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THE SUTRO TUNNEL COMPANY

AND

THE SUTRO TUNNEL

**PROPERTY, INCOME, PROSPECTS, AND
PENDING LITIGATION**

REPORT TO THE STOCKHOLDERS

BY

THEODORE SUTRO

**ATTORNEY, COUNSELLOR, ETC., FOR SUTRO TUNNEL
COMPANY**

NEW YORK

JULY, 1887

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Press of J. J. Little & Co.
Astor Place, New York.

NEW YORK, July 16, 1887.

THEODORE SUTRO, ESQ.,

Attorney, etc., Sutro Tunnel Company,

Dear Sir: The stockholders of the Sutro Tunnel Company being anxious to learn the result of your investigations into its property and affairs, and what has been accomplished on their behalf in the pending foreclosure proceedings, and also your opinion as to the best course to be pursued by them, we would respectfully request you to prepare and issue, at your earliest convenience, a detailed report about these matters.

Yours truly,

H. R. BALTZER, Chairman,

H. H. THAYER, Sec'y & Treas.,

OTTO LÖWENGARD,

} Executive Committee
of the Stockholders.

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THE
SUTRO TUNNEL COMPANY,
AND
THE SUTRO TUNNEL.

I.

To the Stockholders:

THE object of this report is to give to the stockholders of the Sutro Tunnel Company a succinct and intelligible account of their property, and an idea of its great value.

This property was, a few months ago, in great danger of being absolutely lost, but may now not only readily be rescued, but made to yield satisfactory returns at once, and immense returns prospectively.

It is proposed to give herein a truthful, unbiased, and uncolored account of the

cost of the Sutro Tunnel ; its present condition ; its objects ; of what the property consists ; its past, present, and prospective income and expenses ; the probable permanence of its revenues ; and its prospects, resources, and possibilities for the future ;—also a brief history of the pending litigation for the foreclosure of the mortgage on the property ; a statement of the present condition of such litigation ; and finally, the writer's views as to how this mortgage claim had best be disposed of, so that the property may be made permanently valuable.

Every stockholder is earnestly requested, for his own protection and profit, to read the following pages carefully from beginning to end. It would be incomprehensible if, after having done so, any of you should feel disposed to lose the fruits of the great labor so far successfully performed in the effort to rescue the Company from annihilation, when, by the plan hereinafter suggested, you will not only

enhance, by many dollars, the market value of your shares (which a short time ago, in view of their imminent extinction, were absolutely worthless, not being worth, on intrinsic merit, even the six cents per share for which price they were selling on October 15, 1886), but you will eventually make them productive of substantial dividends.

Cost of the Sutro Tunnel.

ACCORDING to the sworn testimony of Mr. Pelham W. Ames (the Secretary of the Company since 1872), given in the course of the pending litigation on May 10, 1887, at San Francisco, California, the main and lateral tunnels had cost, up to the time of their completion, that is to say, up to February, 1882, for construction, repairs, and incidental expenses, and property of the Company connected with them, a little over five million dollars (\$5,000,000).

The main tunnel was begun on October 19, 1869, and had cost up to the time of its completion to the Comstock Lode on September 1, 1878, in round figures, nearly three million five hundred thousand dollars (\$3,500,000).

The foregoing calculations are without adding interest on the sums expended. With interest since the beginning of the work, and expenses since February, 1882, added, it is safe to assume that, up to the present time, the entire cost of the main and lateral tunnels and other appurtenant property belonging to the Company would amount to ten million dollars (\$10,000,000).

And yet this sum must be considered moderate; for interest on the original cost would have been enormous had not the work, compared with other similar enterprises, been completed with such exceptional rapidity—within about twelve years—a mere fraction of time, considering, for example, that, with its branches, it is of larger lateral dimensions and only one third less in length than a like adit or tunnel at Schemnitz, Hungary, which, having been begun in the year 1782, it has taken over a century to complete.

III.

Present Condition of the Tunnel.

THE condition of the tunnels, according to the testimony of Mr. Ames, also given under oath, in the course of the pending litigation on the same date already mentioned, has since their construction not deteriorated, but improved.

Mr. John Landers, the newly-elected Vice-President of the Company, and the president of several mining companies near the Comstock Lode, and for many years practically conversant with mining, writes under date of May 21, 1887, after a visit of inspection to the Sutro Tunnel, as follows:

“The examination of the tunnel and property belonging to the Company resulted in finding everything connected with this great work in fine condition. The tunnel proper, over twenty

Present Condition of the Tunnel. 7

thousand feet in length and its south and north lateral branches, nearly eleven thousand feet additional, were in perfect repair. * * * In fact, everything seemed to be in such good order that it was unnecessary to make anything further than a few minor suggestions to Captain Thomas, our Superintendent."

Mr. C. C. Thomas, an old and experienced miner, and formerly for many years superintendent of various mines on the Comstock Lode, told me, when I inspected the tunnel on April 8, 1887, that it was then in better condition than it had ever been—far better than when he took charge of it in 1880; he told me that only one small "cave" had occurred in the tunnel since that time, and that this had been cleared away and the damage repaired in a very short time and at slight expense.

To the foregoing I may add my own testimony, after a thorough inspection of the property, that every part of the six and one-third miles of tunnels is at present open and in working order. There is no obstruction anywhere for mule teams,

on the many miles of track-rails. As a large portion of this vast subterranean passage is blasted through solid rock, it must, from its very nature, be perfectly secure. Wherever there is soft or swelling ground, timbering is necessary, but these timbers, being of great size and strength, last for many years. As the old timbers, whose thickness is 10 by 12 inches, decay, they are replaced as fast as practicable by new ones of larger dimensions (14 by 14 inches). The only influences which could have any deteriorating effect upon the work would be excess of heat and of water. The former is counteracted by a system of ventilation through different shafts connected with the surface, whereby currents of cool air are made to pass constantly through the tunnels; and, as to the water, the fact that the mining shafts above the tunnel level have already been drained through it, and that those below its level fill up very slowly, renders any contingency of danger from an uncon-

trollable flood of water impossible ; whereas the water, which ordinarily flows through the tunnel, directly tends to preserve the timbers, and one of the constant aims of the Superintendent, therefore, is to keep as much as possible of the woodwork on the bottom of the tunnels submerged. Under these circumstances, watchful attention to occasional retimbering, and, perhaps, chemical treatment of these timbers beforehand, at slight expense, with, for example, a solution of sulphate of iron, will, in my opinion, preserve the tunnels in excellent condition for all time.

The experience in other mining districts in the world, where similar tunnels have been constructed (and in less favorable ground), proves that works of this kind are of an exceptionally permanent nature. For example, the great adit or drain tunnel at the United Mines, near Redruth, in Cornwall, which, with its branches, has a length of over 30 miles,

was completed in 1768, and is still in use. In the Hartz Mountains, in Germany, various tunnels to drain the mines were completed at different times between the years 1525 and 1573, and were constantly used for about two hundred years, when they were abandoned only because it was deemed advisable to build a deeper tunnel (the Deep George Tunnel, 11 miles in length), which was completed in 1799 and uninterruptedly used until 1864, when a still deeper tunnel (the famous Ernst August Tunnel, having a length of 14 miles, and at a depth of 1,200 feet) was completed, and has been used ever since.

Compared to such as these, the Sutro Tunnel, which was completed to its present state only in February, 1882, has barely begun to exist.



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other mining districts, in Spain, Hungary, England, Germany, and other countries, though not at so great a depth or in so promising a field. It was not, therefore, merely experimental, but a well-tested, thoroughly approved and generally known method for attaining the foregoing objects in the most feasible manner.

The first two of said objects, drainage and ventilation, have already been thoroughly accomplished. The third, transportation, which can be made profitable only by erecting mills and building a railroad near the mouth of the tunnel, will require additional expenditure of money for its attainment, and so also the fourth object, the greatest and most promising of all—the work of exploration.

The two last-named objects have been rendered impossible so far, because what revenue the Company has derived, or might have employed, in furtherance of the work of transportation and of exploration, has been wholly exhausted in trying

to discharge the enormous interest accruing on the mortgage on its property, which, like a huge anaconda, has for years completely sapped its energies and resources, and was a short time ago on the point of crushing out its very existence.

That the objects mentioned may best be attained by a work of this description is almost self-evident. Water is the great obstacle encountered the world over in deep mining, and in the Comstock Lode more than elsewhere, and the most expensive way of getting rid of this water is by pumping it to the surface. This has been the experience of the Comstock mining companies, and they have, in times past, expended untold millions on pumping machinery, fuel and labor for that purpose.

It is quite evident that by means of a graded drain tunnel, tapping the shafts of these mines at a depth of about 1700 feet, all water above the level of the tunnel must necessarily flow out, of its own ac-

cord, and that such shafts as have progressed to a depth below the tunnel level, may be kept clear of water by pumping it into the tunnel, so that even as regards these latter shafts, there is a saving of the 1700 feet of pumping to the surface. How enormous this saving is may be judged from the fact that between June 30, 1879, when the Chollar Combination pumps were started, and March 1, 1882, there were discharged at the mouth of the tunnel through the drain-boxes in the latter, three billions seven hundred and ninety-nine millions eighteen thousand eight hundred and twenty (3,799,018,820) gallons of water, or sixteen millions four hundred and sixty-seven thousand three hundred and fifty-five (16,467,355) tons, besides a large quantity of water not confined in the drain-boxes, and all of which immense volume of water it would have been necessary, but for the Sutro Tunnel, to have pumped 1700 feet higher, to the surface. The drainage capacity of the

tunnels is amply sufficient to handle all the water that may be expected to be pumped into them from below or flow into them from above their level, throughout the series of mines on the Comstock Lode, extending for over three miles, from the Utah Mine on the north to the Overman Mine on the south.

It is also evident that a series of vertical shafts, by means of which the mines are worked (even though these shafts may here and there be connected with each other by means of small horizontal drifts) precludes all possibility of ventilation, either in purifying the foul air, or in moderating, to any appreciable extent, the intense heat encountered at these great depths; whereas their connection with an immense underground horizontal tunnel, terminating at its mouth in the open air, must necessarily result in producing a great sweep of purifying and cooling draughts of fresh air, especially when, as is the case with the Sutro Tunnel, the latter itself

derives additional ventilation by being connected with the surface by means of a number of perpendicular shafts along its course (the shortest of which is about 500 feet deep) and provided with scientifically arranged partitions and gates whereby currents of air are regulated at will, so as to go either up from the tunnel or down to it through the shafts, forming what are known in miners' parlance as "up-casts," or "down-casts" of air.

How foul the air is in the lower levels of these mines was vividly brought home to the writer on the occasion of his recent visit to the Company's property, when, in his anxiety to inspect every nook and corner of the tunnels, he insisted on venturing, accompanied by the foreman, into a small drift running, in an irregular manner, from the South Lateral Tunnel to an abandoned and choked up mining shaft, in spite of the warning of Mr. Thomas, the Superintendent. Ventilation in this drift was of course impossible, as

there was no connection with the surface, in consequence of which the air was suffocating. We had not proceeded more than 20 feet when, for want of oxygen in the air, the candles in both our lanterns suddenly went out, and we deemed it prudent to beat as hasty a retreat as, in the darkness and over rocks and débris, was practicable.

The heat also is intense at such points as have no direct connection with the outer air, for example, at the extreme terminus or "header" of the North Lateral Tunnel, where the rock is as hot as an oven, and a momentary contact with the hand is quite a sufficient experience. Mr. George F. Becker, Government geologist, in taking the temperature of air and water at different points in the Yellow Jacket Mine, found the air on the 2,700 foot level to measure Fahrenheit 126 degrees and the water 153 degrees; whilst on the 3,065 foot level the water reached a temperature of 170 degrees.

As to the transportation of ore and waste-rock, it may be said that it is obviously easier and cheaper to work upward through the mines from the tunnel level (and all work in the Comstock mines is confined at present to the region of ground above the tunnel), and to allow the ore and waste rock to drop, by their own gravity, down on cars, to be carried out by means of these cars through the tunnel, the ore to mills, and the waste-rock to dumps near by, than to hoist them through the shafts of the mines to the surface, and to carry the ore thence far down the mountain slopes by means of a circuitous railroad, to distant mills, to be reduced to bullion. It also needs no argument to show that lumber, ice, machinery, tools, and other supplies, and lastly, men, may be transported far more expeditiously and safely to and from the mines by means of long trains of cars running through the tunnels than by means of little cages, hoisted and lowered on chains or cables, through almost in-



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justified the great expenditure of money, time, and trouble involved in the construction of this great work, will readily be answered in the affirmative by considering the extent and richness of the Comstock mining district, which had produced from the time the first mine (the Ophir) was discovered in 1859 up to the year 1880 about four hundred millions of dollars in bullion (two-thirds silver and one-third gold), and many additional millions since. That a large portion of this enormous sum has been swallowed up in "expenses" (paid principally in the shape of assessments by the stockholders of the various mining companies) may be ascribed partly to the very fact that the Sutro Tunnel was not completed sooner, so as to diminish the expense of drainage and of ventilation, and, moreover, has never been fully equipped so as to admit of being utilized for the transportation of ore; but the main cause of this enormous expense has been the insane haste and search after "big bo-

nanzas," whereby millions of tons of inferior, but very profitable, ore have been passed by and neglected; and another cause for said expense may, unfortunately, be found in stock deals, rings, and dishonest management.

The Sutro Tunnel, if freed from the incubus of the excessive interest payments on its mortgage (the legacy of a former management), and as long as confided to honest and economical yet enterprising and active hands, may readily be constituted the main factor in reducing the expense of mining to a minimum, and in utilizing the untold stores of wealth of the Comstock Lode for generations, and in thereby, at the same time, insuring for our Company a permanent and increasing revenue.

Franchises and Property of the Sutro Tunnel Company.

