

21-1924/1-31-15

Copy 1.

ROYAL COMMISSION

TO ENQUIRE INTO AND REPORT UPON AFFAIRS OF THE

HOME BANK OF CANADA

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

COMMISSIONER:

The Honourable Chief Justice McKeown

OTTAWA, FRIDAY, MAY 16, 1924

No. 15

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 Friday, the 16th 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, when we concluded last evening I was speaking in reference to Exhibit No. 106. In Exhibit No. 105, at the end of the page, Mr. Lash said to Sir Thomas White:—

“I feel that the conclusion which you arrived at, to allow the new management to make these efforts, was a wise one in the public interest, and I feel equally sure that a continuation of this attitude on your part will be further justified by the result.”

I have no doubt in my mind that Mr. Lash was quite serious when he wrote that letter, and especially those words: “and I feel equally sure that a continuation of this attitude on your part will be further justified by the result.”

Now we pass on to Exhibit No. 107. While passing may I call your lordship's attention to page 204, copy of a ledger statement requested by the Minister on the Pellatt demand loans. I call your lordship's attention to the debts of \$337,840 on principal on September 12th, October 25th and November 24th.

Then Exhibit No. 107 (194) in reference to the Prudential loan, a statement of the indebtedness as of November 15, 1918, your lordship will see there \$1,665,428.96 owing, and they state that unpaid interest amounting to \$688,966.42 in the account of the A. C. Frost Company, and \$234,995.11 in the New Orleans account has been added to principal and taken into profits. If Sir Thomas White ever got that statement, and I think he did, there was a direct statement from the officers of this bank that they had been padding these accounts. Such a statement should have directed his mind to the idea that now these gentlemen were coming out into the open, they were beginning to tell the truth. He should have had the idea in his mind that “although I have been fooled up to the present time I can be fooled no longer, and the proper idea is that I must have an independent audit and investigation of these accounts.”

If he turns over the next page or two of this statement that he is said to have received, on page 200, he will find standing out in large letters that nobody could fail to see the words:—

“Interest: Taken into profits, \$688,966.42.

Not taken into profits, \$253,737.54.”

If up to this time the Honourable Minister of Finance had been sleeping at the switch, here was printed in large letters for him or any one to see who might have desired to see, this fact that they had padded these statements to the extent of \$688,966.42. Might not that have been an indication to his mind that this Board of Directors, this management that he had put his confidence in, the leading counsel who had been Assistant Minister of Justice in the Government of this country in whom we had the greatest confidence, had sent him a statement and on that statement it appears that they had taken into profits \$688,966 of unpaid interest? It seems to me that, if the Honourable Minister of Finance, directing the affairs of this country, had been looking over the situation seriously it would have drawn his mind to this fact, that somebody was being seriously fooled. And who was that somebody? That somebody was the gentleman in whom Sir Thomas White had the greatest confidence.

Now we pass on to Exhibit No. 132 in which we find the position of this bank. On the 29th of February, 1916, we find a letter written by Mr. Lash to Mr. Fisher and a copy of this letter was I think, included in the Fisher file—if I am not speaking by the record my learned friends will correct me. In this letter there had been drawn to the attention of these Western Directors by Mr. Lash the fact that he at a certain period of time had given very serious consideration to the situation, and that within one month and seven days after the statements had been made by these Western Directors he wrote this letter, in which he said:—

“The more I consider the bank’s position, even assuming that every account will ultimately be collected in full, the more doubtful I feel as to the possibility of its continuing in business.”

Mr. McLAUGHLIN: This letter was not before the Minister.

Mr. SYMINGTON: No, it was not before the Minister.

Mr. LEE: I think my learned friends are speaking correctly when they say this letter was not before the Minister; but this letter was before the Western Directors, and particularly was it before Mr. Crerar, one of those Directors, and it is for that purpose that I am reading this letter.

Mr. SYMINGTON: There is no evidence that Mr. Crerar knew of it; it was Mr. Fisher.

Mr. LEE: I think so. Mr. Lash wrote this letter to Mr. Fisher and I think in the evidence of Mr. Crerar it will be found that he admits that he saw it. In this letter he says:—

“The more I consider the bank’s position, even assuming that every account will ultimately be collected in full, the more doubtful I feel as to the possibility of its continuing in business. The amount locked up indefinitely in four large accounts, is probably three times the paid-up capital, and more than half the total deposits; and if anything should take place which would cause a comparatively small percentage of the depositors to ask for their money, I do not see how the bank could, without assistance from outside, continue with open doors.”

If we believe Mr. Lash, and I have not any reason to doubt what he says, he told Sir Thomas:—

“I told Sir Thomas that my main object, since I learned the outline of what the bank’s position was, has been to bring about a position

which, if the worst happened, would result in liquidation with open doors. This can only be brought about by the assistance of other banks, and I want definite instructions from the Board as to how far I may go in this direction in consultation with Sir Thomas White, for he is now an essential element in the situation, which cannot be disregarded. He told me, and I could not dispute the correctness of his position, that, after you, on behalf of the Winnipeg Directors, had submitted to him information which, to say the very least, was very disturbing, the responsibility was thrown upon him, which he could not avoid."—

and Sir Thomas was perfectly right at that time—

"And which would not be discharged because those who had invited his intervention might desire him to withhold further action. The statements relating to the three accounts about which he asked for information, were sent to him on the 22nd or 23rd."

Now I pass on to page 310 and there I think you will find what Sir Thomas says was in his mind at that time. I have no quarrel with the Honourable the Minister of Finance upon that question, because nobody could know better than he what was in his mind at that time, but I am going to try to draw to your lordship's mind what I think should have been in his mind at that time, other than the reasons alleged by himself. And what does he say was in his mind? At page 310 Sir Thomas White said:—

"In refraining from bringing the matter to the attention of the Bankers' Association I was influenced by three things:—

"(1) The harmonizing of the Board and its statements as to the position and prospects of the bank. That was quite influential with me. They were all content and all agreed on Mr. Haney, and wanted to go ahead. The Western Directors had practically withdrawn their later request.

"(2) Crerar's letter on behalf of Western Directors. That is the second influence on my mind, a direct influence.

"(3) Reluctance to take action which might bring down a bank which while it might have to face a loss on one or more accounts, appeared to be solvent and to have its capital intact, because its Board had said that it would be found that its capital was intact, in their opinion."

Now we get a few more reasons from the Honourable the Minister of Finance, at page 318 where he says:—

"I was of the opinion at that time that there was a quarrel between Mr. Haney and Mr. Machaffie; that was suggested by Mr. Lash's letter and by the terms of this resolution of the Board. I am only giving my view at that time."

I am wondering what right the Honourable the Minister of Finance had to assume that the statements that had been made to him by the Directors of this bank, in whom by this time I should assume that he had lost a certain amount of his confidence, that the reason for his not paying more attention to the statements of Machaffie, why he should have assumed the fact that there was a quarrel between Machaffie and Haney. Had he not found that a great number of Machaffie's statements were true? Had he not reason to believe that that danger signal which had been given at various times was still burning brightly? Had he not reason to believe that that danger signal which he had been given, was becoming brighter? And that that flag, which he looked upon as white in 1916 had become red? These are the reasons which should have prompted his mind, and not the statement that is made that "I was of the opinion at that time that there was a quarrel between Mr. Haney and Mr. Machaffie"? What did the Honourable the Minister of Finance do to find out whether that statement,

contained in that letter, was true? It is true that he wrote a letter to Mr. Machaffie acknowledging the receipt of his communication, but other than that I have been unable to find any communication from the Honourable the Minister of Finance to Mr. Machaffie; other than that letter of courtesy which one business man directs to another when he acknowledges the receipt of his letter. I would have thought that in all ordinary decency of public life, that after he had received this statement, he would have sent a copy of it to Mr. Machaffie. That he would have said to Machaffie: You have been an honourable servant of this bank, you have served them faithfully for a long number of years, you have been in the service of the Bank of British North America, and of the Merchants' Bank for a long number of years, and in the service of this bank, and common decency requires me to send you, Machaffie, who have given me these ideas about this bank, these danger signals, you have stated to me and made certain charges; I should have thought that in all decency this Minister of Finance would have said to Mr. Machaffie: here is a copy of the answer which the Directors of this bank make to your charges. Did the Honourable the Minister of Finance do that? No, he did not. He seems to have forgotten all about the assistant to the President and he pays very little if any attention to him afterwards. But we find a further reason of Sir Thomas when we come to look at page 319, in that communication which is referred to as Exhibit 97 and which appears at page 187. He said:—

“If as a matter of fact there is abundance of security so that the principal and the interest which is added is well secured, my view was then and is now that it would properly come into earnings.”

That is a part of Sir Thomas White's statement. I had thought it was a part of the letter of October 31st, 1918, and I beg your lordship's pardon if I gave you that impression. It is a part of Sir Thomas White's evidence appearing at page 319. Passing on to page 321 Sir Thomas says:—

“Wrong inferences have been drawn from it, I think inadvertently and I think it will help to clear up the situation. This is an interview which I gave the press. I may say that in the interviews, which I gave to the press from time to time, because, as I regarded it, I was very unfairly attacked, I had not before me the papers, the documents, the records, which were in the Finance Department, and which down to the present time have been there.”

Far be it from me, my lord, to attack Sir Thomas White or any other Minister unfairly; but I don't think that I would be properly doing my duty to my clients unless I drew to your lordship's attention these various danger signals which Sir Thomas White had during all this time. My learned leader, in his remarks to your lordship at various times, considered that up to a certain period of time Sir Thomas White, rightly or wrongly, during the progress of these negotiations and of these talks with the Directors of the bank, had some reason for considering that there were difficulties upon this Board and that he as a wise Minister, having regard to all considerations, and having regard to the interests of the people of Canada, and being the guardian, so to speak, of the moneys in all the banks of Canada, that he should in doing his duty bring to the attention of this Board of Directors such a feeling that everybody would get along very nicely. It is true I think that he did his duty up to that time. I don't think that there is any great quarrel with the Honourable the Minister of Finance up to that time, but when Mr. Machaffie makes these serious charges, which the Minister admits were most serious, it strikes me, my lord,—in the light of course of after event—that the Honourable the Minister of Finance, who had been placed as the custodian and the guardian of the moneys of the people of this country, should not have been bamboozled, should not have been fooled

by any statement of Mr. Haney, the President of this bank, or by any statements that Mr. Machaffie or Mr. Lash or any other member of the Board of Directors made to him. Sir Thomas was placed in this position. Why? He was placed in this position because of the training which he had received in financial matters. He was placed in this position because for a long period of time he had been the manager of a large and influential trust company in the City of Toronto. He had been placed in this position because he was the associate of this very same Mr. Lash who had himself been the assistant to the Minister of Justice in a former Government of this country. The people of this country may make mistakes sometimes. Barnum once said, that you can fool all the people half the time, and half the people all the time, but you cannot fool all the people all the time. Sir Thomas was fooled half of the time. My learned friend beside me says "all the time." I won't go that far. I have too much consideration for the Honourable the Minister of Finance's keen legal acumen. He was fooled half the time. But in 1918 up to the time at which he went out of office, which was the balance of his term, he should not have been fooled the other half of the time. The people of this country are looking to the Minister of Finance as the guardian of their rights. They are not looking to the Premier of this country as the guardian of their rights in this respect; they are not looking to the Premier of this country as guarding their money; they are looking to the Minister of Finance to guard their money and the question that arises before your lordship is: did he do his duty, honestly, fairly, as he should have known it at that time?

We have made certain allegations on behalf of these depositors. The question arises now: Have we proved them? I have submitted to your lordship, and my learned leader has, all the evidence I think that fairly bears on this matter regarding the matter as Sir Thomas White's mind was. Sir Thomas came to this position with a very splendid record. He left it with a splendid record.

I trust that no words I may utter to your lordship will sully that record, a fine type of a man, a splendid citizen, but I must say, in the light of after events, wanting, in my opinion, in that common, ordinary judgment, which men expect other men will have holding such a high, honourable and responsible position as the Honourable Minister of Finance did during these years.

It is quite true, and more honour to the Honourable Minister, Mr. White, that he was working seventeen to eighteen hours a day during that period. Tremendous difficulties were being presented to him every day. He was being called upon the telephone all hours of the night. Sometimes I wonder how he got through. Sometimes I wonder that he is able to be with us to-day, and to tell of those terrible difficulties which were confronting this small country of nine millions of people carrying 450,000 men on its roll fighting battles day by day during those terrible and perilous years. Sometimes I wonder that the physique of Sir Thomas ever stood the strain, and, up to 1918, I do not wonder at all that the little Home Bank was forgotten in the midst of all the trials and tribulations which Sir Thomas must have had.

The learned Government counsel, Mr. Lafleur, was exceedingly kind, I thought, to Mr. Machaffie. Some people would have thought, and possibly it might have touched your lordship's mind, that Mr. Machaffie, when he wrote this letter making a certain retraction, took away much of the force and effect which it might have had in your lordship's mind. Machaffie was a responsible official of this bank. He had done his work faithfully and well, and honestly. No man can point his finger at Machaffie and say that he was not an honourable and true official of this bank.

I am not here to defend Machaffie's conduct, but this I am here to say, and that is that I wish in all the banking institutions of this country it could be heralded from one end of the country to the other that we had men of the

sterling and true type of Machaffie, to draw the attention of the men in high places in banks and banking institutions the same as Machaffie drew to the attention of the Honourable Minister of Finance at this time.

It is true Machaffie had left the service of this bank, it is true that Mahaffie had had some little difficulties with the President of this bank. Why would not any man have had difficulties with Mr. Haney under circumstances where he is drawing to the attention of Mr. Haney the fact that he, Mr. Haney, is doing something which he, Machaffie, as a banker, could not agree with? And what was he doing? Mr. Haney was doing things that in his, Machaffie's, opinion were speculative. Mr. Haney was, in my opinion—and I am subject to correction—doing things which no sound banker could agree with. Speculations? Yes. Charges that he made? Yes. Why? Machaffie did not care particularly whether he was Manager of this bank or not. It is true that they appointed him, but this mind, this strong mind, as is stated in one letter, of Mr. Haney, seems to have overpowered and chloroformed two gentlemen in this bank. And who were these gentlemen? First, Mr. Lash, and then, through Mr. Lash, Sir Thomas White.

Now, if I have stated the evidence correctly, and if I have not overdrawn the force and effect of this evidence in your lordship's mind, and if you believe the statements, subject to what the Honourable Minister of Finance has to say about the correspondence, I submit to your lordship that, after 1918, it matters not what was in Sir Thomas White's mind before that, that he was, after 1918, after the receipt of Machaffie's letter, guilty of a great dereliction of duty to the people of this country, and to the patrons of this bank in particular. We cannot get away from that, much as we like him and love him. We have got to place these facts before the people of this country.

He spoke, I think in one communication, of the affairs of this country being rosy. Of course they were. They were painted with that brush, and the canvas was prepared where everything was made lovely for Sir Thomas, and for the bank, and for the poor people of this country to put in another ten millions of their hard-earned savings, which they had striven and toiled for for many years.

Mr. SYMINGTON: There was a decrease after 1918.

Mr. LEE: From the time in June of 1916 up to 1918 there had been an increase in the deposits of this bank. Sir Thomas was aware that new branches were being established; twenty-eight of them had been established, twenty-eight of them that took in three million and some odd thousand dollars up to the time at which this bank suspended. The old branches had been still taking in the money. It was "Bring it along boys, we will keep the darned thing going all the time on your deposits." That was about the position, as it looks to me, in the light of after events, but I want to try and pierce the mind of that Honourable Minister of Finance, who had not been put there just to be a lovely ornament. He had been put there because he was a sane, sound thinking business man. He had been put into that responsible position because he had been head of a very great Trust Company.

Sometimes politics may throw men into positions that they are not fitted for, but this was not the case, and when this war came on it was a grand thing to look out upon that horizon and to know that here we have at the helm of the Ship of State in this country a man who can twist and turn and carry the finances of this country upon his shoulders. We had that man. They say that when great crisis come in the affairs of nations that men are provided. Sir Thomas was provided for us when this war came on; he was a heavenly blessing sent to us, and, during that crisis, we worked him 16, 17 and 18 hours a day.

The people of this country will never know what they owe to Sir Thomas

White during all those terrible years of that war when those boys were giving up their lives on the fields of Flanders to protect this country. He was giving up his life, practically, in his office in the Parliament Buildings of this country, and had the war lasted long enough, notwithstanding his magnificent physique, he would probably have given up his life looking after the interests of this country.

These danger signals were drawn to his attention, the lights were hung high in the sky. He disregarded all those danger signals; he let the lever be opened, he did not throw on the emergency brake. When he looked at his gauge in his office, as he should have, he ought to have seen that the pressure here was up to 150 pounds. He should have seen that this bank was working overtime in taking the deposits of the poor people of this country. He should have seen that these deposits were increasing, and that the poor people's money was being taken, and that he had three or four danger signals which they did not know anything about and which he knew all about.

