

21-1924/1-31-10

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ROYAL COMMISSION

TO ENQUIRE INTO AND REPORT UPON AFFAIRS OF THE

HOME BANK OF CANADA

And in the matter of the Petition of the Depositors
in the said Home Bank of Canada

COMMISSIONER:

The Honourable Chief Justice McKeown

OTTAWA, WEDNESDAY, MAY 7, 1924

No. 10

OTTAWA
F. A. ACLAND
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1924

CANADA

IN THE MATTER OF A COMMISSION appointing the HONOURABLE
HARRISON ANDREW McKEOWN a Commissioner to enquire into
and report upon affairs of the HOME BANK OF CANADA.

AND IN THE MATTER OF THE PETITION of the Depositors in the said
HOME BANK OF CANADA.

Before the Honourable Chief Justice McKeown, the above named Royal
Commissioner, at Ottawa, on Wednesday, the 7th day of May, 1924.

Counsel:

EUGENE LAFLEUR, K.C., and H. J. SYMINGTON, K.C.,
for the Government of the Dominion of Canada.

R. J. McLAUGHLIN, K.C., A. G. BROWNING, K.C., and W. T. J. LEE,
for the Depositors.

McGREGOR YOUNG, K.C., *for the Attorney-General of Ontario.*

R. A. REID, *for certain shareholders (opposing the double liability).*

Mr. LEE: Before Mr. Edwards' evidence is resumed, when we were at Mr. Machaffie's evidence there were some letters which your lordship did not think were sufficiently proven. I now put in certified copies from the liquidator, Mr. G. T. Clarkson, of Exhibits Nos. 136, 142, 143, 144, 145 and 146. All of these exhibits have been certified by Mr. Clarkson as having been compared with the originals and being exact copies of the same. The originals were in his possession.

His LORDSHIP: To whom were these letters written?

Mr. LEE: Exhibit No. 136 was a letter of W. A. Machaffie to R. P. Gough dated 26th March, 1916.

Exhibit No. 142 was a letter written to Mr. Machaffie by Mr. Gough.

Exhibit No. 143 was a letter written by Mr. Machaffie to Lieutenant-Colonel J. Cooper Mason.

Exhibit No. 144 was written to Mr. Machaffie by the bank's officers notifying him of a resolution passed by them.

Exhibit No. 146 was a letter written by Mr. Machaffie to the Home Bank.

Exhibit No. 145 was a letter from Mr. Machaffie to the General Manager.

His LORDSHIP: The only one I have any doubt about is this one to Mr. Gough. You would not suggest that that is certified in a way that it would be taken in a Law Court? Mr. Gough's activities may be in question before me. What do you think?

Mr. SYMINGTON: He is under indictment and perhaps the Liquidator requires these for that purpose. If they are duly certified I suggest that probably they would be satisfactory to us, more particularly if the Attorney-General wants the originals, I think we must give way.

His LORDSHIP: It is just a question if Mr. Clarkson when he was on the stand could have produced them.

Mr. SYMINGTON: Was there not some understanding with Mr. Clarkson that he could substitute?

Mr. LEE: There was an understanding that if I produced copies certified by Mr. Clarkson as having been compared with the originals by him that they would be allowed in.

Mr. SYMINGTON: It seems to me I saw something of that in the record.

His LORDSHIP: I think so. Let them go in.

Examination of George Edwards resumed:

Mr. SYMINGTON: I believe you desire to make a correction this morning. When you were being examined with respect to the growth of the bank you gave certain figures which you stated had been taken from the May returns. I understand now that those figures in respect to that particular feature were taken from the monthly returns for December rather than the Annual May returns?—

A. From the Departmental files.
I would also like to add that there was a typographical error in the statement that was put in yesterday in respect to the reserve on December 31, 1906, it was stated that \$821,780, which was the amount of the paid up capital. The correct figure in that column should have been \$175,000. It was just a typographical error, it is correct in the exhibit.

His LORDSHIP: I suppose these are the figures that appear in the Year Book from year to year?—A. They are published in the *Gazette*, they can all be verified from the published records.

His LORDSHIP: I looked up all these figures before I left, and they seem to be the same, but some figures for the last year had not been published then. I have given consideration to what those figures on their face would import.

Cross-Examined by Mr. Browning:

Q. I call your attention to Exhibit No. 46 on page 78, letter from Sir Thomas White to Sidney H. Jones; in the second paragraph: "Under the provisions of Section 56A of the Bank Act I now direct and require you as auditor to enquire into the accounts mentioned and report to me in all proper detail respecting them."

Also to Exhibit No. 61 on page 90, the letter from Mr. Jones to Sir Thomas White. You have those before you?—A. Yes.

Q. I think I understood from you yesterday that you are not interested in this matter one way or the other for any of the parties, your object is simply to find out the facts?—A. Correct.

Q. And bring such expert knowledge as you have to bear upon them. What do you say as to the letter of reply from Mr. Jones to Mr. White, as to its being a sufficient reply, having in mind the provisions of Section 56A?—A. It would not be a reply to Exhibit No. 46, it would be a reply only to Exhibit No. 59.

Q. Did it comply in any way with the Minister's requirements for an audit of even the one account, the Frost account?—A. No, not with the requirements of Exhibit No. 46 which calls for a report in all proper detail.

Q. It is simply a copy from the bank's books?—A. Yes.

Q. Is it in any sense an audit of the Frost account?—A. It is not the sort of statement which an auditor would be expected to present, there is no comment with it at all.

Q. Have you gone through the papers sufficiently to satisfy yourself as to whether or not any reply other than this set out in the letter of Mr. Jones to Sir Thomas White was ever made to the request of the Minister contained in his letter of January 24, 1916?—A. I have been unable to obtain any additional information.

Mr. BROWNING: It is only fair to call your lordship's attention,—although probably unnecessary, but I do not wish any misunderstanding to prevail,—to exhibit No. 48 and Nos. 52 and 59. Exhibit No. 48 acknowledges certain correspondence, and then in Exhibit No. 52 the Western Directors express most strongly their desire that a special audit of the bank's affairs, touching especially the larger accounts in the Toronto office, be directed by the Finance Department, and then Exhibit No. 59 from Sir Thomas White to Mr. Jones, referring apparently to the previous letter from Mr. Fisher of February 18th which asked for a detailed statement. There is room for argument as to whether or not the request contained in the letter of January 24th was referred to.

Q. But at any rate no audit ever was made as far as your investigation shows in answer to the Minister's request contained in his letter of January 24th?—A. I can find no evidence of a response to the request in that letter.

Q. At least one or two witnesses have stated that no record of any investigation by Mr. Haney or Mr. Haney and Mr. Machaffie or either of them in pursuance of Mr. Lash's request to the Minister was ever made. What do you say as to that?—A. Investigations of that nature might have been made and there be very little record of it. I can only say that there is no indication in the written records that such an investigation took place.

Q. Have you been able to find any hint of such investigation having been made?—A. The only indication which appears to me to answer that requirement would be the proposal to write down the Rest on May 31st following by \$100,000. Inferentially that might indicate that an investigation had taken place and that was the conclusion they arrived at, but that is all there is to help me on that.

Q. That is, it may be that the decision of the Directors to write down the Rest by \$100,000 followed an investigation by someone?—A. Of some sort.

Q. But that is merely an inference which has very slight foundation?—A. Yes.

Q. Will you look at Exhibit No. 85 on page 176. I wish you to either confirm or state what actually happened in connection with the payment of dividends out of that interest. Was this assurance of Mr. Lash to the Minister given effect to following March 28, 1916?—A. It was not given effect to in the year ending May 31, 1916, nor in the following year.

Q. It was in the following years as to the Frost account?—A. In 1918 it was given effect to, that is two years afterward.

Q. But with reference to the New Orleans account?—A. It never was given effect to.

Q. So that within six weeks after Mr. Lash's assurance to the Minister, and for every year following, the assurance was disregarded?—A. As to the New Orleans account.

Q. And in 1916 as to the Frost account and in 1919, 1920 and 1921 as to the Frost account?—A. No, it was disregarded in 1916 and 1917 as to the Frost account, it was observed in the four following years, 1918 to 1921.

Q. But consistently disregarded as to the New Orleans account?—A. Yes.

Q. Exhibit No. 86, a letter from Mr. Haney to Sir Thomas White of June 14, 1916, are the statements contained in that third paragraph correct and true?—A. There are agreements which indicate that additional securities were taken. My information is that the statement that "our customer is paying interest in cash quarterly" is not correct.

Q. That refers particularly to the Pellatt account, doesn't it?—A. Yes.

Q. You say additional securities may have been given?—A. There are evidences of additional securities being taken.

Q. Those securities being in the nature of additional real estate subdivision properties?—A. Equities in whatever the borrower might have had in addition to the security which the bank had previously.

Q. And all in real estate subdivisions?—A. And some shares in those subdivision companies.

Q. Those shares practically representing land?—A. A schedule is among the exhibits.

Q. As to the second part of the sentence "our customer is paying interest in cash quarterly"; what do you say as to the correctness of that?—A. My information is that that was not correct. They probably paid some but the interest accruing on that account was not met.

Q. Substantially the statement is not true?—A. Is not true.

Mr. SYMINGTON: He was paying interest but not the whole of the interest.

Mr. BROWNING: In the fourth paragraph relating to the New Orleans matter:

"In the New Orleans matter, progress has been made by obtaining control of an equity which I am satisfied will yield a substantial sum in reduction of the debt."

As a matter of fact, prior to writing this letter was not the bank's interest in the New Orleans property closed out?—A. I think the evidence shows that.

Q. And then later on they purchased this equity or interest from a Mr. Carroll?—A. That statement is misleading in that it appears to refer to the transaction in which the Prudential was interested, and it does not.

Q. I particularly refer you to Exhibit No. 39, the report from Mr. Adair. I ask you to look at that and express your opinion as to the correctness of the statement made in the last paragraph (page 69). Mr. Adair says:

"I would feel safer, owing to the uncertainty as to the amount of repair work necessary, and to the condition of the present rolling stock, to place total liabilities at \$300,000. It therefore does not seem a proper thing to me for the bank to put any further amounts into this proposition without at least a material assistance from the Prudential Trust Company, and find itself operating a railway at so great a distance with the prospects of a comparatively small profit."

With that before you and with your knowledge of the situation, what do you say as to the correctness of the statement made in the New Orleans paragraph of Mr. Haney's letter to Sir Thomas White (page 177)?—A. When Mr. Adair wrote Exhibit No. 39, the additional transaction had not been entered into. When Mr. Haney wrote in June, 1916, it was under negotiation. The actual transaction whereby that equity was obtained by the bank did not occur until some later date, probably October, the money was paid in October for that equity.

Mr. LEE: That is October 1916?—A. Yes.

Mr. SYMINGTON: But had it not been arranged with Carroll?—A. It was being negotiated at that time.

Mr. BROWNING: Is Mr. Haney's statement correct in your opinion, that the transaction will yield a substantial sum in reduction of the debt by reason of obtaining control of the equity, having before you all the facts?—A. That could only be told by seeing how it worked out later.

Q. Am I right in supposing that these doubtful matters, some of which could only be ascertained by investigation, could have been investigated with very little trouble and their correctness or otherwise made known?—A. They could have been investigated with some trouble.