THE title of the Sutro Tunnel Company to its rights, franchises, and lands is the strongest possible, being derived by direct grant from the government, the original and absolute owner of the mines and mineral lands; first, from the Legislature of the State of Nevada, and then from the Congress of the United States. In view of the Act of Congress (which antedates all acts regulating the proceedings necessary in order to derive title to any mines or mineral lands from the Federal Government), the grant by the State of Nevada (whose title is subordinate to that of the Government of the United States) becomes comparatively unimportant, and need not, therefore, be more fully considered. The Company's title from the United States has

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its source in the Act of Congress of July 25, 1866, whereby the right of way is granted "for the purpose of the construction of a deep draining and exploring tunnel to and beyond the Comstock Lode, so-called, in the State of Nevada," * * * commencing "at the hills near Carson River * * * and extending from said initial point in a westerly direction, seven miles, more or less, to and beyond said Comstock Lode; and the said right of way shall extend northerly and southerly on the course of said lode, either within the same, or east or west of the same, and also on or along any other lode which may be discovered or developed by the said tunnel." Section 2 of the Act grants the right "to purchase, at one dollar and twenty-five cents per acre," an amount of public land "not exceeding two sections," near the mouth of the tunnel, also "the right to purchase, at five dollars per acre, such mineral veins and lodes within two thousand feet on each

side of said tunnel as shall be cut, discovered, or developed by running and constructing the same, through its entire extent, with all the dips, spurs, and angles of such lodes," etc. The Comstock Lode, however, and all other lodes "at the passage of this Act, in the actual *bona fide* possession of other persons, are excepted from such grant;" but such other lodes if not worked as provided by law "become subject to such right of purchase," etc.

* * * It is also further enacted, "that all persons, companies, or corporations owning claims or mines on said Comstock Lode, or any other lode, drained, benefited, or developed by said tunnel, shall hold their claim subject to the condition (which shall be expressed in any grant they may hereafter obtain from the United States) that they shall contribute and pay to the owners of said tunnel the same rate of charges for drainage, or other benefits derived from said tunnel or its branches, as have been or may hereafter be



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For the transportation of ore, rock, earth, or débris, the company is entitled to a charge of twenty-five cents for every ton removed from the mines to or beyond the mouth of the tunnel, as the case may be, for every mile from the point of connection of the tunnel with the mines, to the place of discharging it; and it is entitled to the same rate for all material conveyed from the mouth of the tunnel to the mines. The company is also entitled to a charge of twenty-five cents each way for each man conveyed through the tunnel to and from said point at the mines. The charges for transportation, however, have not as yet become operative, for the reason that the tunnel has, so far, not been utilized to any extent for that purpose.

As the tunnel is now connected with every mine on the Comstock Lode, it is, under said agreements, *ipso facto*, entitled to the payment of the aforesaid royalty for drainage from every mining company,

for every ton of ore extracted. Investing in Sutro Tunnel is therefore equivalent to investing, at one and the same time, in every mine on the Comstock Lode, as every one of the latter is tributary to the former, and not a single ton of ore can be taken out from any of the mines without some payment accruing to the Sutro Tunnel Company.

As to the validity of said agreements and their binding force upon all the mining companies, there can be no doubt, as that has been thoroughly tested, and such litigation as has arisen from time to time in regard thereto, between some of the mining companies and the Sutro Tunnel Company, has uniformly terminated in favor of the latter.

The right to purchase all mineral veins within 2,000 feet on each side of the tunnel, "cut, discovered, or developed" by it, is of incalculable value. As the right of way extends westerly for about seven miles from the mouth of the tunnel to and be-

yond the Comstock Lode, we have here what practically amounts to a grant of a section of mineral land, immediately adjoining and crossing the richest gold and silver vein in the world, of an area of nearly a mile in width and of about seven miles in length ; not only this, but under the language of the act the right of purchase extends, moreover, within 2,000 feet of each side of said tunnel “ *through its entire extent,*” and under the latter is embraced the right of way not only in a westerly direction, as aforesaid, but northerly and southerly on the course of said lode, and also on or along any other lode discovered or developed by the tunnel.

The tunnel has, in fact, “ discovered or developed ” quite a number of promising lodes or veins ; as it progressed westerly it cut across these veins nearly at right angles ; in order to explore them it would therefore obviously be necessary to drift along their course in a northerly and southerly direction, off from the tunnel

line. While the tunnel was being constructed this work of exploration could not be prosecuted, as the Company was, under its agreements with the mining companies, obligated to complete the main work to and along the Comstock Lode first of all, and as fast as possible; and after that was accomplished, not only were its funds exhausted, but it was incumbered with the enormous mortgage debt, to pay the interest on which has absorbed its entire income. For lack of funds, therefore, these discoveries have lain almost wholly dormant; and any gold or silver deposits existing therein, and which by grant of Congress belong to the Sutro Tunnel Company, still remain to be extracted.

For example, at a point about 10,500 feet from the mouth of the tunnel, it has cut a distinct vein, known as the Silver Star or Bella Union Lode. Along this a drift has been run a bagatelle of 576 feet southward, diagonally across the vein, and

a few feet northward. The indications are favorable, and fair assays were obtained from the vein matter encountered, and in the vicinity of this lode, some distance further south, some good ore has been taken from a mine located on the surface.

About 1,000 feet further on, a vein known as the Brunswick or Monte Cristo Lode has been cut by the tunnel, at a depth of 1,361 feet from the surface; along this a drift has been run northward and southward for a distance of only a little over 100 feet. The vein itself is a very strong one, and increases in width as it slopes down from the surface, being about 100 feet wide at the tunnel level. Like all other veins in that district, and like the Comstock Lode itself, the Brunswick Lode is what is known as a "true fissure" vein, having the shape of a cone with the point at the surface and widening out as it proceeds downward, and therefore of unlimited depth. On the surface this vein shows well-defined croppings, and is trace-

able for over two and one-half miles. It is estimated that \$700,000 in bullion (two-thirds gold and one-third silver) have been taken out near the surface from the various mines located thereon, beginning with the Monte Cristo on the north, to and including the Occidental on the south. Prof. John A. Church, a mining engineer of great ability, who has examined this lode, writes of its quartz bodies: "These form a magnificent system of quartz bodies parallel to the main lode" (*i. e.*, the Comstock Lode), "and, so far as they have been examined, quite equal to it in magnitude. Under any circumstances they are worthy of careful exploration, especially now that their fortunes have been greatly improved by the construction of a deep drainage adit" (*i. e.*, the Sutro Tunnel). * * * "All the known geological facts make them just as promising quartzes as any the Comstock contains." In an article which appeared in the *Virginia City Chronicle* in September, 1885, regarding this

lode, I find the following statement: "It is estimated by competent civil engineers, who have surveyed the ground, that there are at least two thousand million (2,000,000,000) tons of low grade ore contained within the boundaries of the Brunswick Lode, which, if reduced to bullion, would represent a value of ten thousand millions of dollars (\$10,000,000,000)."

Proceeding a few thousand feet further westerly along the course of the tunnel we find the Solferino Lode, and still further on, near what is known as the Mint shaft, distinct vein matter has been cut; on neither of said veins, last mentioned, has any exploration work whatsoever been done.

The aforesaid veins, like the Comstock itself, do not run perpendicularly downward from the surface, but slope or "dip," as they descend, in an easterly direction toward the mouth of the tunnel, at an angle of about forty-five degrees, and the area for thorough exploration upward and downward, from the tunnel level, would



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Several cross cuts were made from the prospect drifts, which showed the vein to be well defined. In raising up on the vein a strata of ore, from two to two and one-half feet in width, was followed to a height of 67 feet above the tops of the drift timbers. At points along the top of the drift assays from the ore were obtained as high as \$233.95 per ton. In the upraise assays as high as \$69.75 per ton were obtained. The average of all the assays made, in following the ore strata, was \$17.99 per ton, without calculating the high assays."—And yet, not a foot of further exploration has been made in this promising ground since the date on which the foregoing was written (March 1, 1882).

The work of exploration under the franchises granted by the Act of Congress is, therefore, still in its infancy. What developments may be made by exploring thoroughly the aforesaid veins already cut by the tunnel, and what new veins might

be cut and discovered by running drifts in various directions along the whole extent of the main and lateral tunnels, and, working both upward and downward from these various drifts and tunnels, and, most important of all, by extending the main tunnel at its present level for miles into the virgin ground west of and beyond the Comstock Lode, in which case it would pass in a horizontal direction at a depth of 3,600 feet below the summit of Mount Davidson, it is impossible to foretell! Explorations hitherto made by means of small horizontal drifts or so-called tunnels, run into the sides of Mount Davidson not far below the surface, prove conclusively that veins of value exist on both its eastern and western slopes. For example, the McKibben tunnel, so-called, which is some distance west of the Comstock Lode, shows a vein of quartz sixty feet in width; and ore has also been discovered in the Cole Tunnel, which is still further west; ore assaying as high as three hundred

dollars per ton has been found in another small drift west of the summit, while on a claim a short distance to the south and west of Mount Davidson, and not far from the direction where our tunnel, if extended, would pass under said mountain, some very rich gold ore has been found. The distance intervening between the western terminus of the main tunnel and a point directly beneath the summit of Mount Davidson is only 6,000 feet, whereas the Company, under the Act of Congress, has the right of extending the tunnel over three miles further westward from its present terminus.

There is every reason to expect the most wonderful and profitable results from a thorough exploration of all the many miles of territory through which the exclusive right of way and of purchase of the Company extends; and there is no reason why this work of exploration should not be prosecuted with all possible energy, as soon as we shall be free to direct a portion

of our revenues or resources to that great object.

The height of the Sutro Tunnel is generally from 7 to $7\frac{1}{2}$ feet. The width throughout is 8 feet at the top inside of the surrounding timbers, and from 9 to $9\frac{1}{2}$ feet at the track rails on the bottom of the tunnels, inside of the timbers. For some distance from its mouth the main tunnel is 14 feet wide by 10 feet high. Under the agreements with the mining companies, the main tunnel as well as the lateral tunnels are not required to be over 7 feet in height and 8 feet in width.

The length of the main tunnel, from its mouth (which is located 150 feet above the level of the Carson River) to its point of connection with the shaft of the Savage Mine in the Comstock Lode, toward which it runs in a W. by N. W. course, on an upward grade of three inches for every 100 feet, is 20,489 feet. The distances reached at the end of each year in constructing the

main tunnel, measuring from its mouth, were as follows : The year 1869, 460 feet ; 1870, 1,750 feet ; 1871, 2,665 feet ; 1872, 3,480 feet ; 1873, 5,399 feet ; 1874, 8,079 feet ; 1875, 11,807 feet ; 1876, 15,487 feet ; 1877, 18,601 feet ; and 1878, 20,489 feet. This shows very rapid progress ; more rapid progress in fact than was made in constructing the Hoosac, Mont Cenis, Saint Gothard, or any other famous tunnels. The lateral tunnels, which follow the direction or " trend " of the Comstock Lode northerly and southerly, have been constructed since 1878, and their length is as follows : That of the North Lateral Tunnel, from the main tunnel to the ground of the Mexican Mine, is 4,403 feet ; that of the South Lateral Tunnel, from the main tunnel to what is known as the Forman Shaft, is 8,423 feet. Making a grand total length of all the tunnels of thirty-three thousand three hundred and fifteen (33,315) feet, or over six and one-third miles, fully completed, fully equipped for working pur-

poses, furnished throughout with car-tracks and side switches, drain-boxes and ditches to carry off the water, ventilating shafts and partitions, etc., and all in excellent order.

The reason the North Lateral Tunnel has not been constructed for the remaining distance of about 4,500 feet from the Mexican Mine to the shaft of the Utah Mine, its objective point on the north, is because that work was temporarily suspended under an agreement with the mining companies located between the Mexican and the Utah, inclusive, dated October 4, 1880, under which our Company is entitled to royalty the same as if the work had not been suspended, and gaining the advantage of saving the expense and trouble of maintaining in repair that much additional tunnel; these mines derive substantially the benefits of the tunnel through its connection with the joint Ophir and Mexican drift, and the motive of said mining companies in mak-

ing this agreement with our Company was presumably that they preferred to keep their ground and mining operations concealed.

From the foregoing brief description it is self-evident that the property of the Sutro Tunnel Company is indeed very valuable, worth many millions as it stands, but, considering its resources and possibilities, worth incalculable millions more.

In addition to what has been enumerated, however, the Company also owns, at and about the mouth of the tunnel, at the present time, in the neighborhood of 5,000 acres of land, which it has gradually purchased, partly from the government, under the rights reserved by the Act of Congress hereinbefore mentioned, and partly from private sources. Of this land, which is traversed by excellent roads and irrigating ditches, about two hundred and fifty to three hundred acres are under cultivation, and pro-



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character, is well laid out, and contains scores of substantial frame dwellings, shops, and other buildings, nearly all belonging to the Company, and used and occupied principally by the families of the men connected with the works.

The Company also owns a fine mansion, fully furnished, near the mouth of the tunnel, used as a residence by the Superintendent.

It would lead too far to give a detailed account of all the other property belonging to the Company, as the object of this report is not to furnish a statistical inventory, but only to call attention to salient features; but it may be said in regard to the property of the Company in general, that the latter has everything necessary, not only for doing its present work, but also such other work in the way of transportation, exploration, etc., as may tend to increase its value and income, excepting only—available surplus funds, which were, of course, out of the question so long

as the burden of the enormous current and accrued interest, under the existing mortgage, rested on its property, and more than counterbalanced its income.

VI.

Income and Expenses of the Sutro Tunnel Company.

THE income of the Company (with the exception of a few thousand dollars received from rents and from the sale of ranch products and of land) consists at the present time of what it receives under the agreements of March 29, 1879, as royalties on all ores extracted from the mines on the Comstock Lode.

The first payment of royalty was made in September, 1879, and payments have since continued as follows, viz.:

From September, 1879, to March 1, 1880..				\$35,732.79
“ March 1, 1880,	“	“	“ 1881..	45,498.23
“ “ “ 1881,	“	“	“ 1882..	19,177.38
“ “ “ 1882,	“	“	“ 1883..	47,627.84
“ “ “ 1883,	“	“	“ 1884..	71,515.75
“ “ “ 1884,	“	“	“ 1885..	125,622.81
“ “ “ 1885,	“	“	“ 1886..	174,183.11
“ “ “ 1886,	“	“	“ 1887..	254,009.29
Total.....				\$773,367.20

which total has up to the time of this writing (July, 1887) been augmented by the sum of about \$130,000.

