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TO THE

SHAREHOLDERS

OF THE

COMSTOCK TUNNEL Co.

OTHER WORDS

BY

FRANK J. SYMMES

OCTOBER 3, 1890





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To the Shareholders of the Comstock Tunnel Company:

Your President has assured you, in his most remarkable communication of September 8th, that you would hear from us again. We are happy to be able to prove the absolute truth of this one statement. Our former communications were not intended as complimentary to his business capacity or his integrity of purpose, but it was hoped we might stir his moral sensibilities. It would appear that we have found none, but have aroused the other kind. He has given you there a striking indication of his character, and the friends who still believe in him must be very proud of his temper.

You probably have no interest whatever in “Mr. Symmes and two others,” or Mr. Sutro’s opinion of them, if you may only have your property well managed. This diatribe of abuse sent out from the “Office of the Company” is a disgrace to the office. It is blackguardism befitting the Bowery, shows nothing but Mr. Sutro’s weakness, and does not touch upon the points at issue in our suit against the Conspirators. This pamphlet alone should win our case. The object of our suit is to prevent the payment from our property of

- 1st. \$100,000 in money, bonds or shares to Mr. Theodore Sutro.
- 2d. \$25,000 in money, bonds or shares to Messrs. Seligman & Seligman, Attorneys.
- 3rd. \$10,000 in money, bonds or shares to the Reorganization Committee,—H. R. Baltzer, Otto Lowengard, Theodore Seligman, P. C. A. M. Van Weel, Gordon McDonald.
- 4th. \$15,000 in money, bonds or shares to the Executive Committee,—H. R. Baltzer, H. N. Thayer, Otto Lowengard.

- 5th. 551,988 shares of the Comstock, or any other company, to the Syndicate, given without consideration, whilst yours and ours have cost us many dollars.
- 6th. \$551,988 in bonds of the Comstock or any other company, to the Syndicate, without consideration, whilst yours and ours cost us from fifty to sixty cents each.
- 7th. Other unwarranted and extravagant expenses which we believe exist, and can only be shown by an accounting.
- 8th. \$272,742.50, claimed by the Syndicate as advances, for which it has not yet been reimbursed.
- 9th. To prevent the execution of a deficiency judgment for \$101,365.13, which has been cooked up and yet hangs over the Sutro Tunnel Company.
- 10th. Last but not least, to prevent any assignment of the contracts between the mining companies and the Sutro Company; as such action imperils the entire property.

Mr. Sutro may tell you that these things have been done already, and therefore cannot now be prevented. We believe that they have not been done legally; and if the courts are formed for the purpose of awarding justice between man and man, we are convinced that all these acts, as already done *will be set aside*. You may be told that it was necessary to foreclose on the old Company and form a new one—else some shareholders who did not buy any bonds might be benefited. And to carry out their plan, the Reorganization Committee made you surrender your Sutro shares when you subscribed to a Comstock bond, when the one has no true connection with the other.

If you yet believe that the Comstock Tunnel Company was incorporated *for your benefit*, look at its record for the *first day* of its stock issue (November 12th), and note



who were the first parties thought of in the dividing-up, and how liberally they were served.

