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ADDRESS

TO

THE STOCKHOLDERS

OF THE

SUTRO TUNNEL COMPANY

Symmes



A D D R E S S

TO THE

STOCKHOLDERS OF THE SUTRO TUNNEL COMPANY.

Having become dissatisfied with the recent management of the Sutro Tunnel Company, the undersigned have brought suit in equity to set aside the transfer of the Company's property to other parties, to demand of them an accounting, and to prevent certain extravagant and unwarranted expenditures. In explaining to you our cause of action, we ask at the same time your support, as your interests, if not directly connected with the Syndicate or the extravagant expenditures referred to, are identical with our own.

Mr. Theodore Sutro, as the attorney and agent of the Sutro Tunnel Company, has already made to you a report covering the history of the corporation, its financial situation, and the present and prospective value of its property. Many of you are familiar with this report; but for the benefit of those who have not learned the early history of this company, we would state it in brief as follows:

The Sutro Tunnel Company was incorporated in 1869, commenced work in October of that year, and completed the Tunnel to the Comstock Lode, a distance of over 20,000 feet, about twelve years later. It was built as an exploring and draining tunnel, to connect with the celebrated Comstock Lode, in the State of Nevada, at a point 1700 feet below the surface, with the

object of ventilating and draining all the mines of the Lode from that level, and to serve other mechanical purposes, in the discharge of ore horizontally from this point, instead of vertically to the surface, as had hitherto been done. After completion to the Comstock Lode, it extended two lateral tunnels, connecting with the twenty-seven mines of that district, and by contracts made with these mining companies, it was to receive from the mines a royalty "for draining and other benefits." The rates last fixed (and until notice of this suit paid) are one dollar a ton for ore of forty dollars or less value, and two dollars a ton on ore yielding over forty dollars per ton. Further charges are allowed for ore when transported through the Tunnel, but the above rates have been paid upon all ore extracted from these mines in acknowledgment of its value for drainage, ventilation, etc., and in accordance with contracts made years ago as an inducement for the execution of this work. Funds for use in its construction were borrowed from Messrs. McCalmont Brothers & Co., of London, early in 1877, and as security a mortgage was given upon all the property, to draw interest at twelve per cent. per annum, and in default of payment of interest when due, the entire sum, principal and interest, to become due and payable. Default in payment of interest was made on January 1st, 1881. A suit for foreclosure was commenced March 22d, 1886, on an alleged indebtedness of \$997,853.52, and the trifling interest account additional of \$638,872.71. A receiver was appointed by the Court March 31st, 1886, and he has remained in charge ever since until very recently discharged, because of the final sale and transfer of the property. By the aid of your proxies Mr. Sutro was enabled to elect, in April, 1887, a Board of Trustees of his own selection, the majority of whom had a large personal interest in

the Company, and all of them willing and anxious to do the best possible for the interests of all its shareholders. Also, by the aid of your proxies, Mr. Sutro amended the By-Laws so as to provide for a new officer of the Company—an attorney and counsellor, who should have *full charge* of all the legal affairs and business of the company—and he was himself duly elected such attorney and counsellor. This Board of Trustees allowed him an ample sum for his expenses, granted him an allowance of \$400 per month, on account of his fee, and provided him with full powers of attorney to make a settlement of the impending mortgage, and to raise a sufficient sum of money to satisfy the same. By his efforts, in his capacity of attorney for the Company, a compromise with the mortgagees was effected on the basis of six per cent. instead of twelve per cent. interest, the same rate of interest to be credited on payments previously made by the Company and final settlement to be made on January 1st, 1888. This satisfactory settlement, although fully agreed upon in June, 1887, was first announced by circular to the stockholders on November 15th, but six weeks before the expiration of time for settlement. In that short time the stockholders were called upon to hand in to the so-called Executive Committee \$1,000,000. From this time on, the Executive Committee, who appear to have been self-appointed, assumed control, with Mr. Sutro's assistance, of the business of the Company, issued circulars to the stockholders, and generally usurped all the functions vested by law in the Board of Trustees. Alarmed at such unwarranted and anomalous conditions, and at the utter failure of Mr. Sutro's efforts to raise money for the Company, the Trustees seem to have endeavored to resume their duties; but it was too late. Under their direction, the Secretary proceeded to New York, to reason with the

