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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, TUESDAY, MAY 20, 1924

No. 17

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

CANADA

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

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

Before the Honourable Chief Justice McKeown, the above named Royal Commissioner, at Ottawa, on Tuesday, the 20th 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.

ARGUMENT BY MR. REID, *continued.*

Mr. REID: When we adjourned last evening, my lord, I was dealing with the annual reports and Mr. Haney's connection with the bank, and his knowledge of the conditions of the bank at the time, between 1916 and 1923, and I think it would be more convenient, perhaps, if I confined my remarks to that period in view of the dates contained in the reference, as far as possible, except where it may be necessary to refer to an earlier year, to show the connection between Mr. Haney, Mr. Crerar, and others.

I made the statement last evening that Mr. George Edwards, the accountant and auditor called by the Government, had stated in the witness box, which is also confirmed by Mr. Clarkson, I think, that the stock of the Home Bank between 1916 and 1923 had no value whatever, in fact, it was absolutely worthless. It was even worse than worthless, because it makes those who bought or held stock during that period responsible for the double liability now.

Mr. LEE: What date was that?

Mr. REID: Between 1916 and 1923.

Mr. SYMINGTON: What is the reference to Mr. Edwards' statement?

Mr. REID: It was in his evidence, when you called him.

Mr. SYMINGTON: I do not recall it, that is all.

Mr. REID: I asked him that myself. I asked him if the stock had any value, and he said "No, none whatever."

Up at Osgoode Hall, in the Riddell library, there is a book entitled "Great Imposters of History," and I think in that book it deals with bankers and others who have figured before the world at various times in connection with bank

failures, and other matters, and I have no hesitation in saying that if the author of that book had lived a little longer, or had deferred the publication of his book, he would have had an opportunity to include in it probably one of the worst pieces of imposition and one of the worst financial scandals in the history of any country in the world. Here we have 1,800 shareholders and 60,000 depositors on whom absolute misery, ruin and poverty has been brought, driven to poor-houses, put out on the street, and ruined forever because of the false and fraudulent statements sent out through the mails to them in printed form, and to the public.

At the annual meeting in 1915, which is the year before the inquiries and complaints commenced to pour in to Mr. Haney and Mr. Lash and others, Mr. Haney is present at that annual meeting, and there is a letter on file in the evidence from Mr. Fisher, I think it is, where complaints had been made as early as 1914 regarding the condition of the bank, and, as I say, Mr. Haney is present at the annual meeting in 1915 and he approves of the statement then laid before the shareholders at that annual meeting held on the 29th day of June, 1915.

In the report for that year, both Mr. Clarkson and Mr. Edwards show that the interest commenced to be capitalized, that is, in Mr. Clarkson's report.

Mr. LAFLEUR: The Clarkson report is not filed. Mr. Clarkson gave his evidence and consulted his report, but the report itself is not in evidence, as far as I remember.

Mr. REID: I saw it in the evidence.

Mr. LAFLEUR: Would it not be better to simply refer to the evidence, because there are some portions of that report that are not before this tribunal.

Mr. REID: Of Mr. Clarkson's report?

Mr. LAFLEUR: Yes.

Mr. REID: The report I am referring to is the report of Mr. Clarkson to the Supreme Court, a report which is referred to all through his evidence.

Mr. LAFLEUR: But it is not in evidence, and for reasons which were given at the time and here approved by the Commissioner, because there were some accounts which it was not useful or proper to discuss.

Mr. REID: I do not propose to discuss any particular accounts, I am just referring particularly to his view of the evidence as a result of his investigation into these various matters and accounts.

Mr. LAFLEUR: Why not refer to the evidence?

Mr. REID: I thought it was referred to all through his report.

Mr. LAFLEUR: No.

Mr. REID: Very well.

His LORDSHIP: I suppose you thought we had the report in evidence.

Mr. REID: I did look through the evidence, and I saw it referred to all through his evidence, and I thought it perfectly right and proper to make those references to it.

The point is, however, that in that year, at any rate from the evidence of Mr. Clarkson, and I think the evidence of Mr. Edwards, the interest commenced to be added to the accounts, and fictitious profits were shown with which to pay dividends.

