of the Chase Bank that were regarded as possessing expert knowledge on real-property values?

Mr. SNOW. That is correct, sir.

Mr. PECORA. Was any opinion or judgment obtained from them as to the value of the property in January 1931 when this circular was issued to the public?

Mr. SNOW. I do not recall.

Mr. PECORA. You know, as a matter of fact, that if any such information was obtained from them, it was not used in the preparation of this circular or prospectus, was it?

Mr. SNOW. I judge that is correct. I cannot be certain of that.

Mr. PECORA. Mr. Ramsey, I show you what purports to be a photostatic reproduction of a letter addressed to Mr. E. L. Heinemann, of the Harris Trust & Savings Bank of Chicago, Ill., dated June 9, 1931. Will you please look at it and tell me if you recognized it to be a true and correct copy of such a letter addressed in behalf of the Chase Securities Corporation? The identifying number in your record is 41-69.

Mr. RAMSEY. Yes, sir.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. It will be admitted.

(The document referred to, letter, June 9, 1931, Chase Securities Corporation to Heinemann, was received in evidence, marked "Committee Exhibit No. 232", Dec. 6, 1933, and the same was subsequently read into the record by Mr. Pecora.)

Mr. PECORA. The document received in evidence as Committee's Exhibit 232 is as follows [reading]:

JUNE 9, 1931.

Mr. E. L. HEINEMANN,
Harris Trust and Savings Bank,
111 West Monroe St., Chicago, Ill.

DEAR ED: The information which I sent you sometime ago concerning the Lincoln Building was furnished us by Chase Securities Corporation who, in turn, received the most of it from the Renting Agents. Some of the information was not, strictly speaking, correct. For instance, the building at the present time is about 50 percent rented. There are certain leases verbally agreed upon but not actually signed which would bring the figure up toward 65 percent. The Company has not made public as yet either earnings or a balance sheet. At the present time I do not believe the building is rented quite to the point where it is actually covering the First Mortgage Interest charges. The interest was, however, paid on June 1st.

We have not been telling people a great deal about the figures since we have not really received any authentic figures. We are simply saying that the building, we understand, at the present time is approximately 50 percent rented, and then we give a general talk about how terrible real-estate conditions are, and then we commit ourselves to the point of saying that if real-estate conditions begin to pick up, the Lincoln Building because of its newness, strategic location, etc., should be among the first to benefit.

As you know, the Debentures defaulted on the June 1st interest but since this interest is guaranteed for three years by United Engineers it probably will be paid by the guarantor. Meanwhile, as far as the debenture agreement with the Lincoln Building Corporation goes, the bonds will be in default. Details are now being worked out as to just what the procedure will be. I will inform you further when I hear.

Very truly yours,

———— ————.

That is signed by one whose initials are G. J. L. Who is G. J. L.?

Mr. RAMSEY. Mr. Leness.

Mr. PECORA. What was his relationship to the Chase?

Mr. RAMSEY. He was not part of the Chase organization directly at that time, but part of the Harris Forbes organization.

Mr. PECORA. That was a subsidiary of the Chase?
Mr. RAMSEY. Yes.
Mr. PECORA. When was the foreclosure action commenced?
Mr. RAMSEY. December 1931.
Mr. PECORA. And it was brought in behalf of the first mortgage security holders?
Mr. RAMSEY. Yes, sir. That was January 1932, instead of December 1931.
Mr. PECORA. Prior to that, did the Chase National Bank resign as trustee for the holders of the debentures?
Mr. RAMSEY. I am not certain, Mr. Pecora, whether they retired prior to that, or approximately the same time. I think it was prior.
Mr. PECORA. Why did the Chase National Bank so resign?
Mr. RAMSEY. So that there could be no possibility of a conflict of interests. They resigned in December 1931, so it was just prior to that.
Mr. PECORA. Did the Chemical Bank, which succeeded the Chase National Bank as trustee for the debenture holders, engage counsel to represent it in the foreclosure action?
Mr. RAMSEY. I believe they did, yes.
Mr. PECORA. Who paid those counsel?
Mr. RAMSEY. I do not know.
Mr. PECORA. Who promised to pay them?
Mr. RAMSEY. I do not know that, Mr. Pecora.
The CHAIRMAN. When was the sale under the foreclosure?
Mr. RAMSEY. July 1933.
The CHAIRMAN. The proceedings were commenced in January 1932?
Mr. RAMSEY. Yes, sir.
The CHAIRMAN. And were not concluded until July 1933?
Mr. RAMSEY. No, sir.
Senator COUZENS. Are the same rental agents operating the building now?
Mr. RAMSEY. No, sir.
Senator COUZENS. When were they removed?
Mr. RAMSEY. They were removed, I think, in September or October 1931.
Senator COUZENS. That was after you found they had been misleading you?
Mr. RAMSEY. Yes, sir.
Mr. PECORA. What was the last question I asked?
(The reporter read as follows:)

Mr. PECORA. Who paid those counsel?
Mr. RAMSEY. I do not know.
Mr. PECORA. Who promised to pay them?
Mr. RAMSEY. I do not know that, Mr. Pecora.

Mr. PECORA. Is there any way by which you can find out, Mr. Ramsey?
Mr. RAMSEY. Yes; I think so.
Mr. PECORA. Will you please do so?
Mr. RAMSEY (after conferring with an associate). I understand that because this issue was in default there was no trustee that would

take on this job without some kind of certainty that he would be paid for his service, whereupon the Chase Securities, through Mr. McKee, or rather the debenture committee—I do not know whether he acted for Chase Securities or the debenture committee—guaranteed to pay the actual trustee fees which would accrue for the services of the Chemical National Bank.

Mr. PECORA. Was an action originally brought, or was notice of the bringing of an action in behalf of the trustee for the debenture holders ever brought to the notice of the Chase?

Mr. RAMSEY. I am not sure that I understand that question. I wish you would ask it again, Mr. Pecora.

Mr. PECORA. Did not the Chemical Bank indicate to the Chase interests that it was going to bring an action to foreclose the debenture secured by a second mortgage, to foreclose the second mortgage which secured the debenture?

Mr. RAMSEY. I think perhaps they did. I am not personally aware of that.

Mr. PECORA. Mr. Philip E. Allen, who was secretary of the protective committee, representing the first mortgage certificate holders, had been connected with the Chase interests, had he not?

Mr. RAMSEY. Yes, sir.

Mr. PECORA. In what capacity?

Mr. RAMSEY. He had been employed by Harris-Forbes prior to the merger with the Chase.

Mr. PECORA. Now, Mr. Ramsey, will you look at this printed copy of a letter addressed to Mr. Allen and secretary of this protective committee, dated July 26, 1932, the original of which was on the letterhead of Milbank, Tweed, Hope & Webb, and tell me if that is a copy of a letter that was caused to be sent to Mr. Allen by that law firm.

Mr. RAMSEY. Yes, sir.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. Let it be admitted.

(The document referred to, letter, July 26, 1932, Milbank, Tweed, Hope & Webb to Allen. was received in evidence, marked "Committee Exhibit No. 233," Dec. 6, 1933, and the same will be found at the conclusion of today's proceedings.)

Mr. PECORA. I take it, Mr. Ramsey, that this letter sets forth the essential facts with regard to the situation that existed as of the date of this letter, namely, July 26, 1932.

Mr. RAMSEY. Yes, sir.

Mr. PECORA. I think that is all.

The CHAIRMAN. Let the record show that Mr. Snow and Mr. Ramsey are excused.

Mr. PECORA. Mr. Aldrich, will you be good enough to resume the stand?

TESTIMONY OF WINTHROP W. ALDRICH—Resumed

Mr. PECORA. Mr. Aldrich, referring to the statement which you read into the record on Wednesday of last week, have you anything to add to the statements and opinions already expressed by you before this committee with regard to the separation of the functions

of the commercial bank and the exercise of trust powers by a commercial bank?

Mr. ALDRICH. Yes, I have, Mr. Pecora. I have been giving a very substantial amount of consideration to that.

Mr. PECORA. All right, sir.

Mr. ALDRICH. Of course, there is a considerable amount of historic background connected with that situation. Originally the national banks did not have the power to do a trust business. Trust business grew up in the creation by States of corporations that were authorized to do a trust business, and in the course of time those State corporations began to do a commercial banking business, and eventually the State trust companies were operating alongside the national banks doing both a commercial banking and trust business.

Of course, that trust business consists primarily of individual trusts, trusts created by will or executorships, or depositary relationships, escrow, and things of that kind, and that is the major portion of the business today.

In addition to that there is what is commonly known as corporate trust business, which involves being depositary for securities of various kinds, issuing deposit receipts, or being trustee for mortgage bond issues or debenture bond issues, and things of that sort.

I think it is fair to say that by far the larger proportion of the business is individual trust business. The national banks were first given power to engage in the trust business in the Federal Reserve Act by amendment thereof approved on September 26, 1918. That amendment contained, in section 11, an authorization to the Federal Reserve Board "to grant, by special permit to national banks applying therefor, when not in contravention of State or local law, the right to act as trustee, executor, administrator, or registrar of stocks and bonds under such rules and regulations as the said Board may prescribe."

As I understand it, the national banks did not take much advantage of that provision of the law until about 1919. That was the time when they began to do a trust business under that authorization. Of course, at the time of the organization under the Federal Reserve Act everybody desired very much to get the State banks and State trust companies to become members of the Federal Reserve System, and it brought very sharply to the fore the competition which existed between the two classes of member banks, where you had, on the one hand, State trust companies and State banks perhaps doing a trust business, and on the other hand national banks, all members of the same system; and it was unquestionably for the purpose of permitting the national banks to compete on a basis of equality with the State trust companies that that power was given. In fact, my understanding is that the decisions of the courts sustaining the granting of that power by the Federal Government were based on the theory that it was to protect the national banking system against the competition of State banks which had that power.

Of course, as Senator Glass said here yesterday, it is a very serious problem always, in connection with an attempt to devise restrictive regulations that will apply to national banks and to State banks by Federal Government legislation, how you can get jurisdiction over the State banks; and where an attempt is made to

legislate with regard to State banking by the National Government, very serious considerations of constitutional law are involved.

I think it has been freely admitted by everybody that, except for the possible fact that when the Federal Reserve Act was originally passed there might have been a moral commitment on the part of the Federal Government not to alter the charter rights of State banks, which then became members, the Federal Government has clear power to determine how the business of member banks of the Federal Reserve System should be conducted.

On the other hand, whenever the Federal Government formulates restrictive provisions which apply to member banks, it necessarily creates the danger of a withdrawal by State banks from the Federal Reserve System.

If I may be permitted, before I go off the stand I would like to say a word about this deposit guarantee provisions of the Banking Act of 1933 in that connection, because I think there is a very serious danger that the deposit guarantee provisions of the Banking Act of 1933, as far as the permanent form is concerned, will tend to drive banks out of the Federal Reserve System.

As a matter of actual fact, there is a very real distinction between the history of the granting of trust powers to national banks and the history of the mingling together of the investment banking business with the deposit business of national banks.

The power to engage in the trust business was granted directly by Federal statute to the national banks themselves. There was never any grant of power by the Federal Government to the national banks to engage in the business which was conducted by the securities affiliates. That business was engaged in, as you have brought out in these hearings, through the creation of interlocking stock arrangements or other arrangements which affiliated those investment banking concerns with the national banks, and I think there is a very real distinction because of that difference.

The national banks, by Federal act passed after due deliberation and in order to enable them to compete with the State banks, were given the power to engage in the trust business as a part of their own function. To endeavor to dissect and separate that function at the present time, it seems to me, would not only create the additional danger of the withdrawal of banks from the Fderal Reserve System, but it would also be changing a policy which was instituted by the Federal Government, and upon the basis of which the national banks have gone into the trust business and have erected their trust departments and proceeded, since 1919, to do that business.

There is no doubt in my mind that there have been situations created by the fact that commercial banks are in the trust business, which require careful thought. There was a time when there was a great deal of feeling, looking at it from the point of view of the national banks, that the securities affiliates of the national banks and the investment corporations, if any, connected with the State banks, might sell to their trusts securities which they brought out.

At that time many banks had rules in effect that trust departments could not purchase securities which were brought out by the investment affiliates, but, of course, that danger has been eliminated by the provisions of the Banking Act of 1933, and to that extent—

and, of course, that is the major part of the business—the possibility of situations arising which have been criticised no longer exists.

That leaves the situation with regard to the corporate trusts. You have brought out here today the type of situation which exists under those circumstances where, for example, a trustee may become trustee for two corporate issues, one being senior to the other.

Mr. PECORA. And which may conflict, the one with the other.

Mr. ALDRICH. And which might conflict in interest. I should think that that might very well be made the subject of remedial legislation, because obviously if the situation arises where the property has to be foreclosed, it is necessary for the trustee to resign in one of those capacities, and for some one else to be immediately nominated, and, of course, the situation at once arises, who is going to pay the expenses of the new trustee, if the estate is in a condition that the trustee feels that there is going to be some doubt as to whether it is going to pay?

Possibly you could devise a simple remedy for that. I do not think that has anything to do specifically with the mingling together of the commercial and trust business, because it would apply equally if a corporation were engaging in the trust business alone, and took positions which might be inconsistent.

Another embarrassing situation which has been illustrated in the testimony here, which may arise, is that a bank may make a loan to a corporation having a debenture issue of which it is trustee, or it may, as a matter of fact, purchase securities which are of another issue. That situation also might be covered by specific legislation.

I am inclined to believe that it would be a mistake to attempt to to do that at the moment, for this reason, that I think that the commercial and trust relationships of the various banks with their customers have become established to a point where it would be unfortunate at this juncture to upset such a vital part of the whole commercial relationship between commercial banks and their customers. As a matter of fact when the situation arises where a conflict of interest occurs between a commercial bank and its trust department because of the circumstances I have just referred to the same situation exists as when a trustee has taken the first mortgage and second mortgage. He either has got to get out of that position by resigning as trustee or the court of equity or the court in bankruptcy will undoubtedly insist on his retiring.

Now, I have myself found that in the first place the banks are very anxious to themselves retire from a position of inconsistency, and I have also found that the courts are very acute in seeing that they do it, if they do not do it voluntarily, and my own feeling is this, that there is no reason at all for divorcing the trust business from the commercial banking business completely. There might be certain cases such as I have just referred to where you could prohibit the relationship arising. I think you could, without any harm at all, prohibit a trustee from taking the first mortgage and second mortgage. I think it would be more embarrassing if you tried to prohibit a bank making a loan to a corporation, of whose securities it happened to be trustee, because of the fact that naturally the commercial relationship or the trust relationship would happen to be the same in each case.

Does that cover your point?

Mr. PECORA. Yes.

Mr. ALDRICH. I would regret very much seeing anything done, even by prohibitive legislation in detail, which would upset existing relationships at this moment between commercial corporations and their banks, because I think the situation is sufficiently involved already so that that would just make additional difficulty.

May I say this? I think this is true, that if you attempted to separate the two businesses what would happen would be that there would be an additional impulse toward retirement from the Federal Reserve System and toward going into the State system, and you would finally find the cycle started all over again of the necessity of allowing the banks which were members of the Federal Reserve System to compete with banks which were not members, outside of the Federal Reserve System, in furnishing both facilities.

Mr. PECORA. Mr. Aldrich, have you anything you care to say to the committee on the question of whether or not there should be any legislative restriction upon executive officers of banks engaging in any other business?

Mr. ALDRICH. I do not think that the executive officers of banks in large centers which can afford to pay men sufficient to obtain their entire services should engage in any other business. I think in small communities it is really essential that they should be permitted to do so, and as I have indicated in my statement, I think that there should be a full disclosure of any such relationship.

I do think this, Mr. Pecora. I think that within reason officers of commercial banks should be permitted to sit on the boards of commercial companies, and I think it is essential that officers of commercial companies should be permitted to be directors of commercial banks.

Looking at the former problem first—the question of the officers of commercial banks serving on the boards of commercial corporations. Of course if we had the English system of directors, where members acted and gave a great deal of their time, practically all their time, to the position of being a director, I should say that we would have to follow that English system out to its logical conclusion and have our directors concentrate on the particular corporations of which they are directors.

But I think our philosophy of directors is somewhat different from the English system. I think that the philosophy which has grown up here is that the executive officers of commercial institutions are experts in the business which they are administering, and that the board of directors, in part at least, consists of men who have a wide knowledge of general affairs and of the commercial conditions of the country generally, who will advise the technical managers with regard to large questions of policy.

Of course in a number of corporations they do not have such directors. The Standard Oil companies, for example, are run entirely by employee directors—officers of the companies are the directors. That is still a third philosophy, as distinguished from the English and the philosophy I have just been mentioning. But generally speaking our large corporations are run on the technical side by their officers with a board of directors which represents general knowledge of the existing economic situation.

I think on such a board as that a banker can be extremely useful, and, judging by my own experience, it is extremely useful to the banker to sit on some boards because of the fact that he gets views of economic conditions in the country which he might not otherwise get, and while that is a purely selfish point of view and not advanced as an argument from the point of view of the corporation on whose board the banker sits, I think it is an argument in favor of permitting the banker to sit on such board.

Obviously we should not run to the point where the banker is sitting on any large number of outside boards, and it was for that very reason, among others, that I put into my statement the recommendation that the banker should always advise his own board with regard to every other board that he sits on, so that the bank's board could determine whether they thought the banker was sitting on an improver number of outside boards. It should not be left entirely to the banker's discretion, because I think in a great many instances men have sat on more boards than they could possibly do to advantage to the corporations on whose boards they were sitting or for the benefit of their own bank.

Another case where a banker might sit on a board properly, it seems to me, is where a bank has made a loan to a corporation and it wants to be sure that the corporation is being run in such manner as to make certain that the loan would be repaid. I think there are sometimes instances where it is very valuable to put a man on the board to check the management to see how it is operating, and whether the bank feels that it is being run to the best interest of the company.

Does that answer your question?

Mr. PECORA. Yes. Now I think you agree that in theory at least the officers of the banking corporation, just like the officers of any other corporation, are the servants of the board of directors, who are the masters representing the stockholders?

Mr. ALDRICH. Absolutely.

Mr. PECORA. Now that is the theory and the technique. But in practice have you not found it very often the other way around? That the executive officers, theoretically the servants, are really the masters who dominate the policy?

Mr. ALDRICH. Yes.

Mr. PECORA. I was persuaded to that thought in part by the statement you made yesterday before this committee in which you made a reference to the fact that many of the things concerning the activities of the Chase National Bank which have been brought out before this committee at the public hearings had not been within the knowledge of the board of directors of the bank. Do you recall your statement to that effect?

Mr. ALDRICH. Well, Mr. Pecora, that statement was not intended to connote exactly what you are saying now. What I meant by that statement was this, that there were a great many relations as between the officers and the bank which were disclosed by an examination by you under the power of subpena of corporations other than the Chase National Bank. There are a great many things that occurred in this situation to which I was referring which were not within the purview of the operation of the bank at all.

Mr. PECORA. Is it your experience that the members of the board of directors other than those members thereof that might also be executive officers of the bank keep currently posted as to the activities and transactions of the bank?

Mr. ALDRICH. I should say that that was not true in a great many instances of the entire board. I think in the case of groups like executive committees that they do keep very close track of what is going on. And, curiously enough, my experience has been that the men who have been on more boards than others kept closer track than the men who are on fewer boards. I do not know whether that is a matter of personality, but it has been my experience that men who have been on a number of boards know more about what is going on than men who are not on so many boards.

Mr. PECORA. Can you suggest any way by which through the imposition of statutory rules and requirements members of the board of directors would be obliged to keep currently posted and to actually make decisions and determinations for the bank?

Mr. ALDRICH. Well, of course I think that the courts have laid down the rules with regard to the duties and liabilities of directors and the trust relationship they occupy, which are perhaps more flexible and even more impelling than any statutory mandate could be. I think that a great many directors do not realize the significance of decisions of the courts in that connection.

The CHAIRMAN. Do you think each director ought to be a substantial stockholder of the bank?

Mr. ALDRICH. By all means; yes.

The CHAIRMAN. Not merely a qualifying director, but he ought to be interested beyond that?

Mr. ALDRICH. Yes. Of course, Senator, that brings up the point to which Senator Glass referred yesterday. I would not want to see that put so high as to handicap the small institution in obtaining directors.

Mr. PECORA. You made reference yesterday, Mr. Aldrich, to the fact that the Chase Bank did not have 36 investigators such as I had. What were you referring to in that statement? It is rather ambiguous.

Mr. ALDRICH. I was referring simply to the fact—I really should have referred also to the power of subpena—I was referring to the fact of the information as to transactions outside the bank which you were able to obtain. They were the things I was referring to which I had not known about.

Mr. PECORA. Well, by the 36 investigators reference that you made——

Mr. ALDRICH (interposing). The 36—I said that offhand. I should not have used the number 36. I did not know how many there were.

Mr. PECORA. As a matter of fact I want to say just so the record may be clarified, we never had anything like 36 investigators, and as I recall it the largest number of investigators, so-called, that we had examining the records of the Chase did not exceed 6.

Mr. ALDRICH. Well, Mr. Pecora, as a matter of fact, the record states that we did not have the investigators you had.

Mr. PECORA. You had 36 members of your board, but they were not investigators; is that what you mean?

Mr. ALDRICH. That number sprang into my mind, and as a matter of fact it was not accurate, and as a further matter of fact it did not go down into the record in that way. It was down in the record simply that we did not have the investigators you have. So if you want to quickly correct the record you can consider this discussion as off the record.

Mr. PECORA. Could you elaborate a little bit more than you have already done, Mr. Aldrich, on the opinion you expressed a few minutes ago that this guaranty of deposits plan that has been embodied in the Banking Act of 1933 might have a tendency to drive banks out of the Federal Reserve System?

Mr. ALDRICH. Yes. I have prepared a written statement upon that which I would like to read, because it is a very technical question.

Mr. PECORA. All right; if you will. Have you a copy of it?

Mr. ALDRICH. I probably will not read this whole statement in, and I have not got a copy of it. It is simply a memorandum, but I would like to read from it.

Mr. PECORA. Yes.

Mr. ALDRICH. Of course the goal at which I think everybody—all the legislators and everybody else—was aiming was to create a banking system which would be so strong that deposits insurance in any form will be unnecessary. Dissemination of sound banking practices is more important than insurance of deposits, in any event.

My chief anxiety in connection with this insurance of deposits is not the temporary deposit guaranty which is effective on January 1st. That is limited to deposits of $2,500 or less, and the assessments——

The CHAIRMAN (interposing). I understand, Mr. Aldrich, that that in number amounts to about 97 percent of all deposits.

Mr. ALDRICH. That is right. I am going to point out the fact as to that. The temporary deposit guaranty applies to deposits of $2,500 or less, and the assessments which may be made upon the banks of the country in this connection are limited. But the permanent system designed to go into effect in the middle of 1934 gives a guaranty of all deposits.

Senator GOLDSBOROUGH. Is it not in July 1935 that the permanent system goes into effect?

Mr. ALDRICH. It goes into effect in 1934, as I understand it.

Senator GOLDSBOROUGH. The permanent system goes into effect in 1935. This is only a temporary system, I take it.

Mr. ALDRICH. 1934, Senator.

The permanent system designed to go into effect in the middle of 1934 gives a guaranty of all deposits, even though the guaranty for deposits in excess of $10,000 is limited to a percentage of the excess, and, most serious of all, it imposes an unlimited liability upon all banks for contributions to the guaranty fund.

This unlimited liability will breed distrust in the strong banks, create fears among the holders of bank shares, prevent the flow of new capital into banking, and contribute to general financial distrust. I cannot emphasize this too strongly.

To make the banking situation really safe you should limit the liability of the banks in this connection. If you wish to use the strength of the strong banks to support the weak banks you must leave the strong banks strong. The unlimited liability, creating fear regarding even the strong banks in any time of trouble, can defeat the very purpose which you have in mind. That purpose is adequately effected by the terms of the temporary legislation.

The guaranty of small deposits might well be based upon the theory under which bank notes have been given special protection both in the United States and Canada, on the ground that bank notes get into the hands of ignorant people not in a position to inform themselves regarding the responsibility of the issuing bank. whereas depositors can use their discretion.

It might be urged that small depositors likewise are not in a position to discriminate wisely, and therefore need special protection.

If you limit the deposit guarantee to deposits of not exceeding $2,500 you will still cover over 96 percent of the deposit accounts in 5,500 national banks, which constitutes 23.7 percent in dollar amount of the total deposits of such member banks.

For the smaller State institutions outside of the Federal Reserve System both these percentages would be higher—the percentage of small deposits being very much higher. That is to say, the deposits of $2,500 and less are considerably more than 96 percent of the total deposits of the small State banks.

Senator GOLDSBOROUGH. Does that 96 percent include the State banks which are members of the Federal Reserve System?

Mr. ALDRICH. No, Senator. That is national banks.

Senator GOLDSBOROUGH. That is entirely national banks.

Mr. ALDRICH. The State bank members of the Federal Reserve System will probably average about the same. The small State banks outside of the Federal Reserve System will undoubtedly have a higher percentage of small deposits.

Great corporations and financial houses and large depositors in general are in a position to take their own risks. And this is a very important point. These large depositors will feel much safer, choosing their own banks with care, if the banks they choose are not included in the deposit guarantee, and are not exposed to unlimited liability in connection with that guarantee.

In other words, the large depositor who is in the position to use his own discretion and judgment as to where he shall put his funds is going to feel very much safer if the bank into which he puts them is not subject to an unlimited liability in connection with the guarantee of all of the deposits in all of the banks.

The principle of the greatest good to the greatest number should surely justify leaving unguaranteed 4 percent or less in number of the deposit accounts in order that the guaranty given to the 96 percent or more may be a good guarantee.

My suggestion is that if it is necessary to have any permanent form of deposit guaranty the temporary system contained in the Banking Act of 1933, with its limited guaranty and limited contributions, should be adopted. But I earnestly believe that we should seek by every practical means to make any kind of permanent deposit guaranty unnecessary.

The CHAIRMAN. Do you not think a reasonable guaranty such as proposed in the act of 1933 will increase the confidence in the banks and will therefore bring back depositors to the banks?

Mr. ALDRICH. I think that as an emergency measure the limited guaranty was no doubt justifiable and necessary. I think that the aim of everybody should be to make any guaranty unnecessary because of the character of the banking system and the manner in which it is run.

I think it is quite obvious that the theory of bank guarantee of deposits is fallacious. What it amounts to really is not a guarantee of deposits at all. It is a guaranty of assets—of the value of assets. It is really a guaranty that the assets into which deposits are put will liquidate for an amount equal to pay the deposits.

Now, it seems to me that it is quite obvious that that puts a premium on bad banking, because if a banker knows that no matter what he invests his funds in, no matter what kind of loans he makes, his depositors are going to be safe, he will be tempted, in competition with other banks, to make more and more speculative loans, feeling, as he would, that his deposits in any case are safe.

Of course there are a lot of technical criticisms that can be made to the plan contained in the Banking Act of 1933, which is called an insurance plan. Of course, it is not an insurance plan. It has not got any of the actuarial requirements of an insurance plan. The contributions are not based upon the amount of the protection given, and there is no possible method of working out any actuarial prognostication of the failure of banks. It depends entirely on commercial conditions that exist from month to month and year to year.

And I take it it is not necessary for me to speak to the committee about the history of deposit guaranty plans in the various States where they have been tried. They have all resulted in failure. They have all become insolvent.

The CHAIRMAN. Mr. Aldrich, you concede, do you not, that that is possibly due to the system as set up in the States where the assessment was based not upon the amount of the deposits but on the capital stock? And that, of course, in some instances a bank might have a capital of $100,000 and deposits of $2,000,000. That system would not work in such case. And then, aside from that, none of them had this unlimited liability.

Mr. ALDRICH. I think that the unlimited liability is the most dangerous feature of the present act. I have heard people say who were arguing in favor of the present act that the experience in the States where the deposit-guarantee plan has been a failure was not a fair test because the area involved was not sufficiently great and that therefore the risks could not be sufficiently diversified. But it seems to me the answer to that is that if you have your area increased the ultimate catastrophe is simply going to be that much greater rather than that it is going to be a stronger situation to deal with.

I believe that this latent menace of unlimited liability upon the sound banks to pay the deposits of banks which may get into difficulties cannot be exaggerated. As a matter of fact, if that guaranty continues in the form that it is there ought to be a footnote on the statement of every bank: "This bank is subject to unlimited liability in

connection with the failure of other banks"; otherwise you are not stating a contingent liability which exists.

The CHAIRMAN. In case some banks failed by reason of direct mismanagement they would have an opportunity of doing that but once.

Mr. ALDRICH. I think the safeguards that are attempted to be put around bank managements are hopeful in that respect. But I think that the unlimited liability on the sound banks is the thing that experience will show has simply got to be changed. I do not think it will work.

The CHAIRMAN. I think you have got to have some sort of protection to the depositors. Take the Government, for instance. A man makes a deposit in the Postal Savings bank of funds. The Postal Savings bank deposits that money in a bank, but they require security, absolute security, Government bonds back of them. The Government does not make a deposit in a bank without security and protection. Why should the people be required to do that?

Mr. ALDRICH. Senator, I say in this statement that if you limit your deposit guaranty to deposits of $2,500 and less you will cover 96 percent of the depositors of the country.

The CHAIRMAN. In number; yes.

Mr. ALDRICH. And if at the same time you limit the liability on the other banks in the way that is now limited in the temporary plan——

The CHAIRMAN. Will there be a tendency on the part of large depositors to break up their deposits and instead of having all their funds in one bank divide them up a little?

Mr. ALDRICH. Not if you eliminate the possibility of unlimited liability of large banks, because a large depositor will choose his own bank with care, and he will not split his deposits up among a lot of other banks. He will be sure that the bank he deposits his money in is a sound bank, and he will be very much more sure of it if that bank is not subject to unlimited liability for the deposits of other banks.

The CHAIRMAN. I think unless you give the public some protection, protection to depositors generally, they are not coming back to the banks. They have lost so much confidence, and they have lost so much money. If you now make it safe for them, they are not going to keep their money under their mattresses and that sort of thing. They will go with their money to the banks. That is where we want them to go.

