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ROYAL COMMISSION

TO ENQUIRE INTO AND REPORT UPON AFFAIRS OF THE

HOME BANK OF CANADA

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

COMMISSIONER:

The Honourable Chief Justice McKeown

OTTAWA, MONDAY, MAY 19, 1924

No. 16

CANADA

IN THE MATTER OF A COMMISSION, appointing the HONOURABLE HARRISON ANDREW McKEOWN, a Commissioner to inquire 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 Monday, the 19th 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.

SIR THOMAS WHITE (Continuing his argument): May it please your lordship: before resuming the thread of my argument, I desire to complete the references which I gave imperfectly, on Friday, with respect to those sections of the Bank Act which are mandatory upon the Minister, the Treasury Board, and the Governor in Council, as distinguished from those sections which are permissive. In the former case the word "shall" is used, and in the latter the word "may." Instead of adding to those numbers of sections which I have already mentioned, I desire for the convenience of your lordship, to place the enumerations of all the sections now upon the record, and I am referring to the Bank Act of 1913; not to the revision of 1923:

The sections are: section 15, subsection 3. Section 17, subsection 1. Section 33, subsection 3. Section 56, subsection 3. Section 56, subsection 8. Section 60, subsection 2. Section 61, subsection 8. Section 64, subsection 2. And then sections 84, 106, 107 and 115, subsection 2. And in order to fix my point in your lordship's mind, I desire briefly to refer to a few of these sections to which I did not specifically refer on Friday.

I did refer to section 15, subsection 3, which provides that 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 have been complied with.

Now 33, subsection 3, as to capital stock issued;

"No such certificate shall be issued by the Treasury Board unless application therefor is made within three months from the time of the passing of the by-law."

Then 56, subsection 3:—

“The Minister shall communicate his disapproval, if any, to the Association.”

56, subsection 8:—

“If the appointment of auditor is not made, the Minister shall, on the written application of the shareholders, appoint an auditor.”

Section 60, subsection 2:—

“The Minister shall make such arrangements as are necessary for ensuring the delivery of Dominion notes to any bank, in exchange for an equivalent amount of gold coin.”

Section 64, subsection 2:—

“The Minister shall retain certain moneys.”

Then section 84.

HIS LORDSHIP: 84 is “may.”

Sir THOMAS WHITE: Yes, I beg pardon; 84 must come out of the list. The next is 106. A very strong section. The approval of the Governor-in-Council shall not be given; the Government itself is not to act, unless in certain conditions. The words are “shall not.” 107. “The agreement shall not be approved”.

115. subsection 2:—

“The Governor-in-Council shall on the report of the Treasury Board, direct payment”.

Now those are the references, my lord, and in order that I may not have to return and supplement in my recapitulation I desire to give your lordship one or two other references from Todd as to the right to review the honest executive action of a Minister or a Governor, and especially with regard to ex-Ministers. Vol. 2, page 519:—

“It is of course competent to Parliament—to Parliament, not to the executive—to investigate particular matters of complaint against individual ex-Ministers whenever facts come to light which call for inquiry.”

It is Parliament not the executive Government of Canada, which can do this; and therefore my point is, my lord, that Sir Henry Drayton and myself are subject to criticism in Parliament just as is Mr. Fielding, and as a matter of fact our policy and actions are constantly brought under review and criticism in Parliament, although personally I have no seat in Parliament and am no longer a Minister.

Now as to the general power of Parliament, I have just this brief quotation, from Vol. 1 at pages 416 and 417. The quotation here is from Pitt, quoted by Todd as authentic:—

“That the House of Commons had the constitutional power to inquire into the conduct of any department of the Government was unquestionable.”

“Note: the House is to inquire. A limited power of delegation is conferred by the Inquiries Act.”

But that Act, as I have stated to your lordship, does not apply to a Minister of the Crown. Now just in that connection I may say to your lordship that I limit my contention to cases of unconditional honest executive discretionary action. If the executive act is conditioned and mandatory by

legislation, where the Minister is an instrument to carry out the will of Parliament, a Commission may find that the condition existed and whether power was exercised or not. Or, if charges of corruption are brought against a Minister, a Commission may find the facts and report for the information of the Government and of Parliament.

Then the next submission I have to make, quite honestly and seriously, relates to a definition of terms. I have used in my previous argument, and I intend to use in my further argument a little later, two expressions which I employed on Friday. The one was the word "wise acre"; the other was "retrospective imagination." The word wise acre is derived from the German word "weisagger". It meant originally a foreteller or a prophet; then later it was applied in the ordinary sense to a wise person, but that meaning is now archaic. And now it is defined in Webster's National Dictionary, that a wiseacre is a person making undue professions of wisdom, or, "a would-be wise persons." Brewer's "Dictionary of Phrase and Fable" contains this definition: "Applied to dunces, wise only in their own conceit."

Now I desire to define, myself, the expression "retrospective imagination" as I shall use the term in my argument. I define it as follows: that remarkable faculty whereby many worthy persons are enabled to delude themselves into the sincere belief that they would upon critical past occasions of vast public responsibility have acted much more wisely than those who were actually charged with that responsibility.

The delusion is harmless and indeed beneficent, because it confers upon those subject to it a happy albeit a fictitious sense of their own innate superiority of judgment. That is my definition of retrospective imagination.

Now, my lord, before taking up the evidence relating to the period 1916-1918, I desire to picture to your lordship the conditions then prevailing about which your lordship asked me at the close of my evidence. Your lordship is asked to substitute your mind now for my mind then. Here we are in a coiled room in a period of profound peace; outside, the ordinary activities of men are proceeding in the normal way. In Parliament and in the press there are disputations upon the immemorial political questions of surplus or no surplus; Free Trade or Protection. My point is that we have pre-war topics of discussion.

I am going to ask your lordship to let your memory and your imagination take you by the hand and transport you to a very different scene, six to eight years ago, when every morning and evening newspaper brought tidings of some appalling disaster by sea or by land, a period when the Empire and our Allies were locked in a life and death struggle with the most formidable combination of foes in all history, fighting for their national existence, and indeed for civilization itself, every sinew braced, every nerve tensed, no one knowing whether the war, sir, would last two years, or five years, or ten years, or go on the destruction of the world. The weapons which were employed were men and money, the courage of men and the power of money, which is credit. Those were the weapons with which the war was fought and with which the war was won.

For conciseness, because I could give it to your lordship in a discursive way, I am going to read a few sections, very compact and brief, from "The Story of Canada's War Finance," which I wrote immediately after the war dealing with this period:—

"It was not until the close of the year 1915 that the Canadian people fully realized the life-and-death character of the struggle in which the Empire was engaged"

"Speaking of the war in the Budget of February, 1916,"—I had my Budget in February, 1916, the time that these letters were being written and received. In that Budget I used the following language:—

“The conflict has developed and extended upon a scale and to an extent far beyond our expectations or imagings at its inception. Looking backward over its tragic course and reflecting upon its varied fortunes, there has grown in the hearts and minds of all an ever-deepening sense of its increasing gravity and menace to the Empire's safety.’

“In view of the gravity of the situation and with the object also of producing a heartening effect throughout the Empire, Sir Robert Borden announced on New Year's Day, 1916, that Canada's authorized enlistment would be extended to a total of half a million men.”

Then it goes on:—

“When the decision was reached increasing enlistment to 500,000 men, not one of us had any clear view as to how so many additional men could be raised or where the necessary money would come from. We simply went on faith, feeling instinctively that what we decided upon was right and that means would be found to enable us to carry it out.”

Then the booklet goes on to describe the financing of that year, very heavy financing in New York and in Canada, and, further, the amounts which were taken by heavy additional taxation to raise a part of the expenditure.

Towards the middle of 1916, the same year, speaking of Great Britain's finance, I said this:—

“The burden of this financing became exceedingly heavy. The Titan was beginning to bow beneath the load. Expenditure in the United States had become a monster into whose insatiate maw flowed an ever-increasing stream of gold from the Treasury of Britain. In Canada also British commitments for munitions were running at the rate of twenty-five millions a month, of which we were furnishing by way of credits about fifteen millions.”

Continuing further on:—

“On July 28, 1916, I received a cable despatch from Right Honourable Bonar Law, Colonial Secretary, stating that ‘it would be of the greatest assistance to His Majesty's Government’ if I ‘could arrange to come to London at the earliest possible date to give an opportunity of discussing the question of Canadian and American purchases personally’ with me. The despatch expressed appreciation of the financial help already given by Canada and stated that arrangements for future finance would be greatly facilitated ‘by such a survey of the whole question as a visit would alone render possible.’”

I go on to say:—

“It was not possible for me to go overseas at that time as I was fully engaged at Ottawa with business of an urgent character, and I was also preparing for the issue of the second domestic war loan early in the autumn. On August 12th I received a further cable, stating that it was considered most important that I should come over and ‘give the benefit of my advice with regard to the whole situation at the earliest possible moment.’”

Then I received a further cable from Sir George Perley, stating the desire of the Chancellor that I should go to London for the purpose of discussing the whole financial situation, which seemed to make it undesirable that I should further delay, and, after consultation with the Prime Minister and my colleagues, I decided to go.

There is a great deal more about 1916, and I need not say to your lordship it was a very critical year, but this was the period when, according to the eloquent expression of my learned friend, Mr. Lee, I was asleep in a barn. If he had crossed the sea in the *Mauretania*, as I did from Halifax, with 3,000

Canadian troops in the face of one of the most formidable concentrations of the German submarine department to get that boat, the last thing that would have been in his mind, I assure your lordship, would have been sleep.

Now I come to 1917. I say there that we discussed, over there, not only the extent of the aid that Canada could give by way of money but also Great Britain's finance in the United States. I was asked to a conference at which Mr. J. P. Morgan was present representing the United States financiers.

I might say to your lordship, generally, that through the entire period of the war, from 1916 on, I was in constant touch with the British authorities, and advised not only with regard to our own finance but with regard to Great Britain's financing in the United States.

The booklet goes on:—

"There was no question as to the need to Great Britain of continuing to purchase in America to the utmost extent. The German submarine campaign was developing with frightful rapidity and effectiveness. Daily, the papers contained reports of sinkings of merchant vessels. Daily, Britain and her Allies were being bled white by the tremendous drain upon their resources. The policy was to strain every nerve and bring to bear every power to bring to an end the war which threatened to destroy the world by exhaustion before a final decision could be obtained."

And then it goes on to say how much Great Britain depended upon the supplies of steel, copper, and other products of the United States, and of Canada as well.

Mr. SYMINGTON: What book are you reading from?

Sir THOMAS WHITE: "The Story of Canada's War Finance". I am going to present it to you later on, and, as I say, I could have put that in evidence. As a matter of fact, if there is any objection to my reading it, I would be very glad to give this in my address, and the reason why I read it is because Mr. Lee has made various references to the condition of mind in which I was.

Mr. SYMINGTON: I have made no objection to it, Sir Thomas.

Sir THOMAS WHITE: "I won't be very long. I come to the year 1917:—

"The year 1917 was probably the most trying period of the war. It was a time of deep anxiety and uncertainty as to the outcome. While it marked the entry of the United States on the side of the Allies, it was also the year of Russia's revolution and subsequent collapse. The German submarine campaign was at the height of its power and destructiveness."

Then I go on to refer to the loss of Canadian lives at the front, and to the widespread grief throughout the Dominion, the work that was done by patriotic men and women in connection with the Red Cross and kindred associations, and I say:—

"For the first time the Canadian people were upon a war basis, instinct with the spirit of sacrifice and self denial which must be evoked before the full power of a democracy can be brought to bear."

Now, this is very important which I am going to draw your lordship's attention to. I testified to this in my evidence:—

"At one time during the year there was an agitation for what was called the 'conscription of wealth.' This was taken by some to mean the confiscation of deposits in our chartered banks, and in consequence of the publicity given to the expression there were 'runs' in certain parts of Canada. So serious did the matter become that I was obliged to make a statement in the House of Commons that so far from intending to confiscate deposits, the Government's policy was to promote and foster national savings."

And that was the year of the extension of the business profits tax, and the introduction of the income tax.

Just one further as to 1917:—

“At the stage of the war of which I am now writing, the demand upon the Dominion Treasury for money was becoming exceedingly heavy. We had to provide not only for our rapidly mounting war expenditure in Canada but also the ever-increasing credits required by Great Britain for her purchases of Canadian munitions and other supplies. For this last purpose we were lending her twenty-five million dollars a month, and in addition, the sum of ten million dollars for a shipbuilding programme which she was carrying out in Canadian yards. We floated our third domestic war loan in March of 1917, and in the summer placed an issue of one hundred million dollars of two-year notes in New York. This last-named issue was the least successful of the public flotations made by the Government during the war. We had to arrange to have a part of it specially subscribed and it immediately fell to a discount after allotment. The reason for its non-success was that the United States had declared war in April, and American investors were conserving their resources for the purposes of their own national finances.”

That was the period when, according to my learned friend, Mr. Lee, I was asleep at the switch, although I had to go away shortly after 1917, in January of 1918, because I could not sleep. Now, we come to our Victory Loan organization in 1917-18:—

“That organization was formed in 1917 and perfected during the next two years. It was, I believe, one of the most efficient in operation anywhere in the world. It combined professional and lay ability. Those engaged in the securities business in Canada understood thoroughly the most modern methods of marketing bonds. Associated with them was a body of most earnest men and women in every part of Canada patriotically devoting their thought and energy to the service of these loans. The publicity campaign was organized most efficiently by the Canadian Press which probably more than any other single factor, except the patriotism of the people, had to do with the success of these great flotations. The work of the chartered banks in receiving and handling subscriptions was invaluable. The co-operation of all fraternal and other societies, loan, trust and life insurance companies, the schools and churches of Canada, was actively enlisted, and with all these agencies at work the impetus of a Victory Loan movement, once it got under way, was irresistible. I had a great deal of heavy work at the outset in getting the organization extended over the whole Dominion and in smoothing out difficulties which continually arose. I am happy to say that no question of politics ever entered into these campaigns. I do not recall hearing a single complaint as to discrimination on this ground. Most assuredly, the Government had the whole-hearted support of the entire community in its war finance.”

Then the booklet continues, further on:—

“The proceeds of the second Victory Loan, which was floated about the time of the Armistice in 1918, gave the Government funds with which to meet the trying period following upon the war. They were thus enabled to provide, among other things, a gratuity of more than one hundred and thirty million dollars to Canada's returned soldiers for their maintenance during the unsettled conditions which then ensued. It also enabled us to continue shipbuilding and provide credits for the purchase of Canadian products, all of which was of the highest consequence to Canadian industry at that critical time.”

I do not know whether Mr. Lee thought that at that time I was, to use his expression again, "a heavenly blessing" or a "lovely ornament," which, he said, the country could not afford.

Those are all the quotations from "The Story of Canada's War Finance."

Mr. LEE: Are you putting that in?

Sir THOMAS WHITE: No, no, I am just giving it to the reporter.

Mr. LEE: I suppose it should be put in.

Sir THOMAS WHITE: I have no objection to it going in.

Mr. LEE: If you have quoted from it, it should be put in.

Sir THOMAS WHITE: I have no objection to it going in.

EXHIBIT No. 179.

Filed by Sir Thomas White, May 19, 1924.

The Story of Canada's War Finance.

Sir THOMAS WHITE: I have said we were engaged in financing our own loans, and in financing Britain, so that, at the close of the war, Great Britain owed us four hundred million dollars. That our dollar stands as it does to-day, and that our credit is as high as it is, is due to Canada's war finance, and to the productive energies of the people of Canada, which were based upon that financing without which they could not have found scope.

The banks, at that period, took my Treasury bills, pending loans, to the extent of fifty, seventy-five or a hundred million dollars at a time. All the banks had large deposits from the Dominion Government representing the amount which their various depositors had contributed by way of subscriptions to our Victory Loan.

Now, your lordship, I am getting back to the very point before you, to which this has been preliminary. It is necessary for a Minister, in exercising his discretion at any time, to be careful. I need not say to your lordship how necessary it was for a Minister to be careful in dealing with any bank at that time.

Our friends, the wiseacres, say that you can investigate a bank with impunity. Notwithstanding all the evidence of accountants, I know from my knowledge of banking and my talks with leading bankers, whom, for reasons your lordship will understand, I could scarcely produce here, that placing a Government auditor in a bank, that is an individual bank, when there is no general law, is likely to cause a run.

I am going to ask your lordship to do what Judges do under a rule that I have heard termed "a golden rule" and where there is a conflict of evidence that your lordship will bring to bear your own knowledge of affairs. What would be the probable effect in your lordship's judgment? I have not produced evidence here from bankers, and Government counsel have not called bankers, I do not blame them; but the result is there is before your lordship one sided evidence, and I have not been represented in cross-examination,—my own fault of course, I blame no one.

I am going to read to your lordship from a public document, the proceedings of the Select Standing Committee on Banking and Commerce of Wednesday, May 14, 1924; Mr. Edwards was giving evidence, and I was not there to cross-examine. He is speaking of inspection and audit by Ministers:—

"Q. If he exercises his powers now suddenly, would it not be injurious to any bank he might enter, unless you made it an obligatory and

regular inspection?—A. Quite. Any exercise of these powers, in my judgment, would have to be applicable to all the banks so that there would be nothing conspicuous about the entire thing.”

That is what the Government witness says before that Committee. Then he goes on;—

“Q. You think the Minister could not act under that section unless he examined all the banks?—A. No, but I think it would be imprudent to exercise it in the case of one particular bank.”

Now you are getting good sense from Mr. Edwards. Then he speaks of the section under the new Act, not the Act of 1913, and the questioner speaks of that and says;—

“Q. Then the section does not amount to very much?—A. Yes, because he can exercise his discretion in regard to all the banks.”

Section 56A was enlarged in the revision of 1923, the Act under which I was acting was the Bank Act of 1913. He says:—

“Q. It makes the Minister examine all the banks when he only wants to examine one?—A. Why should he want to examine one? He has a very good chance to examine them all.” (Under the new Act, as a regular thing.

He is pleading that you do not need an inspection system, that under the Act as amended in 1923 you can as a regular thing, and as they do, call for special reports from all the banks.

