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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

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COMMISSIONER:

The Honourable Chief Justice McKeown

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OTTAWA, THURSDAY, MAY 15, 1924

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No. 14

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 Thursday, the 15th 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.)*

SIR THOMAS WHITE, K.C., *appearing on his own behalf.*

Mr. LEE: My lord, I think there was some false impression gained by the local press here yesterday in reference to some remarks which your lordship addressed in answer to a suggestion made by me regarding the amount which would be required to pay the depositors one hundred cents on the dollar.

I desire to bring that to your lordship's attention. I do not think that your lordship intended what was contained in the local press which, apparently, would lead to the belief that your lordship was taking a view of this case before any decision is rendered in it. I just draw it to your lordship's attention. Probably your lordship has not seen the local press in regard to it.

His LORDSHIP: Oh, yes, I saw what was there. The report which was in the paper did not convey the meaning I had in my mind at all. I was discussing, as you will remember, the two ways in which the calculation might be made, that is to say the idea of getting all that could be got out of the bank and then seeing what the balance would be which the Government, under the petition, might be asked to assume. You, or Mr. McLaughlin, or both of you, put forward the idea that the Government might put up the whole deficiency and take over what I think you yourself termed "the wreckage of the bank." It was rather as between the two methods that I expressed the opinion, and I certainly did not intend to leave the impression contained in the report in the local press.

Mr. LEE: I understood your lordship perfectly well, but apparently the reporters of the Citizen and Journal did not get your lordship's purport or what your lordship said, correctly, so I thought it was my duty to draw it to your lordship's attention.

HIS LORDSHIP: It has accomplished the purpose, I think. I have just been handed the official report, and it bears out what you say, Mr. Lee, and correctly reports what all of us said. It was furthest from my intention to suggest any course that the Government might take.

MR. LEE: I quite understood that, my lord.

*Argument by R. J. McLaughlin, K.C., resumed.*

MR. McLAUGHLIN: My lord, at the adjournment last night I had just covered the correspondence of Sir Thomas White, and the question submitted to your lordship is: What was done by the Finance Minister or the Department as the result of the representations that were made?

The result was that nothing was done under the Bank Act. No inspection, or audit, was obtained under Section 56A. The reasons given for that were Mr. Crerar's letter, and I have discussed that, to some extent, how Mr. Crerar stood by the principle of an independent audit until that meeting in Ottawa which is reported in the letter of the 23rd of March, where Messrs. Haney and Lash secured from him the letter in question. I have dwelt on that to some extent, Mr. Crerar being the President of the Grain Growers' Company which company had a thou-and shares of stock, and he being a large shareholder himself. Mr. Haney with his great ingenuity, and having succeeded in persuading Mr. Lash, contrary to his own opinion, that an independent audit should not be made, impressed the idea upon Mr. Crerar that an independent audit would bring about a run upon the bank, and a failure which would be di-astrous to the shareholders and which would make them responsible for their double liability. Quite unconsciously, his personal interest being so great, they prevailed upon Mr. Crerar to write that letter.

I can imagine the shivers that ran up Mr. Crerar's spine when Mr. Haney and Mr. Lash pressed upon him the view: Now, you urge an independent audit, an independent audit will bring about the immediate failure of the bank and what will become of the thousand shares of the Grain Growers' Company, and your own?

We must also recognize that, at that time, eight years ago, Mr. Crerar was a comparatively young business man, and he was taken into camp by Mr. Haney who was a very much older and more experienced man, especially in iniquity, and Mr. Lash whose great reputation and great personality was, no doubt, overpowering.

The very fact of that letter being obtained, and being presented the way it was, would have impressed still further the idea that fraud was at the back of it. It was something that should have weighed upon the mind of the Minister in an absolutely different way.

Then the second excuse that the Minister gives is associated with the first, that is, that an independent audit would have caused a run upon the bank.

Mr. Lash, in his letter of the 4th of March, says his experience shows that, while in his letter of the 29th of February he had refused to agree to Mr. Haney's suggestion to the same effect. No possible experience could have arisen between times, and no possible experience has been quoted to your lordship, and no possible experience of that kind exists. There is no record in the history of banking in this country, or any other country, where an independent audit caused a run upon the bank. Runs upon banks are not so easily caused.

Sir Thomas White gave an instance that occurred recently. He said a mere whisper, a mere word, had caused a run on the Dominion Bank. That run was not the result of a mere whisper, or a word, but it was caused by the fact that the public confidence in banking institutions in this country, from one end to the other, had been shaken to its very foundation by the disclosures in connection with the Home Bank, and the Merchants Bank, but especially the Home Bank.

Up to that time, runs were not so easily brought about upon banks. We all know that in the case of the Merchants Bank there were rumours about the great losses to the Merchants Banks for months before it was taken over. There was no run. We know that in the case of the Banque Nationale for a year and a half, or two years, there were rumours all through the country that the bank had enormous losses. It caused no run. We know that in the Home Bank itself, if an outside audit would have caused a run, surely the employees of the bank would have known something about the enormous amount in this bank that was locked up in the Frost account and in the Pellatt account, and would not whispers of the state of the bank itself have far more effect in bringing about a run upon the bank than a whisper of an independent audit?

The fact that an independent audit would have caused a run on the bank has not been supported by any evidence worthy of any consideration at all. No banker has been brought here to state, and no banker could be brought here to state, that an audit or examination could not be made by the Bankers' Association, or by an officer appointed by them, without causing a run, while we have Mr. Machaffie, an experienced banker, who explained how simply it could have been done during the Easter holidays without anybody knowing anything about it, the Easter holidays coming in then, and what a comparatively short and superficial investigation would have been required to show the real condition of this bank.

We also have Mr. Edwards to the same effect, and we have Sir Henry Drayton, while parrot-like he repeated the words from Sir Thomas White's published statement, that an independent audit would have caused a run on the bank, incidentally, a few moments later, he said, I had a man in the Banque Nationale for a long time and knew everything that was being done, and yet it caused no run.

That, I think, is the lamest of all possible excuses.

Then the first reason that has been urged, is his confidence in Mr. Haney. There is no reason alleged as to what the foundation of that confidence was. He made no effort to look up the record of Mr. Haney, while in his own Department there was the report of the late Mr. Justice Clute giving this man's record in connection with the Crow's Nest Pass Railway which would, if it had been turned up, have entirely satisfied the Minister as to the amount of confidence that could be reposed in that quarter.

As a result of these things no investigation was made. An investigation under Section 56A was justified, as Sir Thomas White himself said; in his evidence on pages 345-6, 349 and 362 he emphasizes it, says it was justified and that he intended to have it. But the investigation he intended to have in the first instance was not an investigation at all, it was merely a comparatively useless report from the bank's own auditor. If it had been a case where there were no charges of fraud, but merely further explanations required, a report from the bank's own auditor might have been all right, but where there were charges which went to the credibility of the auditor himself and to the propriety of the statements that had been sent into the Government and signed by that auditor, nothing could be more worthless than such a report. The investigation required here was a thorough investigation, such as Mr. Lash said could only be made by an independent party who would be absolutely free from any influences of the management of the bank. That ought to have been clear to the Minister, that no half way, no pretended investigation would be of any use. I do not know that I ought to quote philosophy, but there is a little bit of philosophy that even a Cabinet Minister ought to know. I remember an old plantation song the chorus of which was:

"Half way doin's ain't no 'count  
For this world or the next."

I think that applies to a half way investigation, and I think any man should have seen the folly of such a pretended investigation as was in the first place suggested to Sir Thomas White. Later on he came to a different conclusion and believed investigation should be by a man appointed by the Bankers' Association, and that seems the wise thing to do, because they are the people most anxious to prevent a run on the bank, the people most concerned for the credit of the country's banking institutions. Had he stuck firmly to that notwithstanding Mr. Haney's suggestions and notwithstanding the letter that Mr. Fisher wrote to Mr. Lash in which he reported what Mr. Haney said, and notwithstanding Mr. Lash's letter of March 4th when he urged an inside investigation, had Sir Thomas stuck firmly to his ground right down to the final interview at Ottawa reported in the letter of March 23rd when he was led to change his opinion through the influence of Mr. Lash and Mr. Haney personally present with him, this disaster would have been prevented. It never occurred to him before—and if there had been anything in it it would have occurred to him—that an outside investigation would be dangerous in any way.

That disposes of the representations made in 1916. Now we come to the fiasco of 1918 where Mr. Machaffie wrote to the Minister and the Minister took no further steps than merely to ask Mr. Haney for information. It was apparent to the Minister at that time that all the undertakings they had given to him in 1916 had been broken. None of them had been fulfilled. The promise to have an inside audit and inspection, full and complete, by Mr. Machaffie under the authority of Mr. Haney was not kept, and no report was ever received. The promise that the affairs of the bank should be managed by Mr. Haney and the Western Directors was not kept. The promise that interest on the Frost and New Orleans accounts would not be taken into profits was not kept. But for two years interest on the Frost account and all the other frozen assets was taken into profits; if it had not been the bank would have had no profits and could have paid no dividend.

So that in 1918 the Minister fully understood how utterly unreliable the assurances and promises of Mr. Haney were, and whatever shadow of an excuse there might have been in 1916, there was none in 1918 for placing further confidence in these people.

Therefore I submit that the answer to these questions would be that the representations fully justified an audit under Section 56A, and no such audit was obtained.

The effect of such an audit would have been to show the true condition of the bank. Both Mr. Clarkson, Mr. Edwards and Mr. Machaffie say that an independent audit in 1916 would have revealed the true state of the bank's affairs; Sir Thomas White on page 366-7 said an independent auditor would probably have learned the truth. In answer to Mr. Lafleur's question (368) he goes on to say that an independent audit was right and would have discovered the facts. Mr. Edwards (514), Mr. Machaffie (403-4). When the question was put to Sir Thomas White by Mr. Lafleur about an inside audit being fallacious he said that the Home Bank affair had shown that such was the case, but that it was not known up to that time. Surely the history of the world is long enough and the experience of centuries ought to be sufficient to show that independence was absolutely necessary in an investigation of this nature. It was not necessary for the Home Bank tragedy to occur to prove that independence was required in such a case. Humanity is supposed to differ from the lower orders of creation in the fact that experience can be handed on from one generation to another. The experience of the past was quite sufficient to establish this. It does not require that every horse be stolen before the wisdom of locking the stable door is understood. As far back as the time of Bacon it was understood that the wise man is he who learns from the experience of others.

There are several other things stated by Sir Thomas White which I might refer to. For instance he says; (374) the bank was not shown to be insolvent therefore I was not bound to act. If the bank had been shown to him to be insolvent the time for an investigator or auditor would have been past. The day for the Curator or Liquidator would have arrived. Under Section 56A it is not necessary that a bank be shown to be insolvent before the Minister should have it investigated, but only that such circumstances be shown as raise doubt and suspicion as to the bank's integrity. He also says (352) that public knowledge that three times the capital was locked up in four accounts would have caused a run on the bank. Mr. Crerar testified to the same effect. (455). Is a bank to be allowed to go on doing business and taking money from the public when facts are known to the Department of Finance and the Government, the trustees of the people, that if known to the people would show them that their deposits in that bank were not safe? In the recent discussion in the House some Members said that the people should decide themselves, they should judge as to what bank they will entrust their savings to. How can they judge if information that would enable them to do so is deliberately kept from them by the public servants?

Now as to the question of the state of the bank in 1916, the review of that evidence I am going to leave to my colleagues; but Mr. Edwards (507 and 513) shows that the bank in 1916 had suffered a diminution of its assets to the extent of \$3,370,000 which was equivalent to the loss of its whole capital and reserve and somewhere about \$1,000,000 of the depositors money, which he said left the bank in a position to pay out of its own assets about 94 or 95 cents on the dollar to the depositors, and leave the double liability in addition. If 50 cents on the dollar were realized on the double liability it would pay the depositors in full. Mr. Clarkson (274-5) speaks to the same effect.

As to the state of the bank at the time of failure in 1923 we have the evidence of both Mr. Edwards and Mr. Clarkson. While I think that with regard to the state of the bank in 1916 Mr. Edwards evidence is more reliable, because he has given special attention to finding that out, which Mr. Clarkson has not, of course the evidence of either of these gentlemen is entirely reliable from the point of view of creditability, the only question is as to the opportunity for investigation which each man has had; so the state of the bank at the time of failure and what it would realize is better known by Mr. Clarkson than anyone else because for some nine months now he has been endeavouring to realize on the assets and getting all possible information and must have a great deal of material at his disposal in addition to what Mr. Edwards would have. So I say that the evidence of Mr. Clarkson is thoroughly reliable in respect to what the losses of the bank will be, and he stated that it has lost its whole capital and reserve and some \$9,500,000 in addition. I am sorry we cannot give your lordship details of that, but Mr. Clarkson has explained that to give details of each account and the losses to be expected might have a very serious and detrimental effect on the realization, which is a result that we are all most anxious to prevent.

Then there is the question as to what could have been done by the Government under the circumstances. We have the evidence of Sir Thomas White (359, 364, 365) and Sir Henry Drayton (138) that if they had known the true condition of the bank they could have had it taken over by another bank. That perhaps goes no further than an opinion from these gentlemen. But it is an opinion that is entitled to a great deal of weight, for while of course the Government has no legal power to compel another bank to take over this bank and assume its liabilities, the Government could have brought about a liquidation, could have referred the matter to the Bankers Association, and if that Association had recommended a liquidation undoubtedly that liquidation would

have taken place, if the officers of the bank had refused to liquidate all the Government would have had to do would be to let the public know the facts and the public would have seen that the liquidation took place. A liquidation at that time, according to Mr. Edwards and Mr. Clarkson, with a reasonable recovery on the double liability, would have paid the depositors in full. I am leaving the evidence and the details concerning this to my colleagues.

Then I come to the question of war condition which have been referred to. This matter under ordinary circumstances would be a matter of the very highest importance, no matter that came before the Finance Minister could be of greater importance I imagine than the representations made here. Under the banking system of this country and our customs and habits as to trade and commerce, the business of this country is carried on on credit, and the bankers are the organizers and distributors of that credit. The funds they receive are the deposits of the simple, honest, thrifty people throughout the country, people who have little financial knowledge but who have great faith in the Government and in the banks. That simple faith of the people gives the banks a billion and a half of money. That money forms the basis of the credit which enables all the manufactures and commercial and agricultural and mining interests of the country to be carried on. It is the life blood of our industrial system and our commerce. The lack or the destruction of that credit, or even its impairment to the extent of ten, fifteen or twenty per cent would bring about a financial crisis which would result in disaster and bankruptcy from east to west.

The banks are the heart which governs the circulation of money and credit throughout the country. Anything that destroys that credit is like cutting the jugular vein; it brings about death and destruction.

Now why did Sir Thomas White, with all that was before him, neglect to have an independent investigation? Why did he, after March, 1916, pay no more attention to this bank for two years and five months? And then would have paid no attention whatever to it unless he had received a letter from Mr. Machaffie. Why was it forgotten? Why was it thrown in the discard?

It is only fair for me to give the ex-Minister every opportunity and the advantage of everything that can arise from the surrounding circumstances. At page 324 of the evidence, he puts in a portion of a public interview that he had given to the press:—

“Under no circumstances would I have allowed a bank to fail during the period in question. I had many difficult and dangerous financial situations to deal with during the war. At its outbreak, in view of the panic which prevailed, the Government, at my instance, placed itself behind the banks of Canada and gave public assurance that it would loan them such sums as they might require to meet the conditions of the war, and would take all further steps necessary to safeguard the financial situation during its continuance. At a later period I found it necessary to make a statement in the House to allay unrest caused by the agitation for the so-called conscription of wealth. If it had appeared to me that the bank was not able to meet its public obligations, I should have taken steps to have it taken over by some other bank or banks, or failing that, would have given it necessary assistance under the Finance Act, 1914. Such action would, in my view, have been justifiable in the public interest at that time.

“It is not unusual for Ministers to receive complaints from ex-officials respecting financial or other institutions. If any Minister of Finance since Confederation took greater pains in connection with any such complaint than I did in the Home Bank case, I should like to have his name and the particular instance drawn to my attention.”

I turn then to page 359 of Sir Thomas White's evidence. The examination was as follows:—

Where he says "At that time" he means of course war time.

"Now I would ask you, if you found a bank in difficulties if it had been shown to you at that time that the Home Bank was in serious difficulties, what would you have done to prevent its failure?—A. If I had believed that the Home Bank at that time was in danger of failing, closing its doors, was insolvent, I should have gone to the Canadian Bankers' Association and told them to take over that bank. Either to one bank or more banks.

"Q. And what is your opinion as to what they would have done?—

A. I think they would have looked into the situation and on the situation or anything like the situation that was before me, they would have done it. I think I would have made them do it.

"Q. If the bank was not too far gone?—A. Yes. I would have made them do it. When I say that, I had no legal power, but nevertheless I feel confident that I could have got them to do it, because it was in the midst of the war and if I had believed that that bank was in danger of insolvency or about to close its doors, I would have said to the Canadian Bankers' Association: 'You take over that bank.'

"Q. If you had known then what you do now, you would have done that, I suppose?—A. Absolutely.

"Q. You say: 'I had many difficult and dangerous financial situations to deal with during the war. At its outbreak, in view of the panic which prevailed, the Government at my instance placed itself behind the banks of Canada and gave public assurance that it would loan them such sums as they might require to meet the conditions of the war, and would take all further steps necessary to safeguard the financial situation during its continuance. At a later period, I found it necessary to make a statement in the House to allay unrest caused by the agitation for the so-called conscription of wealth. If it had appeared to me that the bank was not able to meet its public obligations, I should have taken steps to have it taken over by some other bank or banks, or failing that, would have given it necessary assistance under the Finance Act, 1914. Such action would, in my view, have been justifiable in the public interest at that time.' That is on account of the war?—A. Yes.

"Q. During all that period, of course, you were very busy with war work?—A. Mr. McLaughlin, if you had had the load of work and responsibility that I had during that war, you would not be cross-examining me to-day."