	SHARES.
<i>Stock Issued to</i>	
<i>H. R. Baltzer</i> , Chairman Reorganization Committee,	5,000
(Directory says "Merchant.")	5,000
	5,000
	5,000
	5,000
	25,000
	92,000
<i>Joseph E. Cahill</i> ,	
(Directory says "Clerk" also "Plumber.")	3,727
Care Lowengard & Stern.	3,727
(Lowengard—Reorganization Committee; Stern—Syndicate.)	14,908
Also November 15th,	30,000
" " 	100
" " 	12
<i>Victor Marache</i> (Care Lowengard & Stern),	3,727
(Not in Directory.)	
Also, November 20th,	1,000
<i>Elisha Dyer III</i> (Care Ladenburg, Thalman & Co.)	100
(Directory says "Clerk.") (Syndicate.)	
<i>O. Schmidt</i> (Care Ladenburg, Thalman & Co.)	18,536
(Syndicate.)	
<i>James M. Lennon</i> (Care Maitland, Phelps & Co.)	7,454
(Not in Directory.) (Syndicate.)	
<i>Herman Stursberg</i>	18,636
(Syndicate.)	
Also, November 16th	8,137
<i>John Tierney</i> (Care H. P. Goldschmidt & Co.)	11,182
(Syndicate.)	
Also, November 18th,	3,400
" 22d,	2,200
<i>C. Wallach</i> (Care Kahn, Loeb & Co.)	55,909
(Directory says "Clerk.")	
Also, November 20th,	3,400
<i>Stephen E. Haas</i> (Care W. & J. Seligman & Co.)	40,998
(Not in Directory.) (Syndicate.)	7,454
<i>F. Strauss</i> (Care W. & J. Seligman & Co.)	111,815
(Directory says "Clerk.") (Syndicate.)	74,543
	37,272
Also, November 19th,	400
" " 	200
" " 	250
" " 	400
" " 	2,000
" " 	4,000
" 25th,	16,000
December 10th,	34,500
" " 	10,600
" " 	650
" " 	32,082

There were thus issued, November 12th, twenty-two certificates to eleven persons, aggregating just 551,988

After this laborious undertaking of November 12th, your President and Secretary appear to have required a rest of two days, as no further stock appears to have been issued until the 15th, when twenty-five certificates were disposed of; and, apparently still weak from the labors of the 12th, but nineteen certificates were issued on the 16th.

By a singular coincidence this number of shares issued November 12th (551,988) corresponds exactly with the number in the Sutro Company which failed to subscribe to the bonds. It would appear, therefore, that the Syndicate was very careful to deal out first its own shares, which cost nothing, and to wait a little and perhaps try the market before issuing yours. How long did you wait after November 12th? And why is it, if these gentlemen were justly and honorably entitled to these shares, that they thought it advisable to issue nearly all of them in the names of other parties—principally clerks? Only one member of the Syndicate accepted his share of this day's plunder in his own name.

Now, one word as to the *justice* of this day's labor. 551,988 shares of the Sutro stock were evidently held by people who could not buy bonds. Many of them—whom we have heard from—bought their stock at *five to eight dollars a share many years ago*. Are you willing to be a party to this transaction to rob them of the small value of a few cents a share which the Comstock shares, if granted them, are worth to-day, in order to give it to this Syndicate which has helped itself so extravagantly?

551,988 shares of Sutro stock thus condemned and made worthless and 551,988 shares of Comstock stock dealt out to the Syndicate the very first thing, that they may use them to retain the control of the Company and continue the same methods of management. Are you willing thus to be used as a cat's-paw to rob the poor to give to the rich?

According to this Committee's method of reorganization and Mr. Sutro's claims, these gentlemen are entitled to these shares. Therefore, if you do not protest with us, you are consenting to this action, and consenting that Mr. Sutro and others in power shall have for fees and services just what they may fancy those services worth.

Mr. Sutro may declare how tenaciously the Syndicate holds to its shares, but the records show a very different story.

Why is it that Mr. James M. Lennon (*Care Maitland, Phelps & Co.*, of the Syndicate), who received on that red-letter day—November 12th—7454 shares, transfers to Frank L. Dunnell (also *Care Maitland, Phelps & Co.*) and to Robert Kneass *all* his shares within thirty days, and Mr. Dunnell disposes of nearly all of his in lots of from 25 to 2500 shares soon after.