“Q. Because he has evidence that one is not acting in good faith, or is acting wrongly, do you think he should examine all the banks?—A. I do not think that was the purpose of the subsection. I think the purpose was that there should be a general enquiry into all the banks along the lines suggested.”

Now during the period of the correspondence with the Western Directors I thought of an investigation by the Bankers Association, it was in my mind that that was desirable, because of the losses which might result upon those three accounts which were specially drawn to my attention. I changed my mind in regard to that. Now let us consider what would have happened, disregarding for the moment the question whether what would have happened was good or not, on the conditions before me. In the state of mind in which I then was would I have been justified upon full consideration in laying the facts before the Canadian Bankers Association? What is the composition of the Canadian Bankers Association? The General Managers of all the banks of Canada. Lay that before the Canadian Bankers Association, and every General Manager or Executive in the first instance of the principal banks are at once acquainted with the situation of a rival bank. I do not think it is an over statement to say that facts like that laid before the Bankers Association would be on the street in a few hours. These banks are taking the exchange of this bank every day at domestic points, what would they do with regard to that exchange if the Minister refers a situation to them indicating his view that the bank is in a weak or a somewhat weak condition? The Bank Act makes no provision for reference to the Bankers Association. That was my own first idea, and I abandoned it because I believed its effect would be to pull the bank down, solvent, or insolvent, and at the time I thought it was solvent. If there is an obligation to be careful to-day there was a triple obligation in 1916 to 1918. And that triple obligation was in the interests of the bank itself, to say nothing of the general situation.

Now your lordship I have put this down for conciseness, it represents my view of the situation. I did not jettison the Home Bank in 1916-18, but in dealing with it I had to have regard to conditions as they were, and weigh

carefully and conscientiously the consequences to the bank of a mistake on my part. The action I took was in my discretion, in exercising his discretion a Minister must have regard to conditions, because conditions have a direct bearing upon the consequences attendant on his action to the bank and the general situation. If you make a mistake in putting in an auditor, in peace time the consequences may be a run producing little effect upon the bank; if in war time, you may bring down the bank and in addition you may cause an unspeakable calamity to the country. It is not that you deliberately do something contrary to your judgment, only you are much more anxious and careful that your judgment is sound. The discretion under 56A of the Bank Act of 1913 is a discretion at any time, war or peace, the Bank Act applies to a time of war just as to a time of the most profound peace. It makes no difference how many things are on your mind, the discretion as to what to do is the Minister's and his only. I shall endeavour to prove to your lordship that I did my full duty, I do not claim the war as a shield for any action or default on my part, my judgment was honestly exercised, but in conditions where the consequences of a mistake would have been most serious to the bank and to the public.

As to what I did or what I did not do I must be judged by my state of mind at that time, what did I think about the situation, what did I honestly think? Now my state of mind, and indeed the state of mind of Mr. Crerar and Mr. Lash, is shown in the letters, clearly and unmistakably. I did not suspect underlying fraud, no honest man could have suspected such fraud as has been disclosed. I would not like your lordship to think that I am for one moment saying that all the Directors of the Home Bank knew of this underlying condition of fraud. I could have had the bank taken over at any time by one or more of the banks if I had known the real situation, as opposed to the situation which was presented before me and as I saw it. What was the state of mind of the Minister? Was it an honest state of mind? How did he see the situation? Not what were the real facts, disclosed and undisclosed. The building the Minister saw, the quicksand beneath it he did not see, it was hidden from him by fraud. The essence of fraud is deceit. In a civil action I need not tell your lordship there must be wilful or reckless misrepresentation of material fact, and the party who is the victim of the fraud must be deceived. Honest men are continually deceived by fraud. You assume, and you have a right to assume, unless you have positive evidence to the contrary, that the men with whom you are dealing are honest and honourable men. I remember one of the great metaphors in literature, Dante in his *Inferno* pictures fraud as wearing the face of a just man. If fraud wore the face of a wicked man no one would be deceived. But fraud wears the face of a just man and consequently is enabled to perpetrate fraud and deceit. There just flashes through my mind as I speak, reading in my early student days in Anson a dictum from Brian an old English judge, he said: "The devil himself knows not the mind of man."

Mr. McLAUGHLIN: "The devil himself cannot try the heart of man."

Sir THOMAS WHITE: Well you can have it either way as long as you get the devil into it. I have been called many names in my life by political opponents years ago, but they never ascribed to me all the attributes of his satanic majesty, and I do not pretend to be nearly as astute as he is. Yet Brian says that the devil himself knows not the mind of man. He is right.

Now your lordship, the fault I have to find with counsel for the depositors, —and also I think, and I am not censorious at all, with counsel for the Government, is that in their examination of the correspondence and the testimony of witnesses they have been looking at the matter through a microscope, the picture they have painted and will paint to your lordship is painted with a

camel's hair brush. I am asked: "Sir Thomas, did you consider the psychological processes of the Western Directors? They shifted their ground once, twice, thrice, surely that must have made a deep impression on you. Did you call in a psycho-analyst for Mr. Lash? We allege that he changed his mind in four days." Is there anybody in this Court Room who never changed his mind? If he changed it honestly it might be a very wise thing to do. Counsel say: "Can we reconcile all the letters and all the paragraphs of the letters." in a changing, fluctuating, shifting situation in which men are trying to do the right thing? The best evidence of the honesty of the transaction is that the letters are as they are. "Did the Minister's view vary?" Now your lordship, let us get away from this camel's hair brush painting and this microscopic examination and ask: What is the effect of the correspondence as a whole? I submit to your lordship,—and I know I need not submit it,—that that is the correct way to look at honest correspondence, not at the shifting and changing position from time to time but at the effect on the whole of that correspondence.

What does that correspondence show? It shows three main stages in the mental attitude of the Western Directors and of myself. The Western Directors, through their representative James Fisher, laid before me a complaint as to certain accounts and matters concerning the bank. They do not ask for any investigation at that time. I say I will decline to accept your complaint as confidential, I must deal with it officially; and I at once take the matter up with the Home Bank Board under Section 113 of the Bank Act.

The second stage is they say: We want an investigation of the bank's affairs, not limited to the three accounts. But I am going to call your lordship's attention to one curious thing that recurs in their letters: they do not want an investigation by the Board as at present constituted, that is to say Mason was the President, they had no confidence in Mason.

The third stage is that upon the harmonizing of the Board under the Acting Presidency of Haney, Mr. Crerar comes down to Ottawa and tells me that the condition of the bank is improved and that it is not necessary to have an outside investigation, that with the Board re-established and the confidence they have in Mr. Haney they do not want an outside investigation by the Minister, they can handle things themselves.

Those are the three stages in their mind, and lest I should forget it, let me add this: supposing your lordship had been seated in my chair as Minister of Finance, and three members of the Board came, reluctantly as I believe they did, but in pursuance of what they regarded as their duty, and laid before you facts, so that as a result of that presentation they became subject to very severe criticism from the other members of their Board, would not your lordship have assumed that at all events those three men were honest men? I did assume that, and it was not a difficult assumption to make because I had known those three men by reputation. Those men were on the Board, on the inside, they had been taking up a multitude of matters that never came before me in any correspondence, they were very much better acquainted with that situation than I was, and when they through their representative, Mr. Crerar, a man who might have been a Minister, who was a Minister afterward and who may be a Minister in the future. When they come to me through that representative and say: Now Sir Thomas, the condition of this bank is improved and we ask you not to put in an auditor, which might have the effect of wrecking this bank, but give us a chance; and they pass a resolution at a meeting at which Crerar and Kennedy were present to the effect that in their belief the capital of the bank was intact,—that cannot be controverted, I have a copy of the resolution and I think it is on the record; now was I to be astute to wreck the bank in the face of that request on the part of the Western Directors who had originally brought

the matter to my attention? Was I to be keen, eager to wreck the bank? What was any sensible man to do situated in my chair, unless he had lost confidence in all mankind? I certainly had not, and have not to-day, and never will.

The Western Directors were not satisfied with James Mason and were not satisfied with Mr. Barnard, he was the only one of the Directors that they were dissatisfied with. Then they harmonized the Board, James Mason was side-tracked altogether and replaced by Haney the strong man. Mr. Fisher says you rightly believe Haney is the strong man, Mr. Crerar believed in him, he has sworn so. What is there on the record to the contrary except an inference six years after the event that he may have deceived the Minister, but what is there up to the time I acted? Mr. Machaffie made certain charges, I will come to that later, but what is there for the period from 1916 down to 1918 to show any doubt whatever in the mind of anyone connected with the bank that Haney was not an honest, sincere man? On the contrary it was all the other way. Mr. Crerar testified to it, the letters show it. Mr. Lash believed in Haney. I have been amazed since I came into this Court Room to hear the charges made against Mr. Haney. Is it not an amazing thing that during all that time when he was at the head of the bank no shareholder of the bank who knew him well should get up and say: Why have you a man such as Mr. Lee described at the head of the bank? I wonder if Mr. Lee is not exercising that retrospective imagination of which I have spoken.

Mr. LEE: I was not a shareholder.

Sir THOMAS WHITE: But you are stating now that Haney is a man worthy of no man's confidence, what I am saying is that all these people connected with the bank, the Western Directors, Mr. Lash, all had confidence in Haney and there is nothing on the record that shows during that period, 1916 and 1917, anything whatever against him; and I say, is it not an extraordinary thing that if his reputation was as Mr. Lee indicates now in the light of after events, no shareholder at the meetings of the Board in 1916 and 1917, men who had known Haney for years, did not get up and tell the shareholders what Mr. Lee so confidently tells your lordship now? That is fair argument.

Then I come to the three stages in my own mind. I called for a report under Section 113, as it was in my discretion to do, I called for a report from the Auditor of the bank under section 56A, as it was in my discretion to do. I said I would find out, and I got a report from the Board, notwithstanding that Mr. Lash did not want me to get it, I asked for a report from the Board, insisted on getting it and I got it. Also I got a report as from an accountant, the Auditor of the bank, with regard to the Frost timber account about which the Western Members especially inquired.

Now the second stage. In view of the second stage of the Western Directors' attitude, or because it occurred to myself, I cannot say which at this date, but the letters show that I did determine provisionally to lay the facts before the Canadian Bankers' Association. At this distance of time I cannot tell your lordship precisely what was in my mind but I think it was this, that it was a question for a banker rather than for an auditor to tell me something as to the value of these accounts and pronounce generally upon the situation as to whether the bank should be allowed to continue in business. The things that were influencing me were, first the bank was in a weak condition but not sufficiently weak in my judgment to justify closing it up, that is on the information before me.

Now I shifted from that position by reason of the apprehension, which was shared apparently by Mr. Crerar and Mr. Lash and others and concurred in by myself on full reflection, that that might have a very serious effect upon the bank and bring it down, a bank that might be saved would be brought down. That is the second stage.

Now the third stage: Mr. Crerar comes down with Mr. Lash and writes me a letter, I will read that letter later on, in which he says: "The condition of the bank is good, we have re-organized the Board and we can make this investigation from the inside, you do not need to investigate from the outside, and run this risk that we are all afraid of." Those were the three phases.

Now I want your lordship to look at this correspondence as a whole. That is the reason I mention these three stages in their mental attitude and in my mental attitude towards the bank.

What was my policy at the time? It is stated in one of the letters, it was to give the reorganized Board a chance to put the bank on its feet and to carry on business, if it were possible in my judgment. I will quote that accurately. I am not going to weary your lordship by going over all these letters again, Jove would weary of the task. What did the Minister do? The petition says, merely referred the matter to Mr. Lash. Now I acquit entirely the depositors' counsel of making any misrepresentation to their knowledge in saying that, that was taken from a general interview which I gave when I had not the public file before me which shows that I had taken action under Sections 113 and 56A. I did not refer the matter to Mr. Lash at any time, but I did feel a very considerable measure of confidence in any statement made to me by Mr. Lash, who was one of the most respected men in the city of Toronto. Not a member of the Bar in Ontario will say a word against Z. A. Lash, there was no man who acted more frequently for all parties than Mr. Lash, there is not a man in this room but will bear honest testimony to that. It at once wrote James Mason, Exhibit No. 43, asking for a return under Section 113 of the Bank Act, and wrote a letter to the Auditor, Exhibit No. 46 under Section 56A, and in pursuance of my discretion as Minister.

I am going to call your lordship's attention especially to this paragraph in Mr. Fisher's letter of February 18, 1916, Exhibit No. 52.

"It is true that my clients are most desirous to co-operate harmoniously with Mr. Haney, whom Mr. Lash, rightly as I think, regards as the strong man amongst the eastern members of the Board, and at the recent meetings I understand my clients gave evidence of such desire. But it was quite clear to me that they would not for a moment be content with an investigation to be conducted by the Board as at present constituted."

They would not be content for a moment with an investigation conducted by the Board as it was then constituted. You will find that running through their correspondence and I call your attention to it again. Then Mr. Fisher goes on to say:—

"I was to prepare a communication to be sent to you, expressing most strongly their desire that a special audit of the bank's affairs—touching especially the large accounts in the Toronto office—should be directed by the Finance Department. These accounts would include especially the Frost, the Prudential and the Barnard accounts."

The next letter is Exhibit No. 53, appearing on page 83, from Mr. Fisher to me:—

"It will be wholly unsatisfactory to have an investigation made by the Board as at present constituted."

The same expression is used. Then he goes on, page 84:—

"My client's anxiety, however, is about the handling of and dealing with, the *prescnt* large accounts."

The word "present" is underscored. I may have underscored it; I do not know.

"And as to these the first requisite, in their judgment, is to get at the actual facts, and in their judgment this cannot be effectively done under an investigation by the present Board."

Now what is suggested there? That none of these things can be done, in his opinion, under the present Board as constituted. Does he not infer that it might be done under a Board differently constituted? A Board in which they had confidence? Why does he repeatedly use the expression: "effectively under an investigation by the present Board"? That is, before Mason is displaced.

Now in my letter to Fisher I say:—

"My duty of course lies to the public, and in view of the serious charges which you have made, I feel I cannot allow the matter to remain in abeyance".

Now my policy, sir, to which I referred a little while ago;

"At the same time it will and should be my policy to give the reorganized Board of Management every opportunity to place the administration upon a sound basis, provided that in my judgment this is possible."

That appears in Exhibit 54 at page 86. I say that was my policy at the time and I say it was a wise policy and I stand by it.

Then the reply of the Home Bank is dated February 22nd, 1916, Exhibit 63, appearing at page 93. I shall not read that. It is the official reply of the Home Bank to my letter asking for information about those three accounts. It is long and goes quite extensively into the history of those accounts, and it seemed to me at the time, as I think it would seem to anybody who did not believe he was dealing with men endeavouring to deceive him, to cover the ground very fully; and I say to your lordship that I relied on the good faith of the parties who were making this communication to me; and I repeat that if I had doubted the good faith of all concerned, and suspected underlying dishonesty and fraud, I would have had the bank taken over; I would not have allowed it to fail during the war. I have already testified to that; and I still believe at this moment, as I believed then, and as Mr. Crerar believed then, and believes now, that with good management that bank could have been made to succeed. We do not wreck a bank because it has made a marginal loss on three or four accounts, even though they are large losses. As I have pointed out, the whole intention of the Act is not for the Minister to close a bank; he has not the power to close a bank.

Now I want to read the Lash letter, Exhibit 70, or just an extract from it, about half way down the page. The letter is dated 14th February, 1916:—

"I was also glad to learn that at the Board meetings when the Winnipeg Directors were here, and after the natural acrimonious discussion took place, harmony was restored and the Board became unanimous with respect to the proper treatment of the bank's affairs."

This is Mr. Lash; not only a great lawyer, the man who drew the Bank Act originally, when he was Deputy Minister under the Hon. Edward Blake; not only a great lawyer, but a banker, Vice President of a bank, and Counsel for the Bankers' Association for years, although not Counsel for them at the time of this letter. He says:—

"The Board became unanimous with respect to the proper treatment of the bank's affairs. This I think was largely due to the fact that Mr. Haney, one of the new Directors, convinced the Winnipeg Directors that he was in accord with them instead of being, as they had feared, in accord with the management. The other Directors followed Mr. Haney's lead and all are a unit with respect to (1) introducing new and efficient management; (2) getting to the bottom of all important accounts and transactions of the bank; (3) going into no new accounts or important transactions until the permanent position is decided upon. In pursuance

of this policy Mr. Haney has been engaged in investigating such matters as can be dealt with in Toronto and as soon as possible he is going to the West to look into the lumber account out there and into the values, etc. The important account in Toronto is also being dealt with and further security is being got. Mr. Haney went to New Orleans and is able to speak intelligently as to values down there. He reports a substantial equity, and if the bank is able to treat the situation in the only way in which I think it can be treated to save the bank loss, that treatment will be given to it, but until we know whether the bank can continue and take up new business, the position cannot be advanced much with respect to this particular account."

That is what Mr. Lash says: that the Board is harmonized and important steps taken. Then he deals more fully with the situation in his letter of the 29th:—

"Personally I have given up hope of being able to secure a competent person who could undertake the general management, without first fully investigating the position. I have always thought that the investigation should be by an outside competent person, who would be quite free from any interference by the present management or Board. The best course may be to consult the Bankers' Association with reference to the person who is to make the investigation."

Then I wrote him on March 1st:—

"My view is that I should in the near future consult the President of the Canadian Bankers' Association with respect to the affairs of the bank. Please let me know when you expect Mr. Haney to return. It might be advisable to await his report upon the security held for the Frost account. In the meantime I feel free to lay the facts before the Bankers' Association before his return should I deem it expedient to do so."

Then Mr. Lash writes me under date of March 2nd, Exhibit 73: saying he thinks it would be wise to wait Mr. Haney's return before speaking to the President of the Bankers' Association, and he says the application for Mr. Pellatt's company was sent to Ottawa yesterday. That is to have further security on the Pellatt account.