If he had not any power under the Bank Act, which I submit he will probably argue he had not, to close this bank, he, at least, might have given to those poor, innocent, suffering people, by way of the Press, some little glimmer of these danger signals facing him so that they might have had a danger signal to not put any more money into a bank which was tottering, which was shattered by reason of the actions of its Directors, and its management, over a large period of years.

If the people of this country are not to expect any better treatment of the banking system of this country than has been given to it by Sir Thomas White, then what I feel and fear is that the people of this country will lose all confidence in the banking system of this country, and when that period of time arrives God help the banking system of this country. But I have some confidence in the banking system of this country. I feel we have got a young country. The only thing required at the present time is work, and work steadily, but if you once establish in the minds of the people of this country that they have no confidence in the Ministers of Finance of this country, then that confidence which has been so steadily looked after by the bankers of this country for a period of eighty or ninety years, once lost, will take a long time to regain.

Your lordship might ask me "Are you not going to refer to the evidence of Sir Henry Drayton?" Sir Henry was also a Minister of Finance of this country. A greater responsibility rested upon him, in my opinion, than it did upon Sir Thomas White, and your lordship will ask me why? He had no war to contend with. He did not have to work nineteen hours a day as Sir Thomas had. He went on with his ordinary work, in his ordinary way, but, above all things, my lord, he had this advantage over Sir Thomas: He had the advantage of Sir Thomas' wisdom; he had the advantage of looking over the file that Sir Thomas had. That file was always in the Department of Finance. He had the benefit and the advantage of experience of having been the Crown Attorney of one of the largest counties in the Province of Ontario. He had the advantage of having been a counsel of the second largest city in the Dominion of Canada. He had brought to that position that ripe experience of a man who had been dealing with all classes of people for a long period of time.

Now, from a man of Sir Henry Drayton's experience, we expect more than possibly we did, or might have expected, from Mr. White when he assumed this position, and what could we expect from Sir Henry? We could expect, at least, after he had looked over the files of Sir Thomas, that he would have paid a little attention to those files. Did he do anything? Oh, yes. He sat down and he wrote some letters, like a famous statesman in the United States prior to the war, he wrote three or four letters, but still the money kept pouring in and pouring in, and the poor depositors' money was being taken every day.

And what was the first thing that he did? He went over Sir Thomas White's file. He read it carefully, and he must have come to some conclusion. I have been looking over the records of the evidence presented here for some time, and I have begun to wonder what this Honourable Minister of Finance ever did to earn his salary, so far as the Home Bank is concerned. A very honourable chap, a very honourable gentleman, but is that what the people of this country are paying Ministers of Finance for, to sit down and allow a ship which is steadily coming nearer the shoals and the rocks to go on those rocks and not try to prevent that ship from going on them? But that is what Sir Henry Drayton did. He allowed that ship to get nearer, and nearer, and nearer every day, and then when he went out of office he passed it on with a word to his successor, and he said "You will have to do something with the Home Bank just as I did with the Banque Internationale,"—where a loan of \$8,250,000 was made—and Mr. Fielding is left without the record of Sir Thomas White, and without the record of Sir Henry Drayton.

Let us look for a minute. Possibly he did something, and that I have forgotten to mention it to your lordship. Let us look for a minute and see what he did do. Oh, yes. We find that he wrote a letter on January 7, 1920. He addressed the following letter to Mr. Lash:—

"DEAR MR. LASH,—The file of correspondence between yourself and my predecessor in the above connection has been placed before me. It was done that date apparently."

MR. SYMINGTON: That is an interpolation.

MR. LEF: "The last communication from you was dated January 25, 1919, in which you reported upon the position of the following accounts:"

Imagine from January, 1919, the bank carrying on business, taking in the people's money day after day, deposits increasing, and the Minister of Finance of this country admits in his letter "I have not done anything for pretty near a year." Two Ministers of Finance in that responsible position, and that, for a year, nothing had been done by either of these gentlemen watching over, guarding, the moneys of these poor depositors. He says in the letter:—

"The last communication from you was dated January 25, 1919, in which you reported upon the position of the following accounts:—

1. Pellatt.
2. A. C. Frost & Co., Western Lumber, etc.
3. New Orleans.

I shall be greatly obliged if you will let me have a report indicating the present situation as to these accounts and what progress was made during the past year."

Then Mr. Lash, unfortunately, got ill, and then Sir Henry writes another letter to his son, and Mr. Miller Lash replies to him in those words:—

"I happen to know a good deal about the accounts to which you refer as I have had to do with them in connection with solicitor's work for the bank and also my father was in the habit of talking the Home Bank matters over with me as they arose, so that I know what has taken place in the past and also know his views and the principles upon which he reported to your predecessor.

"I am telling you this as it may be that you would wish to ask me to look further into these accounts and to write you about them, somewhat in the same manner as my father has previously done. This is, of course, a matter for you to decide.

"I may say that of my own knowledge the position of these three accounts and of the Bank generally has been much improved during 1919.

"I shall be glad to hear from you if you desire me to do anything in the matter."

And this is the answer he gets back to Mr. Miller Lash, on the 22nd January, 1920. Among other things, the Honourable Minister of Finance, Mr. Drayton, says:—

"Don't trouble at all about the Home Bank matter. I note your assurance that the position of the three accounts in question and of the bank generally has been much improved in 1919."

And then, on the 26th of April, at page 121 of the record, Mr. White, who evidently is not quite satisfied, there is something bothering him in his mind yet; his conscience is not satisfied that he has done his full duty to the people of Canada, and he, in his kindness and consideration, still feels that something yet can be done, writes this letter in answer to a letter of his successor:—

My DEAR HARRY,—I have yours of the 23rd instant enclosing report of the Superintendent of Insurance with reference to a transaction between the Home Bank and the Prudential Trust Company."

Among other things, he goes on:—

"My advice is to summon the President and General Manager of the Home Bank to Ottawa and discuss with them not only this matter but the other loans dealt with in my correspondence with them three or four years ago. The memorandum from the Superintendent of Insurance will be your justification. There is not only this transaction but two others which should be received. The most important one is that relating to a timber limit in British Columbia, which was acquired by the Bank in connection with an imprudent loan which it had made."

Sir Thomas, after he had left office some time, still has the feeling that if he can do anything to bolster up those accounts, or this matter, that he will still do it, and he writes to his successor about this very imprudent loan.

This was the third danger signal which had been held out to these Finance Ministers, two during the time when Sir Thomas White was there, and this was the first real one that had been held out to Mr. Drayton.

And then we come along, and we find that Mr. Drayton writes to the President of the bank on the 26th of April, at page 122, and says:—

"DEAR MR. DALY,—I understand that my predecessor took up from time to time, with your bank, the position of three of its important accounts—" and so on.

And then, among other things, he said:—

"The matter has just come to my attention on account of a memorandum submitted to me by the Superintendent of Insurance as to the Prudential Trust Company. The Insurance Department, as you know, administers the Trust and Loan Companies Act in addition to the Insurance Act.

"I should like very much if you, or the General Manager, would bring down verified statements as to the present position of these accounts—"

And Mr. Daly, as President of this Bank then, came down and discussed them with Sir Henry Drayton, and then Sir Henry, on the 25th of May, received a further letter, at page 124, from Mr. Miller Lash, in which he states:—

"The Bank has given me full information about the present position and I shall be very glad if it would suit you to have it done in that way, to go to see you at some convenient time."

Then Sir Henry Drayton, sitting idly back in his office chair, looks this thing all over and says:—

“Why, this bank is in a very splendid position,”

and he writes back this letter of May 26th:—

“MY DEAR MILLER,—Thanks for yours of 25th instant re Home Bank accounts. In the meantime would you secure and let me have certified copies of the three accounts indicating the changes which have occurred since they were last submitted by your father as at November 30th, 1918.”

Sir Henry Drayton knew at that time nothing of the changes in these accounts for three years. I draw your lordship's attention to this fact, that he had the advantage of seeing and reading and digesting the file of Sir Thomas White. Sir Thomas knew some real things about this bank, this new Minister of Finance seems never to have known anything about it, or to have cared a whitte what became of the bank or whether the depositors lost all their money during his time of office.

Then on page 127 he says:—

“As I said before I saw Mr. Miller Lash and got all the information I could. I don't think there is anything more than I have already given. It indicated an improved position,—”

Can your lordship imagine the position of Sir Henry Drayton, I am trying to bring that to your lordship's mind; he was a man trained in law, one who had been the City's Counsel and Crown Attorney of one of the largest Provinces, of Ontario, the man selected by an influential party of this country to run the finances of the country; yet for a period of three years, and having the advantage of Sir Thomas White's file to read and digest, and knowing all the local conditions that Sir Thomas White knew, because he had lived in the city of Toronto for a period of more than forty years, he knew the people who were on this Board of Directors, there were no local circumstances unknown to him, but what does he do? He sits down and writes two or three letters to “My Dear Miller.” This man so far forgets the duties of his position as to let this bank get closer to the rocks, and at the time he leaves office the only thing he says to his successor is, “You will have to do the same with the Home Bank as I did with the Banque Nationale.” As Sir Henry Drayton was in this box that day I began to wonder if the people of this country knew very much of some of the gentlemen who at various times, and in various Governments, have been in office. I wonder that men should so far forget the duties of their office as to know nothing about a bank that was in such a condition as this for a period of two and a half or three years, a bank well known among the Bankers' Association to be pretty near the rocks. No danger signals are sent out to the poor depositors nor to the poor men who were buying stock in the Northwest, some of whom bought it within ten days of the wreck.

Then what do we find? When Mr. Fielding came into office he had not the advantage of perusing the files of Sir Thomas White or Sir Henry Drayton, but he had or should have had the file which was left in the Finance Department and was there for his perusal during all the time he was in office and right up to the present time.

So we have proved a trinity of negatives; Sir Thomas White, Sir Henry Drayton and the Hon. Mr. Fielding. What did he do, did he do anything? Mr. Fielding apparently forgot that there ever was a Home Bank, he does not seem to have written any letter, and so far as the report which has been brought down with the correspondence in the House shows, I have not been able to find that

there were any communications given to Mr. Fielding in any way, nor have any communications gone out from Mr. Fielding to the officers of this defunct bank. I charge these three gentlemen with being parties to the wreck of this institution. I charge these gentlemen together that they by their united action with the Directors and Managers, wrecked this bank and lost our money.

What could have been done? I should think that in two years of office the Hon. Minister of Finance would at least have written to find out the condition of this matter. If he was too pressed with business he at least might have sent his deputy, having regard to the fact that all the time there was the old complaint in the Finance Department of Mr. Fisher and Mr. Crerar. But we cannot find in the files anything at all, so we have to leave it. A man by his inaction can be guilty of negligence just as well as by his action. Sir Thomas White was very active, he wrote a lot of letters, gave it great consideration; Sir Henry Drayton did nothing, and Mr. Fielding did less. And so the ship plunged on and on the 23rd of August, 1923, smashed on the rocks, sixty thousand people lost their money, and some two thousand odd people are now saddled with double liability. Are these Finance Ministers coming back to give us our money by reason of their negligence? I do not see any of them, I have not received any cheques. That is the situation presented to your lordship. If my learned leader's idea is correct, and I submit it is, there are two horns to this dilemma. My learned leader said that during the force and stress of war work Sir Thomas White did a considerable amount of good work, I quite admit that he did. Sir Henry Drayton did nothing that could be considered as fulfilling the duties required of his high position, and as for Mr. Fielding,—Why it is rather a joke to think that a gentleman shall be placed in that position, with only sixteen or eighteen banks in this country to look after, and this bank be allowed to drift steadily and more surely all the time on to these shoals and rocks until the smash on the 23rd of August last.

Now I think it is only fair to the Honourable Minister of Finance to say that when the Honourable Prime Minister of this country was in the witness box he stated that the Honourable Minister of Finance took exception to what his predecessor had said in regard to his attention having been drawn to the Home Bank. But for the purpose of this investigation that makes no difference. I do not care whether it was drawn to his attention or not, I am not going to quarrel with Sir Henry Drayton or Mr. Fielding upon those matters. The result remains that we have lost our money, and it does not make any difference to me whether it is by the negligence of Sir Thomas White or of Sir Henry Drayton or of the Honourable Mr. Fielding, or the combined negligence of them all, the poor depositor has had in many cases his life's savings wiped out.

This bank was established in 1854 as the Toronto Savings Bank, and it continued taking the people's savings until at the end about sixty thousand people had about \$18,000,000 of deposits there, an average of say \$300 each, the hard earned savings of those poor people. We have in the town of Fernie a loss of about \$782,000 from the poor miners mostly, who could not work any more. Those poor men whose usefulness in the mines had passed had been saving for their old age, and suddenly all their savings were blotted out in the twinkling of an eye by the men who should have carefully guarded those savings. Who should have guarded them? The management looted the bank, I think your lordship will have to say that the Masons looted this bank, they have passed to the hereafter and I will not say more. But who helped them to do it? I say that men who are placed in such responsible positions in the Government of this country as to be made Ministers of Finance should have guarded carefully the savings of those poor miners, of the washwoman, the charwoman and the other people whose whole life's savings have been blotted out. The wrecks that have come to my own attention in this matter are most pitiable,

many people are now in eleemosynary institutions by reason of this bank failure. As one who has suffered by reason of this failure I am asking this Government for something that in my opinion I am entitled to get. Why? I am entitled to get it by reason of the negligence of its officers. I am coming to the people of Canada seeking what in common, ordinary decent justice I am entitled to, namely that the men who are put in public office shall at least do their duty by the people of this country. Have I reason to expect less? Governments are composed of men, men are human, Sir Thomas White at least tried to do his duty, I am afraid I cannot say as much for the other two occupants of that office. Sir Thomas tried to steer the ship off these shoals, but did the other gentlemen do so? I leave it for your lordship to say, in answering these questions that have been submitted in our petition, whether we have brought sufficient evidence from which a reasonable man could find that in 1915, 1916 and 1918 things were brought to the attention of the Minister of Finance which under ordinary circumstances, having regard to the surrounding conditions, that the war was on, large loans were being floated, men were being overworked and so on, have we proved sufficiently that under those extraordinary circumstances the interest of the depositors in this bank were guarded as carefully as they should have been? In putting this petition in I reserved my right to put in sufficient and further evidence that I might find, and what do we find? We find that this bank has not been wrecked wholly by the action of the Directors, not wholly by reason of the inaction of Sir Thomas White, but it has been wrecked by reason of the inaction of Sir Henry Drayton and the Honourable Mr. Fielding. If my deductions are correct, and I think they are, these three gentlemen are partially responsible for this wreck.

Now up to this moment I have not touched upon the actions of one of the Western Directors, the Honourable Mr. Crerar. Mr. Crerar came into the Union Government I believe about the beginning of 1919. I desire to give him very great credit for the decent and honourable way in which he gave his evidence. He is a man in whom I have a great deal of confidence, in watching the way he gave his evidence. Mr. Crerar is head of the United Grain Growers, and naturally desiring some assistance for his company, about 1908 he goes out to sell stock of this bank. To show his confidence in the bank his company buys 1,000 shares of stock at the top notch price, \$133.33, I do not think anyone ever paid a higher price. He goes along doing business with this bank and in the ordinary course of business induces his friends to buy its stock, to show his confidence he bought 66 shares himself. He finds that there is a little leak in the ship in 1915, and as a careful navigator of the United Grain Growers Company he desires to plug that pinhole, so he makes certain representations to the management. No attention was paid by General Mason, he is only a Western Director, only supposed to look after western matters, though he had all the responsibility pertaining to the position of Director of a bank. Messrs. Crerar and Pense and Kennedy felt that things were not going right, and it finally culminated in their going to their counsel Mr. Fisher and Mr. Fisher writing to the Minister of Finance. I am not going to dwell upon the actions of Mr. Crerar, up to a certain period he did noble service for the depositors and shareholders of this bank. When he went into this Government I should have thought, having regard to the condition in which he left the bank, that he would have said to these poor farmers of the west "Our company has sold its stock—"

Mr. SYMINGTON: It had not sold its stock then.

Mr. LEE:—"I have been requested to go into a pool at the instance of the President to hold the stock up to 80, I did not see fit, nor did our company see fit to go into that. I am going to see that nobody else buys stock in this institution, that this institution is not going to gull anybody else, our company has taken a loss of \$33,000, we have sold our thousand shares of stock and ceased

doing business with this bank, you farmers who have already bought it are not going to be fooled by buying more, those who have not bought are not going to be fooled by any representation that we are still stockholders. My fellow directors, like myself, have resigned, I am still your President and as such it is my duty to emblazon across the prairies the fact that I am not a Director of this bank, that I have sold my stock and the company of which you are members has sold its stock. Now gentlemen, you know as much as I do." I blame Mr. Crerar only in respect of what he did not do.

But what did they do? They sold their thousand shares of stock at \$100, I asked Mr. Crerar one question, if when that stock was sold to Mr. Daly there were any limitations put upon where the stock was to be resold, and he said no. It was peddled out to these very farmers who were members of this Grain Company—

Mr. SYMINGTON: There is no evidence of it.