Mr. SYMINGTON: Your lordship, with my friend's consent, I ask that Mr. Edwards be permitted to step down for a few minutes, because some gentlemen from the railway are here, who are wanted in the Railway Committee at 11 o'clock, so if it will suit you we will put them in and let them get away.

His LORDSHIP: It suits me perfectly.

Major GRAHAM A. BELL, sworn.

Examined by Mr. Symington.

Q. Major Bell, in 1923 what was your position with respect to the Canadian National Railway?—A. Part of the time I was Vice-President and Director.

Q. In the month of May, 1923?—A. The first part of the month. I resigned on the 21st May.

Q. On the 21st May you resigned what position?—A. As Vice-President. I remained as a Director.

Q. And up to the 21st May you had been the Vice-President in charge of finance, I think?—A. Since the reorganization.

Q. Now did the Canadian National Railways have any connection with the Home Bank of Canada in the matter of deposits?—A. Yes.

Q. When first did the Canadian National Railways deposit money in the Home Bank?—A. About the end of May. I have forgotten the exact date. The record will show. The 29th of May I think it was.

Q. Was that the first deposit the company had made in the Home Bank?—A. The first head office deposit. They may have had small deposits from agents in different places.

Q. But so far as the head office was concerned this deposit in May, 1923, was the first?—A. As far as I know.

Q. Did you have anything to do with that deposit?—A. I arranged it.

Q. Who did you arrange it with?—A. Mr. Yates.

Q. Mr. Yates being the treasurer of your company?—A. Yes.

Q. You instructed Mr. Yates to make a deposit?—A. Yes.

Q. How did you come to instruct Mr. Yates at that time?—A. Possibly if I tell you the whole story, Mr. Symington, then you can question me on it. On the third Monday in May our regular meeting happened to fall on the 21st May; I attended a meeting of the Board of Directors on that day and tendered my resignation, which was accepted at the Board meeting. The meeting was held in Sir Henry Thornton's office. Mr. Gough, who was a Director of the railway, and also a Director of the Home Bank—I did not know at the time that he was Vice-President of the Bank, I knew he was a Director—approached me immediately after the meeting, and asked, as we were dividing up some of our accounts with different banks, we had taken a couple of new banks into our banking arrangements shortly before this, and on account of the business they were doing, the different members of the bank, Directors, were doing, which would be of interest to the railway, he urged that the Home Bank could use some money at that moment, before the end of the month and they would have funds coming in at the first of the next month, and asked if we would not build up a deposit. I told him I had resigned and I refused to do it. I also told him he would have to see the President. He walked over to the President and the President called me over and said—he was talking to another Director—"I am busy, Bell, and you go into this and if you are satisfied go ahead with it and then you can confirm it at the next meeting, you act for me in this." So I had another conversation with Mr. Gough, and he again urged that they could use some money if we would deposit it with them; and I called Mr. Yates up, our General Treasurer, and asked him to build up an amount; I asked him what funds he had at the moment; he had plenty and he could build up a fund of about a million dollars. Then the matter went out of my mind until several days later, I think until probably about the 27th or 28th. Mr. Yates at that time did not know I had resigned and he called me on the phone from Montreal; meantime I had learned that Mr. Gough was Vice-President, and when he called me and asked me if I still wanted the deposit made, I said Yes, it was too late to change it, so close to the end of the month, better not, it might bother

them if we did not do it at that time, and to put the amount in but withdraw it immediately afterwards, say the second or third, or whatever suited him; put it in carrying interest. I told him I had learned that Mr. Gough was Vice-President and under those circumstances I would not carry it. So Mr. Yates did that, and wrote a letter to the bank saying it was only a temporary deposit, and immediately withdrew it, and I heard no more about the matter until the bank failed.

Q. When Mr. Gough came to you at this meeting, did you know that the end of the bank's year was at the end of that month?—A. I had not the faintest idea.

Q. He explained to you that he would like some money temporarily, because some other money was coming in, stating that he could use this money?—A. Amongst other things he said he could use this money immediately and they had money coming in at the first of the month, some investment of some kind, I don't know what it was, something of that kind.

Q. Did anything strike you about a bank being able to use this money for a few days?—A. It is a common practice, Mr. Symington, with banks at the end of the month, to build up their deposits. All banks do it.

Q. So that you realized at the time it was for the purpose of building up their deposits at the end of the month?—A. No, not for that purpose. I understood that they could use this as an investment or something and had other funds coming in which would cover it. He knew the balance would not remain at a million. I explained that to him, through him, that the balance would go down just as soon as we started to draw; we might have in one bank ten million dollars to-day, and to-morrow there would not be a dollar.

Q. In other words, what you say is that he knew it was a temporary deposit?—A. No, he knew we were going to open an account there. I agreed to that.

Q. It was to be a permanent account, so to speak?—A. Oh, yes, the first arrangement was that we would keep an account there.

Q. And that would have been an account which varied from time to time?—A. Yes, it might be a debit balance at times.

Q. Did he ask for a million, do you say?—A. I think that was the figure he mentioned. He asked how high we could build it up. I told him we would start with a million, if we had the funds and it did not disturb other banks. Mr. Yates said, at the moment we had plenty of funds, and we started it.

Q. Then did you or not give the instructions immediately?—A. I gave the instructions that morning.

Q. But Mr. Yates apparently did not carry them out.—A. He had not made the transfer.

Q. You say the meeting was when?—A. May 21st.

Q. And apparently Mr. Yates had done nothing to carry out those instructions?—A. I would not say that. I would not say what routine there was. Mr. Yates can tell you what routine he carried out.

Q. Later, towards the end of the month, I think you said about the 28th, which I think is correct, you in the meantime discovered that Mr. Gough, a Director of the railway, was Vice-President of the Home Bank?—A. Yes.

Q. And that struck you as not being a desirable situation?—A. No, not on account of his being a Director of the railway; I did not mind him being a Director of the bank; it is a common practice; we have Directors of banks on the Board; but when he was a Vice-President, that might be open to criticism, that we were favouring the bank on that account.

Q. You came to your own decision on that point; it was not a matter of the Directors or Sir Henry Thornton?—A. Sir Henry left it with me entirely to deal with.

Q. And accordingly you say you communicated with Mr. Yates not to make the deposit?—A. Not to make the deposit.

Q. Did you know then that he had not made it?—A. Oh, no; he called me up. I think I explained that. He called me up and asked me; he learned that I had resigned and he called me up and asked me if I still wanted those instructions to stand. I told him yes, on account of the promise I had given Mr. Gough, that he could do it, but to withdraw it right after the end of the month, as I had learned that he was a Vice-President.

Q. What was there in your mind which indicated to you that the deposit of this money for a period of four days would meet Mr. Gough's requirements?—A. Well, simply because when I had given instructions to put the money in the bank, and then I had no doubt at all he had made his arrangements, whatever the bank wanted to use the money for they had made their arrangements accordingly and if I were to withdraw it at the end of the month, it would be very awkward for them, a very bad time to withdraw money.

Q. I could quite understand if you had put it in and withdrawn it before the end of the month, but if it was to be used for an investment pending the return of some money which would be coming in shortly, what good was it going to do them, putting it in on the 28th of May and taking it out on the 2nd June?—A. Simply because he had made his arrangements, I presume. I did not communicate with Mr. Gough again.

Q. You never communicated with Mr. Gough at all?—A. No.

Q. I was wondering what you had in mind in directing Mr. Yates to leave that money in for four or five days, in view of your previous conversation with Mr. Gough?—A. As a matter of fact, Mr. Symington, I did not know that Mr. Yates had not immediately made the deposit, until he called me, and then I wanted, in case Mr. Gough had made his arrangements, as I had given him my promise to put that in, he only wanted to carry that amount until about the first of the month.

Q. Over the first of the month?—A. Over the first of the month, yes.

Q. And that was your understanding with him?—A. And I gave the instructions.

Q. When you found that the deposit had not already been made, you then imposed a limitation upon the deposit, that it was to be withdrawn immediately after the first of the month?—A. Yes. I have forgotten the exact day; the second or third of the month.

Q. Would you say then that that limitation was a carrying out of your first understanding with Mr. Gough?—A. No.

Q. It was not to be withdrawn then after the first of the month?—A. No, it was only when I learned that Mr. Gough was Vice-President that I decided to do this. I carried out my promise. I did not want to inconvenience him, taking it out at the end of the month, as I had given him this promise, and I had no doubt he had made his arrangements accordingly. After the first of the month, Mr. Gough knew that deposit might be \$1 or \$100,000 or might be a debit balance; but what he was anxious for—at least I drew that from his conversation—was that that million dollars should be there at the end of the month, and he gave me his reasons, that he had funds coming in, and it was a usual thing in banking to do that.

Q. So you gathered from his first conversation that the important thing was to have the million dollars over the end of the month?—A. No, not altogether; it was partly that, and partly that he wanted us to carry a permanent account.

Q. I quite understand that it was to be a permanent account; I am not suggesting anything contrary to that, but Mr. Gough apparently was most anxious, from your reason why you made this deposit on the 28th May, that it

should extend past the first of the month before you made your withdrawals?—

A. Yes.

Q. Do you recall when this conversation with Mr. Yates was, Mr. Bell?—
A. I only remember it was about the end of the month, Mr. Symington. I think Mr. Yates can place the exact date. He probably wrote a letter to the bank on the day he called me up on the phone.

Q. I have a copy of a letter here dated May 28th, to the manager of the bank?—A. When you have Mr. Yates, he can tell you whether he wrote that the same day he talked to me. The thing passed out of my mind completely.

Q. Now you have told us, Major Bell, everything you know about this, all the conversations you had?—A. No, pardon me. There was another conversation. Mr. Ruel was in the Board room at the time this took place, and about the first of the month I think, I cannot be sure, Mr. Ruel will probably give you the exact date, he called me on the phone and he asked me if I had made this deposit; he said he had learned that Mr. Gough was a Vice-President. I said, Yes, but I had given instructions to withdraw it. He said that was all right, and that ended the matter. He can give you that.

Q. But so far as any other conversations with any member of the bank or any Director of the bank, that is all?—A. I never had any conversation outside of Sir Henry's instructions, and Mr. Yates, and Mr. Ruel, either before or after, until the bank had failed. Never heard good, bad or indifferent from anybody.

Q. You have told us now all you know about it?—A. All I know about it Mr. Symington.

Mr. LEE: We have no questions, my lord.

Cross-examined by Mr. Reid:

Q. You say your reason for withdrawing the deposit was that you found out Mr. Gough was a Vice-President of the bank?—A. No, I found out Mr. Gough was a Vice-President of the bank, and when Mr. Yates asked me if I still wanted to make the deposit, I told him to implement my promise to carry them over, to do it, but to withdraw it after the end of the month.

Q. Was it withdrawn at the end of the month?—A. Not the end of the month. The first of the month.

Q. The first of June?—A. About the first or second.

Q. And what date was the deposit made?—A. Mr. Yates will have to tell you that. I have not the detail of that.

Q. Is there any correspondence in connection with this deposit?—A. He can give you the exact date I understand.

Q. There is some correspondence about it?—A. Yes.

His LORDSHIP: Any other questions by any of the counsel? That will do then, Major.