President and the Executive Committee, and to explain what to them seemed a perfectly simple and natural solution of the difficulties. But the bit was already in their teeth, and all suggestions from the Trustees were disregarded. Every effort of the Trustees only increased the wrath of Mr. Sutro; and, at the annual meeting, in March, 1888, these Trustees, owners of many thousand shares of stock, subscribers to many thousands of dollars worth of bonds, were by the use of your proxies, which were entrusted to Mr. Sutro to be used for the *greatest good* of the Company, replaced by gentlemen who, however unexceptionable in themselves, had no interest in the Company, and with one exception, not owning a share of stock, nor subscribing to a single dollar's worth of the bonds of the Company. By this—the present—Board, Mr. Theodore Sutro was made President of the Company at a salary of \$500 per month, and was also re-elected attorney and counsellor of the Company.

Observe here the sequence of events. The mortgage compromise, effected in June, 1887—announced November 15th, 1887—its time of expiration only six weeks later; a Syndicate of capitalists formed in February, 1888; the interested Trustees dismissed, and an uninterested Board elected in May, 1888; the mortgage purchased in June, and the acts of the Syndicate approved by this Board in August.

The key-note of these entire proceedings is to be found in that most remarkable document—the Syndicate Agreement. Note its significance to the shareholders not connected with or directly benefited by the same. To all such this address is principally made. For a nominal guaranty of \$550,000 by the Syndicate, the members thereof are to receive in proportion to the amounts subscribed, 1st, \$50,000 in cash, and 2d, \$200,000 in four per cent. income bonds,

provided, as stated in the circular of the Executive Committee of November 15th, that a plan of "reorganization *without foreclosure, if possible*, be adopted"; if, however, a plan including foreclosure be adopted the members of the Syndicate were to receive, *in addition* to the above, 3d, all the shares not represented by subscriptions to bonds, and 4th, all the bonds these unsubscribed shares would be entitled to, if they had subscribed. In order therefore to obtain the fullest extent of this profit *to the Syndicate*, it was necessary to foreclose the mortgage, sell out the property to themselves, and transfer to a new company. This has now been done, and you are promised—as bond subscribers—equal shares and bonds in the *Comstock* Tunnel Company, with a bonded indebtedness of about two and a quarter millions of dollars—to replace the shares which you gave up and the original bonds you subscribed for in the *Sutro* Tunnel Company, with a total indebtedness of less than a million dollars. It is only necessary to consider the above conditions to see that foreclosure, sale and a new company were foregone conclusions, and Mr. Sutro's allegiance then seems to have been transferred to the moneyed side. The bargain was, however, not without consideration on both sides. Mr. Sutro demanded an absurdly extravagant fee, and seems to have given his services in his dual capacity to the side able and willing to guarantee that fee. The Syndicate required, on the other hand, the acquiescence of the *Sutro* Tunnel Company that all might go smoothly with their plans, and apparently did not hesitate to secure the services of its attorney and counsellor and attorney-in-fact, armed and equipped as he was with full powers. His demands were high, but they must have him. It would appear that they rather admired his style—for if his services were worth a hundred thousand dollars, theirs must be worth a