That would have been a happy situation.

"Q. I don't deny that, Sir Thomas, and I don't want to minimize to any extent at all the very important and valuable work you did.—A. And I don't want to emphasize it.

"Q. The immensely valuable work you did during that time, you were raising war loans?—A. I certainly was.

"Q. That was something quite new, raising large loans in this country?—A. Decidedly so.

"Q. You were a pioneer in that respect?—A. I was.

"Q. And I suppose I would not be going too far to say that I don't know how you had the time or the mind to give the attention that you did to this Home Bank?—A. If you did I think it would not be an overstatement. I was acting Prime Minister of Canada at this particular time, and Minister of Finance. Floating loans; working about eighteen



hours a day; called up frequently at night with regard to financial troubles of various kinds. I don't want to emphasize it, but you have asked me the question and I am telling you.

"Q. And I suppose I would not be going too far to say that the great dominating thought in your mind during all that period was the war work?—A. I think it was by far the dominant interest. I would not say it was the sole interest, but the war, and the legislation in the House of Commons, and my administrative work in the office and my work outside, of course absorbed all my time and all my thought.

"Q. In fact it filled every nook and cranny of your big head from the sub-basement to the attic?—A. I assure you it did not seem any too big at that time for the job I had. However, I am not resting on that, Mr. McLaughlin. I claim I did my duty not only in connection with the war but in all other respects. I am amazed that I found the time to do half what I did in this.

"Q. I like human beings, you know, better than supermen.—A. Well, I am a human being and not a superman.

"Q. And as human beings we do not expect everybody to be infallible in his judgment. I make so many mistakes myself that I love others who do it.—A. I never thought I was infallible, but men in public life cannot afford to admit that."

Well now of course there is some truth in that. There is an unfortunate thing about our political situation, that while all history shows that the greatest of politicians make great mistakes and many of them, yet it seems to be political policy that a man is never to admit that he ever made a mistake, and that no doubt is the dominant thought in Sir Thomas White's mind when giving evidence in this Court. It is political treason for him to admit that he ever made a mistake. I believe politicians would be wiser to admit their mistakes, when they make them, like the rest of humanity.

"Q. But now that you are free from public life, as I said yesterday, the truth will set us free."

That is an expression that Sir Thomas White had used.

"A. I should have said 'nobody in politics.' I mean that in politics one cannot afford to make admissions. I do not mean that in my evidence at the present time I have the slightest desire to state anything except the absolute facts.

"Q. It would naturally have been a very disastrous thing from a public and national point of view, to allow a bank to fail at that time?—A. Very serious, very grave.

"Q. It was something that could not be permitted, I suppose?—A. I told you that if I had thought that the bank was in danger of failing, I would have had it taken over.

"Q. That is, if you had known the true facts, you would have had it taken over?—A. Undoubtedly.

"Q. That is my point. I would like to compliment you, Sir Thomas, in closing . . ." and so forth.

Then we have your lordship's questions at page 381.

"His LORDSHIP: Just before you leave, Sir Thomas, perhaps you may help me in one thing which is in my mind. It will probably be argued before me, and I may be asked to express an opinion upon it as to how far the fact that we were at war, at the time of this transaction, operated in your mind in coming to a conclusion as to what would be the best thing to do.

One can readily see that a course which would naturally occur to an executive officer of the Finance Department in times when peace existed would be a very hazardous and improper action at a time when the whole thing was in the melting pot and anything may happen.

Now, how far, if at all, did that enter into your mind in coming to a conclusion? There is some evidence about it, and I thought that if you had anything more to say on that point I would be very glad to hear it.

Sir THOMAS WHITE: I will be very glad to answer your lordship, and I am glad you raised the question, because I should not have raised it myself. I would say this, that it is impossible for a man to say what brought about a state of mind at a certain time, but, without any question, a man who is, so to speak, riding the financial storm of war would be influenced, to a certain extent, in his judgment as to the danger of taking a certain course probably more than he would in a time of profound peace."

Now I agree there with Sir Thomas White that it is very difficult for a man to say at the present time what affected his mind at a period long past. Our memory is such that it takes greater cognizance of overt acts than it does of states of mind, and it takes very little, if any, cognizance of the various considerations that existed in forming a state of mind; so when you want to find a state of mind at a time long past, it is safer that that should be determined from the acts that a man committed at that time, from the surrounding circumstances, from the environment to which his mind reacted, than it would be from any reliance upon memory to sum up at this day the various considerations that entered into the forming of a judgment on any particular question. He goes on to say at page 382:—

"I am not conscious that I was influenced by the conditions existing at that time, but I am not prepared to say that they were not a factor in determining whether a certain course should be pursued, or a certain other course pursued. I do not think anybody is quite capable of saying that sir, because a man is unable to say what all the factors were that entered into his mind and influenced his action.

I can tell your lordship what the condition was during the war. I told you some thing of it. I was notified time and again, during the war, of runs taking place here and there upon banks. I have been called up at all hours of the night, sometimes after I have gone to bed. I had been in touch with the Bankers' Association to close this gap, and close that gap and the other, and I was swinging all the finance of the Dominion of Canada, and I was calling on all the banks to help me, with taking their proportionate share of treasury bills and acting as my agents to receive enormous sums of money which were subscribed by their depositors, and leaving that money on deposit with the banks. My policy was, and my course was, to leave with each bank, and I believe it was done absolutely fairly, so much on deposit as was taken from the depositors of that bank, because otherwise we might take more than a proportionate amount from one bank and give it to another. Then we drew proportionately on those banks for the money that was used.

Generally speaking, sir, that would seem to me to be a fair summing up of the situation.

His LORDSHIP: Let me suggest this to you, Sir Thomas, please. There is, as you know, in Marine law, the principle of average. Goods are sent out on a ship that is making its voyage, a storm occurs, and my goods have, perhaps, to be thrown overboard, and your goods, and somebody else's have got to come in and help me out. You see (say) there was nothing approaching that condition of affairs in connection with this

matter. That here was a bank the failure of which might precipitate a financial crisis at a time in which it was necessary that the utmost confidence should prevail, and the position which I am inclined to think may be taken of it is that it was jettisoned for the public good."

HIS LORDSHIP: That should be "you say there was nothing approaching that condition," not "you see." That word "see" should be the word "say."

Mr. McLAUGHLIN: "You say there was nothing approaching that condition of affairs in connection with this matter." Then Sir Thomas White continues:—

"I would not say that was so. On the other hand, as I have stated to your lordship, it is quite impossible for a man to mention all the elements that enter into his mind. He may be unconsciously influenced by a situation, but, so far as I can see at the present time, I am not aware that it was a case of jettison at all, but I certainly would not have allowed a bank to fail during the war."

That is the evidence upon that point. Now I think in fairness to Sir Thomas White we have to take into consideration the immense amount of work he was doing at that time. As he says, working eighteen hours a day, acting Premier, Leader in the House, raising war loans; and we must come to the conclusion that his state of mind was influenced by his environment and by the various things that were pressing upon him, and as he says, the dominant thought was always the war and the war work. He would not at that time—whatever he might at any other time—have allowed a bank to fail. The mere suspicion that a public audit might have caused the failure of the bank, impressed upon him by Mr. Haney and Mr. Lash, with the fact that his mind was full of things which at that time—while at other times they would not have been—were more important than the case of the Home Bank; the fact of the overpowering and dominating importance of the war work filling his mind, I think in justice to him we must say that he was glad to get the Home Bank off his hands, that he was glad to get it disposed of for the moment, glad to leave it in the hands of Mr. Haney and Mr. Lash, because he had not the mind, he was not a superman, he was not a god, he was only a human being, he was working beyond the limits of humanity; he says himself that for a short time afterwards he had a nervous breakdown which necessitated his giving up his work for some months; I think we have got to take all of these things into consideration, and as I have said before, I am not making any personal attack upon Sir Thomas White; I fully and thoroughly believe that under ordinary circumstances, if there had been no war on, Sir Thomas White would have given the matter of this bank the consideration that it deserved, he would never have forgotten about it for years, but we know that when great interests and dominating thought are in a man's mind, it is easy to forget the lesser when the greater engrosses the whole mind; so I feel that the reasons stated by Sir Thomas White, the fact that after the failure of this bank, when he gave the first interview, he gave that as the dominating reason, or as a dominating reason, the fact that he says now that during the whole period that was the dominating thought in his mind, the quite reasonable fact that he says he cannot tell at the present time—and I don't think anybody else could tell—what were the various factors that affected him in forming his judgment and in the actions he took in this matter; but we all know that the human mind reacts to its environment and consequently we cannot come to any other conclusion than that Sir Thomas White's mind and actions were influenced by the greatest thing in all his environment, the War, in overlooking what under other circumstances would have been his bounden duty, and a duty of such vast importance that it required the fullest and most careful examination and

investigation; but vast as the importance of the failure of the Home Bank, and its effect upon banking credit at this particular time, the life and death struggle that this country and the Empire was in, was of still vaster importance, and it might be easy for Sir Thomas White to say:—"I will let these people have this bank, let them run it a while longer, and if the time comes when it has to close its doors, I will make some other bank take it over, or if not, I will give the necessary Government assistance to prevent any financial crisis or financial trouble in the country." I think in fairness all these things have to be taken into consideration. The depositors in putting this case before your lordship and representing it all the way through, are particularly desirous of treating everybody fairly. We want to do complete justice to the reputation of every man. We are asking the Government to do complete justice to us, and we want to come in with clean hands; we want to come in, not abusing anybody, but giving everybody full credit for every consideration that can be raised, and trying to get at the real and actual truth of the matter, so that we can not only receive justice, but do justice.

I have now laid out the framework and my colleagues will go over the evidence, backing up the theory that we have set forth. I submit to your lordship that the material before you is sufficient to answer all of the questions. The only question that we would like to have given you more information on, is the state of the bank in 1923. I do not think that question is really submitted, but it is a matter that your lordship, of course, would want to report on. Your lordship will appreciate the difficulties we have had in giving you detailed evidence; we would like to have given greater detail in some respects than we have been able to give. I am sure I thank your lordship for your kindness and courtesy in listening to me so patiently. Mr. Lee will now follow me.

His LORDSHIP: Mr. Lee.

#### ARGUMENT BY MR. LEE

My lord, I desire to thank the learned Counsel for the Government for the very kind assistance they have afforded us during the progress of this Commission, and on behalf of the 60,000 depositors whom I have the honour of representing here before you, I beg to thank you, sir, for the uniform courtesy which has been extended to the depositor's Counsel and to the Counsel representing others upon this Commission.

This is an investigation of very great moment to the people of Canada. Upon your report will greatly depend what the Committee on Banking and Commerce of the House of Commons, may recommend to the Government, in so far as amendments to the Banking Act at this session are concerned. We are desirous of having an interim report at as early a date as is possible consistent with the tremendous amount of evidence which is before you, because we are desirous in our request of asking the Government that if your report should be favourable to us, that that report should be supplemented by way of a bill which would give to the depositors in this bank—some 60,000 of them—full justice, if it is found that the statements contained in our petition, presented to the Governor-General-in-Council have been made good by us. Now, my lord, what are those statements. When the petition was presented to the Governor-General-in-Council, we had not had the opportunity of making a search, nor were we aware of evidence which has been presented here, considerable of it, through the kindness of the Counsel for the Government, and through their assistance; and in drawing our petition we presented in it those facts which were then in our knowledge, and which we thought, under those circumstances, if we could prove those facts, would warrant the Government in coming to our assistance. Now in the petition we state that:—

"(2) The said bank was a chartered bank doing business under the provisions of the Bank Act. Your petitioners are informed and believe that in the year 1915 and again in 1916 and 1918 representations were made to the Department of Finance of the Dominion of Canada respecting the condition of the Home Bank of Canada and revealing a state of affairs that would have justified an investigation by the Department of Finance under the powers conferred upon the Minister of Finance under Section 56A of the Bank Act, whereby he was authorized to examine and enquire specially into any of the affairs or business of the bank.

(5) If such audit had been made your petitioners believe that the condition of the Bank would have been shewn to be such that its continuance in business could not have been further permitted.

(6) Your petitioners believe that if the said Bank had ceased doing business at the time the said disclosures were made, the then existing assets would have been almost, if not quite sufficient to meet all claims of creditors, whereas, by reason of the bank continuing in business until the 17th day of August, 1923, and greatly increasing the amount of money belonging to the public on deposit, and at the same time permitting the assets of the said bank to be greatly diminished in proportion to the amount of the deposits, the present depositors have suffered and will unless relief is granted, suffer a very severe loss.

(7) Your petitioners submit that the reasons an audit was not made of the said bank, and in accordance with the powers vested in the Minister of Finance, were reasons of a public and national character, and intended for the benefit of the public at large and that therefore the loss to the present depositors occasioned by the bank being permitted to continue to do business should be borne by the public at large and not by the present depositors.

(10) Your petitioners therefore submit that whether rightly or wrongly the depositors of the Home Bank of Canada were largely of the opinion that the Finance Department of the Government of Canada exercised such supervision over Chartered Banks that it was impossible for depositors to lose their savings entrusted to such a bank the charter of which had been renewed from time to time by Parliament and it is further submitted that the confidence of the people as a whole would be greatly restored if adequate relief were granted to these depositors."

As one of the signers of that petition, and as Chairman of the National Committee of the Home Bank of Canada, I probably would take a deeper interest than possibly other Counsel might in presenting this matter to your lordship. This matter strikes me from probably a different angle than it might my learned leader. We have alleged in this petition that certain facts and circumstances existed during 1915, 1916 and 1918, but that does not preclude, I submit, that we can show that certain other facts and circumstances existed in 1919, 1920, 1921, 1922 and 1923 which were also known to that same Department of Finance, as we petitioned against. Now in reading the Bank Act, I have been unable to find anything which would give such wide powers as we learn from Sir Thomas White and Sir Henry Drayton, when they were in the witness box here before us, they might have exercised. I do not find that the Ministry of Finance has any power to take over any Bank, but I do find inferentially that the Ministry of Finance has by way of investigation, either under section 113, or by way of audit under section 56A, power to close a bank. My learned friend Mr. McLaughlin has discussed with your lordship, at considerable length, the reasons that prompted Sir Thomas White in doing what he did during the progress of these negotiations in 1916. I am going, my lord,

a little further, I am going to say here that had the duty which I believe was cast upon Sir Thomas White under this Act—that had he carried out the duties which I believe he had the right to carry out under the Banking Act—that had Sir Henry Drayton carried out the duties which I fully believe he had the right to carry out under that Act—and had the Hon. Mr. Fielding carried out his duties, which I believe he had the right to carry out under this Act, having regard to all the facts and circumstances which are now known, and which could have been known by investigation—then this bank would not have failed.

At this point, permit me a digression. Considerable has been said before your lordship and in the public press in reference to the files of correspondence of the Finance Department. As I understand the evidence—and I think your lordship will correct me if I have misunderstood it,—I fully believe that the facts which I am now going to relate, are correct as I state them. There was in the Department of Finance, on the public file of that Department, a large amount of correspondence which I will call here "The Fisher correspondence," and which was sent to Sir Thomas White on or about the 22nd January, 1916. That correspondence and that file, so far as the evidence before you, sir, is concerned, remained upon the files of the Ministry of Finance during all the time that Sir Thomas White was there, Sir Henry Drayton was there, and Mr. Fielding, the present Minister of Finance, was there. Sir Thomas White had also a private, or call it a semi-public file, which he kept under his own direction; and when he left the Department, he left that file with his private secretary, Mr. Roberts, which file remained with Mr. Roberts until about three months after the failure of this bank.

During all the time in which this public file, which we have described as the Fisher file, was there, Sir Henry Drayton had the advantage of seeing that file, of reading that file, and writing to Sir Thomas White about that file, and of conducting various correspondence in reference to that file.

Then after Sir Thomas White left he left his file there, which I think was perfectly correct and proper, because they were papers upon public business of the Department of Finance, and of the people of this country.

Sir Henry Drayton had also a semi-public private file, and while it may be private to the Minister and is not meant to be public to the people of Canada, still it does seem strange that Ministers should take away these files in a crisis such as has come in connection with the Home Bank, so that depositors, whom I represent, were given very much more trouble in digging out the evidence than they otherwise should have had.

Sir Henry Drayton took away his private file, and nobody had access to that private file until Sir Henry Drayton produced it in this Court before you, and the depositors had not the advantage of knowing what was in that file, because we knew nothing about that correspondence except by going through the liquidator's files to find what might have been there.

So that we reach a period down to when Sir Henry Drayton left the Department and then, so far as we can find, there is no further correspondence. There are no further papers except the usual monthly returns sent to the Government in the usual course of events by this bank. So that, during the whole course, from the time when Sir Henry Drayton resigned down to the present moment, or down to the time at least, on the 23rd of August, 1923, when this bank suspended and closed its doors, there does not seem to be one single document, there does not seem to be one single communication from the successor of Sir Henry Drayton, Mr. Fielding, down to the time the bank closed up. I think that is truly the statement as contained in the evidence of Mr. Roberts, Sir Henry Drayton, and Sir Thomas White.

If I have, in any way, misstated these facts, I would ask the learned counsel for the Government to call my attention to it, because sometimes in these matters we might not make as full a statement as we possibly might desire.

Now I think, in that way, that I have cleared up the matter of where these files were, the length of time they were in the Department, and what was done with them.

The evidence of Mr. Roberts clearly shows this, that Sir Thomas White's private file remained in the Department a long time after he had left and resigned as Minister. Sir Henry Drayton's file also remained there but was not accessible to Mr. Fielding, and that a short time after the bank failed these two private files of Sir Thomas White and Sir Henry Drayton were sent to Sir Thomas White and Sir Henry Drayton respectively.

The angle at which this matter has presented itself to me, notwithstanding the Petition which has been presented to the Governor-General-in-Council, is this: Large powers are placed in the hands of a Minister of Finance. His powers are very wide; he has direct supervision of all banks and banking interests of this country.