Mr. James Tierney (*Care H. P. Goldschmidt & Co.*) receives, November 12th, 11,182 shares; he transfers to Wm. Finer (also *Care H. P. Goldschmidt & Co.*), January 13th, 11,182 shares, and Mr. Finer sells to Robert K. Kneass 500; to E. A. Anderson, 500; L. Lindenthal, 200; E. A. Anderson, again, 500; Geo. B. Ritter, 200; C. N. Moss, 50; and to J. L. Moss, Jr., 32. This is the way Messrs. Goldschmidt & Co. hold on to their shares.

Mr. F. Strauss (*Care J. & W. Seligman & Co.*) receives from the Company fourteen certificates for 324,712 shares, and from "H. R. Baltzer, Chairman," one for 25,000 shares, making a total of 349,712 shares. (Mr. Strauss did not appear as a shareholder in the Sutro Company.) He transfers to

	SHARES.
Stephen E. Haas (<i>Care J. & W. Seligman & Co.</i>)	37,272
Henry Stern * " " " " " "	3,700
David O. Davenport † 40 Wall Street,	7,254
Louis Flossheimer (<i>Care J. & W. Seligman & Co., London.</i>)	800
Emile Erlanger & Co. (<i>Care J. & W. Seligman & Co. London.</i>)	6,400

*Stern deals them out—to Robert K. Kneass, 500; to D. S. Gorman, 1400 and to Geo. B. Ritter, 100.

† Davenport sells to Robert K. Kneass, 1,000.

L. Lindenthal,	300
Carl Pollitz, Frankfort, Germany,	2,000
Siegmund Brunner, Frankfort, Germany,	500
Carl Herzberg, " "	300
Carl Frier, " "	150
Louis Jager, " "	50
Max Baer, " "	2,750
Joseph Baer, " "	800
Herman Kahn, " "	700
Felix Sachs, " "	50
Mrs. Bella Goldschmidt, Frankfort, Germany,	50
L. A. Ricard Abenheimer, " "	200
M. I. Kercheim Sœhne, " "	850
Frank Blydenberg, 60 Broadway,	1,000
D. S. Gorman,	500
E. W. Kingsley,	8
Alexander Mayer, Frankfort, Germany,	100
Robert H. Shannon,	100
Eugene Small (Care W. & J. Seligman & Co.)	4,000
R. M. Hening, " " " "	4,000
Thos. H. McGovern* (Care H. Conlent, 72 Broadway)	4,000
F. A. Doyle,† 198 Broadway, for Symmes, Aron, Wheelan,	50

We cannot come up to the standard of stock-gamblers, such as Mr. Sutro pictures us; but, in our simple understanding, this is what we call "unloading" on the market about as fast as it could safely be done. Even our little fifty shares seems to have come out of the Syndicate pot. Mr. Sutro, in his virtuous indignation, tells you that "the charge that the members of the Syndicate have sold out their stock is as malicious as it is mendacious." We call this one of the prize "whoppers" of his wonderful collection, and we give you only a portion of our evidence. How many more shares have been worked off on the market that have not come to the office to be transferred can only be imagined from the remarkable eagerness of the party in power to obtain your proxy, *as a rebuke to us*. You may rest assured that this feverish anxiety to obtain proxies for their use indicates that they are not as con-

* McGovern accommodates O. E. Hoag, 500 shares; Mrs. Ellen Ponsland 300 shares; Geo. W. Ponsland, 300 shares; P. Bates, 200 shares.

† As our shares (35,250) are locked up with the Union Trust Company, we recently purchased a few through Mr. Doyle to give us some rights in the Comstock Company, and behold the Syndicate unloads theirs upon us. They are inclined to be accommodating to *any one* who needs them.

fident of their position as they would have you think, and if the presidency is not a bed of roses, it is worth holding on to, and the chances for fat fees among such friends may come round some time again. But even in the same circle Mr. Theodore Sutro has not always been so highly rated. In March, 1887, Mr. Otto Lowengard wrote to Mr. Joseph Aron concerning him: "I wish we could deal with a first-class, able lawyer. I do not think he is." What induced Mr. Lowengarde afterward to consent to giving him such a first-class fee? Was it Mr. Lowengard's own fees on the Reorganization Committee and on the Executive Committee? And are you willing to send your proxies to-day to this same Mr. Lowengard that this kind of a management may be continued?