Mr. ALDRICH. Senator, I am in accord with you on the desirability of that limited guarantee of deposits that is contained in the initial part of this act, temporarily. And, if necessary, it seems to me that that might be continued over periods of 6 months until confidence has been reestablished. But the way to reestablish confidence is not by guaranteeing bank deposits. It is by erecting and completing a sound banking system and seeing that it is properly run. That is the only possible sound answer to that problem.

Senator GOLDSBOROUGH. Then, summing up your position as a whole, you think that the guaranteeing of bank deposits should only be temporary, and that there should not be guarantee of deposits larger than the $2,500 set out in the Banking Act of 1933?

Mr. ALDRICH. That is right, Senator. And in addition I think that the liability on the other banks should be limited in the manner that it is limited in the temporary plan and not be an unlimited guaranty. That unlimited guaranty is very dangerous from every point of view. Especially I think from the point of view of recreating confidence. I think it does more to destroy confidence in the banking structure than anything else could.

Mr. PECORA. Mr. Aldrich, you can come back after recess, can you not?

Mr. ALDRICH. Yes. I will be very glad to do so.

The CHAIRMAN. We will take a recess until a quarter after 2 o'clock.

(Thereupon, at 1:17 p.m., Wednesday, Dec. 6, 1933, a recess was taken until 2:15 p.m. the same day.)

AFTER RECESS

The subcommittee resumed at 2:15 p.m. on the expiration of the recess.

The CHAIRMAN. The subcommittee will resume. I believe Mr. Aldrich is still on the stand.

TESTIMONY OF WINTHROP W. ALDRICH, PRESIDENT THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK—Resumed

Mr. PECORA. Mr. Aldrich——

Mr. ALDRICH (interposing). Mr. Pecora, there is one thing in my statement I should like to make a slight correction of, or rather I want to make a slightly different recommendation in regard to it. That is in paragraph (d) of section 3, where I say that

> The act should be so amended as to require an executive officer of a member bank to report to his board of directors every case where any such officer becomes a director, officer, or member of the firm—

and so forth.

Mr. PECORA. What is the page number?

Mr. ALDRICH. It is at the bottom of page C-2.

Mr. PECORA. All right.

Mr. ALDRICH. It says that he must report to his board of directors any compensation that he gets from any outside interest, in effect, together with the amount thereof. Now, a matter has been called to my attention by several people who are connected with banking institutions in small communities. Very often they will have the head of a large manufacturing concern act as chairman of the board of directors of the bank, and such a gentleman might not want to state the actual amount he is getting from the bigger concern. I do not see why it would not be proper to provide in this section, when one comes to drafting the act, that the board of directors shall have the right to waive the requirement that he shall state the amount of compensation, if they do it as a matter of record. The purpose of that is to cover a case in a small community where, as so often happens, an executive officer of some large commercial institution will be serving as, say, chairman of the board of a small bank.

Senator ADAMS. You do not think those waivers would become a matter of general practice, do you?

Mr. ALDRICH. Well, I hope not or I would not recommend it. But I raise the question because it has been brought to my attention that very often it is desirable that that should be done. I just want to put that on your record. I drafted it the other way myself, but I think possibly there may be something that can be said for this view.

Mr. PECORA. Now, Mr. Aldrich, I should like to direct your attention to a certain feature that, perhaps, was given emphasis by testimony before this subcommittee, and I believe it was given by Mr. Wiggin, that in certain circumstances he granted subparticipations which his family corporation, like the Shermar Corporation, had in certain syndicates to subordinate officers of his bank. There were a number of such instances where, according to his testimony, he gave subordinate officers subparticipation in syndicate interests of the Shermar Corporation; and when asked for the reason why he did it he said he considered it sound practice, and he defined, substantially, as his reason, that he wanted them to make some money. Do you recall that testimony, Mr. Aldrich?

Mr. ALDRICH. Yes, sir.

Mr. PECORA. I do not want to put you in the position particularly of characterizing in any way, shape, or form the views or opinions of any other witness, but I should like to have your views on that practice as an independent expression of your own opinion and judgment.

Mr. ALDRICH. Of course, I have recommended in this statement that bank officers should be forbidden to participate in syndicates at all. Therefore, that particular situation could not arise, because, as I say, either directly or indirectly—and by that I mean through a corporation or otherwise—it would not be possible under the plan I suggest. But I should like to go further than that and say that I do not think bank officers should receive indirect compensation from anybody, that the only compensation they should receive should be their own salary or such other compensation as is permitted by the board of directors where full disclosure is made.

Senator ADAMS. Isn't this the evil in that matter: If they receive compensation from some other individual or corporation who is a borrower from the bank? That is, if they receive compensation from somebody who has no business relations with the bank, the evil isn't there, but the evil comes from the fact that the judgment of the officer of the bank may be, entirely innocently perhaps, influenced by the fact that he has compensation coming from a borrower or customer of the bank, which might warp his judgment. That seems to be the evil, I take it.

Mr. ALDRICH. That is exactly what I have in mind.

Senator ADAMS. And if you limited it to those cases wouldn't you meet the situation you have in mind?

Mr. ALDRICH. Well, I think the way I have expressed it in the statement I made, that a bank officer should receive only compensation from the bank, except such compensation as the board of directors may approve, will cover most cases. I do not think the practice to which you refer should be permitted in any event, under any circumstances, because I think it involves the officer in a speculative

adventure. When I say that, I am speaking of pools or operations in securities.

Mr. PECORA. Mr. Aldrich, considerable evidence has been presented to this subcommittee in recent weeks relating to the activities of certain trading accounts which dealt in the capital shares of the stock of the Chase National Bank, and in which trading accounts the subsidiaries, investment affiliates in other words, of the Chase National Bank, participated. Do you recall that evidence?

Mr. ALDRICH. Yes, sir; I do.

Mr. PECORA. Do you think that is a sound practice?

Mr. ALDRICH. No; I do not. Obviously a bank cannot deal in its own shares, and it seems to me it would be equally obvious that it should not deal in its own shares indirectly in the sense of making a market.

The CHAIRMAN. What would you think about the tendency, and in some instances actual cases have been presented to the subcommittee, and I have some letters to the same effect, where banks induced their employees to buy the stock of the bank? Do you think that ought to be done?

Mr. ALDRICH. Well, I think it is a good thing for employees to have stock in their own institution, but I do not think it is a good thing to put the slightest pressure on them in order to make them either buy it or to continue to hold it after they have bought it. I think it is a sound thing, if an employee of a corporation has funds with which to purchase stock in the corporation, to have him buy and hold stock in that corporation, and I think that is true of all corporations, including banks. But I do not think there should be the slightest pressure put upon an employee either to buy stock or to continue to hold it.

Senator GOLDSBOROUGH. But I do not understand that you think it would be well for an employee to buy a bank's stock if an affiliate of the bank has to carry the stock under a loan.

Mr. ALDRICH. No; absolutely not.

Senator ADAMS. I hope it is going to be a better thing than it has been in the past.

Senator GOLDSBOROUGH. Do you mean the banks?

Senator ADAMS. No. I mean the buying of stock.

Senator GOLDSBOROUGH. Well, I hope you have some reason for that hope.

Mr. PECORA. Now, Mr. Aldrich, there was some evidence presented to this subcommittee with reference to the contents of circulars or prospectuses that were issued in connection with the offering of Cuban bonds. And I recall that in one or more instances in connection with such prospectuses no information was given to the public through the medium of such prospectuses concerning the expenditures and receipts of the Cuban Government. That bears, collaterally at least if not directly, on the wisdom of the provisions of the Securities Act of 1933. I was going to ask you, and I do now ask you, if you have any views in regard to that act that you would like to set forth to this subcommittee.

Mr. ALDRICH. Of course, the Securities Act has a very direct bearing on the commercial banking situation, because, as I endeavored to point out in this statement, investment banking and the business of

commercial banking, while I believe they should be separated in interest, do have a relationship to one another which is extremely important; and, naturally, while I am not primarily interested in the issuance of securities and the sale of securities, I am as a commercial banker interested in seeing that the long-term capital market continues to function. In fact, it is a vital thing for the economy of the entire country that it should. I have prepared a statement with regard to the Securities Act. I haven't attempted to go into the legal questions involved as fully as one would wish to if one were making a complete study of the situation, but I will be glad to give you what I have.

Mr. PECORA. Will you please do so.

Mr. ALDRICH. Assuming that our national financial mechanism is to operate in the future with a definite separation in interest as between commercial and investment banking, it is no less essential that the capital market itself shall function in the widest possible public interest. The ultimate success of the present national reconstruction program will depend upon revival of a sound capital market. Practically all financing of new construction is today being done by the Government. That is not healthy, and it is a reflection of the so-called emotional paralysis or stagnation which affects the public security market.

We shall not have normal conditions in this country until enterprise can once again feel the stimulation of a capital market, through which the public is willing confidently to invest its savings in private undertakings. Experience shows that business revival in this country usually leans heavily upon construction activities. But construction activities as represented by the production of durable goods are today at a very low level. The decline in production which this great depression has brought has been overwhelmingly concentrated upon heavy industries and construction—the kind of production which is most dependent on permanent financing through the capital market. Production of ordinary consumers' goods has declined very much less. The proportion of unemployment is several times as great in the construction industries, and in those producing capital goods, as it is in industries producing consumers' goods.

The connection of this with the state of the capital market is very definite. Ignoring the 5 years from 1925 to 1929, when new capital issues were abnormally high because of an excess of cheap money, and going back to 1923 when there was no expansion of bank credit, we find that new issues publicly placed in that year amounted to $4,300,000,000 as against the figure of only $684,000,000 for the first 8 months of 1933.

If our capital market were functioning normally today the volume of unemployment would be vastly less. A revival of real prosperity should, accordingly, be enormously aided by the restoration of such confidence on the part of the people that they will be prepared to invest their savings in new long-term capital issues, with which can be financed renewed construction and other capital goods activities. There is, further, a great volume of refunding of existing long-term obligations which must be put through during the next few years if financial embarrassments of a serious nature are to be avoided.

A sound capital market is essential for that purpose. The present virtual stagnation in the long-term capital market is partly but not wholly due to anxiety arising from the new Securities Act. New issues are not being offered even of the class exempt from the operation of the Securities Act, such as municipals, railroad issues, or those of banks. Important factors wholly independent of the Securities Act, among them uncertainty regarding the future value, are obviously exerting great influence, and the Securities Act is far from being the only explanation of immediate conditions.

I am compelled, however, to testify that since the passage of the Securities Act of 1933 serious apprehension has arisen in responsible quarters as to whether the actual effect of the act may not be to impede the revival of a normal capital market.

The Securities Act was designed to correct abuses which had taken place in the past in the issuance, underwriting, and sale of securities. The chief objective of the act was thoroughly sound. No reasonable man can question the wisdom of President Roosevelt's statement in his message of March 29, 1933, that the law should provide—

> That every issue of new securities to be sold in interstate commerce shall be accompanied by full publicity and information, and that no essentially important element attending the issue shall be concealed from the buying public.

Though agreeing that the objective of the act as set forth by the President is sound, and that most of its provisions are wise, the fact cannot be ignored that leading security houses, and many of our largest corporations, are actually afraid to undertake public offerings under the act. There is a diversity of legal opinion as to just how far this fear is justified. Preponderant legal opinion is to the effect that a great deal of it is justified. Rightly or wrongly, however, I can assure you that this fear is deep-seated and is more than a trivial indisposition to conform to drastic legislation.

Responsible issuing houses or corporations do not object to supplying the public with all the information required by the Securities Act. What excites anxiety are some of the civil liabilities imposed upon issuers and underwriters of securities, as well as upon directors and officers of corporations, uncertainty of its liabilities, and in some respects the unequal incidence of the liabilities in relationship to damage that may be done or in proportion to the risks involved.

I understand, Mr. Pecora, from the newspapers that a group has been formed or is about to be formed to study this question. In writing this, and before I had heard of that group, I had stated here that your subcommittee might very wisely undertake a full study of this problem, to the end that amendment or clarification of the act, if such is found to be really necessary, may be accomplished as promptly as may be.

Mr. PECORA. Do you approve heartily of the principle of a full disclosure of material facts?

Mr. ALDRICH. Absolutely.

Mr. PECORA. In the offering of securities to the investing public?

Mr. ALDRICH. Absolutely.

Mr. PECORA. And that is the essential principle of the Securities Act of 1933 as you understand it?

Mr. ALDRICH. That is correct.

The CHAIRMAN. This committee is making a study of the subject now, Mr. Aldrich, in cooperation with others, and I should be glad to have specific objections to the present securities act outlined in a way that would be helpful to us in writing any modification or changes in it. I have heard general objections, one of them being on the ground that directors of corporations ought not to be held liable in case of misrepresentation in the declaration, and all that sort of thing, but no one has yet pointed out to me precisely what specific objections there are to the act.

Senator ADAMS. I think for your information, and Mr. Pecora was not with us when we were considering the Securities Act, but you will remember, Mr. Chairman, that we had telegrams and letters and speeches, all openly stating that they were in favor of the principles of the act, but apparently they were opposed to putting those principles into practice.

Senator GOLDSBOROUGH. And that is not unusual.

The CHAIRMAN. Yes; but they had objections to offer to any legislation on the subject.

Mr. PECORA. Mr. Aldrich, what concrete objections have you come across to the Securities Act?

Mr. ALDRICH. Well, I have a list of them here. I should like to say in presenting this to you that I think as to every one of these questions there is some difference in the matter of legal opinion as to the effect of the act. I simply enumerate them to you so that you will hear what I have been told are the things that are troubling the people. I shouldn't like to take the responsibility of saying myself that these particular points are justified by all the legal implications of the act. In other words, I haven't myself made a careful legal analysis of the act, and therefore I cannot say to you that in my own opinion these things are justified. But I can say to you that these are points that have been raised as being points that cause unnecessary fear, if you please, under the act.

Senator ADAMS. Mr. Aldrich, as you point out in your statement there, there has been some lack of new securities in railroad issues and bank issues which are not covered by the act, as in those which are. You attribute that to apprehension. I am just wondering if the two things which run parallel aren't due to things other than the act.

Mr. ALDRICH. I have some statistical information here——

Senator ADAMS (continuing). Well, there has been an absence of issuance of railroad securities and of other activities that are not within the act, hasn't there?

Mr. ALDRICH. Yes; I agree with you. I think that is so.

Senator ADAMS. And I am wondering if it is not what is sometimes termed an alibi.

Mr. ALDRICH. I do not think it is entirely. But with the qualification that I do not pretend to know enough about the legal implications of this act to determine whether the points I am about to refer to are of such a character that they justify the fears that have arisen, I should be glad to enumerate these things if you would like to hear them.

Senator COUZENS. I was wondering if Mr. Aldrich has any specific case wherein any security has failed to be issued because of the Securities Act.

Mr. ALDRICH. No. But I do have some interesting statistics upon what has happened in the capital market.

Senator COUZENS. Well, I think those are available. We do not need to sit here and listen to those. Those are all available to everybody. I think we ought to have some concrete examples by somebody who knows why certain issues, or why any issue for that matter, has not been put out because of the Securities Act.

Mr. ALDRICH. As I say, I am not in the securities business at all.

Senator COUZENS. Well, let us get somebody who is.

The CHAIRMAN. Let us have the objections or criticisms which you propose to give us.

Senator GOLDSBOROUGH. As a member of the subcommittee I should like to hear what Mr. Aldrich has to say on that subject.

The CHAIRMAN. Go ahead, Mr. Aldrich, and point them out.

Mr. ALDRICH. Specifically I should like to call attention to certain features of the act which are apparently a genuine source of apprehension at the moment:

First: The act provides that in the case of a security issue each of the underwriters, no matter what may be their respective participations in the total underwriting, is responsible for the entire amount of the issue. For example, an underwriter taking a $100,000 participation in a $25,000,000 issue, on which his total profit if the issue is successful may not exceed $1,000, exposes himself to a $25,000,000 risk in case the penalties of the act are incurred in the issue. And

Second——

Senator ADAMS (interposing). What is your suggestion? That the penalties be eliminated or be apportioned to the distribution?

Mr. ALDRICH. Apportioned to the risk taken in the underwriting.

Second: The liability placed upon directors, officers, and so forth, of a corporation involves a new doctrine. They are personally and individually liable although the benefits of the security issue will accrue to the corporation rather than to themselves. This liability is framed in rescission as well as in damages. And it has been contended that to hold a person liable in damages for the consequences of his wrongful act is one thing, but to compel him to refund money which he never received personally is a new idea.

Third: The liability imposed upon directors of corporations issuing securities would appear to alter the traditional relationship of directors to American corporations. If the liability for statements and omissions of employees of a corporation is to remain upon directors as now stated in the act, it has been urged that responsible men will either resign as directors or refuse to vote new security issues. This liability is undoubtedly fashioned upon the provisions of the British Companies Act. In England, however, directors are as a rule paid salaries and give continuing attention to the affairs of the business of which they are directors. It may be that the purpose of the law is to change the American theory as to directors, but the subject is clearly one of very far-reaching implications.

Fourth: Under the act if a person buys a security and then sells it to some one else, by whom it is again sold to a third party, and

so on, it would appear that each of the parties who had at any time purchased that security, upon ascertaining that an untruthful statement had been made, or that a material fact has been omitted, might bring suit either in rescission or for damages.

Fifth: The act holds all issuers of securities liable not only for misstatements but for the omission of any material fact necessary to make the other statements not misleading.

It has been urged that while one may agree with the desirability of compelling full publicity "of every essentially important element attending the issue of new securities" so that the public may have an opportunity to understand what it buys, yet where such rigid civil liability is involved it is felt that the law might more clearly define such omissions of fact as of a character the material relevance of which the issuer of the securities could with due diligence have ascertained at the time the issue was made.

It may easily happen that what at the time of issuance was considered in entire good faith and upon confident judgment as a wholly immaterial fact, may subseuently turn out to have been a very material fact.

Mr. PECORA. How could that be? Can you conceive of any circumstances whereby that condition would arise?

Mr. ALDRICH. Well, I should imagine——

Mr. PECORA (interposing). Can you illustrate it by reference to some concrete case?

Mr. ALDRICH. No, I cannot offhand. But I should say it is entirely possible conditions might change so that something, say in the manufacturing business for example, that might have been regarded as irrelevant or immaterial when issuing securities for a manufacturing company, might become either or both in the course of time. I haven't as a matter of fact in mind any particular instance of that kind.

Now, gentlemen of the committee, I have no doubt there are other points that have been raised, or that might be raised by the issuers of securities. I am simply referring to matters that have been current talk as to reasons why this Act has caused hesitancy on the part of securities dealers.

Mr. PECORA. Have these views that you have referred to and given to this committe been expressed to you by commercial bankers or by investment bankers, as fears that exist?

Mr. ALDRICH. They have been expressed by investment bankers and by publications which I have read in connection with the matter. I have looked at the act myself, but have not made any careful legal study of it to see whether these things are justified.

The CHAIRMAN. Do the objections come sometimes from brokers?

Mr. ALDRICH. No; these objections have been stated in publications by lawyers who had analyzed the act, and they have been stated to me by investment bankers in conversation.

The CHAIRMAN. Are any of those apprehensions based on regulations by the Federal Trade Commission?

Mr. ALDRICH. No. I have not heard anybody criticize the publicity features of the act or the complete disclosure features of the act. It seems to me that the principal criticism or fear that has been expressed has been in connection with the nature of the damages and to whom they run.

Mr. PECORA. Would you agree with the observation that in order to effectuate this controlling or basic principle of the act, the act should necessarily provide penalties for their violation?

Mr. ALDRICH. Absolutely; I would agree with that entirely. I think that the basic principle which should govern, however, is that the penalty should have the relation of effect to cause——

Senator ADAMS. You think they have not quite met the old problem in the Mikado of "making the punishment fit the crime"?

Mr. ALDRICH. I should say that was the situation. The chain of causation is one thing that has caused difficulty. I think the principal thing I can testify to is that those points are not mere nightmares in the minds of investment bankers. I do not think there is any strike of the investment bankers. I think they are very much concerned and that they really want to do business if they feel they can do it safely.

Senator ADAMS. My recollection of the act in its earlier stages is that it was much more drastic than ultimately. The element of good faith was involved. They passed these things on in good faith. They were not responsible originally, but regardless of the innocence of the representation——

The CHAIRMAN. That is quite true, I think. The act is modeled after the British Companies Act, you know, and in some respects it is less exacting, less stringent, and less restrictive than the British Companies Act. In a few instances it may be a little more so.

Mr. ALDRICH. My own feeling is that this act is, in some instances, more drastic than the British Companies Act.

Senator GOLDSBOROUGH. Especially as to directorship?

Mr. ALDRICH. Yes. And I think you will also find, when you come to study this thing, that changes in a very few cases, a very few points, will make this act more workable. I do not think it will have to have much done to it.

The CHAIRMAN. Is it not a fact that most of these criticisms are based on apprehensions and on possibilities rather than on actual experience of trying out the act?

Mr. ALDRICH. Yes; that is quite true. But of course it is a pretty heavy risk to take to try out the act.

Senator GOLDSBOROUGH. There has not been any experience under the act yet, has there, actually?

Mr. ALDRICH. No.

The CHAIRMAN. My information is that the applications on file for the issuance of securities are much greater than we have had in previous years, last year or the year before or the year before that.

Mr. ALDRICH. I would be surprised to know that that was true.

Mr. PECORA. As a matter of equity, upon whom do you think it would be fairer to place the burden of loss—on the banker or issuer of securities on the one hand, or upon the investor, assuming that both should be acting in good faith and were innocent of any ulterior motive or purpose? Who should bear any resultant loss?

Mr. ALDRICH. I think the loss should be on the banker.

Mr. PECORA. It ought to be on the banker?

Mr. ALDRICH. Yes.

Mr. PECORA. Is not that the essential principle of the penalty clauses of the act, the liability clauses of the act?

Mr. ALDRICH. Yes; I think it is; but I think that the damage should be measured——

Mr. PECORA. Restricted to the interest in the issue?

Mr. ALDRICH. Well, I think it should be restricted, yes, to participation in the issue, and also I think it should be measured by cause and effect. I do not think that the issuer of the securities should be an insurer. But I feel somewhat hesitant to express any very definite opinion on this, except that I think it is a real problem.

Senator ADAMS. Mr. Aldrich, a moment ago you spoke of the sound capital market, and that raised this inquiry in my mind. Take a bank which during the past 3 or 4 years has made no bad loans and has had an unusual record in that regard, a thoroughly conservative bank, building up a secondary reserve in bonds, and this bank suffered a very substantial loss. I am wondering whether or not there is anything in the suggestion that a bank should be restricted in buying bonds other than Government bonds. That has been one of the two sources of loss to banks. One was bad loans and the other was the purchase of bonds. Is it possible to restrict a bank so that it should be limited to loans and at no time become the owner of securities? In other words, any ownership of securities involves to a certain extent the element of speculation.

Mr. ALDRICH. You are touching on a point, Senator, which I think is very important. In fact, I am not at all sure that it ought not to be put into the law. I think that the secondary reserve of a bank to which you refer should be in the form of such short-term paper that it would be practically the same thing as a loan. In other words, I would not at all regret to see the limitation that the portfolio of a bank, outside of governments and municipals, should be limited to bonds of a maturity of not more than 5 years. That is practically the same thing as a loan. Of course, if they purchase bonds of a corporation which fails, it is just exactly like making a bad loan. But if they confine themselves to short term obligations with a maturity of not more than 5 years, and the obligation is good, they are not going to be much affected by market conditions because they will collect at maturity.

Senator ADAMS. That is, the depositors' money which is being loaned, and which is involved and which we are interested in, should not depend upon market conditions, but upon collectibility, whether or not the paper the bank has will be paid, rather than whether or not there is an available market for it?

Mr. ALDRICH. I personally feel that the secondary reserves of a bank should be in very short term paper outside of governments, and even in the case of governments at times——

Senator ADAMS. If that had been the rule in the past four years we would have saved most of our banks.

Mr. ALDRICH. Yes. If your paper is of sufficiently short term it will be paid at maturity if your risk is good.

Senator GOLDSBOROUGH. Do you exclude municipals?

Mr. ALDRICH. No, I do not. I would not limit the type of securities that the banks are permitted to invest in under the Banking Act, but I would limit the term, so that the term should not be more than 5 years. Do you see the point?

Senator ADAMS. Yes.

Senator GOLDSBBOROUGH. Short-term obligations?

Mr. ALDRICH. Yes.

Senator ADAMS. For the bank to lend money and not to buy speculative securities.

The CHAIRMAN. That is a matter that can be regulated very completely now by the Comptroller making examinations, and so forth, as to national banks, but as to State banks we have no control over them.

Mr. ALDRICH. The Comptroller today has the right to determine what proper securities are. There has not been any limitation as to the term. Of course I realize that it is not a thing to be passed on offhand. I am simply making it as a suggestion.

Senator ADAMS. The Comptroller's office in the past was supposed to encourage secondary reserves and long-term securities.

Mr. ALDRICH. I personally think it is unsound. I think that secondary reserves should be carried in short-term paper. As a matter of actual fact, if I were doing it myself—I am not speaking of the statute, but in actual operation—I would have secondary reserves with a term of more than 3 years.

Mr. PECORA. Mr. Aldrich, in cases of making collateral loans and borrowings commercial banks do not as a rule make inquiry as to the purposes for which the loan is to be applied by the borrower, do they?

Mr. ALDRICH. No; I should say not.

Mr. PECORA. Would you care to express any opinion as to the advisability of making it obligatory upon commercial banks to make such inquiries?

Senator ADAMS. May I interject, before he answers? When Mr. Aldrich says "no", he is speaking of city banks rather than small banks. I think you will find that the purpose of the loan in small communities is almost always inquired into.

Mr. ALDRICH. I think that while it might be well, I doubt very much whether you can control the use of credit.

Mr. PECORA. You can control the use of credit to a certain extent by making the granting of it conditional upon the nature of the use of it, can you not?

Mr. ALDRICH. That would be an awfully difficult thing to do.

Mr. PECORA. Would not that simply involve the exercise of judgment on the part of the commercial bankers as to whether or not in the granting of a loan to an applicant the use that is to be made of the loan is for constructive or legitimate commercial purposes?

Mr. ALDRICH. Yes; I think that would be perfectly proper. I thought you were referring to possible legislation.

Mr. PECORA. Well, we can make it obligatory by legislation if necessary.

Mr. ALDRICH. To ascertain the purposes of the loan?

Mr. PECORA. Yes.

Mr. ALDRICH. I do not think that would get you very far. I think, as a matter of banking practice, it would be a very wise thing, perhaps, to inquire in every case what the purpose of the loan was.

Mr. PECORA. Let me state frankly the evidence before this committee upon which I base this question to you. There was some evidence here that very substantial loans, amounting to approx-

imately, in each instance, about $4,000,000, were made by the Chase Bank to Mr. Dahl, a director, and to Mr. Graustein of the International Power & Paper Co.; and those were collateral loans. Would it not seem probable—I may be mistaken, not knowing all the facts—that those loans were not used for what might be called strictly commercial purposes by the borrowers, but they rather suggested the thought to my mind that they were to finance stock-market operations.

Mr. ALDRICH. I think, Mr. Pecora, that I misunderstood your original question. I think that if an individual came to a bank and wanted to borrow a large sum of money on collateral, he would unquestionably be asked what the purpose of it was. I do not think there is any doubt but what he would be asked.

Mr. PECORA. In the case of the loans to which I specifically referred I do not think that anything among the records of the bank would indicate the purpose for which those loans were made or what the proceeds of those loans were to be applied to by the borrowers; and these loans were very much undercollateralized.

Mr. ALDRICH. I should hesitate to express an opinion——

Mr. PECORA. Eliminating from consideration any particular loan, have you addressed yourself to the general policy of making incidental loans on collateral without inquiry as to the use and purpose to which the proceeds of the loans are to be applied by the borrower?

Mr. ALDRICH. Except as to making loans on collateral in the open market, in the money market, or the making of loans on collateral to large corporations, or something of that kind. I think that one should ascertain the purpose. I think as a matter of bank practice it would be done. But you understand that there are a great many loans made by banks in big centers where there is no possibility of ascertaining the purpose.

Mr. PECORA. There was evidence given before this committee by an investment banker—to be specific, Mr. Clarence Dillon—in which, among other things, he advocated publication of portfolios by investment trusts, and I think he also advocated that that be done by all corporations that held securities. Do you think that should apply to banks?

Mr. ALDRICH. No; I do not, Mr. Pecora. I think that at the present time it would be unwise to do that. I think that the situation has resulted in so many large blocks of securities being held by banks that it would be doubtful whether the publication of portfolios might not give people who wish to make a profit on the situation——

Mr. PECORA. You mean market traders?

Mr. ALDRICH. Marker traders or——

Mr. PECORA (interposing). Sharpshooters?

Mr. ALDRICH. I was trying to find the right word. Possibly those are the persons I have in mind—to make a profit out of the situation that might be disclosed by the publication of portfolios at this time. I think if the secondary reserve of a bank was completely in short-term, high-grade obligations that that might be desirable, but I think it is a poor time to put into effect a rule that should require the publication of portfolios just now.

Mr. PECORA. Well, leaving aside the exigencies of these times with regard to certain publications, what would you say concerning the soundness of that principle as applied to ordinary times?

Mr. ALDRICH. I believe always in as full publicity as possible.

Mr. PECORA. Would you include in that principle of full publicity the publication at regular intervals by banks of profit and loss statements in addition to their general balance sheet statements?

Mr. ALDRICH. No; I would not.

Mr. PECORA. Why not, Mr. Aldrich?

Mr. ALDRICH. I think it is a very difficult thing to ascertain the current profits and losses at stated intervals. Of course, the examination of a bank by the banking authorities in all cases requires the appraisement of its assets, and the determination of profits or losses from quarter to quarter is a question of appraisement of the assets of the bank at that particular time. Now, with conditions fluctuating as they do, you might get an entirely erroneous impression from a statement of earnings for that period published currently because of conditions that were apart from any operation of the bank at the time.