Besides the above-mentioned royalty actually paid in cash, about \$370,000 have been withheld by the companies to repay certain advances made by them to the Sutro Tunnel Company for building the lateral tunnels. These advances, amounting in the aggregate, to date, to the sum of nearly \$800,000, were made, under the terms of the aforesaid agreements, by the various mining companies to the Sutro Tunnel Company at the rate of \$70 per foot for every foot of the lateral tunnels constructed by the Sutro Tunnel Company; such advances, however, were not to constitute a lien on the property of the Tunnel Company, were not to bear any interest, and were to be repaid only by allowing one-half of the charges, to grow due from the mining companies, to be withheld by them each month until the whole advances should in this way have been repaid to

them. In other words, under these agreements, the advances made by any mining company, which shall never take out any ore, need never be repaid by the Sutro Tunnel Company ; and such mining companies as take out ore are repaid by simply crediting them with one-half of the royalty, which may grow due from them to our Company.

Of the various mining companies, the following have been entirely repaid the amounts so advanced by them to our Company, and are paying royalty at full rates, viz. : The Belcher, Consolidated Virginia & California, Crown Point, Hale & Norcross, Kentuck, Sierra Nevada, and Yellow Jacket.

The following are still paying royalties at half rates, viz. : The Challenge, Chollar, Confidence, Consolidated Imperial, Gould & Curry, Mexican, Overman, Ophir, Potosi, Savage, and Union Consolidated.

The following are the only ones that have not taken out any ore since the date

of said agreements, and have, in consequence, not yielded or paid any royalty, viz. : The Alpha, Best & Belcher, Bullion, Exchequer, Segregated Belcher, and Utah.

The following companies have also paid a few hundred dollars royalty, viz. : The Andes on the Comstock Lode, and the St. George, St. John's, and Solferino on the Brunswick Lode.

For the year from March 1, 1886, to March 1, 1887, the total income was derived from the following sources, viz. :

From Royalties.

From Con. Cal. & Virginia Mining Co. . . .	\$122,413.93
“ Yellow Jacket “ “	57,359.88
“ Crown Point “ “	37,979.60
“ Belcher Mining Co. (at half rates) . . .	18,565.24
“ Kentuck “	12,452.25
“ Overman “ (at half rates) . . .	3,782.32
“ Savage “ “ “ . . .	1,081.22
“ Sierra Nevada “	231.85
“ Gould & Curry “ (at half rates) . . .	119.00
“ Hale & Norcross “	12.00
“ St. George “	12.00
	<hr/>
	\$254,009.29

Sutro Tunnel Company.

Brought forward,		\$254,009.29
From Sales.		
Of ranch products.....	\$6,029.48	
“ sundry material.....	3,416.18	
	<hr/>	\$9,445.66
From rents of houses and lots.....		2,112.47
“ transportation.....		985.71
		<hr/>
Total receipts.....		\$266,553.13

The Company has borrowed no money since November 12, 1883, and the total income for the past three years has been as follows, viz. :

For the year ending March 1, 1885.....		\$142,954.53
“ “ “ “ 1886.....		204,819.10
“ “ “ “ 1887.....		266,553.13
		<hr/>
Total receipts.....		\$614,326.76

making the average gross income for the past three years, ending on March 1, 1887, the sum of \$204,775.59 per annum.

The expenses of the Company for the year, from March 1, 1886, to March 1, 1887, have been for the following items, viz. :



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Sutro Tunnel Company.

For the year ending March 1, 1885.....	\$42,542.41
“ “ “ “ 1886.....	121,400.25
“ “ “ “ 1887.....	189,838.04
Total Net Income.....	<u>\$353,780.70</u>

making the average net income for the past three years the sum of \$117,926.90 per annum.

From the foregoing it will appear that the income of the Company has steadily increased, and its expenses have steadily diminished, during the past three years.

VII.

Prospective Income and Expenses.

THE total annual expenses of the Company (as soon as it shall be freed from the present complications and the attendant outlays) need not exceed the average expenses during the past *two* years, namely, about \$80,000, as that has been quite sufficient to keep the tunnels and works in thorough repair and to defray the ordinary expenses of the Company. In this, of course, would not be included such expenditures as might be rendered necessary for exploration, building of mills, railroads, or other new enterprises ; but as such expenditures would also, in turn, result in giving to the Company a much larger revenue, they need not for the present be taken into consideration.

It would also be fair to assume the average gross income of the Company during

the past *two* years, viz., the sum of about \$236,000, as a basis for future calculations, as the work of taking ore from the mines lay comparatively dormant during the period from the completion of the tunnel until the year 1885, the mining companies having, for some occult reason, occupied their time during said period principally in levying assessments. As the output of the mines has largely increased during the past year over the preceding year, it may safely be assumed, in view of the still greater activity which is at the present time displayed in all the Comstock mines, that the income of the Sutro Tunnel Company will continue to increase in at least the same proportion. The net income of the Company for the year ending March 1, 1887, exceeded the net income for the preceding year by about \$70,000, so that it is hardly possible that the net income for the year ending March 1, 1888, can fall short of \$250,000, and there is every indication that it will be nearer \$300,000.

In this connection the following quotation from the letter, hereinbefore referred to, written by Mr. Landers immediately after his recent visit to the Comstock Lode, will be appropriate, viz. :

“ Everywhere along the Comstock Lode the companies were preparing to increase their ore production by extensive explorations, developing ‘ deposits ’ which will largely increase the royalties to the Tunnel Company. Several new mills are in course of construction, and others that have been idle for several years are being put in order for active service. I am quite certain that the income will be increased fully one-quarter more than last year, and it would not surprise me if it aggregated \$400,000 by the time our next annual report is made to the shareholders.”

Mr. Ames, the Secretary of the Company, writes from San Francisco under date of May 3, 1887, to Mr. Horace H. Thayer (recently appointed to the new office of Assistant-Secretary at New York), for the information of the stockholders, as follows :

“ The companies that may be ex-

pected to pay increased royalty for the year ending March 1, 1888, are, 1st, the Cons. California & Virginia, which in the previous year paid \$122,413.93. Unless they have more trouble with the fire than is expected, they should, I think, pay the Company about \$135,000 to \$140,000 for the current year. 2d. The Belcher Company, which will begin this month to pay full rates, which should increase their payments from \$18,565 to something over \$30,000. 3d. The Overman Company. This company is now taking out ore and paid us \$320 for February and \$652.50 for March. The yield is uncertain, however, and I should not venture to make any estimate on it. 4th. The Savage Company. This company paid last year only \$1,081, but they are going to take out considerable ore, it is understood, this year. They reduced 2,409 tons in March, and paid \$1,204.75 royalty. 5th. The Hale & Norcross, which paid last year only \$12 royalty. It is understood that they will also take out considerable ore. They pay full rates—\$1 per ton. They reduced nearly 250 tons in March. 6th and 7th. The Chollar and Potosi Companies. They paid no royalty last year, but they have large bodies of low-grade ore, some of which, I have heard, they will try and reduce this year.”

To the foregoing the writer of this report may add, that he has had personal assurances from one of the owners of the Chollar and Potosi mines that active preparations are in progress to take ore from said mines in the near future. He is also informed that the fire which has been raging for about eight years in the underground workings around the 1,500-foot level of the Consolidated Virginia Mine, and which is estimated to have covered an area of two million feet of said mine filled with timber, has at last been overcome by smothering it with carbonic acid gas, and that the output from this and the California Mine will, in the course of the year, be increased from 400 tons to 600 tons daily; and that the present average daily output from all the mines on the Comstock Lode, of about 1,000 tons, will, by October 1st next, be increased to about 1,600 tons.

There is in fact a new era dawning for the Comstock Lode, as the mining com-

panies seem at last to have awakened to the necessity of pursuing legitimate rather than speculative mining, by extracting all ore of a fair assay value.

The foregoing estimates of the income of the Sutro Tunnel Company for the current year are therefore based upon the strongest probabilities.

But what likelihood, it may be asked, is there for a continuance of the income of the Sutro Tunnel Company in the shape of royalties from the mines for any long period of years? Every likelihood, and almost a certainty! Because the mines will undoubtedly continue to produce ore for generations to come—not perhaps “bonanzas” (although also that is likely), but what does the Sutro Tunnel Company care for bonanzas belonging to the mining companies? There appears to be a strange misconception on the part of the public in regard to this point. The highest royalty to which the Sutro Tunnel Company is entitled from the mining



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John W. Mackay himself. There is no doubt also that these ore bodies may be profitably extracted; although such extraction may perhaps involve some slight reduction in charges, as regards very low-grade ore, by some joint agreement on the part of the Sutro Tunnel Company, the railroads, the mills, the lumber companies, the Miners' Union, and also on the part of the various other corporations and organizations whose interests are identified and connected with the work of mining; and there is no doubt that *through the Sutro Tunnel* even ore of the *lowest* grade may be profitably worked.

It is therefore not true that the mines are "played out" and the Sutro Tunnel only a useless "hole in the ground," the more forcible than elegant exclamations often made by ignorant people. The mines are and will be productive long beyond our time (provided always that the insane search for "bonanzas," and the disgraceful stock manipulations, which have been

unfortunate concomitants heretofore of mining operations on the Comstock Lode, shall cease); and the Sutro Tunnel, being indispensable to the effective working of these mines, will, for an equal length of time, continue to be proportionately profitable to its owners.

It may be that mine managers may periodically, for purposes best known to themselves, deliberately suspend the work of extracting ore, and it may also be that single mines on the Comstock Lode may, now and then, in fact, temporarily cease yielding ore, especially bonanza-ore, for the latter is met with only in scattered places, in "chambers" or "pockets," without regard to any settled rule or principle; but, taking the mines of a whole mineral district, such as that of the Comstock Lode, together, history proves that there is great permanence in its aggregate yield.

The mines of Cornwall have been worked for over three thousand years, those in the Harz Mountains for over eight hundred

years, those of Freiberg and of Schemnitz for many centuries, and yet all those mines are still yielding. The mines at Cerro Pasco in Peru have been worked since the year 1643. In Mexico, the mines at the Veta Grande of Zacatecas and at the Veta Madre (*i. e.*, “mother” or true-fissure vein) of Guanajuato, have been worked almost since the discovery of America, have yielded over one and one-half billions, or fifteen hundred millions of dollars, and are still productive. The Valenciana Mine, on the Veta Madre of Guanajuato, was opened in the year 1760, and a rich bonanza struck in a part of the vein which had been given up two centuries before that time as “worked out.”

The famous Potosi Mines in Bolivia were, during the first seventeen years after their discovery, not as promising or productive as the mines on the Comstock Lode for the same period; yet the Potosi Mines, though opened as early as the year 1545, and having produced up to the year

Prospective Income and Expenses. 61

1800 over \$1,600,000,000, have nevertheless kept on, and are still yielding, whereas the mines on the Comstock Lode were not discovered until the year 1859.

A vein such as the Comstock, located on a spur of the great Sierra Nevada Mountains, having a length of about five miles, varying in width from 50 to 200 feet and in some places on the surface 500 feet, proved to reach from its surface croppings, at an elevation of about 6200 feet above the level of the sea, downward as far as the miners have up to the present time gone (in some places over 3,100 feet), and having every indication of extending down for miles, retaining its general geological characteristics to the lowest depths so far reached, being almost wholly composed of solid quartz, permeated with particles of silver and gold and here and there abounding in bodies of immensely rich ore, and which vein has been worked spasmodically for only about twenty-eight years, and never systematically at all with a view of

extracting its low-grade ore bodies,—such a vein, in view of the experience gained with similar vein-formations elsewhere, some of which have hereinbefore been cursorily mentioned, but which are not even of the magnitude of the Comstock Lode, can really never be said to be “worked out.”

Under Act of Congress approved April 4, 1871, “authorizing the President to appoint Commissioners to examine and report upon the Sutro Tunnel in the State of Nevada,” the President of the United States, General Grant, appointed a Commission composed of “General H. G. Wright, Lieutenant-Colonel of Engineers, and Brevet Major General United States Army; General J. G. Foster, Lieutenant-Colonel of Engineers, and Brevet Major General United States Army; and Wesley Newcomb, Civil and Mining Engineer.” This Commission arrived at Virginia City on June 29, 1871, and from that time until August 7, of the same year “was con-

stantly occupied” (in the language of their report) “with its investigations, during which period it examined pretty thoroughly the mines on the Comstock and other lodes in the vicinity, the country in the neighborhood within a general radius of fifteen miles, with a view to ascertaining its topographical and geological character, and conferred with the mining authorities, miners, and others interested in the great and almost sole industrial interest of that section of Nevada.” I quote from their report dated New York, November 30, 1871, as follows:

“We know that for a distance of five miles, with a varying width of from 50 to 500 feet, and to an unexplored depth, the Comstock Lode is found, one of the richest, most productive and extensive in the records of mining.

“It is, however, of very great importance to determine whether the Comstock be a true fissure-vein, as declared by most intelligent geologists, or be but a gash-vein, with its material filled in from adjacent rocks. The permanency of the mining interests of Nevada depends

upon which of these views proves correct. In the first contingency we may claim that no true fissure-vein has ever been worked out, and from analogy we may draw the conclusion, with a good degree of certainty, that the Comstock cannot be exhausted by the labor of man. * * *

“ We are left to the only possible explanation of the occurrence of this wonderful deposit, *i. e.*, that it is a true fissure-vein filled from below, and, like other fissure-veins, extends to a depth beyond the power of man to reach. * * *

Reasoning from the past history of fissure-veins in other countries, we have just grounds for believing that the metallic wealth, thousands of feet below the surface, will fully equal or be even greater than that from higher levels. The Sampson Mine in Germany has reached a depth of 3,000 feet without any diminution of its yield of silver. This, compared with the Comstock, is a small vein, but for that very reason is far more likely to be lost by a fault than one of the magnitude of the lode under consideration.

“ It is quite probable that at great depths the metals are more equally distributed through the vein matter, in which case the very rich ores will not be met with, but the whole mass will yield



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of the Ophir a body of ore exists that has been mined and used for filling in stopes for a distance of 300 by 300 by 100 feet, which will average, by assay, \$20 per ton. A large body in the north mine, yielding but little less, is found in place. He further states that in the Crown Point, on the 200-foot level, an estimated amount of 100,000 tons of ore, that will assay \$20 per ton, may be found. He was for three years connected with that mine, and is thoroughly acquainted with the upper levels.

“From our own observation, and the evidence of others, we do not hesitate in stating that vast amounts of what are designated as low-grade ores abound in these mines, that may yet be made available in increasing the national wealth.”