The Government of this country gives to the banks, and the Bankers' Association, certain rights and privileges from the people, and certain duties are cast upon the banks and the Bankers' Association, to the people from whom they receive those rights, and, for such purposes, the Bankers' Association is a body existing under the Bank Act, and certain powers are given to that Association in the event of a suspension, or in the event of a bank being unable to meet its liabilities.

I would like to point out, sir, that in the Petition which was presented by the depositors no allegations are made against any Minister of Finance. What is distinctly stated in that Petition is that we are attacking the Department of Finance, and we say, inferentially, that had the Department of Finance, through its proper Ministers acting during those years, and down to the time at which this bank failed, done their duty in a proper manner, as we think they were entitled to do, having been placed in the responsible position of Ministers of the Government of this country, this bank would not have failed, and that it is by reason of the laxity of these Ministers of Finance, it is by reason of the duties cast upon them by the Act, and inferentially from the Act, that this bank has, together with the want of proper care and management by the Directors of this bank, failed.

Had the duties which were cast upon the Minister of Finance been carried out with that due regard for their own duties, having regard to the fact that they had already discovered in this bank such circumstances as would warrant an ordinary man, not a superman, being put upon his inquiry, and have been made suspicious of the circumstances which were going on in this bank, having regard to those circumstances, those facts having been disclosed to those various Ministers, this bank would not have failed, and, by reason of that ten millions of dollars of the people's money would not have been lost, and, therefore, we come to the Crown seeking from the Crown that money.

**HIS LORDSHIP:** That is a very clear statement, Mr. Lee.

**MR. LEE:** Now I propose, in my humble way, to try and see if I cannot, in some way, prove to your lordship those statements.

We are not making any complaints much before 1915, although I believe that this bank, from the evidence given now before you, was in somewhat of a dilapidated state in 1914, but if we look at the files which were sent by the Western Directors, and which will be found commencing at page 17 of the evidence, it is there stated by Mr. Fisher, acting on the instructions of Messrs. Persse, Kennedy and Crerar, that the authorized capital of this bank was five million dollars, subscribed two million dollars, and that five hundred thousand dollars of that was held in the Prairie Provinces; that the number of shareholders in the West was roughly eleven hundred, and the number of shareholders in the East was roughly six hundred. And, of course, my lord, they had a very great interest in making those representations. They owned at that

time, with their friends, probably over fifty per cent of the stock of this bank, and they found a state of circumstances, a state of wrongness, might I say, at that time, a festering sore that if it had been properly treated by the Minister at that time, if it had been washed and salved at that time, as I believe could have been done—

Mr. McLAUGHLIN: Disinfected.

Mr. LEF: If it had been disinfected as my learned friend says. I fully believe that if the sanitary officers had been called in the putrid condition of this bank, as now revealed to us, would not be here.

They had a great reason for going to the Minister of Finance. They had been making representations to the Eastern Directors for some period of time. These representations, apparently regarding General Mason as a Manager in whom they had not confidence, had been made at various periods of time from 1914 on, in fact, their confidence has been already lost.

Mr. Crerar deserves a vote of thanks up to that time for his efforts in endeavouring to put this bank in a proper state, and he had reason to do so. Mr. Crerar, one of the leaders of these Directors in the West, had induced his own Company, or with his friends, to purchase a thousand shares of stock. As was stated here, the Company, of which he was President, had issued a prospectus, stating in that prospectus, what a splendid thing it would be for the farmers of the West to invest in the stock of the Home Bank. It seemed a reasonable investment to Mr. Crerar at that time, and consequently Mr. Crerar felt called upon, probably more so than any other single Director of this bank, to take watchful care, to keep a strong eye, so to speak, over this bank, and to see that it was managed properly, because his friends, his business acquaintances, had taken stock upon his representations.

Mr. Fisher points out that early in the Fall of 1914 suggestions came to the Western Directors that the business of the chief Toronto office of the bank was not in good condition. There is a statement that, in 1914, the business was not in good condition, a statement by one of the Directors, a man who should know, if anybody knows, the business of the bank, and he became anxious, therefore, to have the matter inquired into and thus lead to action being taken on the lines therein indicated.

At page 18, my lord:

“Certain information was given at that meeting, with which, however, the Western members of the Board were not by any means satisfied, as is shown by a letter of 17th February, 1915, addressed by the Western members to Mr. A. C. Macdonell, that letter being sent to him particularly because he was a member of the legal profession, and we relied upon him to be of assistance to us in getting the fullest information possible.”

Then he goes on in that letter, and he states that the same matters were further discussed at a meeting held in the end of December.

Then a little further down he says:

“At the November meetings we made enquiry as to whether any recent inspection had been made of the Toronto office, and were told by Col. Mason that it had not been deemed necessary to have it inspected because the business of that branch came weekly before the Board. We protested against the failure to have a regular inspection, and at a subsequent meeting an inspection was directed to be made by Mr. Adair, the bank's supervisor. We specially urged that it should be ready for submission before the annual meeting to be held late in June.



It turned out, however, that the inspection report was not ready when the annual meeting was held on 29th June, but we did not know of its not being completed until we came to the meeting."

There is the first danger signal, I submit to your lordship, that would have made a Minister of Finance, in reading that correspondence submitted to him by Mr. Fisher, at least a little suspicious of what was going on in the management of this bank, and by reason of the Western Directors not knowing anything about the annual report which was going to be presented to the annual meeting until the annual meeting was held.

A man skilled in dealing with finances, as the Honourable Mr. White has expressed it so well in giving his evidence, would have seen and would have read that clause over.

We must remember, when we are dealing with this matter, my lord, that Mr. White was not the ordinary man going into the Department of the Ministry of Finance. He was a man who had had a good deal of experience in various departments of the civic service in the City of Toronto for long period of years. He was a man who had received his diploma at the Bar of the Province of Ontario. He was a man who had had the financial direction of a very large company, the National Trust Company, for a considerable number of years, and so, therefore, he was not the ordinary man going into the Ministry of Finance, and whose suspicions, by way of his experience, should not have been aroused quite so easily by these words:

"We specially urged that it should be ready for submission before the annual meeting to be held late in June. It turned out, however, that the inspection report was not ready when the annual meeting was held on 29th June, but we did not know of its not being completed until we came to the meeting."

Even admitting the war was on, and large loans were having to be looked after, and tremendous power and responsibility was given to Mr. White, but, as he says, very clearly, he had a good grasp of his duty, surely this first intimation, in reading that, should have been the danger signal hung out and cause him to say, I cannot treat this bank in the ordinary course, I must be suspicious of that management, I must have some suspicion that things are not going along very well, and I must keep my weather eye on this bank all the time; I am not satisfied when I get a statement from within written at the instance of three Directors of this bank, I must be more than careful with this particular bank.

Now, this letter goes on, and it says:

"Early in January, 1916, a letter dated 31st Dec., 1915, copy of which is attached, was received from the General Manager, announcing the resignation of Mr. McNaught as a Director."

A second danger signal. What is the meaning of this? Even a glance at that letter announcing the resignation of a Director, taken together with the rest of the letter, would have indicated that everything was not right. It should have meant that an investigation by him should be made.

It further says:

"Announcing the resignation of Mr. McNaught as a Director, and the election of Mr. Haney in his place."

Of course, it might be well argued, it might be well said, that bank Directors are dying every day, bank Directors are resigning for various purposes, and it was of very little moment, especially during the war when Mr. White had so much to do, but it goes on to say:

"On or about the 17th inst., we received from the General Manager a letter (copy attached in the Barnard memo) announcing the resignation of Mr. Gooderham—"

Another of the Directorate. Not often do we find two Directors of a bank resigning the very same day, that is not a common occurrence, and this ought to have been another danger signal to Sir Thomas, and they point out:

"We knew nothing of this meeting, and we understand Mr. Macdonell was still absent from the Province."

They are pointing out that this meeting was an irregular one, so to speak, and they go on further to say:

"We draw attention to the fact, referred to in the accompanying memorandum relating to the Barnard loan—"

They have already announced the fact that Barnard has been elected in Mr. Gooderham's place, and Barnard, at this time, is a borrower from this bank. He is now elected as a Director of this very bank, and Mr. Fisher points out:

"We draw attention to the fact, referred to in the accompanying memorandum relating to the Barnard loan, that the settlement of the Barnard account was made on the 5th January, Mr. Gooderham being, we assume, present at that meeting. A telegram from Mr. Gooderham (copy attached) shows that he resigned his seat at the Board on the following day."

Now, that is the first danger signal to Sir Thomas White that something was not right in this bank.

Exhibit No. 2, page 13. I would like to point out to your lordship that that memorandum was also contained, and it was a memorandum in reference to the Prudential loan, and in that memorandum Mr. Fisher is not by any means satisfied, representing these Western Directors, because he says:

"We thought it well to make particular enquiries from Mr. Adair, who made the report, as to the information put before him and he has told us there is no entry whatever in the books of the bank showing any connection with the New Orleans Railway save that these bonds were held as security. He has told us that Mr. Anglin has been shown papers in connection with this matter in the books held by Col. Mason, but he (Adair) has never had access to them, and the only information he had when the report was made was that contained in the report."

If the Minister of Finance had read this document carefully, as he has stated he did, he might easily have had another danger signal in this very clause, that the chief inspector, Adair, has not been able, nor has he had access to the papers in connection with a large loan representing upwards of \$500,000.

Then we pass on to page 14, where Mr. Fisher says:

"Nothing of importance relating to this loan came up until November, 1915, when the extraordinary situation shown in the attached correspondence was disclosed, indicating that the loan of \$500,000 was not made at all to the Prudential Company but to the New Orleans Railway people, Mr. C. D. Warren, the President of the former Traders Bank of Canada being at that time the President of that Company."

And I pass on, and at the end of that letter he says:

"The monthly returns of the bank under the Bank Act do not, as we understand them, disclose any current loan whatever outside of Canada."

That is a direct statement of the falsity of the returns of the Home Bank made to the Minister of Finance by Mr. Fisher at this time. If it is true, it was a very serious statement to make, and one which should have placed the Minister in a position of saying to himself, if this matter has not been looked upon by me seriously up to this time, it is time that I should look upon it seriously now when a leading counsel, among other documents, places before a responsible Minister a statement of that kind, when, at this very time, if the statements are true, there was a loan made on the New Orleans Railway of \$500,000.

Then we pass to Exhibit 3. If that was not enough for the Honourable Minister, we have a memorandum here in reference to the loan of Mr. C. A. Barnard, the gentleman who had just been placed upon the Board of this very bank, the gentleman who had just taken Mr. Gooderham's position, and we find that Mr. Barnard, from the Inspector's report—I am reading now from Exhibit 3—owed this bank \$394,000. The security was 2622 shares of Home Bank stock in the names of Barnard and Pellatt in trust. No trust deed is held after deducting the balance at the credit of Banque Internationale account, the stock will have to realize approximately 125 per cent to enable the bank to avoid a loss.

Sir Thomas might have been then suspicious with the receipt of the report of a prominent officer of the bank, that that stock would have to realize 125 per cent in 1915. Please keep this in my mind, my lord, that this stock, when it was placed upon the market by the Home Bank, had realized 133, so that if this statement is true there would have been a depreciation in 2622 shares of \$8 a share at that time.

Then on the 22nd of January Mr. Fisher wrote a letter and a confidential memo, to which I have already referred, and, among other things in that, he said, page 18:

"We protested against the failure to have a regular inspection, and at a subsequent meeting an inspection was directed to be made by Mr. Adair, the Bank's Supervisor."

And then it goes on again to say:

"We draw attention to the fact, referred to in the accompanying memorandum relating to the Barnard loan, that the settlement of the Barnard account was made on the 5th January, Mr. Gooderham being, we assume, present at that meeting. A telegram from Mr. Gooderham (copy altered) shows that he resigned his seat at the Board on the following day, 6th January."

Now, those are the statements contained in that memorandum, and those were somewhat serious statements, but these gentlemen were not satisfied. They felt, no doubt, although they had placed that before the Minister that possibly they could get somewhere by corresponding with the late Senator Macdonell, who was one of the Directors of this bank. They had already sent, on the 17th of February, this letter to Senator Macdonell, and which Sir Thomas White had the advantage of perusing, and in that letter they state:

"You will remember that certain statements were submitted from the General Manager at that meeting, showing extremely heavy advances from the Toronto office to certain customers of the Bank, and the way in which the information was furnished was extremely unsatisfactory. For instance, in one case, the indebtedness of a certain customer was stated on

the first day of the meeting as being \$1,100,000; and the very next day of our adjourned meeting we were told a mistake had been made, and that his actual indebtedness was \$1,500,000, while on the next following day, to which the meeting was again adjourned, it was disclosed that the indebtedness actually reached \$1,780,000, while at the meeting of 30th December it was stated to be nearly \$2,000,000, if not indeed more than that sum."

Sir Thomas White, when reading that statement, if he had never had any suspicions in the correspondence which I have already read, should have had the danger signal hung out and all trains flagged immediately when he saw that statement, if he believed that statement. Why should he not have believed it? Was there any reason? Was it not a communication sent by these Western Directors to one of their own people about their own internal management of this bank? If he wanted to test the weight of that evidence, feeling that there might be some trouble on the Board or something of that kind it would have been very easy for him to find out. He had in connection with the statement which I have already read to your lordship, sent to him by Mr. Fisher, that statement made by these Western Directors which was enclosed by Mr. Fisher to the Minister. Was that not something that should have aroused his suspicion?

Then they go on to say:

"After our return to Winnipeg, and no advice being received from Toronto showing such action to have been taken, I wrote to the head office for information and received copy of another resolution that had been passed by the Board at a later date, reading as follows: 'It was moved, seconded and resolved that the further duties prescribed for the Assistant General Manager, and his associates Messrs. Adair and Dodds, in compliance with the decision of a meeting held on December 30th, ult., will be as follows:'"

There is a suggestion to Sir Thomas that this bank is not in good condition, that there is something radically wrong, because it says:

- (a) Place assets in a more liquid shape.
- (b) Report on possible economies.
- (c) Get in Past Due Bills.
- (d) Obtain further securities on accounts where considered necessary or desirable."

Remember sir, that a year had elapsed since that letter had been written by Mr. Fisher to Mr. Macdonnell.

Then we pass along to exhibit No. 14 (page 30). These gentlemen in the west were not getting very far apparently and they began to wake up again, they are not satisfied, and on November 5th, 1915, they direct this letter to the General Manager, the Hon. James Mason, and among other things they say, after referring to the meeting:

"Meantime, we regard it as particularly urgent that immediate steps be taken by the Executive to have a complete revaluation made on a strictly conservative basis of the Bank's assets, so that the result may be placed before the Board at that meeting."

referring to a meeting to be held on December 15th. They go on to say:—

"It occurs to us, indeed, that it may be necessary to consider seriously—as suggested by us indeed, as long ago as last February—the question of placing the matter before the authorities of the Finance Department of Ottawa."

Sir Thomas's attention was again directed in those words, and he could easily see that there was a great division upon that Board in regard to the Bank's affairs, that these Western Directors were honest in their criticism, and if something was done that they proposed to take it up with the Minister at Ottawa. A period of ten months had elapsed and apparently nothing had been done by the management to satisfy them.

But if that was not enough, Sir Thomas also had before him a letter of 18th November, 1915, exhibit No. 19, page 35, which was written by Mr. Mason to Mr. Crerar in answer to a letter of the 5th. Among other things he said:—

“What is of more serious consequence, grave doubts are arising as to the financial ability of the Trust Company.”

referring of course to this Prudential Trust Company.

“It is represented from sources which cannot be ignored that the Company have their funds pretty well locked up and it now seems quite possible that we may be obliged to reply upon the security to a more or less extent.”

This was a communication from the management which brought to Sir Thomas's particular notice one of these very, very large loans, that something was radically wrong with it, \$500,000 was tied up in a loan out-side of this Province. He might then have started to investigate whether this bank had power to make such loans out-side of the Province under the Charter given to it by this very Government. However I will speak more about that towards the end of my remarks.

He also might have been warned to some extent by the letter written by Senator Macdonell to Colonel Mason, exhibit No. 20, page 36 in which Senator Macdonell said,

“I think the bank should make every effort not to lose these securities but to protect them.”

That was referring to the New Orleans Railway where a large loan had been made.

Then we pass on to exhibit No. 23, page 39. That is a letter from Messrs. Perse, Crerar and Kennedy to the Manager, Colonel Mason, dated November 30th, 1915, in which among other things, they say:—

“It was your expectation when you wrote the letter that a meeting would be held within a week to receive the report of Messrs. Adair and Anglin. . . . It must be borne in mind that this is a loan that none of us Western members ever had to do with. The advance was not authorized, nor had the application for it come up for consideration, at any meeting of the Board of which any of us were present. Least of all did we know, or have any opportunity of knowing, anything whatever of the collateral security in the shape of bonds of a Louisiana railway accepted by the bank, that is before or when the advance was made.”

Then at the bottom of the page:—

“We recall that this Prudential case is the one in which it was stated by yourself at a meeting in November, 1914, above referred to that a sum of money deposited in the bank by the Trust Company was held as security, whereas it turned out, as we understand it, that it was actually trust money held by the Trust Company and deposited as such.” Sir Thomas had that before him.

Then we pass to Exhibit No. 24, a letter sent by Messrs. Kennedy, Crerar and Persee to Col. Mason saying:—

“Meantime, we are submitting to you a memorandum showing in some detail points on which it will be necessary to get full information before we can thoroughly understand the position.”

Following on to exhibit No. 26, we have the first appearance of Messrs. Warren, Bristol & Morden, it is pointed out:—

“We note also that a firm of Barnard, Bristol & Morden,—”  
(They were not a firm.)

Mr. LAFLEUR: They were associates for this transaction.

Mr. LEE: Yes, composed of Mr. Barnard in Montreal, Mr. Bristol the Member for Parliament for centre Toronto, and Mr. Grant Morden formerly of Kingston I believe.

“Indebted to the Bank in over \$32,000 are shown by the Toronto Inspection Report to have given the Bank as security bonds of this same New Orleans, Southern & G. I. Railway.