That would be my impression, that it might be an unfortunate thing to do that.

Mr. PECORA. I have in mind at the moment, Mr. Aldrich, the evidence that was introduced before this committee while Mr. Wiggin was on the stand, in which I called his attention to certain annual reports issued, I think, for the years 1930 and 1931, respectively, by the Chase National Bank. I pointed out, among other things, the failing to specify in those reports the reserves that had been set up for certain shrinkages in security values. Do you remember? And I questioned Mr. Wiggin concerning the ability of any stockholder receiving such a report to determine accurately the actual condition of the bank, and even he, attempting to make a calculation on the basis of the information set forth in those annual reports, was unable to do so. Now, don't you think that stockholders as well as depositors are entitled to complete data at least once a year with regard to profit and loss?

Mr. ALDRICH. Now that is a different question. I thought you were asking a question about current profit and loss statements. I think at the end of the year when you make an annual report to stockholders it might be very proper to give the amount of the write-offs and the result of the operation of the bank during the year. I thought you referred to current profit and loss statements.

Mr. PECORA. I was at the time. Now I am limiting it to an annual report that would give all that information.

Mr. ALDRICH. I think that is an entirely different point.

Mr. Pecora, one of my associates has called my attention to this: He tells me that he understood you to say in asking me a question: "Assuming good faith on both sides, if a bond issue results in a loss, do you think the loss should fall on the banker or on the investor?" And I replied "on the banker." I did not mean to say that where entire complete good faith exists on both sides, that that should be so. I think if the bank has acted in good faith and used good care, the loss should go on the investor. I misunderstood your question.

Mr. PECORA. Yes. Now, do you know of instances where banks in issuing their annual reports or statements have an audit made of the bank's accounts by an independent or outside agency?

Mr. ALDRICH. Of course, that is always done by the bank examiners.

Mr. PECORA. Those are not made public?

Mr. ALDRICH. The figures published have to be in accordance with the bank examiners' report.

Mr. PECORA. Do you see any objection to having independent audits made for the purpose of getting up an annual report of the bank for the benefit of the stockholders and depositors?

Mr. ALDRICH. I would assume that the very purpose of the examination of banks by the Comptroller's office in the one case and by State examiners in the other was to accomplish that very thing. That is what it is; it is an independent audit of the bank's accounts.

Senator COUZENS. Mr. Aldrich, when these statements are published there is no record of the examiners' analysis of your investments.

Mr. ALDRICH. No; that is quite true.

Senator COUZENS. In other words, the form used by the examiner has a column for "slow" and "doubtful" or "bad." You do not publish that statement when it is furnished by the examiner.

Mr. ALDRICH. No, but——

Senator COUZENS (interposing). Then the result of the examinations made by these examiners is never made public.

Mr. PECORA. That is the point I was seeking to make, Senator; that the bank examinations do not reach the public.

Mr. ALDRICH. But the statements that are published are the statements that are made to the Comptroller of the Currency after the examination by the bank examiners, and they must be in accord with the bank examiners' reports to the Comptroller.

Mr. PECORA. Those statements as a rule contain nothing more than a balance sheet statement?

Mr. ALDRICH. That is correct. Yes. The bank examiner's statement does.

Senator COUZENS. As a matter of fact, Mr. Aldrich, there is not a single criticism that a bank examiner, either national or State, makes to the officials of the bank that ever gets published in a public statement?

Mr. ALDRICH. No; that is quite true.

Senator COUZENS. That is the point that I think Mr. Pecora is trying to make, whether we are going to take a conglomeration of figures that no one can understand or whether we are going to receive a detailed analysis of what properly delegated officials find to be the condition of the bank.

Mr. PECORA. And made by independent accountants or auditors.

Senator COUZENS. Either that or by Government officials.

Mr. ALDRICH. I thought Mr. Pecora's question was whether I did not think it was desirable to have an independent audit made of the bank's operations.

Mr. PECORA. Yes.

Mr. ALDRICH. My reply to that was that the bank examiners make that audit.

Mr. PECORA. My reply to that was that whatever the bank examiners find or report does not reach the stockholder or the depositor. That is so, isn't it?

Mr. ALDRICH. That is correct.

Mr. PECORA. The information that I am asking you your opinion as to whether or not should be given the stockholders and the depositors is information that is intended for the stockholders and depositors. Don't you think such information should be once a year, at least, given to the stockholder or depositor of a bank?

Mr. ALDRICH. I think this, Mr. Pecora: I do not think that the reports of the bank examiners as such should be published, because of the fact that they contain an appraisal by an individual and his assistants of the assets of the bank. I think that any information that should be given to stockholders should be given in the form of a statement of the bank's condition, which is approved by the Comptroller of the Currency after the examination by the examiners. While it might be that the present forms of statements that the banks have to publish are not sufficiently informative, I think it would be absolutely impossible to publish the bank examiners' reports. The report on the examination of the Chase Bank is that high [indicating].

Mr. PECORA. I am not suggesting the publication or distribution of information of that detailed character to the depositors or the stockholders. I am referring to an annual statement which would include a profit and loss statement and something much more informative than is now given to them by way of asset values and portfolio values.

Mr. ALDRICH. I think that the banks' statements which are published today might be made more informative, and I think it would be entirely proper to publish annually a statement that shows the amounts of the write-offs and the amounts of the profit during that period, and I think of course that all the statements that are published by the national banks are today passed upon by the examiners of the Comptroller of the Currency. I also think that to the extent that they are not sufficiently informative they should be made more so. I have already said that I do not think it would be wise to publish the detailed portfolios at the present time.

Senator COUZENS. As a matter of fact, Mr. Aldrich, neither the examiners nor the Comptroller of the Currency compels you to write off all of your doubtful items in your portfolio. Is that not a fact?

Mr. ALDRICH. Yes, sir.

Senator COUZENS. Then why shouldn't a depositor or a stockholder know the extent in dollars and cents, not as to items, of your doubtful assets?

Mr. ALDRICH. Well, I think that the amount of the assets that have been written off of the reserve account, the total amount might very well go into a statement such as Mr. Pecora has referred to, which would constitute the running account of the results of the operation of the bank. That is what you have in mind. I see no objection to that. But I think it ought to be done annually rather than quarterly.

Mr. PECORA. Now, Mr. Aldrich, when a bank invites the public to deposit its savings or surplus funds in the bank, the bank to that extent is virtually asking the public to extend credit to it, isn't it? It is tantamount to the same thing, because the bank assumes the relationship of debtor and creditor toward the depositor. On the other hand, when a business man or business corporation seeks a substantial loan from a bank it is customary for the bank to require

such business man or corporation to furnish it with a financial statement certified to by an independent auditor. Isn't that quite customary?

Mr. ALDRICH. Yes; it is.

Mr. PECORA. And the bank requires that in order to help it determine whether or not it will extend the credit that is sought. Why should not the bank do correspondingly the same thing toward the public when it invites the public to deposit its money in the bank?

Mr. ALDRICH. There is no reason in the world why it should not, except for the fact that the whole examination of banks is by the Comptroller of the Currency and by the national bank examiners in the case of national banks and by the State bank examiners in the case of State banks, and that is the thing which corresponds to the examination by independent auditors, and surely it would not be wise to have an independent firm of auditors checking up the examination by the Comptroller of the Currency in the case of national banks or the State examiners in the case of State banks.

Now as to the amount of information contained in the annual reports published being sufficient, I think that is a matter which requires very careful consideration. I am not prepared to say off-hand what should go into the annual statement or what should not. I have always assumed that the information required by the rules of the Comptroller in your public statements was sufficient, and I really have not given it any serious consideration. But I can see that it might be desirable to study with care the question of what information should go into the reports published by the national banks other than what already goes into such reports, and I can see no objection to publishing the reserves and write-offs made during the year. I do see objection to publishing full portfolios.

Mr. PECORA. Now, if it were made obligatory upon banks to publish full portfolios say once a year, wouldn't that have a tendency of making bank executives more keen about the kind of securities they took in their portfolio accounts?

Mr. ALDRICH. Undoubtedly.

Senator ADAMS. May I ask a question about the portfolio, Mr. Pecora: Do you mean to include in that the loans or merely the bonds?

Mr. ALDRICH. No; I am talking about securities.

Senator ADAMS. But you are not giving much information, Mr. Aldrich, about a bank if you merely tell about the bonds.

Mr. ALDRICH. Surely you cannot publish the list of bonds.

Mr. PECORA. No; I did not mean that.

Mr. ALDRICH. That is a suggestion that could not seriously be made. Nor could, I think, the suggestion be seriously made today of publishing the whole portfolios, because I think it would be so harmful.

Senator ADAMS. The impropriety of publishing a list of loans is not a thing that is peculiar today, because that is a confidential matter.

Mr. ALDRICH. Yes; that is a confidential thing.

Mr. PECORA. I referred to an obligation or requirement upon banks to publish their portfolios currently.

Mr. ALDRICH. I do not think there is any difference between you and me in this matter. I think you are quite right. I think if you could make a rule that banks had to publish their full portfolios it

undoubtedly would have a very desirable effect, because I think that bankers perhaps, some bankers, would be more hesitant to have certain securities in their portfolios if they knew they were going to be published than they otherwise would.

But I simply say that I think that at a time like this, which is just after a tremendous depression, naturally there are going to be large blocks of securities in the portfolios which would not normally be there, and I think that type of information would be something that would be unfortunate.

Mr. PECORA. Your objection is not to applying it to general conditions but to its enforcement at the present time in view of exigencies?

Mr. ALDRICH. That is right.

Senator ADAMS. Mr. Pecora, part of the reason for my inquiry is this, following your suggestion of advisability of publication in order that it give information to depositors of the bank as a matter of credit information. If they do not know as to the loans that are made, of course their credit information is quite defective. That is, they are practically compelled to rely upon the Government or the State for their protection. That is, the Government or the State hasn't any right to allow them to operate unless they are solvent. That is the presumption. When I go to the bank the Government or State says: This bank is solvent, and we have to rely on that, and it is impossible for the depositor to make those audits which are essential. That was what was back of my inquiry.

Senator COUZENS. The reliance, however, in the last few years has not been a very safe reliance. Has it?

Senator ADAMS. Apparently not. We hope it is all changed.

Senator COUZENS. I hope so, too.

Mr. ALDRICH. Have I made myself clear? My feeling would be that the question of what should be in the statements of banks is one which does require serious consideration, and I do not for a moment say that all of the necessary information may be in them today, but I do think—and in that I agree with Senator Adams—that the Government of the States and the Nation, the State and local responsibility, is there to see that these accounts of the banks are accurate and do represent a true picture of the bank, and therefore I cannot see any reason for employing outside auditors. I think that would be contrary to the whole system of the banking structure.

Senator ADAMS. That would be in a measure justifiable on the theory of our Securities Act, whereby a depositor can say to the Government, "You have held out this bank to be solvent and passed on it, and I find that it was not. You have made misrepresentations to me. Perhaps you ought to be responsible."

Mr. ALDRICH. Yes. And of course, it is on that same theory that the securities of banks are excepted from the Securities Act.

Mr. PECORA. Mr. Aldrich, if you refer to page D-2 of your mimeographed typewritten statement read into the record a week ago today, third from the last page, under the caption of "General", you say as follows:

> In the foregoing discussion I have confined myself to suggestions for legislation intended to prevent unsound banking practices and to remedy certain omissions. I have said nothing about a number of other problems which are

of vital importance and the solution of which must be found before any program of strengthening the banking system of the country can be completed.

Now, would you be good enough to tell us what those other problems are, without suggesting any solution unless you care to do it?

Mr. ALDRICH. I have covered a number of them in reply to your questions, Mr. Pecora. What I had in mind was the unification of the system. That Senator Glass took up here yesterday. That was the first one.

The second thing was branch banking. Senator Glass also asked me about that yesterday.

A third thing was the guaranty of deposits that you have asked me about today.

A fourth thing was the Securities Bill, which you have also asked me about today, which is the reestablishment of the long-term capital market.

And the last thing, which is one that is highly controversial at the moment and which I would not want to go into without very careful study, is the question of the currency itself, the question of what should be done about stabilizing and the question of the value of the dollar.

Senator ADAMS. If a fellow has got the answer to that, we would like to have it.

Mr. ALDRICH. I think that is a subject which I would not want to go into.

Senator GORE. What did you mention as the second one?

Mr. ALDRICH. I do not remember the order in which I gave them. Perhaps the reporter could give it to you.

The SHORTHAND REPORTER. Branch banking was the second one.

Mr. ALDRICH. I think the first one was the unification of the banking system.

Mr. PECORA. I have no other questions to ask the witness.

The CHAIRMAN. Does anyone want to ask any further questions? If not, Mr. Aldrich will be excused. We are much obliged for your help.

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

The CHAIRMAN. Yes, Mr. McCain, just come forward and raise your right hand and be sworn. You solemnly swear that you will tell the truth, the whole truth, and nothing but the truth regarding the matters now under investigation by this committee. So help you God.

Mr. MCCAIN. I do.

TESTIMONY OF CHARLES S. McCAIN, CHAIRMAN OF THE BOARD OF THE CHASE NATIONAL BANK, NEW YORK CITY

Mr. PECORA. Mr. McCain, what is your full name and address, please?

Mr. MCCAIN. Charles S. McCain; 18 Pine Street, New York City.

Senator COUZENS. What is your occupation?

Mr. MCCAIN. Banker. I am chairman of the board of the Chase National Bank.

Mr. PECORA. How long have you been chairman of the board of that bank?

Mr. McCain. Since April of 1930.

Mr. Pecora. Prior to that were you connected with the Chase National Bank in any other capacities?

Mr. McCain. I was president of the Chase National Bank from August of 1929 till April 1930.

Mr. Pecora. Will you give just a résumé in chronological order of your service with the Chase National Bank?

Mr. McCain. I do not know that I understand you, Mr. Pecora.

Mr. Pecora. When did you first become connected with the Chase National Bank and in what capacity?

Mr. McCain. I first became connected in August of 1929 as president of the bank. Prior to that time I had been president of the National Park Bank and merged with the Chase Bank in August 1929.

Senator Couzens. When did you become connected with the National Park?

Mr. McCain. In 1926. I was vice president and I became president of the bank in the latter part of 1927.

Senator Couzens. Was that your first experience in New York banking?

Mr. McCain. Yes. I came from Little Rock, Ark., and had been president of a bank there.

Mr. Pecora. Mr. Chairman, I have quite a number of questions that I want to ask Mr. McCain with regard to certain loan transactions between the Chase National Bank and certain syndicates of which Mr. McCain was a member or participant or manager, and I would suggest that the examination be resumed tomorrow morning and that we suspend at this time if it is agreeable to you.

The Chairman. Very well; the committee will take a recess until 10:30 tomorrow morning.

(Accordingly, at 3:45 p.m., the subcommittee adjourned until 10:30 a.m. of the following day.)

COMMITTEE EXHIBIT No. 231, DECEMBER 6, 1933

The information set forth herein is not presented in connection with new financing on the part of the corporation, but is descriptive only.

LINCOLN BUILDING FIRST MORTGAGE 5½% SINKING FUND GOLD LOAN

Dated June 1, 1928. Due June 1, 1953

Closed Mortgage; obligation of Lincoln 42nd Street Corporation, Semiannual interest payable June 1 and December 1. Principal and interest payable in New York at the principal office of the Chase National Bank of the City of New York, Trustee. Participation certificates in coupon form issued by the Trustee in interchangeable denominations of $1,000 and $500, registerable as to principal. Redeemable at the option of the Corporation, as a whole or in part, on any interest date on thirty days' published notice at 103 prior to June 1, 1938, at 104 on June 1, 1938, and thereafter until June 1, 1943, at 103 on June 1, 1943 and thereafter until June 1, 1948, and at 102 on June 1, 1948 and thereafter until maturity, plus accrued interest in each case.

Tax provisions.—The Corporation agrees to pay interest without deduction for normal Federal income tax not in excess of 2%. Personal property taxes in Pennsylvania and Connecticut up to four mills, in Maryland up to four and one half mills, in Michigan, California and District of Columbia up to five mills, and the Massachusetts income tax on interest not exceeding 6% per annum refundable upon application as provided in the Mortgage.

The Chase National Bank of the city of New York, Trustee.

These certificates, in the opinion of counsel, are legal investment for Trust Funds under the Laws of the State of New York.

The following information has been furnished by Mr. John H. Carpenter, President of Lincoln Forty-Second Street Corporation:

Lincoln Building.—The Lincoln Building, owned in fee simple by Lincoln Forty-Second Street Corporation, is one of the largest office buildings in New York City. It is located on the south side of 42nd Street between Madison and Park Avenues, directly facing Vanderbilt Avenue and diagonally across from the Grand Central Terminal.

Towering 680 feet above 42nd Street, the new 53-story Lincoln Building takes a prominent position in the rapidly rising skyline of the Grand Central zone. The building is of the most modern fireproof construction and is provided with its own subway entrances. Thirty high-speed elevators serve the tenants of the building. The building was constructed by Dwight P. Robinson & Co., Inc., and was officially opened on March 1, 1930.

The site upon which the Lincoln Building is located has a frontage of 181.5 feet on 42nd Street, 179.75 feet on 41st Street, and 49.75 feet on Madison Avenue.

Rentals.—The Lincoln Building contains 915,000 square feet of rentable area. In terms of gross rental income, the building was 60% rented as of December 1, 1930. Messers. Pease & Elliman, Inc., rental agents for the building, advise that rentals are progressing satisfactorily, and they estimate that the building will be 80% rented by June 1, 1931, the end of the first year of operation. Based on present 60% rental, the income is more than sufficient to cover interest on First Mortgage Gold Loan after providing for maximum estimated operating expenses and taxes.

Capitalization.—The outstanding capitalization of Lincoln Forty-second Street Corporation at December 1, 1930, was as follows:

First Mortgage 5½% Sinking Fund Gold Loan, due June 1, 1953	$16,000,000
Twenty-Year 6½% Sinking Fund Gold Debentures, due June 1, 1948	$5,500,000
6% Purchase Money Notes (With Sinking Fund) due 1935	$1,600,000
7% Preferred Stock	$3,500,000
Common Stock (no par value) shares	600,000

Valuation.—Charles F. Noyes & Co., Inc., representing the Bankers, report under date of March 20, 1930, as follows: "We have recently inspected said land and building and in our opinion the present value of the land owned in fee and the said Lincoln Building, as now completed, is in excess of $26,667,000." The First Mortgage 5½% Sinking Fund Gold Loan outstanding in the amount of $16,000,000, would therefore be equivalent to approximately 60% of this valuation.

Security.—This Loan is secured, in the opinion of counsel, by a first closed lien on the land and building. The trustee has issued its certificates representing shares or parts in the loan and in the mortgage securing the Loan.

Sinking fund.—The mortgage provides for a cumulative sinking fund, commencing June 1, 1933, which is calculated to retire more than $5,200,000 principal amount of Certificates of this issue by maturity.

These Certificates are listed on the Boston Stock Exchange. Price on application.

CHASE SECURITIES CORPORATION,
The Chase National Bank Building, New York.

Offices in Principal Cities.
JANUARY 12, 1931.

COMMITTEE EXHIBIT NO. 233 DECEMBER 6, 1933

MILBANK, TWEED, HOPE, & WEBB,
New York, N.Y., July 26, 1932.

PHILIP E. ALLEN,

Secretary, Protective Committee, Lincoln Building First Mortgage 5½% Sinking Fund Gold Loan, 60 Cedar Street, New York, N.Y.

DEAR SIR: This letter is in response to a request from you for a report by us as counsel for your Committee on the situation generally in reference to the progress of legal affairs in connection with the Lincoln Building. This report

is directed particularly to certain specific questions that have been asked you by certain interested parties.

The Chase National Bank as Trustee of the First Mortgage, at the instance and request of your Committee, declared the whole of the principal of the loan to be due and payable by reason of default in the payment of interest after the expiration of the period of grace and commenced foreclosure proceedings of the Indenture securing this loan in the Supreme Court of New York in New York County, on January 5, 1932. At the same time a receiver of the mortgaged property was applied for by the Trustee, and the Hon. Robert F. Wagner (United States Senator from New York), was appointed by Judge Churchill as the mortgage receiver on January 6.

The important parties defendant named in the foreclosure bill were the owner of the building, Lincoln Forty-Second Street Corporation, and the trustee under the second mortgage, Chemical National Bank & Trust Company (which had become substituted trustee upon the resignation of the Chase National Bank as trustee under that mortgage). Because of a belief on the part of the attorneys for the Chase National Bank as Trustee that it might be found necessary or desirable later to amend the complaint in foreclosure, in order, among other things, to join as parties defendant certain of the tenants in the building who might, after further experience, for one reason or another prove to be undesirable and therefore suitable parties defendant in order to foreclose them out of their leases, service of the original complaint was not made upon the second mortgage trustee, namely, Chemical National Bank & Trust Company until about February 25.

Under the practice in New York State Courts, a party defendant has twenty days in which to answer a complaint and can obtain almost without exception a further period of twenty days on *ex parte* application to the Court. Chemical National Bank & Trust Company ultimately served an answer about April 5, and because the answer was believed not to present a substantial defense, a motion was made by the attorneys for the Trustee for a summary judgment. After the making of this motion, Chemical National Bank & Trust Company about May 5 served an amended answer.

In order to make clear the background of this answer and amended answer, it will be necessary to describe certain circumstances more fully. As we understand it, the land upon which the Lincoln Building was constructed was sold to Lincoln Forty-Second Street Corporation for a certain price, all of which was paid in cash with the exception of $1,600,000. In setting up the financial structure of the land and proposed building, this unpaid $1,600,000 was represented by a so-called "6% Purchase Money Note" in the amount of $1,600,000 issued under and secured by the second mortgage under which Chemical National Bank & Trust Company is now trustee. This second mortgage secures $5,500,000 of "Twenty Year 6½% Sinking Fund Gold Debentures" of Lincoln Forty-Second Street Corporation as well as the $1,600,000 Purchase Money Note. By the terms of this second mortgage, as well as by the terms of the Purchase Money Note, the $5,500,000 of Twenty Year 6½% Sinking Fund Gold Debentures were given a superior lien over the Purchase Money Note under this second mortgage. This second mortgage in turn was by its express terms subject to the lien of the Indenture of First Mortgage securing the $16,000,000 loan for which your Committee is acting. In addition to this, a title policy for $16,000,000 was issued to the Trustee under the First Mortgage by one of the leading title companies in New York insuring this First Mortgage as a first mortgage in the amount of $16,000,000. This Purchase Money Note for $1,600,000 was delivered at the time of closing to 1928 Holding Corporation (the seller of the land to Lincoln Forty-Second Street Corporation or the successor to the seller). We are informed that thereafter 1928 Holding Corporation pledged to Manufacturers Trust Company (a New York trust company) as trustee, this $1,600,000 Purchase Money Note, together with 10,000 shares of the capital stock of Manufacturers Trust Company under a collateral trust agreement to secure an issue of "7 Year 6% Collateral Trust Gold Bonds" of 1928 Holding Corporation.

Before Chemical National Bank & Trust Company as second mortgage Trustee had served its amended answer, a corporation known as the Barclay Arrow Holding Corporation alleging itself to be the successor of 1928 Holding Corporation, brought suit, naming as defendants Lincoln Forty-second Street Corporation, the Trustee under the First Mortgage, the Trustee under the Second Mortgage, and a number of the tenants in the Lincoln Building, alleging that

it was the successor of the vendor of the land upon which the Lincoln Building was built, that the $1,600,000 of purchase money was still upaid and that it claimed a vendor's lien upon the property prior and superior to the lien of the first mortgage and the lien of the second mortgage. The title company which insured the title of the First Mortgage as stated above, has been called upon in behalf of the First Mortgage to aid in the defense of this suit. It is rather difficult for us to visualize the theory of this suit. As stated above, this $1,600,000 of unpaid purchase price was represented by the Purchase Money Note for that amount described above, which at the closing was delivered to 1928 Holding Corporation. From what we can learn to date, we are of the opinion that this suit has no merit whatsoever. If it should by any chance ultimately be successful, then the title company in turn is obligated to make good on its title policy to that amount.

There is another important feature of the situation that should now be mentioned. One of the occupants of space in the Lincoln Building under a lease for twenty-one years calling for a rental of $115,000 a year, payable quarterly, was Chatham Phenix National Bank & Trust Company. This lease was made by the management of Lincoln Forty-Second Street Corporation under date of January 23, 1929. Instead, however, of Chatham Phenix National Bank & Trust Company physically signing the lease as tenant, the lease was signed by a wholly owned subsidiary of Chatham Phenix National Bank & Trust Company called "C.P.N. Realty Corporation." From the date that the premises were ready for occupancy, Chatham Phenix National Bank & Trust Company exclusively occupied the premises as a branch for its banking business until Chatham Phenix National Bank & Trust Company merged into Manufacturers Trust Company. The rental due February 1, 1932, for the quarter year named in the lease consisting of February, March and April 1932, was not paid, and on or about that time the merger of Chatham Phenix National Bank & Trust Company with Manufacturers Trust Company became effective, and this branch was closed. Likewise the rent due May 1, 1932, for the quarter year, consisting of May, June and July 1932, was not paid. Manufacturers Trust Company acquired by virtue of the merger the assets and liabilities of Chatham Phenix National Bank & Trust Company, including all of the capital stock of C.P.N. Realty Corporation. C.P.N. Realty Corporation has failed to pay the rent due and Manufacturers Trust Company has refused to date to pay this rent in spite of representations made to its officers in conference with them by the Chairman of your Committee, and a suit for the unpaid rent for the quarter beginning February 1, 1932, has now been brought against Manufacturers Trust Company by the mortgage receiver, Senator Wagner.

So much for the background of this answer and amended answer.

No defense to the foreclosure which we consider substantial has been interposed by this amended answer of Chemical Bank & Trust Company. The answer raises some question as to whether proper consent of stockholders was given to the execution of the first mortgage and also makes an attempt to raise the point that there should be joined as a party defendant in the foreclosure suit this Barclay Arrow Holding Corporation mentioned above. Having in mind the various circumstances we have recited, it would seem doubtful that this amended answer is interposed for any purpose other than to gain some delay in the progress of the foreclosure action. The attorneys for the Trustee of the First Mortgage have made a motion for an order striking out the amended answer and for summary judgment. This motion has been set for argument before the Court early in August.

We will not go into details in connection with the various tactics of the foreclosure action any further except to say that to a certain extent at least this has become a "litigated foreclosure" which will have the effect of delaying the time when a decree of foreclosure is obtained and foreclosure sale under the first mortgage held. We do not like to venture an opinion as to the exact delay that may be caused.

Lincoln Forty-Second Street Corporation has many creditors and some large ones in addition to the First Mortgage Loan and the issue of second mortgage Debentures and Purchase Money Note. Outside of its "equity" in the building and its fixtures, covered by the first and second mortgages, it has no property of any importance with the exception of a comparatively small sum in cash and a claim to some personal property. The situation, however, became rather difficult for the officers of the corporation so that finally under advice of their counsel that corporation filed a voluntary petition in bankruptcy on March 19,

and the Irving Trust Company has been elected Trustee in bankruptcy, and is administering the unmortgaged assets, that is, the cash and certain claims to personal property. So far as we can determine, this adjudication in bankruptcy of Lincoln Forty-Second Street Corporation should not in any way delay or hamper the foreclosure proceedings, as obviously there is now no "equity" in this building for the unsecured creditors of Lincoln Forty-Second Street Corporation.

In conclusion we should like to emphasize that what your Committee can accomplish in behalf of the holders of Certificates of Interest depends in very large measure upon the amount of Certificates of Interest that may be deposited with it.

Very truly yours,

MILBANK, TWEED, HOPE & WEBB.

STOCK EXCHANGE PRACTICES

THURSDAY, DECEMBER 7, 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 on yesterday, in room no. 301 of the Senate Office Building, Senator Duncan U. Fletcher presiding.

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

Present also: Senator Reynolds of North Carolina.

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; William Dean Embree of Milbank, Tweed, Hope & Webb, and C. Horace Tuttle of Rushmore, Bisbee & Stern, counsel representing the Chase National Bank and the Chase Corporation.

The CHAIRMAN. The subcommittee will come to order, please. You may proceed, Mr. Pecora.

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

TESTIMONY OF CHARLES S. McCAIN, CHAIRMAN OF THE BOARD OF DIRECTORS, THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK—Resumed

Mr. PECORA. Mr. McCain, from evidence heretofore presented to this subcommittee it appears that a loan was made by the Chase National Bank to a syndicate the managers of which were Dillon, Read & Co., H. C. Couch, and yourself; that the amount of the loan on January 29, 1930, was $2,795,000. Do you recall the loan in question?

Mr. MCCAIN. Was that a loan made to——

Mr. PECORA (interposing). That was a loan that was secured principally by shares of the capital stock of the Louisiana & Arkansas Railway Co.

Mr. MCCAIN. Yes, sir; I recall the loan.

Mr. PECORA. When was that loan first made?

Mr. MCCAIN. That loan was made in 1927 originally at the National Park Bank.

Mr. PECORA. That loan was made when you were connected with the National Park Bank?

Mr. MCCAIN. Yes.

Senator COUZENS. These gentlemen whose names you have just referred to were syndicate managers, were they, Mr. Pecora?

Mr. PECORA. Yes, sir.

Senator COUZENS. All right.

Mr. PECORA. Now, Mr. McCain, do you remember on what date in 1927 that loan was first made?

Mr. MCCAIN. I see here it was January 16, 1928.

Mr. PECORA. Do you say now it was in 1928?

Mr. MCCAIN. Yes.

Mr. PECORA. You were then president of the National Park Bank?

Mr. MCCAIN. Yes.

Mr. PECORA. And had been connected with it from what period of time?

Mr. MCCAIN. Since the 1st of January 1926.

Mr. PECORA. What was the principal amount of the loan at the outset?

Mr. MCCAIN. It was $2,295,000.

Mr. PECORA. When was the loan taken over by the Chase National Bank?

Mr. MCCAIN. At the time of the merger, in August of 1929.

Mr. PECORA. At the time of such merger you became an officer of the Chase National Bank?