JAMES ANDREW YATES, sworn.

Examined by Mr. Symington:

Q. Mr. Yates what is your position?—A. General Treasurer of the Canadian National Railways, sir.

Q. And that was your position in May of 1923?—A. Yes.

Q. If the company was opening a head office deposit account in a bank, who has control, who decides it?—A. The Board of Directors would authorize the account, subject to the approval of the Vice-President on my recommendation.

Q. The ordinary routine would be that you as Treasurer would recommend the opening of an account in a certain bank, to the Vice-President in charge of finance, am I right?—A. Yes.

Q. And the Vice-President would submit it to the Board of Directors for their approval?—A. In order to get the necessary authority.

Q. And the Board of Directors having approved it, you would receive notification of it and make the deposit?—A. Make the arrangement.

Q. Now is that what occurred in connection with the deposit in the Home Bank in May, 1923?—A. I got my instructions from the Vice-President. I presume that that was the arrangement.

Q. In the first place did you, as is usual, make a recommendation to the Vice-President in charge of finance?—A. Not in this instance.

Q. So that the original suggestion did not come from you?—A. Not in this instance.

Q. What then was the first you heard of this, Mr. Yates?—A. I was asked by the Vice-President if we had any surplus funds that we could open a deposit with the Home Bank, and I told him at that time that I thought we could, and asked the amount that he would desire, that we should place in the bank, opening the account. He suggested about a million dollars. I said that about a certain date I would probably have sufficient, and arranged for the opening of the account.

Q. He asked you first if you would have some money to open an account, and you said you probably would in a few days?—A. A few days.

Q. And he said to open the account, is that it?—A. The surplus funds I would have to open an additional account,—I had to make observations of my requirements at that time, to see whether I could open another account, and I had money at the time, but I had to look to my commitments.

Q. And you having found that you had or would have money at the time, the Vice-President said to open the account?—A. Yes, to place a deposit with the Home Bank.

Q. Of a million dollars?—A. About a million dollars.

Q. Was there any limitation as to the amount?—A. Not at that time. It was suggested about a million dollars.

Q. Any limitation as to the time it was to remain there at that time?—A. Yes, it was to be a temporary account.

Q. Temporary, meaning what?—A. Well, for a short period.

Q. A definite short period?—A. No, not a definite short period. When I said a temporary account, I said I would be able to have sufficient money there for probably a week or ten days, when I would require it. When I said a temporary account I meant that I would have commitments, and would probably have to withdraw it and it would not remain there as a million dollar deposit for any great length of time.

Q. No deposit account of yours in any bank remains steadfast throughout the year, does it?—A. No.

Q. So was there any difference in this account in the bank from any other, that is it would be drawn against and would fluctuate and vary from time to time?—A. Well at the time I spoke to Major Bell—afterwards are you talking about?

Q. No, I want the first conversation.—A. When the amount was first suggested?

Q. Yes, I want to know the first arrangement?—A. The first arrangement was that it would be a temporary account with the Home Bank.

Q. And by "temporary account" in the first arrangement you meant what?—A. That I would deposit this amount in the bank and withdraw it when my requirements occurred.

Q. Is not that coming back to exactly what you did in all bank accounts, you make a deposit and withdraw the money when you want it, there is no guarantee that it is going to remain there?—A. No.

Q. Why do you characterize this as a temporary account then?—A. For the reason that I saw at that time that I could not leave it in for any great length of time.

Q. Was the differentiation in the length of time it was to be in? I mean, was there any difference between this account and an account in the Bank of Montreal or the Royal Bank or any other bank?—A. Well, the money was to be put in at a certain date, and drawn out.

Q. At a certain date?—A. After. When I found what my requirements would be, yes. And I called up Major Bell.

Q. Wait. I want to get this clear. When the original arrangement was made was it understood that the money was to go in up to a million dollars? And that it was to be drawn out at a nearby date?—A. Yes, it was. I recall that.

Q. And that is what you mean by a "temporary account"?—A. A temporary account, yes.

Q. That was the original and first arrangement?—A. Yes.

Q. And when was that, can you recall?—A. As I recall the date, it was about the 21st of May, that I was asked if I would have the money.

Q. And what you have told us now up to the moment is what took place about or on the 21st May?—A. The 21st May as I recall the date.

Q. Then what next happened?—A. In the meantime I had looked up my situation, and on the 25th May I think it was, I telephoned to Major Bell and asked him if he still desired that deposit to be made, and he said yes. Then I vouched the amount and prepared for it and put it into the bank on the 28th of May.

Q. The next thing then was the 25th of May?—A. The 25th of May was the date I drew my vouchers preparing for the deposit.

Q. That was the first day, following the 21st that anything happened?—A. Yes.

Q. And on the 25th of May, having got your vouchers ready, you telephoned Major Bell in Ottawa here?—A. Yes.

Q. And asked him if he still wanted that deposit made?—A. Yes.

Q. Why did you do that, Mr. Yates?—A. I found out in the meantime that he had resigned as Vice-President.

Q. Having found out that he had resigned as Vice-President, you telephoned him to know whether he still wanted the deposit made?—A. Yes, because I did not know what the arrangement was that he had made with Mr. Gough.

Q. I suppose having resigned you really could not take instructions from Major Bell any more, could you?—A. I did in this case, because Major Bell in addition to being Vice-President was a Director, and also Vice-Chairman, as I understood, of the Company.

Q. Why would the fact of his resignation cause you to telephone and ask if he still wanted the deposit made?—A. I wanted to get his approval, anyway and as he had made the arrangement suggesting to me to make the deposit, or in fact requesting me to make the deposit, I wanted to know if he, having resigned but being still Vice-Chairman of the Company, still desired the deposit to be made.

Q. That is, having made the arrangement on the 21st, and he having resigned, you wanted confirmation on the 25th that the arrangement as originally understood was to be carried out?—A. Yes.

Q. And you accepted a verbal confirmation over the telephone?—A. Yes.

Q. Then what did you next do?—A. Well, Major Bell asked me to make the deposit and I made it on the 28th and to withdraw it at the beginning of the month, about the first of the month, which I did.

Q. Do you recall, on the 25th, when it was that you communicated with Major Bell, would it be in the morning or the afternoon or evening?—A. As I recollect it, it was after lunch.

Q. After lunch on the 25th?—A. Yes. That would be after I would get my figures.

Q. And at that time you had had no communication with the bank yourself?—A. None whatever.

Q. And having got this information on the 25th from Major Bell, on the 28th you made the deposit?—A. I made the deposit, yes.

Q. What documents have you with respect to that?—A. I have a copy of the voucher which is usual to put through our records, covering a deposit or a transfer, and I have a letter.

Q. We do not want to take your vouchers, if there is anything important on them.—A. Here is the voucher and the cheque.

Q. You want these vouchers back do you?—A. Yes. I have a copy here but that is my official record. I have the pay portion copy.

Q. I don't know that that is important. First you have a voucher dated May 25th, to the Home Bank of Canada, Montreal, Treasury Department issuing. Department Number 55. May 25th. For amount of temporary special deposit \$1,000,000. And this voucher is vouched for by "R. W. Denman."—A. Yes, he would pass the voucher. I would authorize him to pass the voucher and he would sign that and that would issue.

Q. He is in your department?—A. He is Assistant Treasurer.

Q. Then there is something, approved, someone else, Assistant Treasurer. If you will read those words.—A. Oh, Denman is Assistant Treasurer now; he was Chief Clerk. "A.—Ritchie, Assistant Treasurer." Myself as General Treasurer, and then J. M. Rosevear, Comptroller, is the final signature there.

Q. And you have a receipt for that temporary special deposit dated May 28th and signed by the Home Bank, Montreal, per the Manager?—A. Yes.

Q. And you have a cheque dated May 28th, on the Bank of Montreal, payable to the Home Bank, for \$1,000,000 with the stamp of the Home Bank on it showing that it was cashed?—A. Yes.

Q. Now having made that document out, what next did you do?—A. I had the cheque drawn and signed and then enclosed it with a letter to Victor Scott, the Manager, placing it on special deposit.

Q. You have a copy of a letter here which you sent to Victor Scott?—A. Yes.

Q. The date I notice is in lead pencil. Is that the date it was sent, to your knowledge?—A. Yes, it was the day the date of the cheque. When I found that copy I assumed it was the 28th because the voucher and cheque was issued and I would write the letter the same day.

Q. This is a letter addressed to Victor Scott, Manager, Home Bank of Canada, Montreal.

"Referring to my interview with you on Friday the 21st instant." You already had an interview apparently with Mr. Scott?—A. I might state, I had another interview with Mr. Scott before the 25th. The 25th was the date that I got the approval by telephone that I telephoned to Major Bell, on that date in the afternoon I told Victor Scott that this amount was going in; that on or about the 28th I would deposit a million dollars with the Home Bank.

Q. And what else?—A. And that I would expect to get three per cent interest during the time the money was on deposit. That is as far as I recall having said anything to him.

Q. Did you not say anything to him about the temporary nature of it?—A. Well, I presume I said that we were putting in a temporary deposit there of a million dollars. I do not recall my conversation.

Q. You do not recall anything else?—A. I do not recall anything else. I remember calling him up, because I confirm it there, that this money was going in, but as to what I exactly said, I don't just recall.

Q. Remember you had had no communication up to this moment with anybody connected with the Home Bank?—A. Not between the 21st and 25th.

Q. I understand that. I am speaking now of the interview of the 25th. You had had no communication of any kind with anybody connected with the

Home Bank. Then you had an interview with Mr. Scott, the Manager of the Montreal office?—A. I telephoned him.

Q. Telephoned, if you like. You had a conversation with him?—A. Yes.

Q. Following your conversation with Major Bell that afternoon?—A. Yes.

Q. Now you say that you told him that you would on the 28th be making a deposit of a million dollars in his bank?—A. Yes.

Q. I suppose that sounded like good news to Mr. Scott, did it?—A. Yes, it did.

Q. Was that the first he had heard of it?—A. I think it was. In fact he gave me the impression that it was.

Q. And you were dealing with a million dollars and you had had no previous conversation with anybody in the bank. Now what did you arrange with him in connection with this million dollars?—A. My letter speaks for that, Mr. Symington. That is as far as I recall, that I was putting that in on the 28th, a temporary deposit.

Q. All you say is, "Referring to my interview with you on Friday the 25th instant."—A. That was all that took place at my interview, that I would be making a deposit with him on the 28th. I went further and said, according to my letter there, as I recall it.

Q. I will come to the letter. All I want to know is if you have any recollection of what your arrangement or interview was with the manager on the 25th.—A. That is as far as I recall.

Q. That is all you said, "I will be depositing a million dollars on the 25th or 28th?"—A. On the 28th, yes.

Q. And that is all you recall of the conversation?—A. That is all I recall.

Q. I do not want to come back to it Mr. Yates. There is an arrangement set forth here?—A. Yes.

Q. But what I want to get at is, was that arrangement made on the 25th by a verbal conversation? You have told me all you remember is that you told him you would be depositing a million dollars?—A. That I would be depositing a million dollars.

Q. Then you had no further interview with anybody up to the 28th?—A. Not that I recall.

Q. And you then wrote this letter?—A. Yes.

EXHIBIT No. 171.