We note that Mr. Z. A. Lash, K.C., holds the view that a sum of \$300,000 apparently on deposit from the Prudential Trust Company in the bank, cannot be applied by the Bank to meet its claim.”

My learned colleague has dealt fairly fully with the Prudential, and I will pass on to the letter from Mason to Mr. Crerar of December 10th, at the top of page 49. I might draw your lordship’s attention to this fact: Mr. Lash, while advising that the bank should not loan to pay off the Carroll loan and otherwise look after the Algiers situation, advised that the delay obtained should be used to bring pressure to bear upon the Prudential Company to clear up the situation as to the attitude of that company. Then exhibit No. 31, also before the Minister, a letter directed by General Mason to Mr. Crerar in which he says, about half way down page 53:—

“You state that the firm of Barnard, Bristol and Morden is indebted to the Bank for \$32,000,—this amount is made up of three notes of \$10,000 each, and accrued interest, upon which C. A. Barnard, Edmond Bristol and W. Grant Morden are jointly and severally responsible. It is not a partnership and was advances made direct to the three parties mentioned in the collateral security of some \$62,000 of the bonds of the steam railroad.”

I think that explains what my learned friend Mr. Lafleur called my attention to.

Then we pass on until among other letters which are not of so much importance we come to Exhibit No. 34.

The first inspection report by Mr. Adair, made on July 21st, 1915. Notwithstanding war conditions and all the labour Sir Thomas White had had looking into these matters, surely some attention might have been paid to this report. It was the first inspection the Toronto branch had ever had. If it were not such a tragedy I might know how to characterize the conduct of the management of this bank. Here is the first report, made by the man appointed Chief Supervisor to make a report to the Directors. He says:—

“*Routine*—The routine of the office shows signs of the lack of efficient supervision. Discrepancies were numerous and are briefly outlined hereunder, they have already been taken up in detail verbally with the management.

*Cash*—Large cheques are held in the teller's cash over night un-certified. Returned cheques and sundry items are held as cash.

*Collateral Notes*—The register of those was in very bad shape, and many notes were not diarized.

*Customers' Papers*—There was lack of system in the filing of these.

*Current Loans and Discount*—The total of these is some five and a half million dollars made up as under:—”

The total amount was \$5,517,410, and there were overdrafts of \$824,411 in a small bank which had a paid up capital at that time of about \$1,000,000.

Mr. SYMINGTON: The paid up capital was nearly \$2,000,000,—\$1,900,000 in 1915.

Mr. LEE: Then I beg pardon. Then when we come to call loans; if there had been nothing else come to the mind of the Honourable Minister to arouse his suspicions as a business man this should have done it. At that time there were call loans amounting to \$1,607,000 of which \$1,492,000 was advanced to Pellatt & Pellatt. That was a firm of brokers doing business in Toronto, from which city the Honourable Minister of Finance comes and where he had a great deal of acquaintance.

“*Staff*—Some changes have already been made and more will be recommended. On the whole the staff compares favourably with that in other branches of the service.”

That is a very significant remark of Mr. Adair's. I do not know how ironically he meant it, but from what has been disclosed before us now it appears somewhat that way to me.

“In conclusion, it would seem that had regular returns been made to Head Office in accordance with the Rules and Regulations, and in common with all other branches, the affairs of this branch could not possibly have drifted into their present condition. The statements that have been submitted have been signed by officers who knew them to be incomplete, and it is not surprising that laxity and irregularity have made themselves manifest.”

What a splendid report of the first inspection of the Toronto branch. The bank had started about 1905 and in ten years there had been one inspection of the place where seventy five per cent or more of the money was loaned, and these comments are made on it by their own Chief Inspector, they come to the attention of the Minister of Finance, and we will see afterward what he does.

Then we pass along to Exhibit No. 41 on page 73, a letter from Mr. A. W. Anglin dated December 2, 1915 to Colonel Mason in reference to the Prudential Trust Company. He says:—

“1. Mr. Lash stated that the matter was primarily one for the Bank's Board to determine. He felt instinctively, however, on the whole situation, that the Board should decide not to make the new advances which would be required to pay off or take over the Carroll loan and otherwise look after the Algiers situation.”

Then we have a statement placed before him, Exhibit No. 42, of the Barnard account, showing that this gentleman who had just recently been put on the Board, owed this bank upwards of \$411,000.

Then on January 24th, 1916, Sir Thomas White wrote to General Mason giving him notice that these various statements had been made. All I have been,

reading from hitherto were documents that were enclosed to Sir Thomas by Mr. Fisher. Then Sir Thomas White, having got this letter, writes to General Mason and says:

"There has been placed officially before me a memorandum signed by James Fisher, K.C. of Winnipeg, acting on behalf of Messrs. Crerar, Kennedy and Persse, Directors of your Bank residing in Winnipeg. This memorandum calls attention to certain accounts of your Bank about which it is evident the Directors in question are much concerned, and in the circumstances I deem it my duty to ask for full particulars from your Board and from your Auditor whom I have to-day written in the matter."

He points out the accounts in question:

1. Prudential Trust Company, \$500,000.

Pellatt & Pellatt, The Home City Estates Limited, Toronto City Estates, Limited.

3. A. C. Frost & Company.

And there are some other accounts, he says, referred to in the Inspection Report mentioned which would appear from the report to be in an unsatisfactory condition, but the three set out above appear to be those about which the Western Directors are chiefly concerned; and he asks him:

"I shall be obliged if you will write me officially, setting out concisely the history of these loans and indicating the amounts of unpaid interest (if any) in such accounts..... Apart altogether from the question of security, the loans appear to me to be exceedingly large having regard to the capital of your bank—"

Sir Thomas is at this time seized of the fact that having regard to the capital of \$1,960,000 there was more than the whole capital of that bank out upon these three loans. He says:—

"In directing to you this letter with reference to the memorandum which, as I have stated, has come before me officially, I am following the practice which we have hitherto adopted in similar cases and am acting under the Provisions of Section 113 of the Bank Act."

Could he not have acted under Section 56A of the Bank Act? He could have changed his practice, he did not need to act under Section 113.

Section 113 in my opinion is a very reasonable way of doing things, not quite so drastic perhaps as Section 56. Section 112, subsection 4, says:—

"The Minister may also call for other or special returns from any bank, and may require that the bank shall transmit or deliver such other or special returns at monthly or other prescribed periods, or whenever in his judgment they are necessary to afford a full and complete knowledge of its condition."

Section 113 says:

"Every return provided for or required for under the last preceding section shall be accompanied by declarations which shall be a part of the return, and the declarations shall be in the form set forth in schedule G. to this Act, and shall be signed by the Chief Accountant or by the Acting Chief Accountant, and by the President,—"

Mr. SYMINGTON: What year is that?



Mr. LEE: The 1923 revision.

Mr. SYMINGTON: Under the old Act section 113 is the section which gives the Minister the right to ask for information.

Mr. LEE: Then it will be section 112. I will undertake to give it to your lordship. I have the wrong copy.

Mr. SYMINGTON: The present Act is much more detailed than the old Act as to the nature of the information. The old Act was that he could call upon the bank for what information he wanted.

Mr. LEE: It really corresponds with section 112, subsection 4.

Now section 56A of this Act to which I have referred was not changed at all from the old section.

Mr. SYMINGTON: I think not.

Mr. LEE: Section 56A reads:

“The Minister may direct and require any Auditor appointed under the next preceding section of this Act, or any other auditor whom he may select, to examine and inquire specially into any of the affairs or business of the bank, and the Auditor so appointed or selected, as the case may be, shall, at the conclusion of his examination and inquiry, report fully to the Minister the results thereof.”

Then subsection 4:—

“The person selected by the Minister under this section shall, for the purposes of section 153 of this Act, be deemed to be an auditor of the bank.”

Mr. SYMINGTON: I think that is different in the new Act.

Mr. LEE: Then I will undertake to see if it is.

Sir Thomas was requested for further time in a letter from Col. Mason. Colonel Mason agreed that under section 113 he had only thirty days to make the statements. On January 26th, 1916, Sir Thomas said:—

“I do not state any time limit for the return requested but as the allegations made to us on behalf of certain of your Directors, who should have knowledge of the matters in question, are of so serious a character I think it advisable that your reply should be completed and forwarded at as early a date as possible.”

Then on January 24th, Mr. White also wrote to Sidney H. Jones, Exhibit No. 46 and among other things said to him:

“Under the provisions of Section 56A of the Bank Act I now direct and require you as auditor to inquire into the accounts mentioned and report to me in all proper detail respecting them.”

Then on January 24th, 1916, Mr. White writes a letter to Mr. Fisher acknowledging receipt from him, acting on behalf of Messrs. Crerar, Kennedy and Perse, of the memorandum with correspondence attached and the report of the inspection of the Toronto branch; and he said:—

“I have drawn to the attention of the President and the Auditor of the bank the accounts about which I understood from you your clients were principally concerned.”

Then we pass on in relation to Mr. White's knowledge, until we get the letter of February 2, 1916, exhibit 50, written by him to General Maon in which he says among other things that he wants a copy of the agreement between the Bank and the Prudential Trust Company.

"It will be necessary for me in this connection, in order to ascertain the financial responsibility of the Prudential, to order an investigation under the authority of the Trust Companies Act."

Of course he had wider powers than given under the Bank Act. He was then threatening to order an investigation of that particular account under the Trust Companies Act.

Mr. SYMINGTON: An investigation of the Trust Co.

Mr. LEE: Yes. And as far as the evidence before us at the present time shows, Sir Thomas seems to have forgotten all about this. He seems to have gone away and slept during the next two or more years and forgotten that such a letter was ever written. That is the first we have heard about any investigation under the Trust Companies Act, and we have never heard of it since. The only thing we have heard is that there was a report made at some future time by one of the mercantile agencies in reference to another trust company.

Mr. SYMINGTON: Are you sure of that?

Mr. LEE: It is the Fidelity Trust Company, I beg pardon.

Then on page 80, on February 2, 1916, Mr. White makes a memorandum in this matter like a good business man, Exhibit No. 51:—

"Memorandum re Home Bank of Canada.

Messrs. Haney and Barnard, K.C., called on me a few days ago with reference to the affairs of the above bank. They stated among other things that they had only recently become Directors and believed if given a little time they could reorganize the affairs of the bank so as to place it upon a much better basis."

Why reorganize? Was not that a danger signal to Sir Thomas White? Was he not seized of certain correspondence? All he had done up to that time was to ask their own Auditor for an investigation of certain accounts. He goes on and says:—

"With reference to the matter of payment of dividends and taking into profit account interest upon such loans as the Frost loan, I stated that this was a matter of judgment developing upon the Directors who would have to be careful to see that they did not by payment of dividends impair the capital of the bank and diminish the security of depositors and other creditors."

It was very kindly advice, and well meant, that Sir Thomas gave to these gentlemen at that time. But advice is not often tendered unless there are reasons for giving it, especially by a man like Sir Thomas White of such great experience, and as Minister of Finance. So he must have had some very compelling influence in his mind to cause him to point out to two other business men, one of them a King's Counsel at Montreal, that they would have to be very careful not to pay dividends so as to impair the bank's capital. Why did he point that out? Did he not have some fear that these gentlemen were going to pay dividends out of capital, which was a serious criminal offence? He must have had something in his mind to cause him to make this note at the time.

Mr. SYMINGTON: Will you notice the beginning of that sentence, "I spoke strongly as to the Frost account...."

Mr. LEE: They discussed with him generally the Prudential, Frost and Pellatt accounts. "I spoke to them strongly as to the necessity for bringing pressure to bear upon Pellatt and the Prudential Trust Company, whose affairs

I stated I would probably investigate if I came to the conclusion that it was not living up to its engagement with the bank. I spoke strongly as to the Frost account, and generally impressed upon them that a heavy duty developed upon them in respect of the administration of the bank with which they were now identified."

Mr. SYMINGTON: The next sentence is the one I had in mind.

Mr. LEE: "With reference to the matter of payment of dividends and taking into profit account interest upon such loans as the Frost loan—"

He must have had in mind at that time, after looking over the various statements, that they had taken into profits certain large amounts of interest which had been capitalized, and from which they had been paying dividends, which in itself was a criminal offence for which they would be liable if they were parties to it. That was another danger signal that he had to do something, something real, something that would stop transactions of this kind.

Then he gets another letter from Mr. Fisher written on February 18th, in which Mr. Fisher among other things points out to him again, (page 82):—

"It is true that my clients are most desirous to co-operate harmoniously with Mr. Hancy, whom Mr. Lash, rightly as I think, regards as the strong man—"

I would direct attention to that word "strong" used by Mr. Fisher, because at the end of my argument I am going to draw certain conclusions as to how this bank was wrecked and who helped to wreck it.

"But it was quite clear to me that they would not for a moment be content with an investigation to be conducted by the Board as at present constituted. It was decided, indeed, that after Mr. Crerar returned I was to prepare a communication to be sent to you, expressing most strongly their desire that a special audit of the bank's affairs—touching especially the larger accounts in the Toronto Office—should be directed by the Finance Department."

There is a direct specific request again from Mr. Fisher to the Minister. They had already sent one on the 22nd of January, 1916, they had sent the documents along with it, but nothing was being done up to this date, nothing effectual in their opinion. Mr. Fisher says he wants something done.

It is quite clear to me that they would not for a moment be content with an investigation to be conducted by the Board. Who is desirous of having it conducted by the Board? Why, the Board itself, except Crerar, Percse and Kennedy. They do not want it conducted by the Board. They are asking the Minister of Finance to conduct that investigation and to do his duty, and their Counsel is reiterating that request. On the 18th February he says to Sir Thomas White in words to this effect: I wrote you on the 22nd January; a month has elapsed; I sent you all the documents bearing upon this matter; what have you done? That is the meaning of that letter, and he goes on and points out specifically that it was decided that after Mr. Crerar returned I was to prepare a communication to be sent to you expressing most strongly the desire that a special audit of the Bank's affairs, touching specially the larger accounts in the Toronto office, should be directed by the Finance Department."

Mr. SYMINGTON: I would like my learned friend to point out that that arose from the wire subsequently sent by Mr. Lash. He suggested in his wire of the 15th an inside audit.

Mr. LEE: Yes. Then we pass along to the 21st. Exhibit 53; and Mr. Fisher writes Sir Thomas the letter of 21st February. If he had not placed it strongly enough to Sir Thomas upon that occasion, he writes him this letter and he marks it "Personal."

"I wrote you on the 18th inst. in this matter, and Mr. Crerar having now returned I have gone into the matter with the three Western members of the Board, and am writing this further letter upon their instructions. They very decidedly approve the view expressed in Mr. Lash's telegram referred to in my letter, to the effect that a full investigation is required."

They do not ask for one, two, three or four accounts in the Toronto office. They have never asked for one, two, three or four Toronto accounts, or these accounts to be investigated only. They have been continually calling out to Sir Thomas White all the time, we want this bank investigated under 56A of the Act. That is what they have been crying out for. And at this time, so that Sir Thomas will know what Mr. Fisher really means, he says:—

"This, of course, they understand to mean a full investigation of the bank's affairs generally, including the acts and conditions that have led to the present situation."

Could Sir Thomas have wanted any larger or greater request to do his duty faithfully by the people of this country than in that letter of February 21st, following up the letter of the 22nd January? And then they go on and they say at page 84, among other things:—

"My clients' anxiety, however, is about the handling of, and dealing with the present large accounts, and as to these the first requisite, in their judgment, is to get at the actual facts, and in their judgment this cannot be effectively done under an investigation by the present Board."

That is, they are pointing out all the time, taking those two clauses, one in connection with the other. We want no investigation from within, we want an independent investigation from without; we want you, Sir Thomas, to have this investigation made, an independent audit, with which the Board will have nothing to do. Then if he can he will give him any further information, and desiring to cooperate with Sir Thomas he says at page 85:—

"I am also enclosing copy of a mercantile agency report on the Fidelity Trust Company, whose paper was taken to cover the remainder of the Barnard account after the settlement. From this you will see, amongst other things, that Mr. Barnard himself is a Director of this company, and its affairs, you will see, are understood to be largely in the hands of his law firm. On the whole, it is the hope of my clients that you will be able to see your way to direct a full investigation by an auditor appointed by your Department."

He does not say an auditor appointed by Sir Thomas White, in the bank; he says an auditor appointed by your Department. That is what he says in that communication at page 85. And there is not up to the present moment, one tittle of request from Mr. Fisher or his associates, Col. Mason or anybody else, that they want an investigation by the man whom Machaffie described afterwards in his sworn testimony, as a man who was not a chartered accountant. But let us pass on. He had before him also this mercantile report, which was in full, and if he had read that at all, he would see that the Fidelity Trust Company with which Barnard was connected, was an incorporation with an authorized capital of \$500,000 in shares of \$100. And among other things he would see in that report:—

"The parties originally interested eventually withdrew from the concern, and they have practically been doing little of anything for some little time past, their affairs for some time is understood to have been largely in the hands of K. C. E. Barnard and W. H. McKeown, of the legal

firm of Barnard & McKeown these parties being considered to hold the bulk of the stock. Several efforts have been made to interview the parties interested, but without success, and the office is practically closed, there being very little indication of business activity in their premises."

That also should have been a danger signal to Sir Thomas, that Barnard's account was not in any too good shape, and he had better look out for that account among the others and should have been a further indication to him to do what Mr. Fisher requested him in his letter of the 21st, by having an auditor appointed either by his own Department, from within his own Department, or an outside independent auditor. There was no request at this time that the bank's own auditor should make any investigation.

Then Sir Thomas writes the letter to Mr. Fisher of the 21st of February, Exhibit No. 54, and he says to him, among other things:—

"The position I have taken with Mr. Lash is that I desire the statement which I have asked for on the complaint lodged by you on behalf of the Western Directors."

I might point out to your lordship that he uses the word "complaint." Now in business correspondence, especially in mercantile circles, unless Sir Thomas considered these matters of a very serious nature, I don't think he would have used the word "complaint." I am just calling that to your lordship's attention.