Mr. MCCAIN. Yes. I became president of the Chase National Bank.

Mr. PECORA. And you subsequently became chairman of the board?

Mr. MCCAIN. Yes.

Mr. PECORA. Which is the position you now hold?

Mr. MCCAIN. Yes.

Mr. PECORA. Now, at the time when the loan was taken over——

The CHAIRMAN (interposing). Is that chairman of board of directors?

Mr. PECORA. Yes, sir. He is chairman of the board of directors of the Chase National Bank, and not chairman of the governing board.

Mr. MCCAIN. Yes; chairman of the board of directors.

Mr. PECORA. At the time when the loan was taken over by the Chase National Bank what was the principal amount of it?

Mr. MCCAIN. The principal amount of it was $2,795,000. The loan had been increased in May of 1929 by $500,000.

Mr. PECORA. By whom?

Mr. MCCAIN. By the National Park Bank.

Mr. PECORA. Now, who were the members of the syndicate to which this loan was made?

Mr. MCCAIN. I will give you a list of those in a minute.

Mr. PECORA. All right.

Mr. MCCAIN. Dillon, Read & Co., Randolph G. Pack, Harvey C. Couch, Caldwell & Co., C. S. McCain, Coverdale & Colpitts, and J. A. Moffett. Then each of those had subparticipants, as a matter of fact, a list of which I haven't at the time in front of me.

Mr. PECORA. Will you give the respective interests or participations of those participants in the syndicate?

Mr. MCCAIN. Dillon, Read & Co., New York, $3,000,000——

Mr. PECORA (interposing). Representing what percentage? Do you say it was 3 million dollars?

Mr. MCCAIN. Yes, sir; it was 3 million dollars, or 30 percent. The syndicate was for 10 million dollars.

Mr. PECORA. Yes. Go ahead.

Mr. MCCAIN. R. G. Pack, $750,000——

Mr. PECORA (interposing). And that is 7½ percent?

Mr. MCCAIN. And H. C. Couch $3,500,000; Rogers Caldwell, $850,000; C. S. McCain, $650,000; Coverdale & Colpitts, $250,000; and J. A. Moffett, $1,000,000.

Mr. PECORA. Who is Mr. Randolph G. Pack?

Mr. MCCAIN. Mr. Pack is a capitalist who lives at Princeton, N.J.

Mr. PECORA. Is he engaged in any business?

Mr. MCCAIN. Not actively in business.

Mr. PECORA. By capitalist do you mean investing his own funds?

Mr. MCCAIN. Yes, sir.

Mr. PECORA. Who is Rogers Caldwell?

Mr. MCCAIN. He is a well known character who lived at Nashville at that time, and was in very good circumstances, but afterward failed as you may recall.

Mr. PECORA. Who is Mr. J. A. Moffett?

Mr. MCCAIN. He was at that time vice president of the Standard Oil Co. of New Jersey.

Mr. PECORA. And Mr. Harvey C. Couch at that time was connected with the railroad in question?

Mr. MCCAIN. No. At that time he was president of the Arkansas Power & Light Co.

Mr. PECORA. Wasn't he also connected at that time with the Louisiana & Arkansas Railway Co.?

Mr. MCCAIN. No. This syndicate, Mr. Pecora, was organized to purchase the Louisiana & Arkansas Railway and the Louisiana Railway & Navigation Co. They were two well-established railroads in Arkansas and Louisiana. The Louisiana & Arkansas Railway had belonged to William Buchanan, the William Buchanan interests, for many years, and Mr. William Buchanan had died about a year before this original loan was made. The Louisiana Railway & Navigation Co. belonged to Mr. Edenborn of New Orleans, who was a very well-known character, and who died about a year ago, or I mean about a year before. So we felt on account of the deaths of these two principals, and the desire of other parties in interest to sell, it would be an opportune time to buy and to merge these two roads as they complemented each other. One ran from a cotton belt connection to Shreveport, and the Louisiana Railway & Navigation Co. ran from Shreveport to New Orleans. So it made a through line by a combination of the two railroads. This syndicate was organized for the purpose of purchasing those two railroads.

Mr. PECORA. And you merged them into the Louisiana & Arkansas Railway Co.?

Mr. MCCAIN. They were merged under the name of Louisiana & Arkansas Railway Co.

Mr. PECORA. Is that syndicate account still open?

Mr. MCCAIN. Yes.

Senator COUZENS. What is the status of it now?

Mr. MCCAIN. There has been paid on that loan $50,000, as of June 10, 1930; $410,000 as of January 16, 1931; $25,000 as of January 30, 1931; $22,500 as of February 16, 1931, and $998,155 as of January 18, 1932. So the loan today is about $1,289,000.

Senator COUZENS. Is it adequately secured?

Mr. MCCAIN. I think it is adequately secured. It is secured by 24,989 shares of the common stock of the Louisiana & Arkansas Railway of Arkansas; 28,987 shares of the prior preferred stock; 19,991 shares of the preferred stock and 49,978 shares of the common stock of the Delaware corporation. In addition to that it has as security notes of Randolph G. Pack for about $175,000 and of H. C. Couch of about $820,000, and he has under that some 22 subparticipants with him, a list of which I can furnish you if you desire to have it.

Mr. PECORA. Have you a list of the persons who were subparticipants of Mr. Couch's in this syndicate?

Mr. MCCAIN. Yes, sir.

The CHAIRMAN. Those two railroads were acquired?

Mr. MCCAIN. Yes, sir.

The CHAIRMAN. And a new corporation was formed?

Mr. MCCAIN. Yes, sir.

The CHAIRMAN. And that corporation issued stock?

Mr. MCCAIN. Yes, sir; but no stock was sold to the public in the new corporation. It is one of the few railroads in the United States that has earned its entire fixed charges during this period. It has earned its interest during this year and during the last 2 years.

Mr. PECORA. Mr. McCain, is it a fact that this railroad which you say is so prosperous cannot get a loan from the Reconstruction Finance Corporation?

Mr. MCCAIN. It has never applied for a loan from the Reconstruction Finance Corporation.

Mr. PECORA. Have you a list of the names of all of the participants in the syndicate?

Mr. MCCAIN. Yes. I can hand you this list if you like and save my reading it.

Mr. PECORA. If you will.

Senator COUZENS. Read them off.

Mr. PECORA. Mr. Chairman, I offer in evidence a list of subparticipants produced by the witness, and ask that it may be made a part of the record.

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

(The list of subparticipants in the syndicate of the Louisiana & Arkansas Ry. Co. was marked "Committee Exhibit No. 234, Dec. 7, 1933", and will be found immediately following where read by Mr. Pecora.)

Senator COUZENS. Those are subparticipants of Mr. Couch's list?

Mr. MCCAIN. Yes, sir. And, Mr. Pecora, you may have that list for your record.

Mr. PECORA. The list received in evidence and marked "Committee Exhibit No. 234", shows the following subparticipants in Mr. Couch's interest in this syndicate account:

H. C. Couch and Subparticipants:	
H. C. Couch, Pine Bluff, Arkansas	$1,650,000
J. P. Butler, New Orleans, La	250,000
John Nickerson, New York	250,000
S. Z. Mitchell, New York	125,000
Electric Bond & Share, New York	125,000
W. C. Ribenack, Little Rock, Arkansas	100,000
C. H. Moses, Little Rock, Arkansas	100,000
W. E. Baker, Pine Bluff, Arkansas	80,000
C. F. Couch, Shreveport, Louisiana	50,000
H. C. Abel, New Orleans, Louisiana	50,000
J. L. Longino, Pine Bluff, Arkansas	25,000
B. S. Atkinson, Shreveport, Louisiana	25,000
George Howard, New York	25,000
Neil Weathers Estate, New York	25,000
C. G. Lunday, Minden, Louisiana	25,000
John R. Fordyce, Hot Springs, Arkansas	25,000
J. T. Thomas, Grenada, Mississippi	12,500
J. G. Blass, Little Rock, Arkansas	12,500
W. N. Adams, New Orleans, Louisiana	12,500
B. F. Thompson, Alexandria, Louisiana	12,500
W. O. Tatum, Hattiesburg, Miss	2,500
Olin Longino, Hot Springs	2,500
A. G. Kahn, Little Rock, Arkansas	5,000
J. M. Hartfield, Jackson, Mississippi	5,000
Mrs. Garner Green, Jackson, Mississippi	5,000
Total	3,000,000

And then follows a list of names of the original participants:

Dillon, Read & Company, New York	$3,000,000
J. A. Moffett, New York	1,000,000
Randolph G. Pack, New York	750,000
Coverdale & Colpitts, New York	750,000
C. S. McCain, New York	650,000
E. A. Frost, Shreveport	500,000
Caldwell & Company, Nashville	850,000
Grand total	$10,000,000

Mr. McCAIN. I might say that during this period the railroad has earned its fixed charges, during 1931, 1.89 times, and during 1932, 1.03 times, and during 1933, 1.6 times.

Mr. PECORA. Which railroad?

Mr. McCAIN. The Louisiana & Arkansas Railway Co.

Senator COUZENS. That is, you mean after the consolidation?

Mr. McCAIN. Yes, sir.

Senator COUZENS. Did Coverdale & Colpitts ever render any engineering report as to the possibilities of the railroads as consolidated?

Mr. McCAIN. Yes; we did not rely on that, though.

Senator COUZENS. I am glad you did not, but I suppose it was very favorable, otherwise they would not have gone into the syndicate.

Mr. McCAIN. I think that is true.

Mr. PECORA. Were any bonds of the Louisiana & Arkansas Railway Co. put up as collateral in connection with this loan?

Mr. McCAIN. No; not with this loan.

Mr. PECORA. Do you know what the market quotation is for bonds of the Louisiana & Arkansas Railway Co. that are outstanding?

Mr. McCAIN. I think it was about 43, the last I saw. No; I find the last quotation was 46.

Senator COUZENS. Have you the market value of those securities that you still have to support the loan, outside of the notes of individuals?

Mr. MCCAIN. They have never been listed.

Mr. PECORA. What is the quotation in the unlisted market, the over-the-counter market?

Mr. MCCAIN. There are none in the hands of the public at all. They were never offered to the public.

Mr. PECORA. What valuation was given, if you know, to those securities in order to determine whether or not the loan is sufficiently supported? Who fixed that valuation?

Mr. MCCAIN. Well, I think it would have to be an arbitrary valuation that you would fix on it, as far as that is concerned.

Mr. PECORA. And is it upon an arbitrary valuation that you say the loan is properly collateralized?

Mr. MCCAIN. Yes; that plus the notes that we hold of participants, all of whom we regard as good.

Mr. PECORA. Now, Mr. McCain, are you familiar with the proceedings that were had before the Interstate Commerce Commission in connection with the consolidation of the Louisiana & Arkansas Railway with the Louisiana Railway & Navigation Co.?

Mr. MCCAIN. Just in a general way I am familiar with them.

Mr. PECORA. Can you tell the subcommittee about that?

Mr. MCCAIN. I know that application was made for the consolidation of the two railroads. The Interstate Commerce Commission's valuation on the two railroads was something like 25 million dollars. The company's valuation was 39 million dollars, as I recall. Application was made for the issuance of 16 million dollars of bonds and 3 million dollars of first preferred and 2 million dollars of second preferred and 100,000 shares of common.

Senator COUZENS. Of no par value?

Mr. MCCAIN. Of no par value.

Mr. PECORA. Was there a transaction that the syndicate was undertaking to consummate at that time with Mrs. Sarah Edenborn who owned the securities of the Louisiana Railway & Navigation Co.?

Mr. MCCAIN. The purchase of her interest—and she owned, I will say, 100 percent, I think, of the Louisiana Railway & Navigation Co.—of all the bonds and stock, was contingent on the permission of the Interstate Commerce Commission for the merger of the two railroads.

Mr. PECORA. In the application that was made to the Interstate Commerce Commission to enable the syndicate to acquire those securities from Mrs. Edenborn, it appears from the record of the proceedings as published by the Interstate Commerce Commission that the following colloquy took place between Commissioner Woodlock and an attorney named Frank M. Swacker who appeared for the petitioner, namely, the Louisiana & Arkansas Railway Co.:

Commissioner WOODLOCK. I get the impression, probably falsely, that you are justifying the securities being issued on the ground that the price which the syndicate is paying to Mrs. Edenborn, is a contract price—you don't mean that they got this old lady in a tight place and are proceeding to take advantage of her, do you

Mr. SWACKER. * * * I suppose I cannot very well deny the fact.

What did that have reference to?

Mr. McCAIN. I never heard of that before. I think the situation was the very opposite if any such statement was made.

Mr. PECORA. That appears in the record of the proceedings before the Interstate Commerce Commission.

Mr. McCAIN. I never heard of that. Mrs. Edenborn was left after the death of her husband with this railroad, which at that time was not earning any of its charges, and had not paid its interest for several years, and was badly run down. And she had an inheritance tax of something like $2,500,000 to pay, as I recall. She was very anxious to sell the railroad, and rather than any advantage being taken of her as a result of the sale of the railroad, she was enabled to pay her inheritance tax, and has now, I think, something like six or seven million dollars of Government bonds. So she certainly profited very much, I think, by the deal.

Mr. PECORA. What decision was made by the Interstate Commerce Commission on this application?

Mr. McCAIN. They granted it.

Mr. PECORA. You say they granted the application?

Mr. McCAIN. Yes, sir.

Mr. PECORA. But that was not a unanimous decision of the commissioners, was it?

Mr. McCAIN. It was contested by the Missouri Pacific Railroad, and on that account it was held up for some time, but they granted the application.

Senator COUZENS. What was the basis of the Missouri Pacific's contest?

Mr. McCAIN. On the contention that it would create a through line that would compete with them at New Orleans.

Mr. PECORA. Mr. McCain, are you familiar with the fact that Com missioner Eastman dissented in part from the decision of the Commission?

Mr. McCAIN. No, sir.

Mr. PECORA. Well, I have before me the report of the Interstate Commerce Commission on this application, and will read therefrom the following extracts from Commissioner Eastman's dissenting opinion:

When the transaction here approved is consummated, the new L. & A. will own all of the stock of the L. R. & N., the latter will be without debt, and its property will be leased to the new L. & A. for 999 years. Section 5(2) of the Interstate Commerce Act does not empower us to authorize an acquisition of control which involves the consolidation of the carriers in question into a "single system for ownership and operation." In my judgment this is such a consolidation.

So far as the merits of the proposed unification are concerned, I think that it is likely, on the whole, to result in public advantage. Certain features, however, ought not to be overlooked. The bonds of the new L. & A. are to be used to purchase the securities of the L. R. & N. now owned by Sara Edenborn. She, however, wants cash or its equivalent for these securities, and she also wishes to dispose of her holdings in the L. R. & N. of Texas. It is, therefore, proposed to give her the new L. & A. bonds in exchange for the securities of the L. R. & N., but in the same breath she is to sell the new bonds and also her holdings in the L. R. & N. of Texas for $10,000,000 to the syndicate which will own the stock of the new L. & A. Reducing the transaction to simple terms and stripping it of nonessentials whose only purpose is to tinge it with a certain legal color, it amounts merely to a sale of the new L. & A. bonds for $10,000,000 to

the syndicate which will control that carrier, for the purpose of obtaining that amount of cash or its equivalent to pay to Sara Edenborn for her holdings in the L. R. & N. and in the L. R. & N. of Texas, the latter to be thrown in with the new L. & A. bonds and given to the syndicate.

This somewhat circuitous transaction may be very profitable to the syndicate.

* * * * * * *

It may be that to provide sufficient inducement for railroad unifications it is necessary to give to their promoters opportunities for speculative profit such as that which is here being given to this syndicate. But in view of the fact that this is not wholly a transaction at arms' length between independent parties, but in part a deal between a carrier and its own stockholders, I am inclined to think that we are entitled to better evidence than has been presented that what is proposed is really necessary.

* * * * * * *

One feature of the transaction invites comment, and is not without elements of humor. It illustrates the absurdity, in certain respects, of the corporation laws of this country. The present L. & A. is a corporation in Arkansas and Louisiana. There are certain things, however, which its promoters wish the new L. & A. to do or refrain from doing which are prohibited or required, as the case may be, by the Arkansas corporation laws, and perhaps by those of Louisiana also. At all events the promoters have gone to little Delaware, many hundreds of miles away, and have secured a charter which is more liberal in its provisions. It permits the now L. & A. not only to do all that its promoters now have in mind, but practically anything else if occasion arises in the future, in all States except Delaware. * * * On the contrary, however, the governors and the regulatory commissions of both States have gone on record here in favor of the invasion. In this connection I may say that it is at least debatable whether we ought to permit railroad lines to be acquired by corporations which are chartered, not only to run a railroad, but to engage in practically any other line of business that fancy may dictate. There is no valid reason for such charters and they are inconsistent with sound public policy.

Mr. PECORA. Now, Mr. McCain, what were the reasons, if you can tell the subcommittee, why this holding company was incorporated in the "little State of Delaware" to operate a railroad in the States of Louisiana and Arkansas?

Mr. MCCAIN. I do not want to be held strictly to this, but my impression is that under the Arkansas law a railroad company could not issue preferred stock. It is some antiquated provision of that kind.

Mr. PECORA. So, in order to overcome that statutory provision, or laws of the States in which the railroad was going to operate, a charter was obtained from another Commonwealth, hundreds of miles away.

Mr. MCCAIN. Yes.

Mr. PECORA. And that conferred extraordinary powers upon this railroad corporation referred to by Commissioner Eastman in his dissenting opinion?

Mr. MCCAIN. Yes.

Mr. PECORA. And empowered the railroad corporation to do all those extraordinary things in all other States except in the State which granted the charter?

Mr. MCCAIN. I am sure the corporation would not do anything and did not do anything that made Delaware ashamed, however, being domiciled there.

Mr. PECORA. Apparently Delaware was not taking any chances of having any of those things done within its own borders.

(The witness simply smiled.)

Mr. PECORA. When this loan was increased from its original amount of $2,295,000 to $2,795,000 was any additional collateral supplied to the bank?

Mr. MCCAIN. That I cannot answer. Additional notes of participants were put up, Mr. Pecora.

Mr. PECORA. No collateral but additional notes?

Mr. MCCAIN. Yes.

Mr. PECORA. I suppose signed by certain members of the syndicate?

Mr. MCCAIN. Yes, a list of whom I have given you here.

Mr. PECORA. How many of the members of the original syndicate were connected with the National Park Bank at the time this loan was originally made to the syndicate by the National Park Bank?

Mr. MCCAIN. I was the only one connected with the bank. I know a partner of Dillon, Read & Co. was a director in the bank, Mr. Forrestal.

Mr. PECORA. Subsequently did any other members of the original syndicate become officers or directors of either the National Park Bank or the Chase National Bank after the loan was taken over by the Chase?

Mr. MCCAIN. Mr. Couch became a director of the National Park Bank, and afterward with the Chase Bank.

Mr. PECORA. And Mr. Clarence Dillon, the head of the firm of Dillon, Read & Co., became a director of the Chase National Bank?

Mr. MCCAIN. Of the Chase Bank; yes, sir. At the time of the merger he succeeded Mr. Forrestal as a director.

Mr. PECORA. There was some reference made in that dissenting report of Commissioner Eastman to the Louisiana Railway & Navigation Co. of Texas.

Mr. MCCAIN. Yes.

Mr. PECORA. Was that one of the operating companies that was acquired by this holding company?

Mr. MCCAIN. Yes.

Mr. PECORA. The syndicate formed?

Mr. MCCAIN. Yes.

Mr. PECORA. Did that operating company attempt at any time to obtain a loan from the R.F.C.?

Mr. MCCAIN. I think it—no—well, I am not certain of that. I cannot say. I have the impression that they did, but I am not certain of that.

Mr. PECORA. Did the Louisiana, Arkansas & Texas Railroad attempt to secure a loan from the R.F.C. at any time?

Mr. MCCAIN. I do not know that road.

Mr. PECORA. It is not part of your combination?

Mr. MCCAIN. No; it is not part of our combination. In fact, I think the L. & A. of Texas, as I recall, endeavored to obtain a loan from the Railroad Credit Corporation and not from the Reconstruction Finance Corporation. That is my recollection.

Mr. PECORA. At the time of the financing by means of this loan, this syndicate operation, were you connected with the railroad company, the Louisiana & Arkansas Railway Co.?

Mr. MCCAIN. No.

Mr. PECORA. Did you afterward become connected with it in any official capacity?

Mr. MCCAIN. Yes.

Mr. PECORA. In what capacity?

Mr. MCCAIN. As chairman of the executive committee.

Mr. PECORA. Any other members of the original syndicate that became officers or directors of the railway company in question?

Mr. MCCAIN. Several of them became directors. Mr. Couch, of course, became president, and Mr. C. P. Couch, his brother, became vice president and is now president of the road.

Mr. PECORA. Who is that?

Mr. MCCAIN. Mr. C. P. Couch, his brother.

Mr. PECORA. Mr. McCain, let me digress for a moment or two to ask you if in addition to being an officer and director of the Chase National Bank you are also an officer and/or director in any other corporation?

Mr. MCCAIN. Yes.

Mr. PECORA. How many other such corporations?

Mr. MCCAIN. I should think probably 10 or 12.

Mr. PECORA. Is that all?

Mr. MCCAIN (after conferring). Twenty, I am informed.

Mr. PECORA. Twenty?

Mr. MCCAIN. About twenty.

Mr. PECORA. Could you give the committee from memory the names of those corporations in which you are a director or officer?

Mr. MCCAIN. I am director of the Corn Products Refining Co., the Standard Surety & Casualty Co., the Standard Fire Insurance Co.—those two companies are allied—the Great American Insurance Co. group.

Mr. PECORA. I just want to see that those gentlemen——

Mr. MCCAIN. They are not telling me this. I was giving you this. The Great American Insurance Co. group. They have five or six subsidiary companies in their group, and a director of one is director of the others. And the National Cash Register Co.; the Chase Corporation.

Mr. PECORA. That is the successor of the Chase Securities Corporation?

Mr. MCCAIN. Yes. The Chase Bank, which is the bank that the Chase National Bank owns. I have been with the American Express Co. which the Chase Bank also owns, which I have just resigned from. The Goodrich Co.

Mr. PECORA. B. F. Goodrich Co.?

Mr. MCCAIN. B. F. Goodrich Co.

Mr. PECORA. That is a rubber manufacturing company?

Mr. MCCAIN. Rubber manufacturing company. I think that is all I belong to.

Mr. PECORA. You left out the Western Electric?

Mr. MCCAIN. The Western Electric; yes.

Mr. PECORA. You left out the National Surety Co.?

Mr. MCCAIN. I am not a director. I resigned 2 years ago.

Mr. PECORA. You were, were you not?

Mr. MCCAIN. I resigned about 2 years ago. I am a director of the Penn Mutual Life Insurance Co. also.

Mr. PECORA. How about the Seaboard Air Line Railway Co.?
Mr. MCCAIN. Well, that is in receivership.
Mr. PECORA. Were you a director of that at the time it went into receivership?
Mr. MCCAIN. Yes, I was; and of the Rock Island when they went into receivership.
Mr. PECORA. The Chicago, Rock Island & Pacific Railroad?
Mr. MCCAIN. Yes.
Senator COUZENS. Were you a director of the Rock Island when Coverdale & Colpitts issued that laudatory engineering report?
Mr. MCCAIN. No, sir; I don't think so. No; they were never employed as far as I know.
Mr. PECORA. Have you overlooked an investment trust called the "United States & Foreign Securities Corporation"?
Mr. MCCAIN. Yes; the United States & Foreign.
Mr. PECORA. That is the investment trust that Dillon, Read & Co. helped to promote?
Mr. MCCAIN. That is correct.
Mr. PECORA. And manage today.
Mr. MCCAIN. Yes.
Mr. PECORA. Do these directorships require much of your business time, Mr. McCain?
Mr. MCCAIN. Not a great deal. Most of them meet once a month.
Mr. PECORA. As chairman of the board of the Chase National Bank your duties are very pressing are they not?
Mr. MCCAIN. Yes.
Mr. PECORA. What has been the highest salary you received?
Mr. MCCAIN. $150,000 is the highest salary.
Mr. PECORA. A year; plus a bonus?
Mr. MCCAIN. Well, I was not receiving that salary. The highest bonus I ever received was $40,000. At that time my salary was $125,000. My salary now is $128,500.
Mr. PECORA. That is more than it was in the boom year of 1929?
Mr. MCCAIN. Yes, I think it is.
Mr. PECORA. Do you receive any compensation for any duties you perform as a director in any of these other corporations other than receiving the usual director's fees, $20 or $50, as the case might be?
Mr. MCCAIN. In the National Cash Register I think their fees are $2,400, and Louisiana & Arkansas I think it is $1,200. The Goodrich Co. is I think—I am a member of the finance committee of Goodrich as well as the board, and I think that is $8,500.
Mr. PECORA. Eighty-five hundred?
Mr. MCCAIN. Yes.
Mr. PECORA. What company is that?
Mr. MCCAIN. B. F. Goodrich Co.
Mr. PECORA. How about the United States & Foreign Securities Corporation?
Mr. MCCAIN. Nothing but an ordinary director's fee, $50 I think.
Mr. PECORA. You used to receive $5,000 a year?
Mr. MCCAIN. Yes.
Mr. PECORA. When you were a director?
Mr. MCCAIN. In the beginning, but that was eliminated in 1930.
Mr. PECORA. How about the Western Electric Co.?

Mr. McCAIN. $20 is their director's fee.

Mr. PECORA. Now these corporations, or some of them, are very active industrial corporations, are they not?

Mr. McCAIN. Yes.

Mr. PECORA. And in order to enable one who is a director to exercise intelligently the functions of a director he should be kept pretty well posted and should keep himself pretty well posted with respect to the business of the corporation, should he not?

Mr. McCAIN. They send us monthly reports of the corporation.

Mr. PECORA. Do you feel, Mr. McCain, that a man occupying the kind of executive position that you occupy and have occupied for several years past in a banking institution of the size of the Chase National Bank can do justice to both his duties as an officer of the bank and his duties as a director of the kind of corporations that you are a director of, where his directorships number as many as yours do?

Mr. McCAIN. Well, I think he can. Mine sound larger than they really are, because in the case of the Great American where there are five of them you have a meeting of all the companies simultaneously, because the companies are under one management and one group. Of course, in banks and affiliates which add to the number, you are there and that is really part of your business. I think that I have been very careful in the directorships that I took. I think that an officer should be, because these companies of which I happen to be a director, are all companies of high standing which do not use the bank in any way, have no occasion to do it, and I think that the information I have gotten from them has been helpful to the bank and I think that the information that I have been able to give the companies from my experience in the bank has been helpful to those companies. I do not think it has been harmful to the bank, nor do I think it has taken the bank's time.

Mr. PECORA. Directors' meetings are held during business hours as a rule, during banking hours?

Mr. McCAIN. Some of them are; some of them after.

Mr. PECORA. You know that the former executive head of the Chase National Bank, Mr. Wiggin, was also a director in numerous corporations, industrial, railroad, insurance, and other kinds——

Mr. McCAIN. Yes.

Mr. PECORA. During the time that he was executive head of the Chase—you know that?

Mr. McCAIN. Yes.

Mr. PECORA. And is that also true of other executive officers of the bank so far as you know?

Mr. McCAIN. Of the Chase Bank?

Mr. PECORA. Yes.

Mr. McCAIN. Some of them are; yes.

Mr. PECORA. And do you think that is good practice?

Mr. McCAIN. I think there should not be too many of them.

Mr. PECORA. How?

Mr. McCAIN. I do not think there should be too many. They will take too much of the time. Nor do I think one should be a director in corporations which are apt to use the bank in any way. I do not think you can serve two masters, as far as that is concerned.

Mr. PECORA. Now, many of these corporations—or some of them rather—on the boards of which you sit have had active banking relations with the Chase National Bank, have they not?

Mr. MCCAIN. Do now, yes; but not in a borrowing capacity.

Mr. PECORA. How about the United States & Foreign Securities Corporation?

Mr. MCCAIN. They never borrowed.

Mr. PECORA. How about Dillon, Read & Co.?

Mr. MCCAIN. They have never borrowed.

Mr. PECORA. Didn't they borrow as members of different syndicates?

Mr. MCCAIN. They borrowed, yes; in this syndicate they did. When I say "never" that is a strong statement to make, because they might have occasionally.

Mr. PECORA. You remember, for instance, that they were managers of a very substantial syndicate account that operated in Seaboard Air Line Railway Co. securities?

Mr. MCCAIN. Yes.

Mr. PECORA. And got large loans from the Chase National Bank, did they not?

Mr. MCCAIN. Yes.

Mr. PECORA. I mean that syndicate did.

Mr. MCCAIN. Yes.

Mr. PECORA. Was any question ever raised by the board of the Chase National Bank with regard to its officers functioning as directors on either corporation's boards?

Mr. MCCAIN. We discussed that and reported. In my case I reported the corporations of which I am a director to the executive committee of the bank, and I think that has been true of most of the other officers.

Mr. PECORA. And in such cases were the members of the board of the Chase also informed not only of the identity of the corporations in which you served as a director but also any fees, compensation, or emoluments?

Mr. MCCAIN. Yes; that is my understanding. I either informed them or the salary committee. I have forgotten which that was.

Mr. PECORA. Do you know whether there is any mention of those things in the minute book of the board of directors of the Chase National Bank?

Mr. MCCAIN. I do not think there is; no. No; I think not.

The CHAIRMAN. Do you favor limiting the number of directors of the bank?

Mr. MCCAIN. A smaller number of directors, you mean?

The CHAIRMAN. Yes.

Mr. PECORA. The 25 under the law now?

The CHAIRMAN. Yes.

Mr. MCCAIN. Yes; I think that is a wise thing to do.

The CHAIRMAN. You do not favor so many interlocking directors?

Mr. MCCAIN. No. I think that under the present banking act of 1933, under strict construction, it is going to work great hardship on the commercial banks, particularly the provision which states that an officer or director of a national bank who is also an officer or director of a corporation that makes any loan on stock or bonds cannot

serve as a director. For instance, if the General Motors Corporation makes a loan on stock or bonds, which they might possibly do, not as a general business, but just one time, that would disqualify Mr. Sloan as a director of the National Bank of Commerce in Detroit. And you can pursue on down the line and it would eliminate I think practically all of the heads of the large industrial concerns and commercial concerns from directors in banks.