Nearly sixteen years have elapsed since the foregoing was written. In the meantime the Sutro Tunnel has been completed and the mines explored to enormous depths, and what was at that time still mere conjecture as to the existence of these vast quantities of so-called “low-grade” ore, and as to the indefinite extent downward of the Comstock Lode, has since

then been proved to be a fact by actual demonstration. .And yet from that time to this, or at least until a year or two ago, the mining companies kept on hunting after "big bonanzas" only, and passed by nearly all the "low-grade" ore. The latter, therefore, remains to be extracted, in almost undiminished quantities.

In this connection I will again quote from a letter of our Secretary, Mr. Ames, dated San Francisco, May 10, 1887, and addressed to me, as follows :

"As to the value and permanence of the Comstock Lode, what better evidence can be asked than the preparations which are being made at the present time to provide adequate milling facilities for the different companies?"

"The Virginia & Gold Hill Water Company is making arrangements to largely increase their supply of water, to be used in running new mills about to be erected. It is understood that two mills are to be built in the Six Mile Cañon as soon as the water supply is ready, and the Chollar and Potosi Companies are now building a 40-stamp

mill so arranged as to be capable of being increased to 100 stamps.

“Mining men on the Comstock Lode are all confident that there is ore enough now in sight to run the mills to their fullest capacity for the next five or six years, and equally confident that the immense bodies of low-grade ore, known to exist, will furnish an industry that will thrive for several generations to come.

“It may be the privilege of the Sutro Tunnel Company to help to solve the problem of deep mining on the Comstock Lode, and to make available many million tons of mineral-bearing ore that cannot under the present conditions be milled at a profit.”

To the foregoing may be added that the immense California stamp and pan-mills, which have lain idle for years, are being again used, that the Alta Mining Company began work on a new 10-stamp mill on the ground adjoining their hoisting works on June 20, 1887, and that the latest advices from the Comstock, in general, indicate a period of preparation and activity at all points, such as has not been witnessed in many years, the monthly sum

disbursed by all the mining companies to their employés alone, amounting in the aggregate, at the present time, to over a quarter of a million dollars.

Under date of July 19, 1887, Mr. Ames writes to me :

“The new ore body discovered in the Crown Point Mine is an important one, not only for that Company, but for the whole Comstock Lode, and of course incidentally for us. This ore body was opened on the 400 foot level, and is situated about southwest from their old shaft, but it is 400 feet west of their former workings, and 200 feet west of any point previously worked. Where the stopes are now beginning, the ore body is from 140 to 150 feet long and about 60 feet wide, of which 45 to 50 feet in width is good ore going \$40 to the ton. On the 500 foot level a drift is being run to strike the vein, and a winze is down from the 400 foot level already about 70 feet, and still in the ore,—so that they are confident of getting it at 500 feet. Such an opening might possibly lead to another bonanza, and would, I think, encourage prospecting further west.

“But the singular fact of a new ore

body being opened in this mine, 200 feet further *west* than former explorations almost at the same time that the ore body is opened in the Consolidated Virginia & California Mine some 200 feet *east* of former workings, will serve to give renewed assurance of the extent and permanence of the Comstock Lode."

The Comstock Lode has so often, during its history, been believed to be "worked out" by the public, and has so often recovered its prestige, that it would seem to be almost superfluous to add arguments in proof of the probable permanence of its ore deposits. In an article entitled "Mine Bottoms and Stock Bottoms," the San Francisco *Evening Bulletin* of April 26, 1884, says :

"In the language of the street, the Comstock mines have petered out many times in the past twenty years, and bed-rock values have been announced quite as often. The truth is, it is impossible to know when a mine is exhausted. If every claim were abandoned the first

time ore disappears, we should have any number of abandoned mines. Few thought, in 1870, that there was any ore in the Crown Point or Belcher mines below the depths to which they were then opened. But the largest value of metal from those mines was subsequently discovered and removed. That discovery strengthened the theory in deep mining more than any reasoning had been able to do before. It encouraged capitalists to continue work in other directions on the same lode, with the result so well known, the discovery of the largest and most valuable ore deposit ever found in the United States, in the Consolidated Virginia and California mines. The number of deep mining believers was increased many fold by that opportune discovery. How much the world is indebted for that find to the previous find in the Belcher and Crown Point mines will never be known. * * *

“The Comstock Lode has never had such a long comparatively barren period from the first discovery of ore there in 1859, as since the exhaustion of the ore body in the bonanza mines, some six years ago. * * *

“Stock value have undergone similar vicissitudes. In the dark days of 1868 and 1870, when those owning the bulk of the stock, in which the leading Com-

stock mines were then divided, were on the point of throwing the whole thing up or transferring their interests to English capitalists for a nominal sum, we heard a great deal about bed-rock prices. But from 1870 to 1875 there was a grand improvement in the condition of four mines on the lode and of course a great upheaval in stock values. The point of greatest depression occurred about the close of 1870. At that time twenty-eight of the leading mines of the Comstock Lode, commencing with Utah on the north and ending with Benton on the south, were selling at the rate of of \$4,696,700. Five years later, say January, 1875, in the height of the excitement about the Consolidated Virginia and California, these and the twenty-six other mines in the same radius were selling at the rate of \$271,059,200. In 1877, the same mines sold for about \$30,000,000, but in the Sierra Nevada excitement, which culminated in September, 1878, the same mines sold at the rate of \$114,560,000. This was the next greatest value ever put upon the shares in these twenty-eight mines.

* * *

“Taking the lowest values yesterday, the leading Comstocks were nominally rated as follows:



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mines has at the time of this writing (July, 1887,) again enhanced to seven or eight times the foregoing quotation of April 25, 1884; and yet the present price is only about one-third of what they were quoted at last December, when Consolidated California & Virginia was selling at \$55 and Ophir at \$35 per share.

And to add a strictly official opinion of recent date, the following report by a committee appointed for the very purpose of investigating and reporting on the condition of the Comstock Lode, submitted to the San Francisco Stock Exchange, on April 4, 1883, will be of interest. For a copy of this report I am indebted to Mr. H. R. Wright, of the New York Mining Exchange, who also has taken considerable interest in the movement to resurrect the Sutro Tunnel Company. The forecasts made in that report, especially in regard to the prospects of the Consolidated Virginia and the California mines, have been fully proved to be correct by the

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recent developments between the 1,300 and 1,500 foot levels in said mines, after the impression had industriously been created that they were "worked out;" so also as regards the new ore body in the Crown Point Mine; and as to all the mines, it may be said that what was probable in 1883 is much more so in 1887; for all the mines are now in better working order, and, with the exception of a temporary suspension of prospecting work on the lowest levels, are either being explored or about to be explored more thoroughly and actively than ever.

"TO THE SAN FRANCISCO STOCK AND EXCHANGE BOARD.

"Gentlemen: Your Investigating Committee beg leave to submit the following report as to the condition of the Comstock mines:

"We have found it impossible to obtain any reliable official information with reference to the condition of the mines, and the little we have been able to glean from that source is anything but satisfactory. This is owing to the

secrecy with which all exploratory work is carried on, through the medium of the diamond drill, which has been extensively used in almost every mine on the lode, while the result of such explorations is kept a profound secret by the operators who have obtained control of the different companies, chiefly by means of proxies which have been voted at the annual elections. While the State laws have made it imperative on the part of the superintendents to report to the companies' officers all discoveries made with the diamond drill, we find that they have in almost every instance disregarded the law, contenting themselves with privately reporting such discoveries to operators who have obtained such control, while having little if any moneyed interest in the companies. This is a matter of grave import to the stockholders of the companies, who, while paying enormous sums for the purposes of exploration, are debarred all knowledge of, or benefit from any discoveries which may be the result of such expenditures. It is true that reports are made to the secretaries of the different companies, but they are very meager and treat only of the most unimportant work going on in the mines, and where reference is made to interesting points on the lode the information

given is so vague as to be rather calculated to deceive than to give any proper understanding of the situation. From information, however, obtained outside of official sources regarding the existence of 'concealed bonanzas,' we are inclined to the belief that valuable ore bodies have been discovered, which so far have not been officially announced. But as we are restricted by our informants in the use of this information, we abstain, for the present at least, from making any more positive statement than the foregoing.

“With reference to the middle and northern mines, viz., all those mines situated between Potosi and Utah inclusive, we have to say that they appear to be in a splendid condition for rapid exploration. There has been an enormous amount of money expended upon these mines in preparatory work, such as sinking shafts and winzes, and making air connections, running lateral drifts, etc., and we have every reason to suppose that the cost of future explorations in these properties will be much less than at any time in the past. In fact, it should be possible to run these mines for the next two years for one-third of the expense which the work for the past two years has entailed on the stockholders. These mines are thor-

oughly ventilated, and as a rule much cooler than they have been for some time past. The danger from water is past, the water problem having been solved, and the work now going on is below the water belt, and the mines are well drained. Nothing but the grossest carelessness could cause any damage from water. So far as we are able to judge from the vague reports in the different offices, and what reliable information we have been enabled to obtain from other sources, there is every probability that some of these mines will be on a dividend-paying basis ere long, and the long-suffering stockholders be relieved from the terrible exactions in the shape of assessments under which they have groaned for such a length of time.

“ These mines are splendidly equipped with machinery of the finest and most substantial character, their pumping machinery being unequaled in the world. The mines are opened to great depth, the deepest workings being in the Mexican and Ophir on 3,100 foot level. They have large and substantial shafts and winzes, and are opened laterally with large drifts for about two miles, and so well arranged and connected as to make danger from fire a very remote contingency.

“ For about a mile north of Savage no

explorations of any importance, that we are aware of, have been made on the lower levels until very recently, when several cross-cuts were started, one of which encountered ore on the line of Union Consolidated and Sierra Nevada of great promise, and we have good reason to hope that when further explored it will prove a real bonanza. The other cross-cuts, so far, give good indications, and we expect to see paying ore developed by them.

“The Savage, Hale & Norcross, Chol-lar and Potosi are all ready for cross-cutting on the lower levels, and the fact that in Hale & Norcross there has already been some good ore discovered on the 2,600 foot level, gives us reason to expect the uncovering of a body of good ore in this section of the lode.

“In the Mexican, Ophir, California, Consolidated Virginia, Best & Belcher, and Gould & Curry mines there is a block of ground about 1,000 feet in height, by over 1,000 feet in width, and over 3,500 feet in length, which has not, so far as your committee is able to learn, been cross-cut or explored in any way to any great extent. What may have been done with the diamond drill and secret drifts in this block of ground, of course, is a sealed book, so far as your

committee and the general public are concerned.

“ All the lower levels of the Comstock mines are in an ore zone, as shown by the continual cutting of stringers, seams, and small bodies of rich ore, and there is no reason why there should not be large and rich bodies of ore discovered. In fact, the prospects for the lode were never brighter. So far as the southern group of mines is concerned, nothing can now be seen below the 1,900 foot level, as the mines have been flooded up to that point for more than a year. Above this level there has been a large amount of ore extracted. Within the past two years over 120,000 tons of ore have been extracted and worked—principally from the Crown Point and Belcher. What this ore paid we have been unable to find out, and we can only say that there is an abundance of ore in these mines, and that it is not the fault of the mines that they have not been placed on a paying basis long ago. In this connection we will say that in our next report we will deal more fully with the subject of mine management. In conclusion, we would say that the prospects and condition of the mines on the Comstock Lode have not been so good for years, and that we believe that in the near future the Comstock Lode will be re-



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from the mouth of the tunnel, and building railroads connecting the tunnel with said mills, and of otherwise making improvements, such as substituting compressed air or other locomotives, or cable cars, in place of mules, for the purpose of bringing about the work of transportation, is unquestionable. A number of mining companies are already negotiating with the Sutro Tunnel Company with a view to that object, and there is very little doubt that a great many mining companies will avail themselves of the Sutro Tunnel for transportation purposes, as soon as the latter shall be in a condition to offer to the mining companies the proper facilities and inducements.

And then, lastly, and most important of all, remains the great prospect of increasing the income of the Company to an almost unlimited extent, by exploring and working its own mines and veins, such as have already been discovered, and such as there is every reason to presume may still be discovered, at various points, in that

enormously rich and large area of mineral land, to which the Company has the first claim under the Act of Congress.

In this connection also, I may venture to suggest a project combining the objects both of exploration and transportation, and which may possibly become a reality in that golden era of prosperity which, I hope, the Company may enjoy at no distant day, provided it shall pass safely through its present stormy experience, a project which our Superintendent at Sutro, to whom I broached it, on my late visit there, thought quite feasible, namely, to continue the main tunnel into Mount Davidson, not only for three miles beyond its present terminus, but still a few miles further, entirely *through* the mountain, and to use it not only as a draining, ventilating, and exploring tunnel for the mines, but also as a railroad tunnel for general transportation purposes. The outlet of such a tunnel would be near a place known as Steamboat, which is only 11 miles distant

from Reno, a station on the Central Pacific Railroad. Steamboat, however, is 41 miles distant from Virginia City, by the only present route, the Virginia & Truckee Railroad, known as the "crooked railroad," and which winds its tortuous course, serpentine-like, up the mountains to Virginia City, whereas the distance from Steamboat to Virginia City, in a direct line, through such a tunnel would be only about 7 miles. The distance from Steamboat to the town of Dayton (which latter is only about two and one-half miles distant from the present entrance of the tunnel, and is connected with southern and western Nevada and California by the Carson & Colorado Railroad), would, through such a direct tunnel, be only about 13 miles; whereas the distance between Steamboat and Dayton, by way of the only existing railroads, the Virginia & Truckee, and the Carson & Colorado railroads, is about 39 miles. As a freight road, such a tunnel-railroad, con-

necting with Virginia City by means of elevators through the already existing numerous perpendicular shafts, and connecting with all other points by a road-bed of easy grade, through our Company's present main tunnel and the land at the mouth of the tunnel, to Dayton and beyond, ought to be a paying investment, in view of the fact that the Virginia & Truckee Railroad is not only one of the greatest monopolies in the United States, but has proved to be almost as much of a bonanza to its owners as any of the mines have to the "bonanza kings."

As a result of carrying out some or all of these various projects, the 5,000 acres of land owned by the Company at and about the mouth of the main tunnel ought to become thickly populated, and must also necessarily greatly enhance in value, and prospectively yield very large rents and profits.