million, at least—and, between the two, the Syndicate Agreement was cooked up with ample provision for both. Mr. Sutro brings it to this Coast for your Trustees to ratify, which they did—with a reservation. Terms being agreed upon, everything now goes merrily on. The suit assumes a friendly form. Stipulations between counsel were only necessary, and a judgment was quickly rendered for the Union Trust Company, the substituted mortgagees, for the sum of **\$1,419,314.22!!** And, why this sum? And when and how did we come to owe it, and on what authority should our President and attorney confess to such a judgment? Let us consider the situation of the stockholders, who are losing, not making, money by these transactions! They had employed counsel, had given him all the money he asked for, both for his own uses and for his expenses, had given him the fullest powers to conduct their affairs, and had, with complete confidence, “held up his hands” in every possible way. They had congratulated him on his success in *reducing* the debt to less than \$900,000, and felicitated themselves on the same result; but imagine their astonishment at learning that their trusted attorney had suddenly *arbitrarily increased* their debt about *sixty per cent.*, and had *confessed judgment* on their behalf for the whole amount! Such a result is bewildering and overwhelming!

The Comstock Tunnel Company has now been formed, has taken over by formal purchase the property of the Sutro Tunnel Company (though still holding a deficiency judgment of \$100,000 *in terrorem* over this unfortunate corporation), and has already issued and marketed its bonds and stock according to subscriptions. To those who have not subscribed to the bonds offered you, we say: The title to your property is already gone, but we claim that it has gone by trick if not by fraud, and therefore it is your duty

to aid us in its restoration. We expect your aid and assistance. We believe that the debt of the Sutro Tunnel Company *has been fully paid*, and when the U. S. Court shall compel the accounting we demand, we shall show you as follows;

That we have paid in our bond subscriptions more than	\$720,000
That the Receiver has paid from the income of <i>our property</i> more than	<u>254,000</u>
A total of	\$974,000
That the mortgage was purchased and the compromise made <i>for us</i> for about	<u>840,000</u>
And a balance therefore remains <i>in our favor</i> of not less than	<u><u>\$134,000</u></u>

We expect to show to you that the Syndicate has been reimbursed in full for every dollar advanced; and that your shares therefore should still have a market value, and that the Syndicate had not the slightest cause, other than to obtain their enormous commission, to crush out the Sutro Tunnel Company and declare your stock valueless. To such, therefore, as have not subscribed to the bonds offered, we say; join with us and protect your rights, and by no means sell your stock in the open market. The Syndicate declares it of no value; yet we believe it is the only purchaser at the prices now offered. Your stock has been rendered useless by a high-handed trick, after you had paid off every dollar you owed upon your property.

To those of you who *have* subscribed to the bonds of the Sutro Tunnel Company, and are now offered the bonds of another company instead, we say: The Trustees of the Sutro Tunnel Company never authorized the funds subscribed to *their* bonds to be

diverted to any other purpose, and your Comstock bonds, if accepted, are of *very questionable value*;—further than this, if you fail to join our protest, you are practically *giving away* to the Syndicate more than a quarter of all the stock of your Company, and about a third of all the bonds issued. Do you consider this a good thing to do? The Comstock Company has no just right to issue more bonds than are properly subscribed and paid for, except the \$200,000 which your Trustees practically approved of, if settlement could be made “without foreclosure.” If you submit to these proceedings, you reduce the value of the bonds you hold more than twenty-five per cent. Most extravagant and ridiculous fees and expenses have been contracted, without the proper authorization of your Trustees, and we propose that those fees and expenses shall not be paid out of *our* property or *our* bonds. Let us join together a strong force to prevent it. The true interests of the stockholders have apparently never been thought of by Mr. Theodore Sutro or his Syndicate; and whether bond subscribers or not, you are all—except members of the Syndicate and the Committees—directly interested with us.

We feel sure that we can prove to you—in fact, that it must be plainly apparent to you—that the foreclosure sale and transfer of the property of our Company was for the benefit of the Syndicate alone; that your interests were safer and more valuable in the Sutro Tunnel Company than in the Comstock Tunnel Company. But it was only by the transfer that the Syndicate could become possessed of, say, 500,000 shares of stock and \$500,000 in bonds, and it was only by consenting to and arranging the transfer, that Mr. Theodore Sutro could obtain, what your Trustees apparently would not agree to—a fee of such magnificent proportions as \$100,000.