Filed by Mr. Symington, May 7, 1924.

Copy letter May 28, 1923, from J. A. Yates, (Gen. Treasr.) C.N.
Rys. to Victor Scott, Mgr. H.B. of C., Montreal, re the million dollar deposit.

May 28th, 1923.

VICTOR SCOTT, Esq.,
Manager, Home Bank of Canada,
Montreal.

DEAR SIR,—Referring to my interview with you on Friday the 25th instant.

I enclose herewith a cheque on the Bank of Montreal for \$1,000,000, which be good enough to deposit to a temporary Special Account with your bank. It is understood that you will allow interest on this amount while it is with you at the rate of 3 per cent per annum.

I propose to withdraw these funds on or about the 2nd or 4th of June. Cheques for the withdrawal of this amount will be signed by Mr. C. D. Cowie, Assistant to Vice-President, or Mr. C. R. MacKenzie, and countersigned by myself as General Treasurer or Mr. H. G. Foreman, Assistant General Treasurer.

Yours faithfully,

General Treasurer.

That was the contract, so to speak that you made with Mr. Scott?—A. Yes.

Q. And that is the only written document that you have with respect to the arrangement?—A. Yes.

Q. Now you are clear, Mr. Yates, that the arrangement was only for a million dollars at any time?—A. Up to about a million dollars, yes.

Q. And you limited this deposit to the 2nd or 4th of June following your telephone conversation with Major Bell, although on the 21st it was understood that this was a temporary account?—A. A temporary account.

Q. Had you carried out the arrangement of the 21st without further communication with Major Bell, would there have been any difference in that letter you had written?—A. I could not have carried it out at that time.

Q. If on the 28th you had carried out instructions which Major Bell had given you on the 21st, would the letter have been any different if you had not had the subsequent telephone conversation with Major Bell?—A. Well, I don't know whether it would, or whether the amount would remain there longer or not. I don't just recall more than that we were to make this deposit.

Q. What I was trying to get at, Mr. Yates, so that you may perfectly understand it. I am trying to arrive at what difference the telephone conversation with Major Bell made between the arrangement or instructions which he gave you on the 21st and the confirmation of it on the 28th?—A. No, I understand the arrangement was the same.

Q. Now what happened next in connection with this deposit then, Mr. Yates?—A. As I arranged on the 28th of May, I withdrew the money again on the 2nd of June as I recall it.

Q. Is that the next you had to do with it?—A. Yes.

Q. You had no communication with any of your Directors?—A. No.

Q. You had no communication with Major Bell?—A. No.

Q. You had no communication with Sir Henry Thornton?—A. No.

Q. You had no communication with Mr. Gough?—A. No.

Q. But following out your written suggestion, the next you had to do with it was drawing out the money on the 2nd?—A. On the 2nd, yes.

Q. And you drew it out on what date?—A. My letter is dated the 1st June.

Q. The letter that I have just read has been filed as Exhibit 171.

The next document, Mr. Yates?—A. On the 1st of June I wrote the Home Bank to transfer that amount to the Bank of Montreal.

Q. You produce a copy of a letter dated June 1st, 1923, directed to the Manager, Home Bank of Canada, Montreal.

EXHIBIT No. 172.

Filed by Mr. Symington, May 7, 1924.

Copy letter, June 1, 1923, from General Treasurer, C.N. Rys. to Manager, Home Bank, Montreal, re transferring \$1,000,000.

DEAR SIR,—Will you please arrange to transfer to the Bank of Montreal, Montreal, for the credit of our General Account, the sum of \$1,000,000.00, being amount of temporary special deposit.

Yours truly,

*General Treasurer.
Assistant to Vice-President.*

The WITNESS: That would act as a cheque, you see. It was going from one account to the other in the same company.

Q. So that on the 1st of June, the money having been put in in the afternoon of the 28th, you wrote this letter, and what next happened?—A. On the 2nd of June the voucher went through covering the transfer on receipt of the advice from the Bank of Montreal that the transfer had been made.

Q. You produce a voucher from the Bank of Montreal dated the 2nd of June, 1923, addressed to the Canadian National Railways, Montreal?—A. Yes.

EXHIBIT No. 173.

Filed by Mr. Symington, May 7, 1924.

Voucher from Bank of Montreal advising credit.

BANK OF MONTRÉAL

MONTREAL, 2nd June, 1923.

The Canadian National Railways,
Montreal.

The Bank of Montreal begs to advise at your credit in account the following amounts:—

Received from the Home Bank of Canada, Montreal.....\$1,000,000.00
(One million dollars).

(Sgd.) R. W. BRACKIN,
Pro Manager.

The WITNESS: That was the usual advice.

Q. Now, Mr. Yates, you did not get any interest?—A. From the Home Bank?

Q. Yes.—A. Oh, yes.

Q. Well, where did that go to?—A. The Home Bank gave us a cheque for that, Mr. Symington. I have a letter here dated the 2nd of June, 1923, in which they sent me over a cheque. I evidently called them up on the phone and asked them for the interest.

Q. That is, following the receipt of Exhibit 173 where you saw only a million dollars was deposited in the Bank of Montreal, you telephoned them about the interest?—A. About the interest.

Q. And you received this letter dated the 2nd of June, addressed to Jas. A. Yates, Esq., General Treasurer, Canadian National Railways, Montreal?—A. Yes.

EXHIBIT No. 174.

Filed by Mr. Symington, May 7, 1924.

Letter, June 2, 1923, from Home Bank of Canada to General Treasurer, C.N. Rys., re cheque for interest.

THE HOME BANK OF CANADA,

MONTREAL QUE. 2nd June, 1923.

JAS. A. YATES, ESQ.,
General Treasurer,
Canadian National Railways,
Montreal, Que.

DEAR MR. YATES,—As per our telephone conversation, we are enclosing a cheque for Four Hundred and Eleven Dollars (\$411.00), payable to the Canadian National Railways, which you might please sign, and have countersigned.

Kindly accept the writer's most sincere thanks for your goodness in this matter.

Yours truly,
(Sgd.) V. W. SCOTT,
Manager.

Q. What did he mean when he said "Thanks for your goodness in this matter,"?—A. That is a usual bank term.

Q. That is a bank term, is it?—A. A bank term.

His LORDSHIP: You are not accustomed to getting that kind of letter?

Mr. SYMINGTON: No, mine is usually badness.

Q. Have you anything else, then, Mr. Yates?—A. I have got my acknowledgment for that cheque of \$411.

Q. On June 5th you wrote to Mr. Scott, the Manager, Home Bank of Canada, Montreal, acknowledging receipt of cheque for \$411 allowed on special deposit placed with him on May 25th?—A. That is a typographical error, evidently, it was May 28th.

Q. It was May 28th the deposit was made?—A. The voucher was put through on the 25th, and the deposit was made on the 28th.

EXHIBIT No. 175.

Filed by Mr. Symington, May 7, 1924.

Copy letter, June 5, 1923, from General Treasurer, C.N. Rys., to Manager, Home Bank, Montreal, acknowledging receipt of cheque for \$411.

June 5th, 1923.

VICTOR SCOTT, ESQ.,
Manager, The Home Bank of Canada,
Montreal, Que.

DEAR SIR,—This will acknowledge receipt of yours dated June 2nd, enclosing cheque for \$411, payable to this Company, being interest allowed on the Special Deposit placed with you on May 25th.

Yours truly,

General Treasurer.

Q. What else have you got in connection with it, Mr. Yates?—A. I have a letter dated 28th May, 1923, in which he acknowledges receipt of the deposit of a million dollars. Perhaps you had better have that too.

Q. You produce a letter marked "Confidential"?—A. Banks usually write "Confidential".

EXHIBIT No. 176.

Filed by Mr. Symington, May 7, 1924.

**Letter, May 28, 1923, from Home Bank to General Treasurer,
C.N. Rys., acknowledging receipt of deposit of \$1,000,000.**

THE HOME BANK OF CANADA

MONTREAL, QUE., May 28, 1923.

Confidential.

JAMES A. YATES, Esq.,
General Treasurer,
Canadian National Railways,
Montreal.

DEAR SIR,—Will you kindly accept our best thanks for the deposit of one million dollars. This amount has been placed to a Special Account according to our arrangements and we note same will be withdrawn between the 2nd and 4th of June.

Gratefully yours,
(Sgd.) V. W. SCOTT,
Manager.

Q. You were a pretty popular man around that time, Mr. Yates?—A. Yes.

Q. Now, what else have you got?—A. That is all I have got, Mr. Symington.

Q. That is all the correspondence of any kind that you have?—A. That is all.

Q. Was any sum other than a million dollars ever discussed with you?—A. No.

Q. And that was to be a special temporary deposit which you were to withdraw after the end of the month?—A. Yes.

Q. Now, Mr. Yates, you have told us all you know about this transaction?—A. Absolutely.

Q. In every way, shape and form?—A. Everything.

Q. And entirely in accordance with your recollection of it?—A. Entirely in accordance with my recollection.

Q. Have you ever known, in the course of your experience as Treasurer of the Company, of a similar transaction?—A. No, I do not recall that I do.

Q. What struck your mind, Mr. Yates, when you received instructions to place a million dollars in a new bank, I mean a bank in which you had never had an account, on the 28th day of May to be withdrawn on the 2nd of June, what impression did it make on your mind?—A. Well, I knew it was the practice among banks, Mr. Symington, that at the end of the month they usually like to have their balances built up. Our own bank usually asks us to keep our deposits up, and I consider that this was a matter to show their deposits at the end of the month.

Q. You came to the conclusion that it was something that had been arranged with your superior officer for the purpose of showing a favourable bank balance of deposits in the Home Bank for the end of that month?—A. It was the usual practice among banks.

Q. Quite so. At any rate, that was what was conveyed to your mind by the whole transaction?—A. That is what I gathered from it.

Q. You gathered that from your discussions, or simply by intuition?—A. Intuition.

Q. The matter was not mentioned between you and Major Bell?—A. No.

Q. The matter was not mentioned between you and Mr. Scott?—A. No, not that I recall. All I said to Scott was that the money was going to be deposited.

Q. Was there anything said that nothing was to be drawn against this account, that the bank, as a bank, were not to lend out this money, or anything of that kind?—A. No, there were no restrictions on it.

Q. No restrictions of any kind?—A. No.

Q. The reason I asked you about the million dollars, Mr. Yates, was because I find a copy of a letter—I have not got the original—from the General Manager to Mr. Scott at Montreal, as follows:—

“We duly received your wire stating that you had received a million dollars deposit from the Canadian National Railways, and note that you expect to obtain the balance you mentioned you had received, namely, \$200,000, before close of business to-day.

Yours truly,
General Manager.”

A. Well, that had nothing to do with our deposit.

Q. At any rate, Mr. Ross seems to have reported to Mr. Mason—I may have read it wrong—but at least I assume that he expected an additional amount from you?—A. No.

Q. The additional deposit could not have referred to your deposit, so far as you are concerned?—A. No. I would imagine that he probably expected some deposits from some other source. He had probably reported to his General Manager that he would get \$1,200,000.

Q. But that had no reference to the Canadian National Railways?—A. He says in that letter other deposits.

Q. Further deposits. He says “You expect to obtain the balance you mentioned,” meaning he expected to have additional deposits?—A. I would judge he was getting additional deposits from other sources.