And if, therefore, we have carefully and timidly ventured to estimate the net in-

come of the Company, for the current year, as probably not less than \$250,000, we may, on the other hand, boldly and unhesitatingly estimate that income (provided the Sutro Tunnel Company shall take full advantage of and utilize its enormous resources) as more likely, in the course of time, to approximate two or three times, or even ten times, said sum.

Such is a brief epitome of the cost, condition, objects, nature, and present and prospective income and expenses of the Sutro Tunnel; and in this connection, by way of summary, and as throwing light on points not hereinbefore touched upon, the following article, originally published in the *National Quarterly Review* for July, 1879, and republished in the *New York Daily Graphic* of July 21, 1879, and the statements wherein the writer desires at the present time to emphasize and confirm, as fully borne out by his more recent and personal in-

vestigations, may appropriately be inserted, viz. :

“ THE SUTRO TUNNEL.

“ (The author of the following brief and authoritative paper—Mr. Theodore Sutro, for a number of years attorney for the Company—has taken this occasion to correct some very natural misapprehensions on the part of the public, in respect of the aims and objects of this enterprise, which, we doubt not, will be read with interest and profit.—EDITORS.)

“ Let it be understood *ab initio* that the Sutro Tunnel does not pierce a mountain—running through it from one side to the other—but, like all great mining tunnels, is in the nature of a *cul de sac*, with its mouth at the base of the mountain, and its terminus, or in mining parlance, ‘header,’ in the Comstock Lode; also that its principal object is not to convey railroad or horse-car passengers or run canal-boats, nor, on the other hand, to find ‘big bonanzas,’ all of which amusing inquiries, among many others of like nature, have been made of the writer. The original purpose of the work is two-fold, namely, to drain one of the greatest precious metal deposits ever discovered

of its never-failing flood of water, and incidentally, also, to explore that great deposit. So it was expressed in the title of the Act of Congress of July 25, 1866, which granted the right of way and other privileges to aid in the construction of a 'draining and exploring tunnel' to the Comstock Lode in the State of Nevada. The enterprise should never have been looked upon as an experiment or mining venture at all, as it simply applied to a new locality a system of mining for centuries in vogue in Europe, and proved to be the most rational in a mineral region of the Comstock topography; prominent examples being the Ernst August Tunnel in the Harz Mountains, the Rotheschoeneberger Tunnel at Freiberg, Saxony, the Kaiser Joseph Tunnel at Schemnitz, Hungary, the great drain tunnel of the United Mines near Redruth in Cornwall, and the many drain tunnels (*contraminas*) of Spain and other countries.

“ But, owing to the impatient greed of man for sudden riches, and to the misrepresentations of the Comstock mine owners, who desired to obtain control of the tunnel by discouraging its prosecution, the main objects of the work were gradually lost sight of and the general expectation warped in the direction of hoping for 'big bonanzas' in



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for the immense benefits accruing to them.

“The completion of the tunnel, here alluded to, consists in an air-tight covered sub-drain now being excavated under the car tracks to carry off the steaming hot water (temperature about 150 degrees); and when in a few days said water shall have begun to flow off, and the various mines, after being connected with the tunnel by drifts and shafts, shall, in the course of time, have been effectually drained, then one of the great objects of the enterprise will have been substantially realized and all the other uses, benefits, and advantages of the tunnel over and above that will be *post praelia præmia*.

“The chief among these additional advantages is the facility which the tunnel will afford for extracting and smelting the millions of tons of low-grade ore which lie partly exposed to view in the 200 miles of shafts and galleries, and partly still concealed in the depths of the Comstock mines, having heretofore been passed by as not likely to pay for the expense of hoisting it to the surface and of transporting it to the mills and reduction works. The tunnel will afford the cheapest possible way of utilizing these immense ore bodies, through the instrumentality of *chutes*,

by which the ore can be lowered into cars and conveyed through the mouth of the tunnel to mills, which will be erected near the Carson River and driven by the water-power of that stream. The correctness of this view is demonstrable, if we consider that this ore assays from \$10 to \$20 per ton, and that the expense per ton, from the time of extracting it until it is in the shape of bullion, under the old system, is at least \$20, while through the tunnel and mills at the Carson River it is estimated that it will not exceed \$8.

“ The tunnel will also serve as a great air flue for ventilating and cooling the whole net-work of the Comstock mines ; its utility in that respect having been effectually demonstrated, when connection was made with the shaft of the Savage Mine in the summer of 1878, in the almost overpowering blast of air which roared through the 20,000 horizontal feet of tunnel, and upward through the 1,700 perpendicular feet of the Savage shaft to Virginia City, clearing and purifying heated depths which never had received a breath of air from the outside world.

“ It would be beyond the scope of this brief and hurried sketch to do more than merely mention the advantages the tunnel will afford as a new basis of

operations for working the mines thousands of feet below its own level; for conveying large numbers of miners to their work by means of long trains of cars, which may be run by steam at short intervals on the double-tracked road-bed, instead of lowering and hoisting a dozen men at a time in small cages through perpendicular shafts; for carrying ice, cut from the Carson River, or from the artificial lakes formed by the waters flowing from the tunnel, to the hot galleries below the tunnel level, at about one-twentieth of the present cost (no small item, if it is considered that many thousand tons are consumed annually by the miners in the various mines); for transporting to Virginia City the 600 cords of firewood there consumed daily, direct from Carson River (on which it is floated down from the Sierras) through the tunnel, instead of through the circuitous route of the Virginia & Truckee Railroad, thus saving an expense of fully \$4 per cord; for exploring and utilizing the several veins already cut by the four miles of tunnel, and those that, judging from the surface indications ('croppings') on the slopes of Mount Davidson, will probably be met with in that unexplored country west of and beyond the Comstock, which the act of Congress permits the Tunnel



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the face of almost insuperable difficulties—interposed by man rather than by nature—was something extraordinary ; but the work itself also will show its grandest success in being the means of maintaining an immense mining population in prosperous activity for centuries; thus corroborating the prediction made fifteen years ago by one of the greatest living geologists, Baron Von Richthofen, that ‘the amount of nearly \$50,000,000 which have been extracted from the Comstock Lode (now nearly \$400,000,000) is but a small proportion of the amount of silver awaiting future extraction in the virgin portions of the vein, from the lowest levels explored down to *indefinite* depth ; * * *’ and, again, that in case no tunnel should be constructed, ‘the treasures buried in the unexplored depths of the vein will be valueless, in the other they will be a *lasting* source of wealth for the owners of the mines, for the population of Washoe, and that portion of the community at large which depends more or less on the products of the Comstock Lode.’ ”—*New York Daily Graphic*, July 21, 1879.

VIII.

Litigation to Foreclose the Mortgage.

THE foregoing is a brief description of the property, a fractional part of the title to which is represented by each one of the two million shares of the stock of the Company, and of which property the shareholders of the Sutro Tunnel Company will be wholly deprived, if the pending foreclosure suit, brought by Hugh McCalmont and William Johnstone Newall, of London, England, as complainants, against our Company as defendant, in the United States Circuit Court for the District of Nevada, shall be prosecuted to a successful conclusion and decree favorable to the complainants, and shall entail, as a result, the sale of the property of the Company under execution.

The mortgage, which is sought to be

foreclosed by said suit, purports to have been executed by the Sutro Tunnel Company to the complainants at San Francisco, on January 4, 1877.

And here the writer will be pardoned for digressing for an instant and parenthetically saying a few words personal to himself, but necessary in view of many inquiries. At the time said mortgage was given, and during the period from 1875 to 1880, I was at intervals one of the attorneys for the Sutro Tunnel Company, but not, as at the present time, its general attorney and adviser. My professional duties to the Company extended no further than to take charge of such matters as arose in the Interior and other departments of the United States Government at Washington, under the Act of Congress of July 25, 1866, hereinbefore set forth, and of such occasional litigation as arose from time to time in regard to the affairs of the Company here in the East. I was not cognizant of, nor consulted in



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be advanced, and interest at 12 per cent. per annum ; the interest to be paid half yearly on the first days of January and July of each year ; and that “in case default shall be made in any payment of interest,” the Company “will forthwith pay all principal moneys for the time being owing on the security” of the mortgage. On March 28, 1878, the alleged indebtedness, by reason of “further advances,” had increased to \$433,965.10, and a supplemental agreement was entered into, whereby the time of payment of the said principal, together with any further advances, was extended to January 1, 1891, with the same provisions respecting the payment of interest, and of the principal sum upon default in the payment of the half yearly interest.

It was owing to the alleged default in the payment of interest (the first default having occurred on January 1, 1881) that the present suit was commenced (March 22, 1886), the alleged indebtedness then

Litigation to Foreclose the Mortgage. 99

amounting to \$997,853.52, besides interest claimed as remaining unpaid thereon, to the amount of \$638,872.71, and which has been augmented, if calculated at the rate of 12 per cent., by about \$10,000 monthly ever since.

Besides said sums the complainants, under a certain resolution passed by the Board of Trustees of the Sutro Tunnel Company on September 1, 1880, also claimed compound interest at the rate of another 12 per cent. per annum upon said unpaid back interest of \$638,872.71.

On the same day on which the suit was commenced (March 22, 1886), on application of the complainants—the mortgagees—an order was made by the Court appointing a Receiver of all the property of the Sutro Tunnel Company, without any opposition on the part of the Company, or any attempt thereafter to have the said order vacated, or modified. The late President of the Company, Charles W. Brush, was appointed Receiver by said

order, but he was almost immediately succeeded, on April 1, 1886, by the late Vice-President, William Johns, as such Receiver, who is still a trustee in the Company and continues to be its Receiver.

On March 29, 1886, the defendant, the Sutro Tunnel Company, filed a general notice of appearance in the suit. Subsequently a plea to the jurisdiction of the Court was filed on behalf of the Company, and argued, but was denied.

Thereafter, on July 5, 1886, the defendant filed a formal answer to the bill of complaint, merely denying its allegations, not being under oath, and setting up no affirmative defenses. The usual formal replication was filed to the answer by the complainants, and shortly thereafter the taking of testimony in the case was begun at San Francisco, California, pursuant to stipulation between the attorneys. Said testimony consisted wholly of such as was offered by the complainants, and was given



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claimed by them, and, in a speedy sale, on execution, of all the property of the Sutro Tunnel Company. The case not having been reached for trial in its regular order, the foregoing condition of affairs continued unchanged until January 29, 1887, when the petition, drawn and suggested by me, and hereinafter more particularly mentioned, was filed in the Court at Carson City on behalf of certain New York and other eastern stockholders for leave to intervene and defend the suit on their own behalf. What the said condition of affairs was, in its bearing on the future of the Sutro Tunnel Company, may be inferred from the following, written by Mr. S. M. Wilson, the leading lawyer of California, and contained in one of the briefs presented to the Court in connection with said petition :

“The Directors of the Corporation defendant and their solicitor say, that they see no chance of any defense, and practically abandon all hope of resistance in whole or in part. * * *

“It is indisputable then that the Corporation is on the very verge of destruction—it is *in articulo mortis*. The decree which the Directors and their solicitor deem inevitable will not only be a total destruction of all corporate rights, but compel a final cessation of all business and bring the Corporation to a virtual death. * * *

“Here the mortgage, purporting to cover all the rights, privileges, franchises, and property, and even the books of account of the Corporation, and a decree of foreclosure and sale of all these being sought, we have such a strong case of the impending total destruction of all corporate rights as will compel a suspension and final cessation of all its business and bring the body politic and corporate to a virtual death.”

Until the time of the signing of said petition, which constituted the first step in my plans for endeavoring to save the property of the Company in the interest of the stockholders, the latter had taken no steps whatsoever in the litigation, for their own protection.

My attention was first called to the

commencement of the suit to foreclose the mortgage by several stockholders of the Company. These gentlemen consulted me regarding the matter in an informal manner, about the month of April, 1886.

Having for about six years previous to said time taken hardly any interest in the affairs of the Company, nor been connected with it in any way whatsoever, not owning a single share of stock, and my former connection, moreover, having proved anything but profitable to me, I naturally felt rather an aversion to being in any manner again identified with Sutro Tunnel matters. I was nevertheless induced to make a cursory examination of the rumored litigation and of the affairs of the Company, and during such examination perceived that the Company was, for the first time in its history, earning a substantial income. After considering what might be done to protect the stockholders, who had consulted me, I entered into some corre-



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an early trial of the case, I received the following :

“ San Francisco, January 8, 1887.
“ To Theodore Sutro,
Counselor at Law, 292 Fifth Avenue,
New York.

“ Evidence closed ; case to be argued
next month, possibly sooner.

“ Edmund Tauszky.”

Feeling convinced that all would be lost, the property sold, and the stock extinguished, unless immediate action were taken, I felt it my duty to direct the attention thereto of such gentlemen as had conversed with me, as aforesaid, about their shares of stock, and advised them to call a meeting of the stockholders to take immediate and concerted measures to protect themselves. After much discussion with various stockholders, much persuasion, and endless explanation on my part, and also many annoyances, and a great deal of senseless opposition from some quarters, an informal meeting was at last

called, mainly with the energetic and intelligent co-operation of Mr. Horace H. Thayer, and through the medium of an advertisement, which meeting was held in the city of New York, on January 12, 1887, at the office of Mr. Herman R. Baltzer, himself a stockholder, and one of the first to interest himself in the matter.

The following brief account of said meeting, which appeared in the San Francisco *Evening Bulletin*, at the time, will be sufficient :

“ SUTRO TUNNEL

“ *Special to the Bulletin.*

“ NEW YORK, *January* 12.—A meeting of the Sutro Tunnel stockholders was held here to-day, and was well attended. Many prominent mining operators were present. Theodore Sutro of this city presented a petition for signatures. It is addressed to Nevada's Circuit Court. He said it was an absolute necessity that the stockholders should sign it, in order to protect their rights. The petition recites that McCalmont Brothers & Co., of London, holders of the present mortgage, had acquired and

remained in control of the Company, through the ownership of a bare majority of the stock; that the trustees and officers of the Company elected by them had executed the deed of trust or mortgage in suit, and that the officers elected by the mortgagees have now made a merely formal answer to the application for a foreclosure, and cannot be expected to protect the minority shareholders. In conclusion, the petition asks that the signers or any one of them be allowed to defend the suit by separate counsel; also that a final hearing of the foreclosure suit be postponed in order to give them time to prepare evidence. A resolution approving the petition was unanimously adopted, and the following committee of signers was appointed to protect the minority stockholders: H. H. Thayer, Bryce Gray, J. C. Reiff, L. von Hoffmann & Co., H. R. Baltzer, Hermann Stursberg, Palmer & Löwengard as agents, Simon S. Stern, Charles F. Tag, I. S. Bernheimer, H. B. Smith, V. R. Martinsen and John Ponder. The petition will be forwarded to Nevada. Statements were read at the meeting, showing that the original mortgage was about \$124,000 and had increased to about \$435,000 in 1878. The present principal is about \$1,000,000 with accrued interest of \$600,000.