Mr. Sutro criticises the writer of this article for sending out letters written upon the paper used in his business, as if advertising San Francisco manufactures all over the world. How carefully has he concealed *his* business in this wonderful tirade of billingsgate. And who would ever imagine that its author laid claim to respectability as an attorney and counselor? We will not be out-done by him in the advertising line, however; and as he has been so generous toward us (at your expense, no doubt), we will return the compliment at our own, and proclaim his profession as widely. You may learn in time that the *fees* of his profession are his chief aim, and the salaries in two Presidencies over the same property only secondary considerations.

One of us is called a "traitor," because he "originally subscribed to the reorganization and foreclosure plan, and then made war upon it." How many would have rebelled with us had they obtained but a fraction of our information? Our indignation arose when that hundred-thousand-dollar fee was talked of, and it burns brighter and stronger every day. The "war" has

but just begun. Our "impertinent" letters were intended to obtain information to which we were entitled and it would have been well for your interests if there had been a thousand or more as impertinent as we.

Mr. Theodore Sutro cannot afford to attack Mr. Joseph Aron, even if he dwell upon another continent. If he could serve the Sutro Tunnel Company as a President as honestly and faithfully as did Mr. Aron for years, and retire with as good a record, he need issue no pamphlets in any attempt to cleanse his reputation.

Mr. Aron believes he has just grounds to suspect the name of Sutro, yet he stood by Mr. Theodore, as every one of us did, until the hope of that hundred-thousand-dollar fee obscured all our interests, and as it could only be obtained through a new Company, your President sold us out, apparently agreeing to give anybody anything that might be left, if that fee could only be secured to him. Mr. Aron is fighting to maintain the name of Sutro now for the Tunnel, but he values the name for no other purpose than for a hole in the ground.

Mr. Wheelan of Santa Barbara, has also written some "very impertinent" letters, for he too wanted the privilege of protesting when he saw so much of the property about to be swallowed up. If Mr. Wheelan's chief sin lies in his not appearing "as a stockholder of record until after the *preliminary* steps in the foreclosure plan had been completed," how your President must hate himself that he has not been "of record" in your Company, even as late as July 31st, 1890. We have charged him with not being a shareholder, for the books did not show him as such; but if the truth was known, it would be found that he had to accept a portion of that magnificent fee in shares of your Company, and later developments may show that it has been locked up in some one else's name, so

that he could not unload it upon the market before the Syndicate should work off the half million shares which it obtained for nothing.

Mr. Sutro urges you to read his "Synopsis of Answer to our suit: so do we, and we recommend "Some Words" of ours to accompany it. They go well together. He tells you of the "one glaring fact" that he wishes to bring to your notice "*first, last and all the time,*" that until some wicked gamblers commenced this law suit, "1300 or more shareholders had every reason to be satisfied," for the Company had "over \$123,000 in cash" and \$861,000 in bonds unissued. He urges you to be thankful for this much remaining from the \$1,000,000 in cash, and \$3,000,000 in bonds which have recently been through his hands. Are you fully satisfied with your *share*? He congratulates you that the Company "*has no floating debt whatever.*" How about the one which will not float?

We are well aware that it is difficult for you to believe all of our statements—all at once. Hence, we are patient in our labors and shall reprint our first address for the benefit of those who have not yet received it. Our facts are chiefly gleaned from the records of the two companies—and although obtained under many difficulties, they need no corrections of consequence. With all the books, papers and attorneys at his command, with doubtless a good salary as an encouragement, and our money and yours to fight us with, your President complains of his labors to answer and defend our suit, and craves a little indulgence for delay. We have all his advantages against us, and yet we are getting on fairly well, and neither losing our tempers nor our courage.