Mr. McLAUGHLIN: They always did from the beginning.

Mr. REID: They always did from the beginning, I think there is no doubt whatever about that.

Mr. LAFLEUR: That is in his evidence.

Mr. REID: Now, coming down to 1916, which is the year that the letters and complaints commenced to pour in to Mr. Lash and others, Mr. Haney is

also Vice-President of the bank, and he signs the printed statement, which was also sent to the Government, sent out to the shareholders as Vice-President, and in that report of the directors to the shareholders he refers to the fact that the profits of the bank have been reduced by reason of the war, but dividends have been paid and provided for at the rate of 5 per cent per annum, and he goes on to show that the profits have been earned and the dividends justified in payment, where as the fact is that, at that very date, in 1916, Mr. Crerar writes a letter to Mr. Haney dated April 8, 1916—

Mr. SYMINGTON: Page, please.

Mr. REID: Page 429 of the evidence, just before the Annual Report for 1916 is prepared. He is referring to the fact that he is going to Toronto, and he says:—

“We could then go over the whole situation generally and decide upon the form of the Annual Report as you suggest.”

And then he goes on, further down, to refer to the fact that it may be necessary to reduce the capital, and to work out an amalgamation before the statement is given to the public.

There is not one single word, there is not one single reference in this Annual Report of any such condition as is stated in that letter, and this is the Annual Report for 1916 laid before the shareholders at the annual meeting held on the 27th June, 1916, which shows the bank to be in a prosperous condition, with payment of dividends justified and profits being made, and yet at that very moment when that printed statement is sent to 1,800 shareholders, and the public, millions of dollars, I submit, were being diverted. And you must remember also that this report came under the notice of the depositors. They usually get them, although there are some people who say they are thrown in the wastepaper baskets, and you would be surprised at the number of depositors who are anxiously waiting to get one of these reports.

At that very date when that report is sent out to the public, a fraudulent, dishonest, misleading report, there is a frame-up going on between Mr. Haney and Mr. Crerar to actually wipe out the reserve, to reduce the capital, and to do it before they present their statement to the public, and in order to do it, and make a misleading statement, they suggest that they had better have a meeting so as to see what kind of a report they will send out, and one by which the public will not be able to see what is really going on.

Mr. Haney signs that report. It is actually in here signed by Haney, and I presume the same report, under the Bank Act, goes to the Government signed by M. J. Haney, Vice-President, and James Mason, General Manager.

In the 1917 report, in which Mr. Haney is President, he signs this report also, as President, and he says:—

“The net profits after making provision for bad and doubtful debts, rebate of interest on unmatured bills under discount cost of management, etc., amount to \$217,059.57—”

It starts at the top:—

“The Directors of the Bank beg to submit to the shareholders the Twelfth Annual Report for the year ending the 31st May, 1917, accompanied by a statement of the Bank's affairs, and the results of the operations for the year.”

And Mr. Haney, in his President's address says:—

“This is the first meeting at which I have had the honour of meeting you as President, and I am pleased to be able to inform you that the Bank, as shown by its statement, has progressed steadily during the past year.”

Now, at that very date, in 1917, the losses down to the end of the year 1916, according to Mr. Edwards, were \$3,370,000. That is from the beginning of the bank, I presume, down to the end of the year 1916, and, in addition to that, the loss of the capital and the reserve.

Mr. SYMINGTON: Oh, no, that is included.

Mr. REID: Well, down to the end of 1916 the loss is \$3,370,000, and Mr. Clarkson says that between 1916 and 1923 it is about \$4,330,000 or a total of \$7,700,000 in all. That is Mr. Clarkson's evidence.

Mr. McLAUGHLIN: Yes, that is it.

Mr. REID: And the total deficit altogether, down to 1923 he estimates to be \$9,500,000, at the very time that Mr. Haney and the other Directors, but Haney in particular who was President, and who is referred to all through this evidence as a dictator in one place and the strong man in another, and the man who had a lot to do with the non-appointment of an auditor to make an audit of this bank, sends this false and fraudulent report out, and at the time when the bank has lost already \$3,370,000, and he says the bank is prosperous, has earned profits, and that they are able to pay dividends.