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such defenses; the ground for making said application being mainly, that the Sutro Tunnel Company itself was not *bona fide* defending the action.

In order to induce performance of the aforesaid services, I had to indulge in contingent promises, as I myself had received no compensation whatsoever, nor had any funds been contributed for the purpose of retaining any other attorneys.

Through the efforts principally of Mr. Horace H. Thayer, and as a result of certain resolutions adopted at said meeting of January 12, 1887, a number of stockholders were induced to contribute, though with evident misgivings, a trifle of one cent per share to help defray preliminary expenses, and in this way at last a few thousand dollars were accumulated and applied toward necessary disbursements. To those who voluntarily created this small fund at that critical period all the other shareholders of the Company owe a great debt of gratitude; and the

first surplus moneys which the Company may have in its treasury should be applied to repaying to the stockholders, who made said contribution for the benefit of all the rest, the amount so advanced by them.

The petition was duly filed on January 29, 1887, as already mentioned, and therewith the first step in my general plan was taken, that step being intended to procure time for the stockholders, within which to devise measures to protect their property; the paramount importance of obtaining such time I had already urged upon them in my address to them at the meeting in New York, and it was in fact likewise stated in the petition itself. The hearing of argument on the petition was set for February 7, 1887, adjourned to February 10, 1887, and on the latter date argued at Carson City, by Mr. S. M. Wilson (who had meanwhile been retained as associate counsel), and by Mr. Tauszky, on behalf of the petitioning stockholders, and

by Mr. Louis T. Haggin of San Francisco, the solicitor for the complainants in opposition. The Court took the matter under advisement, granted leave to counsel to file briefs in support of and in opposition to the application until March 2, 1887, and ordered a stay of proceedings meanwhile. Thus already one advantage had been gained, in that it gave a breathing spell for formulating plans for further action.

Having serious misgivings as to the granting of the petition for intervention at so advanced a stage of the case, which latter had been pending already for nearly a whole year, and also owing to the lack of certain formalities which, under the rules of the Court, I considered essential, but found it utterly impossible to comply with at that time, I deemed it prudent already then, in furtherance of my general plan, to call the attention of the Committee of Stockholders to the importance of taking immediate steps to be present



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H. R. Baltzer, Chairman, H. H. Thayer, Secretary and Treasurer, and Otto Löwen-gard), and especially of Mr. Thayer, proxies for over six hundred thousand shares were gradually accumulated; and then came long discussions with the committee as to the advisability of my proceeding to San Francisco to see what could be done in regard to the election and the litigation.

The committee were obviously not in a position to offer any inducements, but I was nevertheless at last persuaded to undertake the journey, and a portion of the one-cent fund was paid me toward defraying my traveling expenses; and so on February 24, 1887, I started for San Francisco, rather reluctantly I must confess, for I felt that I had assumed an enormous responsibility, and personally a great risk, not only from a pecuniary but professional point of view, in thus suddenly leaving my practice in New York; for, as I had already freely expressed my-

self before leaving, I had doubt about the eventual granting of our petition, and was also, at the same time, not in a position to carry the annual election in the interest of the stockholders, as, in spite of the most strenuous efforts, the total amount of the proxies which we had been able to obtain up to that time was for only about 650,000 shares, and it was, of course, necessary that we should have a quorum, that is to say, over one million shares, or proxies therefor, in hand, in order to make sure that the election or annual meeting could take place at all, as provided by the by-laws of the Company. Nevertheless, I also felt that my journey at that time was absolutely essential in furtherance of the general plan, so that I might be on the spot to consult with my associate attorneys, and acquaint myself more thoroughly with the affairs of the Company by personal interviews, and by investigation of the books and records, and in that way devise, perhaps, some other plan of rescue

in case both the petition and election should fail us.

On March 2, 1887, I arrived at San Francisco. Being wholly unacquainted in said city, and finding, upon inquiry, that no one took any special interest in the affairs of the Sutro Tunnel Company there, except one or two members of the old Board of Trustees and Mr. John Landers, who owned some shares of stock (and who has recently been elected Vice-President of the Company), and finding that everybody regarded the Sutro Tunnel Company as having arrived at a point at which it would soon cease to exist, and that it was past all hope of redemption or rehabilitation, I had the greatest difficulty to induce any gentlemen of responsibility to consent to act as members of a new Board of Trustees. Through a great deal of persuasion, however,—and some impotunity, I fear,—during the few days left before the day of the annual election (March 7, 1887), I managed to secure



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feat the holding of any election, if they could do so, by withholding their proxies, as in that way their own Board of Trustees, already in office, would have been able to hold over for another year.

Perceiving their tactics, and having exhausted arguments and protests against their course, I adopted the expedient of bringing about an adjournment of the meeting to the 28th day of March, 1887, so that we might gain time for the purpose of negotiating about the settlement of the litigation, and, as a consequence, of possibly arriving at some agreement with the McCalmont party about holding an election on the adjourned day. But the intention more especially was, that by March 28th the stockholders, in whose interest I had been acting, might be induced to send sufficient additional proxies, so that we might be able to control the election without asking any favors of the other side, and in that way become masters of the situation.

Litigation to Foreclose the Mortgage. 119

In pursuance of that plan, on the evening of the 7th day of March, immediately after the adjournment of the meeting, I sent the following telegram to New York:

“ San Francisco, March 7, 1887.
“ To Horace H. Thayer,
“ Room 123, Produce Exchange,
“ New York City.
“ Managed adjournment to 28th instant, because must have majority stock. Advertise immediately for more proxies. Advise against transfers.
“ Theodore Sutro.”

On March 9th an advertisement, substantially to the effect as suggested in the foregoing telegram, was inserted in the New York papers; and a few days later I sent the following telegram:

“ San Francisco, March 10, 1887.
“ To Horace H. Thayer,
“ Room 123, Produce Exchange,
“ New York City.
“ Get all proxies possible. Have all shares in names of persons unwilling to give their proxies transferred to real owners. Impress upon stockholders

great value of property about which am now fully convinced. All stockholders should now help.

“Theodore Sutro.”

The time for the filing of our final brief in support of the petition of the stockholders for leave to intervene, having expired on March 2d, but having been extended from week to week, I now directed my attention, in conjunction with the other attorneys in the case, to the preparation of said brief, and it was filed on the 18th day of March, 1887, which was the latest day to which the matter could by any possibility have been postponed. The following Monday, March 21st, was the day on which the Court was to render its decision on the petition and dispose of the question when the final hearing in the case should take place, and on that day came the telegraphic news from Carson City, in answer to a request from me for information, that our petition, as I had feared all along, had been denied, and that



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man and Secretary of the Executive Committee, Messrs. Baltzer and Thayer, urging upon them the necessity of obtaining every possible proxy and of leaving no stone unturned in the effort to secure representation of over a million of shares at the adjourned meeting on March 28th, and I did so in full appreciation of the risk I ran of somewhat annoying those gentlemen by the persistence of my demands in that direction.

As it was absolutely essential that I should be present at the annual election of the Company, and, also deemed it important personally to attend in Court at the time of setting the case for final hearing, and as both of these events were to take place on the same day, the former in San Francisco and the latter some 500 miles away at Carson City, Nevada, I directed my attention to a possible postponement of the Court proceedings, and managed, after considerable trouble, in having them adjourned for one week to April 4th.

Having about a week before the 28th

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day of March heard from New York that the prospect for acquiring proxies sufficient, with those already obtained, to represent a majority of the shares, was favorable, I immediately endeavored to have the books of the Farmers' Loan and Trust Company (the transfer agents of the Company in New York) closed in time, so that we might not lose any of our proxies by transfers, and with the co-operation of Mr. Ames, the Secretary of the Company, I succeeded in accomplishing that, and shortly thereafter received the intelligence from Mr. Thayer that sufficient additional proxies, in order to give us control of a little over one million of shares, were on their way to San Francisco. Great credit is due to Mr. Thayer for devoting himself so promptly and assiduously to the work of obtaining, in the short space of two weeks, so many additional proxies, with the co-operation of the other members of the Executive Committee, and of Mr. Hermann Stursberg, a member of the

General Committee, and one of the earliest friends of the Sutro Tunnel enterprise.

Without entering into a more detailed statement of my course immediately before and at the adjourned meeting, suffice it to say that the latter took place on the 28th day of March, 1887, and, as a result thereof, five out of the seven Trustees were elected in the interest of the stockholders whom I represented, and in that way we gained, to a large extent, what had been denied us theretofore in consequence of the rejection of our petition, namely, a standing in the litigation, no longer now as third persons, begging and praying to be allowed to defend their rights and their own property, but as the party defendant, the Sutro Tunnel Company itself, entitled to recognition in the suit, and in a position to be heard upon the trial, and to take whatever steps might be deemed advisable thereafter for the purpose of carrying the case, if necessary, on appeal to a higher Court.



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was also the one of that Board who (seconded by Judge Thomas P. Stoney, also of the old Board) initiated measures in the interest of the eastern stockholders, and was the mover of a resolution inviting my associate attorneys and myself to cooperate with the attorney for the Company, Col. M. N. Stone, of Virginia City, Nevada, in defending the suit; Mr. Cahn is well known as the Manager of the London, Paris, and San Francisco Bank. Mr. John Landers (the Vice-President of the Company) is the General Manager for California of the Manhattan Life Insurance Company of New York, the president of several mining companies, and a man of considerable practical experience and enterprise. Mr. Moritz Meyer (the President of the Company) is a member of the firm of Daniel Meyer & Co., a millionaire banking-house of San Francisco, and is also Cashier of the Bank of Nevada, at Reno, Nevada; having been until recently a resident of New York City, he is

sufficiently well known to the stockholders. Mr. Frederick Roeding, Vice-President and Cashier of the German Savings and Loan Society of San Francisco, is one of the best known German gentlemen there, a man of great business and financial experience, and highly respected. Mr. Mountford S. Wilson, an able young lawyer and of excellent business tact, is the son of S. M. Wilson, Esq.,—the latter being of counsel in the pending litigation, and standing at the head of the Bar in California, and being President of the Bar Association of San Francisco.

And I may add that also the two remaining trustees (elected by the McCalmont party), namely, Messrs. Pelham W. Ames, and William Johns (the Receiver in the pending litigation), are displaying a commendable degree of fairness in their course; and it is due to Mr. Ames to say that he has justified his re-election as Secretary of the Company, through the interest which he has shown in its con-

tinued existence, and in the rescue of its property, and through the valuable information which he has been able and ever ready to impart in consequence of his thorough familiarity with, and great experience in the affairs of the Company, through his long years of service as its Secretary (since August 2, 1872).

The newly elected Board of Trustees, therefore, is unexceptionable, and the property and affairs of the Company are in good hands.

The carrying of the election, while the litigation was still undetermined, was undoubtedly a great point gained (and let it not be forgotten that the suit was not closed in consequence of the additional time obtained, in the first instance, by the filing of our petition), but yet we were not in a position to present such defenses to the suit as I thought might and ought to be presented and as had not been sufficiently, or at all, introduced in the evidence so far taken, nor pleaded in the



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granting of the petition, that certain outside stockholders were being deprived of certain rights, but on the ground that the defendant itself, being now in entirely new hands, was entitled upon good cause shown, and in so exceptional and large a case as this special one, to present whatever additional defenses it might satisfy the Court to be important for the protection of its own rights.

In pursuance of that view, we served notice on the attorney for the complainants of an application to the Court for leave to the defendant Company to amend its answer by pleading additional defenses, and to take testimony in support of the allegations contained in the proposed amended answer, and noticed the hearing of said application for the 4th day of April, 1887, being the same day on which the case was to be set for final hearing.

We also gave notice of several other applications on behalf of the Company, among them, one, that the money in the hands

of the Receiver, amounting already at said time to about \$200,000, and which was lying idle, bearing no interest whatsoever, whereas against us, interest at the rate of 12 per cent. was continually accruing upon the mortgage, should be paid over to the mortgagees, but without prejudice in any way to our rights or defenses in the case. Another application, which I proposed to make on said day, was that a regular monthly sum should be paid by the Receiver to the Company for its current business expenses, and for which latter, up to that time, the Company had been, to a large extent, dependent upon the discretion of the Receiver.

I left San Francisco for Carson City on the afternoon of April 3, having, in the midst of the many other pressing matters which had engrossed my time, made such preparation for the argument as, under these disadvantageous circumstances, had been possible; and yet I felt that my success or failure upon my application to the

Court on the following day would be of the utmost importance on the question of the continuance or extinction of the Sutro Tunnel Company, as, in spite of whatever had been gained at the election, that would all again be lost, if the case should at that time be pushed to a final hearing, judgment entered, and the stockholders driven to the alternative of either losing their property altogether, or of redeeming it at a price so high that redemption would be entirely out of the question.

If I felt the responsibility of my position at the time I left New York for San Francisco, that feeling was intensified on the day on which I departed from San Francisco for Carson City, in view of the attitude of the complainants and the previous temper of the Court on the question of granting us time. By way of illustration, the following encouraging letter from a gentleman intimately acquainted with the condition of affairs at that time, and which was handed to me as I was on



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present were new and material; and upon the further fact that the complainants could not possibly be prejudiced by any brief delay which might be caused in consequence of granting the application of the Company for leave to amend its answer, and to take testimony in support thereof; and met the principal argument advanced by the other side, in opposition to our application, by laying special stress upon the fact that, although it was true that the suit had been pending for nearly a year, nevertheless the stockholders could not be charged with *laches*, because the control of the Company, and as a result the litigation, had theretofore, and ever since the commencement of the suit, been entirely in the hands of the complainants.