In possession of fifty shares of the Syndicate's original stock purchased in our interest, the new shareholder obtains a transfer and asks for information. It is refused. He demands to be permitted to

examine the records. This is refused. Insisting upon his rights, he examines and copies from the stock ledger. He asks for a copy of the By-Laws. There were none. None were ever printed by this \$4,000,000 corporation. Demanding to see the By-Laws as spread upon the minutes, it was reluctantly permitted. The date of the annual meeting was previously given to him as the third Monday of October, and we so published it in our last pamphlet. In the By-Laws it was found to be the second Monday of October. Is it possible that your Secretary could have made this mistake intentionally? Mr. Sutro and Mr. Thayer evidently do not approve of our obtaining a knowledge of their doings, and Mr. Sutro wrote in reply to a request by this stockholder to be permitted to examine and make notes from the records of the Trustees, that inasmuch as "you are an attorney-at-law representing the aforesaid persons (Symmes, Aron and Wheelan), I deem it my duty, in the interest of this Company, to refuse to furnish you any information beyond what the law absolutely requires us to furnish to a stockholder of record."

They ought not to object, for we are really performing their duty—that is, publishing to the shareholders the proceedings of the Board, and doing it at private expense.

Mr. Sutro tells you that we know nothing about law, and that the Supreme Court will permit your Company to be run by any rag-a-muffin who may be picked up for the purpose, whether he owns a share of stock or not. If such is the case, is this not another and a most excellent reason why you should withdraw from such a corporation to one where such is not the case. Your own By-Laws contemplated and provided that the Trustees should be shareholders in the Company, and as a piece with all the doings of your President and Secretary, they send you a notice

of Annual Meeting and a selection from your By-Laws with the most interesting part omitted. With our compliments, we beg to give you the missing link:

"SECTION 1. The number of trustees shall be seven, *who shall respectively be stockholders in such Company.* Such Trustees shall" etc., etc.

Why did President Sutro think that four stars would look better in that paragraph than the above words which belonged there?

When we ask these knotty questions, he calls it resorting to tricks.

We have already explained that our suit is entirely against the few who have sought to make money out of the situation, and whom we term the Conspirators—and every other shareholder, who has received only as many Comstock shares as he surrendered of the Sutro shares, has exactly our interests. If we were to accept the 35,250 Comstock shares and bonds paid for by us, and awaiting us at the Union Trust Co., we should then be in your position. But we will not consent to this kind of reorganization. When we obtain our rights you will also have yours. Our suit is for the whole Company, and to win it is to save these extravagant expenditures for every share of stock equally. We ask and can obtain no personal gain, damages, fees or commissions. It is a suit in equity, and a demand for an accounting before the U. S. Circuit Court, and we are spending thousands of dollars and a vast amount of time for your benefit—far more than for our own.

Therefore you must not be misled into believing that we are trying to injure your property or that you can lose anything that you have obtained honestly.

We did not expect your proxies could be handled from San Francisco—but would arouse you to the importance of the situation, and have them placed in some reliable hands that would use them towards a