If you have a bad account that suddenly shows up and try to get a collection of it and the man has got a little stock up as part of the security, that would immediately disqualify that man under the act of 1933. I do not think that that was intended as the construction of the act.

Mr. PECORA. Mr. McCain, in the transaction which this Louisiana & Arkansas Railway syndicate had with Mrs. Edenborn the syndicate obligated itself to make her a loan of about 1¾ million dollars, did it not?

Mr. MCCAIN. Yes. That was to pay her inheritance tax.

Mr. PECORA. Was that loan made to her out of the proceeds of a loan which the syndicate obtained originally from the National Park Bank and which was later carried over into the Chase National Bank, where it now is?

Mr. MCCAIN. I don't think so; but I don't have that information with me. I will try to get it, but I do not recall.

Mr. PECORA. Do you know a corporation called the "Southwestern Investors, Inc."?

Mr. MCCAIN. Yes.

Mr. PECORA. What is the nature of that corporation?

Mr. MCCAIN. That corporation has been liquidated; was some 2 years ago, as I recall. It was an investment trust.

Mr. PECORA. Were you connected with it?

Mr. MCCAIN. Yes.

Mr. PECORA. In what capacity?

Mr. MCCAIN. I was a stockholder and a director.

Mr. PECORA. Who was the head of the corporation?

Mr. MCCAIN. Mr. H. C. Couch.

Mr. PECORA. Did it ever obtain any loans from the Chase National Bank or the National Park Bank?

Mr. MCCAIN. Yes; they had a small loan. I say "small"—I think it was three or four hundred thousand dollars—which was paid.

Mr. PECORA. What bank made that loan?

Mr. MCCAIN. The Chase National Bank.

Mr. PECORA. While Mr. Couch was a director of it?

Mr. MCCAIN. Yes. It was made on stock exchange collateral with their portfolio perfectly well secured.

Mr. PECORA. When did you say it was liquidated?

Mr. MCCAIN. It was liquidated, my recollection is, Mr. Pecora, in 1930.

Mr. PECORA. Where was its office?

Mr. MCCAIN. Pine Bluff, Ark.

Mr. PECORA. You said it was an investment trust?

Mr. MCCAIN. Yes.

Mr. PECORA. Did it specialize in the acquisition of securities of any particular kind?

Mr. MCCAIN. No.

Mr. PECORA. Did it have any public utilities securities?

Mr. MCCAIN. Public utilities and some local securities in Arkansas and Louisiana.

Mr. PECORA. How widely was its stock held, can you tell us?

Mr. MCCAIN. It was never a public offering at all. It was just a distribution largely among the associates of Mr. Couch. Never any public offering.

Senator COUZENS. When they dissolved were they relieved of a contingent liability in this syndicate?

Mr. MCCAIN. They were not in this syndicate, Senator. They were in the Seaboard syndicate, and of course the Seaboard syndicate had discharged all its liabilities. It was dissolved.

I might say, if the committee will permit me, that Mr. Couch and I started out in the same small town in Arkansas 26 years ago, and we have been intimate and close friends ever since that time, and our relationship has been very close. I have never come in contact with anybody I think with as high integrity and character as Mr. Couch. Nobody in the Southwest stands any higher. Our efforts have been principally in constructing the Louisiana & Arkansas. I think that was one of the greatest things done in that territory. We were interested in that because we came from Arkansas, and the local people there were all interested in it.

Mr. PECORA. Mr. McCain, I hold in my hand what purports to be a photostatic reproduction of a letter addressed by Harvey C. Couch to Mr. Albert H. Wiggin, dated September 24, 1929, and I may say that we obtained this photostatic copy of this letter from the Shermar Corporation, which as you know is Mr. Wiggin's family corporation.

Mr. MCCAIN. Yes.

Mr. PECORA. And this letter makes some reference to you, so I will read the letter to you and then I will ask you some questions about it. You will kindly follow me when I read the letter. It is written on the letterhead of Harvey C. Couch, Pine Bluff, Ark. [Reading:]

SEPTEMBER 24, 1929.

MR. ALBERT H. WIGGIN,
Chase National Bank, New York, N.Y.

DEAR MR. WIGGIN: Last night we mailed you allotment certificate for 25,000 shares of Southwestern Investors, Inc.

We are glad to include you on this although we are not making a general offering at this time. This comes to you at the suggestion of our mutual friend, Mr. C. S. McCain. We have already made a nice profit but you are getting in on the original basis. The time is rather short to October 1 and if you find it more convenient to make your remittance so as to arrive not later than October 10, this will be satisfactory but it will be necessary to include interest on the delayed payment.

With regards, yours very truly,

H. C. COUCH.

Are you familiar with the matter referred to in this letter, Mr. McCain?

Mr. MCCAIN. Yes.

Mr. PECORA. At the time this letter was written were you connected with The Chase National Bank?

Mr. McCain. What is the date?

Mr. Pecora. September 24, 1929.

Mr. McCain. Yes; I was president of the Chase National Bank at that time.

Mr. Pecora. That was shortly after the consolidation with the National Park Bank?

Mr. McCain. Yes.

Mr. Pecora. What is the meaning of this statement in the letter to Mr. Wiggin which I have read [reading]:

We have already made a nice profit, but you are getting in on the original basis?

Mr. McCain. It means that on account of the market having gone up, the value of the stock was then in excess of what the original subscribers had paid in. I had simply mentioned to Mr. Wiggin that Mr. Couch had organized this investment trust, and I had some stock in it, and Mr. S. Z. Mitchell was interested in it, and he said he would like to be interested in it, so I spoke to Mr. Couch and asked him if he could let Mr. Wiggin have some stock. That is the result of that letter. There were never any commissions or anything of that kind. As I say, it was never publicly offered. It was simply among a group of Mr. Couch's friends and associates.

Senator Couzens. Mr. Wiggin took the stock?

Mr. McCain. Yes, sir.

Senator Reynolds. What position did Mr. Wiggin hold with the bank at that particular time?

Mr. McCain. Mr. Wiggin was chairman of the board.

Mr. Pecora. He was the executive head of the bank.

Mr. McCain. Yes.

Mr. Pecora. I have also before me what purports to be a photostatic reproduction of a letter sent by Mr. Wiggin to Mr. Couch, in reply to this letter of September 24, 1929, that I have just read into the record. This copy was also furnished to us by the Shermar Corporation, I will read it to you [reading]:

September 26, 1929.

Dear Mr. Couch: I have your courteous note of the 24th instant. Thank you sincerely for your thought of me in connection with Southwestern Investors, Inc. I will make the remittance so that it will reach you not later than October 10, as you suggest. I assume that the "original basis" includes a share of the option warrants.

With renewed thanks for your courtesy,

Yours sincerely.

What is the reference there to the share of option warrants?

Mr. McCain. When the company was originally organized, an option warrant was given, which was popular in those days, for an additional share of stock at a certain price. I have forgotten what the price was.

Mr. Pecora. I will ask that the two letters read into the record be marked in evidence.

The Chairman. Let them be admitted.

(Letter, September 24, 1929, Couch to Wiggin, was received in evidence. marked "Committee Exhibit No. 235," December 7, 1933, the same having previously been read into the record by Mr. Pecora.)

(Letter, September 26, 1929, Wiggin to Couch, was received in evidence. marked "Committee's Exhibit No. 236," December 7, 1933, the same having previously been read into the record by Mr. Pecora.)

Senator REYNOLDS. What was the price to be paid by Mr. Wiggin for this stock?

Mr. MCCAIN. My recollection, Senator, is that the stock was $100 par value, and it was to be paid in installments of 10 percent each. There was finally 80 percent called on the stock, and it was paid in.

Senator REYNOLDS. Do you recall at what price he had the option of making a purchase of other stock?

Mr. MCCAIN. I think it was $10.

Senator REYNOLDS. Additional stock?

Mr. MCCAIN. Additional stock he had at the present price. If it was $100, he had it at that price. It was thought the company might become quite successful, and then, if a man wanted to sell his original stock and keep his option warrants, he had a valuable right.

Senator REYNOLDS. Do you know whether, thereafter, he took advantage of the opportunity by way of the warrant?

Mr. MCCAIN. Unfortunately, there was never any opportunity to take advantage of it, because the crash came along, and the company was not successful.

Senator REYNOLDS. That was September, 1929.

Mr. MCCAIN. Yes.

Senator REYNOLDS. Just prior to the crash.

Mr. MCCAIN. Yes.

Mr. PECORA. Do you know, Mr. McCain, how many points profit had already accrued on the allotment certificates of Southwestern Investors, Inc. on the date when Mr. Couch addressed that letter to Mr. Wiggin, namely, September 24, 1929?

Mr. MCCAIN. I do not.

Mr. PECORA. Several points profit?

Mr. MCCAIN. I would think so.

Mr. PECORA. In view of the fact that that profit of several points had already accrued on those allotment certificates, this offer of Mr. Couch to Mr. Wiggin to let him in on an original basis for 25,000 shares of those allotment certificates was really in the nature of a gift to Mr. Wiggin, was it not?

Mr. MCCAIN. I hardly think so, because, in capitalizing the company, I think, at that time it had not been started very long, and they felt they could have used the money, and they would have done that for other people just as well.

Mr. PECORA. If the Southwestern Investors, Inc., wanted the money, it could have obtained a higher price for them from some one other than Mr. Wiggin, to whom they were sold on the original basis.

Mr. MCCAIN. They might or might not.

Mr. PECORA. Doesn't it really appear to you now, as you look back on the transaction, that in effect it was tendering Mr. Wiggin a gift or gratuity?

Mr. MCCAIN. I do not look at it that way.

Mr. PECORA. It was an outburst of generosity on Mr. Couch's part, was it not, in favor of Mr. Wiggin?

Mr. MCCAIN. Yes; I think so.

Mr. PECORA. That was done at your suggestion? You are the mutual friend mentioned in Mr. Couch's letter to Mr. Wiggin?

Mr. MCCAIN. We will say at my suggestion; yes.

Mr. PECORA. What advantages do you think might have accrued to the Southwestern Investors, Inc. from having this generous exhibition made toward Mr. Wiggin at that time?

Mr. MCCAIN. Mr. Wiggin at that time, as you know, was interested in a number of things, and he might have been very helpful to them in advising them with reference to investments.

Mr. PECORA. In other words, it was establishing a friendly contact with the man who was at the head of a great big bank, was it not?

Mr. MCCAIN. That plus the fact that the man was interested in a number of other enterprises.

Mr. PECORA. Mr. Couch became a borrower of the Chase National Bank, did he not, at one time or other?

Mr. MCCAIN. Yes. He has a loan at the Chase National Bank now, properly secured.

Mr. PECORA. Do you know when he first established a loan account at the Chase National Bank?

Mr. MCCAIN. I think his first borrowing relations with the Chase National Bank were back as far as 1913, long before I came to New York. He had a relationship with them for quite a period, I should say—1918 or 1919, probably.

Mr. PECORA. When?

Mr. MCCAIN. Probably 1918 or 1919. That was back a number of years before I had come to New York. He had had friendly relations with the bank.

Mr. PECORA. Then there was an interruption of those relationships for a period of years until about 1928.

Mr. MCCAIN. Yes.

Mr. PECORA. And in 1928 he again became a borrower at the Chase National?

Mr. MCCAIN. A borrower at the National Park.

Mr. PECORA. And the loan was carried over into the Chase National Bank upon the consolidation of the two banks.

Mr. MCCAIN. Yes.

Mr. PECORA. He has a loan account there at this time?

Mr. MCCAIN. Yes.

Mr. PECORA. Do you know what the peak was of that loan account?

Mr. MCCAIN. I will see if I can find out, Mr. Pecora.

Mr. PECORA. My information is that it reached a peak of $338,525.87 on September 11, 1929. Does that accord with your recollection or knowledge?

Mr. MCCAIN. I think it was higher than that, Mr. Pecora.

Mr. PECORA. I beg your pardon?

Mr. MCCAIN. I think it was higher than that.

Mr. PECORA. Then I will stand correction.

Mr. MCCAIN. I think probably that peak was January 14, 1930, when we loaned Mr. H. C. Couch and C. H. Moses——

Mr. PECORA. That is a joint loan.

Mr. MCCAIN. Yes.

Mr. PECORA. To Mr. Couch and Mr. Moses.

Mr. MCCAIN. Yes. It still is a joint loan.

Mr. PECORA. I am referring now to an individual loan account of Mr. Couch. I was coming to this joint loan shortly.

Mr. MCCAIN. The Couch loan has been paid off in full, and they have simply the joint loan now, Moses and Couch.

Mr. PECORA. I beg your pardon?

Mr. MCCAIN. The Couch loan has been paid off in full, and they have the joint loan of Couch and Moses.

Mr. PECORA. That Couch loan, the individual loan of Mr. Couch, was paid off on January 13, 1930, was it not?

Mr. MCCAIN. That is correct.

Mr. PECORA. And the following day, January 14, 1930, a loan was made jointly to Mr. Couch and a man named C. H. Moses, in the sum of $600,000.

Mr. MCCAIN. That is correct.

Mr. PECORA. And the following day that loan was increased to $625,000, is that correct?

Mr. MCCAIN. Yes.

Mr. PECORA. At the same time that that loan of $600,000 was increased to $625,000, was another loan made individually to Mr. Couch in the sum of $25,000?

Mr. MCCAIN. I have not that, Mr. Pecora.

Mr. PECORA. What?

Mr. MCCAIN. You say there was an additional loan of $25,000 to Mr. Couch.

Mr. PECORA. A loan to Mr. Couch individually of $25,000, at or about the time that this $600,000 loan was increased to $625,000, to both Couch and Moses.

Mr. MCCAIN. There may well have been such a loan, but I do not have it on my record here.

Mr. PECORA. Who is this Mr. C. H. Moses that has been referred to here?

Mr. MCCAIN. Yes; that loan was made January 15, 1930, for $25,000 to Mr. Couch, and paid off on January 24, 1930.

Mr. PECORA. Who is Mr. C. H. Moses?

Mr. MCCAIN. He was a practicing lawyer in Little Rock, Ark.

Mr. PECORA. I notice he was one of the sub-participants in this Louisiana & Arkansas Railway Co. syndicate that we have spoken of here.

Mr. MCCAIN. Yes. He has been Mr. Couch's counsel and associate for 25 years, I should say.

Mr. PECORA. At the time that this joint loan of $600,000, increased the following day to $625,000, was made to Mr. Couch and Mr. Moses jointly, you were the president of the Chase Bank.

Mr. MCCAIN. Yes.

Mr. PECORA. And Mr. Couch was a director of it?

Mr. MCCAIN. Yes.

Mr. PECORA. What collateral was pledged against that loan?

Mr. MCCAIN. There were 600 shares of St. Louis & San Francisco Railway Co.; 1,473 Electric Power & Light preferred; 1,489 shares of Electric Bond and Share common; 775 shares Electric Power & Light common; 226 shares of Electric Shareholders common; 2,040 shares of Interstate Natural Gas; 800 shares of Louisiana Land and Exploration common; 500 shares Niagara & Hudson Power Co.——

Mr. PECORA. Eight hundred shares of what company?

Mr. MCCAIN. Louisiana Land and Exploration common.

Mr. PECORA. That is a company that Dillon, Read & Co. was very active in.

Mr. MCCAIN. Yes; 500 shares of Niagara & Hudson Power common; 500 shares of Niagara & Hudson Power A; 10,000 shares of Southwestern Investors B common; 68,257 shares of Seaboard Airline common.

Mr. PECORA. What is the present state of that loan, do you know?

Mr. MCCAIN. It is $153,912. The present value of the collateral is $220,900.

Mr. PECORA. Do you know whether or not, out of the proceeds of this loan of $625,000 that was made jointly to Mr. Couch and Mr. Moses, Mr. Couch was enabled to pay off his loan of upwards of $300,000 that he owed the Chase?

Mr. MCCAIN. He did not owe the bank that, Mr. Pecora. He owed the bank $151,000 on January 13, 1930.

Mr. PECORA. That was the date that that loan was finally liquidated?

Mr. MCCAIN. Yes.

Mr. PECORA. And then this other loan was a joint loan to him and Moses, and was made the following day.

Mr. MCCAIN. January 14; yes, sir.

Mr. PECORA. Do you know the purpose for which this $600,000 loan was made?

Mr. MCCAIN. I do not.

Mr. PECORA. Was it customary for the——

Mr. MCCAIN. I assume—and I am merely saying that without having the dates—that it probably was made to pay on the Seaboard shares of stock which he had to take up.

Mr. PECORA. That is, as a member of the syndicate that Dillon, Read & Co. had formed.

Mr. MCCAIN. Yes, sir.

Mr. PECORA. To acquire securities of the Seaboard Airline Railway Co.?

Mr. MCCAIN. Seaboard common stock. That date, I think, coincides.

Mr. PECORA. Why was that made as a joint loan to Mr. Moses and Mr. Couch? Was Mr. Moses a participant in that Seaboard Airline syndicate?

Mr. MCCAIN. Yes.

Mr. PECORA. Was it to enable both of them to take up their obligations with respect to the Seaboard Airline syndicate?

Mr. MCCAIN. Yes.

Mr. PECORA. Was not that joint Couch-Moses loan under collateralized at one time?

Mr. MCCAIN. Yes, sir.

Mr. PECORA. Was that fact made the subject of comment frequently at meetings of the directors of the Chase Bank?

Mr. MCCAIN. If not at meetings of the board of directors, I would say it was made at the——

Mr. PECORA. At the meeting of the discount committee?

Mr. MCCAIN. Yes; or by the examiners.

Mr. PECORA. For how long a period of time was that loan permitted to remain under collateralized?

Mr. MCCAIN. I cannot tell you definitely, but I would say probably 6 months.

Mr. PECORA. During that time was it made the——

Mr. MCCAIN. It would not remain that way. Mr. Couch would constantly put up collateral, and then the market would keep going down, and he would have to put up some more, which was true of a good many loans we had.

Mr. PECORA. The loan was continued, and he was not sold out?

Mr. MCCAIN. No; but he constantly put up additional collateral, and then he would have to put up some more.

Mr. PECORA. Was that loan, during the time it was undercollateralized, criticized by the national bank examiners?

Mr. MCCAIN. Yes.

The CHAIRMAN. The collateral was made good?

Mr. MCCAIN. Yes, sir. It was constantly made good. It was pretty hard to make it good fast enough for a period there.

Mr. PECORA. Mr. McCain, there has been furnished to me, through the kindness of the Chase National Bank, what purports to be a photostatic copy of a letter addressed to Mr. Couch under date of April 24, 1931, by somebody apparently connected with the Chase National Bank at that time. I am unable to give the name of the writer of the letter, because the photostatic copy which I have of such letter does not give the signature, but the letter is dated April 24, 1931, and I want to show you this photostatic copy of it and ask you to look at it and see if you know anything about it.

Mr. MCCAIN. No; I do not. I saw this photostatic copy. I have seen that photostatic copy before.

Senator COUZENS. You do not know who the writer is?

Mr. MCCAIN. No, sir.

Mr. PECORA. You do not question the authenticity of this copy, do you?

Mr. MCCAIN. No; I do not.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. Let it be admitted.

(The document referred to, letter, Apr. 24, 1931, Chase National Bank to Couch, was received in evidence, marked "Committee Exhibit No. 237", Dec. 7, 1933, and the same was subsequently read into the record by Mr. Pecora.)

Mr. PECORA. The letter received in evidence as committee's exhibit no. 237 reads as follows [reading]:

COMMITTEE EXHIBIT NO. 237

APRIL 24, 1931.

Mr. HARVEY COUCH,
Pine Bluff, Ark.

DEAR HARVEY: Almost every time at our discount committee meetings in the morning when the loans with a deficiency of margin are brought up, yours has quite a prominent part in the list. When Charlie was here it used to be referred back to him, but since he has been on his holiday it has been referred to me to ask you if you would not have the same put in shape.

This is naturally embarrassing to me, but the fellows here all feel that the loan should be in order, and I am sure you will appreciate the position of the bank in the matter.

With kind regards, I am, sincerely yours,

Could you indicate to the committee, from your knowledge of the personnel of the discount committee of the Chase Bank in April 1931, who the gentleman was who wrote this letter, and who felt an embarrassment, what he called a natural embarrassment, in asking Mr. Couch to put his loan in shape?

Mr. McCain. It might well have been any one of two or three.

Mr. Pecora. Who would they be?

Mr. McCain. Oh, I rather think that that was probably Mr. Bruce, who was at that time a vice president of the Chase National Bank.

Mr. Pecora. Is that Mr. James Bruce?

Mr. McCain. James Bruce.

Mr. Pecora. Do you know any reason why it should have embarrassed him, as a member of the discount commitee of the bank, to ask anyone to put his loan in order?

Mr. McCain. I think that he was just writing a nice letter, couching his demand in as good language as he could. He is a very perfect gentleman, if you knew Mr. Bruce.

Mr. Pecora. Is it customary for members of the discount committee to write nice friendly letters to debtors asking them to put their loan accounts in shape?

Mr. McCain. We try to do it as nicely as possible.

Mr. Pecora. Or would you think that this was a sort of departure from the usual form of correspondence addressed by a bank, or its officials, to debtors?

Mr. McCain. We have a formal notice that we send when loans are under collateralized. No letter goes with it.

Mr. Pecora. I have not seen any of those formal notices, but do they refer to any embarrassment being felt by the writers?

Mr. McCain. None at all.

Senator Goldsborough. The character of the note generally depends upon the debtor, does it not?

Mr. McCain. I think that is true.

Mr. Pecora. Mr. Couch was a director of the bank during all that time?

Mr. McCain. He was a director up until the time he became a director of the Reconstruction Finance Corporation.

Mr. Pecora. That was January or February, 1932.

Mr. McCain. Yes. I think, Mr. Pecora, however, that Mr. Couch did very well with his loan to pay it down from $600,000 to $153,000, covered by $220,000 collateral today. That is a better record than most people make. Don't you think that is pretty good?

Mr. Pecora. It probably is pretty good, but that invites an observation from me, Mr. McCain, to this effect. During these times were other borrowers of the bank treated as indulgently and casually as Mr. Couch was?

Mr. McCain. Yes. We treated a great many like that, I think, a great many times. When we were doing a kindness to a borrower, we did both him and ourselves an unkindness during that period, but we have had certain remarkable instances where men have come out who otherwise would have had nothing, by carrying them through. We had one loan I recall, of $2,000,000, undercollateralized, and the bank examiners asked us to charge off $600,000 from that loan as a loss. We did not sell the man out, and the result of that, in this

recent rise of the market here some months ago, was that the collateral was sold out and his loan was paid off, and he has $750,000. That is one case that came out advantageously.

Mr. PECORA. You were carrying a loan account at the Chase Bank concurrently with Mr. Couch, were you not?

Mr. MCCAIN. No.

Mr. PECORA. Did you not have an individual loan account?

Mr. MCCAIN. I had at the Chemical Bank; not at the Chase Bank.

Mr. PECORA. In the minute book of the Chase National Bank, meeting of the executive committee of the board, held on June 15, 1932, the following entry appears [reading]:

> The President referred to the committee the request of Mr. C. S. McCain for an increase of $95,000 in his loan, and outlined the benefit to the bank which Mr. McCain had stated would result in connection with the bank's loan to Mr. Harvey C. Couch. Upon motion regularly seconded the said increase in the loan to Mr. McCain was duly authorized, with the understanding that in connection therewith the officers make the most favorable arrangement possible for the bank relative to the loan to Mr. Couch.

Let me ask you, Mr. McCain, if you are familiar with the transaction to which this entry relates.

Mr. MCCAIN. Yes. I owed some money to Mr. Couch personally, and in making the loan I used the proceeds of the loan, or part of the proceeds of that loan, to pay Mr. Couch, and pay on his loan to the Chase National Bank. That was without saying anything to him, as a matter of fact.

Mr. PECORA. That was what?

Mr. MCCAIN. That was without any agreement with him that I did that, because that put his loan at the Chase Bank then in good shape.

Mr. PECORA. This entry in the minutes refers to an increase of $95,000 in your loan.

Mr. MCCAIN. Yes. I had a loan at the Chase, but not in connection with Mr. Couch.

Mr. PECORA. You did have a loan, then, with the Chase?

Mr. MCCAIN. Exactly.

Mr. PECORA. I understood you to say a few moments ago——

Mr. MCCAIN. No. You asked me if I had a joint loan with Mr. Couch.

Mr. PECORA. No; I did not mean a joint loan. I meant an individual loan.

Mr. MCCAIN. Yes; I did have an individual loan.

Mr. PECORA. I asked you if you were carrying a loan at the Chase Bank concurrently—not jointly, but concurrently.

Mr. MCCAIN. I thought you said jointly.

Mr. PECORA. Contemporaneously with Mr. Couch.

Mr. MCCAIN. Yes.

Mr. PECORA. You misunderstood my question, apparently.

Mr. MCCAIN. Yes.

Mr. PECORA. You did have an individual loan account.

Mr. MCCAIN. Yes.

Mr. PECORA. At the bank; and on June 15, 1932, obtained an increase of $95,000 in your loan.

Mr. MCCAIN. Yes.

Mr. PECORA. Do I understand you to say that out of the proceeds of this $95,000 increase you paid off some personal obligations you owed Mr. Couch, and he, in turn, paid off or reduced his indebtedness to the Chase Bank?

Mr. MCCAIN. Yes.

Mr. PECORA. Was that the reason for your asking for this $95,000 increase in your loan account with the Chase Bank?

Mr. MCCAIN. One reason; yes.

Mr. PECORA. What other reasons were there?

Mr. MCCAIN. I do not know of any other. I will say that is the reason.

Mr. PECORA. Apparently you gave it as a reason for obtaining this $95,000 increase.

Mr. MCCAIN. Yes.

Mr. PECORA. When your application was passed upon by the executive committee of the Chase Bank.

Mr. MCCAIN. That is correct.

Mr. PECORA. Then you must have told your codirectors, in substance, that in order to enable Mr. Couch to reduce or liquidate his loan to the bank, you would like to have an increase in your loan of $95,000.

Mr. MCCAIN. No; I did not tell them that. I had not told Mr. Couch that I was going to use it that way until after the loan was granted.

Mr. PECORA. The extract from the minutes of the executive committee of the bank, meeting held on June 15, 1932, which I have already read, says in part as follows [reading]:

The president—

Meaning you—

referred to the committee the request of Mr. C. S. McCain—

You were not the president than; you were chairman of the board.

Mr. MCCAIN. Chairman of the board.

Mr. PECORA (continuing reading):

the request of Mr. C. S. McCain for an increase of $95,000 in his loan, and outlined the benefit to the bank which Mr. McCain had stated would result in connection with the bank's loan to Mr. Harvey C. Couch.

Mr. MCCAIN. Yes.

Mr. PECORA. What is the meaning of that?

Mr. MCCAIN. Because I told the committee that if this loan were granted, we knew that Mr. Couch's loan was at that time under water, and I expected to apply any proceeds of the loan which I owed Mr. Couch as a payment on his loan.

Mr. PECORA. In order to enable Mr. Couch to put his loan in shape?

Mr. MCCAIN. I did not tell Mr. Couch that until after the board granted the loan, and I called him up and told him I was going to do that.

Mr. PECORA. But you did tell your board that?

Mr. MCCAIN. Yes.

Mr. PECORA. At the time you told the board that, Mr. Couch knew nothing about the intention you had at that time as to what to do with the increased amount of the loan.

Mr. McCain. No.

Mr. Pecora. How did you know that Mr. Couch would reduce his indebtedness?

Mr. McCain. I did not.

Mr. Pecora. You took a chance, then, at saying something to the board, and having it subsequently consummated.

Mr. McCain. If you want to put it that way; but I knew that Mr. Couch would be glad to reduce his indebtedness.

Mr. Pecora. Provided he got the money from you.

Mr. McCain. Yes; or from anybody else who might owe him.

Mr. Pecora. As a matter of fact, how much of this $95,000 that you got by way of an increase of your loan account at that time actually went to Mr. Couch?

Mr. McCain. I am trying to get that information. [After conferring with an associate:] $60,400, Mr. Pecora.

Senator Couzens. What was that date?

Mr. Pecora. The date of the granting of this increase in the loan to Mr. McCain was June 15, 1932.

Senator Couzens. That was after he was a member of the Reconstruction Finance Corporation.

Mr. McCain. June 17.

Mr. Pecora. What is that, Mr. McCain?

Mr. McCain. The loan was made June 17.

Mr. Pecora. But it was passed upon by the executive committee on June 15.

Mr. McCain. Authorized June 15; yes.

Mr. Pecora. You say you turned over to Mr. Couch some $60,000 odd of this increased amount of your loan.

Mr. McCain. Yes.

Mr. Pecora. How much did Mr. Couch pay back out of that to the Chase, on account of his loan?

Mr. McCain (after conferring with an associate). The entire amount.

Mr. Pecora. The entire amount?

Mr. McCain. Yes.

Mr. Pecora. On what date?

Mr. McCain. That is my understanding. [After conferring with an associate:] $36,690, Mr. Pecora.

Mr. Pecora. $36,690?

Mr. McCain. Yes.

Mr. Pecora. Not the entire amount?

Mr. McCain. No.

Mr. Pecora. When was that paid to the bank?

Mr. McCain. June 17.

Mr. Pecora. Was it understood between you and Mr. Couch that he was not going to pay back to the Chase Bank by way of reduction of his loan account all of the moneys you turned over to him out of the proceeds of the increased loan to you?

Mr. McCain. To put his loan in shape, which gave him a proper margin on it when he made the $36,000 payment.

Mr. Pecora. You said that at that time you had a joint loan account with Mr. Couch at the Chemical Bank. What was the amount of that?

Mr. McCain. The original loan was $625,000.

Mr. Pecora. Made when?

Mr. McCain. During 1930 and 1931.

Mr. Pecora. Can you give me the date of that loan?