Without entering into further details in regard to the various arguments adduced by the attorneys for the complainants, and by myself, I may say in brief, that Judge Sabin, after a most patient hearing of both

sides and due consideration of the matter, granted the application, and allowed the Company to file all the proposed amendments, and, in the matter of time, gave us forty days within which to take further testimony, and forty days thereafter to the other side to take testimony in rebuttal. The other applications were also successful, the Court directing the Receiver to pay over to the complainants "without prejudice to the rights of either party" in the litigation, whatever money was then in his hands, and whatever moneys would come into his hands during the pendency of the litigation, always retaining, however, the sum of \$25,000 for any contingent expenses that might arise in relation to the Company's property, and also directing him to pay to the Company a monthly sum for its business expenses.

After some days spent in the examination of the records in the case at Carson City, and thereafter in a visit to the property of the Company, for the purpose of in-

investigating the Sutro Tunnel itself and its surroundings, as a basis for such report as I have endeavored hereinbefore to make to the stockholders, I returned to San Francisco on April 14th, and with my associate attorneys immediately began to take steps to introduce testimony. As a part of our plan, in the taking of said testimony, we prepared interrogatories for certain commissions to issue to Baltimore, Maryland; London, England; and Paris, France, to examine respectively Charles W. Brush, ex-President of the Company, Hugh McCalmont, one of the complainants, and Joseph Aron, who was one of the first friends and supporters of the Sutro Tunnel enterprise, the first President of the Company, and to whose encouragement and valuable services the completion of the work is, in a large measure, due.

The foregoing matters, and also others which arose in connection with the management and organization of the Com-



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the commissions went forward on June 6th. Considerable testimony also has already been taken and quite a number of additional witnesses examined at San Francisco on behalf of the Company, in support of its amended answer.

IX.

Negotiations for Settlement of the Litigation.

IMMEDIATELY upon my arrival in New York, I entered into negotiations with Messrs. Alexander & Green, counsel for the complainants in the suit, with a view to a possible settlement, and after various interviews with them and with their immediate clients, Messrs. Kidder, Peabody & Co., of this city, agents of McCalmont Brothers & Co., a certain proposition was entertained by Messrs. Alexander & Green and submitted by them to the complainants at London, England, who have lately signified their acceptance thereof.

The following correspondence will best explain these negotiations, and show exactly on what basis the complainants will be willing to discontinue the foreclosure proceedings, and also, in a brief way, why it was deemed best, under all the circumstances, to arrive at some settlement.

The following is the letter, hereinbefore mentioned, written by me from San Francisco, before we had carried the annual election :

“ SAN FRANCISCO, *March* 12, 1887.

MCCALMONT, *et al.*,

vs.

SUTRO TUNNEL CO.

“ LOUIS T. HAGGIN, Esq.

“*Dear Sir* : Referring to our conversation of last Wednesday, in the course of which I took occasion to express to you my views of the advantages to the complainants of settling the above-entitled suit, and you suggested that I should formulate some plan, I would now propose as a basis of settlement, that the complainants reduce their demand to the amount of the principal sum alleged to have been loaned by them to the defendant corporation, with the addition of simple interest at 6 per cent. per annum, and that they extend the time of payment of said principal sum to July 1, 1894.

“ Assuming the principal sum to be



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“The foregoing proposition is made without prejudice to any rights or defenses in favor of the stockholders or the Corporation, in the above entitled suit, if not settled.

“You would oblige me by an early answer.

“Yours truly,

“THEODORE SUTRO.”

No letter was received from Mr. Haggin in answer to the foregoing.

The following letters passed between Messrs. Alexander & Green and myself since my arrival at the city of New York:

“10 WALL STREET,

“NEW YORK, *May* 13, 1887.

“THEODORE SUTRO, Esq.

“99 Nassau Street.

MCCALMONT

vs.

SUTRO.

“*Dear Sir*: You called upon me yesterday and as attorney for the Sutro Tunnel Co. made a proposition for set-

tlement of this suit, which, as I understood it, was as follows :

“ You proposed that the complainants should be allowed simple interest at the rate of 12 per cent. per annum upon the amounts secured by the mortgages now under foreclosure in this suit from the dates when such respective amounts were paid or advanced by the complainants to date. That the amount already paid by the Company for interest should be credited upon the amount of interest calculated as above. That the balance of the interest due, calculated in the manner above described, together with the entire principal sum secured by the mortgages, should be capitalized and a new mortgage security for the amount of such principal and such balance of unpaid interest should be taken by the complainants, the amount to be secured thereby to bear interest at the rate of 6 per cent. per annum. Such mortgage to contain a sinking fund clause providing for the payment of say \$50,000 per annum on account of principal. The life of the mortgage so to be given to be, say, 15 years.

“ This proposition has been submitted to our clients, and we are instructed by them to say that they decline to consider the same. Yours respectfully,

“WM. W. GREEN.”

“ 99 NASSAU STREET,
“ NEW YORK, *May 21, 1887.*

HUGH MCCALMONT, *et al.*,

agst.

SUTRO TUNNEL CO.

“ Messrs. ALEXANDER & GREEN,
“ No. 10 Wall Street, City.

“ *Gentlemen* : With a view of ending further litigation in the above-entitled suit, and in consideration of the advantages necessarily accruing to both parties, by placing the Company again in possession of and enabling it to improve and develop its property and thereby enhancing the value of your mortgage security, which this very litigation tends to deteriorate, I have made several propositions of settlement to you on behalf of the stockholders and of the Company. I was under the impression that it would not be necessary to pay wholly in cash, but that your clients would accept in part or even in whole payment a new mortgage, upon some basis whereby they would be assured, beyond a reasonable doubt, of ultimate payment of principal and interest.

“ These propositions were made in



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representatives of your clients, and in the presence of your Mr. McCook, when I took occasion to elucidate the importance to us of knowing exactly on what basis the suit might be settled; that, if necessary, I desired to make an effort to obtain funds, and that these would have to be contributed by the body of the stockholders, but that, as a preliminary thereto, I must necessarily know the precise sum which would be required; and I also explained the difficulty of obtaining immediately any large amount in cash. I was informed, however, that it would be impossible to entertain any proposition except one for an entirely cash payment, and, in order to facilitate a settlement, we are willing to modify our proposition in accordance with said suggestion.

“It remains then to decide, if possible, what the amount of that cash payment shall be, and that this is essential before we can undertake to appeal to the stockholders to advance any funds whatsoever, is self-evident; and to endeavor to arrive at some agreement on this point, is the object of this letter.

“Without dwelling upon the merits of either the prosecution or the defense herein, it must be conceded that the litigation promises to be of a protracted character; that in the mean time your

clients will be kept out of their money ; that through this very litigation, the value of the defendant's property, and therefore of the complainants' security, must deteriorate ; and that, as is the case in all law suits, there must, even from your own stand-point, be doubt as to your complete success, whether it be in obtaining a decree for the full amount of the complainants' claim, or in fully satisfying it by a forced sale of such portions of the Company's property as you might ultimately be able to reach by execution.

“If, therefore, the Sutro Tunnel Company should wholly withdraw its defenses and consent to settle your claim by a cash payment, your clients must also, in consideration thereof, make an equivalent concession. The withdrawal of any claim for compound interest I shall not regard as any inducement ; said compound interest is not sued for by you, is not provided for in the mortgages, and any claim to it must be founded upon grounds and circumstances which, in our opinion, render it absolutely invalid. We do not hesitate to assert that you are not entitled to and cannot possibly recover any compound interest, and it remains then to consider what it would be proper to expect from your clients.

“ From figures furnished to me by the Secretary of the Company, the principal of the mortgage and the installments of interest thereon at 12 per cent. would, on July 1, 1887, foot up as follows (E. and O. E.) :

Amount of principal	\$997,862.52
Installments of interest at 12 per cent.	913,862.10

Total	\$1,911,724.62
-----------------	----------------

The Company has paid on account of interest	229,401.63
--	------------

Which would leave a balance on July 1, 1887, of \$1,682,323.00 from which, however, would have to be deducted such sums as have already been or may hereafter be paid over by the Receiver, without prejudice to our rights, under order of Court of April 4, 1887.

“ Said balance of \$1,682,323.00 would represent the maximum amount of the most favorable decree which your clients might obtain on July 1, 1887, after a trial of the case on its merits, assuming, for the sake of argument, that such were possible.

“ In fact, however, a final decree in your favor herein must necessarily be long deferred ; is, under the most advantageous circumstances, by no means



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still less since the Company has had an earning capacity, and in contemplation of the more recent and present rates for money on the Pacific Coast.

“ It would, in our opinion, be reasonable to ask your clients to reduce the rate of interest to 6 per cent. which would still leave it \$456,931.05

Add to this the full amount
of the principal. . . . 997,862.52

would make the sum total \$1,454,793.57

Deducting as before the
amount of interest paid 229,401.63

would leave a balance of \$1,225,391.94

“ Our proposition then would be this: That the Company agree to pay in cash within six months from July 1, 1887, the said sum of \$1,225,391.94, less such sums as have already been paid or may hereafter be paid over by the Receiver under order of Court as aforesaid; that the litigation continue uninterruptedly, except that the final hearing be not set earlier than January 1, 1888, and that if the Company should fail to pay said sum on or before said last-mentioned date, you shall no longer be bound by the agreement.

“ The final hearing can in no event take place before November, 1887, so that the limit of time hereinbefore suggested will hardly delay the suit, and

it will be no easy task to raise so large a sum of money, as will be required, under this proposition, from the body of the stockholders (who are the ones who will have to make the contribution) within so short a period.

“As it is of importance that I should have an answer to this letter as soon as possible, in order to begin immediately to take active steps to procure money, I have acted upon your suggestion and have sent a copy hereof to Messrs. Kidder, Peabody & Co.

“Yours truly,

“THEODORE SUTRO,
“Attorney for defendant.”

“10 WALL STREET,
“NEW YORK, *May 23, 1887.*
“THEODORE SUTRO, Esq.,
“99 Nassau Street.

MCCALMONT

vs.

SUTRO.

“*Dear Sir:* We are this morning in receipt of your favor of the 21st, in relation to settlement in this suit.

“The propositions which you have

heretofore made have been embodied in writing, first, by your letter to Mr. Haggin, and second, by Mr. Green's letter to you, which you confirmed.

“ Without discussing what has passed heretofore on the subject of settlement, and without affirming or denying any of the statements in your favor of the 21st inst., we beg to say in reply to that letter that we are instructed by our clients, that a definite reply to the same will be given you about the 15th day of June, and that meanwhile you can have a fair amount of assurance that such reply will be favorable in some of its points. The decision, however, will be in a measure dependent upon the responsibility attached to your offer, when the matter is discussed in London, and it would therefore greatly facilitate your client's interests in any proposition of settlement, if you could inform us, prior to the departure of the steamship *Etruria*, on the 28th inst., just what your plans are likely to be for the raising of the cash contemplated in the proposition contained in your letter of the 21st, what reasonable assurance you have of success in that regard, and what financial backing you can now give assurance of.

“ Yours very truly,

“ ALEXANDER & GREEN.”



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could do within that brief period was to obtain inclosed indorsement from the committee which originally appointed me attorney for the stockholders, and which represents the latter.

“The gentlemen who have signed said letter, Messrs. H. R. Baltzer of the late firm of Baltzer & Lichtenstein, Horace H. Thayer, Otto Löwengard (constituting the Executive Committee), and R. V. Martinsen, H. Stursberg of Hermann Stursberg & Co., F. Kruse of L. von Hoffmann & Co., and Simon S. Stern, of the General Committee, being a representative body, their statements and opinions ought to have great weight.

“I would add my own strong corroboration of what they say, and state that, even if the plan mentioned in their letter, for raising money, should fail, I have others available.

“Our method of raising the money, however, must, after all, permit me to add, be of minor importance to your clients, and even total failure on our part would not prejudice them under the terms of settlement, as proposed in my letter to you of 21st inst.

“Hoping to receive a definite answer from you at the earliest moment possible,

“I remain yours truly,

“THEODORE SUTRO.”

“ NEW YORK, *May 27, 1887.*

“ THEODORE SUTRO, Esq.,

“ Attorney for the Sutro Tunnel Co.

“ *Dear Sir:* We have read your letter of 21st inst., addressed to Messrs. Alexander & Green, and their answer to you of 23d inst., both in relation to a proposed settlement of the pending foreclosure suit of McCalmont, *et al.*, vs. The Sutro Tunnel Company.

“ As a Committee of Stockholders, representing the body of the stockholders of said Company, duly appointed at a meeting held in the City of New York on January 12, 1887, we herewith declare that the proposition of settlement, as contained in your said letter, meets with our entire approval; that we hereby pledge our earnest support and active assistance in recommending said proposition to the other stockholders; that, from our acquaintance and conversation with a large number of said stockholders, severally owners of many shares of stock, we feel assured that the sum of money mentioned in your said proposition can be procured from them within the period of time also mentioned in your said letter, and that, so far as we are personally concerned, we are willing to join the other stockholders in advancing our pro rata of said sum on the plan suggested

by you to us, which we consider entirely feasible, and which meets with our unqualified approval; said plan being, as we understand it, to call upon the stockholders to loan to the Company said sum of money on mortgage bonds at a reduced rate of interest.

“ We also desire to state that we fully coincide with you in the statement contained in your said letter, addressed to Messrs. Alexander & Green, that it would not be practicable to call upon the stockholders for any advances until it be definitely agreed what the precise sum of those advances will have to be.

“ We hereby authorize you to transmit this letter to Messrs. Alexander & Green.

“ Your respectfully,

“ H. R. BALTZER, *Chairman of Executive Committee.*

“ H. H. THAYER, *Secretary and Treasurer of Executive Committee.*

“ H. STURSBURG,

“ R. V. MARTINSEN,

“ H. KRUSE,

“ OTTO LÖWENGARD,

“ SIMON S. STERN.”

As a result of the negotiations, explained to some extent in the foregoing correspondence, the following stipulation



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I also received the following answer to my foregoing letter of May 21, 1887, addressed to Messrs. Alexander & Green :

“ 10 WALL STREET,
“ NEW YORK, *July* 6, 1887.
“ THEODORE SUTRO, Esq.,
“ 99 Nassau Street.

MCCALMONT

vs.

SUTRO TUNNEL CO.