In 1918 he signs another statement of the affairs of the bank on the 31st May, 1918. That meeting is held on the 25th June, 1918. M. J. Haney signs that again, and in the Annual Statement he says:—

“The Directors of the Bank beg to submit to the Shareholders the Thirteenth Annual Report for the year ending the 31st May, 1918, accompanied by a statement of the Bank's affairs and the results of the operations for the year.

The report of the affairs of the Bank at the close of its fiscal year may be considered as satisfactory, showing, as it does, a substantial growth during the past twelve months.”

Then further down:—

“The net profits, after making provision for bad and doubtful debts” —etc., etc.,—“amount to \$228,963.19.”

And in the address of the President he says:—

“The success of every institution is due to the loyalty and ability of its staff under a proper head, and I wish to say as a whole we have had a most loyal and industrious staff, who, under the careful and able supervision of the Acting General Manager, Colonel Mason, have produced the satisfactory results presented in this statement.”

This, remember, at the very time when the bank is on the down-grade, when it had practically lost its capital and reserve, there were no earnings, and interest was being capitalized. These false statements were being sent out, and the public were being lulled into a false sense of security. Then we have those letters passing between Haney and Crerar as to what was the best to be done to save the situation.

Then in 1919, my lord,—I am just going to skip briefly through this for reference—there is the Annual Statement of the bank, again signed by M. J. Haney as President, in which he submits the report of the Directors to the shareholders, and he refers to the net profits for the year as being \$238,000 odd, and in his annual address he says:—

“We are pleased to lay before you a report which, thanks to the energy and abilities of our staff, heralds a banner year for the Home Bank of Canada and its continued proper participation in the growth and development of the country.”

In 1920 Mr. Haney resigns as President, but he is shown as present at the shareholders' meetings, and there is reference made to the change from Mr.

Haney to Mr. Daly, and at that annual meeting it was moved by Mr. Haney and seconded by Mr. Galley that the thanks of the shareholders be tendered to the General Manager and the other officers of the bank for the efficient manner in which they have respectively discharged their duties during the past year.

At that meeting also Mr. Haney expressed his pleasure in putting that motion to the meeting, and referred to his long association with the bank. He referred also to the very satisfactory growth of the bank, and expressed the belief that in spite of the tendency of larger institutions to absorb smaller ones, that there was still room in Canada for the smaller banks, and remarked that it was simply a question of time before the Home Bank became one of the large institutions of the country.

That report was sent out to the public through the mails, of the Annual Meeting held on the 29th June, 1920, at a time when the bank was going down, losing millions of dollars every year, not thousands but millions, and Haney knew it all the time. He had been President, and had been connected with this bank since 1905 when he signed the agreement to take over the assets and liabilities of the Home Savings and Loan Company, and he knew every single thing that was going on at those meetings. A more experienced financial man it would be hard to find. He knew every financial deal connected with the bank. During all that period of time he knew what was going on and, as I say, he was just as good as any financial man in this country.

In 1921 the bank statement is presented under the new Presidency. All through this period that I have referred to Mr. Haney, from 1915 down to 1920 when he resigned, the current loans and discounts in Canada are shown in the bank statement running from ten, eleven, up to fifteen million dollars and the overdue debts as only about \$76,000; the call and short loans from \$1,000,000 to \$1,622,000. Those figures are deliberately false, and known to Mr. Haney and the other Directors to be so, those were bad debts, this item of \$15,000,000 in this 1921 statement, and last year I think \$14,000,000, those are really overdue debts carried as current loans and they knew it. They were not only debts but overdue bad debts, dead horses carried as current loans to mislead and deceive the depositors and shareholders in this bank. The same thing applies to the statement of 1922, I do not think it necessary to go over it in detail, this is under Mr. Daly's presidency, and he refers to the increase of deposits, and it was moved by Haney at that annual meeting held on June 27th and seconded by W. J. Green that the thanks of the shareholders be tendered to General Manager and staff for their efficient management, and Mr. Haney expressed pleasure in making this motion, adding that the satisfactory nature of the statement presented simply confirmed what he had expected. Now it is just a question as to what he had expected.