Mr. McCain. May 29, 1930, $105,000; June 2, $300,000; July 17, $150,000.

Mr. Pecora. $150,000 additional?

Mr. McCain. Yes. That makes a total of $555,000.

Mr. Pecora. What was the amount of the loan made on May 29?

Mr. McCain. $105,000.

Mr. Pecora. What other increases were made?

Mr. McCain. In 1931; January 29, $10,000; February 6, $40,000; March 14, $20,000, making a total of $625,000. That was the total amount of the borrowing. The payments were made during that time.

Mr. Pecora. What is the status of the joint loan account now?

Mr. McCain. It is paid off.

Mr. Pecora. When?

Mr. McCain. The last was June 17, 1932.

Mr. Pecora. Was that out of the proceeds of these increases of your loan account in the Chase National Bank?

Mr. McCain. Yes.

Mr. Pecora. Was that joint loan account fully collateralized at all times?

Mr. McCain. Yes.

Mr. Pecora. Could you tell us from recollection the general nature of the collateral?

Mr. McCain. It was marketable collateral. It was just simply investments we bought.

Mr. Pecora. What collateral did you have against your individual loan from the Chase Bank?

Mr. McCain. I had 30 shares of Standard Surety & Casualty of New York; I had a participating interest in the Federal Leather Co., $20,000; 212 shares Bankers Trust Co. of Little Rock; 20 shares First State Bank of Prescott, Ark.; 200 shares of Valley Lumber Co.; a $25,000 note of the Southern Trading Co.; $25,000 interest in the Tennessee, Alabama & Georgia Railway, and $65,000 life insurance.

Mr. Pecora. Was your individual loan account at the Chase still open?

Mr. McCain. Yes.

Mr. Pecora. What is the present principal amount?

Mr. McCain. $226,500.

Mr. Pecora. That pretty nearly represents the peak of the loan account, does it not?

Mr. McCain. There has been $8,500 paid, from the peak.

Mr. Pecora. Now, concurrently with the loan account carried individually at the Chase Bank, did you also have a loan account with the Shermar Corporation?

Mr. McCain. No—well, I had a loan from the Shermar Corporation.

Mr. Pecora. What was the amount of that?

Mr. McCAIN. The amount was $50,000, and is now $43,000. It was merely a personal loan from Mr. Wiggin.

Mr. PECORA. Mr. McCain, will you be good enough to look at what purports to be a photostatic copy of a letter addressed to you by Mr. Couch—rather, I assume it is by Mr. Couch, as it is signed "Harvey"—dated August 16, 1932, and tell me if you recognize it to be a true and correct copy of a letter received by you from Mr. Couch?

Mr. McCAIN. Yes.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. Let it be admitted.

(The photostatic copy of letter referred to, dated Aug. 16, 1932, addressed to Mr. McCain and signed "Harvey", was received in evidence, marked "Committee Exhibit No. 238, Dec. 7, 1933.")

Mr. PECORA. The letter received in evidence as exhibit 238 reads as follows [reading]:

COMMITTEE EXHIBIT No. 238

RECONSTRUCTION FINANCE CORPORATION,
Washington, August 16, 1932.

(PERSONAL.)
Mr. CHARLES S. McCAIN,
Chase National Bank, New York, N.Y.

DEAR CHARLIE: I certainly appreciate very much your very interesting call last night. The matter you referred to, of course, is of tremendous interest, but best of all is the interest and confidence that you have in me.

I would appreciate it very much if you would have sent to me here some of the bond circulars in connection with the financing you have done for the Chicago utilities. Also, any other studies you have made on any of their situations.

If Schweirkert should purchase any E. L. preferred for me, which I have asked him to do in the event he thinks it well, I wish you would have my account there take it up and, of course, place the stock in the collateral. I sold 1,000 shares out of the account there because it was suggested to me. Now, I would like to get as much of it back as I can by re-purchasing. I wish you would have Randall sell all the Sea Board stock as the opportunity presents, so long as he can get 50 cents for it.

We are getting along very well here. Are tremendously busy. These liquidating projects are very interesting; they call for a lot of thought and are going to be very educational and helpful in the future.

We finally made the Wabash loan after a lot of discussion. Under the circumstances, it was the thing to do, I think. I will be home for the remainder of the week; Monday in New Orleans, Tuesday in Jackson, and back here Thursday.

Hurriedly yours,

HARVEY.

It has an inscription in handwriting reading—

Don't forget to have Randall sell my Seaboard.

Do you recall the telephone conversation that is referred to in the opening sentence of this letter, and which I will read to you for the purpose of aiding you in your recollection?

Mr. McCAIN. I remember it.

Mr. PECORA (reading):

I certainly appreciate very much your very interesting call last night. The matter you referred to, of course, is of tremendous interest, but best of all is the interest and confidence that you have in me.

Mr. McCain. At the time of the Insull crash in Chicago, the three operating properties had maturities which became due, with the result that the Chicago bankers came to New York and enlisted the assistance of five or six of the larger banks in New York in financing these maturities, and at that time a discussion came up as to who should be put in charge of the Insull properties as an operating man, and I suggested to two or three whom I thought knew Mr. Couch that perhaps they could get Mr. Couch to go out to Chicago, that he would be the best man they could get to head these properties in Chicago. I simply telephoned him and told him that I had made that suggestion to several of the men who were interested there. That was the telephone conversation, and that is the reason he asked to have sent him the circulars and the studies of those companies.

The Chairman. He afterwards declined it, did he not?

Mr. McCain. I do not know that it was ever offered to him, Senator.

Senator Couzens. But it was a fact that some of those securities were bought to secure the Dawes loan at that time, was it not?

Mr. McCain. I imagine they were, Senator Couzens, because the Dawes bank had some of them in their portfolio.

Mr. Pecora. The so-called "Dawes bank" carried a large block of the securities as collateral for loans, did it not?

Mr. McCain. Yes, sir.

Mr. Pecora. These Insull securities?

Mr. McCain. Yes.

Mr. Pecora. Was it because of the shrinkage in value of those Insull securities that eventually made it necessary for the R.F.C. to make a loan to the Dawes bank, so-called?

Mr. McCain. I would think that was partially true, Mr. Pecora, together with the decline in other values that they had.

Mr. Pecora. Let me call your attention to the concluding paragraph of this letter to you, reading as follows [reading]:

> We finally made the Wabash loan after a lot of discussion. Under the circumstances, it was the thing to do, I think.

Did you have any interest in the making of that Wabash loan referred to in this letter?

Mr. McCain. Because they thought the collateral was worth considerably more than the loan, and it is today. They were very apprehensive because the American Rapid Transit was the most profitable part of their business, and they got that by control of that stock, and they were afraid if we foreclosed on that stock it might be sold to some competing road and they would lose the traffic. So they became very active in trying to get a loan from the Reconstruction Finance Corporation. They put it up to the court to get an order restraining us from selling the collateral. We agreed not to do it until they could see what they could do. The Reconstruction Finance Corporation was asked to make a loan of $5,000,000, and the bankers agreed to carry half of it. One of the banks did not want to go into it.

Mr. Pecora. Was not the condition that the banks should carry half the loan imposed upon them by the I.C.C.?

Mr. McCain. By the R.F.C.

Mr. Pecora. Was it not at the instance of the I.C.C.?

Mr. McCain. Yes.

Senator Couzens. When the loan was made the banks were paid off 50 percent?

Mr. McCain. Yes.

Mr. Pecora. How much of the collateral did it release?

Mr. McCain. Fifty percent. The Reconstruction Finance Corporation and the banks took a joint interest in the collateral.

Mr. McCain. The Wabash Railroad, at the time of the receivership, had a loan of $10,000,000 which was participated in by about 6 banks, 5 or 6 banks. I think the Chase Bank interest, as I recall, was probably 30 percent, $3,000,000. The Central Hanover's was perhaps $2,000,000. One of the institutions, the United Trust Co. of Pittsburgh, had a participation of around $1,000,000. There was also a participation in Kansas City and, I think, in Detroit. I am not sure, but I think probably in Detroit. That made up the $10,000,000.

Mr. Pecora. The Chase Bank had a $3,000,000 participation in the $10.000,000 investment?

Mr. McCain. Yes. As collateral for that we had all of the stock of the Lehigh Valley Railroad Co. for which the Wabash had paid some $32,000,000, as I recall. We had all the stock of the American Rapid Transit Corporation, which was a 51 percent interest, and that controlled the Fruit Express from the Southwest. We had stock and bonds in a road at South Bend, one at their subsidiaries, which controlled quite a lot of traffic. So the receivers became very apprehensive that the banks were going to foreclose on the collateral and take it. As a matter of fact, the banks would just as soon have foreclosed.

Mr. Pecora. Why?

Mr. Pecora. By the way: Can you tell this committee how many other loans were made by the R.F.C. to railroad companies out of the proceeds of which loans the Chase National Bank received a repayment in whole or in part of loans due and owing to it from such railroad companies receiving those loans from the R.F.C.?

Mr. McCain. I would have to do that from memory.

Mr. Pecora. See how well you can do it from memory, will you?

Mr. McCain. We never received payment in full from any—the Reconstruction Finance Corporation did not make any loan that the banks did not have to carry——

Mr. Pecora. I said, in whole or in part.

Mr. McCain. The Rock Island Railroad, $2,000,000, as I recall; the St. Louis Southwestern $4,500,000——

Mr. Pecora. The Pittsburgh & West Virginia?

Mr. McCain. No; we got no proceeds of any loan from them. They have a loan with us, and I don't think they ever paid off the bank any on that; I don't recall that they did. They have a loan at the Reconstruction Finance Corporation and also at the Chase Bank now. Also the Monon—I cannot remember the name of it—has a loan at the Reconstruction Finance Corporation. They have $800,000 at the Chase.

Mr. Pecora. How about the Erie Railroad?

Mr. McCain. No.

Mr. PECORA. How about the Chicago & North Western?

Mr. MCCAIN. Yes. I think we did get a payment of $1,000,000 from the Chicago & North Western, as I recall, and, I believe, from the Baltimore & Ohio.

Senator COUZENS. Why did you want those payments made?

Mr. MCCAIN. Simply because, Senator, we could never see any way to make good the loans otherwise. They could not sell any securities.

Senator COUZENS. There was no demand for commercial loans at that time, was there?

Mr. MCCAIN. No.

Senator COUZENS. There was no reason for liquefying yourselves?

Mr. MCCAIN. No, sir.

Senator COUZENS. Did you hesitate to continue the loans because of your questioning the securities?

Mr. MCCAIN. Not when they were properly secured. As to some of those loans the collateral would be under the face. We have a loan of the New York Central, and we have never asked them to pay; and the New York, New Haven & Hartford, and we have never asked them to pay; and the Boston & Maine. We have never asked them to pay.

Mr. PECORA. What was the amount of the loan of the Baltimore & Ohio that you referred to?

Mr. MCCAIN. That was a mortgage that had been arranged by Kuhn, Loeb & Co., the total of which, I think, was twenty million or twenty-five million dollars, but I think the payment to us was—I think we had a participation in the loan of two and a half millions. I am giving this all from memory and it is a little difficult to do, but I think that was about the amount, and we were paid 50 percent.

Senator REYNOLDS. Did any of those railroads have any money borrowed from any other banks?

Mr. MCCAIN. Oh, yes; any bank that would lend them any.

Mr. PECORA. Do you know of a loan to the Boston & Maine Railroad?

Mr. MCCAIN. Yes. We have that still, $1,000,000.

Senator REYNOLDS. Did your bank have more money to loan to the railroads than any other bank in the country?

Mr. MCCAIN. I do not know offhand, Senator, but I should think we had probably as much as any bank in the country.

Senator REYNOLDS. What other bank in the country?

Mr. MCCAIN. The Guaranty would naturally have quite a considerable amount. The National City Bank would have a very considerable amount. They got their funds from the larger banks, necessarily.

The CHAIRMAN. Was it a usual requirement of the R.F.C. that when they made a loan to a railroad company, not over 50 percent of it should go to the banks ?

Mr. MCCAIN. Yes; and in addition to that, the banks would carry the loan for 3 years and not demand any additional requirement.

Mr. PECORA. That was also a condition imposed by the I.C.C.?

Mr. MCCAIN. Whether they imposed it, or the R.F.C., I do not know; but I know that the loans had first to be approved by the I.C.C.

Senator REYNOLDS. The security offered by these roads was satisfactory to you, or you considered it so?

Mr. McCAIN. We did when we took it.

Senator REYNOLDS. I mean, at the time you were desirous of having those roads liquidated and at the time they were liquidated?

Mr. McCAIN. In quite a number of instances it was not satisfactory at that time due to the poor earnings of the railroads and the decline in the value of their securities which they had with the banks. Take this Wabash loan: They paid $32,000,000 for stock of the Lehigh at the time we took it as collateral, and I think it could be sold only for about one and a quarter million.

Mr. PECORA. Can you give the committee the dates of these loans by the R.F.C. to the railroad companies that you have mentioned, from the proceeds of which loans the Chase Bank and other banks received part payment of their outstanding loans?

Mr. McCAIN. It would be impossible, Mr. Pecora, for me to do that. You can get that at the R.F.C.

Mr. PECORA. The information I have on that, Mr. McCain—and I would like to have you check on it during the recess hour, if you can—is that the loan to the St. Louis & Southwestern Railroad by the R.F.C. was made on or about April 8, 1932; the loan to the Pittsburgh & West Virginia Railway was made on or about May 8, 1932; that the loan to the Chicago, Rock Island & Pacific Railway was made on or about June 15 or June 25, 1932; that the loan to the Wabash was made on or about August 1, 1932, and that the loan to the Chicago & Northwestern was made on or about September 29, 1932. I have not got the date of the loan to the Baltimore & Ohio.

Mr. McCAIN. I will get that. And the St. Louis Southwestern?

Mr. PECORA. The first one I mentioned was the St. Louis & Southwestern, on or about April 8, 1932.

In order to have it appear in the record, is it your recollection that Mr. Couch became a member of the R.F.C. board some time in February 1932?

Mr. McCAIN. It was at the organization of the Reconstruction Finance Corporation, whatever time that was.

The CHAIRMAN. With reference to the personal letter of Mr. Couch——

Mr. PECORA. That is the letter marked " Committee's Exhibit 238 ". Mr. Chairman?

The CHAIRMAN. Yes. The committee had communication from Mr. Couch on that subject which I think Mr. Pecora should read into the record.

Mr. PECORA. I will, sir.

The letter handed me by the chairman is on the letterhead of the Reconstruction Finance Corporation, and reads as follows [reading]:

COMMITTEE EXHIBIT No. 239

RECONSTRUCTION FINANCE CORPORATION,
Washington, October 21, 1933.

Hon. DUNCAN U. FLETCHER,
Chairman, Senate Committee on Banking and Currency,
United States Senate, Washington, D.C.

MY DEAR SENATOR FLETCHER: My dealings with New York banks have been in the usual course of private business. In that connection my name has been brought into your record. Publicity given these routine business transactions

have been of such a nature as to indicate that there was some irregularity about them.

The letter I wrote to Mr. Charles S. McCain of the Chase National Bank will be understood when I tell you that we were reared together in Arkansas. It was a purely personal letter to my lifelong friend and business associate. At one time I owned a substantial amount of stock in the Chase Bank. When I was appointed to the board of the R.F.C., I sold my stock at a loss and severed all official connection with the bank. My connection with the R.F.C. was by request and not by application.

There probably is nothing in this situation that would justify the committee in taking the time to hear me, but I shall be more than willing to appear if you think it desirable.

I hope you will explain to your committee that the statement made to the press was only in response to inquiries by newspaper men.

Very truly yours,

HARVEY COUCH.

The CHAIRMAN. That statement might be read also.

Mr. PECORA. The statement referred to in the letter of Mr. Couch to Senator Fletcher which I have just read, and which is appended to that letter, reads as follows [reading]:

COMMITTEE EXHIBIT No. 240

WASHINGTON, D.C., *October 21, 1933.*

Statement by Harvey Couch in reply to inquiries as to a letter said to be in the possession of the Senate Committee on Banking which refers to a telephone conversation with Charles S. McCain of the Chase National Bank.

The letter which I wrote to Mr. McCain was purely a personal one. He had called me on the telephone to learn if I would consider resigning from the R.F.C. board to undertake the reorganization of a group of Insull properties. I told him I had to complete the job I had begun for the Government and would not be able to accept his offer. I explained further that when I finished here I expect to return to Arkansas to continue to extend such aid as I can in the development of that section.

Neither the letter nor the telephone conversation had anything whatever to do with the R.F.C.

In this connection, I would like to explain that Mr. McCain is a lifelong friend. We were reared together in Arkansas and have been associated in business through the years. There is nothing in my relationships with Mr. McCain that I desire to hide. I shall be glad to appear before the Committee to answer any questions in this or any other connection if the committee sees fit.

I think we might have the letter and the statement marked in evidence.

The CHAIRMAN. Yes. That will be done.

(The letter referred to, dated Oct. 21, 1933, to Senator Duncan U. Fletcher from Harvey Couch, was received in evidence, marked "Committee Exhibit No. 239, Dec. 7, 1933." Statement referred to, attached to Exhibit No. 239, dated Oct. 21, 1933, was received in evidence, marked "Committee Exhibit No. 240, Dec. 7, 1933.")

Mr. PECORA. Referring to the letter addressed to you by Mr. Couch, under date of August 16, 1932, which is in evidence as exhibit 238, let me ask you, Mr. McCain, if the man referred to here as Randall sold the stock of the Seaboard Air Line Railway Co. owned by Mr. Couch at the time of the writing of this letter, in pursuance of Mr. Couch's suggestion to you?

Mr. MCCAIN. I presume he did. Randall is here, if you want to ask him.

Mr. PECORA. Is he connected with the Chase Bank?

Mr. MCCAIN. He is my secretary.

Mr. PECORA. At the time this letter was written, namely, in August 1932, the Seaboard Railway was in receivership, was it not?

Mr. MCCAIN. Yes, sir.

Senator REYNOLDS. May I ask him just one question?

Mr. PECORA. Certainly, Senator Reynolds.

Senator REYNOLDS. Returning to the Southwestern Investment Corporation, what was the capitalization of that corporation?

Mr. MCCAIN. I think, Senator, it was about $1,200,000.

Senator REYNOLDS. You stated a moment ago that 25,000 shares were purchased by Mr. Wiggin?

Mr. MCCAIN. Yes.

Senator REYNOLDS. As a result of the offer that had been made by Mr. Couch?

Mr. MCCAIN. Yes.

Mr. PECORA. On the original basis?

Mr. MCCAIN. Yes.

Senator REYNOLDS. Did that corporation make money or lose it?

Mr. MCCAIN. No; it lost it.

Senator REYNOLDS. That is all.

The CHAIRMAN. The commmittee will take a recess until 2 o'clock.

(Whereupon, at 12.45 p.m., a recess was taken until 2 p.m. of the same day, Thursday, Dec. 7, 1933.)

AFTER RECESS

The subcommittee resumed the hearing at 2 p.m. Thursday, December 7, 1933, at the expiration of the noon recess.

The CHAIRMAN. The committee will come to order, please.

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

TESTIMONY OF CHARLES S. McCAIN, CHAIRMAN OF THE BOARD OF DIRECTORS, THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK—Resumed

Mr. PECORA. Mr. McCain, during the recess period today you indicated to me your desire to be permitted to make a statement to this committee. Will you proceed to make any such statement as you have in mind at this time before I resume my formal examination of you.

Mr. MCCAIN. Yes.

Mr. CHAIRMAN. I have read an account of certain statements made by Senator Glass at the committee hearing Tuesday concerning me. The gist of these statements, as I understand them, was that I, as an official of the Chase National Bank, was in constant communication with Senator Huey P. Long in connection with his filibuster against the Glass-Steagall banking bill and that Senator Long, without waiting to vote on the banking bill and boasting that he had practically filibustered it to death, left his place in the Senate Chamber and took the next train out of Washington to New York for an interview with me. Senator Glass I believe stated that he did not know that these were the facts but that they had been so alleged to him. The whole assumption from these allegations is that I was responsible for the filibuster by Senator Long against the banking bill.

I want to state categorically that there is absolutely no truth in this assumption.

I did talk with Senator Long several times during the filibuster because I had known him in Louisiana and had done him some favors in connection with the financing of the State of Louisiana highway bonds, so I felt free to do that. But I endeavored to get him to stop his filibuster, and endeavored to get him to confer with Senator Glass with reference to it. I was unable to get them together, because Senator Glass did not want to confer with him as a matter of fact.

I also understood from Senator Glass' statement, as I read it in the newspaper, that he said that I had called on him several times with reference to the banking bill, and that I was offensive. I really was very much hurt at this, because I have such a high regard for Senator Glass and respect him so much, not only on account of his ability but his age, that I had been unusually careful in talking with the Senator to show my respect, and he had been unusually courteous to me.

I am quite confident that the Senator really did not mean that, if he said it. I should be very much hurt if he did.

That is all, Mr. Pecora.

Mr. PECORA. Now, Mr. McCain, you were a participant, were you not, in a trading syndicate of which, as I recall it, Dillon, Read & Co. were the managers, and which dealt in the shares of the St. Louis & San Francisco Railway Co.?

Mr. MCCAIN. Yes. I had a small interest in that.

Mr. PECORA. Do you recall the amount for which that syndicate was formed?

Mr. MCCAIN. No; I do not.

Mr. PECORA. That road is now in receivership, is it not?

Mr. MCCAIN. Yes.

Mr. PECORA. I believe one of the securities affiliates of the Chase National Bank had a participation in that trading account, did it not?

Mr. MCCAIN. They did; yes.

Mr. PECORA. Were you ever a director of that railroad company?

Mr. MCCAIN. No, sir.

Mr. PECORA. Were you a stockholder?

Mr. MCCAIN. Just as to the stock that I had.

Mr. PECORA. As a participant in this syndicate?

Mr. MCCAIN. Yes.

Mr. PECORA. Do you recall when the last dividend was declared by the directors of that railroad company?

Mr. MCCAIN. No; I do not, Mr. Pecora.

Mr. PECORA. You were also a participant in another trading account of which Dillon, Read & Co. were the managers and which traded in the shares of the Chicago, Rock Island & Pacific Railway Co., were you not?

Mr. MCCAIN. No; I do not think I was.

Mr. PECORA. Were you ever a director of that railroad company?

Mr. MCCAIN. Yes.

Mr. PECORA. When?

Mr. MCCAIN. Well, I have been a director I think for about 2 years.

Mr. PECORA. Commencing when and terminating when?

Mr. MCCAIN. I think from about 1930 until the road went into receivership, which was the 1st day of December.

Mr. PECORA. Now, while you were a director of the Rock Island was a dividend declared to the stockholders?

Mr. MCCAIN. Of the Rock Island?

Mr. PECORA. Of the Rock Island.

Mr. MCCAIN. Yes.

Mr. PECORA. Do you recall when the last dividend was so declared?

Mr. MCCAIN. It was during the early part of 1932. I think last year.

Mr. PECORA. During the early part of 1932?

Mr. MCCAIN. That is my recollection.

Mr. PECORA. How long before that road went into receivership was that cash dividend declared?

Mr. MCCAIN. Probably a year and a half.

Mr. PECORA. You are merely giving us that from memory now, are you not?

Mr. MCCAIN. Yes. It would be easy to ascertain.

Mr. PECORA. Can you do so?

Mr. MCCAIN. Yes [consulting with associates].

Mr. PECORA. Have you got that?

Mr. MCCAIN. He is getting that information, Mr. Pecora. He is telephoning for it.

Mr. PECORA. All right. Are you familiar with the trading account that was managed by Dillon, Read & Co. which dealt in the shares of the Rock Island railroad.

Mr. MCCAIN. No, except that I know they had one.

Mr. PECORA. You recall that one of those securities affiliates of the Chase National Bank was also a participant in that trading account?

Mr. MCCAIN. Yes.

Mr. PECORA. And as the result of the operations of that account its members eventually acquired very large blocks of the common stock of the railroad company?

Mr. MCCAIN. Yes.

Mr. PECORA. Do you recall how much of a cash dividend was paid in pursuance of the last declaration of such dividend by the directors of the Rock Island Railroad?

Mr. MCCAIN. No; I do not.

Mr. PECORA. At the time of the declaration of that dividend had the road earned it?

Mr. MCCAIN. At that time they had, my recollection is—up to that time, or they had earned it the previous quarter. They had ample surplus. Now, whether they had earned it in that quarter I am not certain.

Mr. PECORA. Is it not a fact that the dividend when paid was paid in part out of the surplus that the road had?

Mr. MCCAIN. I think that is true, but I would have to confirm that.

Senator COUZENS. What date did it go into receivership, Mr. McCain?

Mr. MCCAIN. Well, it went under the Bankruptcy Act, Senator, about 3 months ago. And its going into receivership took effect the first day of December this year.

Mr. PECORA. Are you familiar with the fact that the declaration of that dividend by the directors of the Rock Island Railroad was criticized?

Mr. MCCAIN. Yes. I think at that time a stockholder filed suit—whose name I have forgotten. That was the only criticism that I knew.

Mr. PECORA. Was there not a group or a committee representing a group of life insurance companies, which held the senior securities of the Rock Island Railroad, who also protested against the declaration of that dividend?

Mr. MCCAIN. Not at that time.

Mr. PECORA. Well, did they subsequently manifest their criticism of that dividend?

Mr. MCCAIN. They have since said that the dividend should not have been paid, I have understood.

Mr. PECORA. And has not an action been either started or contemplated, of which you have notice, against the directors for having declared that dividend?

Mr. MCCAIN. No. There was, as I told you, at that time a suit filed. That was afterwards dismissed, I understand.

Mr. PECORA. The Rock Island Railroad obtained a loan, did it not, from the R.F.C. after the declaration of that dividend?

Mr. MCCAIN. That I cannot tell you. I have got the dates of the loans they got from the R.F.C.

Mr. PECORA. All right; let us have those dates.

Mr. MCCAIN. They got a loan on June 24, 1932, of $10,000,000. They got a loan on February 28, 1933, of $1,181,872.

Mr. PECORA. What date is that?

Mr. MCCAIN. February 28, 1933. And March 27, 1933, $2,536,828.

Senator COUZENS. Were they all after the dividend?

Mr. MCCAIN. I am not certain of that date. I would not want to state. I am trying to get this date, Senator, when the dividend was paid. The man is going to call the I.C.C. and see if they can get that.

Mr. PECORA. At the time these loans were obtained from the R.F.C. were you a member of the board of the Rock Island road?

Mr. MCCAIN. Yes.

The CHAIRMAN. The primary purpose of obtaining the loan was to prevent the receivership, was it not?

Mr. MCCAIN. Yes. It was to pay interest on the bonded indebtedness. That was what the loan was obtained for. Not to pay the dividend.

Mr. PECORA. As a matter of fact, were not the amounts of the last two loans mentioned by you, the one of February 28, 1933, and the one of March 27, 1933, an approximation of the amount of the cash dividend that had been declared and paid?

Mr. MCCAIN. Oh, no. The cash dividend, Mr. Pecora, was much smaller than that. I have forgotten the amount; I am afraid to say; but it was something like $500,000 or $600,000, to my recollection, to pay the quarterly dividend.

Mr. PECORA. How many dividends were declared to the stockholders of record by the board of the Rock Island while you were a member of the board?

Mr. McCain. Well, the regular dividends were paid up to the time of ceasing the dividends, and this date I will get and then I can answer you more definitely. I am telephoning for it now.

Mr. Pecora. By the way, was Mr. C. H. Moses——

Mr. McCain. May I give you this now?

Mr. Pecora. Yes.

Mr. McCain. The last dividend was paid on June 30, 1931. Semiannual on the preferred at the rate of $3, being 6 percent preferred; and paid on the $7 preferred 3½ dollars. And the dividend on the common was one dollar. Quarterly dividend one dollar.

Mr. Pecora. Do you know whether Mr. Couch was a participant in the trading account managed by Dillon, Read & Co. at the time it was formed to operate and trade in the stock of the Rock Island road?

Mr. McCain. No, sir; I think he was, but I do not know that definitely.

Mr. Pecora. Do you recall whether he was a member of the syndicate that operated the trading account in the stock of the St. Louis & San Francisco Railroad Co.?

Mr. McCain. I think he was.

Mr. Pecora. The one that was managed also by Dillon, Read & Co.?

Mr. McCain. Yes; I think he was.

Mr. Pecora. Now, as a matter of fact were not the principal stockholders of record of the Rock Island Railroad at the time of the declaration of this last dividend on June 30, 1931, those who became stockholders by virtue of their participation in that Dillon, Read & Co. managed syndicate?

Mr. McCain. The larger stockholders were; yes. That had nothing to do with the payment of this dividend, however, Mr. Pecora.

Mr. Pecora. Was Mr. C. H. Moses also a director of the Rock Island road at the time that you were?

Mr. McCain. Yes. Later. Not in the beginning. He became a director, as I recall it, about a year ago.

Senator Couzens. Is he a member of the law firm in Little Rock?

Mr. McCain. Yes.

Senator Couzens. What is the name of the firm?

Mr. McCain. The firm is House, Moses—I have forgotten the last name. It was formerly Robinson, House & Moses.

Mr. Pecora. Was the Chase Bank a creditor of the Rock Island Railroad at the time the R.F.C. made this loan?

Mr. McCain. Yes, sir.

Mr. Pecora. Do you know how much of the Chase Bank's loan was repaid out of the proceeds of that loan?

Mr. McCain. $2,000,000.

(At this point Senator Glass came into the hearing room and took his place at the commitee table.)

Mr. Pecora. I will ask the shorthand reporter to read the statement which Mr. McCain made at the beginning of this afternoon's session with reference to Senator Glass.

(Thereupon the shorthand reporter read the statement referred to as follows:)

Mr. McCain. * * * I have read an account of certain statements made by Senator Glass at the committee hearing Tuesday concerning me. The gist of these statements, as I understand them, was that I, as an official of the Chase National Bank, was in constant communication with Senator Huey P. Long in connection with his filibuster against the Glass-Steagall banking bill and that Senator Long, without waiting to vote on the banking bill and boasting that he had practically filibustered it to death, left his place in the Senate Chamber and took the next train out of Washington to New York for an interview with me. Senator Glass I believe stated that he did not know that these were the facts but that they had been so alleged to him. The whole assumption from these allegations is that I was responsible for the filibuster by Senator Long against the banking bill.