"It does not appear to me that I would be justified in foregoing my request for such information on the ground that the Board is now in harmony. You make certain definite explicit charges which I conceived it my duty to investigate. When I received the report in those matters from the Home Bank or Mr. Lash, I shall have to determine the course proper for me to take."

I think it is only fair to read the whole of the letter now. I had not intended to.

"My duty of course lies to the public, and in view of the serious charges which you made I feel I cannot allow the matter to remain in abeyance. At the same time it will and should be my policy to give the reorganized Board of Management every opportunity to place the administration upon a sound basis provided that in my judgment this is possible."

Then we pass to Exhibit 55, a letter to Mr. Fisher. Sir Thomas knows at this time that position is a very delicate one and he says amongst other things, at page 87:—

"You will, I am sure, understand that the situation is a rather delicate one and that it is important not to make a mistake in judgment either on the one side or on the other. If the bank is sound it would be advisable in the public interest that it should be allowed to continue in business."

I draw your lordship's attention to that clause.

"If, on the other hand, it is not solvent, the question arises as to allowing it to continue."

Now at this point if we are desirous of ascertaining where the mind of Sir Thomas White had arrived, we may say that he was like a man sitting

on a fence; he had a leg on one side of the fence and a leg on the other side and he did not know which way to jump; but his duty was plain, on the one hand to the public of Canada, and on the other to the bank; he did not want to do an injustice; how could he have found out the course to take? It was simple. He had powers under section 56A of the Act. Gentlemen who were Directors on the Board of this bank had made charges; he admitted himself that they were charges. Any sane man in business, in my opinion, at this stage of the proceedings would have said: "There is only one safe and sane course for me; I see the light in the distance; I will follow that light and that light will lead me to do my duty by the people of Canada, and that is to make a thorough investigation of the affairs of this bank; I will have nothing to do with the members of the Board, I will not pay any attention to Brigadier General Mason; I will pay no more attention to any of these gentlemen; if my duty points me there, I will do it." Did he do it?

Then we arrive at the next letter, Exhibit No. 56, appearing at page 87; written by Sir Thomas White to Mr. Lash. Sir Thomas is getting more and more suspicious of the conditions and he says among other things, about the fifth line from the bottom:—

"I hardly think I should be warranted in relying upon the report brought back by Messrs. Haney and Crerar from British Columbia."

Why? Might be asked. Up to this time—as Sir Thomas admits in the witness box—he had the best ideas of Mr. Crerar and he believed that Mr. Haney was the essence of a good business man. But on February 24th, 1916, Sir Thomas says, although they are both good business men, that he has very little idea about their opinions and he says "I hardly think I should be warranted in relying upon their report."

Mr. SYMINGTON: I think my friend is construing that letter wrongly. He should read the first part of it.

Mr. LEE: I will do so.

"I have received this morning a letter dated February 21st from Mr. James Fisher, K.C., of which he informs me he has sent you a copy. In view of the opinion which these clients evidently entertain, as to the larger accounts of the bank and their want of confidence in the Board and Management as at present constituted, it would appear to me that I would only be justified in allowing a reasonable time for the bank to perfect its security and improve its position under the accounts about which I made enquiry. I hardly think I should be warranted in relying upon the report brought back by Messrs. Haney and Crerar from British Columbia. I assure you I do not desire to take any rash step which might have a serious effect both upon the bank and the general financial situation, but on the other hand, I must protect the public interest. I therefore feel that I must at an early date draw the matter to the attention of the President of the Canadian Banker's Association with the request that the position of the bank be investigated. It would appear to me that the Banker's Association could do this very thoroughly and much more efficiently than any auditor I could appoint or any official I could name for the purpose."

His mind at that time had arrived at the point where he says to himself, I have no confidence in Haney or in Crerar's report. Is not that what he says now, Mr. Symington, on reading the whole letter?

Mr. SYMINGTON: No, the report had not been made.

Mr. LEE: He says, I have no confidence in any report they may bring me, no matter how good.

Mr. SYMINGTON: No, he refers to Mr. Fisher's letter of the 21st, in which he says he wants all the accounts before him.

Mr. LEE: Do not let us get into an argument about it. It speaks for itself it seems to me. "I hardly think I should be warranted in relying upon the report brought back by Messrs Haney and Crerar from British Columbia." They had only gone out there for one purpose.

Mr. SYMINGTON: I don't think they had even gone yet. They certainly had not got back.

Mr. LEE: Then that is all the worse. He has no confidence in them going out to British Columbia. He does not care whether they go or not, that is not going to stop Sir Thomas in the path of public duty. He says, It matters not whether they go to British Columbia or not; it matters not whether they come back from British Columbia or not; that report they will bring back will not alter my decision, which is that in my best judgment the Canadian Bankers' Association, in whom I have confidence, should make the report I require. Is not that the position? It is as far as I see it, on the 24th February, 1916. Then on the same day Mr. Fisher writes to Sir Thomas White in Exhibit 57, and he states, toward the end of the page:—

"He explained certain steps that he, in conjunction with Mr. Lash, had already taken looking to that end, and my clients wholly approve thereof."

The reference there is to Mr. Haney.

"Afterwards I wrote to Mr. Lash in reference to the conference and in order that you may know fully the general attitude of my clients, I quote from that letter as follows:—

"My clients having presented their view very fully and very frankly to the Finance Minister and to yourself as Chief Counsel of the Bank, are entirely satisfied to leave the matter in his hands and yours to decide what action will be taken. No one connected with the bank can more earnestly or sincerely than they do, desire that any action taken will lead to a betterment of existing conditions."

Now Mr. Fisher says, I throw from my shoulders all responsibility as to what becomes of this bank in the future, on behalf of my clients. That is what I am taking that to mean. "If you only assume the responsibility with Mr. Lash." And Sir Thomas does not assume it. He cannot get away from it.

It is like the Irishman and the bear. He had been grabbed by a bear and his brother, speaking to him, said:—

"What's the matter?"

"A wild animal has got me." Then says the brother:

"Hould on, hould on a bit" The victim says:

"Begorra, I can't let go."

He could not get away from him. And Sir Thomas was in that position; he could not get away from it either; he had to do his duty, for he saw his duty, he was beginning to have light; he had not confidence in the management; he had not confidence in Haney's report, or in any report that Crerar might bring back from British Columbia, and the consequence was, he says to himself: "The Bankers Association for me; they will do what is fair and honest and square and upright by the general public of Canada; they are the best people to make this investigation." And it seems one great pity that his mind was ever changed after that letter to Mr. Lash on the 24th February.

Then we pass on to Exhibit No. 59. Sir Thomas there writes to Jones a most loving letter. He says to Jones "I shall be glad if you will send me as soon as possible a detailed statement showing advances repayments and interest charges on the A. C. Frost Company account."

They were not asking for the A. C. Frost Company account. They were asking for a full investigation of the affairs of this bank; and not by Mr. Jones. Remember that the last thing from Sir Thomas White on February 24th is: "It would appear to me that the Bankers' Association could do this very thoroughly." And on the very same day he writes to Mr. Jones asking him for a report. Jones answers him on the 26th and on the 1st March, Exhibit No. 61, he sends Sir Thomas White a statement of the Frost account.

Now Sir Thomas White was a man long associated with financial matters; he had been associated with a trust company for many years; and a glance at that account of Frost's would have shown him its condition. In a very short time he would have seen that in 1915 there had been credits of interest and the interest had not actually been paid, but that it had been credited as if it had been paid.

Mr. SYMINGTON: It is quite the opposite. Charged up.

Mr. LEE: I should say, charged up. And the consequence would have been, when he had seen that, that his mind would have been in a position to say: Here is a bank with a lot of frozen assets, I think that my duty is plain to the people of this country. But his mind seems to have suddenly gone wrong. He had made up his mind on the 24th of February that the Bankers' Association were the only people. Now let us see if I can explain why he changed. But before doing that I would like to refer to this statement that he got from Cooper Mason on that very same day, in reference to the Pellatt account. He saw that Pellatt owed \$2,072,000 to this bank. No, at the outbreak of the war it amounted to \$2,072,000; and now it amounts at this stage to \$2,185,000. It was going up. \$182,000 in that time. And then he might have looked at Pellatt's account of call loans and if he had looked there he would have seen 4,995 shares of City Estates. And what did that mean? That meant a lot of pieces of paper, possibly, printed on a printing press, with a seal attached to them. Land bought at so much per acre, subdivided and to be sold at so much per foot. Sir Thomas had a large experience in these matters himself, and if he had looked further down he would have seen, 2,000 shares of the Page Hersey Company; a manufacturing industry in the city of Toronto, starting into business, to-day doing a very splendid business; at that time a very young company. He would also have seen 755 shares of Steel and Radiation Preferred; and Sir Thomas with the wide knowledge of banking that he had, and knowing the Steel Radiation Company as he did, he would have put his finger immediately upon that and said: That stock is no good, or it is very little better. And then he would find 1,257 shares of Steel Radiation Common, and he would have said to himself: Why, \$1,473,000 and here are 1,308 shares of Western Assurance Company at \$20. He would have known better than that. His intelligence ought to have taught him better than that. I am not a banker; I have never had any banking experience; but my knowledge of general business in the city of Toronto has taught me that these were fictitious values at that time put upon those stocks; and Sir Thomas, if he had looked at them closely, or had he made any examination of those stocks, would have seen that fictitious values were being placed by somebody. Who was that somebody? It was either one of two people. It was either Mr. Pellatt or his friend General Mason.

His LORDSHIP: We shall take recess here until half-past two.

Mr. LEE: If your lordship will permit me, so that I may not forget it?



I put in now a list of the Directors of the Home Bank from 1905.

**EXHIBIT No. 178.**

**Filed by Mr. Lee, May 15, 1924.**

**List of Directors of Home Bank from 1905.**

Proceedings stand adjourned at 1 p.m. Wednesday, 15th May, 1924, until 2.30 p.m.

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**AFTERNOON SESSION**

OTTAWA, ONT., THURSDAY, MAY 15, 1924

PROCEEDINGS RESUMED AT 2.30 P.M.

ARGUMENT BY W. T. LEE, RESUMED

Mr. LEE: When we adjourned for lunch, my lord, I was commenting on the statement presented to Sir Thomas White, at page 95, in reference to some of these securities, which are there set out, totalling \$1,473,751.

A description also is given of the properties covered by this loan, and, so far as I have seen in the evidence, there were no valuations ever made of any of these properties, particularly as we have it here. I have not been able to see anything, except that the Home Land and Securities Company owed \$145,000, and as well as to the Home Bank, \$297,000, and that the Toronto City Estates had agreements and mortgages of sale to the extent of \$985,576, and that they owed, in all, about a million dollars, including the Home Bank.

So far as I have been able to see from the evidence, Sir Thomas at that time made no investigation whatever to ascertain whether the valuation put upon these properties was a valuation which he could reasonably take, having regard to the various statements that had already been made to him by the officers of the Bank.

Then we pass on to Exhibit No. 66, page 158, and there we have a letter written away back on the 4th of January, prior to Mr. Fisher making his statement to the Honourable Minister, in which the Provincial Secretary of New Brunswick in writing a letter to the Honourable Minister asks him, in confidence, for his opinion as to the stability of the Home Bank of Toronto.

Now, apparently, at this time the Minister does not write a letter unless he has some reasons for writing, and there was a danger signal thrown out to Sir Thomas by receiving a letter from another Government asking about the stability of this bank, and the letter reads:

"I would beg to ask you confidentially for your opinion on the stability of the Home Bank of Toronto. They have \$300,000 of the moneys of the Province of New Brunswick, being proceeds from the sale of the Bonds of the St. John Valley Railway Company. This money they have invested for the Prudential Trust Company, the Trustees for the Bondholders.

"The Home Bank is now being asked by the Prudential Trust Company to return the said moneys to them, and the Bank is asking whether we want the money returned to us or the Prudential Trust Company. The Government, before giving an official answer, would wish to ascertain the stability of the Home Bank."

The receipt of that letter, I would suggest, sir, would, in most minds, have produced a feeling that in other quarters of Canada other people, and other corporations, were beginning to wonder as to the stability of this bank, and this is the reply. Of course I might point out to you, in all deference to the Honourable Minister, that this reply was written fifteen days before the receipt of the Fisher communication.

Sir Thomas said to Mr. Landry:

"I beg to acknowledge receipt of yours of the 4th instant enquiring as to the financial position of the Home Bank of Canada. While this Bank is not an institution of large resources as compared with some other Canadian banks nothing has been brought to my attention which would cause me to doubt its stability. I do not feel, however, that I can pass an authoritative opinion upon the financial position of any bank as so much depends upon the quality of its discounts and investments which are not given in detail in the returns under the Bank Act. If you entertain any doubt whatever as to the safety of a Government deposit it might be well to distribute it."

It was an exceedingly careful answer, and came from a very conservative mind, when he says, don't put all your eggs in one basket but put them in three or four.

And then we come along to the 14th of February, when he receives from Exhibit 51, which I think I have already quoted to you.

An then we come along to the 14th of February, when he receives from Mr. Lash an important communication. That is, Exhibit No. 70, and in that communication Mr. Lash said, among other things, line 4:

"I am writing you privately because I want to tell you frankly what the present position is and I do not know how much of this information you would like to make official. If you want any of it repeated in an official form let me know and I will write you officially. Quite recently the Home Bank has been consulting myself and Mr. Anglin about some of the complicated accounts, etc.—"

And then passing on, at page 161, he says:

"Some little time ago I formed the opinion that until a full investigation into the values of the bank's assets and into their liquid and tied up position was made nobody could form an intelligent opinion as to the course which the bank should pursue with reference to the big accounts referred to or with reference to the more important matter of its going on in business. I have no opinion upon the latter question because no opinion can be formed without the information referred to. I became satisfied some time ago that the General management was woefully defective but of course I could not express any opinion upon this to the General Manager himself who came to consult me. I learned privately from Mr. Fisher when he was here that the Winnipeg Directors were unable to obtain from the management sufficient information to enable them to judge as to the accounts referred to or as to the general position of the bank and that they had appealed to you to call for special returns about the three accounts."

Now, this statement is not consistent, I submit, with all the correspondence which had gone on. I am at a loss to understand this letter, because they did not ask, as I understand the evidence, for any special returns, but what

they were asking, and what they continued to ask, and what they have been asking up to this present time from Sir Thomas, first, it was that they wanted a full investigation of all the affairs of the bank, and they wanted an audit under Section 56A of the Act, and, up to this letter, I do not remember any position which they have taken which was in contradiction of that position until this letter was received of the 14th of February by Sir Thomas White at the instance of the bank's own general counsel.

Mr. SYMINGTON: Mr. Lee, would you mind pointing out where they asked for the general investigation, prior to this date? You see, this is the 14th of February which antedates those letters from Mr. Fisher.

Mr. LEE: In the first communication from Fisher which was the 22nd of January.

Mr. SYMINGTON: They do not say what they ask for in that communication.

Mr. LEE: What is the number of that?

Mr. SYMINGTON: The number of the first memorandum is Exhibit 5.

Mr. LAFLEUR: There is Exhibit 3, of course.

Mr. SYMINGTON: Yes, but the general memorandum is No. 5.

Mr. BROWNING: Page 17.

Mr. LEE: Certain information was given at that meeting which, however, the Western members of the Board were not by any means satisfied with, as he says in the letter of February 17th, 1915, addressed by the Western members to Mr. Macdonnell, and the same matters were further discussed at a meeting held in the end of December.

Further down in that letter:

"We protested against the failure to have a regular inspection, and at a subsequent meeting an inspection was directed to be made by Mr. Adair, the Bank's Supervisor."

Mr. SYMINGTON: What I was trying to point out, Mr. Lee, is, that this is the first letter I have been able to find in which the question arises as to what the Western Directors had asked for.

• Mr. LEE: Probably I will get to it in a minute. Then Mr. Lash's letter continues, page 161:

"I have no opinion upon the latter question because no opinion can be formed without the information referred to. I became satisfied some time ago that the General management was woefully defective but of course I could not express any opinion upon this to the General Manager himself who came to consult me."

I have already read that to your lordship, I think.  
Then it goes on:

"I expressed to Mr. Fisher my opinion about the management, and told him that unless new management was introduced the position of the Bank would, I thought, become more complicated and might become hopeless."

And then further down he says:

"From what I know of the three accounts referred to, the fullest statements respecting them which could be sent to you would not advance the situation very far in your mind. You would have to go deeper and inquire into the whole position."

Now, that is what I probably had in mind.

"They sent me the statements respecting these accounts but I have told them that if you were assured by the Winnipeg Directors who asked you to act that they were getting all the information you asked for and a great deal more, and that they would like you to afford the opportunity of completing the investigation, and that the whole Board was now in accord, and that new management was going to be introduced at the earliest possible moment, I felt satisfied that you would prefer not to have the statements sent to you in the meantime."

Then he goes on:

"They would only embarrass you because you could form no opinion as to your duty without further investigation and that you would have to decide what sort of further investigation should take place."

And then further down he says:

"I have therefore taken the responsibility of retaining the statements until I get an intimation from you as to whether you are satisfied to leave the position as it is for the present if the Winnipeg Directors request you to do so or whether you still want the statements."

Now in this letter is the first intimation of the dominant mind over Sir Thomas White: He is putting into the mind of Sir Thomas White, as counsel for the bank—because he was acting always for the bank and never for the Government—this, please don't call for a full investigation; would it not be wiser if I retained these statements, and if I could get the Winnipeg Directors to withdraw the statements made to you in the Fisher communication of January 22nd, why, everything would be lovely, and everything will be rosy. So that he suggests to Sir Thomas White the idea that this thing cannot be carried on, and then he goes on to say:

"If the former, I shall continue my efforts to secure a new Manager, and, so far as I can do so, I shall see that the position of the Bank is not made worse; if the latter, then I will send you the statements. Mr. Haney wrote the Winnipeg Directors last Thursday advising them to tell you that the Board was now unanimous and that they would like you to suspend action on their request."

This is the first intimation that Sir Thomas gets to withhold his hand.