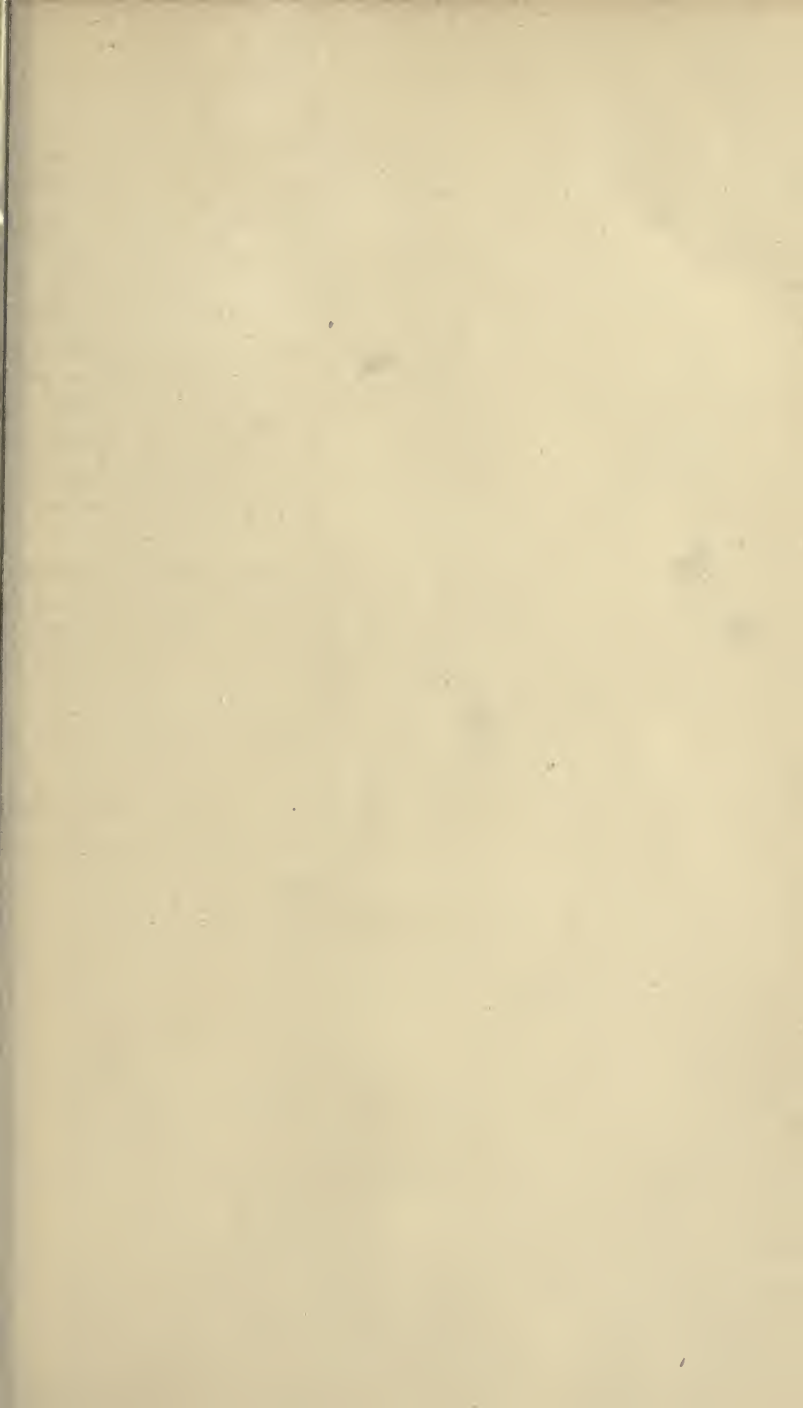
new and better management. We have not learned the trick of managing a large company without our name appearing upon its books, but we earnestly advise you to strike now whilst the iron—and Mr Sutro—are hot. We say, attend this meeting and vote for a change, and to borrow an expression from the learned counsel on the other side, we would also say “if peradventure you have already sent a proxy by mistake” to be used in favor of the present mismanagement, you can even rectify that by sending *immediately* one of later date revoking the former, to Mr. Frank A. Doyle, of 198 Broadway, who will be sure to vote for a new set of Trustees.

To win our suit would be to save *more than a million of dollars* to the shareholders, and would soon increase the value of your shares ten-fold. Can you afford to ignore it? Go and vote for reform or send proxy as above.

FRANK J. SYMMES, 222 Sutter street, San
Francisco, Cal.

JOSEPH ARON, 30 Rue Bergere, Paris, France.

FAIRFAX H. WHEELAN, Santa Barbara, Cal.





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