I want to state categorically that there is absolutely no truth in this assumption.

I did talk with Senator Long several times during the filibuster because I had known him in Louisiana and had done him some favors in connection with the financing of the State of Louisiana highway bonds, so I felt free to do that; but I endeavored to get him to stop his filibuster and endeavored to get him to confer with Senator Glass with reference to it. I was unable to get them together, because Senator Glass did not want to confer with him as a matter of fact.

I also understood from Senator Glass' statement, as I read it in the newspaper, that he said that I had called on him several times with reference to the banking bill and that I was offensive. I really was very much hurt at this, because I have such a high regard for Senator Glass and respect him so much, not only on account of his ability but his age, that I had been unusually careful in talking with the Senator to show my respect, and he had been unusually courteous to me.

I am quite confident that the Senator really did not mean that, if he said it. I should be very much hurt if he did.

Senator Glass. Mr. Chairman, there is little that I care to say about that statement. I was told, and Mr. McCain confirms the fact, that he had several interviews with a Senator whose name I did not call, who was vociferously and vituperatively opposed to the banking bill. I think Mr. McCain will concede that the Senator to whom I had reference twice visited him in New York, and that it is a fact that he did not wait to vote on the banking bill himself after 21 days of filibuster and after summoning the immense number of 9 votes against it when the roll was called, but went immediately on the next train to New York and paid a visit to Mr. McCain.

Mr. McCain. Senator, I do not know how soon he came to New York. He was in New York after that time and called me up and asked me if I would come by to see him at the New Yorker Hotel, which I did. But the Glass bill was not discussed at that time. He spent some considerable time telling me about the situation in Louisiana and things of that kind. I could not have Senator Long conduct a filibuster if I wanted to. I do not think anybody could control him.

Senator Glass. Well, that is about all there is to it, except that I said you were vehemently opposed to some of the provisions of the bill.

Mr. McCain. I was in the beginning. I afterwards changed. I was in the beginning. I think you were opposed to some of the provisions in the beginning and changed. My first visit to you——

Senator Glass. No. The only provision of the bill that I know that I had any doubt about was the insurance of deposits provision, which was not in discussion at that time—in fact it was not in the bill at that time.

Mr. McCain. Well, at the first meeting that Mr. Potter and I had with you—and we discussed the affiliate with you primarily at that time—you said that you had thought possibly that the affiliate should be regulated, but that the subcommittee had voted you down on that.

Senator Glass. No; as a matter of fact I said the subcommittee felt that they ought to be regulated and not turned loose to do as they pleased. I could not have said that, because it was my conviction that they were utterly illegal; that they had not a foot of legal ground to stand on.

Mr. McCain. You said that at the time.

Senator Glass. And you will recall that I resurrected the opinion of The Solicitor General Lehman that had been buried in the files of the Department for 21 years.

Mr. McCain. I remember that.

Senator Glass. Therefore I could not have said that. Well, in short, I had been informed, for whatever significance was involved, that Mr. McCain was in communication with this Senator whose name I did not mention, who had very violently opposed the bill, and Mr. McCain says he was, but he says now that he did not discuss the bill with him except to suggest the almost impossible procedure of an interview between that Senator and me.

Mr. McCain. I do not say I did not discuss the bill, Senator. I say I did call him up several times in an endeavor to stop his filibuster, and have a talk with you and see if you could get together on it. You would not have a talk with him.

Senator Glass. I would not; no.

Mr. McCain. No.

The Chairman. You said you did not discuss the bill at the time he came to New York last?

Mr. McCain. No; that was not what the discussion was about. He saw me several times in New York primarily on his Louisiana highway bonds. He came up there 3 or 4 times. And he called me up and said he wanted to come down and talk about it. He said he went to several of the other banking houses about that. He had an issue of bonds that he was trying to place with the banking houses at that time.

Senator Glass. Well, the whole import and meaning of my statement, Mr. McCain, was that you gentlemen in New York were rather violently opposed to certain restrictive provisions of the banking bill.

Mr. McCain. That is correct; at that time, Senator.

Senator Glass. And in confirmation of that statement and in accentuation of it I did state to the committee that you had been in communication with this violent antagonist of the bill. I did not assert that of my own knowledge, but I was told so by trustworthy persons. I did not undertake to say what was the substance of your conversation with that person about the bill, because I did not know, and had not been told. I also said—and I assert again—that that person left the Senate Chamber before voting on the bill himself—the record will show that— and I was told that he had gone to New York and did not await the formality of your visiting him, but paid a very precipitate and informal visit to you at your home.

Mr. McCain. No; that is not true. That is absolutely untrue. I did go to see him at the New Yorker Hotel on Sunday morning. I have forgotten what Sunday that was. It was after the filibuster, because he telephoned me and asked me to come by to see him. And I went by to have breakfast with him. And so we ordered breakfast, and he sent for a waiter, and I said, "Senator, what will you have?" And he said, "Well, I want a dozen and a half of oysters, a sirloin steak, French fried potatoes, and a plate of vanilla ice cream." So that was the Sunday morning's breakfast that he had with me.

Senator Glass. Well, from that it would appear that you paid dearly for your association and commuciation with that Senator.

Mr. McCain. I think that is true.

Senator Glass. Of course, Mr. Chairman, I have not undertaken to say what transpired between Mr. McCain and the Senator in question; but a perfectly natural inference was that both of them being very violently opposed to certain restrictive features of the bill, that the conversation touched on that point, and that Mr. McCain was not at all averse to seeing a filibuster instiuted which prevented the passage of the bill, 6 months before it was passed. And that is all there is to it.

Mr. McCain. I think, Senator, he simply thought he would get some reputation by starting a filibuster against you.

Senator Glass. Well, he got some reputation, all right.

Mr. McCain. And I think that is not very good

Senator Glass. It depends upon what sort of a reputation a man wants.

Mr. McCain. But I do hope that you do not feel or still think that I was offensive in my conversations with you, because I certainly would not do that.

Senator Glass. I said in a general way, Mr. McCain, that the representatives of the New York banks were offensive.

Mr. McCain. Well, I was not allied with any of them. Mr. Potter and I were the only two.

Senator Glass. I am not prepared to say, and of course I accept your disclaimer, that you were personally offensive. Nobody was personally offensive to me, I will say that. But members of my committee complained that these representatives of New York banks had not only been insistent but threatening, which I would regard as offensive, and asserting that they intended to beat the bill unless the committee yielded to their demands for its modification.

Mr. McCain. I think I never mentioned the bill to a single member of your committee except you.

Senator Glass. They were offensive in that respect.

Mr. McCain. Well, I was not a part of that group. I never mentioned the bill to any one of your committee except you.

Senator Glass. As a member of the United States Senate, under an oath and obligation to do my duty, I would regard it as offensive for anybody to threaten me in respect of that.

Mr. McCain. I agree with you on that.

Senator Glass. Well, Mr. Chairman, that is all I care to say.

The Chairman. Very well. That concludes that matter.

Senator Couzens. Permit me to ask a question right there: Mr. McCain, did you or not contribute any money to the defeat of the Glass-Steagall bill?

Mr. McCAIN. Absolutely not a dollar.

Senator COUZENS. Nor your bank?

Mr. McCAIN. Nor our bank, not 1 cent.

Senator GLASS. When the Glass-Steagall bill was——

Mr. McCAIN (interposing). This was the Glass bill, not the Glass-Steagall bill.

Senator COUZENS. I withdraw the name "Steagall" and use the name "Glass bill."

Senator GLASS. Well, there is a distinction.

Mr. McCAIN. The Glass bill did not have guarantee of deposits in it.

Senator GLASS. Mr. McCain, Senator Couzens, doubtless had the other name in mind.

Senator COUZENS. Mr. McCain in his statement referred to the Glass-Steagall bill.

Senator GLASS. He was mistaken in that. It only became known as the "Glass-Steagall bill" because 6 months afterward we inserted an insurance of deposits provision in the bill.

Senator COUZENS. And that was the Steagall part of it.

Senator GLASS. Well, in principle, yes. It was in principle the Steagall part of it, but Mr. Steagall did not draw the provision. It is customary when some bill is introduced, practically alike in the two Houses, to hyphenate the names, and I have no objection to giving Mr. Steagall all the credit he may desire from the insurance of deposits provision.

Senator COUZENS. I did not think you would object to that.

The CHAIRMAN. You may proceed, Mr. Pecora.

Senator GLASS. Will you now excuse me, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. PECORA. Mr. Reporter, will you go back to the part of the record at which I suspended my examination of the witness and read it?

The COMMITTEE REPORTER (Mr. CARLSON). It was at this point——

Senator GLASS (interposing). There is one thing I might say before I depart; I know it is meant in compliment to me, but I wish to God these people would stop referring to the venerable Senator from Virginia and respecting me for my age. [Laughter.]

Mr. McCAIN. And I apologize to you, Senator Glass.

The CHAIRMAN. You may proceed, Mr. Pecora.

Mr. PECORA. Now, will you read that, Mr. Committee Reporter?

The COMMITTEE REPORTER (Mr. CARLSON). It was as follows:

Mr. PECORA. Was the Chase Bank a creditor of the Rock Island Railroad at the time they made this loan?

Mr. McCAIN. Yes, sir.

Mr. PECORA. Do you know how much of the Chase Bank's loan was repaid out of the proceeds of that loan?

Mr. McCAIN. Two million dollars.

Mr. McCAIN. Now, Mr. Pecora, the Rock Island Railroad at the same time owed the Continental Bank in Chicago, and the New York Trust Co.

Mr. PECORA. Now, had there not been a steady decline in the earnings of the Rock Island Railroad for some time prior to the declaration of that last dividend in June of 1931?

Mr. McCAIN. Yes, sir.

Mr. PECORA. And the United States & Foreign Securities Corporation was one of the largest stockholders of the common stock of the Rock Island Railroad at that time, wasn't it?

Mr. MCCAIN. No, sir.

Mr. PECORA. Well, was it the United States & International Corporation?

Mr. MCCAIN. That is right.

Mr. PECORA. That was the other investment trust that was organized and controlled by Dillon, Read & Co. wasn't it?

Mr. MCCAIN. Correct.

Mr. PECORA. And you were a director of each one of those investment trusts?

Mr. MCCAIN. Of the United States & Foreign Securities Corporation.

Mr. PECORA. And the United States & Foreign Securities Corporation controlled the United States & International, didn't it?

Mr. MCCAIN. Yes. With a separate board of directors, however.

Mr. PECORA. But they had many members of their boards in common?

Mr. MCCAIN. Only the Dillon, Read & Co. partner as to which they were in common. None of the other men connected with it——

Mr. PECORA (interposing). And that was in view of the fact that Dillon, Read & Co. had management control of both trusts.

Mr. MCCAIN. Yes, sir.

Mr. PECORA. And this last dividend was declared during the life of this trading account, wasn't it?

Mr. MCCAIN. I think that had been dissolved prior to that time. But your record may show it. I am not certain, and haven't the figures on that. I don't know. You had it in the Dillon-Read testimony I think.

Mr. PECORA. Yes; and my present recollection is, although I won't be sure that it is correct, that at the time of the declaration of this last dividend the investment trust was a large owner of the stock, and that the trading account was still in operation.

Mr. MCCAIN. As to that I am not certain.

Mr. PECORA. Well, the record will show.

Mr. MCCAIN. You have the record of it, I understand.

Mr. PECORA. Do you recall the reasons that animated the board in declaring this dividend in the year 1931 in the face of steadily declining earnings?

Mr. MCCAIN. Well, there was a spirit of hopefulness in June of 1931. And, of course, the history of the so-called "Northwestern Railroads" always was that the last 6 months of the year were the best part of their earning period, because grain was harvested at that time and a great part of their revenue came from that. And it was felt that they would have revenues in the fall. Estimates were furnished, all indicating that thereafter the earnings would increase instead of decline. But we all know now that that estimate, made by practically all railroads, as a result of the actual experience, was not met, that the actual facts were entirely different, and that earnings continued to go down, and they are going down there.

Mr. PECORA. Will you tell us whether there was ever made any suggestion, either directly or indirectly, that if the dividend were passed at that time such action on the part of the board would be

reflected in a depreciation of the market value of the stock of the railroad company, and hence might impair the profits or advantages which the syndicate or trading account members were seeking to get from the trading account in the stock of the railroad?

Mr. McCAIN. No such suggestion was ever made. In fact, it was never mentioned, so far as I know, by any member of the board. The board was entirely the board of the Rock Island Railroad.

Mr. PECORA. Just how independent was it of any Dillon, Read & Co. influences?

Mr. McCAIN. They had nobody on the board. Mr. Hayden, of Hayden, Stone & Co., was chairman of the board.

Mr. PECORA. And Mr. Hayden, or his firm, were participants in that trading account, you will remember?

Mr. McCAIN. As to that I do not know.

Mr. PECORA. They were also on the board of the United States & Foreign Securities Corporation?

Mr. McCAIN. He was on the U.S. & I.

Mr. PECORA. Well, he was on the United States & International?

Mr. McCAIN. Yes, sir. Then Mr. Fred Scott of Richmond, Va., was on the board; Mr. French of Iowa was on the board; Mr. Leon Amster was on the board; Mr. Alfred Cook was on the board, and Professor Ripley was on the board.

Mr. PECORA. He was on the board representing the public?

Mr. McCAIN. Yes.

Mr. PECORA. As the so-called "public member?"

Mr. McCAIN. Yes, sir.

Mr. PECORA. And Professor Ripley very severely criticized the declaration of the dividend, didn't he?

Mr. McCAIN. Not that I know of.

Mr. PECORA. All right. Go ahead if you have not completed your answer.

Mr. McCAIN. Mr. Bell, the general counsel, was a member of the board, and Mr. Myrick who represents the Dutch stockholders, was a member of the board. That completes the board as I recall. No, Mr. Archibald Roosevelt was on the board.

Mr. PECORA. Now, Mr. McCain, weren't there also two officers and directors of the St. Louis & San Francisco Railroad on the board of the Rock Island?

Mr. McCAIN. Mr. Brown, who was the chairman of the board of the St. Louis & San Francisco, was also on the Rock Island board because of the ownership of the Rock Island stock by the Frisco. And I think at that time Mr. Kern, the president of the Frisco, was also on the board.

Mr. PECORA. Mr. George Kern?

Mr. McCAIN. I do not know his initials.

Mr. PECORA. Was Mr. Frederick Ecker on the board?

Mr. McCAIN. No, sir.

Mr. PECORA. Do you recall whether he was on the board of the Frisco?

Mr. McCAIN. Yes, sir.

Mr. PECORA. And wasn't Mr. Ecker on the board of either one of these two Dillon, Read & Co. investment trusts?

Mr. McCAIN. Yes, sir.

Mr. PECORA. Mr. McCain, have you any opinion to express to this subcommittee with respect to the ethics of members of the board of a corporation whose securities are listed and traded in on the public exchanges, organizing trading accounts to deal in the open market on the stock of their company?

Mr. MCCAIN. Mr. Pecora, the trading account of the Rock Island was not organized as a trading account for dealing in the stock, but to acquire a block of the stock. So far as I know none of it was ever sold after it was purchased by the syndicate. They simply acquired a block of the stock. And those who had an interest did not go on the board until they had acquired stock, and then they had a real ownership in the profits. I would certainly agree with you that no man who is a member of a trading account should deal in stock in which he is interested.

Mr. PECORA. Did you express your adherence to that principle or view at the time the Metpotan Securities Corporation, a securities affiliate wholly owned by the Chase Securities Corporation, was operating trading accounts in the capital stock of the Chase National Bank?

Mr. MCCAIN. Yes. And I did not know that they were operating a trading account. And that was stopped. I was in thorough accord with Mr. Aldrich's policy when we discovered that.

Mr. PECORA. Well, now, as I recall the evidence before this subcommittee, there were something like eight of those trading accounts participated in, or managed, by the Metpotan Securities Corporation, and their operations extended through the years 1928 to 1932, both inclusive. Am I correct in understanding you to say that you did not know what the Metpotan Securities Corporation was doing as a participant in those trading accounts during all those years?

Mr. MCCAIN. Yes, sir; and I was not in the bank for a part of that period, you will understand.

Mr. PECORA. You were there from 1929 down to the present time?

Mr. MCCAIN. Yes.

Mr. PECORA. So you were in the bank as an officer and director for 4 of the 5 years?

Mr. MCCAIN. Yes.

Mr. PECORA. That those trading accounts were in operation?

Mr. MCCAIN. Well, they were stopped, were they not, in—let me see.

Mr. PECORA. In 1932, wasn't it?

Mr. MCCAIN. Yes.

Mr. PECORA. They came down to the end of 1932 as I recall the evidence.

Mr. MCCAIN. No, I didn't have any participation in one of them, and really didn't know that they were operating any one. I knew the Metpotan were selling some Chase Bank stock, but did not know they were operating trading accounts. Well, there was one on the outside, which I should probably have known, managed by Dominick & Dominick.

Mr. PECORA. Weren't the officers of the bank keeping in touch with the activities of those wholly owned affiliates?

Mr. MCCAIN. Well, we were endeavoring to.

Mr. PECORA. Well, what prevented you from succeeding in learning of those operations during all those years?

Mr. MCCAIN. Well, it was difficult to learn.

Mr. PECORA. Was there any suppression of information from the officers of the bank?

Mr. MCCAIN. No; I cannot say that there was any suppression of information.

Mr. PECORA. Then how do you account for the fact that you did not learn of it?

Mr. MCCAIN. Well, it never occurred to me, I presume, to ask about it. I should have investigated, probably, to find out about it.

Mr. PECORA. Weren't reports made?

Mr. MCCAIN. They were handled by the then chief executive officer of the bank. They reported to him. He was responsible.

Mr. PECORA. And you were an executive officer of the bank?

Mr. MCCAIN. I wasn't the chief executive officer. Mr. Wiggin was the chief executive officer of the bank at that time.

Mr. PECORA. You were called second in command in the bank, weren't you?

Mr. MCCAIN. Yes, sir.

Mr. PECORA. And the only superior officer, you say, was Mr. Wiggin?

Mr. MCCAIN. Yes, sir.

Mr. PECORA. And as second in command you did not learn of those activities while they were currently in progress, you say?

Mr. MCCAIN. No.

Mr. PECORA. Well, now——

Mr. MCCAIN (interposing). Mr. Pecora, may I say this: This Rock Island trading account, under an exhibit of Dillon, Read & Co., shows it terminated in November of 1929.

Mr. PECORA. Can you also give me the date when the trading account in the St. Louis & San Francisco Railroad terminated?

Mr. TUTTLE. That commenced July 13, 1929, and terminated November 22, 1929.

The CHAIRMAN. Mr. McCain, will you state that so we can all hear it?

Mr. MCCAIN. The St. Louis & San Francisco trading account was commenced July 13, 1929, and terminated on November 22, 1929. Was that what you wanted, Senator Fletcher?

The CHAIRMAN. Yes. You spoke about the earnings of these railroads falling off, and stated that they are still falling off, or going down, as you expressed it. To what causes do you attribute that?

Mr. MCCAIN. Well, Senator Fletcher, it has been due to an entire lack of business in that territory. You can see that with the Northwestern situation as it has been for the last year and a half, when grain did not move on account of price off the farm and the railroads had no grain to haul, and cotton did not move in the southern portion of that territory, and we know that all manufacturing businesses have been more or less stagnant. The automobile business in Detroit was—well, not good. I think that accounted for it. Now, they should have a pick up in business this fall by reason of a better price for wheat, which they are now having, and they expect a pick up. And oil was down, and they had had considerable revenue from that

source. I am speaking now largely of the western railroads in the grain, cotton, and lumber territory.

The CHAIRMAN. How about the use of trucks?

Mr. MCCAIN. Well, that has hurt them very badly. Of course, the Rock Island formerly hauled quite a lot of cotton in Texas, and 95 percent of it is hauled to Houston by truck—has been in the last 2 years.

The CHAIRMAN. Wouldn't it help the situation some if the railroads would lower their rates?

Mr. MCCAIN. I think they will probably have to lower their rates in order to meet the competition of trucks. I have thought about it a good deal. They think probably they won't have to do it, but I think they will have to devise some quicker and some more economical form of transportation, and haul freight cheaper.

The CHAIRMAN. All right. You may go ahead, Mr. Pecora.

Senator GOLDSBOROUGH. And with door-to-door delivery?

Mr. MCCAIN. They may have to do that, I think, Senator.

Mr. PECORA. Mr. McCain, have you any knowledge with regard to the operation of the trading account that was formed by Dillon, Read & Co. in the stock of the St. Louis & San Francisco Railway, some time in April of 1930, and in which a participation of one half or $10,000,000 was given to the Shermar Corporation by Dillon, Read & Co. as managers?

Mr. MCCAIN. I haven't any knowledge of that operation.

Mr. PECORA. What was that answer?

Mr. MCCAIN. I say, I haven't any knowledge of that operation.

Mr. PECORA. Now, according to my recollection of the evidence here, that participation was taken eventually by the Murlyn Corporation.

Mr. MCCAIN. I don't know.

Mr. PECORA. Do you know that the Murlyn Corporation was one of the family corporations of Mr. Wiggin?

Mr. MCCAIN. Yes; I know that.

Mr. PECORA. And you had some transaction with the Murlyn Corporation from time to time, didn't you?

Mr. MCCAIN. I had a small participation, I think, in this Frisco matter through that corporation.

Mr. PECORA. And as a result of that participation did you have any knowledge of that account?

Mr. MCCAIN. No; I didn't keep up with it at all; and when the account was dissolved the stock was sent to me, and that was all I knew about it.

Mr. PECORA. Mr. McCain, I do not recall whether or not you have heretofore been asked this question, and I will ask it again if I have asked it before: Were you a participant in the syndicate or trading account that was formed and which was managed by Dillon, Read & Co., which dealt in the stock of the Seaboard Air Line Railway Co.?

Mr. MCCAIN. I was; yes.

Mr. PECORA. To what extent?

Mr. MCCAIN. I was not a direct participant in the syndicate which they organized to buy the securities. There were two syndicates in the Seaboard, as you may recall, one of which bought securities of

the road, and the other was a common-stock syndicate. I was a participant in the common-stock syndicate.

Mr. PECORA. Were you also one of the managers of that syndicate?

Mr. MCCAIN. Yes, sir.

Mr. PECORA. What was that syndicate formed for?

Mr. MCCAIN. In 1928 Dillon, Read & Co. had been the bankers for the Seaboard Airline Railway. You will recall the troubles in Florida. The road had had, during the boom period of Florida, a great deal of expansion, and as a result the fixed charges were very heavy, and the securities were selling very low. Dillon, Read & Co. felt that there was an opportunity to form a group which was entirely a private group, to buy Seaboard bonds and securities, and by better management of the road and more economical financing endeavor to put the road in better shape and make some money by reason of these securities improving in value. There was no public offering ever made at all. As a result of that, they organized a syndicate to purchase these securities, which amounted, as I recall it, to $10,000,000.

Mr. PECORA. And they got a loan of that amount, did they not, from the Chase National Bank?

Mr. MCCAIN. No. They got a loan first from the Equitable Trust Co. of $2,700,000. That was before the merger and before we had any connection whatever. Later they got a loan of $3,300,000 from the Chase National Bank. Both those loans were repaid at maturity.

Mr. PECORA. Were you at those times a member of the board of directors of the Seaboard Railway?

Mr. MCCAIN. Not until after the syndicate had acquired this interest in the road.

Mr. PECORA. Were you a director while these loans were open, though?

Mr. MCCAIN. Yes.

Mr. PECORA. These loans to the syndicate.

Mr. MCCAIN. Yes.

Senator COUZENS. This appears on the record as having been granted at a board of directors' meeting of the Chase on January 15, 1930—$3,300,000. As I understand it, you were not a member of the Chase at that time.

Mr. MCCAIN. Yes; I was at that time.

Senator COUZENS. I observe here, among the participants, is the American National Co., of Nashville, Tenn. Is that an affiliate, or was it an affiliate of the American National Bank of Nashville, Tenn.?

Mr. MCCAIN. Yes, it was.

Senator COUZENS. Is that the same syndicate that Mr. S. Z. Mitchell was manager of?

Mr. MCCAIN. Yes, sir.

Senator COUZENS. Was there not a substitute?

Mr. MCCAIN. Yes; he never served, and nominated Mr. Norman E. Davis to serve in his place, and he served.

Senator COUZENS. I understood at the time the testimony was heretofore taken that Mr. Norman Davis was simply a nominee, but I have since learned that he was a participant. Do you know that to be a fact?

Mr. MCCAIN. Oh, yes; he was a participant.

Senator COUZENS. He was a participant?

Mr. MCCAIN. Yes.

Senator COUZENS. So that he was more than a nominee for Mr. Mitchell, as syndicate manager. He was really a financial participant.

Mr. MCCAIN. Yes, sir; he was.

Mr. PECORA. There were five managers of that syndicate account, were there not, as follows: Dillon, Read & Co., H. C. Couch, Coverdale & Colpitts, yourself, and Mr. Norman Davis, as the successor of Mr. Sidney Z. Mitchell?

Mr. MCCAIN. That is correct.

Mr. PECORA. During the life of the loan to this Seaboard Airline Railway purchasing syndicate you, Mr. Dillon, Mr. Couch, and the representative of Coverdale & Colpitts, namely, Mr. Coverdale, were on the board of the railroad company, were you not?

Mr. MCCAIN. Yes, sir. Mr. Dillon was never on the board of the railroad company.

Mr. PECORA. Was a partner of his on the board?

Mr. MCCAIN. Yes. A partner was on the board.

Mr. PECORA. Who?

Mr. MCCAIN. I think it was Mr. Wilcox or Mr. Bollard—probably Mr. Wilcox first, afterwards succeeded by Mr. Bollard.

Mr. PECORA. Was there any relationship between Mr. Davis and that American Exchange Bank of Tennessee—is that the name of the bank?

Senator COUZENS. The American National Co., a subsidiary or affiliate of the American National Bank.

Mr. MCCAIN. I do not know. Of course, Mr. Davis came from Nashville. Whether he had any stock in this company I do not know.

Mr. PECORA. Is that the bank of which his brother was president?

Mr. MCCAIN. Yes, sir. It is an affiliate of the bank of which his brother was president.

Senator COUZENS. Does the Pennsylvania Railroad own any interest in the Seaboard Airline?

Mr. MCCAIN. Well, there was this syndicate, Senator, which bought these securities, and later it was concluded to make an offering of the common stock of the Seaboard Airline, $20,000,000, after the Pennsylvania Railroad sent their engineers and officials over to spend, as I recall it, some three months on the railroad, and they recommended it.

Senator COUZENS. Is that the Coverdale & Colpitts firm?

Mr. MCCAIN. This was the Pennsylvania Railroad. Coverdale & Colpitts had done it first. We did not rely on them. We relied on the Pennsylvania Railroad. After doing that, they then took a $5,000,000 interest in this common stock, and purchased $5,000,000 out of the common stock. Whether they have disposed of that I do not know. That is in the Pennroad Corporation.

Senator COUZENS. I observe in that syndicate is Gen. W. W. Atterbury.

Mr. MCCAIN. That is right.

Senator COUZENS. While he was a participant in this syndicate the railroad of which he was president was a part owner of the Seaboard Air Line?

Mr. McCain. It became part owner of the Seaboard Air Line. This syndicate was formed first—the one you are looking at—to purchase the securities of the Seaboard.

Senator Couzens. At that time the Pennsylvania Railroad did not have any interest in the Seaboard Air Line Railway?

Mr. McCain. I do not think so; none at all. As far as this worked out, it was really a philanthropic enterprise for the Seaboard Railroad. We gave them $20,000,000. They retired $16,000,000 of obligations, reduced the fixed charges $400,000 or $500,000, and we lost all the money we put up. The public never was asked to go in, and were never offered any securities.

Senator Couzens. You did not intend that when you started?

Mr. McCain. We hoped not. We expected, really, to make our money on the constructive work we were doing in making these securities worth more. We never had any public offering in mind.

Mr. Pecora. Was not a large block of the securities of the Seaboard Air Line acquired by either one of those two investment trusts that Dillon, Read & Co. had formed?

Mr. McCain. I do not think a large block. One of them had an interest.

Senator Couzens. $500,000?

Mr. McCain. $500,000.

Mr. Pecora. I have some recollection that by virtue of a transaction between Dillon, Read & Co., and that investment trust, the investment trust took over from Dillon, Read & Co., a large block of the stock.

Mr. McCain. I am not familiar with that.

Mr. Pecora. Of the Seaboard Airline Railway Co.

Senator Couzens. That is in the testimony, but it has no relation to the syndicate.

Mr. Pecora. Yes.

Mr. McCain. No relation to the syndicate at all.

Senator Couzens. When was this Seaboard Airline syndicate closed?

Mr. McCain. I think I can give you that [after examining papers]. January 14, 1930.

Senator Couzens. What is that again?

Mr. McCain. January 14, 1930.

Senator Couzens. I do not see how that can be correct, because it appeared in the minutes of the Chase Bank that the loan was agreed to on January 15, 1930.

Mr. McCain. I beg your pardon. The common-stock syndicate was closed on January 14, 1930. I will see when the securities syndicate was closed [after conferring with an associate]. The loan was paid off in full on March 2, 1931. I am trying to find out now just when the syndicate itself was dissolved and distributed.

Senator Couzens. While you are looking that up, when did the Seaboard Airline go into receivership?

Mr. McCain. I think it was sometime in the early part of 1931, Senator, but I will get that for you right away if you like.

Senator Couzens. Thank you. I wish you would.

Mr. McCain (after examining papers). I do not seem to be able to find, Senator, the date that was dissolved.

Senator COUZENS. The loan was paid up in March 1931?

Mr. MCCAIN. That is right; paid in full.

Senator COUZENS. That apparently was after the date of the receivership, as I understand it.