That is the whole matter in a nutshell.

We do not attack a Syndicate of the heaviest capitalists of Wall street without knowing the undertaking, and being possessed of the necessary staying powers. Three stockholders are but few, but we are large holders of both stock and bonds, and with right on our side are well armed for the fray. We invite your aid. We ask it in behalf of *justice*, of *honesty*, and of *right*, and to condemn *fraud*, *dishonesty* and *wrong*.

Following the Syndicate agreement on the records of the Company we find the following very interesting and affectionate letters, which we reproduce for your entertainment, and as an evidence of harmony and good fellowship closely interwoven between the parties named. In the light of the Syndicate agreement and these letters, can we fairly believe that these parties have labored for *our* best interests, or only their own?

(A.)

[COPY OF COPY OF LETTER.]

NEW YORK, May 7th, 1888.

THEODORE SUTRO, ESQ.—*Dear Sir*: The understanding on the part of our Committee of the terms upon which you undertook to defend the rights of the Sutro Tunnel stockholders in the pending foreclosure suit threatening their existence as such was that you were to receive a fee, contingent upon your final success. Before you left New York for San Francisco in February, 1887, we understood that the amount of said fee was to be One Hundred Thousand Dollars (\$100,000), and was not to be dependent in any way upon your securing a reduction of the claims under the McCalmont mortgage, or of your raising funds to satisfy said claim, but based simply upon the condition precedent of your final success in preventing the foreclosure of said mortgage by and in the interest of the present mortgagees, and which would result in the exclusion of all the stockholders of the Sutro Tunnel Co. In presenting to you this written statement of the understanding between us we desire to take the opportunity to place upon record, as well as to convey to you an expression of our estimate and appreciation of your services in behalf of your clients, the stockholders, whom we represent. We feel that these services have been *arduous*, *exceptional*, *extraordinary* and *distinguished*, combining at once, as they have, services *legal*, *literary*, *financial* and *practical*, requiring abilities of a superior order.

Since the time when you were with difficulty persuaded to take

ment, dated 12th day of June, 1888, relating to the reorganization of the Sutro Tunnel Company hereby *agree to accept* the sum of Ten Thousand Dollars in full compensation for our services in all matters pertaining to our duties as members of said Committee.

(Signed)	H. R. BALTZER,	} <i>Reorganization Committee.</i>
	OTTO LOWENGARDE,	
	THEODORE SELIGMAN,	
	P. C. A. M. VAN WEEL,	
	GORDON McDONALD,	

(The italics in these letters are ours.)

Mr. Theodore Sutro, in his report of July, 1887—lays great stress upon the trials he had to undergo in his negotiations for you, and becomes almost pathetic in the relation of the sacrifices made in your behalf. The records of the Company show some little balm—golden balm—prescribed from time to time for his relief, and always at his suggestion.

We note a few items from these records:

Paid him by Executive Committee previous to May, 1888,	\$2,100 00
Paid him by Receiver previous to May, 1888,	3,900 00
Paid him by Trustees previous to May, 1888,	10,800 00
Paid him by Trustees, June, 1889,	430 29
Paid him by Receiver,	6,000 00
Paid him 13 months' salary, at \$400 per month,	5,200 00
Paid him 13 months' salary, at \$500 per month,	6,500 00
	<hr/>
	\$34,930 29

Among items in expense account rendered. the following are interesting as well as instructive:

Telegrams,	\$244 17
Newspapers,	106 85
Clerk hire,	740 76
Evarts, Choate & Beaman,	1,000 00
Traveling expenses—"trip from New York to California and return, and from San Francisco to Nevada and return" in 1887,	1,479 01
Total of bill of expenses rendered May, 1888,	8,316 70
Traveling expenses—trip as before—January 4, 1889,	1,214 97
Clerk hire,	344 90
Total of expense bill, January 4, 1889.	2,047 95

In addition to the fee to Messrs. Evarts, Choate & Beaman, we find that your hundred-thousand-dollar lawyer has employed other legal talent to the extent of about \$8,000.00.