Mr. LEE: There is no evidence here, but unfortunately I know too well that this bank sold its stock right up to within seven days before it failed and much of it was sold in the Prairie Provinces and British Columbia, long distances away from these gentlemen who were looting the bank. I say "looting", I do not want the word to be mis-applied, I use it in the sense of not paying attention to their duties as officers and Directors of this bank. Far be it from me that anything which I might address to your lordship should be taken as wishing to discredit any of the gentlemen who are on trial or under indictment. The law will deal with those gentlemen in its proper time. But this I can say, our money is gone, hundreds of poor women are in the hospitals to-day or suffering the pangs of starvation, from one branch in the City of Toronto, sixteen have already had to be sent to the House of Providence by reason of the failure of this bank. It is common knowledge that deaths have occurred, one of them right in my very presence at a depositors' meeting. And why? Because the men who should have done their duty honestly, fairly, fearlessly, did not do it. It matters not to me or to the depositors if these gentlemen stole not only all the money of the bank but took away the key of the outside door, but it does matter to us that we were led to believe that the banking system of Canada was the finest in the world. We place our deposits in these banks, are doing so still, and what security have we got? Nothing. The system is wrong, the system of the Finance Department which we are attacking as depositors. We are paying large sums of money as the people of this country to maintain that Department. You would have thought, the war being on or the after-war effects still existing, that there would have been someone at least would have given attention to this matter. No Minister is more than human. What do we employ as assistant, a Deputy Minister for? I should have thought that a Deputy was employed to draw to the attention of his Minister just such instances as this bank affords. We will have to have a cleaning up in the Finance Department of this country, the people are demanding it, the depositors in this bank will insist upon it, and if I can lend any little aid to that demand I shall certainly give it because we are determined that come weal or woe we are not going to have a lot of other people flimflammed in the manner that the depositors of this bank have been.

We have presented our petition to the Governor-General-in-Council believing that we will get justice, we have been sent to you the fountain of justice, and having produced the mass of evidence which we have produced, and I do not think my learned friends even if they so desired could controvert it, we feel that we have furnished the answer to these questions that have been referred to you, and that you, sir, will have to say that your answers are in favour of the

depositors and your recommendation to the Government of this country must be to reimburse us, because the Government of this country through the trinity of Finance Ministers by their inaction, helped the Directors of this bank to wreck the bank and lose our funds. I thank your lordship.

ARGUMENT BY MR. BROWNING, K.C.

Mr. Commissioner, you were good enough at the outset of the argument to state to counsel that they would be allowed the utmost latitude in the presentation of their case. I feel that my associates have dealt very fully with the facts as outlined in the petition, and on the evidence as brought before you they have argued strenuously, and in my opinion most effectively on behalf of the petitioner's claim. So there is really very little for me to say. However I wish to deal more particularly with questions four and five submitted to you, those questions being:—

“4. What effect would an audit under section 56A of the Bank Act, if made in 1915, 1916 and 1918, have had upon the conduct of the affairs of the said bank upon the position of the present depositors?”

5. What was the financial condition of the said Home Bank of Canada in the years 1915, 1916 and 1918 respectively, and what steps, if any, could have been taken by the Government to save the situation?”

I shall deal with those, having due regard to the importance of the case and the fact that we are here, not so much to plead with you or to argue with you, as to assist you in getting at the facts so that your report may be in accordance with those facts. In dealing with those questions, if I seem to overlap or repeat, I will certainly do my best to avoid troubling you unnecessarily or taking up the time of yourself and the counsel for the Government.

It might seem to the public that we are burdening the Court and taking up time unnecessarily, because the questions in themselves are not such that any great effort is necessary to enable one to discover the answer to them, but yet the results following upon the answers to those questions are so important, and so many people are affected not only by the findings you may make but the action that may later be taken by Parliament following your report, that I have no scruples in taking such time as may be necessary, though I promise to deal with the matter as shortly and clearly as possible.

I shall probably not have a further opportunity of appearing before this Commission as counsel, so I wish on behalf of my associates and myself to thank you for the courtesy you have displayed, for your fairness and consideration to ourselves at all times; and while we have not asked for or expected any favours from counsel for the Government, knowing their reputation and high standing as counsel we felt that we would at least get the courtesy which we have got. I am pleased to say we have received even more courtesy than we felt we were entitled to, and while they have not granted us any favours or assisted us in any way, it not being their province to do so, they have co-operated with us in our desire to bring before you as Commissioner the facts as they relate to this most unfortunate matter, the dealings of the Home Bank as between the Directors and the depositors, the conduct of the bank as between the Directors and the Government itself, and any other matters pertinent to the prayer of the petitioners and the questions asked. So while it may not be necessary to thank them, we do appreciate very much their assistance. And we in turn have tried honestly and earnestly to bring out the facts so that no one may be misled, so that the truth the whole truth and nothing but the truth should be before you, in order that the public and Parliament may know just what the facts of the case were.

With your permission, Mr. Commissioner, I will somewhat reverse the order of the questions. It seems to me the last question should be dealt with first, so I will deal with the financial condition of the Home Bank in 1916 and 1918, leaving out any reference to 1915 because the position then was practically the same as in 1916; and then with what steps could have been taken to save the situation, those being the words used in the last question; and third, what effect would an audit under section 56A, if made in 1915, 1916 and 1918, have had upon the conduct of the affairs of the bank.

As has been brought out in the evidence submitted, there can be no doubt that prior to May 1916, there were many disquieting conditions disclosed in the documents submitted by Mr. Fisher to the Minister of Finance on January 22nd, 1916. It was shown that the Banque Internationale had been bought with the stock of the Home Bank, the capital of the bank had practically been reduced or impaired by some 2,622 shares, those shares having been juggled between Mr. Barnard and the Home Bank and the Banque Internationale, a loan of \$400,000 having been made. The Frost matter had been brought to the attention of the Government and while I do not think that anything was shown which would have led the Government to imagine that that transaction was rather a purchase than a loan, it does appear from the evidence that the Directors or the Manager, someone at least in the bank, was not lending that money to Mr. Frost but was really buying the limits for speculative purposes. Mr. Edwards shows that the notes given by Frost were not attended to, they were left to run on past the time of maturity, in one case until the note was nearly barred by the Statute of Limitations, no attention was paid to the collection of interest, everything on the records shows that the bank considered itself the owner of those limits rather than a lender of money to Mr. Frost. The peculiar circumstances in connection with the loan were disclosed to the Government in the documents. You will recollect that the bank had certain Chicago and Milwaukee bonds which at the time of Mr. Frost's request for the loan were of no value, the Chicago & Milwaukee having gone into a Receivership. But Mr. Frost in his desire to get the limits, or obtain a loan from the bank, said to the bank, "I will take over those bonds from you at 90." Nothing appears on the records to show that he knew they were worthless, but the fact was common knowledge at the time, and he and the bank must have known well that in selling the bonds to him at 90 the bank was profiting and he was losing. Or that would have been the case if any money had been actually paid, but it was simply a book-keeping entry. Mr. Frost obtained from the bank a loan of approximately \$750,000, against that loan was charged the value of the bonds at 90, it does not help the bank one way or the other except as the receipt of the purchase price will show on their books as an asset. All this was in some measure disclosed or alluded to in the correspondence submitted by Mr. Fisher to the Minister in 1916.

The New Orleans situation which has been dwelt on at great length was also referred to, sufficiently at least to have put someone in the Department of Finance on enquiry. It was shown that they had loaned to someone some hundreds of thousands of dollars and that the security for the loan had vanished on May 31, 1916, the equity having been foreclosed, and the bank at that time had actually lost all the money advanced on the security of the New Orleans Railway, except possibly for a claim against the Prudential Trust Company for some \$500,000 which claim may have been of some legal effect but its value was very much in doubt and it has never been enforced or attempted to be enforced from that time until the present.

Then the attention of the Department was also called to the real estate subdivision loans made to Sir Henry Pellatt, said by the Auditor to be of a very disquieting nature. Mr. Adair's inspection report was made known to the

Minister, showing that of \$2,200,000 of call loans only about \$25,000 was properly margined, and the greater proportion of those call loans represented loans to Sir Henry Pellatt or his companies on real estate in Toronto or on stocks and bonds of companies promoted by him.

All these matters were disclosed, and there was a further matter which I am unable to find was disclosed, it was fairly large, yet not very large in comparison with the other accounts; in 1916 there was an outstanding account of \$116,000 to the King Shoe Company, which company at that time was insolvent and known to the Manager of the bank to be so. I do not say that this was brought to the attention of the Minister or referred to in the documents submitted by Mr. Fisher. But all the other larger accounts, together with the fact that dividends had been paid for some years, not out of profits but out of the depositors' money, as shown in the letter from the Minister first to Mr. Lash, in which he asks that the practice be discontinued, and the letter from Mr. Lash to the Minister assuring him that the practice will not continue were within his knowledge. It is evident from that that the Minister and the Department knew well that dividends were being improperly paid, that they could only be paid out of the money of the depositors, and that interest was being capitalized and added to overdue accounts and that this had been done for a number of years.

All these facts were outlined sufficiently to place the Minister on enquiry and cause him to wonder what was behind all this, what is the real trouble, is there any satisfactory explanation; if so I must get it. All this was before the Minister as early as January, 1916, and continued to be before him for the months following.

I do not know how your lordship's mind is constituted, but most of us have had experience from time to time of reading over important documents and imagining that we grasp the contents of those documents, but finding sometime afterward that in the burden of the hour and the pressure of other work we have really failed to grasp their purport, we read them by the eye but they did not penetrate the brain. My explanation is, and it seems to me a reasonable one under the circumstances, that while Sir Thomas was as my learned associate has said, giving himself night and day to the affairs of the country he really was not able to give to this matter the consideration it deserved. So it is to some extent rather a reflection upon Governments that when a big man is called upon to serve his country at such a time of crisis, adequate assistance is not given him. It may be that Sir Thomas was at fault, as many big men are at fault, in not relegating to his deputy or to other assistants the details of the office, leaving his mind free for matters of general policy, it may even be that he had not such a man to whom he could delegate such matters of detail, it may be the Government could not find a big man to assist him in the work; however that may be, as my learned leader has said and as has been repeated time and time again, Sir Thomas White, big man as he is, was only a man; he had his limitations; he could only do what one man could do within a given time. Admitting that he did all that he could; admitting that he gave of his very best; yet he could just give so much and no more; and so, having read those documents myself, being myself only an ordinary man and perhaps not in a position to understand the strength and weakness of the bigger men of the day, yet it seems to me I can sympathize with the position that Sir Thomas White was in at that time, and appreciate the fact that although he had all these documents before him and although he seemed to understand them, he really did not grasp the seriousness of them or of their contents, and if I have one criticism more than another to make of Sir Thomas White, it is this: that he finds it difficult if not impossible to place himself in the position he was in, in 1916. He does not appreciate his limitations at that time. He says: I worked so many hours a day; I was besieged with telephone calls after I got home; I

was pressed by night and by day; if Sir Thomas could only go a little further than that and just realize how difficult it must have been for him at that time to carry on; he says Mr. McLaughlin would not have been alive today if he had had to do what he did.

Mr. McLAUGHLIN: And yet, I am pretty tough.

Mr. BROWNING: Well, I don't know whether you are to be congratulated or not.

If he could only go back, with all his powers, and place himself in the position today that he was then, it seems to me that he would be forced to admit: "I did not give those documents the consideration that I would ordinarily have given them, the consideration that was their due." But it was at a time when such paramount interests as those of the necessity of saving our country—it did not matter much to the depositors of the Home Bank, what became of the bank, if the Germans had won the war; we would have lost everything—and one can readily imagine that the matter of 60,000 depositors or 10 or 15 millions of dollars would be small in comparison and would be placed in the back of Sir Thomas White's head, without any intent on his part to place it there, and without perhaps any distinct recollection on his part to-day that he did relegate it to the background of his mind or memory. But I do submit and I urge that the explanation is the only reasonable one of the circumstances, that Sir Thomas did not really grasp the contents of those documents or the seriousness of the case presented.

Further, as to the actual conditions in 1916; I have dealt with the large accounts and shown how they were brought to the attention of the Minister and how they indicated a condition of affairs which to say the least, in the words of the auditor, was embarrassing and disquieting, that is what Mr. Clarkson says, and there can be no question about the value of Mr. Clarkson's opinion. No particular evidence was given before you as to his standing in the community; but it is public knowledge that he is one of the outstanding financial men in the Dominion of Canada; he is recognized as such and he has been appointed by the Court one of the liquidators of this bank. He says that in 1916 a perusal of the documents would have placed an auditor in a very embarrassing position; he would at once have seen that the condition was serious; he would have felt it his duty to report at once to the Directors that many of the loans were not bankable loans, the security was not good, and that the bank was paying dividends out of moneys which they were not entitled to use in payment of dividends, and that generally speaking something should be done to remedy what someone, I am not sure whether it was Mr. Clarkson or Mr. Edwards, has termed a very vicious practice. Mr. Edwards agrees entirely with Mr. Clarkson and says that a very superficial examination, not extending over many days, perhaps a week in all, would have enabled anyone by an examination of the records at head office in 1916 to have known that something was seriously wrong with the bank, and that action should be taken if the bank's affairs were ever to be made right for the depositors, that something should be done to remedy the situation either by a change in the management or by the adoption of new practices and principles of administration. Mr. Edwards further says on page 513 that in May 1916 the bank had lost some \$3,700,000. That is merely an estimate of course because no one can say exactly what the loss would be. The timber limits might possibly be worth a good deal more than the accumulated principal and interest. The New Orleans Railway was gone. The shares in the Banque Internationale had gone. And in fairness to Mr. Edwards—who is also recognized as one of the leading accountants of the Dominion and is one of the Government's confidential advisers, he comes here in that capacity to assist you in getting at the facts of the case and laying before you the real circumstances in

connection therewith—he says that the bank had a shortage or was behind some \$3,700,000, against which at that time, as shown by the records, the paid-up capital amounted to \$1,946,639, and the reserve to \$300,000. So that leaving his estimate as being only equal to the paid-up capital and reserve, some \$2,200,000, there is no doubt that in the end of May, 1916, the bank had no surplus; whether it was insolvent or not it had no surplus with which to carry on business. Its capital had gone. Its reserve had gone. It had nothing with which to carry on but its name, good or bad, the reliance of the people throughout the country on the fact that it was a bank chartered by the Dominion of Canada, and further than that, its position was worse than at the time when it started, because it had lost the paid-up capital of its shareholders, it had lost the reserve which had been set aside for contingencies, and by all the tests laid down by Mr. Edwards the bank at that time was practically insolvent. He has stated two tests: first, the ability to pay liabilities out of readily realizable assets. And next, the earning capacity of the bank, which in time would enable it to carry on and redeem itself from the present situation in which it found itself. But the bank had no earning capacity at that time. For years it had not been earning money. It had been carried on at a loss. The dividends were being paid out of the money which was received from day to day from depositors, and the money which had been paid in by the shareholders being used in connection with the operations of the bank. In 1917 the profits of the bank, according to the annual statement, were \$217,000. Mr. Edwards says that instead of the bank having made a profit in that year of \$217,000 it made an actual loss of \$6,000. The dividends paid in that year were \$97,327.06, so that the bank carried on at a loss in that year, of some \$103,000. In 1918 we have the fact that the bank followed a certain course—I will qualify it later on—the bank, realizing that it was carrying on at a loss, making payments of dividends out of moneys of the depositors and not out of moneys actually earned, decided under Mr. Haney's direction, he being its de facto President, to embark on certain speculative enterprises, which were not banking enterprises in any sense of the word. No bank, the auditor says—and the report of the bank is an admission to that effect—should have indulged in such enterprises as were indulged in in the year 1918. A private citizen has a right to speculate with his own money if he wishes, even to the extent of disregarding the welfare of his wife and children, and they may have to suffer; the outside public cannot complain; it is none of their business; but here is a bank in 1918 dealing with trust funds and speculating with them in a most riotous way. Fortunately for them in that year—and unfortunately for the precedent established—they made enough money so that the profits for that year amounted to \$228,000 according to their showing. The actual profit however was only \$138,000, and the dividends paid were \$97,362.40, so that in that year they earned—if one may look upon these speculative profits as earnings—they made some \$41,000, as against a loss of \$103,000 in 1917. And of course we are not forgetting that we are not taking into account all the losses of the years previously to 1917, which as Mr. Edwards said, at the end of 1916 amounted to \$3,700,000. The question does not deal directly with the growing condition of the bank from 1916 to 1923, but as the Commission directed to your lordship, refers perhaps impliedly to that period, perhaps you will pardon my referring to the condition as it continued to be from 1916 to 1923. Mr. Clarkson says it was steadily growing worse. He states that losses were made on account of new advances amounting to some \$4,500,000. That the losses during that period in all amounted to \$7,500,000, and Mr. Edwards agreed with him in that respect. From year to year, with the exception possibly of 1918 and 1919, but from 1916 to 1923, the condition