Mr. MCCAIN. Yes, sir. That was after the date of the receivership.

Senator COUZENS. That is near enough. How much did the syndicate lose, or is that ascertainable now?

Mr. MCCAIN. They lost, I would think, approximately 95 percent of what they put in, because of the decline in value of the Seaboard securities.

Senator COUZENS. But they still have the securities, for whatever they are worth.

Mr. MCCAIN. Yes, sir. They have been distributed, and they have them.

The CHAIRMAN. Did you give the amount they put in?

Mr. MCCAIN. Yes, sir. I have it here.

The CHAIRMAN. What was the amount?

Mr. MCCAIN. The total amount was $10,085,000. Would you like the individual participants, Senator?

The CHAIRMAN. No.

Senator COUZENS. They are in the record, I think.

Mr. MCCAIN. They are in the record now.

Mr. PECORA. You received a number of participations in syndicate accounts in which participation had been granted originally to either the Shermar Corporation or the Murlyn Corporation, did you not, Mr. McCain?

Mr. MCCAIN. No, sir; never but two.

Mr. PECORA. Which two were those?

Mr. MCCAIN. The Frisco that you mentioned, and a small participation in the American Woolen Co., which was simply just an account to buy some stock of the American Woolen Co.

Mr. PECORA. Were those syndicate accounts financed, in whole or in part, by loans obtained from the Chase Bank?

Mr. MCCAIN. No, sir; none.

Mr. PECORA. In those syndicate accounts did the Chase Securities Corporation or any other security affiliate of the Chase National Bank become a participant?

Mr. MCCAIN. Chase Securities did, in the Frisco. I am not certain whether they did in the American Woolen or not.

Mr. PECORA. You had loan transactions with the Shermar Corporation, did you not?

Mr. MCCAIN. I told you this morning; yes.

Mr. PECORA. This morning you said, with regard to the joint loans made to you and Mr. Couch by the Chemical Bank, that they were collateralized by stock exchange collateral.

Mr. MCCAIN. Yes, sir.

Mr. PECORA. Is your individual loan account with the Chase Bank likewise secured by stock exchange collateral?

Mr. MCCAIN. No, sir; not altogether.

Mr. PECORA. To any substantial extent, is it so secured?

Mr. MCCAIN. No. In fact, I do not believe it is to any extent.

Mr. PECORA. Have you made any payments by way of reduction of that loan during the current year?

Mr. McCain. Yes; I stated this morning——

Senator Couzens. $8,500.

Mr. McCain. $8,500.

Mr. Pecora. At what rate during the current year?

Mr. McCain. I can give you the exact figures [after conferring with an associate] $3,500.

Mr. Pecora. Were they represented by monthly payments at any particular rate?

Mr. McCain. Some of them monthly payments.

Mr. Pecora. At what rate?

Mr. McCain. Some months $500, and 1 month, $1,000.

Senator Couzens. I observe, from the minutes of the Chase Bank, another syndicate, in which a loan of $2,700,000 was made, in which Dillon-Read, H. C. Couch, and Coverdale & Colpitts were syndicate managers. That seems to have been largely made up of Seaboard Airline securities—practically all of it, I think. Has that been disposed of?

Mr. McCain. That has been paid off. Originally it was with the Equitable Trust Co., and came into the Chase Bank through the merger. It has been paid off in full.

Senator Couzens. You were not a syndicate manager at that time in this particular one?

Mr. McCain. Yes; I was.

Senator Couzens. They have left you out of this in the record, apparently.

Mr. Pecora. What is the present principal amount of your loan with the Chase?

Mr. McCain. $226,000.

Mr. Pecora. What rate of interest does it bear?

Mr. McCain. Four percent.

Mr. Pecora. Is there any public market for the collateral which you have against this loan with Chase?

Mr. McCain. Very little of it, I think, Mr. Pecora.

Mr. Pecora. Now, I want to refer for a moment or two to the letter which you received in August last from Mr. Couch, the letter marked in evidence as "Committee's Exhibit No. 238," the opening paragraph of which I will read again to you [reading]:

> Dear Charlie: I certainly appreciate very much your very interesting call last night. The matter you referred to, of course, is of tremendous interest, but best of all is the interest and confidence that you have in me.

I believe you told the committee this morning, in the course of your testimony, what the subject was of that telephone call referred to in this letter.

Mr. McCain. Yes.

Mr. Pecora. As I remember it, it was a suggestion by you to Mr. Couch that he might undertake a reorganization of the Insull interests.

Mr. McCain. That I had mentioned him for this position, or as being a good man to consider for it. I would not have the authority to offer it, but that he would be a good man to consider for that position.

Mr. Pecora. Did he give you any definite reply to your suggestion at the time you talked with him on the telephone?

Mr. McCain. No; except to say that "that is extremely interesting", and it was.

Mr. Pecora. He also said that in the letter.

Mr. McCain. Yes; and it was.

Mr. Pecora. Eventually no proposal was made to him, I believe you said this morning, to undertake such a reorganization.

Mr. McCain. That is correct. Afterward Mr. Simpson, of Chicago, was put in charge.

Mr. Pecora. The reason I ask you about that is that in the statement that Mr. Couch gave to the press, apparently, a copy of which was received in evidence this morning as exhibit no. 240, Mr. Couch, referring to that telephone call and his letter to you in response thereto, says, in part, as follows [reading]:

> The letter which I wrote Mr. McCain was purely a personal one. He had called me on the telephone to learn if I would consider resigning from the R.F.C. Board to undertake the reorganization of a group of Insull properties. I told him I had to complete the job I had begun for the Government and would not be able to accept his offer.

It seems to me that is not fully in harmony with your statement.

Mr. McCain. I think it might well be. I asked him whether he would be interested in this, and said that I had mentioned it to several of these people, and that it might develop. He might very well think that that was a proposition that he was to consider. A number of people were considered at the time, as far as that is concerned.

Mr. Pecora. When did he first tell you that he could not accept any such proposal?

Mr. McCain. I cannot tell you that. I do not remember.

Mr. Pecora. The inference from his statement to the press, a copy of which is introduced in evidence as committee's exhibit no. 240, I think, might be that he told you, in the course of your telephone conversation with him last August, that he would not be able to accept such an offer.

Mr. McCain. I would not think that he meant that.

Senator Goldsborough. Did he not ask, in the letter that you have there, that he be sent copies of certain data?

Mr. Pecora. Yes. The letter which is in evidence as committee's exhibit no. 238 says, in part:

> I would appreciate it very much if you would have sent to me here some of the bond circulars in connection with the financing you have done for the Chicago Utilities. Also, any other studies you have made on any of their situations.

In that statement did you understand him to be referring to the proposal you had suggested to him in the telephone talk the night before the writing of this letter?

Mr. McCain. Yes, sir.

Mr. Pecora. And did you send on the data that he asked you to send him?

Mr. McCain. I think I did.

Senator Couzens. So evidently he had not made up his mind at that time, had he?

Mr. McCain. No; I don't think so.

The CHAIRMAN. Mr. McCain, you have had experience with investment trusts and with investments generally and with banking. I would like to ask you a few questions about investment trust operations. What do you understand to be the functions of an investment banker?

Mr. MCCAIN. I think an investment banker is a man who primarily should furnish long-term capital for either industry or railroads or utilities of the country.

The CHAIRMAN. Does an investment banker furnish capital or does he merely handle bonds and securities?

Mr. MCCAIN. His function is to serve as the medium through which he obtains investment capital from the ultimate investor in the industry. He himself does not have the money to put up.

The CHAIRMAN. Is there any difference between an investment banker and an investment trust?

Mr. MCCAIN. Yes, sir; a great difference.

The CHAIRMAN. What is the difference?

Mr. MCCAIN. An investment banker would simply purchase securities to pass on to the consumer or to the investor. An investment trust presumably would buy securities to hold, either for its income or for enhancement in value, constantly watching their portfolio to see that the company makes progress, so that they can either sell securities or buy additional securities in the same class. They are two entirely different functions.

The CHAIRMAN. Anybody can put up a sign "Investment Banker" and begin business?

Mr. MCCAIN. That is right.

The CHAIRMAN. There is no law regulating them or controlling them or anything of the kind?

Mr. MCCAIN. None at all.

The CHAIRMAN. Does an investment trust underwrite the securities?

Mr. MCCAIN. Investment trusts have done that to some extent, but not generally in this country. They do, as I understand, abroad, in England and Scotland, but in this country they have never done it except to a very limited extent.

The CHAIRMAN. I believe the European method is to separate the underwriter from the distributor?

Mr. MCCAIN. Yes, sir.

The CHAIRMAN. But in this country that is not done?

Mr. MCCAIN. It has not been done in this country.

The CHAIRMAN. Would it not be a good idea for those engaging in investment banking and investment trusts to get together on some standard of operation and membership?

Mr. MCCAIN. I should think it would.

The CHAIRMAN. So as to form some kind of an association that would have the effect of guaranteeing as to reputation, ability and experience those engaged in that kind of business?

Mr. MCCAIN. They come nearer doing that through the Investment Bankers Association than through any other medium they have. They are very strict as regards membership in the association and they endeavor to pass on the character as well as the ethics of those seeking membership before they accept them.

The CHAIRMAN. These investment bankers are usually not bankers at all?

Mr. MCCAIN. No.

The CHAIRMAN. And an investment trust does not do a banking business?

Mr. MCCAIN. No.

Senator COUZENS. I rather smile at the idea of saying that the Investment Bankers Association vouch for the good standing and character of investment bankers.

Mr. MCCAIN. That is what they propose to do, Senator.

Senator COUZENS. We had some little colloquy here when one of Dillon, Read & Co.'s partners was here, and at that time he was a candidate for the presidency of that association.

Mr. MCCAIN. He is now president.

Senator COUZENS. I understand he was elected without any opposition.

Senator ADAMS. Part of the trouble that the commercial banks have had is that they lost their way and became investment bankers, was it not?

Mr. MCCAIN. Yes.

Senator REYNOLDS. Do you not think that a law should be enacted governing and regulating the operations of investment banking?

Mr. MCCAIN. I do not see why you should not do it, as well as enacting laws governing commercial banks. Of course, through the Securities Act you regulate them to a very considerable extent. You at least regulate what securities they can sell, which is a regulation they did not have. You have a check on them there.

The CHAIRMAN. They ought at least to be required to make quarterly reports?

Mr. MCCAIN. I think by all means investment trusts ought to be required to make reports, and I think they ought to be required to publish their portfolios. Of course the investment banker is a little different; he has in some instances limited capital. Some are small and some are large.

Senator REYNOLDS. With reference to Senator Fletcher's suggestion, you really think that investment bankers, regardless of the amount of business they do, should be required to submit quarterly reports?

Mr. MCCAIN. I think it would be very well, Senator, to require them to submit a report. Whether quarterly or not I do not know. I am not certain but what, for their character of business, it is too short a period. Certainly annually they should have no objection, or semiannually.

Senator REYNOLDS. Annually, at any rate?

Mr. MCCAIN. Yes; or semiannually. Quarterly I think would be most too short a time.

Senator REYNOLDS. Do you not think that before any investment banker should be permitted to engage in the business he should unquestionably be licensed and have a very thorough investigation as to qualifications and character and financial standing?

Mr. MCCAIN. I should not see any objection to that at all.

Senator REYNOLDS. It would certainly be information for those who contemplated making investments.

Mr. McCain. Of course, you do not think very much of the stock exchange down here, but they have that regulation. Before any man can become a member of the stock exchange——

Senator Adams. That is what protects the public so thoroughly?

Mr. McCain. Yes (continuing). They make a very careful investigation of his character, financial standing, and so forth.

Senator Goldsborough. May I ask you whether or not the $20,000,000 loss was in the two Seaboard syndicates or was it in one?

Mr. McCain. That was in one. The total loss was approximately $30,000,000.

Senator Goldsborough. The total loss was in two syndicates?

Mr. McCain. Yes.

Senator Goldsborough. Twenty and ten?

Mr. McCain. Yes.

Senator Couzens. Did you hear Mr. Aldrich's testimony with respect to the Securities Act yesterday?

Mr. McCain. Yes, sir.

Senator Couzens. I asked him if he could submit an illustration of where there had been any failure to finance industry through the impediment of the Securities Act, and he could not give an illustration. Have you any illustration of that kind?

Mr. McCain. There is a company at this time which has a maturity during 1934 which, if I may, I will give the wrong amount, because I would not like to embarrass the company. We will say, $20,000,000. It matures along about the middle of 1934. It is a perfectly good security. It is well secured in every way. I think that if it were possible to offer it to the public there is no question whatever that under those conditions they would be glad to buy it. They have been unable to get any banking firm to take the responsibility, although they have offered it to three or four of the leading banking firms; and they are furthermore unable to get their own board of directors to sign the application necessary to make the offering a public offering. I know that situation intimately.

Senator Couzens. Why is that so, if it is perfectly good and there is no misrepresentation or no inaccuracies? Just where is the hazard?

Mr. McCain. The hazard is that it makes the investment banker entirely responsible during the period of that bond issue, even though it passes to the second or third party, and he may be perfectly innocent. You are not allowed to take anybody else's report, Coverdale & Colpitts, or anybody else's.

Senator Couzens. It is perfectly proper that you should not.

Mr. McCain. This penalty still applies, and he is just afraid to take the risk.

Senator Couzens. There is no risk, so far as the security itself is concerned, so long as the representations are honest and true.

Mr. McCain. Correct.

Senator Couzens. Well, then, why does a man take a risk when he makes an honest, true report?—because that is the only liability he has, if the security goes wrong because of that.

Mr. McCain. Suppose some error has been made in computing the earnings. The accountants of the company may have made them up, and it puts a burden and responsibility on those same accountants to

see that ample reserve has been put up. You cannot tell that unless you personally examine each account.

Senator ADAMS. You start with the premise that it is a perfectly good security. Even if there were omissions or errors it would still be perfectly good?

Mr. MCCAIN. I think that is true.

Senator COUZENS. Why did the Pennsylvania Railroad have to go to the R.F.C. to borrow money for the electrification of their road from New York to Washington if the security market would have absorbed their bonds?

Mr. MCCAIN. At the time they borrowed the money from the R.F.C. I am a little doubtful whether the security market would have absorbed their bonds. It might have. I talked to Governor Meyer at that time about it.

Senator COUZENS. There was a later one than that. Now, there is one, within a short while, and there has been no change in the security market since that loan was made. So I am unimpressed with the——

Mr. MCCAIN. I believe the public would buy it today.

Senator COUZENS. I am unimpressed with that as the deterrent to the sale of a sound security.

Why did the New York Port Authority have to go to the R.F.C.?

Mr. MCCAIN. They did not have to go to the R.F.C.

Senator COUZENS. Why did they go?

Mr. MCCAIN. In the first place, personally I do not think that the Port of New York Authority ought to have built the second tunnel that they are building at this time. I think they had ample facilities over the bridge and the Holland Tunnel to take care of the traffic. It is a 5-year construction program, and no banking house is willing to take the risk of holding these securities and risking the loss of revenue that might come from the bridge and from the Holland Tunnel to pay the charges on. They have two other projects that would have some revenue coming in. So it was not a good business proposition to sell to investors.

Mr. PECORA. Was the Detroit & Canada Tunnel Co. any better?

Mr. MCCAIN. I do not know that it was quite as good; but the trouble with it was that there were not enough people to go through it; and that is what I am afraid of about this one.

Mr. PECORA. The Chase Securities Corporation floated those securities.

Mr. MCCAIN. Yes; but not in 1933.

Senator COUZENS. How is it that under the British companies act, which is a stricter act than our securities act, capital investments are mounting while they are decreasing in America, according to the statements, because of the securities act?

Mr. MCCAIN. I think there is very little to be changed in the Securities Act. I think you have got to lighten to some extent the penalty on directors in signing statements of their corporations, and you have got to lighten to some extent the penalty on the dealer honestly selling securities. Those are practically the only two things you have got to do.

Senator COUZENS. How would you propose to lighten them? By limitation of the financial responsibility, or in just what way?

Mr. McCain. They might be lightened as regards the dealer, by limiting his liability to the greater part of the profit made on the securities sold, a percentage of the securities sold. If he gets $100,000 worth of bonds out of $10,000,000 issued, he ought not to be liable for more than $100,000. Today he is liable for the $10,000,000.

Senator Couzens. I think that is a sound argument. What about the directors of the corporation which authorizes the issuance of the securities?

Mr. McCain. I think they ought to be allowed to take the statements either from outside accountants or from a personal examination themselves through accountants, and after they have made oath that they have done that, that ought to be accepted. Today you cannot accept that at all.

Senator Adams. Regardless of the competency or the reliability of those whom they employ?

Mr. McCain. No, sir; you cannot do that today.

Senator Couzens. Why should you? If you are going to assume the responsibility for your agent, you have got to assume it. If he makes an error, he is in your employment and you have to pay for the loss that he creates if you make a bad loan. If the directors have unsound help, then the board of directors ought to stand between the agents and the public.

Mr. McCain. He is liable for that for the life of the issue. What man wants to go ahead and become liable——

Senator Adams. Is there not a statute of limitations in the act?

Mr. McCain. No. He is liable for the life of the issue. Who wants to assume a liability that is going to run for 25 or 30 years? It ties up their estate; it is possible to bring it against the children, and everything of that kind. There ought to be some limitation on that.

Those are practically the only two things you have to do to make it work. There are some minor administrative things for the Federal Trade Commission. I have talked to the head of one of the principal accounting firms and he tells me that the detail required today makes it practically prohibitive for a small concern, because of the expense involved and the number of men used to gain the information makes the financing so expensive that they cannot afford to do it, unless it is a beer or liquor concern——

Senator Adams. Who made that statement?

Mr. McCain. The president of Haskins & Sells.

Senator Adams. During the hearings certified accountants insisted on a provision that these accounts should be certified by certified accountants. The committee had difficulty in keeping that out. It would have made it still worse.

Senator Townsend. It would have made it better for the certified accountants.

Senator Couzens. Before one can practice before the Bureau of Internal Revenue or before the Customs Department of the Treasury he has to pass an examination by a board of enrollment and get certification as to his good reputation and character. What would you say if the Federal Trade Commission was to establish by statute some board of review where public accountants could be given exami-

nations and certified as to their character and reputation the same as practitioners before the Bureau of Internal Revenue?

Mr. McCAIN. I think it would be all right.

Senator COUZENS. That would at least perhaps insure a better group of certified public accountants who would be more responsible to the Federal Trade Commission the same as the practitioners are before the Treasury Department?

Mr. McCAIN. I think so. I also think that in the case of railroads, which are under the supervision of the Interstate Commerce Commission as to their accounting methods and everything else, you ought to release the investment house from some of the responsibility in those issues.

Senator COUZENS. They do not come under the act anyway, so they are not responsible.

Mr. PECORA. Do you know of your own knowledge to what extent the liabilities and penalties imposed by the Securities Act of 1933 are more drastic than corresponding or similar liabilities and penalties in the British Empire?

Mr. McCAIN. Not definitely.

Mr. PECORA. Do you know whether or not they are more drastic, as a matter of fact?

Mr. McCAIN. I understand they are, in the two relationships I have given.

Mr. Chairman, may I say one more thing? In your recommendations for legislation I think you ought seriously to consider not permitting a national bank to make any real estate loans. That is an amendment of only recent years, and it certainly has caused trouble to all the national banks who have done it.

The CHAIRMAN. You mean, strike that provision out entirely?

Mr. McCAIN. Yes, sir. When that was put in it was put in at the instance of a small country bank where there was a national bank and a small state bank in the same community. They got after their Senators——

Senator ADAMS. They wanted to make just as bad loans as the other banks did?

Mr. McCAIN. Yes. It was a great mistake to give them permission to make any such loans.

The CHAIRMAN. Even for a short time?

Mr. McCAIN. Yes; even for a short time. I never thought there was any place for it in a commercial bank.

Senator GOLDSBOROUGH. Some of the country banks would not agree with that, would they?

Mr. McCAIN. No; but they have all suffered from loans of that kind that have been made.

Senator ADAMS. Some of them would like to have the State banks forbidden, and let the national banks make the loans.

Senator GOLDSBOROUGH. Have they suffered more from real estate loans than from other loans?

Mr. McCAIN. I think so.

Senator GOLDSBOROUGH. My impression was that the losses had not been any greater than on other loans. Does not the ultimate loss come from other securities in their portfolios?

Mr. McCAIN. Yes; and from bad loans, too.

I was impressed by what Senator Adams said yesterday. I think there ought to be a limitation on the securities that a national bank is allowed to invest in—say, a 5-year period. I think that is long enough.

Senator COUZENS. What has been your experience with national bank examiners? I mean, as to their alternating in their examinations? Do they alternate or do you always have the same groups?

Mr. MCCAIN. We have practically the same chief examiner, I would say, Senator. He has under him a force. Of course an examination of the Chase Bank is a tremendous task. They bring in, on the day they come in for the examination, approximately 175 men who are brought from all over New Jersey and Connecticut and New York State. They spend 2 or 3 days in the bank counting cash and things of that kind. Then the examination is left to a corps of probably 8 or 10 men.

Senator COUZENS. Are those 8 or 10 men employed in the same Federal Reserve district all the time?

Mr. MCCAIN. Yes; in the same Federal Reserve district.

Senator COUZENS. I want to get that point. I think it is a grave error to have the chief bank examiner and the same group making repeated examinations of the same banks.

Mr. MCCAIN. I agree with you on that, Senator.

Senator COUZENS. The whole system ought to be changed.

Mr. MCCAIN. I agree with you.

Senator ADAMS. The same bank examiner goes back from time to time. He is assigned to a certain territory and the small bank only sees the one bank examiner.

Senator COUZENS. Yes. That is what I am objecting to. I am objecting to the fact that the chief bank examiner of a Federal Reserve district remains there year after year and year after year and dominates the examination of all of the banks in that same district.

Mr. MCCAIN. I think it should be like the way we shift men in the bank. A man keeps a certain set of books, and after a period of 90 days he is shifted and another man takes his books.

Mr. PECORA. They are rotated.

Mr. MCCAIN. They are rotated.

Senator GOLDSBOROUGH. You mean on the ledgers; from A to B and C and D and so forth?

Mr. MCCAIN. Yes. On the deposit ledgers they rotate.

Mr. PECORA. I think that is all, Mr. Chairman, that I have to ask Mr. McCain.

The CHAIRMAN. Is there anything else from any member of the committee? [After a pause.] Much obliged, Mr. McCain.

Mr. MCCAIN. Thank you, sir.

Mr. PECORA. Is there anything else you want to say to the committee, Mr. McCain?

Mr. MCCAIN. No, Mr. Pecora. I appreciate that courtesy very much, indeed.

The CHAIRMAN. The committee will now stand adjourned until December 18 at 10:30 a.m.

(Thereupon, at 3:48 p.m., Thursday, Dec. 7, 1933, the subcommittee adjourned, to meet at 10:30 a.m., Monday, Dec. 18, 1933.)

COMMITTEE EXHIBIT NO. 112, NOVEMBER 9, 1933

Sinclair trading account

Date	Daily totals of shares—		Date	Daily totals of shares—	
	Bought	Sold		Bought	Sold
Nov. 5, 1928	50,900		Feb. 19, 1929	3,600	15,600
Nov. 7, 1928	900		Feb 20, 1929	500	
Nov. 8, 1928	24,000		Feb. 21, 1929	6,700	400
Nov. 9, 1928	2,500		Feb. 25, 1929	400	
Nov. 12, 1928	9,700		Feb. 26, 1929	4,900	3,500
Nov 13, 1928	11,000		Feb. 27, 1929	300	2,500
Nov. 14, 1928	100,000		Feb. 28, 1929	2,900	5,000
Do	17,100		Mar. 1, 1929	100	1,100
Nov. 15, 1928		60,700	Mar. 4, 1929	3,700	
Nov. 16, 1928		62.300	Mar. 5, 1929	2,000	1,000
Nov. 19, 1928	2,300	10,100	Mar. 6, 1929	1,000	100
Nov. 20, 1928	3,200	49,400	Mar. 7, 1929	4,900	
Nov. 21, 1928		31,700	Mar. 8, 1929	6,400	1,000
Nov. 22, 1928	29,600	500	Mar. 11, 1929	1,000	12,000
Nov. 23, 1928	400		Mar. 12, 1929	1,000	500
Nov. 26, 1928	500		Mar. 13, 1929	3,100	2,400
Nov. 27, 1928	4,100		Mar. 14, 1929	1,800	5,900
Nov. 30, 1928	500	1,000	Mar. 15, 1929	19	
Dec. 3, 1928	5,400		Do	200	1,900
Dec 4, 1928	3,900		Mar. 18, 1929	1,900	29,000
Dec. 5, 1928	2,800		Mar. 19, 1929	7,300	32,100
Dec. 6, 1928	400		Mar. 20, 1929	9,300	32,600
Dec. 12, 1928	1,600		Mar. 21, 1929		10,000
Dec. 20, 1928	1,400		Do	14,800	23,100
Dec. 21, 1928	1,400		Mar. 22, 1929	2,900	3,800
Jan. 2, 1929	300		Mar. 25, 1929		12,019
Jan. 3, 1929	17,000		Apr. 15, 1929	177,800	
Jan. 11, 1929		10,400	Apr. 16, 1929	1,300	11,800
Jan. 14, 1929	6,100	1,000	Apr. 17, 1929		1,100
Jan. 15, 1929	3,500	3,000	Apr. 18, 1929		16,666
Jan. 16, 1929	8,500	500	Do	600	47,800
Jan. 17, 1929	10,200	10,800	Apr. 19, 1929		34
Jan. 18, 1929	1,200	1,000	Apr. 22, 1929	100	300
Jan. 21, 1929	1,200	2,100	Apr. 26, 1929	100	300
Jan. 22, 1929	700	3,500	Apr. 29, 1929	400	2,200
Jan. 23, 1929	100		May 6, 1929	3,500	1,000
Jan. 24, 1929		3,000	May 7, 1929	100	8,700
Jan. 25, 1929	3,400	1,000	May 8, 1929	500	24,500
Jan. 28, 1929	4,200	100	May 10, 1929	800	21,400
Jan. 29, 1929	23,900	700	May 13, 1929	1,100	50,500
Feb. 8, 1929		100			
Feb. 18, 1929	13,800		Total	634,719	634,719

COMMITTEE EXHIBIT NO. 113, NOVEMBER 9, 1933

Sinclair Syndicate Account

Date	Daily totals of shares— Bought	Sold	Date	Daily totals of shares— Bought	Sold
Oct. 26, 1928	2,400	23,700	Jan. 7, 1929	1,200	300
Oct. 29, 1928	34,100	37,800	Jan. 8, 1929	10,600	300
Oct. 30, 1928	10,000	43,900	Jan. 9, 1929	7,200	50,000
Oct. 31, 1928	23,600	27,900	Jan. 10, 1929	11,000	15,361
Nov. 1, 1928	21,600	5,700	Do		33,900
Nov. 2, 1928	6,400	60,500	Jan. 11, 1929	600	3,500
Nov. 5, 1928	11,600	100,600	Jan. 14, 1929	1,900	
Nov. 7, 1928	13,000	25,100	Jan. 15, 1929		1,000
Nov. 8, 1928	1,300	53,900	Jan. 22, 1929		50,000
Nov. 9, 1928		28,500	Do		2,200
Nov. 12, 1928	3,000	30,900	Jan. 28, 1929	10,100	439
Nov. 13, 1928		39,200	Jan. 29, 1929	50,000	
Nov. 14, 1928	100,000	43,800	Jan. 30, 1929	4,000	1,300
Nov. 15, 1928	1,200	9,000	Jan. 31, 1929	6,800	
Nov. 16, 1928	29,700	4,500	Feb. 1, 1929	100	7,300
Nov. 19, 1928	1,700	29,300	Feb. 4, 1929	400	24,660
Nov. 20, 1928	200	5,600	Feb. 5, 1929	1,500	2,200
Nov. 21, 1928	14,100	14,100	Feb. 6, 1929	400	
Nov. 22, 1928		32,100	Feb. 7, 1929	2,500	100
Nov. 23, 1928		11,900	Feb. 8, 1929	15,800	200
Nov. 26, 1928	100	3,700	Feb. 11, 1929	21,700	800
Nov. 27, 1928		11,600	Feb. 13, 1929	2,360	31,700
Nov. 30, 1928		52,500	Feb. 14, 1929	7,400	43,700
Dec. 3, 1928	3,700	41,600	Feb. 15, 1929	4,400	
Dec. 4, 1928		2,800	Feb. 18, 1929	5,500	7,300
Dec. 5, 1928		2,800	Feb. 27, 1929		1,700
Dec. 6, 1928		1,200	Mar. 22, 1929		100,000
Dec. 7, 1928	52,600	1,800	Mar. 25, 1929	11,700	42,200
Dec. 10, 1928	96,600	37,900	Mar. 26, 1929	20,100	15,400
Dec. 11, 1928	1,600	11,500	Mar. 27, 1929	19,700	5,700
Dec. 12, 1928		15,400	Mar. 28, 1929	6,300	32,100
Dec. 13, 1928	200	2,100	Apr. 1, 1929	2,000	30,400
Dec. 17, 1928	1,700	4,000	Apr. 2, 1929	6,100	3,500
Dec. 18, 1928	1,300		Apr. 3, 1929	2,400	30,000
Dec. 19, 1928	700	6,000	Apr. 4, 1929	3,000	100
Dec. 20, 1928		27,900	Apr. 5, 1929	100	
Dec. 21, 1928		24,800	Apr. 8, 1929	6,500	
Dec. 24, 1928	700	9,200	Apr. 9, 1929	6,600	
Dec. 26, 1928	1,700	15,000	Apr. 10, 1929	12,500	
Dec. 27, 1928	1,300	15,200	Apr. 11, 1929	600	200
Dec. 28, 1928	2,300	600	Apr. 12, 1929	600	1,500
Dec. 31, 1928		15,900	Apr. 15, 1929		177,800
Jan. 2, 1929		2,700	Do	700	10,000
Jan. 3, 1929		106,300			
Jan. 4, 1929		35,400	Total	702,760	1,702,760