Then I come to Mr. Lash's letter of March 4th. Mr. Lafleur in his cross-examination of me endeavoured to establish the point that Mr. Lash had not changed his mind; that what he was saying was, that the Board had certain views which he was presenting. Now I may have misunderstood Mr. Lafleur at the time, but I confess that annoyed me a little bit, and I was very sorry for a little clash that we had. I am Irish, and therefore it did not take me very long to make it up afterwards, with an old friend. This is what Mr. Lash said, at the foot of page 166:—

"If the Bankers' Association were asked to interfere, my experience tells me that no matter what the pledge of confidence may be, and no matter how faithfully it may be kept by those giving it, yet the situation would become public property in a very short time, by the whisperings or talkings of others, including the bank's own staff. This would precipitate matters before we are ready to deal with them in the best interests of the public, and it is that which I am specially anxious to avoid."

Now that is Mr. Lash's opinion. He does not say that is the opinion of the Board, although it was, as a matter of fact; but it was also his opinion. The point I am making is, that my learned friend cannot establish that Mr. Lash

was not giving his sincere view on March 4th; and that has been corroborated by Mr. Crerar's evidence, in his examination by Mr. Lafleur. At page 425 of the record Mr. Lafleur says:—

“Q. Was he reflecting the opinion of the Directors as far as you could judge, or was he giving his own opinion?”

And Mr. Crerar's answer is:—

“Oh, Mr. Lash held that view at that time, rightly or wrongly he believed it, that is the impression I got.”

Then he goes on to say later on, at page 427 of the record:—

“The Eastern Directors, including Mr. Haney, undoubtedly held that view. Mr. Lash expressed that view to us privately. I do not recall that he did in the meeting, but at any rate the view was expressed then very forcibly by these gentlemen that if there was an outside examination of the bank's affairs they could not keep that information off the street, that you might have a run or would have a run on the bank and it would be forced to close its doors.”

That is Mr. Crerar's opinion. He said:—

“I have a very clear recollection that Mr. Lash impressed upon me the danger that might come from an outside examination of the bank's affairs.”

Mr. Lash's own opinion; on the way down to Ottawa Mr. Lash impressed him with that. Now I have looked through that letter and through his evidence and Mr. Crerar has sworn four times that that was Mr. Lash's opinion. It reminds one of Alice in Wonderland. Alice says, “If I tell you three times, it is true.” Here is a man who became Minister of the Crown afterwards, a man of unquestioned honesty, who swears it four times.

Now Exhibit 79 at page 169 is a personal letter of March 20th, 1916, and in it Mr. Lash says:—

“I am in a much more hopeful frame of mind as to the future of the bank.”

And here is what he tells me is going to be done:—

“General Mason and his son will have leave of absence till a better detailed knowledge of the position is obtained. Mr. Haney was appointed Vice President with the de facto position of President. He will make the affairs of the bank the first charge on his time, till it is in a permanent position one way or the other and will if necessary devote all his time. He will accept no remuneration until it is seen that the bank can afford it and then he will take what the shareholders may decide. Mr. Machaffie in whom Mr. Haney and Mr. Crerar have great confidence, will come to Toronto at once, he has been wired for, to assist Mr. Haney in investigating the general position and Mr. Haney will employ such outside assistance as may be required. Mr. Machaffie is an old bank manager and was trained in the Merchants' Bank and B. B. N. A. He has been with the Home Bank about seven years I think and most of the time in Winnipeg. The Pellatt securities have been approved and will be executed to-day. This will make his account quite safe I think. The Board desire an opportunity of going on with the business, strengthening other accounts and straightening out tangles and it was with that in view that we came here to-day in order to explain the whole position to you and to ask you to give them this

opportunity, by refraining for a while longer from asking the Bankers' Association or other out-side authority to interfere."

"I would like Mr. Crerar to be present with me when I see you in order that he may assure you, as he has assured me, that he is quite satisfied now, and that Mr. Haney has the full confidence of the Winnipeg Directors. His appointment as V. P. was unanimous at the Board meeting, two of the three Winnipeg Directors being present. I feel quite satisfied myself that the public interest will be served by the opportunity asked for being given, and if you will kindly give us an appointment for some day next week, towards the end of the week, we will come here or meet you in Toronto and give full information and such undertakings as you desire that the general position will not be changed to the detriment of depositors."

Now what about "gullibility," a word used here the other day? Mr. Crerar and his fellow Directors from Winnipeg the honest eastern members of the Board, and Mr. Lash, all have strong confidence in Mr. Haney. Mr. Lee, exercising the retrospective imagination, says that no one who knew him could place any confidence in Mr. Haney. Where is that on the record? It is in the retrospective imagination. What did Mr. Crerar say? Mr. Crerar became a colleague of mine later on and he is a man for whom I have the very highest respect, and for whom I had a high respect at that time. This is his letter. (Ex. No. 81, page 171, 20 March, 1916.)

"You will have learned from Mr. Lash of our visit to Ottawa to-day to discuss bank matters with you, and our failure to see you through your absence from the city. You will also have learned of the change made at the recent meeting of the Board held in Toronto a few days ago, whereby the active management of affairs is placed in entirely new hands through Mr. Haney taking the Vice Presidency, and assuming direct executive control, with Mr. Machaffie, the Manager in Winnipeg, whom, for the time being at least, he is bringing to Toronto to assist him. By this arrangement I feel quite certain that the knowledge and information concerning the position of affairs desired by the Western members of the Board and also the changes they desired when they directed their request to you, and which they saw no hope of securing through the then existing management"—the same phase which runs through Fisher's letter—"can now be satisfactorily obtained without calling in outside assistance. In my opinion, the situation has materially improved with the past month, and, at this juncture, with the changes in management recently made, it is better to have the inquiry proceed from within rather than from without. Owing to the possibility of my being unable to attend a suggested conference with you next week, I am giving this letter to Mr. Lash so that he may place it before you. I may add that Mr. Kennedy, with whom I have discussed the views herein expressed, is in agreement with them. Mr. Persse, the other Western Director, is in the south, and so we have been unable to consult him. I feel, however, that were he here he would be in agreement with us."

Now what would your lordship do if you got that communication from Mr. Crerar? You being in my position. I just leave that with your lordship.

Then I write Mr. Crerar that I am glad to have his views respecting these matters and especially his assurance that the situation has been materially improved within the past month.

Then we come to Ex. 83, page 172, in which Mr. Lash writes me officially. I may say to your lordship—it does not arise here, because I certainly would

not have raised the question—I have very great doubts as to whether any of those private letters should have been produced by me even here, although I probably would have got the consent of the Governor-in-Council or His Excellency, and I do not know then whether I could have produced them under the authorities—but I put them in, and I am glad to put them in; I quoted the authorities the other day that private letters even though relating exclusively to State affairs are not to be produced; they are excluded from the rule. Then Mr. Lash says in this most important letter Exhibit 83 after reciting what I have mentioned, “the following changes have been made.” Something has been done now; not in contemplation.

“General Mason has been given leave of absence, and he is now conducting the affairs of the bank.”

The man in whom they had no confidence is out, and the man in whom they had confidence, is in.

“The Vice President, Mr. Flynn, resigned, and Mr. M. J. Haney was appointed Vice President in his stead, with the understanding that he should discharge the duties of President, and have plenary powers with respect to the organization of the staff. Mr. Haney has agreed to make the business of the bank the first charge upon his time, until the situation has been definitely ascertained, and the organization completed, and if necessary, he will devote his whole time to this work. Mr. Machaffie, Manager of the Winnipeg branch, has been brought to Toronto to act as Mr. Haney’s chief assistant. Mr. Machaffie is regarded as one of the ablest officers in the employment of the bank.”

“He is in no way responsible for the general management in the past, and he has managed the business in Winnipeg satisfactorily. He has been with the Home Bank six or seven years. My firm have been appointed the general solicitors of the bank, and I have agreed to act as General Counsel, and give personal attention to the more important questions which are now on hand, and which may arise in the course of the reorganization. Mr. Haney was a Director of the bank some years ago, but has had no connection with it for several years past. He joined the Board a few months ago, because it was represented to him that his assistance, as a Director, would be of value in directing the affairs of the bank, which he understood required special attention.”

They had had several months experience of Mr. Haney on the Board.

“He is interested as a stockholder, but he feels that his greatest interest is in helping to bring the bank through its present difficult position, and to avert the public disaster which would ensue were it compelled, for any reason which might be avoided, to close its doors. Mr. Haney has many personal friends who are very desirous that the bank should be maintained, and their wish that he should become a member of the Board and do what he could in its interests, had much influence on his decision to assume the position. You were made acquainted, in general terms, with the reasons which induced Mr. Crerar, Mr. Kennedy and Mr. Persse to send Mr. Fisher to you. Some of those reasons were the result of misunderstanding on their part especially with respect to the attitude which it was thought Mr. Haney would assume. This misunderstanding has been cleared up, and at the Board meeting, when Mr. Haney was made Vice-President, Mr. Crerar and Mr. Kennedy were present, the appointment was unanimous, I handed you yesterday a letter from Mr. Crerar supporting the request which I made to you on

behalf of the Board, and I may now state without hesitation, that Mr. Haney and the three Winnipeg Directors are in entire accord, I believe the whole Board is now in accord. I mention the Winnipeg Directors and Mr. Haney specially, on account of their position, and the understanding with the Board that the important affairs of the bank will be under their guidance.

"One of the first things which Mr. Haney did after he was appointed Director was to go to New Orleans with a view of investigating the position down there, in order to form an opinion as to the security held by the bank in connection with one of the accounts regarding which you called for special returns. Mr. Haney formed an opinion that by proper management, a substantial part of the value of that security could be maintained, but the situation is not an 'easy one, and requires careful and tactful treatment. In addition to going to New Orleans, Mr. Haney went to British Columbia, accompanied by Mr. Crerar, for the purpose of investigating the securities held by the bank in connection with another of the accounts regarding which you called for the special returns. Mr. Haney and Mr. Crerar both came to the conclusion that the security held by the bank showed a fair margin in value over the amount of the bank's claim. Here again the position is complicated, and requires careful and tactful management in order that the values of the securities may be realized without sacrifice."

I think I put in a copy of the resolution of the Board of Directors containing the report of Messrs. Haney and Crerar. They said that the account was amply secured and that the security could be realized in from three to five years. At that time there was the greatest demand for timber probably in the history of the world. Certainly in the history of modern times and even in the history of the world. Timber was wanted for the war and had never been used on such a scale before. He goes on to say:

"The Board unanimously concluded that they should endeavour, by all reasonable means within their power, to improve the position of the bank, so that it might be able to go on in ordinary course, and the Board expressed the opinion unanimously that if a proper opportunity were given to do what was necessary to bring about the result indicated, they would be able to succeed."

Now I ask your lordship if in the face of that letter, the unanimous opinion of that Board, of Mr. Crerar and his two Western co-Directors, and Mr. Lash, and the Eastern Directors, men like Mr. O'Brien, and I don't know whether Mr. Russell was on then or not.

Mr. LEE: O'Brien was not. He did not attend meetings.

Sir THOMAS WHITE: You say that, but one would think the Minister was expected to attend these meetings to see how many attend.

Mr. LEE: Pardon me, I am speaking of the record.

Sir THOMAS WHITE: I do not think it is in evidence on the record. I say supposing that in the face of that letter, in which they all say that if a proper opportunity were given to do what was necessary to bring about the result indicated, they would be able to succeed, and having before me at the same time the assurance that Haney and Crerar believed there would be no loss on the Frost account, and that Haney had come back from New Orleans and pronounced that the New Orleans matter might be pulled through, or substantially so, and they had also the liability of the Prudential Trust Company by way of guarantee—I say, if I had wrecked the bank at that time, what

would they have said as to my judgment or discretion? Why there would have gone up a cry to high heaven against the Minister of Finance, who in the face of that report would dare to close the Home Bank of Canada; they would have said I was in league with the big interests; and I am very much mistaken if Mr. Lee, at that time had discussed these matters, that he would not have cried to high heaven against the injustice of my action in the face of Mr. Crerar's report, Mr. Crerar, who afterwards became one of my colleagues, and Mr. Haney's report. A great deal would have been said about the practical man's judgment as opposed to that of a theoretical man like the Minister of Finance.

I think it would have been said that I had gone out of my mind if I had closed the bank in the face of that letter.

Mr. McLAUGHLIN: Is not this retrospective imagination?

Sir THOMAS WHITE: No, it is, not. If in the face of that letter and in view of the statements I have made, I had wrecked the Home Bank, I am very much surprised if a cry would not have gone out that it was the most sacrilegious thing that had been done since the time of Martin Luther.

He goes on to say,

"A thorough investigation will be made under the direction of Mr. Haney and Mr. Machaffie."

Let me give you more of it, my lord.

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

Here is a Board with honest men on it, unanimously of the opinion that the investigation that they will make will show that the capital is intact and that no loss will be suffered provided it is not compelled, by a run of depositors, to close its doors. If I had closed the bank and they had published that communication what would these gentlemen have said?

"The Board feels strongly that if they are allowed to conduct this investigation from the inside, instead of having it conducted by someone sent in at the instance of the Finance Department or the Canadian Bankers' Association, nothing will happen which would cause a run by depositors, but that if the investigation be conducted at the instance of any outside authority, the chances are that statements will be made, and things will be said about the bank, which will cause a run, and which will force the bank to close its doors. This opinion is not based upon any want of confidence in anyone who may be sent, or upon any fear that such person would himself disclose the confidence entrusted to him, but experience has shown"

This is Mr. Lash speaking,

"that no person can be sent from the outside to investigate the affairs of a bank, without its becoming known sooner or later that he has been sent from the outside. This probably results from some unguarded, innocent remark, made by some member of the bank's own staff."

Then he goes on to say:

"My firm is now engaged in completing arrangements for perfecting securities in certain instances where they are regarded as defective, and are investigating other securities to see if they are in proper form. This

work will take time but will not be neglected. "Negotiations are in progress, under Mr. Haney's directions, for the realization of a very important security relating to one of the accounts regarding which you called for special returns. Mr. Haney is hopeful that these negotiations will result satisfactorily."

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

What would they have said about the good will of the bank if I had wrecked it? What is it worth? What would be the costs of liquidation, hundreds of thousands of dollars in addition to the value of the goodwill. Should a Minister of Finance be astute to wreck a bank? Or should he be conservative, to save a bank? Unless he is absolutely positive that that bank should not be allowed to go on. Then on page 175:

"You informed us that you had given much thought to the position of the Home Bank since Mr. Fisher had called upon you in reference thereto, that the public interest must at all times be your guide in any decision which you might come to, and that in view of the statements made to you by Mr. Haney and myself, and of the statements in a letter which I handed you, from Mr. Crerar, you thought it would be in the public interest to comply with our request, and that you would do so for the present, always reserving to yourself the fullest right to take any step at any time, which you might think the public interest called for."

I was dealing with Mr. Lash at arms' length. Dealing at arms' length does not mean that you think a man is not honest, when you have known him all your life, to be honest, and when everyone else knows him to have been honest.

Now I wish to draw your lordship's attention to this fact. The evidence of the Hon. Mr. Crerar absolutely substantiates my evidence as to this period. Mr. Crerar was in a very much better position, being on the inside, to know the situation, than I was. I could only look at it through the letters that were sent to me. Mr. Crerar had been a director for years, and so he should have been—and so far as I was concerned, he was, in my view—intimately connected with the affairs of the bank. Suppose Mr. Crerar had been Minister of Finance at that time, in 1916; and suppose Mr. Lafleur had asked Mr. Crerar in the box here this question: "Mr. Crerar, if you had been in Sir Thomas White's place, in view of the evidence you have given would you have closed up the bank?" How could Mr. Crerar answer anything else than No, in the face of his letter to me.

Now I am going to ask your lordship to do, what I know you will do without my asking it: to consider that letter with unusual care. What would your lordship think if you knew those men as I have stated I knew them and had been seated in my chair at the time when I wrote the final letter with regard to the 1916 stage? What would your lordship have done, having regard to what has been disclosed to you of the conditions prevailing at that time? That is the question.

Now before I leave this matter let me say to your lordship that I did not regard the Home Bank situation as a good one. I have endeavoured to be very frank, as I was bound to be, in my testimony, and as I am trying to be now in my statement. I did not regard the situation of the Home Bank as a good one at all. I did not like these accounts. I thought there might be very considerable marginal losses upon certain of these accounts. I have said so. I thought they were imprudent loans made at some time in the past and carried

along, but I did not think on the evidence disclosed to me and on the statements made to me, that there would be such losses on those as to wipe out the capital of the bank; especially when the Directors assured me that in their opinion the capital was intact.

But Mr. Lee says:

“Sir Thomas, did you have the timber limits valued? Surely you would get a real estate expert to go and value the Pellatt property?”
Where is the authority under the Act for that?

Supposing the matter had come up in Parliament next year, and I had been called before the Public Accounts Committee and asked: “Sir Thomas White, what is this item, paying real estate experts for valuing Pellatt securities in Toronto, of the Home Bank?” You have only to state the situation to see the absurdity of it. It is no part of the duty of the Minister of Finance to employ experts to value the securities of customers of bank. There is no appropriation for that purpose. Or should I pay the money out of my own pocket? And would it be an expedient or a wise thing to do, to spread on the records of Parliament and give currency through debates in Parliament to the fact that Sir Thomas White had spent large sums of money for cruisers to inspect the Western timber limits because he was afraid the Home Bank might make a loss on it. Or to value real estate belonging to Sir Henry Pellatt in Toronto. What would they have said in Parliament? I do not know. Your lordship can guess just as well as I can. I wanted to save the Home Bank if possible. That was my policy.