of the bank was steadily growing worse, until at the end of 1923 it finds itself according to Mr. Clarkson, with a deficit of nine to ten million dollars; \$7,500,000 of which had been lost during the period 1916 to 1923; and according to Mr. Edwards, a shortage during that period of \$7,700,000. I have had the advantage of seeing Mr. Calvert's statement, Exhibit 171, and Mr. Clarkson's statement, Exhibit 131, which appears at page 251; and correcting one with the other, because Mr. Calvert's statement seems to be later than Mr. Clarkson's and corrects possibly the total amount owing to the depositors at the end of 1923—the assets as shown by those statements, outside of assets against which advances were made, amounted to \$6,618,402. Those were made up of realizable assets \$5,743,051. Nominal assets in bank parlance \$827,813. Mortgages held \$50,000. Real estate other than premises \$57,512. Fixtures and Furniture a nominal value of \$40,000. In all \$6,618,402. From that is to be deducted the preferred claims of \$2,095,426 leaving a balance of \$3,622,976. To that is to be added the assets on which advances were made, the value of which it is impossible to estimate, but which are placed by Mr. Clarkson, for the purpose of the statement at any rate, at a value equal to the amount owing on them, a total of \$9,229,997. Making altogether \$12,852,973 of assets to pay general claims. Against liabilities of \$16,695,722. Now a very superficial examination of the list of assets shows that it is impossible to place any valuation on them. Your lordship knows what value assets have in cases of assignment or liquidation. It may be that those timber limits, which at one time were thought by Mr. Frost to be so valuable, may again rise to his estimate of what they are worth. Sir Thomas does not go quite that far, but he and Mr. Clarkson say that of 25 cruisers going over those limits no two men will agree as to the value. It is impossible to tell. One can understand how near it is, knowing that they strike an average over say 100 acres of ground, they estimate how many feet there are in that acreage and then from that make their calculation of the whole number of feet in the limit. They never agree. Mr. Clarkson is clear on that point and Sir Thomas agrees with him. So that it is impossible for anyone, no matter how desirous he might be of saying what a timber limit was worth,—that is a large timber limit comprising hundreds of thousands of acres,—to say what the value would be. But Mr. Clarkson has gone carefully over the situation and no man is more competent than he, and he estimates the deficit to be \$9,000,000. That would leave between 40 and 45 cents available to creditors. He estimates 40 cents as possibly payable to creditors; and 25 cents having been paid by borrowing from the banks, there would be fifteen cents more payable over a period of two or three years. Just how far he makes an estimate of the cost of liquidation or of matters incidental to that, such as litigation, I do not know; but his estimate at any rate is that perhaps 40 cents would ultimately be payable to the creditors. Mr. Edwards estimates a shortage of \$7,700,000. Perhaps a little less than Mr. Clarkson. But Mr. Edwards is not clear whether in that \$7,700,000 is included the one million of Western loan losses or the costs of liquidation. In looking over the Exhibit 170, page 495—I just wish to bring it to your attention, as doubtless it has already been, in order that the difficulties that are apparent on a perusal of it may be seen, and perhaps some solution afforded, I must confess that I am unable to understand it. The statement shows that in 1916 the assets of the bank amounted to \$21,030,353. The liabilities to \$18,722,963. The deposits to \$10,028,000. In 1918 the assets amounted to \$28,270,766. The liabilities to \$25,842,000 and the deposits to \$14,988,422. Your lordship will remember that my learned friend Mr. Symington explained the sudden increase in liabilities in that year as due to the fact that the bank had borrowed heavily from the Department of Finance under the Finance Act; and that would doubtless explain the

increase in assets and the corresponding increase in liabilities, because whatever they had on hand they would have to pay for, unless represented by an increase in profit. At any rate between 1916 and 1918, while their liabilities had increased by \$7,000,000, their deposits had only increased by \$4,900,000. Going from 1918 to 1923, the assets in 1923 amount to \$27,434,709. One million less than in 1918. The liabilities are \$24,889,049. One million less than in 1918. While the deposits have increased from \$14,988,422 to \$19,295,735. An increase in the deposits of nearly \$5,000,000 and a decrease in the assets of nearly \$1,000,000. Where the depositors' money has gone in the interval, Mr. Clarkson and Mr. Edwards have endeavoured to explain, and someone will have to definitely find. I do not need to argue with your lordship as to whether or not these facts could have been readily ascertained by any one. The Minister of Finance, or any one in the Government, important as the matter was, could have found out as to the correctness of the statements made, by putting an accountant such as Mr. Edwards, or even a less skilled accountant, on the job. The Directors themselves could have found out if they wished to. Whether they knew or not I do not pretend to say. If they did know, they certainly did not disclose it to Mr. Lash. They do not appear to have disclosed to Mr. Lash their real knowledge. It may be that Mr. Mason, the late General Manager, was the only one who really did know of the situation. The others just implicitly followed him and relied on him and shut their eyes to what was going on, feeling that he was equal to the situation, although from the correspondence between the Western and the Eastern Directors, certainly the Eastern Directors should have known what the opinion of the Western Directors was of Mr. Mason and his unfitness to occupy the position of General Manager. Mr. Edwards states very positively that the statements made by Mr. Haney to the Minister, the statements made by Mr. Lash to the Minister, the statements made by the Directors in their reports to the Minister, the statements made by these gentlemen one to the other, the incorrectness of these, could all have been readily ascertained by a very superficial examination. It was not something which required a long time or very expert ability to find out; it was a matter of but a short time and ordinary ability.

The second question: what steps could have been taken to save the situation. That is on the one hand a very easy question to answer, and on the other a very difficult one. If one looks at the Act, you can find nothing in the Act which gives the Government power to intervene. There is no provision for them taking over the bank, or for them to compel a bank to close its doors. But yet that provision is implied all through the Act. The bank is obliged to furnish a report. Surely those reports must be with the idea that the Government is furnished with information as to the standing and position of the bank, and that having that information before it, it may do something that will have the effect of placing future depositors at least on notice. That there is some publicity possible, some action possible, although I am free to admit that the Act is silent on the matter of what it should be.

"The King can do no wrong" but he certainly can prevent a wrong being done, and in some way or other the Government could have found a way out of the difficulty. Sir Henry Drayton and Sir Thomas White are with me on that point. They would cut the Gordian knot, and I must confess that perhaps the rough and ready way in which they would have solved the difficulty was the way in which it might have been done, and perhaps should have been done. Sir Henry Drayton says at page 134 that if he had known the truth of the matter he would not have set to work in the way contemplated by the Act, but he would have said to the President of the Bank: "You have got to let me put a man quietly in your bank, and you have got to let him go ahead through the

whole thing, you will obey the orders of that man and then we will see what we can do for you."

His LORDSHIP: I remember that.

Mr. BROWNING: Sir Thomas White says at page 359: "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'" On page 360 he is asked "If you had known the true facts, you would have had it taken over?—A. Undoubtedly." In his letter he says:

"I would not have allowed a bank to fail during that time."

In effect he says that the money had to be raised and a financial crisis must not be brought about, and no matter what the cost, he would not have allowed a bank to fail, he would have done something, either finance it under the Finance Act, have compelled the Bankers' Association to take it over or through one or two other banks to take it over. Now to disregard Governmental red tape and to take the solution suggested by Sir Henry Drayton and Sir Thomas White was possible. It is a solution that could have been given effect to at the time. The answer to the second question, I submit therefore is that action could have been taken along the lines suggested by the two ex-Ministers, regardless of the absence of any provision in the Act as to the power of the Government to take the measures which the Ministers say they would have taken. At the risk of perhaps repeating what I am going to refer to later at a little greater length, I might also say that the Government could have taken the action, which was taken by Sir Thomas White, namely calling upon Mr. Jones, the auditor of the bank, under section 56A. That I will refer to a little later.

The next question which I am dealing with is: what effect would an audit if made under 56A of the Bank Act have had upon the conduct of the affairs of the bank so far as the present depositors are concerned?

Section 56A of the Bank Act—with which your lordship is of course familiar—is this:

"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."

There can be in my humble opinion, no question that under 56 and 56A an audit was contemplated. The words are: "select", "examine and inquire" and those taken together with the word "auditor" and with the preceding part of Section 56 clearly show that something more than a mere copy of the records, of the bank books, is what is required. That is a real selection, an examination, an investigation, an audit of the books of the bank. And this was called for by Sir Thomas.

Mr. Clarkson at page 283 says that the duties of an auditor are more than to add and subtract; he is to report as to values; satisfy himself as best he can as to whether or not the securities held by the institution whose books he is investigating are such as they purport to be. For instance if a security on a bank book is valued at \$500,000, and corresponding to it in the files of the bank are bonds which on the face of them appear to be \$500,000, the auditor's duty is to go back and find out whether the bonds are of an existing company, whether that company is solvent, whether those bonds are worth the par value or the amount outstanding against them. He is more than a mere adder and subtracter of figures; and having that in mind, the auditor appointed by the Minister should have made such a report, such an examination, and such an audit as the Minister if he had anything in contemplation—I assume that he had—asked for.

I am not going to deal with Mr. Jones' qualifications. They have already been dealt with by my friend Mr. Lee. But it would seem impossible for Mr. Jones as Bursar of Trinity College, a large institution, the duties in connection with which must have taken up a considerable part of his time, and he was also auditor and accountant for other institutions,—it must have been very difficult if not impossible for him to have conducted the duties of auditing the affairs of an institution such as the Home Bank at all satisfactorily and capably. And it may be that Mr. Jones was not capable, that he did not appreciate the responsibilities of his position, that he was not able to fulfil those duties as they should have been fulfilled. That seems to have been borne out by the evidence, and Mr. Edwards says at page 520 that Mr. Jones' reports were not audits in any sense of the term, they were simply copies of ledger entries, they were in no sense such audits as are contemplated by the Act or such as would be called for by anyone connected with any institution, who desires to find out exactly how that institution stands: is it solvent? Is it making money? How much money is it making? How much money is it losing? What kind of securities does it hold against the loans it has made? Nothing of that kind appears in Mr. Jones' report. He very casually dismisses the Minister's request; sends him a copy of the ledger entries as they refer to Frost, and turns over the other entries to the General Manager, who in turn transmits them to the Minister in the same way, taken apparently just from the books as the books stand, without any question or report as to the value of the securities or any question in connection with the loans or anything that would in any way answer the questions that if the Minister had been in a position to grasp the significance of them, must have been in his mind at that time. The question as to how the bank was paying dividends when it was not making any money; how it was carrying on in the face of increasing losses unless by virtue of increasing deposits? Any institution can carry on as long as people are feeding money into it every day; but there comes a day of reckoning as there did for this bank; but the auditor threw no light on the situation and did not assist the Minister in any way shape or form. The question as to what effect an audit would have had is further answered by the extracts I have given from the evidence of Sir Thomas White and Sir Henry Drayton where they tell what they could have done; that they could have put a man in the bank at once and closed it. If they had done that at that time the effect upon the then depositors would have been that they would have had a chance of getting their money out. Mr. Edwards says that the assets and liabilities were about equal. The shareholders might have been called upon for some part of their double liability but in any case there was a fighting chance for the then depositors; and as Mr. Edwards further says, there would have been no present depositors, the bank would either have been closed, or taken over by another bank. Something would have been done to warn anyone else from depositing money in the bank, so that after May 31st, 1916, or such time as action was taken by the Minister, or the public in some way placed on notice that that bank was not a safe bank with which to do business, depositors would have ceased doing business with that bank, with the result that from the date on which notice was given to the public, the date on which the merger took place, or the date on which the bank was taken over by another bank, the depositors would have stopped and at the present time there would be no depositors such as there now are. Of course we cannot prevent depositors gambling in other banks or in other ways. But we are only dealing with the present situation; what would have been the effect so far as the present depositors are concerned, if action had been taken under an audit in 1916?

Mr. LAFLEUR: Mr. Browning, do you say that there is evidence from Mr. Clarkson as to the likelihood of the then depositors being paid in full?

Mr. BROWNING: No, I say Mr. Edwards says that; I do not think Mr. Clarkson said it.

Mr. LAFLEUR: I was trying to find out if you had discovered anything that would guide us on that.

Mr. BROWNING: No, I looked carefully through Mr. Clarkson's evidence and he finds it impossible to place himself back in that position. Mr. Clarkson says that while interest had been added to interest and there undoubtedly was a loss at that time, yet he cannot say what the assets were. The conditions are so different now from what they were then that he cannot say, if the bank had been closed what would have been the result. But Mr. Edwards says that figuring up the losses, and counting as losses unpaid interest and the accumulation of interest on securities which have proved to be valueless, that at that time might have been known to be bad, at least so far as the additional security was concerned, because of the fact that no effort was being made by the borrowers to pay interest on their loans—Mr. Edwards says at that time there was a shortage of \$3,700,000.

Mr. McLAUGHLIN: \$3,370,000.

Mr. BROWNING: It is either \$3,370,000 or \$3,700,000.

Mr. McLAUGHLIN: It is \$3,370,000.

Mr. BROWNING: I am not so much concerned with the hundreds of thousands, I am more concerned with millions. It is over three millions, at least, and, as against that, there was a reserve of \$300,000, and paid-up capital of between one and two millions.

Mr. McLAUGHLIN: \$1,946,000.

His LORDSHIP: What page is that you are referring to?

Mr. BROWNING: Page 513. That is the page dealing with Mr. Edwards' evidence, showing that the shortage was \$3,370,000, and that the reserve and capital amounted to about \$2,200,000. So that, at that time, there was no question, at least from what Mr. Edwards says,—and we can only take such evidence as is before us—the situation was disquieting and embarrassing, so that there would be no doubt that, in 1916, the bank was not in a solvent condition which, in the light of subsequent events, has proved to be the case.

In connection with that question of what steps could have been taken under Section 56A, I would refer your lordship to page 367, Sir Thomas White's evidence:

“Q. But if you had sent an Auditor in he would have discovered then what we have discovered to-day?—A. If he was a good man he probably would, although I have not a great deal of confidence in auditors.”

Of course, he would have sent in no other man but a good man. Mr. White's idea of an auditor seems to differ from that of Mr. Clarkson's. Mr. Clarkson says an auditor's duty is to question securities. Mr. White's idea is that he has simply to do with figures, that he is a bookkeeper, essentially. But we cannot conceive Mr. White or anybody else placing any other than a good man in, and, if that had been done, he would have found the truth of what we have discovered to-day.

So that it is respectfully submitted that even under the Act as it is now, in view of the returns which are to be given to the Government, disregarding what Sir Thomas says he could have done, and disregarding what Sir Henry Drayton says he could have done, the Government had such notice as threw upon them the responsibility of taking some action of finding out what the difficulty was in order that the depositors might be saved the loss which they ultimately met.

There is room for argument as to what action was taken, the steps that were taken, and what steps, if any, were taken, the Minister on the one hand having started an inquiry, on the other hand not having followed it up, and one may,

supplementing perhaps adding to, what my learned associate Mr. Lee, has said, ask the question why action was not taken. Sir Thomas says, whether by way of justification or otherwise I find it difficult to imagine, that his discretion was unconditioned and unfettered, that is, he was not bound to act in any way. He could have disregarded the complaints made by the Western Directors; he could have disregarded all the warnings that were given to him, and could have said to these gentlemen, "I am Minister of the Crown, the Crown cannot be compelled to take action on the premises; I am free to act, or not to act, as the case may be, and apparently he takes that same stand to-day except in so far as it may be necessary to waive it in order to allow the right of examination and cross-examination, and it may be that in his argument, as hinted at, he will take that same stand that you, sir, as Commissioner have no jurisdiction to review the findings of the Finance Minister as a tribunal under the Act.

One can hardly imagine Sir Thomas seriously taking that stand, or any Government of which he was, or is, Finance Minister, taking that stand, deliberately saying in spite of the Act which gives the Minister power to investigate and call for an audit, which calls for certain returns to be made to the Government by the bank, notwithstanding all that, we will just look upon these returns as so much waste paper, and we will have nothing to do with these complaints. I do not think Sir Thomas will seriously argue such a claim, or urge that he was unfettered and unconditioned. He cannot possibly, carrying it to its logical conclusion, for the reason that he did not act in an unfettered or unconditioned way. He had some idea of the seriousness of the situation. As I said before, I do not think he grasped it at all, but he had some idea that there was something that required explanation, and so he writes to Mr. Jones a letter that might have been written by anybody really wanting to get at the facts. That letter is to be found at page 78 and reads as follows:

"For your information I enclose herewith copy of a letter I have to-day addressed to Hon. James Mason, President of the Home Bank, referring to a memorandum which has been officially filed with me respecting certain accounts of the Bank and requesting detailed information.

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

Sir Thomas White could not have been asked to do anything more than that, except that he might have made some inquiry as to Mr. Jones' qualifications. He might also have questioned whether someone other than Mr. Jones, some Auditor in the Department, could have gone in, but certainly it cannot be suggested that he should have done more than ask some capable person to make an audit under Section 56A. Certainly he did not consider himself unfettered and unconditioned in any way, and I submit it is too late in the day, or rather it is not an argument which should be made by him in view of his position at the time, and also in view of what he did.

On page 345, the question reads:

"You also decided that it would justify an investigation under Section 56A?—A. I asked the Auditor to make a report to me.