"I think you will probably hear from them in a day or so. The Board seems inclined to rely very much upon my advice and I am in such relations with them that I can volunteer advice and if you would like me to advise any particular course, of course I shall be glad to be so informed."

Of course, he says there "if you would like to advise me of any particular course," but he suggested what shall be, that is, Mr. Lash suggested to Sir Thomas what the course shall be. Instead of Sir Thomas dictating to Mr. Lash what that course shall be, Mr. Lash was suggesting to Sir Thomas what the course shall be.

Then we pass on, and on the 17th of February, Sir Thomas White writes to Mr. Lash, and among other things he says.

"The position is that I have been made aware by the Winnipeg directors of a certain condition which is most disturbing. It does not appear to me that I would be justified in staying inquiry because the Winnipeg directors may ask me to suspend action. The real question is whether the bank, having regard to the condition which will be dis-

closed by the statements, should be allowed to continue business with the public. I shall be glad, therefore, if you will send me the statements."

Then we pass on until we get to the 29th of February, 1916, Exhibit 72, page 163. Here we have a confidential communication sent by Mr. Lash. Now Mr. Lash has suggested in that former communication which I have just read as to what Sir Thomas White's policy should be, I take it, and then in this confidential letter of the 29th February, 1916, about midway down the page, 163, he says:—

"In my interview with you in Ottawa on the 22nd, I expressed my personal opinion as to the general position."

What does he mean by his "personal opinion"? Had he two opinions on the matter, one for the bank and one of his own, one to suit his clients, and one for somebody else? I have read that two or three times and I cannot fathom what he means. Continuing:

"and I said that my main object was, to so manage matters that if the Bank had to liquidate, the liquidation might be with open doors."

Now, here is a statement of opinion from the bank's own counsel, a second real danger signal to Sir Thomas. This is the first intimation, I think, coming from the bank's counsel, that they would have to liquidate. Sir Thomas is warned about the seriousness of the condition of this bank at that time, and Mr. Lash in his letter, goes on to say:—

"This can only be accomplished with the assistance of other banks.

"Personally, I have given up hope of being able to secure a competent person who could undertake the general management, without first fully investigating the position."

It is not the three accounts that he speaks about in a former communication, but fully investigating the whole position of the bank. He is pointing that out again to Sir Thomas, and apparently he has rather changed his ideas from the 14th of February up to the 29th of February.

Then the letter continues:

"I have always thought that the investigation should be by an outside competent person."

That is what the bank says, a very fair statement from the counsel of the bank who was supposed to know more about the affairs than Sir Thomas White at that time, and he points out to the Minister:

"that the investigation should be by an outside competent person who would be quite free from any interference by the present management or Board."

And then if Sir Thomas White did not know his duty, which he did, he points out to him:—

"The best course may be to consult the Bankers' Association with reference to the person who is to make the investigation, as it might be important that the Association should feel able to rely upon his report, if their assistance were asked, instead of having to get a further report from their own nominee."

That is the situation on the 29th of February, but there was a communication that he had in his mind before writing that letter, and it was a communication from Mr. Fisher, dated the 23rd of February, 1916, as set out at page 164, and he said, among other things, the fourth line:

"In our conference we discussed the present situation somewhat fully, and I read to Mr. Haney the two letters I had written to the Finance Minister, as well as my letter of the 18th to yourself. Mr. Haney, I find, appears to be under the impression that a special audit under the direction of the Finance Minister might tend to bring about a crisis in the affairs of the Bank. Certainly neither my clients or I have had nor have we the slightest idea that such an audit would tend to such a result.

"They still hold to the view that, as expressed in your own telegram of the 14th, a full investigation is required, and they still hold the view that under existing circumstances an investigation by the present Board would not be satisfactory."

Now, Mr. Lash, at the time he received that, before he wrote the letter of the 29th to Sir Thomas White, knew perfectly well that Mr. Fisher, acting for the western Directors, had not withdrawn one iota from his former communication. The Western Directors had not receded one bit from the position which they had occupied from the beginning up to the present moment, and that was:

"They still hold to the view that, as expressed in your own telegram of the 14th, a full investigation is required."

And they also mention that:—

"Under existing circumstances an investigation by the present Board would not be satisfactory."

And they go on further to say:—

"My clients, however, having presented their views very fully and very frankly to the Finance Minister and to yourself as chief counsel of the Bank, are entirely satisfied to leave the matter in his hands and yours to decide what action will be taken. No one connected with the Bank can more earnestly or sincerely than they do desire that any action taken will lead to a betterment of existing conditions.

"I am not sending a copy of this letter to the Finance Minister, as I take it there is no occasion to say anything further to him, but, of course, I have no objection to your showing him this communication, and I hope you will discuss the matter fully with him."

Permission is given by Mr. Fisher to show the Finance Minister this, and from all the information I can get, I have no doubt the Finance Minister saw that communication.

Mr. SYMINGTON: It is enclosed in this letter.

Mr. LEE: It was enclosed in this letter of the 29th instant.

Mr. McLAUGHLIN: It was produced by Mr. Roberts off his file.

Mr. LEE: So that, at that period of time, on the 29th February the Finance Minister knew that they had not receded from the position which they had taken up all the time, and that it was not until the receipt of Mr. Lash's communication enclosing that that any change in position might have arisen in the mind of the Finance Minister at all.

On the 1st of March, he writes to Mr. Lash this letter:—

"I have yours of the 29th ultimo. My view is that I should in the near future consult the President of the Canadian Bankers' Association with respect to the affairs of the Bank."

So that we have, up to that date, traced what his mind is, so far as it is put down on paper.

And then on the 2nd of March Mr. Lash replies to him:—

"I had a talk with General Mason yesterday and from what he said about the timber property in British Columbia, I think that it would be wise to await Mr. Haney's return before speaking to the President of the Bankers' Association, unless, of course, something should intervene which should make it necessary in the meantime."

Now between the letter of February 29th where he states, "I have always thought that the investigation should be by an outside competent person," and the letter of the 2nd of March in which he says not to speak to the President of the Bankers' Association, what caused the change in the situation? I am trying to decipher what went on. Haney has not come back, he has not returned. Apparently he has changed his mind somewhat.

Mr. SYMINGTON: You will find that Sir Thomas White suggests that himself to Mr. Lash.

Mr. LEE: Mr Lash is not suggesting it.

Mr. SYMINGTON: No, Sir Thomas suggests it to Mr. Lash.

Mr. LEE: I am saying Mr. Lash's mind has changed since the 29th of February.

Mr. SYMINGTON: Well, but Sir Thomas, on March 1st, suggests that to Mr. Lash.

Mr. LEE: Quite so, but Mr. Lash says, in his communication of February 29th, "I have always thought that the investigation should be by an outside competent person," and in Fisher's letter he already had that before him.

Then we get down to Exhibit 76, a letter dated March 9th, from Mr. Fisher to Sir Thomas White, in which he says:—

"I quite realize the delicacy of the situation and how important it is to avoid a mistake in judgment one way or the other. I can but repeat that my clients are entirely satisfied that the matter is in good hands when Messrs. Lash & Anglin are now the solicitors of the Bank.

"As to the special information that my clients have touching the Frost account, it is not so much with respect to the amount of the account but as to the circumstances under which the advances were made."

And then we get the communication of the 20th of March, Exhibit No. 79, page 169, and in this communication the process is proceeding, from Mr. Lash's to Sir Thomas White's mind, so far as I can gather, and Mr. Lash says, among other things:—

"Mr. Haney was appointed Vice-President, with the de facto position of President."

Then further on in the letter:—

"Mr. Machaffie, the Manager of the Winnipeg branch, in whom Mr. Haney and Mr. Crerar have great confidence, will come to Toronto at once (he has been wired for) to assist Mr. Haney in investigating the general position and Mr. Haney will employ such outside assistance as may be required."

There is the first suggestion from Mr. Lash after he receives the letter of Sir Thomas White dated March 1st, that instead of an outside independent investigation, or by the Canadian Bankers' Association, it should be from the inside, because he goes on to describe, and say:—

"Mr. Machaffie is an old Bank Manager and was trained in the Merchants Bank and Bank of British North America. He has been with the Home Bank about 7 years I think and most of the time in Winnipeg."

And then he sets out the reasons, clause 5:—

“The Board desire an opportunity of going on with the business—strengthening other accounts and straightening out tangles and it was with that in view that we came here to-day in order to explain the whole position to you and to ask you to give them this opportunity, by refraining for a while longer from asking the Bankers’ Association or other outside authority to interfere. We would stay over to-morrow and explain things but unfortunately Mr. Crerar must be in Winnipeg on Wednesday and I must be in Toronto to-morrow. I would like Mr. Crerar to be present with me when I see you in order that he may assure you, as he has assured me, that he is quite satisfied now and that Mr. Haney has the full confidence of the Winnipeg Directors.”

That was not the principal thing in this matter. Mr. Haney’s conduct was not particularly at stake. Mr. Haney had not been the Manager of this institution, and had only been in an executive position a very short time. The whole question here was that Sir Thomas should have been guided in watching the situation of whether that investigation should take place, the manner in which it should take place, the method by which it should be made, and to see that that investigation, if it was an investigation, should be such an investigation as he, as Finance Minister, having the matter in hand, and having the welfare of the depositors, and those whose moneys were in that bank at stake, should have been well satisfied with.

And he goes on to say:—

“I feel quite satisfied myself that the public interest will be served by the opportunity asked for being given”—

Now, he has changed his whole tune from that letter which I have already quoted to you in the Fisher communication of February 23rd, and which was followed up by the Lash letter, Exhibit 72, of February 29th, so that when we arrive at the state of mind of Mr. White on the 20th of March we only can ascertain it in this way.

And then on the 20th of March we also find a letter from Mr. Crerar. Mr. Crerar writes this letter to Sir Thomas dated 20th March, 1916, Exhibit No. 81:—

“You will also have learned of the change made at the recent meeting of the Board held in Toronto a few days ago, whereby the active management of affairs is placed in entirely new hands through Mr. Haney taking the Vice-Presidency, and assuming direct executive control, with Mr. Machaffie, the Manager in Winnipeg, whom, for the time being at least, he is bringing to Toronto to assist him. By this arrangement I feel quite certain that the knowledge and information concerning the position of affairs desired by the Western Members of the Board, and also the changes they desired when they directed their request to you, and which they saw no hope of securing through the then existing management, can now be satisfactorily obtained without calling in outside assistance.”

This is the first intimation, in any way, in which the position of the Western Directors has been changed. All along they have been crying out for a full investigation. All along they have been crying out for an outside investigation, and then on the 20th of March suddenly their whole position is changed, and Sir Thomas is written to, in these words:—

“In my opinion, the situation has materially improved within the past month, and, at this juncture with the changes in management



recently made, it is better to have the enquiry proceed from within rather than from without."

Then we turn to Exhibit No. 83, and there may be some reasons disclosed in this communication of why any change should be made in the attitude of Sir Thomas White, because on the 23rd of March, 1916, Mr. Lash writes, which was concurred in by Mr. Haney, who was then President of the institution, and he stated, at page 173:—

"(c) Mr. Machaffie, Manager of the Winnipeg Branch, has been brought to Toronto to act as Mr. Haney's chief assistant. Mr. Machaffie is regarded as one of the ablest officers in the employment of the Bank. He is a trained banker, and before coming to the Home Bank, he was in the service of the Merchants Bank and the Bank of British North America. He is in no way responsible for the general management in the past, and he has managed the business in Winnipeg satisfactorily. He has been with the Home Bank six or seven years.

"(d) My firm have been appointed the general solicitors of the Bank, and I have agreed to act as general counsel, and give personal attention to the more important questions which are now on hand, and which may arise in the course of the reorganization."

Then further down:—

"I handed you yesterday a letter from Mr. Crerar supporting the request which I made to you on behalf of the Board, and I may now state, without hesitation, that Mr. Haney and the three Winnipeg Directors are in entire accord, I believe the whole Board is now in accord. I mention the Winnipeg Directors and Mr. Haney specially, on account of their position, and the understanding with the Board that the important affairs of the Bank will be under their guidance."

Mr. Lash is pointing out that the management now of the bank is the most important thing. Heretofore, we have heard of two things, that is, the management and the position of these accounts, and now the management is being thrown in the face of Sir Thomas and the accounts are absolutely being subordinated. But he goes on and he tells him what Mr. Haney is doing, in the 6th clause, and then in the 8th clause he says:—

"With a view to ascertaining the actual position of the Bank, a thorough investigation will be made, under the directions of Mr. Haney and Mr. Machaffie."

Now, this is the Board. The Board are telling Sir Thomas that a thorough investigation will be made. The meaning I take out of that is that there will be an investigation of all of the accounts, not of the accounts over \$25,000, not of the accounts over \$10,000, but a most thorough investigation will be made, and this is concurred in by the President, and then he goes on to say:—

"The Board is of opinion that the result of this investigation will show that the capital of the Bank is intact, and that no loss will be suffered by any of its depositors or creditors, provided that it is not compelled, by a run of depositors, to close its doors."

That clause indicated to Sir Thomas White the position in Mr. Lash's mind at that time, the terrible seriousness of the condition of this bank, and if at any time suspicion should arise in his mind requiring that an outside competent investigation should be made, it should have been when he read that statement.

His LORDSHIP: What is involved in that expression, "the capital of the bank is intact", does he mean by that that after making provision for all its debts they still have sufficient money over and above the deposits to repay the capital put in?

Mr. LEE: I take it to mean that if all the liabilities of the bank were paid at that moment, the bank would still have its paid up capital.

His LORDSHIP: On hand?

Mr. LEE: On hand.

His LORDSHIP: Not represented by investments such as the Frost loan?

Mr. LEE: No, on hand, that is the meaning of the word "intact". But was that true in the light of these investigations? It certainly was not.

His LORDSHIP: This is Mr. Lash's letter?

Mr. LEE: Yes, it is also the Board's letter, concurred in by Mr. Lash, or written by Mr. Lash and concurred in by the Board.

Mr. SYMINGTON: Concurred in by Mr. Haney.

Mr. LEE: Well Mr. Haney for the Board, as President of the Board.

Mr. SYMINGTON: He was not President nor was he concurring as President.

Mr. LEE: He says he thanks Sir Thomas White on behalf of the Board of Directors.

Mr. SYMINGTON: The evidence has shown that in one instance one of the Directors said he did not know they were supposed to take part in the important affairs of the bank.

Mr. LAFLEUR: You mean the Western Directors.

Mr. SYMINGTON: And I doubt if the Eastern Directors did, barring Haney. After all, this is a confirmation of an interview, it is not a letter in the true sense of the word.

Mr. LEE: It is the official record of what took place at the conference. I do not put it in for anything more or less, I place it there as showing what they agreed upon.

His LORDSHIP: Mr. Lash does not say he assents to that. "The Board is of opinion that the result of this investigation will show that the capital of the bank is intact." Mr. Lash does not subscribe to that.

Mr. LEE: I take it when he signs this letter he does subscribe to that, he subscribes to the Board's opinion when he puts his pen to this letter, because he goes on and says further; "and that no loss will be suffered by any of its depositors or creditors, provided that it is not compelled, by a run of depositors, to close its doors." That is the only thing he exempts, if there was a run on the bank the capital will not be intact. "The Board feels strongly—" Mr. Lash, is writing for the Board:—

"The Board feels strongly that if they are allowed to conduct this investigation from the inside, instead of having it conducted by someone sent in at the instance of the Finance Department or the Canadian Bankers Association, nothing will happen which would cause a run by depositors, but that if the investigation be conducted at the instance of any outside authority, the chances are that statements will be made and things will be said about the bank which will cause a run and which will force the bank to close its doors."

He puts two positions before the Minister. Mr. Lash has thrown away all responsibility, he says, to use vulgar parlance, "It is up to you now, Sir Thomas, to do with this bank what you see fit." And he goes on to say:—

"This opinion is not based upon any want of confidence in anyone who may be sent, or upon any fear that such person would himself disclose the confidence entrusted to him, but experience has shown that no person can be sent from the outside to investigate the affairs of a bank, without

it becoming known sooner or later that he has been sent from the outside. This probably results from some unguarded though innocent remark made by some member of the bank's own staff."

That is to say, we have got your mind up to a certain point, Sir Thomas, and if we can just draw it over the brink we will bring you to the idea that what is in your mind shall be reversed, as to having an outside, competent, independent investigation, and give it to us from the inside.

And Sir Thomas succumbs to the luring bait, he changes his opinion after that apparently. But not quickly. We go on and he says in paragraph 12:

"(12) I think it will be evident to you that all these matters which I have referred to, and which still require attention, can be better attended to under the directions of the present Board than under the directions of a curator or liquidator, in fact it would be impossible for a curator or a liquidator to bring any of them to an successful termination."

In view of that it is very hard for me to understand the meaning of Mr. Lash's statement that the capital of the bank is intact, if he is also considering the fact that a Curator or liquidator should go in. Had Sir Thomas White been considering at that interview of the 22nd the possibility of putting in a Curator? It would strike one that that had taken place. If it had not, why was it mentioned? This letter is a record from Mr. Lash, concurred in by Mr. Haney who was present, of the position of this Board at that time. So if my deduction is correct Sir Thomas White was fully apprised at that interview of the 22nd of the deperate condition of this bank, that they themselves feared, notwithstanding Mr. Lash's statement that the results of the investigation will show that the capital of the bank is intact, that that would not be so. He goes on to say:—

"(13) In view of the foregoing, and of the very different position in which the management of the Bank now is, Mr. Haney and I, at our interview, asked you to refrain from any action which might result in preventing the Board from carrying out their intention with respect to improving the position of the Bank, so that it may be able to go on in business in ordinary course, and we assured you that you would be kept informed, from time to time, of the progress made, and that the position of the Bank, after the investigation above referred to has been made, would be fully shown to you."

Then among other things that Mr. Lash and Mr. Haney state:—

"(14) You informed us that you had given much thought to the position of the Home Bank since Mr. Fisher had called upon you in reference thereto, that the public interest must, at all time, be your guide in any decision which you might come to, and that in view of the statements made to you by Mr. Haney and myself, and of the statements in a letter which I handed you from Mr. Crerar."