Why should the stockholders of the Sutro Tunnel Company feel it in any way incumbent upon them to pay Mr. Sutro \$100,000 more? Why should the Comstock Tunnel shareholders wish to do so?

It would hardly seem possible that Mr. Sutro could be *willfully* extravagant or unreasonable in these expenditures, for he should certainly be interested in the entire Company. *He owns ten shares of stock*—one two-hundred-thousandth part of the entire property.

One of the undersigned remonstrated at these proceedings as early as August, 1888, and when in April, 1889, he spoke in plain language of the mismanagement, President Sutro fired up and promised a suit for libel. The facts here stated cannot be denied.

Mr. Horace H. Thayer, of New York City, has been Assistant Secretary of your Company since March, 1887. For valuable services rendered to the Company, previous to this date, your Trustees awarded him \$1,250; he has received since March, 1887, a salary of \$250.00 per month, or \$6,750. Total, \$8,000. He has been allowed \$50.00 per month for office rent and all other claims for expenses connected with his office—and as all the Trustees' meetings, books of record and accounts have been kept in San Francisco, his labors for you in New York certainly have not broken down his health. Mr. Thayer has been a member of the so-called Executive Committee, and signs as its Secretary and Treasurer. Do you feel that you owe him yet \$5,000 for his service upon that Committee? Would his private opinion of this suit be deemed an entirely unqualified one?

Mr. Herman R. Baltzer, of New York City, has been Chairman of the so-called Executive Committee, and by that Committee appointed to membership of the Reorganization Committee. Do you believe that you should pay him the sum of \$5,000 for his services

upon these Committees as a reward for the prompt and handsome manner in which he has, by the aid of your worthy President, turned your property over to the Syndicate, and increased its debt about a million and a half?

The so-called *Executive Committee*—consisting of Messrs. H. R. Baltzer, H. H. Thayer and Otto Lowengarde, all of New York City—was never authorized or appointed by your Board of Trustees; has never volunteered or been compelled to report to them; but has been, apparently, very active and energetic in aiding your President to dispose of your property, and, doubtless, believes it has succeeded. This Committee has a very high estimate of Mr. Sutro's great talents and all-around abilities (see Letter A) and a fair valuation of its own (see Letter C), and is also generous to its friends (see Letter B.)

The members would "accept" \$15,000. Shall we insist upon their taking it?

The *Reorganization Committee*—consisting of Messrs. H. R. Baltzer and Otto Lowengarde, appointed by themselves from the Executive Committee, and of Messrs. Theodore Seligman, Gordon McDonald and P. C. A. M. Van Weel, appointed by the Syndicate—was organized at the suggestion of the Syndicate and provided for in the Syndicate agreement. This Committee has never reported to your Trustees, or recognized their authority as representing any legal control of your property. In reply to inquiry from one of the undersigned, Mr. Baltzer, Chairman, replied that "*The Committee has nothing to do with the management of the affairs of the Sutro Tunnel Company,*" yet you have received their circulars and know better. They have done just enough for, or against, your Company to be willing to accept \$10,000 for their valuable services (see Letter D).

Will you present them with the \$10,000 asked?

The Syndicate is the party of New York capitalists who subscribed as below to a guaranty-fund, such portion of which was to be used as necessary in the purchase of the McCalmont mortgage; this fund to be contributed only after you—the Sutro Tunnel shareholders—had subscribed and paid in *not less* than \$550,000 toward the amount of that purchase. It is composed of—

J. & W. Seligman & Co., of New York, subscribing	\$150,000
Robert Fleming, by J. & W. S. & Co., of New York, subscribing	105,000
George W. Stern, of New York, subscribing	110,000
P. C. A. M. Van Weel, of New York, subscribing	100,000
H. Stursberg, of New York, subscribing	25,000
Ladenburg, Thalmann & Co., of New York, subscribing	25,000
H. P. Goldschmidt & Co., of New York, subscribing	15,000
Maitland Phelps, of New York, subscribing	10,000
E. W. Clark & Co., of New York, subscribing	10,000
Total,	<u>\$550,000</u>