Q. In any event, it had no reference to your deposit, or to your company, so far as you are concerned?—A. No, none whatever.

Q. I also find a letter from Mr. Ross to head office dated May 25, as follows:—

“Mr. Yates, General Treasurer, of the Canadian National Railways, advised the writer this morning that he is giving us not later than Tuesday a deposit of one million dollars which will be drawn out again on the 2nd of June, and we would ask you not to draw anything against same. Mr. Gough, our Vice-President, arranged with Mr. Yates for this deposit.”

Q. That is not right?—A. That is not right.

Q. “We expect to have further deposits of between \$150,000 and \$200,000 forward for the end of the month.”

Mr. LEE: Who is the letter from?

Mr. SYMINGTON: From Mr. Ross to head office.

Q. Apparently, you see, you notified Mr. Ross on the 25th and not on the 28th that you would draw this out again on the 2nd of June?—A. Yes, in my conversation with him.

Q. Yes, I understand that you advised him, as this letter states, on the 25th. The letter reads:—

“Mr. Yates, General Treasurer of the Canadian National Railways advised the writer this morning that he is giving us not later than Tuesday a deposit of one million dollars which will be drawn out again on the 2nd of June.”

A. Yes.

Q. That is before your letter of the 28th?—A. My letter of the 28th confirmed that.

Q. So that in your interview, or conversation, whichever it was, on the 25th, you had had that date stipulated, the 2nd of June?—A. Yes.

Q. That is, the terms of the temporary deposit had actually been made that day?—A. Yes, I presume they had.

Q. So that apparently on the 25th of May this whole matter, as between you and the bank, had been definitely arranged as to what would take place?—A. Yes, that was the date.

Q. When you drew out this money on the 2nd of June it was not because you needed it?—A. Well, I did need it in connection with my commitments following days, but it was drawn out according to arrangement.

Q. Yes, but on the 25th of May you did not make this arrangement to withdraw this money because you needed it?—A. No, I did not at that date.

Q. Something else moved your mind to the placing of that restriction, namely, your consultation with Major Graham Bell?—A. That was the suggestion I got from Major Bell to only leave it in for that short time.

Q. And that was not arrived at because you anticipated needing the money but because it was a temporary special deposit, for a special purpose, expiring on a certain date?—A. Well, as I recall it, I did tell Major Bell that I would require that money in the early part of June.

Q. Why, then, if that was the moving consideration, did you not simply cheque it out to where you wanted it from the Home Bank?—A. Because most of our interest payments are paid from the Bank of Montreal.

Q. That is what you would require the money for in June, your interest payments?—A. The beginning of June.

Q. Not wage cheques, or payment of supplies and so on?—A. General purposes, but when I had that million dollars I knew I would use it later for interest.

Q. Are all your accounts paid through the Bank of Montreal?—A. Not them all, the Bank of Commerce as well.

Cross-Examined by Mr. Reid:—

Q. Did you make any further deposits in the Home Bank after your withdrawal of that amount?—A. I did not quite catch that.

Q. I said, did you make any further deposits in the Home Bank after your withdrawal of that amount?—A. Not in the headquarters account. We had agents' accounts, where they deposit their daily receipts, and would get a transfer, but those are just local accounts where we would use a bank wherever local conditions would warrant it.

Q. What I mean is this, after you withdrew the million dollars from the Home Bank on June 2nd, or whatever date it was withdrawn, is there any further deposit in the Home Bank at Toronto in the name of the Canadian National Railways?—A. No, sir.

Q. Was there ever any deposit made up to the time of the failure of the Home Bank, after the date of the withdrawal?—A. Not in our general account.

Q. Well, in any account?—A. Yes, where an agent would deposit locally.

Q. At Toronto?—A. No, not at Toronto, probably some of our other stations along the line.

Q. Those would be merely small, local accounts, not very large?—A. A couple of hundred dollars, probably, agents' receipts.

Q. Yes. Now, this cheque for a million dollars is drawn on the Bank of Montreal?—A. Yes, sir.

Q. Where at, Ottawa or Montreal?—A. Montreal.

Q. The City of Montreal?—A. The City of Montreal.

Q. And did that cheque leave the City of Ottawa prior to May 28th, 1923?—A. That cheque was drawn on the Bank of Montreal on the 28th of May, and deposited with the Home Bank in Montreal.

Q. In Montreal?—A. Yes, in Montreal.

Q. That is to say, it was made out in the City of Ottawa?—A. No, in Montreal.

Q. Made out in Montreal, and deposited in the Home Bank of Canada at Montreal and remitted to Toronto?—A. No. deposited in the Home Bank branch at Montreal.

Q. And remained there?—A. Remained there.

Q. Well, that cheque would, in the ordinary course, have to go through the clearing house, I suppose?—A. Yes, it would go through the clearing.

Q. Well, is there anything there to show about the date that it got through the clearing?—A. No, there is nothing on here, sir, that indicates the clearing date. It has got a stamp on the back, "The Home Bank of Canada, May 29th" and "The Bank of Montreal, May 29th," so evidently it was cleared on the morning of the 29th.

Mr. SYMINGTON: It was not cleared at all. I take it was taken direct over to the bank. There is no clearing house stamp on it?—A. No clearing house stamp on it, not that I can see.

Mr. REID: What date is it marked paid?—A. There is a stamp here "Accepted by the Bank of Montreal" but I do not see the date. I presume that would be the 29th.

Q. Well, anyway, at the time the cheque was made out and put through the bank, Mr. Gough was a Director of the Canadian National Railways?—A. Yes, sir, I understand he was.

Q. You knew that at the time?—A. Yes.

Q. Well, did you have any reason for not making further deposits in the Home Bank after June 2nd, 1923?—A. No. The account was closed out on the 2nd of June. I did not put any more money in there.

Q. Well, did you intend to make any further deposits there at any time?—A. No. My instructions were about the 25th of May that we put this money in the bank and draw it out on the 2nd of June.

Q. And close the account?—A. Close the account, withdraw it, which would automatically close the account.

Q. But I understood you to say that when you opened an account in a bank you make deposits from time to time. In making this one deposit in the Home Bank and then drawing all the money out you closed the account on the 2nd of June, 1923?—A. The arrangement was made on the 25th that this money would be deposited, and withdrawn on June 2nd, and that closed the account out.

Q. Did you have any intimation of the impending disaster to the Home Bank at that time?—A. None whatever.

Q. Did you have any conversation with any person in relation to it?—A. None whatever.

Q. Did you make any inquiries concerning the stability of the bank with any person?—A. Not at that time, in fact not at any time.

Q. What is the date of the cheque?—A. The 28th of May, I think.

Q. No, when you withdrew the amount?—A. On June 2nd?

Q. What is the date of the cheque?—A. The letter authorizing the withdrawal of that fund is dated June 1st, and it was drawn out on the 2nd.

Q. Drawn out on the 2nd by cheque?—A. No, by a letter cheque.

Q. By a what?—A. What we call a letter cheque, which is signed by the two authorized officers, and by presenting the letter where the account is going from one bank to another in the name of the same company we do not have to pay any war tax, so we write a letter such as this:—

“Will you please arrange to transfer to the Bank of Montreal, Montreal, for the credit of our general account, the sum of \$1,000,000.00, being amount of special temporary deposit.”

That is signed by the signing officers of the Company.

Q. So that the money was really out of the bank for about three days and a half?—A. From the date it was put in the Home Bank until taken out again?

Q. Yes.—A. It was charged out by the Bank of Montreal on the 29th of May and credited on June 2nd, according to their advice.

MR. LEE: Just one question, Mr. Yates. Was there any discussion between you and Major Bell regarding the Home Bank's statement being made up to the 31st of the year?—A. No, sir.

Re-examined by Mr. Symington:

Q. You say that you do not pay war tax, or at least stamp tax on transfers between banks, that is correct, is it not?—A. Yes, sir.

Q. And is that the reason why this cheque to the Home Bank does not have a stamp tax on it?—A. That was deposited in the Home Bank. Then I transferred it to the Bank of Montreal to the account of the same Company.

Q. Well, I mean was payment of stamp tax made on that cheque?—A. Yes.

Q. You have some arrangement?—A. We have a license, and we emboss our cheques license number so and so.

Q. Yes, A-228, and that is the way you did?—A. Yes. At the end of the month we charge this all up.

Q. So that the account was opened by a cheque between banks and closed by a letter?—A. We would have to open it by a cheque and close it by a letter.

Q. So far as you know, Mr. Yates, was this cheque ever used, was the transfer ever made by the Bank of Montreal to the Home Bank?—A. I cannot say that. I presume it was, because we got credit for it in the Home Bank, and then the Bank of Montreal acknowledged having received the money again on the 2nd. Is that what you mean?

Q. Yes. I was wondering whether they had ever got the money?—A. I would say they had, because we have the acknowledgment from the Bank of Montreal where they say they have the transfer from the Home Bank.

Q. The cheque is marked “paid” so I presume that must be so.

HIS LORDSHIP: Did anybody, as far as you know, receive any consideration for having this million dollars transferred to the Home Bank?—A. No, sir.

HIS LORDSHIP: I would like to have that on the record, that is all.

MR. SYMINGTON: Major Bell has asked to go back in the box for a moment.

Major GRAHAM BELL, recalled.

Examined by Mr. Symington:

Q. Major Bell, there is something you wanted to say following Mr. Yates?
—A. Yes, in explanation of the first part of Mr. Yates' evidence. He left the impression, I think, that the routine in connection with opening up bank accounts was that in all cases the General Treasurer would make the recommendation. It is the duty of the General Treasurer to look after finance generally, but I suppose nine times out of ten the arrangement with the bank is initiated by the Vice-President. When we first amalgamated the Canadian National Railways I was appointed Vice-President. I went over the banking and made considerable changes. For instance, we opened up a general account with the Royal Bank of Canada, transferring the Express and the Telegraph. Mr. Yates at that time was not General Treasurer, but none of the treasurers were consulted, except in a general way. They did not report, they were instructed to carry this out. We also opened up another account in the Province of Quebec, with the Banque Internationale, I think it was. Instructions were simply issued from the Vice-President's office that this should be done. These are all generally discussed with the President, and Vice-President of Finance, and confirmed by the Board.

Q. I quite understand.—A. I do not want the impression to go out that this was an extraordinary case.

Q. I could understand, Major, that where there was a new regime coming in questions of policy of that kind would be settled and probably initiated by the Board themselves, or by the Vice-President in charge, but apart from a reorganization of that kind, a general re-organization, if you are opening up a new account, as a matter of routine, even though the suggestion came from the Vice-President in charge of Finance, my recollection would be that the Treasurer would recommend it as a matter of form to go through and be approved?—A. He might. For instance, Mr. Yates, the General Treasurer, might go to his Vice-President to-day and say, for certain reasons it might be good policy to open up with a new bank, take the Quebec Bank, or the Bank of Nova Scotia. That would be his duty first, watching the interests of the Company, but the Vice-President might initiate, and generally does.