“*Dear Sir:* In answer to your letter to us dated May 21, 1887, we beg to say that the complainants are willing to accept the following proposition made by you on behalf of your client, the Sutro Tunnel Company, the defendant herein, namely, that the Tunnel Company pay in cash before the 1st day of January, 1888, the entire amount of the principal of the advances made by the complainants, together with interest thereon from the respective dates of each advance at and after the rate of 6 per cent. until the time of payment, less such sums as have already been paid, or

may hereafter be paid over by the Receiver under the order of the Court dated April 4, 1887, to the complainants herein; and that the cause shall continue uninterruptedly in its regular order, except that the actual trial of the cause and the issues therein, shall not be moved at any term prior to January, 1888; and that if the Company shall fail to pay the amount of the principal of the advances of the complainants, with interest at 6 per cent., less any deductions from the amount, paid by the Receiver as aforesaid, on or before January 1, 1888, our clients shall be released from their acceptance of the proposition of settlement, and the stipulation signed in this cause shall become immediately null and void; and upon the further understanding that in case of your failure to carry out the proposed settlement, the rights of the complainants shall not in any way be prejudiced, nor their standing in the litigation in any way affected by reason of their having accepted your proposition, or by reason of the signing of the stipulation herein.

“Yours respectfully,

“ALEXANDER & GREEN.”

In order that there might be no misunderstanding whatsoever about the terms

of this proposed settlement, I thereupon wrote the following letter to Messrs. Alexander & Green :

“ 99 NASSAU STREET,
 “ NEW YORK, *July 9, 1887.*
 “ Messrs. ALEXANDER & GREEN,
 “ 10 Wall Street.

MCCALMONT, *et al.*,

vs.

SUTRO TUNNEL CO.

“ *Gentlemen:* Your favor to me, dated July 6, inst., states substantially correctly the terms of settlement herein as understood by me, irrespective of the precise figures mentioned in my letter to you of May 21, 1887, which are mere matter of calculation, subject to errors and omissions, as therein stated and excepted.

“ It may be as well, however, that we also agree at this time on the precise method of final computation, which I understand to be as follows :

“ If simple interest at 6 per cent. be calculated on the entire amount of the



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posed final payment ; provided always that the latter shall be made before the 1st day of January, 1888.

“ It is understood, of course, that the rights of neither party herein shall in any way be prejudiced, nor their standing in the litigation in any way affected, in case of failure on the part of my client to carry out the proposed settlement.

“ Is the foregoing correct ?

“ Yours very truly,

THEODORE SUTRO.”

To the last-mentioned letter I received the following answer :

“ 10 WALL STREET,

“ NEW YORK, *July* 12, 1887.

“ THEODORE SUTRO, Esq.,

“ 99 Nassau Street.

MCCALMONT

vs.

SUTRO TUNNEL CO.

“ *Dear Sir:* We have communicated your favor of the 9th instant to our clients, and are informed by them that your form of putting the matter in re-

gard to the final computation seems satisfactory to them.

“Yours respectfully,
“ALEXANDER & GREEN.”

Such then is the present situation in regard to the litigation, as appears clearly from the foregoing correspondence! In contrasting it with the state of affairs just six months ago, at the time of the improvised meeting of the stockholders in the City of New York, on January 12th last, it is certainly matter for congratulation!

In giving an account in the preceding pages of the events leading up to the present status of the litigation and of the affairs of the Company, I felt it my duty to enter somewhat into details (though by no means into a full report of everything that has transpired), in order that every stockholder might not only have an understanding of the most important points, but that he might also be prepared to put to himself the question whether the benefit and the result of all the labor which, as

appears from said account, has been performed, and of all the obstacles and difficulties which, in the effort to rescue this property, have been encountered and successfully overcome, shall now be sacrificed and lost to him, or be taken advantage of and made the basis for consummating, to its full extent, the work of preserving that property and of still more increasing its value. Assuming that the latter alternative will be preferred, the further question then arises: What, under all the circumstances, is it best to do in order to dispose of the litigation altogether and enable the Company to proceed unimpeded to develop its great resources and possibilities for the benefit of all the stockholders? And in deciding that question it will be necessary to revert for a moment to a consideration of the amount of the claim of the mortgagees at the present time, and for what amount, under the agreement now arrived at, it may be settled.



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to which the mortgagees laid claim, and for which, owing to the lack of a proper defense, they would undoubtedly have obtained a decree, had not the stockholders intervened, in the manner hereinbefore briefly narrated.

It may be proper to add that, in case such decree had been entered and the property sold thereunder for said amount, even if the stockholders or others would have been inclined to redeem the property, they would be compelled, under the laws of the State of Nevada, to pay, in addition to the aforesaid sum, and interest thereon at the rate of 10 per cent. per annum, also a penalty of 18 per cent. on the whole amount, which, with the fees of the Receiver, expenses of the litigation and sale, costs, etc., would have swelled the total, which it would be necessary to raise in order to regain the property (after deducting the sum representing net income, which in the mean time would have accumulated in the hands of the Receiver),

to the sum of about two million three hundred thousand dollars (\$2,300,000).

Redemption for that sum, after the demoralization necessarily attendant upon a judgment against the Company and the final sale of its property under execution, would be entirely out of the question, and said property would undoubtedly be lost to the stockholders forever, the Company annihilated, and the shares of stock effectually extinguished.

And so we are brought to the point that, under the agreement now arrived at, a cash payment at this time of about one million dollars (\$1,000,000)—being the sum of about twelve hundred thousand dollars mentioned in the foregoing correspondence, less the sum of about two hundred thousand dollars, paid to the mortgagees by the Receiver up to July 1, 1887—will accomplish what otherwise would have required about two million three hundred thousand dollars (\$2,300,000), had the litigation proceeded to a decree without the

intervention of the stockholders, and had the latter been driven, in consequence, to the alternative of either regaining their property after execution sale, or of losing it and their shares of stock forever. In fact, however, we have until January 1, 1888, to make said cash payment of \$1,000,000, and further payments in the mean time by the Receiver to the mortgagees, under order of Court of April 4, 1887, will reduce said sum.

The motive of the complainants in making so large a reduction (over \$800,000) from their original claim is presumably, principally, that they prefer an early cash payment to the risks attendant upon a prospective long-protracted litigation; and also because, being very aged and possessing vast wealth, they are desirous of settling up their affairs, especially their American interests, at as early a date as possible.

However that may be, the opportunity thus presented to the stockholders of the



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XI.

Plan of Settlement of the Litigation.

AFTER reading the foregoing pages, in which I have endeavored to give to the stockholders some idea of the value, income, possibilities, and resources of their property, they should be prepared to answer the question: Are the shares of stock of this property, whose value represents many millions, worth saving, by paying the comparatively small sum of one million, to which the claim of the mortgagees has now been reduced? In other words, would one million dollars be too high a price to pay for a property which has cost ten millions, and whose intrinsic value is greater to-day than ever?

And in answering that question the present price of the shares of stock ought not to have the slightest weight; for it

must be remembered that unless the mortgage sale shall be effectually prevented, these shares will be absolutely worthless, and that, on the other hand, if the foreclosure proceedings shall be discontinued and the mortgage canceled by paying the aforesaid sum of one million dollars, the shares ought on merit to sell at a higher figure than they have ever sold in the history of the Company. If in the year 1879, when the Company was not earning a single dollar, but was still borrowing money upon this very mortgage now in suit, and when the tunnels were not nearly completed, and the mines upon the Comstock Lode were extracting hardly a ton of ore, these shares were selling as high as six and one-half dollars (\$6.50) per share, on a par value of ten dollars (\$10), they are certainly now, supposing the cloud of this foreclosure suit resting upon them to be removed, worth a very much larger sum; and it is reasonable to suppose that, as a result of

discontinuing said foreclosure suit and of settling the litigation, the price of the shares ought to appreciate enormously.

Even at the present juncture in the litigation, the shares ought to sell at least forty cents per share higher than at any time since the pending foreclosure suit was begun; for, on the two million shares of stock, forty cents per share would represent eight hundred thousand dollars, which is just about the amount by which the liability of the Company has diminished and therefore the value of its property enhanced, in view of the sum for which the original claim of the mortgagees for principal, interest and compound interest may now be settled.

Taking the present price of said shares of stock (30 cents), the two million shares of the entire capital stock of the Company would represent a value of only six hundred thousand dollars (\$600,000) for the whole property, which is, of course, on its face absurd, and can only be ex-



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plain to the great body of the stockholders, who originally retained me to represent them, the exact situation of affairs, so as to give to all of them the opportunity to derive the benefits which, from a perusal of the foregoing pages, it is evident must accrue to them, by taking some active measures to preserve their shares.

Various plans have been suggested and considered for raising money for the purpose of satisfying the mortgage in suit. There is no doubt, of course, that if all expedients in that direction should fail, we may continue to defend the litigation to the end, and possibly carry it on appeal to the Supreme Court of the United States, which would involve a delay of a number of years, but which would also probably entail the necessity of giving an enormous bond as security, and the final success of which must at best, as in every lawsuit, be doubtful. In mere delay, as such, there is no advantage; for, in

the mean time, interest on the mortgage-claim will continue to accumulate, and, as a result of continued litigation also, the Company will be kept out of, and be unable to explore or develop its property, or increase its revenues, and the shares of stock, instead of appreciating in price, will still more depreciate, and, lastly, it may be very doubtful whether, after the lapse of so long a period of time, in case the litigation shall be continued to the end, any one will be inclined to advance any money to the Company, should that then be necessary.

The best policy unquestionably is to settle this litigation upon the basis at which we have now arrived.

Among the plans which have been discussed for the purpose of raising money for such settlement one was that of levying an assessment. That would be the simplest process, as it would free the Company at once entirely from debt ; but, aside from other considerations

against it, the Sutro Tunnel Company has never since its existence levied any assessment, and, in my opinion, it would be fairer not to compel the stockholders to put additional money into this enterprise without some immediate return or ample security. Moreover, I do not consider it advisable to imitate the baneful example of mining companies by establishing a precedent for levying assessments on Sutro Tunnel shares.

The best plan and the most advantageous to the stockholders would undoubtedly be to give them the opportunity to become the creditors themselves by advancing to the Company, in some proportion to the number of shares held by each, a sufficient sum of money, so that the sum total advanced by all the stockholders may be equal to what shall be required, not only for the purpose of settling the mortgage claim in suit, but of developing the Company's property and resources to the fullest extent; in



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pages, relating to the property of the Company and its income.

Assuming as a basis only its average income during the past two years (although there is every reason to anticipate a large increase in said income in the near future, and an extraordinary increase in the course of time, as hereinbefore shown), interest amounting to the sum of say \$100,000 per annum, can not only readily be paid, but there will remain a very large surplus income which may, and it is a part of our plan, shall be, applied to the creation of a sinking fund for the extinguishment of the principal debt, and yet make it possible before a great while to pay dividends to the shareholders. And as we propose to raise sufficient money so as to leave a balance in the treasury of the Company, after making the payment necessary to settle the pending litigation, in order that said balance may be used for fully improving and developing this very property and its earning capacity, which will stand

as security for the proposed loan, there is no reason why the entire net income of the Company should not, if so desired, be applied to the payment of interest on the new loan and the early repayment of the principal. The company will expressly reserve the right to pay the latter as soon as possible, upon some just plan, *e. g.*, by drawing annually for a certain number of bonds to be redeemed. The Company will, of course, issue bonds for the smallest possible amount necessary for its immediate requirements, and bearing interest at the lowest possible rate, for whatever is to the advantage of the Company is at the same time to the advantage of every shareholder.

Those who are best conversant with our property and prospects are also the readiest and most eager to invest their money therein. The newly elected trustees of the Company, who were extremely unwilling to serve at all on the Board when I first approached them at San Francisco,

and who thought that there was no hope of resuscitation for the Company whatsoever, and little value in its property, have been the first, since their election, to invest largely in its shares of stock, and have also been the first to express their desire to advance their pro rata to the Company on some such plan as hereinbefore suggested. As a practical proof of the estimation in which the property of the Company and the prospect for developing ore in the veins cut by it, is held, by those having practical knowledge thereof, it may also be mentioned that many of the men and miners, connected with the work at Nevada, invest every spare dollar from their earnings in its shares of stock. It may also be mentioned that such of the officials connected with the mining companies, as the writer hereof interviewed in San Francisco, expressed their desire to invest in bonds of the Company, and no doubt the loan could readily be placed in that city. But as the investment is an



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will have an opportunity of investing in them."

The stockholders in New York, with whom I have had personal interviews during the brief period since my return from San Francisco, have expressed a like desire. It is therefore not only a question of self-preservation, but of taking advantage of the opportunity to make a good investment, that every shareholder should at once, and gladly, buy an amount of these bonds of the Company proportionate to the number of his shares.

Supposing that the amount thus to be *loaned* by each shareholder to the Company should be regarded even as so much additional money put into the cost price of his shares, such view would in itself justify the outlay, aside altogether from the fact that he will receive ample security for such additional outlay.

Countless millions have been and still are being patiently buried in ever-recurring assessments, on mining shares represent-

ing nothing, and on which no hope or expectation could be founded for anything but the slender chance of a return, through a possible stock "deal," or "boom," or gamble! Will any owner of Sutro Tunnel shares, representing one of the most legitimate and promising enterprises in the world, deliberately choose to lose those shares rather than render them unquestionably valuable, on intrinsic merit, by investing a few dollars in as good corporate security of its kind as may be found anywhere in the United States?

If companies like the Utah, the Alta, and the Bullion, whose property consists of a plot of mining ground, a few shafts, and some machinery, and who have never had a penny of net income—have nevertheless successfully, for undefined purposes, assessed their obedient shareholders in sums respectively of \$1,590,000, \$2,027,000, and \$3,907,000, or over seven and one-half millions of dollars (\$7,500,000) in the aggregate to date,—surely the Sutro Tunnel

Company, with its vast properties, valuable franchises, large income, and brilliant prospects, and which has not, during its existence of nearly twenty years, levied a single assessment—the Sutro Tunnel Company ought to have every reason for confidently expecting its stockholders to respond promptly and eagerly in buying its bonds, as a means of insuring its existence and of laying the foundation for a permanently profitable future.

An assessment, which has been urged from various sides, would be an actual expenditure and an additional sum put into the cost price of the shares of stock, and paid out absolutely and unconditionally. The desired result will be attained by the stockholders, on the plan hereinbefore suggested, without being taxed a single dollar, but by simply investing in an excellent bond, with the strongest assurance and guarantee that the sums invested will be fully returned, with ample interest.



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