SUPREME COURT OF THE UNITED STATES.

No. 254.—October Term, 1942.

Securities and Exchange Commission, Petitioner,
vs.
Chenery Corporation, H. M. Erskine, R. H. Neilson, et al.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

[February —, 1943.]

Mr. Justice Black, dissenting.

For reasons set out in the Court's opinion and the dissenting opinion below, I agree that these respondents, officers and directors of the Corporations seeking reorganization, acted in a fiduciary capacity in formulating and managing plans they submitted to the Commission, and that, as fiduciaries, they should be held to a scrupulous observance of their trust. I further agree that Congress conferred on the Commission "broad powers for the protection of the public", investors and consumers; and that the Commission, not the Court, was invested by Congress with authority to determine whether a proposed reorganization or merger would be "fair and equitable", or whether it would be "detrimental to the public interest or the interest of investors or consumers."

The conclusions of the Court with which I disagree are those in which it holds that while the Securities and Exchange Commission has abundant power to meet the situation presented by the activities of these respondents, it has not done so. This conclusion is apparently based on the premise that the Commission has relied upon the common law rather than on "new standards reflecting the experience gained by it in effectuating legislative policy", and that the common law does not support its conclusion; that the Commission could have promulgated "a general rule of which its order here was a particular application", but instead made merely an ad hoc judgment; and that the Commission made no finding that these practices would prejudice anyone.

ers. The Commission holding is that it should not "undertake to decide case by case whether the management's trading has in fact operated to the detriment of the persons whom it represents," because the "tendency to evil" from this practice is so great that the Commission desires to attach to it a conclusive presumption of impropriety.

The rule the Commission adopted here is appropriate. Protection of investors from insiders was one of the chief reasons which led to adoption of the law which the Commission was selected to administer.[1] That purpose can be greatly retarded by overmeticulous exactions, exactions which require a detailed narration of underlying reasons which prompt the Commission to require high standards of honesty and fairness. I favor approving the rule they applied.

[1] "Among the most vicious practices unearthed at the hearings before the subcommittee was the flagrant betrayal of their fiduciary duties by directors and officers of corporations who used their positions of trust and the confidential information which came to them in such positions, to aid them in their market activities. Closely allied to this type of abuse was the unscrupulous employment of inside information by large stockholders who, while not directors and officers, exercised sufficient control over the destinies of their companies to enable them to acquire and profit by information not available to others." *Report of the Senate Committee on Banking and Currency on Stock Exchange Practices*, Report No. 1455, 73d Cong., 2d Sess.