Q. Quite so, but supposing, in railway routine, would it not be advisable for a General Treasurer's protection, for instance, that there should be a written authority for him to open a bank account of a million dollars, that is what we are trying to get at.—A. A million dollars seems rather a large amount to the average man, but when you come to think that the railway is handling some days tens of millions, it is only paper to them.

Q. But the fact is that there is no routine which would prevent a treasurer opening an account on any director's instructions?—A. No, he would not open up an account on any director's instructions.

Q. It would be the instruction of the particular Director in charge of Finance?—A. Yes, and afterwards, when I resigned, at Sir Henry Thornton's request I was acting for him in this particular case, so had all the authority of the President.

Q. To get it on the record, so far as you know, did anybody receive any pay or remuneration for this transaction?—A. In no shape or form.

GEORGE EDWARDS, *cross-examination by Mr. Browning, resumed:*

Q. Your attention is again directed, Mr. Edwards, to the sixth paragraph of Exhibit 86 which we have been considering.—A. Page?

Q. Page 177. On May 26th and 27th—I am reading from the letter—a full Board meeting was held, and was marked by complete harmony throughout;

all doubtful accounts were discussed, and appropriations for losses made; the aggregate of these appropriations, together with a considerable sum for good measure, is being transferred from Rest account.

I presume this explains your reference to the \$100,000 transferred from Rest?—A. It appears to do so.

Q. If the letter reads that sufficient appropriations have been made to meet the losses, is the statement correct?—A. I do not think it is correct. I am quite sure it is not correct.

Q. Is the paragraph as a whole, leaving out the last sentence, substantially correct, or substantially incorrect, or untrue?—A. I would say it was incorrect.

Q. As a matter of fact, the losses for that year, at least the unpaid interest for that year, amounted to how much? This was just before the end of the fiscal year?—A. \$199,000.

Q. Included in profits and unpaid.—A. Included in profits and capitalized.

Q. And, prior to 1916, the total amount amounted to approximately how much, from the beginning?—A. The Frost account is the only item I have that I have spoken of prior to that.

Q. Were there others?—A. Oh, yes. I have not the total of them.

Q. What would be the total of the Frost account prior to 1916?—A. On the Frost account it was \$535,000.

Q. That is, interest capitalized?—A. Interest capitalized down to May, 1916. That, of course, would include the 1916 item which is a part of the \$199,000.

Q. Look at the last paragraph, Mr. Edwards:

“Mercantile advances have been got in and quite heavy investments made in Government bonds—”

From your knowledge of the bank's business, and during that year what can that possibly refer to?—A. Well, the bank had a great many loans to mercantile customers. Without a doubt, those loans would be coming and going all the time. The statement might easily be correct.

Q. That is a letter dated June 14th, 1916, from the President of the Home Bank to the Minister. What would you say as to its truth and correctness, substantially?—A. I would say it was a misleading letter.

Q. A misleading statement?—A. Yes.

Q. And could the misleading nature of the statement have been readily ascertained by independent inquiry?—A. Yes.

Q. The ex-Minister states, Mr. Edwards, that if he had known of the real condition of the bank in 1916 he would have compelled some other bank to take it over, or the Government would have taken it over.

Mr. SYMINGTON: Did he say the Government would have taken it over?

Mr. BROWNING: He said he would compel someone. I think I am right in making that statement. The Minister said that, under war conditions, if he had known the actual condition of the bank he would have compelled some other bank to take it over. He was in a position to compel them to do so.

His LORDSHIP: Yes, he said that.

Mr. BROWNING: What would have been the result to the present depositors of the Bank if that had happened in 1916, Mr. Edwards, so far as profit or loss is concerned?—A. There would be no present depositors if that had happened in 1916, and those who have lost money would have had a chance to lose it elsewhere.

Q. They would have had a chance to lose it elsewhere or have saved it?—A. I presume so.

Mr. SYMINGTON: He could have forced the Banque Internationale to have taken it over.

Mr. BROWNING: On page 254 of the printed record, Mr. Edwards, Mr. Clarkson made certain statements which I will refer you to and ask you to express an opinion regarding. At the bottom of the page he states:—

“That the actual profits earned by the bank between May 31, 1916, and August, 1923, according to their own statements, and eliminating write-ups and transfers of securities, showed about \$650,000, and as against that interest was capitalized to the extent of over \$2,050,000.”

Is that correct approximately?—A. It is.

Q. Then he further says that the new advances since 1916 to 1923 were between \$4,500,000 and \$500,000, is that correct, approximately?—A. Where is that, Mr. Browning?

Q. We will leave that for the present. I thought I had that marked. Look at page 285 of the evidence, Mr. Clarkson's statement, question 3 from the bottom of the page:—

“But an auditor operating in 1916 would have to come to some conclusion as to the financial condition of the bank? That is his business?

—A. Then the conclusion he would have to come to was that it was serious.

“Q. It was serious?—A. Yes, there is no doubt about that.”

Do you agree with Mr. Clarkson, or otherwise?—A. Oh, absolutely.

Q. Then take the next question:—

“Q. It is then possible for you to carry yourself back to that period and to form a general estimate of the financial condition of the bank then?—A. What I said, Mr. Lafleur, is this: to enable a bank to continue in business, it is just as important that its earnings are there to allow it to pay its dividends, from one standpoint, as it is that its assets will pay its liabilities. Now we may suppose that any auditor going in there would have known that there was very grave doubt, in fact he would have known that the earnings would not have justified the payment of the dividend; that is the first thing; and that alone would have required him to report the situation. Now secondly I can say this, that any auditor going into the bank at that time would have been very much embarrassed as to the condition of affairs, with these locked-up accounts, and would have had to report them to the Minister; but whether the opinion of an auditor at that time would have been that there was a serious loss there or there was not, I do not think it is fair to attempt to state at this time.”

Do you agree or not with Mr. Clarkson in his statements, Mr. Edwards?—A. Yes, I agree with his statement.

Q. No reservation of any kind?—A. No.

Q. Then Exhibit 88, page 178, letter Machaffie to the then Minister of Finance. You have that letter before you?—A. Yes.

Q. Are the criticisms made by Mr. Machaffie as to payment of dividends warranted or not?—A. Well, I have stated that in 1918, that would be the year ending May 31, 1918, and, therefore before the date of Mr. Machaffie's letter, they possibly earned their dividends.

Q. That is, for the one year?—A. Yes, but 1916 and 1917, no.

Q. Then his criticisms were substantially well founded?—A. Yes.

Q. With the exception of the one year 1918, there is no doubt that dividends were improperly paid, as he charges?—A. Yes.

Q. Exhibit 96, page 186, the report of the Home Bank to the Minister of Finance. Looking at page 185, Mr. Edwards, paragraph 3 from the top. This statement, by the way, is signed by Mr. J. Haney, president, addressed to the Minister of Finance. No, it is a unanimous resolution of the Board of Directors signed by Mr. Haney and forwarded after to the Minister of Finance:—

“The inference to be drawn from Mr. Machaffie’s statements with reference to dividends paid by the bank seems to be that these dividends were paid out of capital, and not out of profits. This statement, or inference, is unfounded. No dividends have been paid out of capital, and the profits of the bank, actually earned, have been amply sufficient to warrant the payment of the dividends which have been declared.”

Is there any foundation for the statement made in that paragraph of the report?—A. Well, to the extent that that refers to the then preceding year, Mr. Haney’s statement might have been reasonably correct, but as to any previous period it is not correct.

Q. And even though the previous year would have to be taken entirely by itself without any reference to the unearned interest?—A. Well, I hardly know how to answer that question. Of course, if the rest and surplus balances of the bank were made up solely of interest added to accounts in this manner then the dividends would not be justified, even though the earnings momentarily were sufficient.

Q. Even if the earnings for 1918 were sufficient to take care of the dividends for that year, the accumulated interest prior to 1918 certainly was not taken care of?—A. I would say that the evidence would be in favour of that contention.

Q. And the rest was entirely wiped out all that time; they were wiped out in 1916?—A. There is no doubt about that.

Q. Take the next Mr. Edwards, paragraph 6, which sets out the net profits for 1917 and 1918. Have you the paragraph before you?—A. Yes.

Q. The statement as to dividends paid is, I suppose, correct; that is taken from the Annual Report to the shareholders?—A. Yes, that is correct.

Q. Is the statement as to the net profits for 1917 correct?—A. Well, they are overstated, in my opinion, to the extent that I have already testified. There were no profits in 1917. There were some profits in 1918, sufficient probably to pay the dividends.

Q. You are approaching this matter entirely from a disinterested standpoint and with the knowledge of an expert?—A. I am trying to form an opinion on the exact situation at that time.

Q. You are not looking at it with any particular interest in view?—A. Absolutely none.

Q. Except to find the facts. Page 186, Mr. Edwards, the second paragraph from the bottom:—

“The liquid assets on 31st May, 1916, amounted to \$6,773,797.”

Can you place your finger on liquid assets amounting to any such sum?—A. Those figures appear in the published Annual Report of that date.

Q. I suppose that does not add to their correctness?—A. It is not conclusive as to their accuracy, but they appear there, that is the foundation for the statement.

Q. Well, have you been able to find any foundation for the statement?—A. I would be disposed to seriously question the liquidity of the call on short loans which are set down in the statement at \$2,271,000. I think the other items included in that total are probably liquid.

HIS LORDSHIP: What Exhibit are you referring to now, Mr. Browning?

MR. BROWNING: Exhibit 96, page 186.

Q. Please explain as to the call on short loans, Mr. Edwards?—A. They did not have the quality of call on short loans you expect to find of that character.

Q. That is explained as to this call on short loans. Was there one large loan included in that amount, or were they made up of a number of small ones?
—A. Our papers show that the Pellatt loans were \$1,500,000 included in that \$2,200,000.

Q. \$1,500,000 of the Pellatt loans. Would you consider that a liquid asset?

—A. I have already given evidence as to that.

Q. The loan was outstanding at the time of the failure?—A. Yes.

Q. And am I right in supposing that the incorrectness and untruthfulness of any of these statements could have been readily ascertained by an inspection at head office?—A. Yes, they could.

Q. And a comparatively superficial inspection at that, I presume?—A. It would not have taken long to ascertain the substantial inaccuracy, at any rate.

Q. A week at the outside?—A. I would not limit it quite to that period.

Q. You mean it might take longer than that?—A. Well, it might take longer than that to thoroughly satisfy one's self. The bank's records were not in too good a condition, and it might have taken some inquiry, or research to get out all the facts in connection with it.

Q. All right. Exhibit 97, page 187, Mr. Edwards, the second last sentence, letter from Sir Thomas White to Mr. Lash:—

“In this connection I require a statement showing how much of the capital and reserve is represented by interest which has been added from time to time to the principal of the three accounts in question——.”

Can you find that any answer was made to that requisition?—A. Yes.

Q. There was?—A. It is in the evidence, Exhibit 107 and following pages, I think, will supply that information, page 194. The accumulation of interest on the Prudential account was shown amounting to \$170,428 down to November 15, 1918.

Q. Yes, that is as to the Prudential, where as to the others?—A. On page 200, similar information as to the Frost account is shown.

Q. And then following as to the Pellatt & Pellatt. All right, Mr. Edwards, thank you. Look at the last sentence at the bottom of page 187:—

“If, as a matter of fact, the capital of the bank is represented by interest amounting in the aggregate to a large sum and added over a course of years to the principal of inactive accounts, a serious question arises as to whether the true position should not be declared and the capital and reserve of the bank written down accordingly.”