Now let us look at the last mentioned account. Sir Henry Pellatt's father established a large brokerage business in Toronto; one of the principal brokerage businesses there. Sir Henry Pellatt succeeded his father and built upon the foundation laid by his father one of the largest brokerage businesses in the Dominion of Canada; and ever since I can remember—and my memory goes back for thirty years—Sir Henry Pellatt has borrowed from banks and from financial institutions and has met his obligations. When I was General Manager of the National Trust Company, I loaned Sir Henry Pellatt money upon securities; they were more liquid than these securities. They were securities listed on the Stock Exchange. We never sustained a cent of loss and had no apprehension about the man's credit. Sir Henry was reputed to be a very wealthy man. A man who builds a million dollar house, in the minds of the public is presumably a man who is well to do. My friends may get auditors to come here, exercising the retrospective imagination, and say:

“I really would not have passed that loan of Pellatt's.” And yet those same men have passed loans to Pellatt without questioning his standing in Toronto. Their retrospective imagination is like that of the doctor who appears at the autopsy and after he sees the results of it, he says: “Why of course that was cancer, and if I had been the doctor in attendance I would have known it was cancer.” That is all that these men are doing and I think is no wonder that I get indignant with them. Auditors coming in and telling what they would have done, and they as auditors were passing the same man's loans with their banks right along. They were not cross-examined as to that. Mr. Clarkson was not cross-examined as to whether he had ever had anything to do with Sir Henry Pellatt's loans. Mr. Edwards was not cross-examined as to whether he ever was in any institution or has audited a bank in which he has raised any question as to the credit of Sir Henry Pellatt. It was not done. I did not think they would lose anything on the Pellatt loans. I had no reason to think so.

Now we come to Frost account. The security is timber limits. And timber limits may be worth immense sums of money. I believe, sir, that those

Frost timber limits are very valuable limits, but a good deal is going to depend on the way they are handled. I have done some liquidation in my life; I have liquidated many companies; and I say a good deal will depend on how these limits are handled. If you put them up at auction and say we will sell to the highest bidder, I do not know what you will get. But if they are handled properly, they are very valuable limits, as I believe, and large sums may be realized for them.

And then what is all this objection raised here as against me, that you must not in any way relate the present situation in New Orleans to the past. They say: "Sir Thomas, at the time you were dealing with this, it is perfectly clear that the New Orleans account was bad." But if on top of that account, and growing out of it, they acquired and collected, as Mr. Lash said they would, an amount that is going to clear them, as Mr. Clarkson apparently indicates, why does that rise up in judgment against me? Bankers continually build one account upon the foundation of another account and if the result comes out all right and there is no loss are you going to blame the Minister, who knew about the first situation in a general way?

I think if your lordship gives an assumption that there are heavy losses on the Frost account and on the New Orleans account your lordship may go very far wrong. I mean on the evidence, I would not say your lordship's judgment would be wrong, but on the evidence because I think the evidence is not complete.

Then the Barnard account. Mr. McLaughlin said to me: "Sir Thomas, didn't you notice that there were loans made upon the security of Home Bank stock when the Home Bank took over the Banque Internationale?" Yes, I noticed that. I do not recall it as a matter of memory but it was in the documents.

The point I desire to call your lordship's attention to is this: It was a fact, it is not something they were going to do, it is something that was done. What are you going to do with these Home Bank shares, throw them in the lake? They were held through trustees—I am speaking from memory now—Barnard and Pellatt, trustees for the Banque Internationale, but supposing they had held them in trust for the Home Bank, and the matter was done in connection with the acquisition of the Banque Internationale, what are you going to do with these shares? You cannot make the purchasers take them back who sold them to brokers without knowing they were selling to banks.

I happened to be looking into a matter similar to this some time ago. Incidentally, a company in the course of its business acquired some of its own stock. At once you will say it could not acquire its own stock, but that stock was held for them. I looked up the purchase, and found out at that time that in a situation like this, although it would have been ultra vires for the company to buy the stock, still, the stock was held there for its benefit, and that the thing to do is to realize on it, and, of course, that is common sense. The Home Bank took over the Banque Internationale, and among the assets were the stocks of the Home Bank. The stock was there at a value, and it should have been sold, and the proceeds applied in the reduction of the loan. I looked at it in a common sense way.

The next thing I come to is Mr. Haney's letter to me, Exhibit 86. This is a letter also that I wish to draw your lordship's special attention to, assuming that I had confidence, as I did, in Mr. Haney, in whom we all had confidence. Now, this is a report. I assume that they are going ahead, administering and looking into the affairs of the bank, and, as they said improving it with a view to carrying it on as a solvent institution. It is dated June 14th, 1916, a sort of interim report of what they are doing, and if ever there was a letter going into particulars, important particulars, with the utmost detail, it is that letter, and

if that letter was false to the knowledge of Haney then all that I have said with regard to Dante's description of fraud applies:

"SIR:—Referring to the letter of March 23rd last from Mr. Z. A. Lash to yourself which also bears my signature in concurrence. Mr. Lash promised that you would be kept informed from time to time as to the progress being made. In the absence of Mr. Lash from the city, this report may now be in order from me.

For convenience' sake the three accounts regarding which you asked for special information may be styled, "the Toronto matter," "the New Orleans matter" and "the British Columbia matter."

In the Toronto matter the additional securities mentioned in Mr. Lash's letter have now been put into shape; our customer is paying interest in cash quarterly, and, while much of the debt may have to be carried until the termination of the war, it is, in the opinion of the Board, reasonably certain that no loss will accrue to the Bank.

In the New Orleans matter, progress has been made by obtaining control of an equity which I am satisfied will yield a substantial sum in reduction of the debt, and, therefore, greatly facilitate liquidation of the whole account.

In the British Columbia matter, negotiations mentioned by Mr. Lash are still pending; we have also been approached by other parties regarding the largest item, and prices mentioned are considerably in excess of the value placed upon it in our books.

On May 26th and 27th a full Board meeting was held and was marked by complete harmony throughout all doubtful accounts were discussed, and appropriations for losses made; the aggregate of these appropriations, together with a considerable sum for good measure, is being transferred from Rest account. A definite policy was decided upon which will substantially increase our earning power.

In conclusion, I would add that much has been done to increase the proportion of immediately available assets; mercantile advances have been got in and quite heavy investments made in Government bonds and this policy will continue."

Supposing your lordship had believed in that man's honesty and he wrote you that letter, what would you do? Would you say "I am going to wreck that bank?" If I had done that what would they have said? What would the public have said, what would Parliament have said on that letter?

Your lordship, I now come to the Machaffie letters. In August of 1918 Mr. Machaffie sent me a letter. I may say to your lordship there has been some talk of delay in getting an official report from the Board. I went West in September. I had been engaged during the greater part of August, and part of September, in preparation for the great Victory Loan opened in 1918, the greatest Victory Loan that we floated, over \$700,000,000. Nobody except the man who had to do with it has any conception of the enormous amount of work involved behind the scenes in connection with a loan of that kind, the calling of representatives of the leading brokers in Canada to discuss terms, to give the directions for the prospectus and for the bonds, and the dealing with the very numerous associations, with the smoothing out of difficulties which arose, all those things that the public know nothing about imposed a very heavy duty upon the Minister, and, as I say, in September I went west. I opened my campaign in Winnipeg by a speech to the people of Manitoba upon the Victory Loan, and asking their support. I went to Brandon, Saskatoon, Regina, and to Vancouver, and back to Calgary, back again to Winnipeg, and then to Montreal, just getting to Montreal a little before the Armistice. At all points I was exceedingly busy day and night, receiving deputations about matters in which

they were interested, dealing with the Victory Loan committees and advising them as to the best method of pushing their campaign, and yet I am accused here of having delayed two months in getting the answer to the Machaffie letter.

I sometimes wonder if some of the people of this country remember there was a war, I really do. I got this letter from Machaffie, and I say to your lordship that such letters are frequently received in the Finance Department, and I think your lordship has the power, if you have any doubt whatever—I am sure you have not—as to my statement, but I suggest that you see the Minister, and he will tell you, and nine out of ten of them are based upon a quarrel or pure spite.

Now, this letter came to hand and I treated it seriously. I will not say that there did not cross my mind, as there does in the mind of every Minister who gets a letter of that kind, "Just what is this man driving at?" It is an unusual letter to get. It is thought there is a great deal of public spirit in Canada whereby people will readily write a Minister and register a letter in discharge of what they regard as their public duty with regard to making charges against other people, firms, companies, or banks, but there is not. Most people who write letters of that kind have axes to grind. However, I treated Mr. Machaffie's letter seriously, and I called for a report from the Board, as it was in my discretion to do under 113 of the Act, and your lordship will find if you will look over the records of the Finance Department, or consult any Minister who has ever acted in the capacity of Minister, that that is the course which is followed with regard to letters of that kind. A Minister does not take the letter that comes in from someone because it is registered, I do not care who the man is, and at once dash, like a bull into a china shop, into a bank. He writes to the Board and he says "Here is a letter that I have received, what about it?" And he hears the Board, he assumes the Board is honest, as I did. I assumed that this Board was honest. He wants to hear what the Board has to say about this letter that a man has written to the Minister, a very unusual occurrence, and I got back, in time, a letter to which I will draw your lordship's attention a little later, from Mr. Haney. Not his letter only but a letter certified by him as President, as being the unanimous report of the Board of Directors of the Home Bank, a letter representing the unanimous report after considered amendments by the Board of Directors of the Home Bank of Canada.

I had intended, your lordship, to speak about Mr. Machaffie's cross-examination, but as I was not in this room and consequently could not, as counsel, determine the effect which it might have made on your lordship's mind, I am going to refrain, but sometimes the art of cross-examination consists in not cross-examining unduly. Sometimes an answer will light up the mind of a Judge as a flash of lightning illuminates the landscape, and counsel says "That is enough, I am not going any further with this cross-examination." I am not going to criticise Mr. Machaffie to your lordship. One reason why a man who has been Minister finds it difficult to be counsel, except in his own case, is that he has known so many people in his life, he has been friends to hundreds of thousands of people who have come to him one way or another, consequently he does not like cross-examination. He does not like to engage in war at the Bar, he is at a disadvantage on account of his experience as Minister, that is, if he is a man of a certain type, if he is a sympathetic man.

Now, what did your lordship think—I am just going to put it rhetorically—of Mr. Machaffie's evidence, when he produced the letter, Exhibit 135, dated February 25th, 1918, when, as a matter of fact, I was in California? This is the letter:

"Dear Sir Thomas: When I last had the pleasure of an interview with you information was asked regarding three accounts on our books."

Now, Mr. Machaffie said in his evidence, as I understood it, that he had one interview with me.

Mr. LEE: Two, not on Home Bank matters.

Sir THOMAS WHITE: Yes, not on Home Bank matters:

“When I last had the pleasure of an interview with you information was asked regarding three accounts on our books.”

Is that right? If he never talked to me on Home Bank affairs, what does this mean? However, he never talked to me on Home Bank affairs. Here is his letter, but it did not come to me.

Mr. LEE: I think that was admitted.

Sir THOMAS WHITE: Well, if it is admitted then that is good.

The letter continues:

“Sir Henry M. Pellatt.
New Orleans Street Railway Matter.
A. C. Frost (B.C. Timber matter).
I told you what I could.”

When did he tell me what he could when he has sworn that he saw me upon one or two occasions and Home Bank affairs were not mentioned? He says in this letter, when I was in California, that he did discuss those matters with me. He raises the question in this way, that he addresses this imaginary letter, this letter that never was sent to me, but which he used with the Board, or that Mr. Haney saw. He said:

“I told you what I could. As fourteen months have elapsed since then a further report may now be considered in order.”

I never asked him for a report.

“*Sir Henry M. Pellatt:*

I have nothing new to report except that Pellatt busied himself in a canvass among our Directors to prevent a change in General Management.

“*New Orleans Matter:*”

I advised you that a sum, approximately \$230,000 was advanced to acquire an equity in a link of railway in which the Bank had no direct interest; it was expected that a bond issue would be floated and the Bank reimbursed. This expectation has not been realized. The large amount mentioned in the report to you of two years ago remains in a position of grave jeopardy.

A. C. Frost:

Since reported to you this account has been again written up some \$200,000 for interest. I cannot let this opportunity pass without pointing out that the aggregate amount written up in this account if added to the amount of Home Bank stock carried by the Bank would account for the greater bulk, if not the whole of the Bank's capital, while, as you have been advised, there are numerous other accounts in a precarious position.

Mr. Haney, the President, has also been appointed Chief Executive Officer, and as such is practically a Dictator. I have endeavoured to have an inspection system installed, and wrote Mr. Haney on the subject on the 13th inst., and now enclose a copy of that letter for your further information.

Mr. Haney's policy is to endeavour to rehabilitate the Bank by a series of speculative ventures, chiefly in steamship activities. While

withholding comment on this policy I cannot refrain from offering criticism of the methods in use. Briefly stated, the Bank furnishes large sums of money without security, and is to receive but a moiety of the expected profits, the bulk of such profits going to Haney, C. A. Barnard, another Director, and F. J. Stewart, a personal friend.

Mr. Barnard has a liability to the Bank of some \$260,000 in connection with Home Bank stock, but neither he nor Haney are personally responsible to the bank for these fresh advances."

Now, he is asked "Is this your letter?" And the answer is "Yes".

"Q. That letter was never sent to Sir Thomas White?—A. No.

Q. To whom was it sent?—A. To Mr. Haney.

Q. Why did you not send it to Sir Thomas White?—A. There were several reasons. The most serious statement in that letter was based on hearsay so far as I was concerned. I felt that to make that statement to the minister was a very serious matter; it was also a very serious matter not to make it if it were true. I thought it good tactics at the time to put it before the Board in that manner, to invite discussion. Doing so could do no possible harm and it might do some good.

Q. It would be in the bank's interest?—A. It could do no harm anyway. There was another reason why I did not send it; I had previously conveyed as I thought practically the same information to Sir Thomas White verbally through his half-brother, and I had reason to believe that it had reached him."

I never discussed Home Bank at any time with my half-brother. The thing is absurd. Fancy a man who wants a communication to go to the Minister to take such a roundabout method of communication through his half-brother. Was such a thing ever heard of in a Court of law, where a communication is to be addressed to a Minister of the Crown.

"Q. As to the condition of the bank?—A. Yes."

Well, now, what does your lordship think of it? I am not going to comment on it. What is the purpose of it, especially in the light of what happened afterwards, what was the purpose of that letter? Why did he write me the letter in August, 1918?

He is telling now about the letter from Oakville that he had sent me. He says, in answer to Mr. Lee:

"A. When the Annual Statement came out in July, 1918, I saw that J. Cooper Mason was appointed General Manager, and Mr. Sydney Jones re-elected shareholders' auditor; and Mr. Gough remained as Vice-President of the bank. I had a very distinct recollection of the assurances which Gough had given me a few months previously, and I felt greatly disturbed."

Bear in mind, your lordship, that the Board of the bank in its unanimous resolution, which was sent to me a little later, said that he wanted to be General Manager of the bank.

Now, this is Mr. Lafleur's cross-examination. In every work of art there is an artistic touch, and it comes in in the next question:

Mr. LAFLEUR: You mean the assurance that there would be a trained banker?—A. A trained banker and a chartered accountant. I did not want to take any further steps at that time, as I was clear of it all; but I was much disturbed, and finally wrote that letter to the Minister. I might say that had my letter to the Minister had the effect which I thought it would have, of closing the bank's doors, that I would have been a heavy loser."

Here is a man who is so concerned, charged with his duty to the public, that notwithstanding he is confident that as soon as his letter gets to the Minister the Minister is going to close the doors of the bank and he will be a heavy loser, he nevertheless sends that letter.

Now, what did he say? Just let us test that. He says, in answer to the question before, still on page 401:

"I had a very distinct recollection of the assurances which Gough had given me a few months previously, and I felt greatly disturbed.

Mr. LAFLEUR: You mean the assurance that there would be a trained banker?—A. A trained banker and chartered accountant."

Now, what does that mean? Suppose that instead of Cooper Mason being appointed General Manager that he had been appointed General Manager, or some other banker had been appointed General Manager, would he have written the letter in view of what he says? Why did he want a trained banker and chartered accountant put in if he thought that the letter would have the effect of at once closing the doors of the bank, and therefore he would lose his money if the bank was closed? Is there some retroactive imagination in that or not? Mr. Lee sympathetically—that is not in here:

"You would have been a heavy loser?—A. Yes.

Q. That is after the Minister had received your letter, and had he acted on it by closing the bank's doors, you would have been a loser?—A. Had they failed they could not have paid me the amount they were under agreement to pay."

I am using this man's own evidence, I am making no statements about it. Now, then, here is the culminating touch:

"Q. So that you took a good deal of risk in writing that letter?—A.—A big risk to me at that time.

Q. And the reasons of course you have told us were that after the meeting of the shareholders in May of 1918 and Mr. Gough had been elected Vice-President, and Mr. Sydney Jones had been continued on as the shareholders' auditor, and Mr. J. Cooper Mason having been elected as General Manager—A. Appointed not elected.

Q. And Mr. Gough's suggestions had not been carried out to you you felt it was a duty that you owed?—A. A public duty.

Q. And you consequently wrote the letter to Sir Thomas White?—A. Yes.

Q. Did Sir Thomas get your letter?—A. He acknowledged it."

Now your lordship, I call your attention to Exhibit 146, in which Mr. Machaffie withdraws that letter, that letter which he did not send me and which he addressed to Mr. Haney. I will not read it all, because I have no doubt it has been referred to several times. He says, in part:

"I have since satisfied myself that for various reasons, including my absence from meetings of the Board of the Bank since January, 1917,—"

Your lordship will note that this is dated May 1st, 1918.

"the information and assumptions on which the draft letter of February 25, 1918, was based, were in some respects inaccurate and in others incomplete, and that the draft letter, if sent, would have conveyed a wrong impression as to the position of the Bank, and the conduct of its affairs. Under the circumstances I am glad that no letter was forwarded by me to the Minister and I am pleased to know that the

position of the Bank in respect of the various matters with which the draft letter dealt is substantially different from and better than the draft would indicate."

He says that on May 1st, and he writes me this letter in August. By the way when did he leave the bank?

Mr. LEE: March.

Sir THOMAS WHITE: He left in March, and he has not been in the bank since March, and he writes this letter on May 1st.

Now, your lordship, it has been said that if I had acted on Machaffie's statements and not believed the unanimous report of the Board I would have found a great many things, and I think that is correct, subject to this one qualification, that the first thing the Board would have done would be to show me Machaffie's letters. They offered to show me them. He wanted to be General Manager.