You see apparently Mr. Crerar's handing him that letter at the instance of Mr. Haney had done the work and had a good deal to do with the change of position of Sir Thomas White, together with Mr. Lash:—

"you thought it would be in the public interest to comply with our request, and that you would do so for the present, always reserving to yourself the fullest right to take any step, at any time, which you might think the public interest called for."

Now that is his mind on the 23rd of March. Let us trace what was done after that.

On the 25th March he writes to Mr. Lash, exhibit No. 84:—

“You clearly understand that I reserve to myself the fullest liberty to consult with the President of the Canadian Bankers Association or take any other step which I may deem to be in the public interest without further communication with Mr. Haney or yourself on the subject.”

He is beginning to get away from the position he took, to accede to the request of Mr. Lash and Mr. Haney, but he is still reserving his rights to call in the Bankers Association.

“I should like to have from you an assurance that interest upon the Frost account will not be taken into profits distributed to shareholders in the way of dividends.”

That was a very serious thing for Sir Thomas White, in my opinion. Sir Thomas knew that these profits had been taken in, previous statements apparently gave him to understand that the profits were being padded. I do not think I am using an expression which is incorrect when I say that.

“It would appear to me also that until the New Orleans situation is cleared it would be advisable to pursue a similar course respecting that account.”

So evidently he knew at that time that they had done the same thing with the New Orleans account.

Then Exhibit No. 86, on June 14th, 1916, Mr. Haney writes a letter to Sir Thomas White, and among other things he speaks of “the Toronto matter”, “the New Orleans matter” and “the British-Columbia matter”.

“our customer is paying interest in cash quarterly, and, while much of the debt may have to be carried until the termination of the war, it is, in the opinion of the Board, reasonably certain that no loss will accrue to the bank.”

He also points out:—

“On May 26th and 27th 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.”

His LORDSHIP: What date is that?

Mr. LEE: June 14th, 1916. There is nothing between that and March of any moment.

His LORDSHIP: In the first place Mr. Lash gives the assurance that Sir Thomas White asked for under date of March 28th, and Mr. Haney the Vice-President writes Mr. Crerar on April 3rd.

Mr. LEE: Then Sir Thomas White writes a letter on June 19th to Mr. Haney, he notes the progress which has been made with respect to the accounts. After that, Sir Thomas seems to have gone to sleep. The file probably got lost. He forgot it anyway.

The bank's condition was not brought to his attention any more, or if it was there is nothing on the files, nor is there any evidence that from June 19th, 1916, for a period of over two years, during which period the evidence of Mr. Clarkson and Mr. Edwards shows that money of the depositors was being taken to pay dividends to the shareholders and the directors. That ends the chapter with Sir Thomas White up to 1918.

Then along comes one of the responsible officers, Mr. Machaffie, who had been appointed Assistant to the Vice-President, and who was also to make a thorough investigation with Mr. Haney of the affairs of the bank. In this interval Mr. Machaffie has been supplemented by Mr. Haney whom he calls the Dictator in one of his letters, has been removed from the service of the bank, as well as Mr. Kennedy, Mr. Adair and Mr. Hase. Now there was a danger signal hanging out all the time during all this process going on in 1916 and 1915. Then the light went out, the oil got short, but in 1918 along come someone to trim the lamp. Mr. Machaffie, this responsible officer, writes to Sir Thomas White from Oakville on August 29, 1918. Of all the communications in this whole correspondence I am inclined to believe that this is one of the most important, the letter of a man who was trying, together with Mr. Crerar and these other gentlemen who had done noble work up to this time, to do his best to save this institution. Notwithstanding his treatment by the President, whom he was brought from Winnipeg to assist and give his counsel to, and notwithstanding the fact that in giving that assistance—he had given the best that was in him, the long service in the Merchants Bank and the Bank of B.N.A. and this bank, but Mr. Raney, an untried man, an ordinary man of business, undertook to dismiss him, notwithstanding what he had promised to do and what Mr. Lash had promised Sir Thomas White, that an investigation would be made by Mr. Machaffie and Mr. Haney, but from the evidence it appears that no such investigation was ever made. Sir Thomas White seems to have lost all track of that correspondence, he does not seem to have called for this investigation of Mr. Machaffie and the President, at any rate he never got it, nor did he even ask Mr. Machaffie whether it was made.

What is this communication:—

“Oakville, Ont., August 29th, 1918.

Dear Sir Thomas:—Referring to the report of James Fisher, K.C., to you on February 1916, and to a conversation with the writer in December of that year; at that time there seemed some hope of selling a substantial portion of the British Columbia timber held in the A. C. Frost account, to a pulp company, this sale however did not materialize; this situation therefore is that the dividends for the years ending May 1916 and May 1917 were based on the addition of interest to doubtful accounts,—”

If that statement of Mr. Machaffie's is true he was accusing these Directors of doing something contrary to law, of taking our money and with that money paying shareholders' dividends that they were not entitled to receive. He goes on;—

“—in each year some 30 per cent more than amount of dividend being added to the Frost account alone—dividend for year ended May 1918 was based on the anticipation of a profit in a British Columbia ship-building enterprise, in which the bank is to receive 25 per cent of the profit, the balance being divided between M. J. Haney, President, C. A. Barnard a Director, and J. F. M. Stewart, a personal friend of Mr. Haney's. In this connection a considerable amount of the bank's funds is locked up.

In view of the foregoing it seems evident that the actual cash disbursed in dividends during the three years under review was furnished by the increase in deposits.—”

Now there is a definite statement of fact. If Sir Thomas White had any conception that it was coming from a responsible man who had been in the service of the bank and knew of what he spoke, any sane man, any man

occupying the high position of Minister of Finance in this country, should have felt "If any of those statements are true I must immediately order a competent outside investigation."

He goes on to say:—

"The total amount written up in the Frost account over the purchase price of the timber, if added to the amount of capital stock carried by the bank, would account for the entire capital.

Section 153 of the Bank Act is of course violated, Head Office officials unwilling to share the guilt are obliged to get out; since matters were reported to you the following gentleman have had to resign:

Mr. Kennedy, Toronto Manager.

Mr. Adair, Supervisor.

Mr. Hase, Supervisor.

Mr. Machaffie, Assistant to President.

The shareholders' auditor, who was the late Col. Mason's selection, is not, I am told, a Chartered Accountant, nor a trained banker; the position of important matters is concealed from the Board, and consequently the public are denied that measure of protection contemplated by Parliament at Section 58 of the Bank Act.

Transactions in which Mr. Haney and his friend have a personal interest were becoming rather frequent, and in some cases the outcome was disastrous to the bank.

This lack of disinterestedness on the part of Mr. Haney, coupled with the fact that much important information is withheld from Mr. Lash, seems to justify the conclusion that the arrangement made by you with these two gentlemen does not afford the public an adequate measure of protection."

What did Sir Thomas do on receiving that? He sent a copy of it to the Board. He acknowledged receipt of it in Exhibit No. 89, said it would have his attention. On September 4, 1918, he wrote a letter to Mr. Lash referring to this and said:—

"I regard the matter as of the utmost public importance, and it is my intention to have a thorough investigation made through the Bankers Association or otherwise."

He has changed his mind since March 20, 1916, this is a new thing, a new charge. He dismissed the other charges as not worthy of getting an outside investigation upon, but "this is a very serious matter and I have got to do something and I am going to have an investigation through the Bankers Association." Let us see what he did.

Mr. Lash writes him on September 6th, page 180, and says:

*Re Home Bank*

"MY DEAR SIR THOMAS: I am in receipt of yours of the 4th enclosing copy of a letter which you received from Mr. Machaffie. I have sent it to Mr. Haney and have asked him for an interview. I have to be out of the City till the middle of next week. On my return the matter will receive my immediate attention."

Then on September 12th he writes to Sir Thomas, Exhibit No. 92, and among other things he says:—

"I presume the matter can stand until his return," meaning Mr. Haney.

"I told you that the profits of last year were quite sufficient to pay the dividend without crediting unpaid interest as profits."

In view of the evidence given here by both Mr. Clarkson and Mr. Edwards that statement was not true.

“My last interview with Mr. Haney, relating to Home Bank affairs, showed a decided improvement in the condition.”

I have no doubt at all, and I trust your lordship will not misunderstand me as to that, that Mr. Lash believed it to be true. But could Sir Thomas, in view of these statements that were made, believe that he himself should not have been somewhat suspicious, having regard to the fact that he knew that they had been padding these accounts, the Frost and New Orleans accounts and others, and when he gets new facts of this nature from a responsible officer should he not have said, “These danger signals are becoming too many, I will pull up the train”? That should have been his position. What did he do? He sent a copy of this to the bank’s board. A month or so afterward,—it does not matter how much deposits might have been taken in the meantime, the ambulance is not called, deposits are taken in for nearly six weeks,—but on the 29th October the Board sees fit to make a reply, and among other things what do they say? In politics sometimes it may be a good thing to abuse the other fellow, someone may believe it; so they proceed in the most expeditious manner to say:

“The Board feels that no good purpose would be served by entering into Mr. Machaffie’s reasons for interfering in this bank’s affairs.”

HIS LORDSHIP: Will you tell me your views of an intervening letter. What about that letter of October 16, Exhibit No. 125? Evidently Mr. Lash was enclosing a draft of the Board’s statement asking Mr. Haney to look it over.

MR. LEE: It is the framing up of what the Board are going to tell Sir Thomas White, I presume.

HIS LORDSHIP: Will you read it over?

“TORONTO, October 16, 1918.

M. J. HANEY, Esq.,

Care of The Home Bank, Toronto.

DEAR MR. HANEY,—Will you please consider carefully the enclosed draft of the statement of your Board of Directors in compliance with Sir Thomas White’s request *re* Machaffie letter. I think you had better discuss it with the General Manager, so as to make sure that the facts which are within his knowledge, and which appears in the books, are correctly stated. The information as to the New Orleans situation I received from Mr. Barnard when I was last in Montreal. I told him that a copy of the proposed reply of the Board would be sent to him for consideration so that he might see that the facts were correctly stated, and make any suggestions which occurred to him before the Board met.”

Now take that sentence, what does that mean? Does it not mean that it never was before the Board?

MR. LEE: It had not been before the Board at that time.

HIS LORDSHIP: Who prepared it?

MR. LEE: Mr. Lash.

HIS LORDSHIP: No, the report.

MR. LEE: The report I presume was also prepared by Mr. Lash.

HIS LORDSHIP: I just wanted your view about it. I find it difficult to explain.

MR. LEE: Although it was sent by Mr. Haney the President I have not the slightest doubt it was prepared by Mr. Lash. He prepared a draft, he then sent a copy to Mr. Barnard because there were certain facts mentioned in reference to the New Orleans situation, then—

"Will you please send a copy to Mr. Barnard. I leave it for you to decide about discussing it with other members of the Board before the meeting. Sir Thomas White is still in the West but he will likely be back in a week or so and as I will be away for ten days, from Saturday of this week, I would like to have the meeting of the Board called for some day not later than Friday of this week, that is if you want me on hand at the time.

I enclose three copies of the draft."

Now the presumption is very strong that the man who prepared the draft, engrossed it after it had been revised by the members of the Board, that is the way I take it.

His LORDSHIP: You see this draft is signed as being submitted by Mr. Haney himself.

Mr. LEE: Yes, acting for the Board, that is the Board's statement to Sir Thomas in answer to Mr. Machaffie's charge.

His LORDSHIP: I was trying to see if you could help me to a decision as to who it was that prepared that statement.

Mr. REID: In the sixth line "The information as to the New Orleans situation I received from Mr. Barnard when I was last in Montreal. "That would look as though Mr. Lash had knowledge of what was in the report.

His LORDSHIP: Well I do not think we can get much farther ahead. I read that two or three times. I thought you might have some definite view about it.

Mr. LEE: Well I am very definite about this feature; the report was prepared by Mr. Lash, drafted from information he received from General Mason and Mr. Haney. That draft copy was sent to Mr. Barnard because they wanted to see that the statements in reference to the New Orleans situation were correct, because Barnard had the best information and was interested in that matter. It then goes before the Board and the Board itself amended this report.

His LORDSHIP: You see it was not too late even at that time, the end of 1918, to save a great loss, at least it is open to the argument that if Sir Thomas White had known the truth at that time he would have taken steps to see that the loss did not occur. Now whoever prepared this report and sent it forward may bear some responsibility. I was just wondering if you could put your hand on anything more definite than what I saw there and what Mr. Reid suggests as to that.

Mr. LEE: I do not think there is anything that has been given in evidence, I am trying to keep to the evidence and draw my deductions as fairly as I can, but there is no doubt in my mind that Mr. Lash prepared this report, that the draft report went before the Board, because at the top it says:—

"Mr. Haney submitted to the meeting a report to the Minister of Finance, to be sent to the Minister on behalf of the Board, and this report after consideration and amendment was unanimously adopted by the Board in the form following, and the President was authorized and instructed to forward copy of this report to Mr. Lash, with instructions to have same forwarded to the Minister."

That is, before the Board's report goes to the Minister, Mr. Lash has the report. So it seems to me that the man who prepared that report and the Board that amended it were the people who have the responsibility of sending this to the Minister; Mr. Lash and every member of that Board who was present at that meeting or who knew anything about it must take the responsibility.

Now what do they say:—

"The Minister of Finance in his letter to Mr. Lash asks that the matter may be taken up with the Board of Directors and a report



prepared dealing with the several charges made. The Minister adds, "It is my intention to have a thorough investigation made through the Bankers' Association or otherwise; before taking this step, however, I wish to have a reply from Mr. Hancy and his board."

Then on page 183, as I was going on when we digressed:—

"The Board feels that no good purpose would be served by entering into Mr. Machaffie's reasons for interfering in this bank's affairs. The papers and correspondence with, and relating to Mr. Machaffie, and to the claims which he made against the bank because he was not appointed general manager as he expected to be, are open for the inspection of the minister, should he wish to see them. They will probably afford the reason for Mr. Machaffie's present action which the board thinks is not impartial or actuated by consideration for the public interests."

What I say is, whether they were actuated by the public interest or any other interest, it became the bounden duty of Sir Thomas White, wherever he received the information from, if that information was founded upon fact it was his duty in conserving the assets of this bank and looking after the welfare of its depositors, when that danger signal was thrown out to make a proper inquiry at that stage. Then he goes on:—

"As the Minister of Finance seems to have placed more reliance upon Mr. Machaffie's letter and statements than the board thinks they are worthy of, and to remove the wrong impression which that letter has evidently created, and on account of the importance of the matter, the board feel that a reference to the position of the bank as directed and managed two and a half years ago, and to its present position, is called for.

"In the early part of 1916, certain representations upon the position of the bank had been made to the Minister of Finance, and he expressed at that time the intention to have an investigation made through the Bankers' Association or otherwise.

"Mr. Hancy, now president of the bank, had joined the board of directors shortly before these representations had been made. On his suggestion the then board retained Mr. Z. A. Lash, K.C., as counsel, and appointed the firm of Blake, Lash, Anglin & Cassels as solicitors.

"Owing to the disturbed condition of business and finances in Canada two and a half years ago, the board was of opinion that any investigation into the affairs of the bank by the Minister of Finance, or by the Canadian Bankers' Association, would be misunderstood, would cause a run upon the bank, and would compel it to close its doors, with all the injurious consequences which would result therefrom, not only to the bank itself but to its customers and to the public interests. The board did not then, and does not now fear the fullest investigation, but they do fear the consequence to the bank, its customers and the public, which would result from an investigation ordered by the minister through the Bankers' Association or otherwise.

"The Board recognized two and a half years ago, and now recognizes, the responsibility placed upon the Minister of Finance, with respect to the banking system of Canada, and if, after full consideration and hearing the representations of the bank, the minister should conclude that, notwithstanding the consequences referred to, he is called upon in the public interests to order an investigation the board, would, of course, submit and afford all assistance possible."

How nice it was of the board to say to Sir James White: "If you insist, Sir Thomas, why of course we will give you all the assistance possible; but

at the same time, please take our statements, absolutely unverified, not even by our inspectors"—because no inspection had been made of the head office, so far as I have been able to judge, since July, 1915, when Adair had made his inspection—"please take our statement; Machaffie is a man unworthy of confidence." Because that is what they mean although they don't say it. And then they go on to say, at the top of page 184:—

"The Minister of Finance said that, on the representations made to him, and in view of Mr. Haney's promise, he would not then order an investigation which might have the consequences referred to and he would rely upon Mr. Haney and Mr. Lash keeping him informed of any changes in the bank's position which would call for action on his part. That the minister has been justified in his position, and that Mr. Haney's promises have been fully kept will be made apparent by the statement which follows."

Well, the statement goes on and at page 185 they again refer to this man Machaffie and they say—and I am going to leave the statements contained in that letter to my colleague, Mr. Browning; he will deal with them in due course—

"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."

HIS LORDSHIP: I think that is a very plain inference.

Mr. LEE: I should have thought so.

Mr. SYMINGTON: I don't think it would be an inference at all, sir. Rather a direct statement.

Mr. LEE: However that may be, they say:

"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."

That statement, in the light of the evidence which has been given here, was an absolutely untrue statement. No dividends had been earned in 1916, or in 1917, if we believe the evidence. And there is a possibility, from what Mr. Adair said, that there was about the sum of \$8,000 earned in 1918, which might possibly have been applied in payment of dividends. I am speaking now from memory.

Mr. SYMINGTON: I think you are wrong in that.

Mr. LEE: However, let us take what they say:

"For the same reason which made the Board feel that an investigation into the affairs of the Bank by the Minister of Finance or by the Canadian Bankers' Association would be misunderstood and would cause a run upon the Bank, the Board felt that great responsibility devolved upon them with reference to payment or withholding of a dividend upon the Capital Stock.

After the most careful consideration, the conclusion was reached that it would be greatly in the interests of the Bank and enable the Board to carry out its determination to make the Bank successful, if the dividend, which for years has been paid upon the Stock, were continued, provided that it could be continued lawfully and without breach of any of the provisions of the Bank Act.