In view of your last answer, the Minister was, within a comparatively short time, advised that, as a matter of fact, the capital of the bank was represented by interest amounting in the aggregate to a large sum owed over a course of years?—A. This statement discloses information of that character.

Q. He had that information before him?—A. I am not at the moment just certain when he got it.

Q. Mr. Lash's letter is dated January 29, 1919.

Mr. SYMINGTON: They were enclosed in the letter, Exhibit 105, I think, page 199, dated January 25.

The WITNESS: Yes.

Mr. BROWNING: Within about three months the Minister had the information which he had asked for, showing that the capital of the bank was represented by interest amounting in the aggregate to a large sum, and added over the course of years to the inactive accounts?—A. Yes.

Q. Then he asks himself the question:—

“A serious question arises as to whether the true position should not be declared and the capital and reserve of the bank written down accordingly.”

The true position having been declared, were the capital and reserve of the bank ever written down from that time on?—A. There is no trace of it.

Q. Nothing that you can find indicating further interest in the matter by the ex-Minister?—A. The record is here.

Q. You have told the Commission, Mr. Edwards, that the securities on which the bank loaned consisted of railways, real estate subdivisions, timber limits, and Veteran scrip land. Now, particularly as to railways, from your knowledge as an auditor, and a man dealing in banks and bank securities, do you consider that a railway such as this New Orleans Railway was security which should be accepted by the bank for an advance of the large amount that was made in this connection?—A. It all depends on the merits of it. I think it would be a very large loan for a bank of this size.

Q. Taking the particular railway in question, even without your subsequent knowledge?—A. Well, one has to take into account a good many circumstances. I do not feel confident to answer your question critically at the moment.

Q. Leaving that then, what about real estate subdivisions such as those on which moneys were loaned through Pellatt & Pellatt and his subsidiary companies, are those good bank securities apart altogether from the Bank Act?—A. I should say not.

Q. Take the particular timber limits, taking into consideration Mr. Crerar's statement that there was a margin of 25 per cent, and Mr. White's statement that he placed no value, or very little value upon the report of the cruisers, they varied so much; what do you say as to that kind of security?—A. Well, I do not know what value my opinion might have with a banker, but I would judge that the prospect of realization on security of that kind is so remote that it could not be considered as the first collateral to a loan.

Q. And as to the Veteran scrip land, particularly referring to the Holmes transaction?—A. That would be subject to the same observation.

Q. Now, as an auditor called in to go over the bank's affairs, what would be your duty, your attention being called to securities of this nature, inactive for a period of years?—A. I think an auditor's duty would be to ascertain whether the loans conformed to good banking practice.

Q. And having ascertained that, what?—A. Report accordingly.

Q. You spoke of speculative profits in 1918, Mr. Edwards. I particularly call your attention to page 239, the fifth paragraph from the top, reading as follows:—

“Several accounts which have been referred to by the Board, I have not dealt with individually, leaving the report to the local manager, in whose statements I concur. These accounts are in a strict sense not good banking propositions, but the bank had some large accounts which were not earning interest and the Directors felt that they were justified in augmenting the earnings of the bank to offset this loss of interest, by embarking on certain enterprises, where the bank was properly secured.”

Do you agree with that statement that the speculative enterprises in which the bank was engaged in that year were not proper banking enterprises?—A. Yes, no question about that.

Q. And was it proper for the bank to make up for the loss it was incurring through non-payment of interest on inactive accounts to embark in speculative accounts of this nature?—A. It would be a very indiscreet thing under ordinary circumstances. I do not know what special knowledge they had about these transactions.

Q. I am asking as to whether this was ordinary good banking business?—A. No.

Q. Can you tell me what large accounts, if any, in which officials or Directors of the bank were interested directly or indirectly as debtors were outstanding at the time of the bank's failure, and the amounts?

Mr. SYMINGTON: I think that is a little dangerous. I have that statement but purposely refrained from using it. If you will limit it prior to 1922 and 1923, or else have the statement put in for his lordship's inspection only. We want to guard against any allegation of unfairness in respect to these gentlemen under indictment.

Mr. LEE: Do I understand from my learned friend that there is not going to be a report made in this matter?

Mr. SYMINGTON: I do not know why my learned friend should draw any inferences, I simply stated that it is the desire of the Commission not to appear unfair in any way to the gentlemen who are under indictment. I am implying nothing but what I have said.

Mr. BROWNING: I think we all agree with Mr. Symington.

His LORDSHIP: Then if you all agree there is no occasion for me to say anything.

Mr. BROWNING: We are not pressing any question that would imply criminal liability, it is purely a matter of debtor and creditor.

Mr. REID: Are these amounts to which Mr. Symington refers, amounts owing by the Directors to the bank?

Mr. SYMINGTON: Owing by companies in which Directors were interested, was the question.

Mr. BROWNING: The answer is going to be directed prior to 1922, and subject to his lordship's direction I am going to ask whether those accounts continued.

Mr. SYMINGTON: I think that is fair. Your lordship will understand that in respect to 1922 and 1923 the Directors are under indictment. Therefore I think we should not go into it.

Mr. REID: Might I ask if a copy of this report in which this information is contained has been delivered to the Attorney General of Ontario?

Mr. SYMINGTON: So far as I know, a copy has been delivered to no one except Counsel for the Commission, for whom the investigation has been made.

Mr. REID: Then I suggest to your lordship that in view of the non-disclosure of these names and amounts a copy of this report should be submitted to the Attorney General of Ontario, as he is the law officer of the Crown enforcing these prosecutions and therefore should be in possession of this information.

Mr. SYMINGTON: The Attorney General of Ontario is represented before this Commission by Mr. McGregor Young who can make any request he likes to the Commission in his official position.

His LORDSHIP: Now let us have the question.

Mr. BROWNING: Prior to 1922 will you be good enough to give me a list of the large accounts outstanding in which Directors or officials of the bank were interested directly or indirectly as debtors, and the amounts.

The WITNESS: I have not prepared such a list. The only information I have prepared on that point is the position in 1923.

Q. Would it be possible for you to get that information for us and give it this afternoon?—A. I could not get it here.

Mr. SYMINGTON: I had not noticed that Mr. Edwards' report refers only to 1922-23.

Mr. BROWNING: So you are not in a position to furnish that information?—A. No, not at the present moment.

Q. And without reference to the head office books you will not be able to furnish it?—A. It is a matter of compilation I think. We have the information in scattered form but it would take some time to make the compilation.

Mr. SYMINGTON: I think as a matter of fact the Curator has already reported on that.

Mr. BROWNING: What was your estimate as to the excess of liabilities of the bank at the time of failure, I understood some \$7,000,00 odd?—A. My estimate was made in connection with a report as to whether the returns to the Government were correct or not, and whether they showed the true condition of the bank as required by the Act.

Q. You expressed an opinion yesterday as to the total excess of liabilities of the bank over its assets at the time of the failure, and I understood that to be some \$7,500,000?—A. I estimated that in order to show a full and fair statement of the position of the bank at the time of the last returns of the Government prior to the failure,—

Q. Yes, May, 1923?—A. \$7,500,000 should have been appropriated to provide for shrinkages in values.

Q. Of course that is largely conjectural, dependent on the realization of assets?—A. I might be wrong. Of course Mr. Clarkson has much later information and he estimates a higher figure than that now.

Q. Did you include the losses of outside branches, for instance the Western losses which are estimated at \$1,000,000?—A. We only took two or possibly three branches into account; Toronto, Montreal and, I think, some in Winnipeg.

Q. Then you did not take into account the Western losses which Mr. Clarkson places at \$1,000,000 odd?—A. I do not recall Mr. Clarkson's evidence on that, if he means farther west than Winnipeg, I did not take them into account.

Q. Comparing 1916 with 1923, the difference between the loss to the depositors at those periods, the value of the bank as a going concern would amount to something I presume, be it little or great?—A. Do you mean the value of the bank's goodwill?

Q. Yes, put it that way?—A. The value of the bank as a going concern would depend largely on its earning power and the character of its assets. Certainly earning power is usually the basis for goodwill, a bank would be a desirable purchase according as it could be shown that it could earn a return.

Q. I presume there is no doubt that in case of the bank having been taken over in 1916, as Sir Thomas White said was possible, the cost of the liquidation at any rate would have been saved to the depositors?—A. Yes.

Q. Do I understand you to say that from 1916 to 1923 the bank was practically being carried on by virtue of the increased deposits from year to year, and not by reason of any actual profits earned?—A. For three or four years after 1916 certainly the deposits increased, and therefore the resources which the Directors could handle.

Q. And there were only two years in which the bank carried on legitimately making profits in those two years?—A. I think that is all.

Mr. LEE: So that I understand you to say that from 1915 up to 1923, including the Annual Statement of 1923, the bank made no profits from which it could declare a dividend except possibly during 1918. Is that understanding correct?—A. I think I said 1918 and 1919.

Q. During 1915, 1916 and 1917 they did not make any profits from which they could declare dividends?—A. No.

Q. Nor during 1920, 1921, 1922 or 1923?—A. No.

Cross-examined by Mr. Reid:

Q. During the period from 1916 to 1923 had the stock of the Home Bank any real value, in view of the information which you have gathered?—A. I think it would be a reasonable inference from my evidence that it had no value.

Q. You mentioned when you began your evidence that you had looked into the origin of the Home Bank of Canada?—A. Yes.

Q. In regard to its incorporation?—A. The material out of which the bank entered upon its business, its assets and liabilities.

Q. And you ascertained that the Home Bank was incorporated by a special Act of the Parliament of Canada of 10th July, 1903?—A. I have seen the Incorporating Act.

Q. And did you look at the subsequent Statute passed on the 18th July, 1904?—A. I did.

Q. Extending the time for one year within which the Home Bank might obtain its certificate to do business?—A. Yes.

Q. Did you read over all the clauses of both the original Statute and the subsequent Statute extending the time?—A. I did, but I am not sure that I recall everything in them at this moment.

Q. In the Statute passed on the 18th of July, 1904, being 4 Edward VII, Chapter 83, Volumes 1 and 2 of the Statutes of Canada, 1904, clause 4 of that Statute is in these words:—

“The acts lawfully done and the agreements lawfully entered into by the provisional Directors named in the said Act of Incorporation as shown in the recorded minutes of their meetings shall be and remain as valid and effectual to all intents and purposes as if no change of provisional Directors were hereby made.”

You have observed that clause?—A. I doubtless have; I did not recall the words.

Q. Did you examine the original contracts and agreements entered into between the Home Loan and Savings Company and the Home Bank of Canada at the time of its incorporation?—A. Yes.

Q. You examined all the contracts entered into by those two corporations?—A. I would not say all the contracts because I do not know what contracts there were, but I examined a contract that appeared to set out essentially the terms and conditions under which that was brought about.

Q. By which the assets and liabilities were assumed and taken over by the newly incorporated Home Bank of Canada?—A. That was not a part of the earlier agreement. I have a copy here—

Q. Well, I do not want to go into details of the agreement; what I want to get at is, are the agreements or copies of them available to be put in as exhibits?—A. I have no doubt they are. They are in the possession of Mr. Clarkson.