Supposing you had acted on the Machaffie letter, your lordship, and you had gone to the President and the Board and said "What about this Machaffie letter?" They would have said "there is the correspondence, look at it." The man leaves in March. Six days before he has written a fictitious letter to me as Minister of Finance in which he makes various statements. On May 1st, 1918, he then writes that letter in consideration of a settlement, he says, of his salary, some salary claim he had. And then on August 18th he writes me this letter.

I wonder if you would have gone any further than that, and having the statement which the Board gave me? But I am not going to put my case on that Basis. I am going to put my case on the ground that the unanimous answer of the Board was a sufficient reply to Mr. Machaffie, at least, I will put it on that as well as on the other. I want to get before your lordship all that is in my mind, including the suspicion aroused by the statement given, and looking at those letters. He wants to be General Manager. Lash told me that he had quarrelled with the Board, and, above all, the character of the report which they sent in to me.

I will come a little later on to what Machaffie, who was examined as a banker, had to say about putting in an auditor. I will not deal with that now.

At page 405, Mr. Lafleur asks this question:

"Q. What distinction do you make between conveying such serious charges based on hearsay by letter, and conveying the same information to the Minister verbally through another person? I do not see what distinction you make there."

Then he says, in answer to Mr. Lafleur:

"A. They were unjustified in this respect, that I had not the personal information. They were not based on my personal information."

As to the retraction, Mr. Lafleur says:

"Q. Am I to infer that that retraction was really extracted from you?—A. Yes, absolutely.

Q. I thought that is what you would tell me."

Mr. LAFLEUR: "Extorted," I think that should be.

Sir THOMAS WHITE: "Q. Am I to infer that that retraction was really extorted from you?—A. Yes, absolutely.

Q. I thought that is what you would tell me.—A. My solicitor thought it was worded in a way which justified me in sending it.

Q. And he thought he could not get a settlement of what you considered to be your legitimate claim against the bank for salary unless you complied with that demand?—A. That is it."

That is all I am going to say about that.

Now, I come to the answer of Mr. Machaffie. I want the reply of the Board.

Mr. SYMINGTON: Page 182, Exhibit 96.

Sir THOMAS WHITE: Thank you, Mr. Symington. I am going to ask your lordship's special attention upon certain assumptions. This is the letter in respect of Mr. Machaffie's allegations, and the first thing I desire your lordship to note is that this is not Mr. Haney's letter. This is the report to the Minister of Finance, certified, of course, by Mr. Haney, to be sent to the Minister on behalf of the Board, and this report, after consideration of amendments, was unanimously adopted by the Board in the form following, and the President was instructed to forward a copy of this report to Mr. Lash, with instructions to have same forwarded to the Minister. So that, your lordship, it is not a question now for my learned friend, Mr. Lee, to say "Well, why did you rely upon Mr. Haney at all?" This is the unanimous report of the Board of Directors of the Home Bank of Canada. I do not know how many were present, but this is the unanimous report of the Directors in answer to my official communication for a reply to Mr. Machaffie's charges. I am not going to read it all, it has been read, I suppose, a good many times. I will read certain paragraphs of it:

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

I did not look at that correspondence at that time. I surmised it to be something like it is.

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

Then it goes on and recites what I have already told your lordship, that the Board was reorganized, that Mr. Haney had been placed in charge, Mr. Lash made counsel, Blake, Lash & Cassels, Solicitors. Then it recites what I have stated this morning as to the opinion of the Board, as to an investigation.

"The Board did not then, and does not now fear the fullest investigation, but they do fear the consequence to the Bank, its customers and the public, which would result from an investigation ordered by the Minister through the Bankers' Association or otherwise."

This also was a period of the war. The Armistice came in November. No one thought it would come in November. The best military opinion in England was that the war would go over until the next year, but the Armistice came suddenly. At this time the war was in a very critical stage. Britain and her Allies were getting into a position to drive the Germans back. In March and April of that year they feared for the Channel ports, and for Paris. The

Germans were endeavouring to drive a wedge between the French and British armies and cut them off, driving the British back on the Channel and the North Sea.

I spoke of assumptions; supposing you were of the opinion that that Board was an honest Board, as I was, would you have paid any attention to that or not? I think your lordship would. Then they say that notwithstanding the possibility of these consequences they would submit and afford all assistance possible. Then he goes on to say that he has consulted with Mr. Lash, and he takes up these three accounts which were particularly in my mind, which had been drawn to my attention and which I had enquired about and would naturally be desirous of knowing something further about. There was:

- “(1) A large account held at the Winnipeg office.
- (2) A large account held at the Toronto office.
- (3) A large account, the security for which was timber lands and limits in British Columbia.
- (4) A large account held at the Toronto office in connection with certain undertakings in New Orleans.

The Board of Directors have gone carefully into all the bank's affairs.”

That is the Board which under Section 19 of the Bank Act of 1913 is to deal with its business and affairs,—

“Committees of the Board visited the places where the interest of the bank were greatest, and personally made themselves familiar with the positions. Mr. Haney and Mr. Barnard went to New Orleans and obtained full information of the situation there, and came to the conclusions as to the way it should be treated. Mr. Haney went to Manitoba and to British Columbia. In the latter place the timber lands and limits, in which the bank is interested, were examined and information respecting them and the general conditions in the Province was obtained.”

Then he sums up;

“Account No. 1 has been fully liquidated.”

I think that is the account Mr. McHaffie referred to, I am not sure.

“Security for account No. 2 was taken and in the opinion of the Directors the balance thereof is now fully secured. The account has been reduced by \$284,091.27 of capital and all interest has been paid.”

That is the Pellatt account. I admit that gives the impression that they have maintained the security and reduced the loan, but even supposing they merely made Pellatt take out the speculative security, Dominion Iron & Steel, to that extent, at all events the loan is reduced. The steel stock might go down, when I made call loans I used frequently to insist on the loan being reduced and the collateral taken out, because a situation develops in which you want high-class instead of other collateral nevertheless the impression they gave me there was not that the Dominion Steel had been taken out, but that they held the security and the loan was reduced.

“With reference to account No. 3 with the information obtained in British Columbia, the Board's judgment was that there was ample security in the timber lands and limits for the claims of the bank, and since that time the value of the security has increased. The selling price of logs in British Columbia (confirmed by actual transactions) have been as follows:—

- In 1916, \$8.85 per thousand feet.
- In 1917, \$12.12 per thousand feet.
- In 1918, \$17.00 per thousand feet.”

Under the revision of last year the Board is made the final judge as to the value of security; the Auditor calls attention to a security, says; "I think that should be classified as inactive, "but there is provision in the Act that the Board may overrule, they represent the shareholders, they are presumed to be acting in good faith, and the Minister has no right to suppose that a Board which is subject to the severest penalties for a false return will make a dishonest return. That is what the sanction in the Act is for now. Then he goes on to say:—

"Spruce is now being cut for the Imperial Munitions Board, from one part of these limits, at a price netting \$6 per thousand for No. 1, and \$2.50 per thousand for No. 2."

I am not going to weary your lordship reading the rest, it is all optimistic, confident as to that account. He sums up:—

"The Directors feel confident that no loss will be sustained by the bank in connection with the account secured by these limits."

Here is the situation; the Winnipeg account cleared up, the Pellatt account reduced and interest paid up, and the Frost timber account, "The Board is of opinion that there will be no loss." Then the New Orleans situation, he describes that, says that the Directors went to New Orleans and the whole situation was organized upon a new basis, efficient management installed, the undertaking put into good repair and condition. Mr. Barnard, one of the Directors has personally given much time and attention to this matter and has frequently visited New Orleans in connection with it. The results have been satisfactory. The net operating profit, which, for the first twelve months ending December 31st, 1916, amounted to \$27,319.34 now amounts to more than \$7,000 monthly, the net income from operation for the month of July, 1918, was \$7,500. The gross revenue for September 1916 was \$11,349.03; for September 1917, \$14,936.75; and for September 1918, \$18,094.86. And he says this improvement has not resultd from abnormal causes but is the result of improved condition of the properties, careful management and the general advance in business conditions which the Board feels sure will be continued.

"The securities held by the bank have been greatly strengthened and improved, and the Board is confident that no loss will result to the bank in connection with this account.

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

Then they go on as to the continuation of the dividend, and of course if the net profits were sufficient to warrant the payment of the dividend it is within the power of the Directors and would be a wise policy for them to continue paying the dividend. Now I draw your lordship's attention to this statement of net profits, that influenced me I believe, from memory, quite as much as anything else, if not more because it would lap up so much. The mere fact that for a year they had taken in interest on the Frost timber account, contrary to what Mr. Lash had promised, was not alone sufficient to counteract a statement of this kind. Look what they say:—

"The net profits for 1917 were	\$217,059.57
The dividend for 1917 was	97,327.06
The net profits for 1918 were	228,963.19
The dividend for 1918 was	97,362.40"

Net profits two and a half times the dividend, a leeway of \$120,000.

Mr. McLAUGHLIN: Which was less than the Frost interest?

Sir THOMAS WHITE: That may be, suppose it was. Put the thing as strongly against myself as I can; are they going to start to wreck the bank? "No unpaid interest upon account No. 3 or other inactive accounts was credited to profits since the 31st May, 1917, the end of the bank's fiscal year 1916-17." Yet on their statement for 1918, although no interest was taken in on the Frost timber account, they had net earnings two and a half times the amount of the dividend.

Then he goes on to say that Mr. Machaffie's statements in regard to the British Columbia shipbuilding enterprise are unfounded. He says:

"The bank made certain advances in 1917 to Mr. J. F. M. Stewart, collaterally secured at all times by good security. The transaction was one of ordinary banking business. Mr. Stewart alone was quite responsible for the advance. The indebtedness was liquidated in full prior to December 31st, 1917. The transaction was a profitable one to the bank. The papers and accounts connected with it are open to the inspection of the Minister at any time."

Then he goes on to traverse all his other statements. What does he say about Sidney Jones?

"This gentleman is a man of the highest reputation and ability. For the past seventeen years he has been, and still is, Bursar of Trinity College and Auditor for other institutions. His name is included in the list of persons selected by the General Managers of Banks under Section 56 of the Bank Act, deemed by them to be competent and eligible to be appointed Auditor under the provisions of the Act, and he was not disapproved of by the Minister under the provisions of the Act. He was duly appointed by the shareholders at the Annual Meeting. No information required by him in pursuance of his duties as shareholders' auditor has ever been withheld, and he has been most careful and even exacting in obtaining information for the purposes of his audit."

Sidney H. Jones was on the panel, how could I prevent the bank electing him Auditor, and I had no reason to attempt to prevent them; he was a qualified man under the Act.

Then he goes on to show the growth of the bank.

"On May 31st, 1916, the total deposits of the bank, not including Dominion-Government deposits, amounted to	\$10,133,785
The deposits on May 31st, 1918	15,682,750
The gold and legal tender notes on 31st May, 1916, amounted to	2,816,573
On 31st May, 1918; they amounted to	3,252,464
The liquid assets on 31st May, 1916, amounted to	6,773,797
On 31st May, 1918, they amounted to	11,073,182
The total assets on 31st May, 1916, were	15,562,032
On 31st May, 1918, they were	23,675,773"

Now your lordship, fancy the fine earning power, from assets as large as that, deposits of that magnitude. There was an enormous goodwill in connection with that bank. It had the confidence of the Roman Catholic community,—and I am only referring to that Church because what I state is correct,—it had deposits from thousands belonging to other denominations, but it had a very fine earning power from that section of its depositors, it had a clientele on which it could count and rely, and in a situation like that the earning power of a bank is very great if it is properly managed.

Then it goes on to tell about the gentlemen who had been on the Board. As to Mr. Barnard, the only thing on the record against him is what was suggested about some commission in connection with the Banque Internationale purchase, and supposing there was one man on the Board who had had to do with the acquisition of Home Bank stock in connection with the Banque Internationale, what power had I to put him off?

Then R. P. Gough, President of the Sellers-Gough Fur Company, his position as a business man in Toronto is well known. He—

“was asked to join the Board to assist and advise the bank on various commercial matters. His position as a business man in Canada is well known. He has devoted much personal time to the affairs of the bank, and has been of great assistance.”

Why should I not believe that? Mr. Gough is a man of excellent standing in the Toronto business community, he was regarded as a man of such integrity and ability that the Government appointed him a Director on the Board of the National Railways. I do not know a thing against Mr. Gough, I never heard anyone suggest a word against him, yet they say “Sir Thomas, why did you rely on what these men told you?” As far as Mr. Gough is concerned, they might as well ask me would I rely on what any of these counsel tell me. And this is a unanimous report of this Board.

“Mr. Ambrose O'Brien, Manager of M. J. O'Brien Company, Limited was asked to join the Board because he was a young and active man whose business interests are closely associated with the development now being carried on in Canada. He has been, and will continue to be, of great service to the bank.”

Mr. LEE: He did not remain very long.

Sir THOMAS WHITE: Nothing here to show he didn't. What was the state of mind of the Minister at the time? Not a word against Mr. O'Brien, and I know nothing against him, his name there created a certain confidence in my mind with those other names, and have every right to.

Now we come to Mr. Daly.

“Mr. H. J. Daly, Vice-President of the National Cash Register Company, and General Manager for Canada, was elected a Director in order that the bank might receive the benefit of his great experience and system, his knowledge as a business expert and successful manufacturer. His appointment has been very beneficial to the bank.”

I want to say there are scores and hundreds of the best business men in Ontario who absolutely believed in the integrity and ability of H. J. Daly. I might go into that witness box and tell your lordship of ecomiums pronounced upon him by some of the leading financiers of this country. Down here he was appointed by the Dominion Government as an expert in organization in connection with one of the establishments, I forget which—

Mr. SYMINGTON: The Department of Soldiers' Civil Re-establishment.

Sir THOMAS WHITE: I never heard a thing against Mr. Daly's character and I heard much to his ability, there was not a thing on the record against him up to this moment.

Now, Senator Macdonell, through his Parliamentary and other duties and the state of his health was not able to give much time to the bank's affairs, so Mr. S. Casey Wood, of the firm of Rowell, Reid, Wood & Wright, one of the leading law firms of Toronto, was asked to join the Board so that the legal aspects of matters coming before the Board might be properly guided and discussed. “The wisdom of selecting Mr. Wood has been fully justified.”

Now your lordship, any man may be deceived, fraud implies deceit, wilful or reckless misrepresentation, believed in by the party deceived. I do not say for one moment that every member of that Board was a party to making wilful misrepresentations to me, no man could ever make me believe that. But that there was fraud some place, and dishonesty, where I do not know, there is absolutely no doubt whatsoever.

Mr. LEE: We agree there.

Sir THOMAS WHITE: Now your lordship in judging we must say what was before the Minister, what did he think of these men whose unanimous report he got, as against Mr. Machaffie's letter. I had no more reason to distrust the men whose names I have mentioned and who were notified to me as being on that Board, than I would have to doubt the word of any Board of Bank Directors in the Dominion of Canada. In other words I had no reason at all.

Now after this letter I followed the matter up. On October 31st, 1918, after I had come back I think from this Victory Loan Campaign; I thanked Mr. Lash for this letter and asked for certain supplementary information;

"Copies of the bank's ledger entries, showing in detail all advances made, interest added from time to time, any payments in reduction of principal, and full particulars of security now held."

Then I go on to state that the Board's report that no unpaid interest upon account No. 3 or other inactive accounts has been credited to profits since May 31st, 1917, seemed to imply that for many years interest had been added to principal, and that such added interest is therefore now represented as part of the bank's capital. And I mentioned the note circulation being dependent on the capital, and that this raised a serious question whether the capital and reserve of the bank should be written down accordingly. It was not in my mind at that time that the bank should close, but if as a matter of fact, a situation was disclosed in which the capital and reserve was impaired, although it is a serious step to take because it shocks public confidence, yet they should consider the advisability of writing it down.

I then asked for a statement showing how much capital and reserve is represented by interest added to the principal of the three accounts in question and any other where the principal loaned has exceeded \$250,000, and I got the information later no from Mr. Lash, he wrote me going over all this again, about the two members of the Board going to British Columbia and the statement that that account was fully secured. (Exhibit No. 105). That as to the New Orleans account, the whole position was reorganized and turned into a going concern which is realizing profits:—

"Which I am told are sufficient to cover the interest, but, to strengthen the position, the profits except \$25,000 remitted to the bank, as mentioned in the memo, were allowed to be used in betterments and improvements. The bank expects a payment soon on account of interest, and no arrears will further accumulate. The Prudential Company is still indebted to the bank in the amount of the original advance and interest and its liability forms part of the bank's security, but, owing to the position of the Prudential Company, it was not thought advisable in the interests of the bank to proceed against it until the position was further advanced. I am instructed that the Board of the bank is convinced that outside of the liability of the Prudential Company the securities now held will realize for the bank the full amount of its claim, leaving the liability of the Prudential to the good."

Then he traverses Mr. Machaffie's statement that Mr. Lash is not being consulted, Mr. Lash himself makes the statement that he has been consulted

from time to time in regard to these accounts and has given to the bank his considered judgment and advice. And he says:—

“I am convinced that very sincere efforts on the part of the Board and management have been made during the past three years to improve the position of the Bank, and my opinion is that these efforts have been so far successful, and that the Bank's position has been greatly improved, and I see no reason to think that the effort will not be continued or that the position will not continue to improve. I feel that the conclusion which you arrive 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 continuance of this attitude on your part will be further justified by the result.”

Now your lordship, I will be prepared to pledge my oath that Mr. Lash meant every word he said in that letter. Z. A. Lash was incapable of deliberately misleading any human being.

Now I just acknowledged Mr. Lash's letter on January 29th, telling him that if there was anything further I wanted I would communicate with him. That closes the evidence with respect to my period in office.

After I left office, which was August 1st, 1919, I understand Mr. Daly ousted Mr. Haney from the Presidency, there was something given in evidence as to obtaining proxies and buying stock. The financial community believed that the bank was doing well under his Presidency. Mr. Daly organized a Bond Department in connection with the bank, I remember hearing that it was doing well, and I had heard, as I testified, that Mr. Daly had put his money into the bank, I suppose that must have meant that he had bought the Grain Growers' stock; at any rate the impression of the financial community was: Here is a good man in this bank, he has organized a Bond Department, has put his own money in, and he is making money, it is going to get on. That was the opinion of bankers in Toronto, I am not giving my own opinion, I did not discuss it with all but I did discuss it with some. The dividends were increased a couple of times after I went out, the Annual Meetings were held and good statements put out. Now was there any duty on me after I left office to do anything in view of the situation? I was not the Minister—

Mr. LEE: The depositors' counsel are not charging you with anything.