On each occasion when the declaration of a dividend was discussed, careful consideration was given to the question of the profits of the Bank, and, after being satisfied that sufficient profits were on hand, the dividend was declared and paid."

And then they set out what the net profits were. When Sir Thomas received that statement of the net profits for 1917, and the dividend had been paid, as we have seen, in 1917, and in 1918 their allegation as to profits, which was published also to their own shareholders, and what they had paid out in dividends, supposing he had investigated that bank from an independent source, supposing that he had been doing that duty which I conceive to have been his duty at that particular time—if it had never been his duty during 1916, regarding the Fisher letter—as I conceive it to be his duty at this time, that danger signal had gone higher in the sky, he was more aware now after this charge was made, together with the statements that had been obtained from within, if ever a duty devolved upon a Finance Minister in this country, it did at this time, to investigate what was said in reference to these two years. He did not need to go into all the affairs of the bank, but had he found that a statement contained in these two years was incorrect, then he could have had a full investigation of the affairs of the bank, and that would have led him, as a cautious man should have been led, to have said: "You have made misstatements to me; you have asked that an outside independent audit should not be made; I have acceded to that request; now further charges have been made against you as a Board; you have made further statements to me, Mr. Lash, and you the members, Mr. Haney and other gentlemen, of this Board; I have not much further confidence in you; I am going out"—as any sane reasonable business man would have done—"And I am becoming suspicious and I am going to see whether my suspicions are well founded or not." That is a position which I think a man of the great experience of Sir Thomas White should have taken; he should then have made an independent investigation of his own. But instead of that he seems to have swallowed the hook and the line and the sinker; he seems to have got it caught in both gills; and instead of him dragging them down to Ottawa and putting them through the threshing mill they simply draw him up and make him accept their statements, as a reasonable man should not. Now they go on and state:

"Mr. Machaffie's statement that section 153 of the Bank Act has been, or is being violated, is untrue, and his insinuation that he and three other officials whom he names, resigned from the service of the bank because they were unwilling to share the guilt, and others not named were "obliged to get out" or to resign because they were 'unwilling to share the guilt,' is untrue."

Now there is a definite statement of fact. One alleges that the statement that these gentlemen had to get out because they would not share the guilt is true. The other, the Board, alleges that it is untrue. Could he not, by a reasonable effort upon his part have made some investigation to find out, for instance first: whether Mr. Kennedy, an old servant of the bank, had left for any such reason? That would not have required very much investigation. And if he found that Mr. Machaffie's statement was true, he possibly might have put more confidence in Mr. Machaffie. But Mr. Machaffie goes further and makes other charges. Mr. Machaffie says he is told that the shareholders' auditor is not a chartered accountant or a trained banker. In answer to my learned friend Mr. Lafleur—and I am now speaking from memory—I am under the impression that Mr. Machaffie said that he had nothing to retract, although he had written that letter of retraction; that all these statements, in the light of further evidence, were practically true.

Mr. McLAUGHLIN: He never retracted anything contained in that letter. It was another letter that was not sent.

Mr. LEE: Well, this letter he did not retract.

Mr. LAFLUR: It was a letter that he had held.

Mr. SYMINGTON: There was no retraction of anything in this letter.

Mr. LEE: Not of this letter.

Now there is not a bit of evidence before you that the statement of Machaffie, made there, that the man who was the auditor of this bank was not a chartered accountant, was not correct; and I fully believe that to be a fact, although it is not in evidence before you, that he was not a chartered accountant and never had been one.

Mr. LAFLEUR: The report of Mr. Haney implies the truth of the allegation, that he was not a chartered accountant. He explains what he was, and that he was as good as a chartered accountant.

Mr. LEE: He says he is a gentleman. That is the first thing.

Mr. LAFLEUR: And that he is the bursar of a College.

Mr. LEE: And because he is the bursar of a College it is to be taken that he has a knowledge of finance.

Mr. SYMINGTON: His main point was that he had been approved of by the Department.

Mr. LEE: Well, it is the Department that I am going to find fault with.

Mr. SYMINGTON: Going to? or have?

Mr. McLAUGHLIN: Non-professional or lay services are never reliable.

Mr. LEE: At page 186:

"For the past seventeen years he has been, and still is, Bursar of Trinity College, and auditor for other institutions."

I do not know that the position of Bursar of Trinity College would add very much to his qualifications as an auditor of a bank. A College has a large number of students, it is true, and the Bursar has to see that the students are well provided for, that they get good meals and that their fees are paid regularly. I don't know that those duties would fit him particularly, for being the auditor of a bank. But it is said that he has been auditor for other institutions. The institutions are not specified. It might be that he had been the auditor for Kingston Penitentiary, for all we can tell. That is an institution.

"His name is included in the list of persons selected by the General Managers of banks under section 56 of the Bank Act."

I would like to know the names of these bankers, of the Canadian Bankers' Association, who select men who are not chartered accountants, to be the auditors of banks.

Mr. SYMINGTON: The Act was changed in consequence of this very thing.

Mr. LEE: Quite so. I have forgotten for the moment that this gentleman was a particular friend of one of the Directors, Sir Henry Pellatt; and that Sir Henry Pellatt, if my memory serves me rightly, was at one time a Director of this Bank; and I presume when Sir Henry Pellatt's fulfilment of his contracts with this bank was called to his attention, that probably he resigned from the Directorship. Is not that right? Let us see. I will take the last Exhibit. I do not like to make a statement unless I am sure that it is right, but I was under the impression that Sir Henry Pellatt had been a Director.

Mr. SYMINGTON: I do not think so. At least it is not shown in Mr. Edwards' report that he was a Director.

Mr. LEE: I am still under the impression that he was. However, I will verify that.

Mr. SYMINGTON: Mr. Edwards gives the original Directors' names, and all the changes that have been made.

Mr. LEE: I had forgotten that. I thought that Sir Henry had been on this Board for a period of two or three months, and subject to that, I will have it verified before the case is closed. But Mr. Haney goes on to say:—

"Deemed by them to be competent and eligible to be appointed auditor under the provisions of the Act, and he was not disapproved of by the Minister under the provisions of the Act."

By what Minister? By Sir Thomas White, it must have been. That year, I believe that these bank auditors at that time had to be approved every year, and if he was not disapproved of by the Minister, then he was approved of by the Minister, and therefore he was practically an appointee of this Finance Department, of which the Honourable Sir Thomas White was then the responsible Minister; and therefore he was subject to be removed by being taken off that list, and if he had been taken off that list then they would probably have got an auditor who would have looked after this bank's interests in a better way. Now they may say:—

“He was duly appointed by the shareholders at the annual meeting.”

But he could not have been duly appointed at a meeting of the shareholders if he had not been on the list approved by the Finance Department.

Mr. SYMINGTON: Not disapproved of. The language of the Act is quite clear. The Bankers' Association submits a list and unless the Minister disapproves of it, it is adopted. That was changed in 1913.

Mr. McLAUGHLIN: The law was changed, requiring the approval; but all the men who had been bank auditors before that, were approved of.

Mr. LEE: What I am quarrelling with is, that if this statement of Machaffie's is true, he was being continued from 1913 on up to 1918, and during 1918, although this is called to the responsible Minister's attention, up to the time at which Sir Thomas resigned from this position, I don't see that he has been removed; I don't see any statement in this evidence here that Sir Thomas made any investigation in reference to the qualifications of this man.

Now I trust that your lordship will not think that I am saying that because he was not a chartered accountant, he was not qualified. I do not know that. I suppose there are many men who are not chartered accountants who are just as good accountants as men who have received their degree. I do not agree with Mr. Machaffie up to that point, that because he was not a chartered accountant, he was not a competent man; but apparently there was some reason in Mr. Machaffie's mind—he, a trained banker, and probably one of the three trained bankers in this institution at that time, as he was, pointing out to the Minister that his responsibility was greatly increased; he was pointing out the fact. Here you have a banking institution, and you have no trained bankers; because, remember, Adair has gone; Kennedy has gone, Hase has gone; he himself has gone; you have no trained man in there to watch this situation. Now that was a very dangerous situation at that time. There had been an open switch; the train was running fast into the open switch. Sir Thomas, if he had been watching closely over that train, and those danger signals, would have been advised to have the audit which he had been threatening during 1916.

Then they go on to say:—

“The statement by Mr. Machaffie, that the position of important matters is concealed from the Board, is untrue.”

I do not desire to say anything before this Commission which would in any way hamper, or in any way injure, the fair and free trial of the gentlemen who are now under indictment; but if the statement of the President of that institution is true, then Machaffie's statement must have been untrue. If Machaffie's statement is true, then the statement of this Board is absolutely untrue; because they are totally contradictory.

Now it continues:—

“Machaffie's statement that the transactions in which Mr. Haney and his friends have a personal interest were becoming rather frequent, and that in some cases the outcome was disastrous to the bank, is untrue.”

I cannot recollect at this moment what the evidence upon that point is. My impression of the evidence is that Mr. Hancy at that time was engaged in certain speculations with the bank's money, loaned to one who afterwards became a Director of this bank. There is no evidence before us and therefore I cannot dwell long upon that line, and I do not desire, as I said, to hamper in any way the trial of these gentlemen.

Now the deposits are given for 1916; the gold and legal tender, and also a distinction is made with the year 1918. It seems to me that if Sir Thomas White, the Finance Minister, did not want to make a thorough investigation, as had been asked for on a previous occasion and as had been pointed out to him by Mr. Machaffie, he could at least have made an independent investigation to find out whether the statement contained here in 1916 of the deposits of the gold and legals, and of the condition of the liquid assets was correct and by that means he would have found out whether the statements in this statement were true. I am going to point out what he did do. The report goes on to tell Sir Thomas who Mr. Barnard was. I should have thought that by this time Sir Thomas would have known who Mr. Barnard was. I should have thought that he knew that he was a man who had been borrowing a large amount of money from the bank. I should have thought that he knew that he was also a Director of the bank. I should have thought that he knew who the other members were; Mr. Daly, Mr. Gough and Mr. O'Brien; and that Senator Macdonell was resigning; and that he personally knew Mr. Casey Wood, having been brought up very close to him. Now I should have thought, in all decency, man to man, even although the war was on, that when a man makes charges against another, and that other replies to them, that at least the person making the charges should have got a copy of the reply. Was there any reply made to Machaffie by Sir Thomas? No; except a very formal acknowledgement of his letter, contained in a few lines. I should have thought that in all fairness, which characterizes the ordinary business affairs of life, that Sir Thomas might at least have directed the bank officials to send Machaffie a copy of the statement which they made in reference to him. Because his charges were serious; he made them, I believe in the interest of the bank; he made them, as he said in his sworn testimony, when he had \$10,000 to lose in it; I should have thought that in all common decency Machaffie should have been requested to say whether these statements, contained in this report, were true or false. And in that feature of it I say that Sir Thomas White did not do his duty; he was recreant to the duty which was imposed upon him. It is true there was no legal obligation on him to do it; it is true that he could exercise his own discretion about the matter; but I should have thought that in all common courtesy he would have sent a statement because had he sent a statement Machaffie would have had the right of reply. Instead of that Machaffie does not know what they were saying about him; they might have lied all over the lot about him; he knows nothing about it; Sir Thomas does know, and he does not say anything more.

Then on October 31 Sir Thomas writes to Mr. Lash in these words. Exhibit 97, page 187.

"It is stated in the Board's report that no unpaid interest upon account No. 3 or other inactive accounts has been credited to profits since May 31, 1917. This would seem to imply that for many years interest has been added to principal of accounts which were not capable of liquidation or reduction and that such added interest is therefore now represented as part of the Bank's capital or reserve in its public statements. As the note circulation of the Bank is dependent upon its paid-up capital, and as the other Banks of Canada are guarantors of this circulation, it appears to me to be a matter of importance both to this

Department and to the Banks that the capital of the Bank should represent substantial assets. 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."

Now my lord what does the letter mean? Must it not mean only one thing? Must it not mean that Sir Thomas White himself did not believe the truth of those assertions which were contained in Mr. Haney's statement of October 29th? Could it mean anything else? He points out in reference to the note circulation and he says a serious question arises as to whether the true position should not be declared. The true position of what? Surely it must have been the bank. Surely he had suspicions at that time that that statement that they were trying to put over him was untrue, or he would not have written any such letter. I cannot get anything further out of that clause. Probably my learned friends when they are discussing it, may.

Mr. SYMINGTON: The first sentence in the third paragraph I think explains it.

Mr. LEE: The first sentence in the third paragraph is:

"It is stated in the Board's report that no unpaid interest upon account number 3 or other inactive accounts has been credited to profits since May 31st, 1917."

That is the clause. I cannot see that that explains it.

Mr. SYMINGTON: It implies that for many years it has been added to principal; therefore it should now be written off.

Mr. LEE: It should now be written off, but it means to say that they are not disclosing to him the true position of the bank at that time when they are sending him this statement on the other page, showing the difference between 1916 and 1918. At least that is the way I take it.

Then apparently they forget the whole thing again, because on the 23rd December, 1918, Mr. Lash is in receipt of a letter from Sir Thomas, in the following words: Exhibit No. 99.

"Some weeks ago, I wrote you asking for information from the Home Bank as to certain accounts. I shall be glad if you will make enquiry and inform me when I may expect a reply. There would seem to be no good reason for the delay which is taking place in furnishing this information."

Then Mr. Lash writes him on Decembre 26th and says among other things:—

"I am in receipt of yours of 23rd."

then following down:—

"I confess that the matter passed out of my mind and I did not make enquiries about it."

Then on December 27th, Exhibit No. 101, Sir Thomas writes to Mr. Lash and says:—

"Thanks for yours of the 26th instant. It would not appear to me that Mr. Haney's absence should occasion delay in furnishing me with the information desired which can be easily compiled by any official of the bank. Please inform the Board that I desire the information requested by me to be furnished at an early date."

They are still hanging back. What is the purpose? Could not Sir Thomas then consider what the purpose was? Then we come down to Exhibit No. 105 and we get this letter written on the 25th January. During all this time apparently Sir Thomas has not got the information that he was asking for; but on the 25th he gets this letter from Mr. Lash. It is at page 191 and refers to the Pellatt, Frost and New Orleans accounts, and includes an analysis. Then he says:—

“No interest charge to this account remains unpaid; on the contrary all interest has been paid and the principal has been reduced.”

I presume he is referring to the Pellatt account. Then he goes on, page 192:—

“Two members of the Board personally went to British Columbia and went through the limits and got information as to other sales.”

That statement, I have no hesitation in saying, in view of Mr. Crerar's evidence—and it is the only evidence we have here, because Mr. Haney did not turn up to give his evidence—was absolutely untrue. I am not saying that Mr. Lash was making an untrue statement. Far from it. Far be it from me to say that. But these gentlemen did not get through the limits. What did they do? I think Mr. Crerar told us what they did.

Mr. SYMINGTON: There is no question about it.

Mr. LEE: They took a nice trip to Vancouver.

Mr. SYMINGTON: Are they the members referred to? And is that the trip referred to?

Mr. LEE: I take it that that was the only investigation.

Mr. SYMINGTON: That was two years before.

Mr. LEE: I did not know that there was any question about it. Your lordship will have to take it subject to that, that I am referring to the fact that this was the trip made by Mr. Haney and Mr. Crerar to British Columbia. My friend Mr. Browning says to me, they only made the one trip.

Mr. SYMINGTON: Those two only made the one trip. There is no question about that; but they never went through the limits.

Mr. LEE: Have we any evidence here that anybody else, members of the Board, went through the limits?

Mr. SYMINGTON: No, we have not.

Mr. LEE: Then I am probably right in assuming that they are referring to Mr. Crerar and Mr. Haney.

Mr. SYMINGTON: I do not know whether you can make that assumption. We have no evidence of it.

Mr. LEE: I am going to assume it for the present. Mr. Crerar says he got Lacy's report, but Lacy was not a member of the Board. Then if that statement is true, Mr. Lash made a misstatement of fact to Sir Thomas. And it could have been easily ascertained whether they had gone through the limits. Mr. Lash no doubt might have said in his own mind that they went through the limits, because they had Lacy's report, and they had various cruiser's reports who had gone through the limits. But that is not what he said. He said these two members of the Board personally went to British Columbia and went through the limits and that they got information as to other sales.

And then he goes on and he refers to the interest. He says that “the total interest up to 31st November 1918 was charged to these accounts. A memo enclosed with the statements explains the reason for this.”

But had not Sir Thomas White already drawn their attention to the fact that they must not do that? Now here is another danger signal. These people in the face of Sir Thomas' statement not to do what he had told them not



to do, and which they had no legal right to do, boldly say, or Mr. Lash says: You will see that the total interest up to 31st November 1918 was charged to these accounts. And then he goes on further down, on page 192:

"I am instructed that the Board of the bank is convinced that outside of the liability of the Prudential Company the securities now held will realize for the bank the full amount of its claim, leaving the liability of the Prudential to the gods."

I am afraid, my lord, that the management of this bank was seriously pulling the wool over the eyes of their own Counsel, and in the honesty of purpose of Counsel Mr. Lash was transmitting that to Sir Thomas, and Sir Thomas was—I will not use the word "gullible", that would not be right, because he was a man who was trained in banking, in a banking institution, and I do not think men who have the experience of Sir Thomas are gullible; I do not know; I am trying to imagine what influence Mr. Lash's mind had over the mind of Sir Thomas White, that after all these statements are made to him, that a proper investigation as requested by Directors, by officers of the bank, was not made at this time.

HIS WORSHIP: Mr. Lee, I suppose you have quite a little still to urge upon me?

MR. LEE: Yes, I have to go through Mr. Crerar's and Mr. Machaffi's evidence.

HIS LORDSHIP: Then you cannot finish tonight. We will adjourn until ten o'clock tomorrow morning.

Proceedings stand adjourned at 4.40 p.m., Thursday, 15th May, 1924, until 10 a.m., Friday, 16th May, 1924.