Q. That is under that section?—A. Yes, 56A, without doubt I proceeded under the Bank Act.

Q. Well, you might answer my question, you felt yourself justified in asking for a report under Section 56A of the Bank Act?—A. Yes, undoubtedly, and calling on the Board and on the Auditor."

Showing that, at that time, Sir Thomas had in mind the seriousness of the situation in all its ramifications.

I am going to urge, in view of his reputation for more than ordinary ability, that he certainly felt an audit was required, that an investigation should be further made, although, possibly, he did not go to the right sources for the information he desired.

With reference to the matter of an audit, my learned associate, Mr. Lee, has dealt with that, and I am not going to add to what he has said, except to emphasize this, that after a careful reading of all the correspondence between the Western Directors and the Minister of Finance, I have been unable to find any waiver on their part for a thorough investigation of some kind. They do say that they have explicit confidence in Mr. Lash, and in Mr. Haney, and they hope that, with the aid of these two gentlemen, under the direction of the Minister, such action will be taken as will lead to a disclosure of the affairs of the bank as they really exist, but at no time is there a suggestion on their part that an investigation, an inside investigation, should be waived. They asked, at first, for an outside investigation, they insist on it, but, later on, in pursuance of Mr. Lash's intimation that an outside audit would lead to serious results, and make the condition of the bank public, and precipitate a run; they fall in line with his request, but, as I say, at no time do they waive their desire for an audit, or that an investigation should take place by someone on the inside. All these records show that they are depending upon an investigation being carried on by someone under the direction of Mr. Haney and Mr. Macchaffie. The Minister seems to have thought that too. The records show that Mr. Haney was to make an investigation along with Macchaffie and also that Mr. Haney was to have such assistance as he needed in the making of that investigation.

But admitting for the moment, which I do not think requires to be admitted, that no such waiver had been made, we have before us the Minister's statement that even if the utmost harmony prevailed, if the Western and Eastern Directors had been united in agreeing that the bank's condition was all right, if the report as to the British Columbia timber limits by Messrs. Crerar and Haney had been satisfactory, the matter, having been brought to his attention, he was bound in the public interest to see it through. The public interest was paramount, according to his letters, and the fact that there was harmony between the Eastern and Western Directors must not be given effect to.

So it cannot be argued, in any way, that he failed to act because of the fact that the Western Directors had asked him so not to act.

It may be argued by someone appearing here on behalf of Sir Thomas White, or possibly by other counsel: How are the depositors in any worse condition than if no notice had been given? That is, supposing no notice had been given to the Government in 1916, the depositors had continued doing business with the bank as they had been doing business, in what worse position are they in to-day, or would they be in to-day than they actually are? Well, of course, the answer to that is that they are in the same position exactly. No action has followed, and, as far as they are concerned, it makes no difference to their losses whether the notice had been given or not.

But the facts are that it should make some difference. The Western Directors, as a section of the Directors, are trustees for the shareholders, perhaps more for the depositors than the shareholders, because the shareholders, in the light of after events, are investing their money in a somewhat speculative enterprise, and they elect the Directors, they are responsible for the men who are carrying on the business of the bank for them, but the poor depositors have no say in the matter. They have put their money blindly into the bank, and I respectfully submit that the Directors are trustees as much for the depositors, if not more, than they are for the shareholders. Of course, the depositors have no voice in the direction of the bank at all, they are simply putting their money in, leaving it to be dealt with by the Directors and management.

Notice was given by the Western Directors to the Government which created the bank, which kept it in business, which received notice monthly and yearly, and which, in 1923, renewed its charter. So that while anticipating an argument that may be made as to the position in which they would have been if no notice had been given as compared with the position in which they are, notice having been given, I submit that while their position is not actually different it should be different, as notice was given.

As a matter of fact, we cannot imagine what would have happened if no notice had been given, and a responsibility must attach to the persons to whom the notice was given.

In connection with that same enquiry, what steps, if any, could have been taken by the Government to save the situation, I think it is pertinent to consider whether or not the Minister knew the truth, and I approach this branch of the subject with considerable hesitation, because the Minister says he did not.

My learned associate, Mr. Lee, says he should have known, at least, after 1918. Mr. McLaughlin says that if he did not know it was because he was blinded, or deafened, by circumstances beyond his control overwhelming him, and that while he may have heard something that under ordinary circumstances would have placed him on his enquiry, and led him to search after the truth, and the actual ascertainment of the truth, he did not because of the great pressure of work that was then undertaken by him possibly know the truth, and the whole truth, regarding the matter.

I must confess that if there had been no war and counsel were addressing a Judge and Jury charging someone in whose employ Sir Thomas White was at the time, someone for whom Sir Thomas was not, within the scope of his duty, responsible, it would be argued, without any show of successful contradiction that he did know of all the circumstances as to the condition of the bank in 1916 and 1918. That is, he was placed in possession of such information as, with a little further research or inquiry, would have enabled him to know exactly how the bank stood at that time.

Was he negligent? That is a matter of opinion, of course, and it is difficult to judge of a man by present day conditions. He says he had implicit confidence in Mr. Lash, although he knew that Mr. Lash was counsel for the bank. He relied upon him. He says that he had known Mr. Haney for some considerable time, I think he said he was associated with him on the Hospital Board, and that some other gentlemen were elected to the Directorate by way of new blood, gentlemen who were known to him as men of standing in the community, and in 1918, at least, he thought that everything was all right.

I do submit, in addition to the argument made by my learned associate, Mr. Lee, and without in any way detracting from it, because he is, of course, emphasizing the theory of negligence which should be properly before you, sir, as Commissioner, in dealing with this matter, that notwithstanding what Sir Thomas says, at this time he could not appreciate the extent, if any, to which the war played as a factor in his mind. It was impossible at that time for him to get away from those conditions. No man working practically twenty-four hours, because he says he was working eighteen hours and receiving telephone calls after he got home, could tell, as I say, to what extent those conditions played as a factor in his mind. That alone would be sufficient excuse.

But we can all understand now, if we put ourselves back, what a weight was upon every man, what a weight was upon every father and every man in a public position at that time with the burdens of the day, and the men overseas, how all this must have engrossed Sir Thomas White's mind to the exclusion, practically, of everything else.

So I urge that, notwithstanding anything he may now say, and I feel that, perhaps, he is trying, unconsciously, to over-estimate his own strength, he was

at that time so possessed and engrossed with the affairs of State and national defence that he cannot be judged by present day standards.

It is true that this explanation is somewhat favourable to the depositors. We say that they were sacrificed at that time, consciously or unconsciously for the good of the public at large, the war being then on, and every effort being put forth for its successful prosecution, and now when the war is over we should, in turn, be given the consideration of the public at large who benefited by our sacrifice, and be recompensed for what we have suffered.

I have referred to the theory that the King can do no wrong, but in the Petition which was presented to His Excellency, the Governor-General-in-Council, and the Commission issued to you, this does not enter into consideration at all. The Government ask you to report upon the facts, they wish to know what they are, and then they are going to determine whether or not it will be proper to pay out of the public moneys an amount sufficient to indemnify the depositors. They won't take the position that the King can do no wrong, otherwise this Commission will be useless, or they will not take the position that they are in a different position from any Government, or any individual, who is being asked to pay a claim that has been sustained by reason of his failure, as being something which he should not have done, so that I do not need to deal with that.

Our claim is supported by the facts that were brought to the attention of the Government. The condition of the bank, in 1916, was brought to the attention of the Government, and that condition could have been ascertained either by the Minister of Finance, or by someone on his behalf, and that such condition was a serious one, and at this time would have been known as serious to anyone who examined the affairs of the bank. The Government found that such was the case, and as the result of the bank being allowed to carry on business from 1916 to 1923, the public were relying on the fact that the bank was chartered by the Government, the bank's charter being renewed in 1923. We assume then that the Government will do what is right, because the King, above all persons, is the one who will do the right, and right the wrong, and I think we, as depositors, can quite unhesitatingly leave it to Parliament to do what is proper to be done under the circumstances.

Then the answers to the questions, as disclosed by the evidence, are as follows:

In answer to the first question, representations were made to the Department of Finance in 1916 and 1918, not in 1915 because although the letters were written in the year 1915 they did not actually reach the Minister until 1916. Representations were made to the Minister in 1916 and 1918.

In 1918, the war was still at its height. Your lordship will quite remember how just about the time of Mr. Machaffie's letter we were then afraid that Germany might make its final rush and overwhelm us. The Minister's work was increased possibly as it never was before, otherwise how could he possibly have jumped to the conclusion that Machaffie was not to be trusted because of his being a dismissed employee. That is an idea that one might get into his mind, but he dismissed the complaints entirely because someone connected with the employment says "Don't pay any attention to this man, he has left our employment because he was unworthy of trust." How any one could possibly fail to go to the man and say to him we have heard such and such in answer to your communication is hard to understand. One cannot imagine Sir Thomas could have acted as he did in connection with that, knowing him as we do to be a man of the highest ability, and conscientious in his work, unless he was at that time overwhelmed and engrossed with the affairs of State.

So that the answer to the first question is that representations were made showing a state of affairs such as would have justified an inspection under Section 56A.

The same answer prevails as to number 2:

“Whether, if such representations were made, a state of affairs was revealed concerning the condition of the said bank such as would have justified an investigation under the powers conferred upon the Minister of Finance by Section 56A of the Bank Act.”

That such a state of affairs was revealed is clearly shown by the fact that an investigation was directed. Sir Thomas White asked Mr. Jones under Section 56A to make an investigation. No one was more competent than Sir Thomas at the time, or even now, as Minister of Finance, and certain matters were brought to his attention, and he thought an investigation should be made, and he directed that one be made, so that there can be very little doubt that a state of affairs was revealed concerning the condition of the bank such as would have justified an investigation.

It is true that between the time of the request made by the Minister to Mr. Jones for the inquiry and time of the official report by Mr. Jones, there is certain correspondence which, to some extent, indicates not exactly a weakening on the Minister's part but a lack of desire, or lack of need for the investigation or audit that he previously wanted. But I do not think the letters go that far. If they do, they do not excuse the Minister in any way. However, he had asked for it and Mr. Jones did not furnish it. If the Minister did not ask for it further, then that, of course, is another matter.

Then we come to the third question:

“What action, if any, was taken by the then Minister of Finance upon such representations as may have been made.”

That, I submit, is also clear on the evidence. Perhaps there is more inaction than action, but certainly there is action. There was the correspondence with the Directors, with Mr. Fisher. That could hardly be action, but at least it evidences a certain anxiety on his part to find out whether or not the statements made by them are in accordance with the facts, a desire to find out the real condition of the bank, an apprehension of the seriousness of his position as Finance Minister, and then he writes to Mr. Jones asking for an audit under 56A.

Now, that at least is a request in the direction of action. It is a desire for information, and while he does not get the information yet, as far as the Minister was concerned, he asked for it. Further than that I cannot find that any action was taken by him in 1916. From 1916 to 1918 no action appears to have been taken. In 1916 he had said to the Bank Directors, through Mr. Lash, you may carry on business. It is in the correspondence that Mr. MacHaffie and Mr. Hancy were to make an investigation of this bank, and I think, further, the Minister, if he had thought of it at all, must have understood that some report of that investigation was to have been presented to him. The Western Directors were asking for a voice in the management, and asking that they be consulted upon all important matters. It was before the Minister that this was to be done. The Western Directors were to be given a voice in the management of all important matters relating to the bank, and the further matter that no dividends were to be paid except out of moneys actually earned, particularly in connection with the Frost and the New Orleans account. That condition of affairs continues from 1916 to 1918.

Within six weeks after Mr. Lash's assurance dividends are paid out of interest unearned, and, with the exception of the Frost account, dividends continued to be paid to the end of the bank's history in the case of all large accounts, I think, at the instance of the Directors out of depositors' money, and the accrued interest capitalized and credited as profits.

The fourth question:

"What effect would an audit under Section 56A of the Bank Act, if made in 1915, 1916 and 1918, have had upon the conduct of the affairs of the said bank upon the position of the present depositors."

That question is answered by Mr. Edwards, that there would be no present depositors. The bank would have ceased doing business, would have been taken over by the Government; a condition of affairs would have been made public to such an extent that the public would have been warned, and there would have been no loss, so far as the bank is concerned, on the part of the present depositors.

Whether any of the present depositors were depositors in 1916 I do not know. The position of the two classes of depositors is, of course, somewhat different. Previous to 1916, no warning had been given. The depositors then had no claim on the Government. They relied at that time upon the Bank Act, and they relied upon the fact, rightly or wrongly, that the bank being chartered by the Government, the bank being obliged to furnish reports monthly and yearly, some obligation existed upon the Government to protect them at least so that they might know, or realize the safety of the moneys deposited by them with the bank, and, to that extent then, the depositors of 1916 are entitled to consideration.

(Adjourned at 1.10 p.m. until 2.30 p.m. on Friday, 16th May, 1924.)

AFTERNOON SESSION

OTTAWA, ONT.,
FRIDAY, 16th May, 1924.

Proceedings Resumed at 2.30 p.m.

ARGUMENT BY MR. BROWNING (continued)

Mr. Commissioner, I would like to qualify my argument as to question 3. In dealing with that I referred to the letter of the Minister as action under the request as made. To a certain extent it was, but it seems to me the question refers to what action was taken as bearing upon the depositors and the result to them, and in the face of the evidence submitted it must be admitted I think that no action actually was taken.

Then as to question 4. What effect would an audit under section 56A of the Bank Act, if made in 1915, 1916 and 1918 have had, such audit would undoubtedly have disclosed the condition of the bank, would have shown and emphasized the improper payment of dividends, the accounts outstanding, and the general condition of the bank, and even at that time would have brought to light what Mr. Edwards now says was the case, that the bank was practically insolvent except in so far as the shareholders might be called upon for part of their double liability.

The answer to question No. 5 it is submitted is disclosed by the evidence in view of the losses made, and the continuance of the bank at the expense of the depositors to the end of 1916, the impairment of its capital through the purchase of La Banque Internationale, the loss at that time of the bank's equity in the New Orleans Railway, the condition at that time was one of insolvency, which condition continued to 1918. The bank having made a small speculative profit of some thousands of dollars in 1918, this was more than eaten up by the dividends paid in 1917 and 1918. The steps that could

have been taken by the Government to save the situation were stated by Sir Henry Drayton and Sir Thomas White, they could have cut the red tape if any red tape were binding the enforcement, they would have put a man in the bank, or compelled other banks to take it over, they would have done something to prevent the present day depositors and those subsequent to 1918 entrusting their money to the bank and losing it thereby.

It has therefore been proved by counsel for the depositors, I submit, that notice was given to the Government in 1916 by the Western Directors through Mr. Fisher of Winnipeg, that such notice was a continuing notice from that time until 1923, the papers being on the files of the Department all that time, except those which were by mistake sent to Sir Thomas White. Accepting the Prime Minister's statement regarding Honourable Mr. Fielding at its full value, I think Mr. Fielding must be excused from any personal knowledge of such file, but that does not excuse the Government. We are not charging Sir Thomas White, Sir Henry Drayton or Hon. Mr. Fielding personally, we are not asking them to reimburse us out of their pockets for the losses we have sustained, we are asking the Government of the Dominion of Canada to reimburse us. If the papers on file were not known to Sir Henry Drayton or to Mr. Fielding, while the fault may not be theirs it must lie with the Government machinery. It hardly seems possible that the bank's charter could be renewed in 1923 without someone in the Department knowing and recalling the revelations that had been made. There must be something wrong when a file can be put away, relegated to the attic or the cellar, forgotten by everyone, and when the bank makes application in 1923 for the renewal of its Charter there is nothing on record as far as the responsible officers of the Crown are concerned to show that the attention of the Government was ever called to its condition, so that they might ask themselves; what is the actual condition of this bank at this time, are we to renew that Charter and thereby lull the public into a renewed false security that it is a bank which can properly continue to carry on business? There is something seriously wrong when such an important matter as this continues from 1916 to 1923 and the Charter is renewed at that time without Mr. Fielding the present Minister of Finance knowing anything about it. There should be some official in the Department who would keep track of such matters, have a daily or yearly record of transactions relating to the banks, there are only fourteen altogether, the most important financial institutions in the country; to think that they can be carried on from year to year apparently without any knowledge on the part of anybody as to how their business is being carried on is astounding. Further than that, we have the records and statements to which I have referred.

We have also proved that the losses, from the time the notice was given to the Government in 1916, to 1923, were very considerable; according to Mr. Clarkson the creditors will not be paid more than 40 cents on the dollar. A dividend has been paid partly by borrowing from other banks and the balance will only be paid over a term of years. There is a loss of over \$9,000,000, how much more depends on the realization of the timber limits and the New Orleans Railway and other assets, the particulars of which Mr. Clarkson did not care to give because he fears that by calling attention to their condition the sale of the assets might be prejudiced.