Sir THOMAS WHITE: I thank you for that and I appreciate it. Nevertheless I wrote Sir Henry Drayton, I always like a little plus in what I do,—calling his attention to those three accounts. I want your lordship to observe that letter of January 20th, I said “I think you had better look into these three accounts,” or rather I told my Secretary to draw them to his attention. Now supposing I had had suspicions as to the underlying situation, which I have sworn I had not, would I have stopped at those three accounts? The three accounts were the only things that were in my mind, right straight through. I simply said: “Draw those three accounts, or draw this file to Sir Henry Drayton's attention.” Then afterward when Sir Henry wrote me,—I am a little confused, a little tired,—when Sir Henry wrote me as to the Superintendent of Insurance I called his attention to the three accounts, and told him to send for Mr. Daly. There was nothing else in my mind except what I told him.

Now just one other thing before one o'clock—

Mr. LAFLEUR: Take all the time you want, Sir Thomas.

Sir THOMAS WHITE: No, just this, lest I forget it. No word during 1916 and 1917 from the Western Directors, from Mr. Crerar who was a Director of the Bank until the end of 1917, no word changing or modifying in any way their request, apparently they were satisfied.

(Adjourned at 1 p.m. until 2.30 p.m. on Monday, 19th May, 1924).

AFTERNOON SESSION

OTTAWA, ONT., MONDAY 19TH MAY, 1924.

Proceedings resumed at 2.30 p.m

Sir THOMAS WHITE: (Continuing his argument): My lord, I wish to deal briefly with some matters which my learned friend Mr. Lafleur raised with respect to the question of putting an auditor into an individual bank under our present law, which does not provide for the regular inspection of banks. The contention put forward by my learned friend when I was under cross-examination, if I properly understood it, was that that was frequently done with no serious consequences; and there was instanced, either by himself or by Mr. McLaughlin, the case of the Banque Nationale.

Mr. LAFLEUR: That was by Mr. McLaughlin.

Sir THOMAS WHITE: My learned friend informs me that it was Mr. McLaughlin who instanced the case of the Banque Nationale. I understood it was suggested that an auditor had been put in the Banque Nationale. Now Mr. Edwards in his testimony before the Banking and Commerce Committee, said that he had heard of the condition of the Banque Nationale, by rumour. Mr. Edwards has been employed by the Department of Finance for two or three years back, and as I said this morning, he is a very, good man indeed. No my lord, I gravely doubt and as far as I know there is nothing in the evidence to show that an auditor was put in the Banque Nationale by the Department of Finance. Sir Henry Drayton mentioned "a man" being in the bank. There is a very great difference between the Department of Finance putting in an auditor who is known to the officials in the bank as a Government auditor—a very unusual condition—and a friendly conference between the representative of some other bank, which may possibly desire to take over a bank, and the officials of that bank. In the case of the Banque Nationale, that was mentioned a number of times here, it is common knowledge that a loan of \$15,000,000 was required to be made by the Government of the Province of Quebec to assist the situation which existed. Now if an auditor was put by the Department of Finance into the Banque Nationale at the time of Sir Henry Drayton's dealings with it, or afterwards, subsequently to his communication to Mr. Fielding with respect to the Banque Nationale, it seems to me an extraordinary thing that the auditor was put in by either one or other of the Ministers, and failed to detect the situation; because Sir Henry Drayton resigned office at the close of 1921, and the bank had been doing business down until the transaction to which I refer, namely the subsidy or loan of \$15,000,000 by the Government of the Province of Quebec. Now I do not know the facts, and it appears to me that nobody in this room knows the facts, and therefore I submit, that it is not proper to suggest that an auditor was put in the Banque Nationale. It is not in evidence on the record.

Now my friend Mr. Lafleur I think referred to the Merchants' Bank and asked was there not an auditor put in there? I do not think so. I do not think there is any evidence as to that. I do know something about that transaction, because evidence was given at the trial of Sir Montagu Allan for negligence as President of the Bank. My recollection is that Sir Montagu Allan became concerned about the condition of the bank, and he brought in a very able Banker, Mr. McKenzie, connected with the Royal Trust Company and well known in Montreal and even throughout Canada. It is a very different thing, putting in an auditor, on behalf of the Government, in an exceptional instance of an individual bank, and the President of a bank in a friendly way, in pursuance of his own desire to put the bank upon a proper basis, asking a fellow banker to co-operate with him in order that the facts as to the bank's

condition may be ascertained. There is nothing in that situation that need arouse any suspicion, or that would be likely to arouse any suspicion on the part of officers of the bank, other than the President and one or two who may be next him. Assume that it did become known to a larger group; the inference would be that some other bank was about to amalgamate with the bank; or some other bank was about to take over the assets, under the Bank Act, of the bank in question. In those so-called amalgamations, which are in reality the purchase and sale of the assets of one bank by another bank, a substantial price, a satisfactory price, because goodwill enters into it, is usually obtained by the selling bank, and its shareholders are usually well satisfied, and so are its officers for the most part, because a stronger situation is created, and there is a larger sphere of promotion for ability. Usually a weak bank as to assets is taken over by a stronger bank, and the amalgamated bank, so to speak, although that is hardly the proper term in law, becomes a much larger institution than either of the other two. Therefore when one bank takes over another, while there is undoubtedly a conference between the bankers, the officials of the one bank and the officials of the other, and while the assets are looked into more or less carefully, it is a perfectly friendly proceeding, it is not an audit in the sense in which we have been talking of an audit, and consequently not likely to arouse anything more than a rumour that there might be an amalgamation between the two banks; and when there is a rumour of an amalgamation between two banks, the stock of the weaker bank goes up; instead of there being a run on the bank, the situation of the bank in the public estimation is improved.

Now what similarity is there between that situation and a situation in which, while there is no regular system of inspection provided for by law, the Minister of Finance suddenly puts an auditor into a bank, against the will of the President and other executive officers? We do not require Mr. Edwards to tell us what would happen. And I am sure, if your lordship felt that it would be proper for you to do so, which I do not suggest, to consult with practical bankers, you would get a very different opinion from that which has been put forward here by accountants. As that is probably not practicable, and might not be proper,—although I believe it would be, under the powers conferred upon your lordship,—let us use our own commonsense with regard to it. The question is asked, who is this man who has come into the bank? He is the Government auditor. There is no system of regular inspection. What is he doing in the bank? There must be something wrong? How long would it take for that to get out? And what might be the consequences? Especially in critical financial conditions, what might be the consequences. I think your lordship can answer that just as well as any banker or as any auditor, by just turning your practical mind upon it and asking yourself the question: and asking your self the other question, whether if you were the Minister of Finance you would feel quite as confident as some Counsel here that no untoward consequences would follow. I read your lordship this morning what Mr. Edwards said before the Committee on Banking and Commerce. When I saw the newspaper report I said, Surely that is not what he said here, and I took the trouble to get the record. He was not cross-examined strongly enough here upon the point. That was my fault; I should have been here.

I spoke this morning about the effect of the Bankers' Association looking into the affairs of the bank. I am not going over that again now, except to call your lordship's attention specially to what I said this morning. Because the matter has been dealt with so lightly here that I thought it had been dealt with almost flippantly. I do not mean by intention. I have entertained such views on the matter, and no man has had to think more deeply about it than I had when I was Minister, and since, for that matter, in reflecting upon it, that I can hardly understand a man who comes forward here and says that there would

be no trouble if a Government auditor or an outside auditor were put into a bank. This inquiry is concerned principally with the affairs of a particular bank; but nevertheless, the evidence taken here is being made in part the material upon which the Banking and Commerce Committee is to-day considering the question of amendment to the Bank Act. Now I am not going to take the time of your lordship in discussing the question of inspection of banks, except in so far as it has a bearing upon the position of a Minister under the Act of 1913. Every Minister of Finance, for the last thirty years, has felt himself in a dilemma, and a very grave dilemma, when a complaint has been made to him about the condition of a bank. In the first place, as I have said, he has to ask himself, What does this letter mean that has come to me in regard to this bank? Is this man genuinely concerned or is there something else behind it? On the one hand, if he takes the active step of putting an auditor into the bank, he may bring down the bank or injure it very gravely, which he has no right to do. On the other hand he may find that letter rise up in judgment against him, no matter who wrote it, at a distance of years in time from the date at which it was received. No matter who wrote it, or with what motive it was written. I say that the position of Minister of Finance, under the legislation of 1913,—which I myself introduced into the House,—and the legislation of 1923—which the Rt. Hon. Mr. Fielding introduced—is intolerable through lack of facilities afforded by the legislation for the purpose of taking proper and at the same time safe action. A Minister is presented with a dilemma which causes him the greatest anxiety, no matter which horn of it he looks at. If the Minister had a bureau of inspection in connection with his Department, by which the head offices of banks were regularly visited, under the authority of legislation, the situation would be quite different. The Inspector would then make his rounds in the usual course. There would not be any question about the Government auditor being in the bank. It would be the duty of the Government auditor to go periodically to the banks, just as the superintendent of insurance periodically visits the Insurance companies or the loan companies, because they are under his jurisdiction now.

It is not part of the Inquiry here, the extent to which the inspection should go; but it should undoubtedly relate to the larger loans, and should be an inspection, in the sense that I defined earlier in my argument.

As against audit, an inspector values securities. An auditor is usually an accountant, although, as I said, some auditors are more than accountants. I am drawing a distinction between an inspector who appraises as well as audits, and an auditor who is principally an accountant. The trouble is usually at the head office, and I think if such a bureau were established it would relieve the Minister from much responsibility and would prevent such gross frauds as have destroyed one or two banks, two or more banks of Canada, including the Home Bank. The bearing on my argument is that under the Act of 1913 and under the Act of 1923, the Minister is reasonably apprehensive as to the effect of his putting an auditor in an individual bank. That is all I intend to say about that.

Now I come to another aspect of the case of the petitioners. They put forward the contention that if an auditor had been put into the Home Bank by the Minister of Finance in 1916, 1917, 1918 or later, that the true condition of the bank would have been discovered; and as that was not done, that all the losses that have occurred since are the inevitable and natural consequence of remissness on the part of the Department of Finance. Well, now if the bank had remained under precisely the same administration, there might be something to be said for that contention, always provided that the basis of remissness is established. It is not a legal claim. They put forward the petition on the analogy of a legal claim, and they say it is a moral claim. Of course they could not recover against the Government in a Court of law,

no matter whether there was remissness or not; and of course I have submitted and I think I have established to your lordship that there was no remissness.

Daly ousted Haney. I have not followed the reports of the liquidator, but I heard it stated here that Mr. Daly had obtained a million dollars from the bank. I heard it stated, I think in evidence, if not here then elsewhere that Mr. Barnard's company owed the bank a million and two or three hundred thousand dollars. Within the last two years there have been enormous losses made by the Home Bank. In one case in Montreal I understand that \$750,000 were handed over to a company there without any security. I was out of office on August 1st, 1919. I have been trying to get an illustration for your lordship. I am fond of metaphors and similes, and also I have had a great liking for the study of medicine, and I draw an illustration from that study. There is an operation known in surgery as an exploratory operation, or exploratory incision. A patient is ill, and the symptoms are more or less obscure. It is suggested that there should be an exploratory incision to aid in diagnosis; but the doctor, an experienced man, says, "I am afraid that the condition of the patient is such that an exploratory incision might kill him." And the exploratory incision is not made. The doctor has honestly given his opinion, it is adopted, and the incision is not made. The man, not fully recovering, but improving in condition, engages again in the activities of his calling and through association with some parties with whom he had not been associated before, he engages in speculation and loses his entire estate and a large amount beside, then he dies. Could the executors of the estate set up a claim against the doctor?

Mr. McLAUGHLIN: That he had not killed him at once?

Sir THOMAS WHITE: My learned friend has anticipated my conclusion. They set up a claim on the analogy of law, as they put it, that if the doctor who hesitated to have the exploratory incision made, by reason of the condition of the patient as he had reason to judge it, had made the incision, the patient would then have died and would not afterwards have engaged in these disastrous speculations and so might not have lost all of his estate. That is his case, my lord.

Mr. McLAUGHLIN: I will admit that the doctor would not be liable.

Sir THOMAS WHITE: Well, it is said that an admission is the best evidence. I will let it go at that.

Mr. McLAUGHLIN: He should have sent him to a specialist.

Sir THOMAS WHITE: The trouble is that specialists like Mr. Lee, are not Ministers of Finance. If you get into the realm of probabilities, your lordship will have to consider whether a man who would have known precisely the right thing to do, is likely ever to be a Minister.

Now I am coming to another point, my lord, and it touches on the question of your lordship's jurisdiction to pass upon the question of justification. There are one or two considerations further that I desire to draw to your lordship's attention in that regard. I am going to lead up to it, and your lordship will see the bearing of what I say in a few minutes, by referring to the strictures that have been passed upon the Minister here by counsel and particularly by my pugnacious friend Mr. Lee. You will see the bearing in a moment. Mr. Lee has paid me some compliments, which I very highly value. Mr. McLaughlin has spoken of my work during the war in kindly terms, which I shall always remember with gratitude. But Mr. Lee is not content with either lager beer or ginger ale. He prefers a shandygaff, which in the days before the O.T.A. was in force meant a mixture of the two. I mean that while with one breath he has extolled me to the skies, in the next he has consigned me almost to perdition.

He has passed the most severe censure upon not only myself, but Sir Henry Drayton and the Rt. Hon. Mr. Fielding, who are not here to defend themselves. I am not here in any sense representing either of those gentlemen; I wish to make that absolutely clear; but "A fellow feeling makes us wondrous kind" and all Ministers of Finance are sympathetic at least toward the burdens and responsibilities which their predecessors have borne, or their successors must bear; so that I am using the names of the two Ministers and referring to the fact that Mr. Lee has been quite impartial—if anything he has favoured me a little—but he has been practically speaking quite impartial in the severity of his censure upon the three Ministers who together have spent a period of 28 years as Ministers of Finance in this country; from 1896 when the Rt. Hon. Mr. Fielding came in, until the present time. Mr. Fielding of course is the dean, with eighteen years in office; I was eight years, and Sir Henry Drayton about two. Now Mr. Lee refers to the three Ministers as constituting "a trinity of negligence."

Mr. LEE: "Inaction," pardon me.

Sir THOMAS WHITE: "Inaction"? Then the papers were wrong?

Mr. LEE: The papers were wrong.

Sir THOMAS WHITE: They are sometimes wrong. I have found that myself. "A trinity of inaction." Now I do not know precisely what he said by way of censure or stricture upon the Ministers other than myself, although I believe that at least one of them came in for fairly rough treatment by way of vituperation.

Now I have selected from the record a few of the epithets which Mr. Lee has bestowed upon me, and which have gone over this country, because they make good headlines, something for the people to talk about in a time when many people desire, for some curious reason, present after every war, to pass censure upon the men who have occupied high positions, whether they were soldiers or sailors or public men. We are in such a period now. After every war there is a period of recrimination. There was after the American Civil War; after the Crimean War; after the Napoleonic wars; we are in that period now; a period of detraction. I could analyze the psychology of it but I am not going to take the time.

Mr. Lee has referred to me as "a lovely ornament, which the public found to be too expensive." As that could not refer by any chance to intellectual qualities or attributes, he must have had in mind my personal appearance. "A lovely ornament." Since hearing that I have been quite puffed up by the compliment to my personal appearance, because as I have been getting along in years, I have been rather losing conceit of myself in that regard, so that I owe something to Mr. Lee for rehabilitating my self-esteem.

Mr. LEE: You are getting better looking all the time.

Sir THOMAS WHITE: Then he said that I have been a "switchman." He is fond of mixing his metaphors. He says I was a switchman and went to sleep at the switch; then that I was a mariner, who navigated badly; an engineer who disregarded danger signals and threw open his throttle lever; and then he called me a tramp.

Mr. LEE: Not that I know of.

Sir THOMAS WHITE: You said I slept in a barn. A tramp sleeps in a barn.

Mr. SYMINGTON: Did he not also say you were a fish?

Mr. LAFLEUR: Yes, he compared you to a fish swallowing the hook, line and sinker.

Sir THOMAS WHITE: If he had said a poor fish, that would be "The most unkindest cut of all."

Mr. LAFLEUR: And having gone through the threshing mill.

Mr. SYMINGTON: You must have been wheat then in the barn.

Sir THOMAS WHITE: Now my lord, I have naturally been a little bewildered by these various descriptions or metaphors.

Mr. LEE: Compliments.

Sir THOMAS WHITE: And I am going to ask your lordship, what am I, in view of all this?

Mr. LEE: A wonder.

Sir THOMAS WHITE: Since the days of Frankenstein has there been such an extraordinary mixture as I have been pictured before this tribunal? Now let me call your lordship's attention to a fundamental fault in this inquiry and it will show why I have been introducing something that might appear a matter of pure levity. The attempt to review the unfettered discretion of a Minister is quite contrary to constitutional usage, as I have already contended. It is when his judgment is sought to be brought under review, that vituperation like this is possible; and I contend that a situation in which, outside of Parliament, the unfettered honest discretion of a Minister, as to its quality, is brought under review, is plainly unconstitutional and against the public interest. I call your attention to those words, the unfettered, unconditional, discretionary act of a Minister of the Crown. Now suppose your lordship had been asked to report on the facts, as I contend is contemplated in the Inquiries Act. There would not have been any vituperation of Ministers, because there would have been no evidence on the point and no argument would be permissible.

The question would be, what were the facts; what were the communications, if any, received? What were the conditions at that time? What did the Minister do? If you like, what result followed? Facts. But when a Commission is asked to pronounce on the quality of a Minister's act, where it is honest; then the inquiry is thrown wide open to just what we have had here. That is one reason, as I submit to your lordship, and I could prove from constitutional authority, is a reason among others, for the rule that a Minister's conduct, if honest, can only be reviewed by Parliament. It is the matter of the public interest. It is not in the public interest.