Q. Have you read over for your own purposes when carrying out your duties as auditor, the minutes of the first half dozen or so meetings of the incorporators of the Home Bank by which those assets were taken over and the details of the incorporation arranged and so on?—A. I have.

Q. Are there copies of those minutes available, or is the original in the possession of Mr. Clarkson?—A. I have here copies of minutes commencing with October 27th, 1902, and going on to December 17th, 1906, that is the minutes of the Home Savings and Loan Company. That is from their angle of course. Some of these minutes are prior to the date of the incorporation of the bank.

Q. They refer I presume to the incorporation of the Home Bank of Canada?—A. They embody the proposals that as I take it resulted in the formation of the bank.

Q. Is there a copy available that we can put in?

Mr. SYMINGTON: Unless Mr. Edwards has himself made the copy and certifies to it,—there are interests of third parties involved,—

Mr. REID: I only want to get before his lordship the fact of the illegal incorporation and acts of this bank, so that we can refer to it and know where to get the papers. I am not going into details.

Mr. SYMINGTON: I do not see how, in view of the interests of third parties, we can put that in as evidence.

Mr. REID: I say that the Statute incorporating the Home Bank of Canada and referring to the taking over of the assets of the Home Loan and Savings Company and the minutes of that company referring to that and leading up to the transfer are relevant and should be before the Commission so as to show the origin and history of the bank.

Mr. SYMINGTON: I quite agree, but my point is you must get it from Mr. Clarkson.

The WITNESS: I would not take the responsibility of putting this in.

Mr. REID: Then it is understood that we will have properly certified copies placed before the Commission in the usual way?

Mr. SYMINGTON: Counsel will endeavour to get those minutes, unless my friend himself will put them in, if he is interested.

Mr. REID: We are interested to the extent that I will presently show that the bank has not been functioning legally since its incorporation, and we say there never was any legal issue of stock.

Mr. SYMINGTON: We do not want to fight a lawsuit for my friend.

Mr. REID: I am simply drawing his lordship's attention to the facts.

Mr. SYMINGTON: If Counsel can secure these documents from Mr. Clarkson for his lordship's information they will do so.

His LORDSHIP: That is as far as you can go. At any rate you know where they are now.

Mr. REID: Yes. I just want to let your lordship know the history of the bank in logical sequence so that you will see how it started, and our contention regarding the stock, so that you will have a clear view of its history when you make your report.

Now at the time the bank was incorporated by the Parliament of Canada and the Statute passed, meetings of the provisional Directors were held I presume and all the details of the taking over of the assets and assuming the liabilities of the Home Loan & Savings Company were arranged as shown by the minutes?—A. Yes, as far as I could judge the statutory meetings were held and the statutory requirements were observed.

Q. Then in reference to the second statute dated 18th July, 1904, extending the time for one year, I presume you have not looked up the history or circumstances under which that Statute became law?—A. No.

Q. You had nothing to lead you to do so?—A. I have taken it as evidence of the fact, that is all.

Q. Just as it appears in the statute?—A. Yes.

Q. And you have no knowledge of your own to show you that by virtue of the General Bank Act of Canada, Section 16, the original statute passed on the 10th of July, 1903, expired on the 10th of July, 1904, ceased and determined and ended all the powers, privileges, franchises and rights of the original corporation of the Home Bank of Canada under that statute?—A. I cannot tell you.

Mr. SYMINGTON: He is not a lawyer.

Mr. LEE: Is my learned friend trying to make out—

His LORDSHIP: He is only putting on record a series of questions to this witness, who confesses he does not know how to answer them, but he is getting it on the record so that he may be able to locate it, that is all.

Mr. SYMINGTON: You do not expect answers to your questions, that is the point.

Mr. REID: I am asking if he had any means of knowing that. And you have I presume no knowledge of the circumstances under which the second statute, extending the time for one year for the bank to obtain a certificate to do business, which received the Royal Assent on July 18th, 1904, became law?—A. No.

Q. So you are not in a position to pass any opinion or answer any questions concerning the first Act which automatically expired and became null and void by virtue of the Bank Act of Canada?—A. No.

Mr. SYMINGTON: I understand your point is that the reviving statute could not revive something that was already dead.

Mr. REID: That is the idea. And you have no knowledge of the effect of the second statute passed July 18th, 1904, and purporting to refer to something which had ceased to exist.—A. I cannot express any opinion about that.

Q. So you cannot pass any opinion on the validity of the stock issue made by the Home Bank from the date of its inception until its final collapse.—A. Not as far as it depends on the statute you mention.

Q. That is the point. Then just one or two questions. Concerning the Prudential Trust matter, which has been mentioned several times, have you from your investigations any knowledge as to the final disposition of that claim for \$500,000?—A. I believe it is still being considered by the liquidator, the desirability of trying to enforce it.

Q. Have you any knowledge of the objections which have been raised recently to the payment of the claim?—A. No.

Mr. LEE: I ask my friend not to go into this matter, it may injure the depositors greatly if he goes much further, I do not think it is wise and on their behalf I request him not to go into it.

Mr. REID: Then regarding the loans which have been made to various real estate companies referred to in the evidence, is it not a fact that in the case of nearly all the large loans to these companies the loan by the bank was really on the security of the real estate?—A. I do not think there is any doubt about that, because the real estate was the only asset these companies had. Of course there were the personal guarantees, whatever they were worth.

Q. But what I wish to draw to your attention is that the Bank Act prohibits the lending of money under any circumstances on real estate security by a bank?—A. Yes.

Q. And the fact of incorporating a joint stock company and printing stock certificates and taking them down to the bank as security for a loan is simply an indirect way of obtaining money on the security of real estate, which is prohibited by the Bank Act. That is what it amounts to?—A. It looks like that.

Q. In the course of your investigations of the books of the Home Bank did you go into very great detail concerning the loans obtained by Mr. Daly on the security of stock of the bank from banks in Buffalo and other places in New York State.

Mr. SYMINGTON: What are we getting into now?

Mr. REID: I am speaking of loans secured by Mr. Daly, from a bank in Buffalo and elsewhere in New York.

Mr. SYMINGTON: Mr. Daly is under indictment. My objection is no good if my friend is going to spread on the records of the newspapers exactly what he is going to say (by His Lordship's direction Mr. Reid's question was read to the witness, namely):

Q: In the course of your investigations of the books of the Home Bank did you go into very great detail concerning the loans which were obtained by Mr. Daly on the security of stock of the bank from banks in Buffalo and other places in New York State?

The WITNESS: I did.

Mr. REID: Then in deference to Mr. Symington's objection I do not want to press it, but with His Lordship's permission I will ask this:

Q. Did you find in the course of the investigation you refer to any evidence of a large deposit of the money of the Home Bank, amounting to about \$300,000, in either the Marine Savings Bank in Buffalo or any other institution in New York State?—A. I do not recall that at the moment.

Q. Did you make any inquiry or investigation to ascertain that?—A. No.

Mr. REID: I think that is all, Mr. Edwards.

I have here something which I would like, with the permission of counsel who may look it over, to lay before Your Lordship and put in as an exhibit. A copy of a petition of the Home Loan & Savings Company Limited which was laid before the Legislature of the Province of Ontario on the 31st of March, 1903, numbered 95, praying that an Act may pass authorizing the Home Savings & Loan Company to sell, assign and transfer its assets and good-will to a bank to be incorporated.

Following on that petition is a printed copy of Bill No. 74 of the year 1903 which received a first reading in the Ontario Legislature. It sets out the history of the Home Loan & Savings Company, and of this bank to some extent, and has a very significant clause in it, No. 2:—

“Nothing in this Act contained or done in pursuance thereof—”

Mr. LEE: I do not like to object, but Your Lordship is trying a petition that we have presented, and surely we are not and should not be kept here to go into a lot of stuff of this nature.

His LORDSHIP: Do I understand you to say that is an Act of the Ontario Legislature?

Mr. REID: The Bill received its first reading and was withdrawn. All I wish is to lay it before Your Lordship for information. If Your Lordship does not wish it in I will not press it, I will get it in under some other circumstances.

Mr. SYMINGTON: If my friend will be kind enough to submit that to counsel for the Commission they would be very much obliged to him. As I understand his position he is contending that the shareholders are not responsible under the double liability.

His LORDSHIP: I think that is it exactly.

Mr. SYMINGTON: That may affect the interests of the depositors. Now those are not original documents I understand, we want to get all the information we can, if he will submit them to us we will be delighted to follow the matter up.

Mr. SYMINGTON: That I fear is all we have for to-day. I ask for adjournment until to-morrow morning. If my friends have any suggestions or requests to make to the Commission I suggest that they be prepared to make them to-morrow morning, when we will be in a position to consider them. I understand that in respect to their case my friends have no further evidence to bring, and no further witnesses that they ask counsel for the Commission to procure.

Mr. McLAUGHLIN and Mr. LEE: Correct.

Mr. SYMINGTON: So we are in their hands now as to what they desire to do.

Mr. McLAUGHLIN: Then as to our argument or presentation of our case. I understand from Sir Thomas White's telegram that he wants to be present. We will be prepared to go on with that to-morrow morning if it suits your lordship.

Mr. SYMINGTON: I would like if my friends would consent to discuss this matter to-morrow morning. I do not think Sir Thomas White can be here or that it would be fair to ask him to argue here to-morrow morning, he probably has not seen the record for to-day, and as he wants to argue his case I think we will have to consider the procedure to-morrow morning. My friends will then have their ideas formulated and Mr. Lafleur and myself will have ours and we will submit them to your lordship then.

Mr. McLAUGHLIN: We are quite satisfied.

Mr. REID: It occurs to me, I understand the Prime Minister is to be here and make some explanation, which I think we should have, of the circumstances under which the effort was made to save the bank in the last two or three days of its life. I think he said in the House of Commons that he would be glad to come and tell what took place, and I think we should know that.

Mr. SYMINGTON: If counsel request counsel for the Commission to have any evidence here we will be glad to do what we can, as I said before. We asked counsel for the depositors who they wanted, and procured them. That is the situation as far as we are concerned.

Mr. McLAUGHLIN: We have not asked for the Prime Minister and do not intend to, it is entirely for the Prime Minister and the Crown whether they want to give the information or not.

Mr. SYMINGTON: I am quite prepared to carry any message the Commissioner suggests to the Prime Minister, or to try to.

Mr. REID: He said in the House of Commons that at the right time he would come here and make a statement regarding the circumstances under which an application was made to the Government for large deposits, and also subsequent visits to Montreal to see the Bankers' Association and other parties. I think in the interests of the shareholders as well as the depositors we should have that on record.

His LORDSHIP: The view that impresses me just at present is that I am primarily concerned with this question of the depositors. It may be that at a later stage in the developments the question of the shareholders will bulk larger, but at the present moment I do not see any reason for calling the Prime Minister on behalf of the shareholders. If the depositors ask to have him called that is another matter.

Mr. LEE: We will consider that this afternoon.

His LORDSHIP: You can consider that. We will adjourn until half-past ten to-morrow morning.

Proceedings stand adjourned at 12.50 p.m. Wednesday, 7th May, 1924, until 10.30 a.m. Thursday, 8th May, 1924.