The Syndicate Agreement, a document announcing the terms and conditions of the above subscriptions was brought to California by your able President, and by him recommended to your Trustees for ratification. It was ratified by them August 10, 1888: but only “so far as it relates to *non-foreclosure* of this Company.” These two plans were submitted by the Syndicate, and, by its own terms, and Mr. Sutro’s, it was to be paid for its guaranty, 1st, six per cent. interest upon all advances; and, in case of non-foreclosure, 2d, \$50,000 in cash; and, 3d, \$200,000 in bonds of this Company,

these payments to be granted, even if your subscriptions had left but \$50.00 to be advanced. The second plan, based upon foreclosure of the mortgage, granted to the Syndicate, *in addition to the benefits as above*, all your shares, which failed to subscribe to the bonds, and all the bonds in the new Company to which you would have been entitled if you had subscribed; and these shares, numbering over 500,000 of the Sutro Tunnel Company, and the bonds which would have cost you (at 55 and 60 cents) at least \$275,000 cash, by this second plan the Syndicate is to have *for nothing*.

The option on the two plans was intended to remain with the Syndicate, if it was not "in its opinion sufficiently reimbursed." The Syndicate seems to have preferred the second plan. We expect to show that it has been *extravagantly* reimbursed.

The question has arisen, how, at this late date, can our property be reclaimed? And our suit in equity is the answer. We think that we have a good case. We were led to believe that foreclosure was to be avoided if possible. We subscribed to the utmost of our means upon that ground, and we have been deceived. The Trustees refused to countenance the foreclosure, the so-called Executive Committee had no authority to act for us, and our President, without our consent, has confessed judgment against us. The Trustees have not assessed and sold out the stock according to law. We subscribed to certain bonds and gave all the income of the property to pay off our mortgage, and have more than paid it. The Syndicate was to make up any deficiency in our bond subscription, and the Union Trust Company to hold the property *in trust* till the Syndicate was reimbursed. The Syndicate has been reimbursed, and we demand our property. The sale and deed to the Union Trust Company, although unnecessary, was only a mortgage and so acknowl-

edged, and in the light of the law—once a mortgage always a mortgage.

One word as to the value of the property: Do not pass it over lightly. Mr. Sutro valued it in 1887 at ten million dollars. It is probably worth it. Let us hold on to it and fight for it. We own a tract of mineral wealth seven miles long and nearly a mile wide, crossing the richest gold and silver vein in the world. We have approached this vein from one side only and have passed and ignored ore running as high as \$233 a ton. Let us do some legitimate mining, and bore into Mount Davidson rather than into each other's pockets, and obtain our wealth from the Comstock rather than by scheming on Wall street.

We have an income from royalties of from fifteen to twenty-five thousand dollars a month—coming from *the mere existence* of the tunnel—without working a pound of ore, and at a mere nominal expense.

Do not sell your shares! If you have already taken Comstock shares in their stead, hold on to them; join our action, and with a ten million property and one million *honest* debt, let us put the stock where it belongs—to \$5.00 a share.

Comstock shares and bonds are already offered and sold in the New York market. Have they been generally distributed? We have not received or been offered them. Has anybody but the insiders received them? If so, why is it? Do the insiders wish to unload their 500,000 shares before we are supplied at all?