So I think you might quite properly be asked, and quite properly deal with the question; was there any obligation existing upon the Government in view of this notice and the losses which have been sustained by reason of the notice not being acted upon? I submit and urge very strongly that an overwhelming obligation rests upon the Government. If it is under no obligation, if its discretion is unfettered and unconditional, if it can stand by and see its

own child drowned, what do sections 56 and 58 and 112 and 113 mean? The Government having created the bank and allowed it to stay in existence by renewing its Charter for ten years, if those sections mean anything they surely mean that some obligation is thrown upon the Government, and that obligation should be fulfilled to the extent at least of taking action to protect the depositors and shareholders when, to the knowledge of the Government, a condition of affairs exists which would justify action being taken.

In this case that obligation has not been fulfilled, the depositors have lost some \$9,000,000. It could have been fulfilled. So I respectfully ask that questions 1 to 5 be answered in such a way as will justify the allegations of the petition; that you will find that those are statements of fact, borne out by the evidence, and that the recital in the prayer of the petitioners is to that extent confirmed. And having in mind also the fact that you are at liberty to express an opinion on the evidence, I respectfully urge that an opinion be given to the effect that the prayer of the petitioners for indemnity to the extent of their losses be given effect to. Without necessarily imputing negligence to anybody, without blaming any particular Minister of the Crown, because we are not doing that, we are seeking a remedy from the Government of Canada; and I suggest that you can quite properly express the opinion that the prayer of the petitioners that a Bill of Indemnity be passed by the Parliament of Canada should in view of the evidence be given effect to. As one of the counsel for the depositors I urge that that be done.

ARGUMENT BY SIR THOMAS WHITE.

May it please your lordship; when I survey this array of counsel, and see on one side my able and experienced learned friend Mr. McLaughlin, and my fiery and pugnacious friend Mr. Lee, and my practical and sagacious friend Mr. Browning, and my redoubtable and intrepid friend Mr. Reid; and on the other side the leader of the Quebec Bar, and indeed the leader and dean of the Bar in Canada, Mr. Lafleur, and the leader of the Manitoba Bar and an advocate known as of the highest distinction in all the tribunals of Canada, Mr. Symington, I know just how Daniel felt in the den of lions. When I see them looking so hungrily at me I know just how he felt. I may say also in that connection that having regard to the evidence, imperfect and incomplete as it is upon the record, and having regard to the trained judgment which I know your lordship will bring to bear upon that evidence, I am not without hope that I may fare as well as did the prophet upon that famed historical occasion.

I have been reluctant to appear in this argument, and I am sure I need not say to you, sir, that it is not by reason of any consideration personal to myself but because I am unwilling to appear in opposition to claims for public aid on the part of so many of my fellow citizens who as depositors in the Home Bank of Canada have suffered grievous loss. If a petition had been presented to the Government, for some reasonable legislative measure of public relief on grounds of wide-spread national calamity, I personally as a citizen would have cheerfully assented, and gladly contributed my share as a taxpayer. Such relief has frequently been given upon occasions when an earthquake or some other visitation of the forces of nature has destroyed cities and caused widespread ruin among their inhabitants. Large sums have been voted by Parliament in such cases, even when the catastrophe has occurred in foreign countries.

The Home Bank was just as surely blown up by underlying dishonesty and undisclosed fraud as cities are blown up by subterranean volcanic forces

whose presence was unsuspected by the citizens who were its victims. One is tangible, the other intangible, but the intangible is no less deadly than the tangible.

But unfortunately this course has not been pursued by counsel for the Depositors. They have set up a claim for relief, alleging remissness by the Department of Finance. They do not say that they have a legal claim, their claim they say is a moral one. On legal analogy they say there was remissness, that following upon that remissness as its natural and inevitable consequences, are all the losses that have been suffered by the bank from 1916 down to its collapse in August last.

More than that, and here also is where I am mainly concerned,—attack has been concentrated upon me, I was Minister of Finance during the war, although three Ministers of Finance have been in charge of the Department from 1916 down to the collapse of the bank in 1923. This brings me to a matter which I desire, with your permission, to clear up at the very outset of my argument. I refer to the files of the Department of Finance relating to the Home Bank, the files public and private, about which there has been a great deal of discussion not only before this Commission but throughout the country. I am giving your lordship now the grounds for certain special findings which I am going to ask you to make. For months past I have suffered under the most unjust imputations in respect to these files. In certain of the Press, not all the newspapers of Canada I am happy to say, but in certain of the Press and in debates in Parliament distrust and suspicion have been sown in the public mind regarding these files; and I say to you, Mr. Commissioner, that no one in Canada has welcomed this Commission of enquiry in order that the facts, the truth and nothing but the truth, should be brought out, more than I. I therefore ask your lordship to make certain special findings in view of these imputations which have been unjustly cast upon me.

The first finding I am going to ask your lordship to make is with regard to the public file. It has been stated by responsible Ministers of the Crown,—I make absolutely no reflection upon them, I was never known as a man who made reflections upon other men, but responsible Ministers of the Crown have stated in Parliament, and it has been repeated in the Press, that this file was missing. I am sorry to say that the impression has gone out through this Dominion, and is not counteracted yet, that I was the cause of the removal of that file. That is the ground for the finding in this regard which I ask, and submit I am entitled to ask. I refer to two utterances in the House as reported in Hansard. In the debate in the House of Commons on March 27th. Hon. E. M. Macdonald, Minister of National Defence said to Mr. Meighen:—

“Does the right honourable gentleman mean to say that this government got the complaint that was made to Sir Thomas White in 1916?”

All I have to say is there is no such record in the Department.”

And Hon. Mr. Robb, Acting Minister of Finance said:—

“We have copies that were discovered in the Home Bank files of certain letters that were sent out. We have not copies of the letters that came down to Sir Thomas.”

Now you understand, your lordship, that I make absolutely no reflection upon those Ministers of the Crown, but they made those statements, and they have gone out through the Press, and that is the reason why I want your lordship to make a special finding in this matter in bare justice to me. I am not in public life, but I have a certain standing and reputation which is of value to me in the business community and I desire it to be preserved.

Now on the first day of the enquiry before your lordship, counsel for the Dominion Government placed before you in evidence from the public files of

the Department of Finance no less than ninety-seven pages of the record, Exhibits 2 to 42 inclusive, containing all the original documents received from John Fisher, K.C. in 1916, every one of them. These consist of the original Fisher complaint on behalf of the Western Directors of the bank, with the letters and reports connected therewith, memoranda relating to the Frost lumber account, the Pellatt account, the New Orleans Railway account, the Prudential Trust Company, the Fidelity Trust Company, correspondence between the Western Directors and James Mason, complaints as to inspection methods at Head office, everything whatsoever that was ever disclosed to me at that period, in fact everything in substance that was ever disclosed to me at any period, together with my official letters to and replies from the Home Bank with respect to the Frost account, the Pellatt account and the New Orleans account. Also the report I received from the bank, giving details of these accounts and their history. Also the report of the auditor as to the Frost loan, showing that interest had been added to principle for many years previously. All these have been on the public files of the Department of Finance, open to the inspection of Ministers and officials since the day they were received by me. So that there may be no doubt whatever in the mind of your lordship about the matter I read from the evidence produced by Mr. Symington on the first day of this enquiry, the evidence of Mr. Roberts, the Secretary of the Department;

“Q. Have you made a search of the Departmental records in connection with the affairs of the Home Bank?—A. Yes sir.

Q. And do you here produce all the records you could find?—A. Yes.

Q. You have, I understand, the original file here?—A. Yes.

Q. From the Departmental file?—A. From the official records of the Department of Finance, yes.

Q. And it is your desire, I understand, to put in copies and take your Departmental original away?—A. That is the customary procedure with reference to public documents.”

And again the witness says, “That ends the memoranda and documents submitted by Mr. Fisher to the Minister of Finance.”

Q. So that we may get it clear, all the documents which you have read and placed before the Commission to this moment are documents and copies of documents handed to the Minister in January, 1916 by James Fisher, Esq., K.C. of Winnipeg?—A. Yes sir.

Q. And that completes the whole file that he handed to the Minister?—A. As far as it is on the records of the Department.

Mr. LEE: The originals were not sent the Minister, only copies?—

A. These are the original copies, I do not know that there were ever any copies made except for this Commission.

Mr. SYMINGTON: What you have produced are the original documents, the actual documents that Mr. Fisher handed the Minister?—A. The original memoranda and supporting copies of documents which Mr. Fisher handed to the Minister of Finance.

Q. That is, what purport to be copies are shown, but these are what was handed to the Minister by Mr. Fisher?—A. Yes.

Q. The papers that were handed to the Minister?—A. Yes.

Q. And they cover all?—A. As far as the Departmental records show.”

Now I ask your lordship to find expressly, in justice to me and in view of the imputations that have been cast upon me—I do not say deliberately by everyone who has made the statement—that all these documents and memo-

randa, which contain in substance all that was ever brought to my attention as Minister, have been on the public files of the Department, open to the inspection of every Minister since the dates upon which they were received by me. It is idle to say that Sir Thomas White only received these representations and notices, those documents have been before every Minister of the Crown since 1916, and those representations so-called have been speaking to every Minister of the Crown since the dates they were received by me. So much for the public file.

Now I am going to ask your lordship for another finding in justice to me, I ask this on stronger grounds even than in regard to the public file, that is in regard to the private file. It has gone all over Canada that I carried off the private file and then kept back from my successors important information relating to the Home Bank of Canada. I was maligned about it for weeks in the City of Toronto.

I have shown in evidence that when I left Ottawa I left all my correspondence with my Private Secretary. He was to assort it and return to me what he regarded as private. That is the usual course, as it takes weeks or months to do this. I brought away no correspondence whatever. When I left Ottawa the state of my health through overwork was such that for one year I was unable to do any work whatsoever, as I testified the other day, and I assure you, sir, that I was not thinking of files. And when I was Minister—and I believe this is the universal practice, indeed it could not be otherwise—I left it to my Secretary to file letters as he saw fit. A Minister is a breathless hunted creature, he has no time to go behind the scenes and tell his Secretary what he is to file as private and what as public. I do not remember ever giving any instructions to my Private Secretary, and I had three of them during the war, to file anything specially as private, I may have done so but I do not recall it. I had confidence in my Secretaries and in their judgment, and they did the filing. I had no time to supervise details. My first Private Secretary, Mr. Viets, went overseas almost at the outbreak of the war and was wounded; in 1916 I took on my next Private Secretary, Lawrence Code, I can hardly think of him without emotion, he was killed overseas; and in 1917 Mr. Roberts, who had offered himself but was rejected, became my Private Secretary. The files, your lordship, are precisely as the Secretaries made them up, there was no interference on my part. I do not think,—but of course at this distance of time I cannot be certain,—that it was in my mind that any part of the correspondence would ever be returned to me. The transactions had occurred long before and by 1923 certainly the Home Bank had gone largely out of my mind. I had understood, as I have testified in evidence, that the bank was doing well under Mr. Daly's Presidency. Its dividends had been increased twice after I left office and its published Annual Statements showed on the face of them a good position. I certainly had not the files or the memory of the files in my mind. I have always been rather conscientious in regard to my duties as Minister, I think I may say that without boasting, and after I had had a reasonable rest, in thinking over the situation at Ottawa I wrote to Mr. Roberts my former Secretary, who was then Secretary to Sir Henry Drayton, in January, 1920, to bring the three Home Bank accounts to the attention of my successor. I do not remember what was the occasion of that letter, it may have been something that occurred or something that crossed my mind, I cannot recall. I ask your lordship to note the wording of the letter, "To place before the Minister the file respecting the Home Bank." I did not say the private file,—and I do not believe at that time, in fact I know, I was not expecting any Home Bank file at all to be returned to me.

Now your lordship, I heard nothing further, except the letter from Sir Henry Drayton and my reply, both of which are on the record, until last

September when the file was returned to me. As I testified, I was surprised to receive it and I thought at the time that it had been sent,—probably I had better not say by direction of the Minister, but by direction of officials of the Department. I have testified what I did with that file, it came back to me after the bank had failed, they evidently did not want it at Ottawa, at least that was my view,—or why was it sent to me? Mr. Roberts has explained that he thought it proper to return it to me, but I was under the impression that he had been sent back with it. I did not return it to the Department, I called up the Attorney-General of Ontario, because then these informations had been laid and I think prosecutions had been instituted, that is my recollection. I called up the Attorney-General of Ontario and told him I had received a file from Ottawa in the Home Bank matter and that it was in my possession available for his counsel at any time. Owing to the attacks which were made on me at that time by the Toronto Globe I gave the substance of some of the letters to the Press. I did that in self-protection, there was no other way to counteract the campaign which was being conducted against me. I could not publish the whole file, I have never published a confidential letter in my life and I never will, unless before some tribunal that has the right to ask it; I could not publish the Crerar letter, it was marked "Personal", I was urged to publish it because some persons got to know that I had it but I refused and endured a good deal of abuse. I am not making a grievance of that but I want your lordship to make a special finding in view of the grounds I am stating. Suspicion was sown in the public mind in regard to that file, there have been suggestions of suspicion before this tribunal regarding it—

Mr. LEE: No, no.

Sir THOMAS WHITE: Well, I accept my learned friend's disclaimer. Now I was going to Brazil last February on a business trip in connection with the Brazilian Traction Company of which I am a Director, or partly for business and partly for a trip south. At that time no mention had been made of this commission, in fact I understood from a statement attributed to Mr. Fielding, or a report from Ottawa, that no investigation would be held other than that which was proceeding in Toronto, the criminal prosecutions. But I did know, or I thought I knew, that the matter would come up in Parliament, therefore before leaving for Rio de Janeiro I had copies made of nearly all the letters, I will not say the minor connecting letters, which I handed to my friend Sir Edward Kemp in Toronto and asked him to make them available to Parliament in such way as he saw fit. I think he gave copies to the Hon. Mr. Meighen, because Mr. Meighen said in the House that he received copies; I think I wrote Mr. Meighen that they would be available, but I am not sure as to that.

When I returned and saw the difficulty that was apparently being made as to getting this evidence, the way it was going in,—I do not suggest by design on the part of counsel for the depositors,—but evidence going in in a fragmentary way, and saw it suggested that, "we may be able to get one or two of these letters from the Liquidator—" when I had the whole of them under my hand, I moved before your lordship, and your lordship at once saw the justice of my request, that instead of having that evidence put in in that fragmentary fashion, I be allowed to present the file to your lordship in Toronto, although the hearings were to be here, and your lordship and counsel for the depositors and Mr. Lafleur readily consented, so I got the file before this tribunal and in the press, something that I had been absolutely unable to do since the attack upon me was commenced last September.

I made no idle statement when I said a little while ago that no man in Canada welcomed the appointment of this Commission more than myself. Some thought that file would be a bombshell for me. Was it? Or was it for anyone else? I do not say the depositors' counsel, I do not say Mr. Lafleur or Mr.

Symington, I do not say the Government. At any rate it was not a bombshell for me. I am going to ask your lordship, did you ever see a file more in order or exhibiting a higher degree of attention to details? I know something about Governments and Governmental administration and I make this challenge, that there is not in the archives of the Government of Canada any file more complete or evidencing greater attention to official duty than those files, public and private. Well may the counsel for depositors, my learned friend Mr. McLaughlin, say "I do not see how you found the time to do it all." Well, Mr. Commissioner, I found the time for this and for similar tasks during the war, at the cost of the loss of ten year's capacity for heavy work which I otherwise would have been able to do. It is very good of Mr. McLaughlin to say: "Be just to Sir Thomas White on account of his war burden." I say, Mr. Commissioner, that I discharged my full duty to this country with respect to the war and with respect also to every other matter to which it was my official duty to attend while I was Minister of Finance. I do not say that I did everything in the best possible way; but I say that I gave them all my attention; the war and everything else; and I did it by working, as I have already testified to your lordship:—

Now, I ask your lordship, therefore, with regard to this private file, to find expressly that I dealt with it honestly and honourably, and in addition to that, as I am going to show your lordship, that I dealt with it according to constitutional usage.

There is a great deal of talk about the files; the private file; the public file; what should be done with the private file? No one seems to have taken the trouble to look up the authorities and see what ought to be done with a private file of private correspondence. It is very easy to look it up and it is perfectly clear and well established usage. The highest authority is Todd. I refer your lordship to Todd's Parliamentary Government in England, Revised Edition, by Spencer Walpole, 1892, Vol. 2, page 133.

"All public officers are required to leave behind them, when they retire from office, whatever public documents have come into their possession during their term of office, in order that a complete history of all public transactions may be preserved in the archives of the Department. Private letters, however, do not come within this rule, even though they may exclusively relate to affairs of State."

"No ex-Minister is at liberty to quote in Parliament from any document which he may have received while in office, unless it has first been made public by being laid before Parliament."

That is my quotation from Todd, the highest constitutional authority with regard to Parliamentary Government, in the Empire. The reason is obvious, my lord. I need not say to you, not only a jurist of long standing, but having occupied a high and distinguished position in the Government of your Province—I need not say to you what the reason is. The reason is, the public interest. The reason is, in order that the public may privately communicate to the Minister information which may be of value to the State. The public would not do that if the privacy was to be violated by the Minister bringing down the letters to Parliament, or publishing them in the newspapers.