Mr. LEE: That doctrine has been exploded in England.

Sir THOMAS WHITE: Has it? It is not in the public interest that the quality of a Minister's act should be brought in question.

Now, if my friend Mr. Lee were a member of Parliament, he could indulge himself in vituperation to the limit against the three Ministers he has mentioned. That is, he would be at liberty to—but whether he would do it, and how he would fare if he did do it, is another and a very different matter. I can assure him there would be lions in his path. Mr. Fielding is not here. Sir Henry Drayton is not here. But in the House, if attacked as to the quality of their acts, they could defend themselves. And if they were not present, the members of their party would defend them, and there would not be only one set of headlines that would go over Canada. I can assure counsel that it would not be a one-sided combat in the House of Commons. If a man made statements such as that in the House of Commons, and survived, I should be somewhat

surprised. I have come here myself at a loss of three weeks' time and trouble to defend a discretionary action, which I submit should not be discussed and made subject to the decision of any tribunal other than Parliament. We should be confined here to testifying entirely as to the facts. I said to your lordship earlier in my argument that if there was a condition upon which the Minister's action was based, it would be perfectly open for your lordship to find that the condition did or did not exist. If the statute had said: "The Minister shall," "The Treasury Board shall," "The Governor in Council shall" do this or that upon certain things happening, your lordship would find whether the thing had happened or not and whether the Minister or the Treasury Board or the Governor in Council had taken the action which Parliament imposed upon them as a mandate; in that case the Minister, the Treasury Board, or the Governor in Council, are the instruments to carry out the will of Parliament, and the finding on the facts would determine whether they had carried out the will of Parliament or not. I am not dealing with that situation. I am dealing with a discretionary situation. I have raised a question here which I am satisfied has attracted and will attract a great deal of attention from the Bench and the Bar in Parliament, and I feel confident in leaving it with your lordship for consideration and decision.

Let me give your lordship a few illustrations, in addition to those I have already mentioned, as to just where this would lead. What would your lordship think of a commission as to whether a judge's decision was justified or not? Or an arbitrator's decision? Or let us get away for a moment from the courts, where the discretion is absolute—as I contend the discretion is here,—to other executive action. Your lordship at one time occupied the distinguished position of Attorney-General of New Brunswick. An Attorney-General from time to time, upon the evidence before him, institutes prosecutions, or refrains from instituting prosecutions, and assuming that an Attorney-General honestly comes to the conclusion that he should institute a prosecution in one case, or should not in another case, what would be thought of a commission for the purpose of reviewing his discretion and determining whether he would have been justified in instituting a prosecution in the case where he did not institute it, or that he was not justified in instituting a prosecution in the case where he had instituted it? It is an executive act, unfettered, unconditioned, and honest.

Let us look at it from another angle. We are very fortunate in this case to have as Commissioner a Chief Justice, and a man who has had wide experience in public affairs. What is there to suggest that if a Minister in his act is to be reviewed that we are almost certain to have a Chief Justice? We might have a lawyer of a few months' standing; we might have a business man. What is to hinder us from having a farmer, or a labourer even, or a banker to pronounce on a question like this, and then we would have the delightful spectacle of a banker sitting where your lordship is sitting passing upon my conduct as Minister of Finance, and Mr. Fielding's conduct, and Sir Henry Drayton's conduct, against none of whom has there been one single suggestion but only of honest action. That is where it would lead to.

Our press in this country usually do not discuss constitutional questions. The matter was raised before me a day or two ago by a constitutional authority as to what the London press would say, the writers of the Metropolitan press of London, if a commission were appointed to review the honest, unfettered, unconditioned discretion of a Minister of the Crown.

That constitutional usage arises out of the arousing of public interest. Ministers are responsible to Parliament, not to be subject to vituperation by counsel where there is no chance for reply. At any distance of time from the period of which they have been Minister, and at their own expense and loss of time, may there be an inquiry as to the acts of a Minister? Yes, as to facts. As to the quality of the act, or as to pronouncing upon justification, no.

Your lordship, I am going to ask you for certain findings. I would ask you to find, first, honesty, the honest dealings by the Minister with the matter which is before your lordship. That is the first finding.

Secondly, I am going to ask your lordship for a finding of diligence. I have told your lordship as to the conditions prevailing in 1916, 1917 and 1918. I do not represent the other Ministers, but it would be an extraordinary thing to me if your lordship did not know as to the work devolving upon them as Ministers of the Crown in and out of the House in the Department of Finance, but as I am representing only myself I ask for a finding of diligence, of faithfulness and attention amid great perplexities, heavy responsibilities, and the hardest kind of hard work day and night, to the duties of my office under the law, under the Bank Act of 1913, with respect the Home Bank of Canada. And I point to the file, I point to the interviews at the time I was in office, the attention that I gave to the matter after I left office, and I ask your lordship to find that there was diligence.

I do not ask your lordship for a finding as to whether I exercised sound judgment, according to your lordship's mind now. By no possibility can your lordship now place yourself in my position then, and I say this with very great respect to your lordship. I am quite sure you will not misunderstand me.

His LORDSHIP: I quite understand you.

Sir THOMAS WHITE: In order not to be personal, let me say this: There is no man living who can now see with my eyes then, estimate conditions with my judgment then, substitute his mind now for my mind then at that tremendously trying time. I could not do it myself now. I mean, your lordship, that I do not regard myself at this moment as capable of pronouncing soundly upon what I did or refrained from doing at various periods of the war.

A finding such as your lordship is asked to make could not, I submit with very great respect, be judicial, and I know your lordship will want to make no other, at least I feel your lordship will want to make no other. No man living can say what he would have done had he been in my place. "Wiseacres" may think they can, "wiseacres" as defined by me this morning. Those possessed of "retrospective imagination" may delude themselves into the belief that they would have done this or that that I did not do, or that they would not have done what I did. No one's opinion after the event is valuable as bearing on the question "What should have been done at the time?"

Now, your lordship, I am drawing to the conclusion of my lengthy remarks. I assume that I have no reply, and I do not know that I want to. If any of my learned friends, counsel for the depositors or the Government, should open up any ground outside the evidence, what I mean, open up any ground that would come in the nature of a surprise that a man could not reasonably foresee, I would ask your lordship to be allowed to either send in a written memorandum to be presented through Government counsel, or probably I might cover it even by a telegram or something like that, or I might be able to attend here. But I do not think that will be necessary. I am quite content to leave this matter of my argument with your lordship, and I have to thank your lordship for an exceedingly patient hearing.

I have said, and I repeat, that you, sir, are fortunately not only a jurist but an experienced public man who has served his province with high distinction in office, and one who is thoroughly acquainted with the matter of administration in both a theoretical and a practical way, and with the usage of constitutional law governing the rights and the responsibilities of a minister.

Your lordship and the public will judge in this matter. All I have desired to do is to get out the facts before your lordship and before the public. For this I have given three weeks of my time, and your lordship's courtesy has afforded me the opportunity for which, I assure your lordship, I am deeply grateful.

ARGUMENT BY MR. REID

Mr. REID: My lord, speaking for myself, on behalf of the shareholders whom I represent, I wish to thank your lordship for your kindness in allowing me to be present at this inquiry to lay before your lordship such information as I am in possession of regarding their interests, and to place on record such reference to the interests of the shareholders as may seem necessary, in order that your lordship may have before you a proper appreciation of the origin and history of this bank, in order to ascertain exactly what rights the shareholders have. And in doing that I am quite certain that it will also assist the depositors, to a great extent, for you to know what the rights of these parties are.

I am not asking your lordship, and I am not going to ask your lordship to rule on any legal question which may be in dispute before the Courts, or to make any judicial findings of law on matters which I will lay before you, but just to place them in such form as will show your lordship when making your report to the Banking and Commerce Committee, or to whatever department you may make your report, or to the Governor General in Council, the circumstances connected with the legal position attaching to the incorporation and present position of this bank.

Before doing that, I would just like to make one or two remarks regarding some of the statements which have been made in evidence regarding the circumstances under which depositors and shareholders exist, so far as their interests are concerned, under the banking system of Canada generally.

The depositors in any bank in Canada are really the whole fabric, foundation, and keystone of the whole banking system. Without the depositors the banks could not function at all. Deposits are the real life-blood of the whole banking system, and notwithstanding that fact that while the incorporation of a bank at first involves a special Act of Parliament requiring the provisional capital, I think it is, of a million dollars, with \$500,000 subscribed and \$250,000 paid in, the real basis of the bank's existence after that is the depositors, and, for that reason, I say the depositors' interests and the shareholders' interests are combined to an extent, which makes one absolutely dependent upon the other. Notwithstanding that, under our banking system, the depositor gets what I call a fourth mortgage as his security, and the shareholder has practically to take his chance on no security and the possibility of having to pay for his shares over again in the case of the insolvency of the bank. What I mean is this: The Home Bank illustrates what has happened in other cases, and what might happen again unless the banking system is changed in some way, that when a bank becomes insolvent the first claim is the circulation. Then comes the Dominion and Provincial Governments and then the depositor, the man who puts in the very life-blood of the whole bank, and the whole business, trading community of Canada into existence, and all he gets is a fourth mortgage. And, for that reason, I say the shareholder is connected in a way with the depositor, that anything the depositor says in this matter of the Home Bank inquiry the shareholder is vitally concerned in it to the same extent, and anything that the shareholder can do, speaking for the people I represent, we are willing to do to back up anything the depositors may wish us to do.

The evidence has been so fully gone into and presented to your lordship that I do not intend to labour all the exhibits and other documents that have been put in. There is practically nothing left for me to say about it, except some short remarks which I will have to make later on concerning the conduct of certain individuals under whose notice the condition of this bank was brought and who took no steps to remedy that condition.

Another point I wish to draw to your lordship's attention is this, that the shareholders of a bank, under our system, are at the mercy of the General Manager and the Board of Directors, to the extent that the banking system of

Canada is run by proxy, and may be on the face of it, it appears to be, perhaps, the only way it can be run, in view of the fact that shareholders are scattered all over the world. The annual meeting is about to be held, proxies are sent out to all these shareholders residing, in some cases, in the most remote parts of the world. The proxies come back, and, in many cases, I understand, the system is they go to the President, and the result of that proxy system is that while the shareholder has his money invested and is subject to the double liability, for the purpose of obtaining the large dividends which the banks have been accustomed to pay in Canada, the larger banks at any rate, he is willing to take this chance of paying the double liability at some time, because of the large return which he gets on his investment, and he further places his implicit faith and confidence in the General Manager, or the President, and the Board of Directors, to see that the shareholder's interest is protected, and relying upon the position of the bank as presented to him through annual statements sent out at the end of the year he sends in his proxy, as a matter of form, to be voted upon as the Directors, or the President, or whatever official of the bank gets the proxy, may think fit.

The result of that is, I submit, with all respect, that there is no other business in the world, I do not care where it is, which has such tremendous possibilities, such great advantages and privileges as the Canadian banking system under the present system as it exists to-day. The proxy system, as I have described it to your lordship, enables the President of a bank in Canada to select the Board of Directors by the majority of proxy votes which he gets. In addition to that, the proxy appoints the auditor who is to audit a particular bank, and I will have more to explain about that in a moment. The proxies which are received also fix the salary of the auditor, and the proxies also voted on by the President fix the Directors' fees.

Your lordship can see at a glance that that is the way the system works, and unless some solution is found to place a curb upon the system of proxies by making a provision in the Bank Act, you can readily see that the whole system is dependent upon the whim or the will of eight or nine very estimable gentlemen who are Presidents of banks. That is the way the Canadian system is run.

In addition to that, there has been mention made—I will just touch on it to explain it as far as I am able with the information at my disposal—as to the selection of the auditor, something we have heard so much about. The auditors selected to audit the banks in Canada every year are chosen in this manner: At about the middle of June or July the Bankers' Association of Canada send out through the mails, running from a thousand to twelve hundred application forms and notices to all the accountants' associations and accountants' societies in Canada, that a certain number of auditors are going to be selected to audit the chartered banks for the coming year, and asking the return of applications filled in from any of those who receive them, and who desire to be appointed auditors for the banks.

As the result of that system, after a few weeks or so, those application forms come dribbling back into the office of the Canadian Bankers' Association, and two or three hundred may be returned, sometimes one hundred.

Mr. SYMINGTON: You know that has been changed.

Mr. REID: I am just coming to that. And that system of selecting auditors for the banks in Canada, the applications having come into the Bankers' Association they are then picked out. A certain number is required by the Bank Act, I think it is sixty or seventy, and they are sent to Ottawa for the approval of the Minister.

These auditors are approved by the Minister as a matter of form, unless some objection is taken to any particular auditor for any particular reason. I

understand that in the last twenty years objection has been taken to but two or three auditors, and I think they lived in the United States. When the Minister approves of those auditors they go back to the association duly approved, and the various head offices of the banks in Canada are given this list, or panel as it is called, of the auditors, and they are told "From this you may select your auditors for the coming year."

The result is that some of the banks, up to the present time at any rate, have had the one auditor audit two or three of the head offices of the banks, and the salaries are fixed, as your lordship can ascertain from any of the annual reports, at from five to ten thousand dollars a year. I am not casting any reflections upon auditors, because I think the auditors, as a rule, are men of the very finest type that can be selected to act, but it is the system of banking in this country which allows the bank to select its auditor in that way. The auditor is paid a salary by the bank, and that auditor cannot be an independent man. His ability to audit has nothing whatever to do with what he audits, and his ability to audit has nothing to do with the salary he receives. He audits what is placed before him by the bankers, and he does not value securities. He simply audits the books of the bank.

I am simply outlining that to your lordship as the system in Canada to-day, and unless we have some outside inspection apart altogether from the bank's own audit, that system will continue, and at some future time, it may be twenty or thirty years from now, we will have a repetition of this Home Bank. They can and they will say "Well, there was a shareholders' audit," and the shareholder has about as much to say in the selection of the auditor as I have, and I am not a shareholder at all.

That is the system as it works. I just lay it before your lordship for what it is worth, for information in making your report to the Banking and Commerce Committee.

I was going to make one other remark which I think, is justified by the evidence brought out here, and that is this: Any system of banking which places the entire life and death of a bank, or the desirability or otherwise of having an investigation into that bank at any time as the result of complaints received from parties outside, who may be shareholders or depositors, or those who may have an interest in the bank, in the hands of one man is absolutely wrong, and no amount of argument can make it right. Even if we have a Finance Minister, or a Minister of Agriculture, or a Minister of Public Works, or any other Minister who is administering a Department, or administering his department in the ordinary routine, that is all right, but when it comes to a vital question such as the solvency or insolvency of a bank, as the result of complaints made to him, I say that that matter should either be brought before the full Cabinet, or, if necessary, before Parliament, to find out what the truth is, but under the present system if the complaint is made to the Minister himself it may never get before the Cabinet. It may be chloroformed or pigeon-holed until some catastrophe occurs, and, as Sir Thomas White put it, the "retrospective imagination" gets to work and says, "You should have done this" or "You should have done that".

I submit, sir, that provision should be made for that in the Bank Act.

Now, my lord, just one other remark. I think the result of experience in the last ten or fifteen years of banking in this country, speaking from my own experience, the Ontario Bank, the Sovereign Bank, the Farmers' Bank, and now the Home Bank, teaches us that shares in a bank, from what we have gleaned from these banks I speak of, are not assets at all. They prove to be liabilities. Just look at the position. A man has a share in a bank, and it is hanging over him like a dark cloud every day he lives with the possibility of having to pay the double liability, and so I think another provision that should be made in the Bank Act is that, unless there is a thorough Government inspection made

of a certain asset, bank shares in this country should not be authorized as investments for trust funds. There should be an inspection made under the Bank Act, or some other statute, and, as I say, bank shares should not be authorized as investments for trust funds. Look at what it means in this very instance of the Home Bank, people pauperized and sent to poor houses, thousands of depositors or shareholders all over the country, and in a large number of estates in the list of contributories, money invested from the estates of children and young people who were depending on it for a living.

Now, my lord, I wish to deal with the incorporation of the bank, as I say this, that one of the absolutely essential conditions precedent, I call it, to the existence of any chartered bank in Canada is that it ought to be incorporated by a special Act of incorporation as provided by the general Act, and that it conforms thereafter to all the general provisions and conditions of the general Bank Act after it receives its special Act of incorporation.

The Home Bank of Canada was incorporated in the year 1903 under and by virtue of a Statute 3 Edward VII, chapter 127, which was assented to on the 10th July, 1903, and it is to be found in Volume 2 of the Statutes of Canada for 1903.

The general Bank Act of Canada requires that a certificate shall be obtained from the Treasury Board of Canada before business is commenced, and that that certificate must be applied for and obtained within one year from the date of the incorporation. And there is a provision in section 16 of the general Bank Act of Canada which says:—

“If the bank does not obtain a certificate from the Treasury Board within one year from the time of the passing of its Act of incorporation, all the rights, powers and privileges conferred on the bank by its Act of incorporation shall thereupon cease and determine, and be of no force or effect whatever.”

The Home Bank it is admitted, and is not disputed, did not get its certificate to do business within one year from the 10th day of July, 1903, and I say it died, what I term, a statutory corporate death, on the 10th July, 1904, and was not legally entitled to call itself a chartered bank, or any other kind of a bank after that date.

That is a clear position about which there is no dispute or question, that within that period of time it did not get a certificate to do business. It did not start to do business, but what happened?