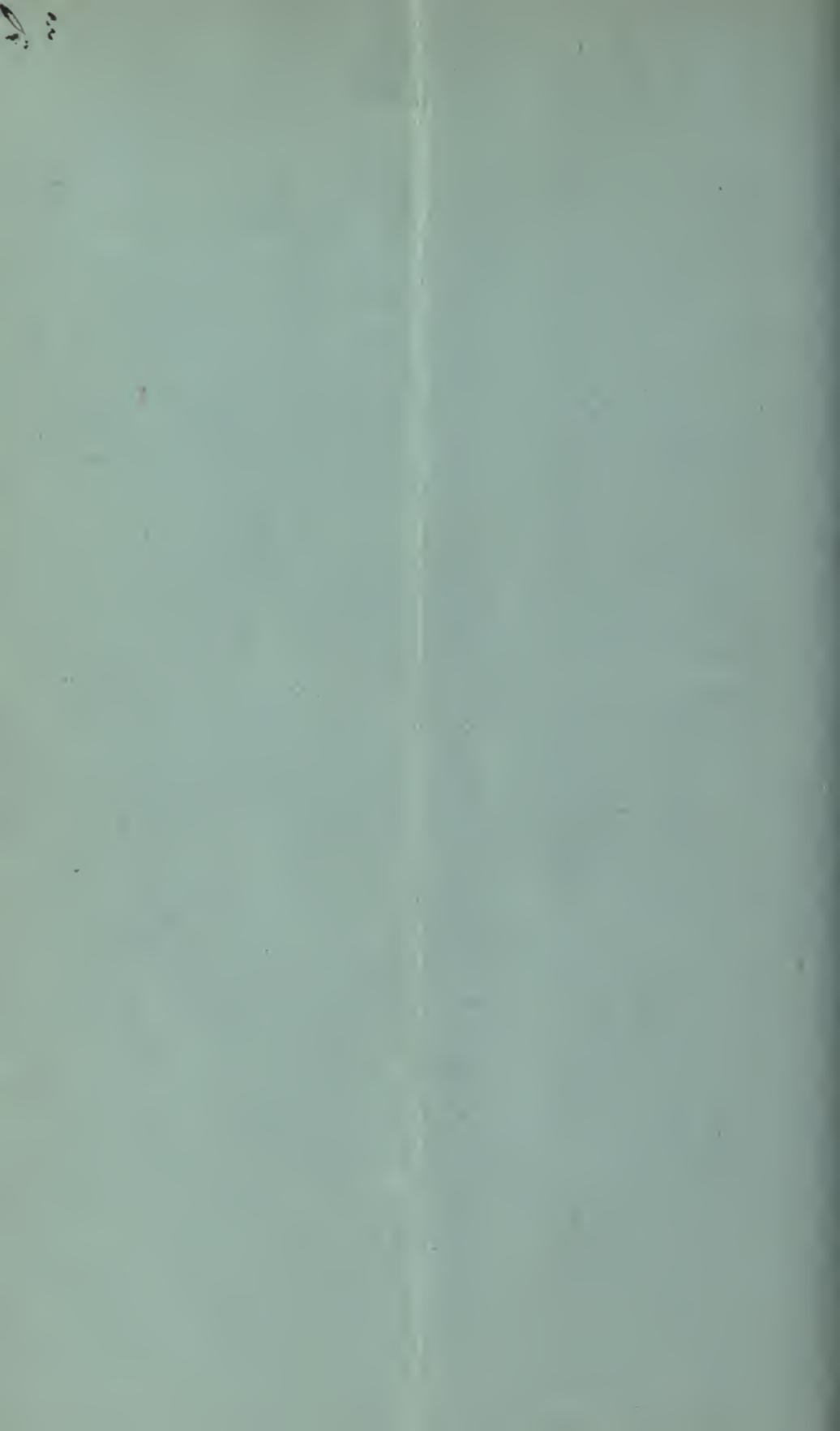
Send your address, stating number and kind of shares, certificates or bonds which you hold, to Frank J. Symmes, 222 Sutter street, San Francisco.

Give us your own opinion of affairs, and ask for any special information desired.

FRANK J. SYMMES, San Francisco, Cal.

JOSEPH ARON, 30 Rue Bergere, Paris, France.

FAIRFAX H. WHEELAN, Santa Barbara, Cal.







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