Now I ask your lordship, with regard to this private file, what more could I do than I did? Call the file to the attention of my successor, when returned to me, not at my request, although I may have been entitled to request the return of every letter marked "private" in that file. When returned to me, although not requested by me, although as I say I would have been entitled to request it, after the bank failed, I called the file to the attention of the Attorney-General of Ontario; I gave copies to Sir Edward Kemp who is a Senator, for the information of Parliament. Does any Counsel here suggest anything different?

I therefore ask your lordship, for the special finding which I mentioned a few moments ago, that I acted honestly, honourably and correctly regarding that file.

I ask your lordship to find expressly that my retainer in August last, to which there is a reference on the record, was in the usual course of my professional business, and is irrelevant in this inquiry. That has been admitted by Counsel for the depositors and I think it will be admitted at once by my friend Mr. Lafleur, acting for the Government.

Mr. LAFLEUR: I have said so already.

Sir THOMAS WHITE: Yes. Now why do I ask for that special finding? Because again an imputation has been made against me. Not made here. I am practising law for a living. I have not been Minister for five years. I am not a member of Parliament. And yet this has been put out in such a way as to endeavour to injure me, and I might fairly ask whether I have a right to practise my profession or not? I know this is correct: in view of the way that statement was put out in certain of the press, there are very many people in the Dominion of Canada to-day, and information has come to me about some, who believe that I received that retainer when I was a Minister of the Crown; instead of having received it more than four years after leaving Ottawa, and professionally. Mr. Commissioner, that is what I call hitting below the belt. If I were in Parliament I would not mind any of these things a bit, because I would be in a position to answer them; but a man in private life who is subjected to imputations such as this, is like a man under bombardment in the trenches when he has not got the means of replying effectually. My position is similar to that, except by the goodwill of the press, the great body of the press in this country on which I am happy to say I have always, up to date, been able to rely.

Now my lord, I come to the terms of the Commission under which your lordship is holding this inquiry, and I am going to ask your lordship to give your close attention to the Orders in Council, some portions of which I shall read; the first being the Order in Council of the 23rd February 1924, which refers to the petition of the depositors. By that petition it is stated that in 1915, 1916 and 1918 "Representations were made to the Department of Finance... respecting the condition of the Home Bank of Canada and revealing a state of affairs that would have justified an investigation" by the Minister under section 56A of the Bank Act. That is the allegation in the Order in Council. Then it goes on to say:

"The petition alleges" "The then Minister of Finance had merely referred the matter to Z. A. Lash, K.C.,"—"And that such investigation as the latter made merely smoothed things over."

The Order in Council then goes on to authorize the Commission to conduct an inquiry and investigate among other things the following: Question Number 2 is the only one I desire to draw your lordship's attention to specially.

"(2) Whether, if such representations were made, a state of affairs was revealed concerning the condition of the said bank such as would have justified an investigation under the powers conferred upon the Minister

of Finance by section 56A of the Bank Act."

Now your lordship will observe that that first Order in Council related only to representations made during the period when I was Minister. Now I understand that opinion both inside and outside of Parliament compelled, in justice to me, an extension of that. I do not suggest for a moment, that the Government were not ready to extend it, when it was drawn to their attention that this was very unjust to me, and besides did not afford the scope for the inquiry that the public interest was deemed to demand; and consequently, by the Order in

Council of 17th March 1924, the scope was widened to the date of the failure of the bank:

“Including any representations made to the Government of the day as to its condition, any action taken by way of the Ministers of Finance upon such representations as may have been made, and the effect on the position of the depositors of any audit under section 56A of the Bank Act if made at any time in consequence of such representations.”

Now I am going to ask your lordship to notice the difference in the wording of that Order in Council with respect to the subject of justification, and the Order in Council of the 23rd February, 1924. In the first Order in Council the investigation is as to whether “a state of affairs was revealed concerning the condition of the said bank such as would have justified an investigation.” In other words, your lordship under the first Order in Council is asked to report on a question of justification. That first Order in Council relates only to my regime. The second Order in Council says:

“Including any representations made to the Government of the day, as to its condition, any action taken by way of the Ministers of Finance upon such representations as may have been made, and the effect on the position of the depositors of any audit under section 56A of the Bank Act if made at any time in consequence of such representations.”

What is your lordship to find with regard to everything after 1918? Whether representations were made? And what would be the position of depositors if made at any time in consequence of such representations? The effect on the position of the depositors under 56A of the Bank Act? Now if an audit has been made, you are not asked under that, sir, to pronounce on the question of justification. It will be noticed that in those two Orders in Council the Commissioner is to find as to justification, only with respect to the years 1915, 1916 and 1918. That is to say you are to find it while I was Minister, but not to pronounce on it in the case of my successors. Now with all due respect I submit—and I am going to argue later the question of whether your lordship has jurisdiction—that if your lordship makes a finding on the justification matter with respect to my regime, and not as to that of the others, it seems to me to be a gross unfairness to myself. Now let us try if we can reconcile these Orders in Council. If it was intended to be fair, the second Order in Council must be deemed to merge the first. There is no other way. They cannot be reconciled. The second Order in Council must be deemed to merge the first. I do not suggest that your lordship read it that way. I would rather, if your lordship is going to find on the question of justification, after I submit my argument, that you treat the second as meaning the same as the first. But taking them as they stand, the second Order in Council must be deemed to merge the first, the force of which had gone. If this is sound, then your lordship is not to find on the question of justification for an audit, but only as to whether any representations were made to Ministers, and what would be the effect upon depositors if an audit under 56A had been made. Any representations, you are to find, whether important or unimportant. It seems to me that another Order in Council is needed. Now the Order in Council of the 27th February appointing your lordship as Commissioner, gives your lordship discretion.

“We hereby require and direct our said Commissioner to report to our Governor-General-in-Council the result of his investigation together with the evidence taken before him and any opinion he may see fit to express thereon.”

Now that gives your lordship discretion as to the extent to which you will express your opinion. Your attention is called in that to the two Orders in

Council and you are to investigate "as by said Orders authorized and provided." That is the expression. That is to say, you are to investigate according to the letter and meaning of those two Orders in Council, as to whether there was justification or not during my regime for an Order under 56A and not as to whether there was justification under the second Order in Council. In other words, this is the position, as they stand; your lordship cannot deal with the question of justification for 1919, 1920, 1921, 1922 and 1923, and you need not deal with it for 1916 and 1918 unless your lordship sees fit; and I submit that if your lordship, after my argument, decides to pronounce upon it, that a new Order in Council is necessary to enable you to pass upon the question of justification for an audit if any representations were made during the incumbency of office of my two successors, Sir Henry Drayton and the Rt. Hon. Mr. Fielding.

Now, my lord, I propose to deal with a matter which I raised at the outset, and I regard it an extremely important matter. I waived any objection that I might have taken to your lordship hearing the evidence, and I presented my testimony before your lordship, because I recognized that it was in the public interest that all possible information should be obtained; and I am very glad to have observed, as I would have expected in an inquiry of this sort before your lordship, that with respect to the testimony which has been given here your lordship has not confined it within the limits of those strict rules of evidence which necessarily prevail in Courts of Justice; your lordship has recognized that this matter is of general interest throughout the Dominion; your lordship has recognized that another tribunal than this tribunal is passing judgment upon the evidence contained in the record; and that tribunal, the tribunal of public opinion, is the tribunal of final appeal in all matters relating to public affairs. Therefore, I did not press my objection at the time but proceeded with my evidence.

I am going to ask your lordship now for another finding; this will be Number 4. I ask your lordship to find that that part of the Order in Council of February 23rd, 1924, which authorizes your lordship to report whether an investigation would have been justified following representations to the Department in 1916, and 1918, is ultra vires of the executive Government of Canada and wholly null and void. I do not say for a moment that the whole Order in Council is null and void. It is not. I confine my objection to the point that I am raising and I repeat it; that that part of the Order in Council which authorizes your lordship to report whether an investigation would have been justified following the representations to the Department in 1916, and 1918 is ultra vires of the executive Government of Canada and wholly null and void. The Commission is stated on the face of the Order in Council to be in pursuance of the authority of the Inquiries Act, and for the purpose of my argument I do not care whether it is under the Inquiries Act or a Royal Commission in the old sense, my argument holds good, as I contend. Now the Inquiries Act gives authority for the Commission to inquire and report upon facts. It also, by one of its amendments— if I recall it correctly—enables a Commissioner to report as to the conduct of a member of the inside or outside Civil Service. A Minister is not a member of the inside or outside Civil Service. He is a Minister of the Crown; responsible only to Parliament under our Constitution. Whether the employment of an auditor was justified or not, is, I contend, for the Minister, to decide in the exercise of his own judgment; and as long as that judgment is honest—that is the qualification—the Minister is responsible only to Parliament and to no other tribunal whatever. I have established that from the authorities.

In a case of tort or crime, the Minister is responsible like any other citizen, to the Courts of the land; but he is not responsible in the honest exer-

cise of his functions as Minister to any tribunal on earth except to the parliament of Canada. Now I do not propose to undertake a discussion of elementary Constitutional law. I shall merely refer your lordship again to Todd's Parliamentary Government in England, which is the authority. The revised Edition by Spencer Walpole, 1892, Vol. 2, page 185. And I quote:

"Every Minister is directly responsible to Parliament for his conduct in office and for the advice he tenders to his Sovereign, but he is responsible to no other tribunal."

And I have no doubt at all that that does not come as a surprise to your lordship, having been as you were, Attorney General of the Province of New Brunswick.

Now let me read section 56A of the Bank Act, as to what this audit is, as to which your lordship is asked to find justification. The Bank Act of 1913 Section 56A. We have heard this talked about so much, but I think we had better see what the Statute says. Section 56 refers to the duties of auditors and their responsibilities. Section 56A is as follows:

"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,"—an alternative—"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." ■

While I am at it I will turn up Section 113, which is the other section under which I acted in the Home Bank matter. This is the old Act:

"The Minister may also call for special returns from any bank, whenever, in his judgment, they are necessary to afford a full and complete knowledge of its condition."

That is what they are doing now, testified to before the Banking and Commerce Committee; calling for special returns.

Now I submit with very great respect—I should not like your lordship to think for a moment that I have any idea in my mind that if your lordship addressed yourself to this subject that I would question in any way your lordship's finding. I am simply submitting this as Counsel on my own behalf and I am sure your lordship will so understand it.

HIS LORDSHIP: Oh, thoroughly, Sir Thomas.

SIR THOMAS WHITE: I submit that for your lordship to find whether the appointment of an auditor under 56A was justified, is to review the conduct of the Minister. The Minister would only take such action as he deemed himself justified in taking. Justification is for the Minister. Shall I act? How shall I act? The only tribunal that can review that action of his, if honest—and the honesty of my action has not been question here—is Parliament. And I respectfully, sir, enter an objection to any effect being given to an Order in Council which on its face ousts the jurisdiction of Parliament. I object first as a citizen, having regard to the well known rules and usages of the Constitution; and secondly, because I regard it as an invasion of the rights of the Minister, under our Constitutional system. Let us see where this leads. As I have said, I submit that it is not competent for your lordship to find upon the question of justification, and substitute your judgment for that of the Minister, because that is what you are asked to do. Look at the situation. I use the name of the Hon. Mr. Fielding—for whom I have the greatest possible respect,—only because he happens to be the present Minister of Finance. I want to show just how absurd this is. Supposing that second Order in Council is

correct and that it would include him and Sir Henry Drayton, then your lordship is to pronounce upon the question whether the Rt. Hon. Mr. Fielding received any representations, and whether there was justification for his not taking executive action under 56A of the Bank Act, if he did not. Yet, at this moment that your lordship is asked to pass upon that, the Rt. Hon. Mr. Fielding is directly responsible to Parliament for the executive action which he took or refrained from taking, if he received any representation. It surely cannot be contended that this Commission is to oust the jurisdiction of Parliament in criticising the conduct of Mr. Fielding? It would violate and outrage every sense of elementary justice that a man should at the same time be under trial in two tribunals. There may be at any time a debate in Parliament with regard to Mr. Fielding's action. He is responsible to Parliament, and under the Inquiries Act there is no power to oust the jurisdiction of Parliament. Is Parliament to pronounce one judgment on the Rt. Hon. Mr. Fielding, and this Commission another?

Similarly, Sir Henry Drayton and myself were and are subject to criticism in Parliament for our action as Finance Minister but we are not answerable to any tribunal whatsoever excepting Parliament.

Now further, let us see what Todd says about a Commission of Inquiry and as to the general principles which should govern its appointment. In Vol. 2 of the same edition at pages 95 and 96:

"A Commission of Inquiry should be limited in its operations to obtaining information and suggesting points as to which it might be expedient that legislation or executive action should be taken. No Commission should be invited to enter upon any question of policy, lest it should trench upon the proper limits of Ministerial responsibility and upon ground which belongs to Parliament."

The Minister had a policy at the time with regard to doing this, or doing that; and Todd says, no Commission should be invited to enter upon any question of policy.

Now I am going to ask your lordship to look at the absurdity of a contrary view to that which I am putting forward. The calling of Parliament is an executive act. What would be thought of the appointment of a Commission to determine whether the Prime Minister of Canada was justified in calling Parliament in February instead of in January? One has only to state it. What would be thought if a Commission were appointed to decide whether there was justification for the appointment of a judge on the recommendation of a Minister of Justice? Or what would one think of a Commission appointed for the purpose of pronouncing on the justification for the appointment of this Commission. Or take section 99-2 of the Bank Act, as a practical illustration. Section 99-2 of the Bank Act relates to the purchase of the assets of one bank by another bank. The section is:

"(2) No agreement by a bank to sell the whole or any portion of its assets to another bank shall be made unless and until the Minister, in writing, consents that an agreement under subsection 1 of this section may be entered into between the two banks."

The Minister has to give his consent. Now what would your lordship think of the appointment of a Commission as to whether the Minister was justified in giving his consent to the purchase of the assets of one bank by another bank? Let me give a more striking case still. I do not wish to labour this unduly, but what would they think, let us say in England, if a Commission were appointed for the purpose of expressing an opinion on whether Sir Edward Grey just before the outbreak of the war should have sent a firm

Note to Germany stating that in the event of war Great Britain would at once enter upon the side of France and Russia. That was an executive Act, and Sir Edward Grey has been much criticized. But I wonder what they would think of the appointment of a Commission for that purpose. An executive Act; he acted honestly. Everything, I say to your lordship is postulated on the assumption that the Minister acts honestly. If he does not act honestly, he is subject to the Courts of the land, as he ought to be, like anybody else. But as long as the Minister is acting honestly, no tribunal on earth except Parliament, I submit, can review his conduct in that regard.

Now, with very great respect—and I stress this because no one could have greater respect for the judgment of your lordship than I have—any finding of your lordship on the question of justification, which is referred to your lordship for investigation under that first Order-in-Council, must, I submit, be devoid of any judicial force because the inherent jurisdiction is lacking. It cannot have judicial jurisdiction; it can only be an expression of your individual view; what you think you would have done, sir, if you had been Minister; or what you think somebody else would have done if he had been Minister. Does our Constitutional system assume that all Ministers of Finance are precisely alike, in temperament and in experience? This is not a case of the ordinary man and ordinary diligence and ordinary judgment and ordinary suspicion. It is the question of a Minister of the Crown confronting a situation, such as confronted me, and dealing with that situation honestly and to the best of his judgment at the time. Now your lordship's opinion—with the greatest possible respect—can only be a private opinion, I submit, expressed in the light of subsequent events, and that is all.

Now I am going to submit to your lordship very respectfully that you should not express a personal opinion; if I am right in my argument and your opinion cannot carry judicial weight, you should not express a personal opinion. Why? We have had a great deal of evidence here as to conditions during the war; but, sir, if my learned friend the Counsel for the depositors and the Counsel for the Government had piled Pelion upon Ossa in the shape of evidence and Olympus upon both, your lordship could not make that past to live again in this room. It is impossible. Call a meeting of the Counsel of the Dominion, or of the Judges of the Dominion, and tell me that by means of evidence presented at a time like this you can give a picture of that tremendous epoch in our history and in the history of the war, so that your lordship or any other Judge would be able to live in that atmosphere and deal with questions as the Minister of the day dealt with them? It is impossible; absolutely impossible. My honourable friend Mr. McLaughlin—I should say my learned friend, although no doubt he will some day be my honourable friend—speaks of “supermen;” he would be a superman indeed who could visualize that past and enter fully into it at a time such as this. I submit, sir, that it is impossible for you to place yourself in the past, in the place of myself or of the other Ministers concerned, and see the situation in which they acted, as it appeared to them at the time. The Act says that the Minister “may” and one Minister may be acting in more difficult times than another. The discretion is the discretion of the Minister and of no other individual whatsoever under the Act, if it is honestly exercised. I get back to that word “honestly,” Mr. McLaughlin. It is a great word, if it is honestly exercised.

Mr. McLAUGHLIN: I have never questioned your honesty, Sir Thomas.

Sir THOMAS WHITE: I know that. You are a decent man, Mr. McLaughlin, I have known that all my life.

