

January 30, 1943

Dear FF:                   Re S.E.C. v. Chenery Corporation, et al.

I think this meets the situation fully and a separate opinion by me would add nothing but words. The only idea that might at some point be worth considering is something I would express as follows:

“In view of the conditions imposed by the Commission it is clear that there was some violation of a positive prohibition of the law rather than any moral wrong of which the directors stand accused. If their purchase of the stock was a breach of an obligation owing to anybody or was a wrong to anybody, it was to the stockholders from whom they purchased and who thereby parted with their stock at less than its book value -- which, as we have said, may or may not be real value. If there were wrong to be righted it would be pretty clear that the parties who had thus disposed of their stock should have some opportunity to regain it. The Commission, however, confirms the purchase by these directors and requires the fruit of it to be turned in to the corporation. This, we think, indicates clearly that the Commission does not regard the selling stockholders as having been wronged. Indeed, if, as is frequently the case, they were selling under compulsion, the bids of these directors may well have sustained their market, and they may well have benefited therefrom as against the terms they must have accepted in the absence of such bids.”