On the 18th day of July, 1904, a Statute known as 4 Edward VII, chapter 83, assented to on the 18th July, 1904, to be found in the Statutes of Canada, Volumes 1 and 2, for 1904, was passed by which the Parliament of Canada extended the time for one year to the 10th July, 1905, within which the said Home Bank of Canada might obtain its certificate to commence business. But what I say is this, and I shall refer your lordship to the Statute in a moment, that the second Statute which was passed and assented to on the 18th July, 1904, did not reincorporate the bank, but that it simply extended the time for one year within which the Bank could get its certificate to do business, and my submission is that, the bank and all its rights, powers and privileges having ceased and determined under section 16 of the Bank Act on the 10th July, 1904, the second Act which was passed on the 18th July, 1904, extending the time to the 10th July, 1905, was futile legislation. It assumed to extend the time for something which had ceased to exist. The Statute that was passed on the 18th July, 1904, had nothing on which to operate. It could not be retroactive because there was nothing on which it could act. In other words, it tried to keep alive something that had actually died and gone out of business, and the second Statute, I submit, should have reincorporated the bank in addi-

tion to giving it another year to do business, and not having done so the shares of stock which were issued to my clients, and to other shareholders, were shares of stock which had no legal or valid issue, were shares of stock to which the double liability does not apply, and they could, if they desire so to do, apply for a return of their money.

I simply lay that before your lordship for whatever it is worth in your lordship's view, as to the legal position of this bank on which you are going to report, and I submit that the Government of the day in those years, having made what may be an unintentional blunder, no doubt whatever about that, or the draughtsman having blundered in some way in getting his dates mixed, or in doing something that he was not thinking what he was doing, the Government of the day, and the present Government, consequently, are responsible for all the loss and damage that has been subsequently caused as a result of the liquidation and failure of the bank. That is to say, if a bank carries on business illegally, without a proper charter, and not under the authority of the Act, taking the depositors' money, selling stock to the public, and not functioning as required by the Bank Act, that authors of that blunder, whoever they may be, or whatever the cause, are legally and justly and fairly responsible to those who have suffered either directly or indirectly as a result of that action, and the least that could be done would be to reimburse those who have suffered to the extent of the loss of their liability, if not for the whole of their shares, and the depositors in full, because they were putting their deposits into an institution that was not a legal and incorporated bank.

The most that can be said about it is that it is that they are an unincorporated body of trustees on behalf of depositors and shareholders. They could not be a partnership, because you cannot have a partnership in a bank. They bought stock in an unincorporated bank and thought they were buying stock in an incorporated bank, and they could not be sold stock in anything else, so that under these circumstances they are entitled to have their money back for failure of consideration for not having received what they intended to buy, and no partnership, or any aggregation of men, trustees or otherwise, except a trust and deposit company can carry on business in this country unless incorporated by special Act of Parliament. I trust I have made that clear to your lordship.

His LORDSHIP: I understand you.

Mr. REID: There is another aspect of this that I wish to draw to your lordship's attention too. The Act incorporating the Home Bank of Canada on the 10th July, 1903, is in clause 5. There are only five or six clauses in the Act, and this Act was subject to the provisions of section 16 of the Bank Act, that is, the general Bank Act. This Act was to remain in force until the 1st of July of the year 1911. The intention of that is to carry it over to the next revision of the Bank Act, the result being that this Act shall remain in force until 1921. As your lordship knows there is a revision every ten years.

What I wish to point out to your lordship there is this, that the Statute incorporating the Home Bank of Canada is a self-executing automatic Statute. By its own terms, with the assistance of section 16 of the Bank Act, it automatically expires. Now there is a provision in the Bank Act regarding the renewal of Charters. I have not the exact reference in the new Act, but there has been no change, the gist of it is to provide for the renewal of Charters, but that nothing in this Section shall be deemed to continue in force any Charter or Act of incorporation if, or insofar as it is, under the terms thereof, or under the terms of this Act, or of any other Act, forfeited or rendered void by reason of the non-performance of the conditions of such Charter or Act of incorporation, or by reason of insolvency, or for any other reason. That gets over the argument which I heard one or two gentlemen advance in Toronto, this Sta-

tute having expired by virtue of its own terms with the assistance of Section 16 of the Bank Act it could not be renewed, because this Act had not been complied with and its terms had not been carried out, and for that reason it went by the Board and the new Act did not reincorporate the bank.

Then there is another point in connection with the incorporation. This bank is the result of an application made in April, 1903, by the Directors of an old concern incorporated in 1854 I think, known as the Home Saving and Loan Company. In Mr. Edward's evidence he refers to the fact that this application to Parliament for the incorporation of this bank was made by reason of the great increase in business of this loan company, by reason of this great increase in loans and assets they deemed it prudent to make application to Parliament to turn it into a bank. On the 30th of December, 1905 they made an agreement between the Home Savings and Loan Company and the Home Bank of Canada by which the Home Bank agreed and undertook to purchase the assets and assume the liabilities of this old Home Savings and Loan Company. The amount involved was somewhere between \$3,000,000 and \$4,000,000. The agreement is on record, it is referred to in the evidence, and I submit that the whole proceedings and transactions between the Home Savings and Loan Company and the Home Bank, in transferring on the one part and taking over on the other, the assets and liabilities of that concern are absolutely illegal and ultra vires, that there is no provision in the Bank Act, and no authority can be found anywhere in the banking laws of Canada providing for a bank carrying out such a transaction as that set forth in these documents. I am not going to labour that, I simply lay it before your lordship so that you will have the history of this bank before you, that the only provision in the Bank Act of Canada for a bank taking over the assets and liabilities of another concern is by the purchase of another bank, that there is no authority whatever for the proceedings carried out here. Consequently the beginning of that transaction and the assuming of those liabilities was the very beginning of the trouble, at its very inception this bank was handicapped by the Frost and other loans. My view of this transaction is that they saw the storm clouds gathering, notwithstanding what Mr. Edwards says in evidence that the assets looked good to him, there was not much examination on that point; I say they saw the storm clouds gathering, they saw their investments in the Frost and other loans getting to a point where something would have to be done, it was only a matter of a year or two when the Loan Company would be in trouble, and in order to keep the snowball rolling and make it roll as much more as they could, someone hit on this idea of getting a bank Charter and turning the whole thing over to this bank. Within two years after that bank starts, 30th of December, 1905, this agreement is made in the year 1907. In Mr. Clarkson's evidence they commenced to have trouble with the Milwaukee bonds, the Receivership happened the next year I believe, my view looking back now is that they saw that coming and in order to shelve it off or make some new arrangement to save themselves they organized this bank, illegally and improperly I submit, and without any justification in law, and no authority can be found for it.

In that connection I wish to draw your lordship's attention to a very significant clause in the Act extending the time, assented to on July 18, 1904; clause 4 says:—

“The acts lawfully done and the agreements lawfully entered into by the provisional Directors” (that is the provisional Directors under the original incorporating statute which I say went by the Board) “named in the said Act of incorporation, as shown in the report of Minutes of their meetings, shall be and remain as valid and effectual to all intents and purposes as if no change of provisional Directors were hereby made.”

What I say about that is that when this Act extending the time was applied for to Parliament something took place of which we have no evidence except what we see written in the statute, that questions had been raised as to the legality of the proceedings which had taken place, before the Committee or before Parliament, and an attempt was made to legalize them, but Parliament was too cute. Parliament apparently had looked over what they had done, and all the distance they would go was to say that the acts lawfully done and the agreements lawfully entered into we will legalize, and we will stop there and let someone else deal with the question later on if a dispute arises. They protected themselves, they said: "We have seen some things you have done and the way you have tried to switch these assets, you have laid your case before us, we are not satisfied that it is right, we will look into it and if anyone in the future wants to raise the question we protect ourselves by saying the only thing we legalize is the agreements you have lawfully entered into, and not otherwise." It is very significant that when the bill came up for second reading in the House of Commons Mr. Fielding who was engineering the bill through the House said: (House of Commons Debates, 1904) "That bill is somewhat exceptional in its character, it is a departure from the general principles of our Bank Act, these departures should only be made for special reasons, I am quite ready to let the bill go to the Committee, when further information can be obtained from the honourable gentleman who is promoting it." That is all there is in the Debates of the House, I have searched them through and through, it was an ordinary incorporating statute which goes through the Commons without much comment. Here was a statute that the Finance Minister himself said looked rather exceptional, "I will not agree to it, I will send it to the Committee and let them deal with it." What was so exceptional in its character was the taking over of the assets of the Loan Company and making them part of the capital of the bank, for which there was no legal authority whatever in the Bank Act of Canada. And when they finally put the bill through Parliament without reincorporating the bank, that was the only thing they legalized, what they had legally done.

Now that is the history of the incorporation of the Home Bank, another reason, I respectfully submit, why the depositors as well as the shareholders should get some consideration here for what I say were illegal and improper acts in connection with the original incorporation and the starting of this bank on its career.

Another thing I wish to draw to your lordship's attention is that a second increase of the capital stock of this bank was applied for, a by-law was passed by the directors increasing the capital stock \$1,000,000 on 6th June, 1907, and it was decided to submit the by-law to the shareholders at the annual meeting to be held on the 25th June following in order to obtain authority to increase the capital stock of the bank from \$1,000,000 to \$2,000,000. On the 25th June, 1907, the second annual meeting of the bank was held at which M. J. Haney was present as a director, and by-law No. 9, being a by-law to increase the capital stock from \$1,000,000 to \$2,000,000 divided into 10,000 shares of \$100 each was debated and passed. What I say about that is that the capital stock of a chartered bank in Canada cannot be increased without the consent of the Department of Finance, no shares can be issued that are valid or legal, or of any effect whatever without a certificate from the Department, and there is not on record any evidence of such certificate, there cannot be, there is nothing in the Finance Department to show that that second increase of capital stock was ever authorized or sanctioned by the Department. I say that every share of stock sold of that second increase of capital was illegal, ultra vires, and an over issue of stock for which no authority was ever given by the Finance Department.

I am not going to labour the next point, there was a further increase of capital stock to \$5,000,000. There was no certificate issued by the Finance Department for that either, but I understand, and I think the records show, that they did not sell any of that stock. But they did not forget to do this, when that increase was authorized in 1913, the fact that it was authorized by by-law does not make it legal, but when that by-law was passed they printed on their annual statement that the authorized capital was \$5,000,000, paid up capital \$2,000,000. That went on for over ten years to 1923 although it was never legally authorized, but it looked as if it had been, gave the public to understand that it was. That shows how the business of the bank was done. That is the history of the capital stock issues of the bank.

Now in reading the evidence and listening to the witnesses I am sure that we were all struck by one thing, that was the evidence of Mr. Haney and Mr. Crerar, which seemed to me all through as of the greatest importance.

Mr. SYMINGTON: Mr. Haney never gave evidence.

Mr. REID: I mean the exhibits referred to concerning Mr. Haney and the exchange of letters and documents. Mr. Haney appears first as a director on the 30th of December, 1905, when he signs the agreement between the Home Bank and the Home Savings & Loan Company as a director. He signs that agreement transferring the assets to the Home Bank, and at the first annual meeting of the bank, as appears by the printed reports, M. J. Haney appears as a director. The first annual meeting was held on June 26th, 1906. He also appears as a director at the annual meeting of the bank held on June 25th, 1907. He has been a shareholder of the Home Bank ever since 1906, he became Vice-President in 1916 and President in 1917, and resigned as President in 1920. Now the part that strikes me about Mr. Haney's connection with the bank is this, that in exhibit 96, referred to at page 183 it is stated that:

"Mr. Haney, now President of the bank, had joined the Board of Directors shortly before these representations had been made."

Now as a matter of fact Mr. Haney had been a shareholder and director for a great number of years, and the suggestion that he only became a director and became aware of these representations and other matters a year or two before the complaints were made is nonsense. He has been connected with the bank ever since its inception, he signed the agreement taking over the assets of the Home Savings & Loan Company, and has been fully acquainted with every turn and move of this bank from the day it was born down to the day it failed. I propose to say something about that later when I deal briefly with the annual reports.

Mr. Haney being fully acquainted, I submit, with all the financial transactions of this bank and with everything that was going on, being fully posted in regard to all the loans, knowing everything that was done in connection with the election of directors and investigations on the inside, knowing everything that the general manager and assistant manager and inspectors were doing, I submit when he sent those annual reports out to the public from 1906 down to the year 1920 when he resigned as president, he knew without any one telling him that those annual statements were false and fraudulent. And I propose to show that by reference to the figures as they appeared in the statements from time to time and compare them with the evidence of the auditors. These statements going out from year to year were designedly prepared to mislead the public and induce persons to buy stock, they were padded and fixed up for the purpose of lulling into a false sense of security, the public, the shareholders and the depositors. Take the statement sent out in 1916, the very year the complaints were made to the Finance Department, and take what Mr. Haney says in Exhibit No. 96, page 185:—

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

I submit that on the evidence of Mr. Edwards and Mr. Clarkson that at that very date the capital and reserve of the bank were gone, no dividends were earned, and between 1916 and 1923 the stock of the Home Bank had no value whatever. No profits were earned out of which they could pay dividends, yet he makes this knowingly false report to the Finance Department. At that very time he was writing letters to Mr. Crerar suggesting mergers, suggesting the formation of a pool to keep the stock up to 80 that had been sold at 133 and no dividends being earned, and capital and rest gone, yet he says:—

"No dividends have been paid out of capital, and the profits of the bank, actually earned, have been amply sufficient to warrant the payment of the dividends which have been declared."

Then he goes to work and embodies those statements in the report to the shareholders, absolutely false and fraudulent, and he knew it was so when he made them.

In Exhibit No. 148, page 428, Mr. Haney writes a letter to Mr. Crerar on April 3, 1916, and says:—

"I am arranging for a pool to support Home Bank stock and maintain it at a price not below eighty. This will require \$200,000, and we want the co-operation of our Western friends and I trust you will help me to the extent of \$50,000."

Then Mr. Crerar writes a letter in return to Mr. Haney dated April 8, 1916, Exhibit No. 149, in which he says:—

"I have, as you know, been under the impression that we may have to clean off entirely the present reserve of the bank in order to present a correct report to the shareholders. Of course the present examination of affairs going on under your direction with Mr. Machaffie's assistance may show that this will not be necessary, but having in view the possibility that the full reserve of the bank may have to go, and assuming even a worse construction that there may have to be a reduction in the capital, I think it is important to have under serious consideration the course that should be followed."

Yet at that very date he sends this false and fraudulent statement to the Department of Finance as a report of the Board of Directors of the Home Bank. He must have known at that time that the whole fabric of the bank had gone and that collapse was imminent. Here is a man who has been connected with the bank during the whole of its existence, and a Director and President, a pillar of the church and a leader in society in Toronto. Was it any wonder that people were misled, having fraudulent statements of that kind laid before them? Yet no explanation is given, Mr. Haney does not come here, from the day this bank blew up right down to this minute, Mr. Haney,—I will not say anything harsh about him because I suppose he is a sick man,—but he has not come into the witness box or before any committee or court with one single word of explanation or excuse or palliation for this disgraceful conduct that took place in 1916, let alone other years, and when he is summoned to come he sends a doctor's certificate which may be all right but surely he could give a statement, dictate it and let us have some explanation, because I submit that

he and Mr. Crerar are the keystones in the greater part of this whole transaction, they were the men who carried on this correspondence, who made the complaints to the Finance Department, and who know the whole inside workings of this bank.

But that is not all. I must give Mr. Crerar this much credit, up to a certain point complaints had been made as to the manner of conducting the business in Toronto, and his company being anxious to get financial assistance in the West and get banking assistance for themselves and their farmer friends to develop their business no doubt desired to have a bank in the West which would give them that assistance, and in order to give it of course had to sell stock, and by getting the farmers of the West interested in the stock of the Home Bank the natural consequence would be that they would put their deposits in the Home Bank, so things went merrily along for a while until complaints commenced to be made to the Directors in Toronto as to the manner in which certain accounts were being conducted. Now Mr. Crerar and Mr. Kennedy, the Vice-President I think of the Grain Growers, had large interests at stake. Mr. Crerar had his \$6,600 and Mr. Kennedy had \$4,300 in stock, and in case the bank blew up and they had to pay double liability they would have to put in another similar amount. In addition they had the Grain Growers to consider, which had \$100,000 worth of stock for which they paid \$133,000, and in case of the double liability being imposed and they had to pay another \$100,000 I suppose it would have practically wiped them out of existence. Now all these things were in their minds when this agitation was going on and this correspondence took place; and after about a year, getting no results from the correspondence, Mr. Crerar is suddenly sworn in as a Minister of the Crown. That was in October, 1917, I think, and he sent in his letter of resignation to the bank in January, 1918. Mr. Kennedy, the Vice-President of the Grain Growers' Company, I think resigned as a Director at the annual meeting in 1919. Now after Mr. Crerar was sworn in as Minister of the Crown and became a member of the Government he remained there until June, 1919. During that whole period, when he was in a position where he could have forced on the Government the things which he had been voicing through these exhibits, when he had been writing letters suggesting merger, what did he do? When I asked him if he did anything during the time he was in office he replied, "If you mean with the Directors of the bank, no I did not, and if you mean with the Government, I refuse to answer." That is the information you get. He again becomes a member of the House of Commons in 1921, supporting the present Government, and he is there at the time of the failure in 1923, and during that period of two years he does nothing. He knows the inside condition of the bank. But this they did: in 1918, having good reason to suppose that the disaster could not be very long delayed he sold the greater part of his stock, saved himself the double liability. Mr. Kennedy, the Vice-President of the Grain Growers, sold his shares. Mr. Crerar sold the balance of his stock in 1923, a very small amount. The Grain Growers sold their \$100,000 worth in 1919 to Mr. Daly, stock for which they had paid \$133,000 they sold at par, and they say "Oh we suffered a great loss." But how much loss did they suffer? During that period of time, from 1910 when they became shareholders down to 1919 when they sold their stock, they drew \$60,000 in dividends, so on the whole transaction they had a net return of \$27,000 notwithstanding their loss of \$33,000 on the original investment. So you can see from that that when this pool was suggested by Mr. Haney and Mr. Crerar said: I do not think I can do that without letting the Directors of the Grain Growers know, and if we do that the whole thing will blow up. I think the meaning clearly is: I do not want to let my Directors do that or there will be trouble. He did not go in, but he did the next best thing, sold the stock at par to Mr. Daly. Now was it honest, was it

right, was it what you would expect, when Mr. Hancy had suggested a pool to keep the stock up to 80, to sell it at 100 to innocent unsuspecting farmers all over Canada and the West? Yet that is what took place.

Proceedings stand adjourned at 4.30 p.m., Monday, 19th May, 1924, until 10 a.m., Tuesday, 20th May, 1924.