I ask your lordship to find that expressing an opinion on justification is to pass upon the conduct of Ministers, and that such review on your part is not

within the Inquiries Act and is contrary to the well known usages of constitutional law.

Your lordship may find facts and report. That is the purport of the Inquiries Act. If the Bank Act had said that if certain representations are made by letter, or otherwise, the Minister shall do something, why, then, your lordship could find whether the representations were made, and whether the Minister did that thing, and if he did not, why, I think, he would be subject to a good deal of criticism by Parliament.

That is not the case here at all.

Now, then, my learned friend, Mr. McLaughlin, put forward that word "shall" is never used in regard to the Crown. I knew at the time when I was in the box that he was wrong. Of course, a man in the box is subject to the control of his cross-examiner, and I did not raise the question, but I have taken the trouble to look it up, and I would point out to your lordship that the statement is incorrect, and I am going to give your lordship the references in the Act.

I would refer your lordship to Section 15, subsection 3:

"No certificate shall be given by the Treasury Board until it has been shown to the satisfaction of the Board, by affidavit or otherwise, that all the requirements of this Act and of the special Act of incorporation of the bank, as to the subscriptions to the capital stock, the payment of money by subscribers on account of their subscriptions, the payment required to be made to the Minister, the election of directors, deposit for security of note issue, or other preliminaries, have been complied with, and that the sum so paid is then held by the Minister, and unless it appears to the Board that the expenses of incorporation and organization are reasonable."

It would be perfectly proper for your lordship, if a case arose under that section, to say whether the condition had been satisfied. If your lordship said the condition had not been satisfied and the Treasury Board had given a certificate, it would have been acting in contravention of this Act.

Take the next one, Section 17 of the Bank Act of 1913:

"Upon the issue of the certificate in manner hereinbefore provided, the Minister shall forthwith pay to the bank the amount of money so deposited with him as aforesaid" etc., etc.

Then Section 61, subsection 8:

"The Minister shall, from time to time, and not less frequently than twice in each year, cause an inspection and audit of the gold coin and Dominion notes held by the trustees to be made by officers of the Department of Finance."

Now, your lordship could find whether the Minister had done that and report. If he had not done it his action would be a contravention of the Statute.

There are two or three others that I will give later, I have not the references at the moment. However, I think I have given enough.

Under Section 56A, and under Section 113 of the Bank Act, the word is "may."

Then I come to the Petition. Now, there are some errors in that Petition, not intentional errors.

Mr. McLAUGHLIN: The facts are taken from your statement to the Press.

Sir THOMAS WHITE: At that time, I explained, Mr. McLaughlin, that I had not the public file.

Mr. McLAUGHLIN: You stated in that that you referred the matter to Mr. Lash.

Sir THOMAS WHITE: That was my memory, but it was not so when I got the public file.

The Order in Council states that in the course of these arguments it was stated that instead of ordering an audit under Section 56A of the Bank Act, the then Minister of Finance had merely referred the matter to Z. A. Lash, K.C. That is untrue, and I have explained why, I do not say it is untruthful. There is a difference between untruthful and untrue.

Mr. McLAUGHLIN: We took it all from your own statement.

Sir THOMAS WHITE: That may be, but, at the same time I did not have that document before me, and I was trying to recall eight years before.

The Petition states:

"Your petitioners realize the seriousness of such action on the part of the Minister of Finance—"

That is, to make an audit under Section 56A.

That paragraph in the Petition reads:

"Your petitioners realize the seriousness of such action on the part of the Minister of Finance, and that the mere fact of causing an audit to be made might in itself bring about the failure of the said Bank."

This statement is true on the Petition before your lordship, the Pleadings, so to speak. That is stating, what I believe to be absolutely true. It would be a very serious thing to do for fear of bringing down the bank.

I have not been able to adduce any evidence here, your lordship, in fact, I have not had the time nor the money to produce evidence here, but I hope your lordship has not got the idea that I cannot produce bankers to give evidence as to what the effect would be to put an auditor into an individual bank.

The Petition states that the depositors 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 a bank. This cannot be correct, your lordship, because banks have frequently failed in Canada, as elsewhere. Counsel for the depositors have asked me "What is the Department of Finance for except to supervise the banks?" We are living under a limited Government, limited by law. No Minister of Finance has any general powers of supervision over banks. Where would that lead to?

Mr. LEE: Where it is given to you under the Act.

Sir THOMAS WHITE: Yes, except where it is given to me under the Act. Mr. Lee says, "What is the Finance Department for if not to supervise the banks and their business?" We have got some of the largest banks in the world in Canada, with hundreds and hundreds of millions of dollars of assets, with thousands of branches extending over all this Dominion, in the United States in the West Indies, in South America, in Great Britain, in France, and in Asia, four Continents. General supervision over all those banks would be no easy matter.

We have heard a good deal in recent years about the increase in functions of Government, but it has not gone quite as far as that yet. If it does, to use a familiar expression, "It will be some job."

Mr. REID: Supervision of head offices.

Sir THOMAS WHITE: I will come to that. I never made a speech in my life in which I did not try to be constructive. There is no general supervision, and there cannot be general supervision, giving that expression its natural meaning, in the same way that a chief executive exercises supervision over the business of a company.

Take Section 19, your lordship, of the Bank Act. This is a point that I wish, particularly, to draw to your lordship's attention. By that section, the

affairs and business of banks are entrusted to Boards of Directors elected by shareholders whose capital is at stake and who are subject to double liability. They are proprietors inviting deposits upon the credit of the bank. They must lose all before the depositors can lose any, and lose more than all, that is, all their capital with the addition of the double liability. Now, that is one main safeguard to depositors, and another safeguard to shareholders and depositors alike is the ability and integrity of Directors and the officers they select. The Directors are the agents of the shareholders, and the Directors employ the officers of the bank. That is the situation. And auditors are appointed by the shareholders under the Bank Act.

I introduced the legislation making that compulsory, Mr. Commissioner, in 1913, and we followed the English system, the system that was then in vogue, and the system that is in vogue to-day, and I thought we had made a great advance, and I still think we did, although I have been disappointed, to a certain extent.

The other day, in giving my evidence, I said I had not a great deal of confidence in auditors. That was a general statement. Some auditors are abler than others, but what I had in mind at that time was that an auditor was not an appraiser, he was more an accountant, a man who had checked the cash and the entries in the books, and, in that way, would see that a true balance sheet was presented, and, of course, if anything comes to his attention that suggests fraud, or anything like that, why, he is bound to inquire into it, because then his balance sheet would not be a true balance sheet of the affairs of the company, or bank, as the case may be.

For more than twenty years the matter of bank inspection has been before Parliament. The reason I mention that, your lordship, is that I want you to realize clearly the powers or discretion which the Minister had under the Act of that time, and the limited character of the supervision which has been spoken of as general.

For more than twenty years the matter of bank inspection has been before Parliament. All Governments have avoided it because of the responsibility it would cast upon them. The time has come when some measure of Government inspection must be instituted. I am using the word "inspection" in contradistinction to "audit." But under the Act of 1913—and I can say that Parliament is now considering that very question—and the Act of 1923, no such provision is made. Even in the Act of last year no such provision is made. When I was Minister there was no power of general supervision or inspection.

Now, there is a further limited, very limited safeguard, the returns to the Government. They are protected by very severe penalties against false returns. The returns all contain general items showing aggregates not details. If the return on its face shows no irregularity then it is accepted as correct. If for any reason the Minister is dissatisfied with the return, or receives any information which causes him to doubt its correctness, he may do one or more of three things. He may call for a special return from the Board (sanction of heavy penalties); call for a report from the Auditor appointed by the shareholders under the provision of the Act, protected by the sanction of very heavy penalties; or ask an outside auditor to report upon any matter. He also is subject to penalties.

Men say, why are you supposed to rely on the return of a Board of Directors well, protected by the heaviest penalties for false returns. Now, as I say, the Minister may do any one of those three things, and the discretion of the Minister as to what he will do is absolute not conditioned.

The Statute does not say that if he receives a letter complaining of a return he shall do this or do that. It is for the Minister to decide whether he will do this or that or do nothing. It depends on the letter, and even then it is his judgment as to what should be done that governs him. Letters are con-

stantly received where nothing is done. I do not want to overstate it, but there are a dozen—I was going to say twenty—letters on record in the Department of Finance, some of them very strong letters. There may be a quarrel, there may be spite, there may be a general concern about an institution. The Minister has to estimate those letters as best he may and decide what he will do. He has got a good deal of experience to guide him in those matters. Usually the Board is asked for a statement in answer. Previous to 1916 no special auditor was ever put into a bank in Canada. I say 1916 because that is the time that this came, and I have said the Minister has no general power of supervision, he is limited in his duties and discretion under the Statute.

I was asked the other day what my conception of the duty of a Minister was, and I gave it offhand, and I am rather pleased with it. As a matter of fact, those offhand judgments are usually good. His duty is to act honestly and according to his best judgment, and when he has done that he has discharged his duty. I stand by that, that was my answer. No tribunal except Parliament can review his action when he has so acted honestly and to the best of his judgment.

Just a word or two more about auditors. I was asked "Why didn't you press further for the report of Mr. Sydney Jones, Auditor of the Bank?" Can an auditor value timber limits? The owner does not know what they are worth, he has got his own idea about them. All he can do is estimate them as fairly as he can on the opinion of cruisers, and having regard to the conditions at the time, supposing he had sent Mr. Sydney Jones out to make an investigation of the limits, sent him out as Mr. Crerar went out, and as Mr. Haney went out. Do the auditors of banks to-day value assets? They do not. They call it to the attention of the Board if there is anything that attracts their interest particularly, and under the new Act the Board, if the Auditor has called the account to their attention, can declare that it is inactive and not active. The responsibility under the new Act is clearly on the Board. It recognizes that the Auditor is not the supreme power in the bank for the purpose of valuing securities. He would have quite a job if he did.

Now, then, between audit and inspection, the difference is that inspection implies a valuation, in my judgment. Under the American system the inspector does that valuing. He says to a bank "You cannot add interest there any longer," only because he has got the power. It is a question of valuing, whether interest should be added or not. As I pointed out in my evidence, there comes a question as to whether interest should be added or not. Now, a banker can do that work.

Mr. Commissioner, during my period of office I did much for auditors, business profits and other measures, and I wish to say they perform exceedingly valuable functions. Some, as I have said, are better than others, wider experience, older men, you cannot generalize.

Now, take the case of the Merchants Bank. One of the greatest firms in the world was auditor of that bank, and detected nothing. The auditor of the Home Bank, a very respectable man,—I think he is a Bursar of Trinity College—detected nothing. He was on the panel of men named competent by the Canadian Bankers' Association to audit banks.

Here is the curious thing, as I have read over the evidence of Mr. Clarkson and Mr. Edwards, both very able men. Auditors will come with the greatest assurance after the collapse of a bank and say "Why, I would not have allowed that valuation of a timber limit or that of the liability of a trust company. I would have insisted on writing them down, and the same would apply to an account like Pellatt's. Pellatt had accounts in no end of financial institutions, and was in good credit in the City of Toronto, and I doubt if any question was ever raised about him.

I think that this bank had an altogether undue proportion of non-liquid assets. I am merely stating to your lordship that auditors, like other people—

and there are some of them in this room, not your lordship—have what I call retrospective imagination. What do auditors do in cases of this kind? Now, Mr. Haney was a contractor, and Mr. Crerar was an able business man, and they were appointed a committee of the Board to go to British Columbia and pronounce upon the value of a timber limit. I am just as certain as I am looking at your lordship this minute that nine auditors out of ten, yes, more than that, ninety-nine out of a hundred looking at that account and seeing that report of Messrs. Crerar and Haney, Crerar an absolutely honest man, and an able man, and Haney, there is nothing here that shows, except the correspondence suggests, that anybody threw any doubt upon Mr. Haney.

What would your lordship think of a doctor turning up at an autopsy where there was more or less obscure doubt as to the situation among the medical practitioner and his consultant or consultants, and this doctor comes in and he sees the results disclosed by the autopsy. Why, he says if I had been called in, these symptoms that appeared obscure to my fellow practitioners I would have diagnosed as cancer. The retrospective imagination. It is nice to look at the after event.

Men, including auditors, readily persuade themselves that they would have done this or the other which they never would in fact have done. Why Mr. Commissioner, there are people to-day who have persuaded themselves that they could have told at the time that Admiral Jellicoe should have taken the turn to the right instead of the left at the Battle of Jutland, and have honestly persuaded themselves that if they had been there and controlled the helms of that fleet the turn would have been made differently. They are plenty of people like that, and they think it manifest that Jellicoe did not know his business. They call those people "wiseacres". I looked it up in the dictionary the other day. A wiseacre is a man who makes undue pretension to wisdom, a man who is wise after the event and tells exactly what he would have done if he had been there, and he believed it.

HIS LORDSHIP: What is the point of the word "acres"?

SIR THOMAS WHITE: I do not know, your lordship, but it is "wiseacres". I do not know what the derivation is, but it is a man who has undue pretension to wisdom, and there are men in this room, counsel Sir Thomas White: Why, of course, if I had only been in his place none of this would have happened at all, never would have happened. But he was not in my place. The question is "How did the Minister deal with it honestly?"

It was suggested that an auditor was placed in the Banque Nationale. I doubt it. There may have been some understanding with some other bank, in a friendly way, to check up securities, and something of that kind. But if an auditor was put in did he discover anything, and, if so, why was it allowed to do business with the public for two years afterwards? What would have happened to its depositors if the Provincial Government had not put up \$15,000,000 to save it, and would there have been a Commission appointed as to justification?

No Minister, your lordship, has power to close a bank. He is limited by law. Section 126, let us see how far that goes. I have told your lordship that you have the safeguard of the depositors. One of the main safeguards is the capital and the double liability on the shareholders.

MR. REID: What protection is the double liability in a case of this kind?

SIR THOMAS WHITE: That is, if it can be called. If you want any advice of that kind you will have to give me a fee. Section 126:

"Any suspension by the bank of payment of any of its liabilities as they accrue, in specie or Dominion notes, shall, if it continues for ninety days consecutively, or at intervals within twelve consecutive months, constitute the bank insolvent, and work a forfeiture of its charter or Act of incorporation, so far as regards all further banking operations."

Now, what does that contemplate? It contemplates the bank going on until, as a matter of fact, it is unable to pay any specie and then it is given ninety days to resume specie paying. The reason is obvious. They want to give the proprietors a chance if they can by any means bring it about to put the bank on its feet again. A Minister can, as I have stated, take action that will have the indirect effect of closing a bank, and his action will be prosecution for false returns.

Mr. LEE: Could he publish the returns?

Sir THOMAS WHITE: He does publish them.

Now, Mr. Commissioner, I just want, in closing for to-day, to leave this thought with your lordship: In view of the Crerar-Haney report, in view of the Haney report with regard to New Orleans, in view of the opinion expressed by Mr. Crerar and his fellow Directors from the West, what would they have said in 1916 if I had closed up the Home Bank? Well, I know what they would have said. They would have advocated appointing a Committee for the Minister, that is what they would have done. What would they have said about the value of the timber limit? What would they have said about New Orleans? What would they have said about the goodwill of that bank built up over twenty years? The goodwill of a bank is worth millions sometimes. In the case of the Merchants Bank it was said to be worth seven millions. The goodwill, the establishment, the money spent, the effort made, the advertising, the connection, all lost if you close a bank.

I do not mean to say for one moment, your lordship, because I want to put this thing frankly, that if any situation such as has been revealed underlying that bank, apart from these three or four loans, if that situation had been suspected and an auditor like George Edwards, or Mr. Clarkson of Toronto put in, I think it altogether probable he would have discovered that underlying situation, but I do not believe that at that particular time—although I think they would have called attention to it—they would have taken the position that that timber limit account should be written down to half its value on the books of the company, or beyond that, from what I know of auditors, but if I had closed the bank in 1916; apart altogether from the war, all I have to say is that the agitation which would have resulted would have been second only, if second, to what happened since this bank has closed its doors. But I want to say this, that had absolutely no influence upon me with regard to what I did, and that is shown absolutely by the correspondence. The correspondence in this thing is so clear that there is no room for doubt. Every single step is set out in that correspondence. It is not a matter of the uncertain memory of a man going back for eight years. It is there, and I will take that up next in order of time.

Just one other point. It takes years to build up goodwill and a day to wreck it. People talk lightly of responsibility. They say "If I had been there I would have closed that bank up quick." Would they? On the evidence before me, because that is what I have got to go by, not by the real facts but the facts as I believe them honestly to be, and that is shown in the correspondence. You do not close up a bank because it makes losses on three or four accounts. You do not close up a bank if it loses \$500,000 of its capital, or half its capital. There is many a bank in the world to-day that has lost a third or a half its capital and has become a strong, powerful institution under good management.

I have taken up a good deal of your time, my lord, and I have to thank you for your exceeding courtesy. I want to go on after the adjournment, and whatever adjournment will suit you, sir, and the other gentlemen, will absolutely suit me.

(Proceedings stand adjourned at 4.40 p.m. Friday, 16th May, 1924. until 10 a.m. Monday, 19th May, 1924).