Now my lord in view of all these statements and this conduct of Mr. Haney who was as I said a pillar of the Church, a leader in society, a trustee of the House of God, President of the Bank, Director of a Trust Company, and holding all these other offices and held in the highest esteem, how can a man of that stamp holding the positions he does come before the shareholders and put a statement of that kind before them, and at the same time that he is putting this statement before the public be framing up a job with Crerar to mislead and deceive them? This is the keystone of this whole investigation, there was a frame-up and fraud being practiced on the shareholders and depositors unknown to them by these men under cover, they were also misleading the Government and Haney and Crerar knew all about it at the time. The evidence is there plain as noonday in that letter of April 8, 1916. I say Haney was a mean trickster and he knew it, and had no business whatever to mislead and deceive

these innocent people and bring this privation and poverty upon them. But my present point is that their fraud and rascality were so transparent that those before whom this misinformation was given should not have been carried away. He may have been a dictator and a strong man to some people, but surely there are big enough men in the Government not to allow every one to mislead and put these transparent frauds over them. I submit there was sufficient brought out, Haney was doing his work and his fraud in such a way that it should have caused suspicion and should have put people on inquiry and have been enough to bring about an investigation.

I think Mr. Haney, although he is a sick man, should be brought to book for this matter, I think he should be put on trial with these other Directors so that the truth may be brought out, if they are innocent let them be acquitted. But we cannot here to-day pass remarks about people who are under indictment, some of them may be innocent, Haney may have worked his fraud and trickery on these men the same as the others, but Haney should be brought to book, and I think this Commission should have this man brought before it in some way, or a deputation from your lordship accompanied by reporters and others should visit this man and get a statement from him.

I was going on to say that England has had its Terence Hooley and Whittaker Wright, Scotland its Glasgow bank wreckers, the United States its Teapot Dome scandal, Massachusetts its Ponzi, but I think Ponzi and the rest were pikers, to use a common expression, compared with Haney and the gang he had around him wrecking the Home Bank. What they did not know about fraud and trickery is not knowledge at all.

Now it is not a very nice thing to have to criticize men who are in Parliament unnecessarily, and I do not propose to do so, but Mr. Crerar certainly has a large share of blame in this matter. Mr. Crerar was in a rather peculiar position, he was elected a Director in 1910 and remained a Director until 1918, when he resigned. During all that time beginning with 1916 he was writing letters in an endeavour to get an investigation of the Home Bank, an outside audit. But the time comes when Mr. Crerar finds that the bank is going down grade every year, it did go down every year, and Mr. Crerar is as much a party to the annual statements sent out by this bank between 1915 and 1923 when it failed—

Mr. LEE: Mr. Crerar was not a Director after a certain period.

Mr. REID: Yes, I am going to refer to that, he was a Director in 1915, 1916, 1917 and 1918. And Mr. Crerar had a wrong impression of his duties as Director of a bank, he had an idea that he was a Director of a compartment of a bank. I submit that as a Director of the Home Bank Mr. Crerar is equally liable for all these false statements contained in these reports, if they did not come to his knowledge it was his duty to have them brought to his knowledge or find them out. But as a matter of fact what do we find? Mr. Crerar in the letter I have referred to of April 8th, 1916, to Mr. Haney says:—

Mr. SYMINGTON: You had better read it correctly this time, you did not last time. Don't leave words out.

Mr. REID: I am not intentionally. It is on file, it can be read. 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. What effect would such a possibility as I have just mentioned have upon public confidence in the bank in Toronto and other Ontario points. If it would have a serious disturbing effect in the way of destroying confidence and subsequent withdrawal of deposits, it seems to me much better to work out an amalgamation, if possible, before our statement is given to the public, since we would be in a much better position to dispose of our assets prior to the loss of confidence of the public than after that had taken place. I desire to mention this only as a thought that has been in my mind in connection with the affairs of the Institution, and I have no doubt but that you and the other Directors in the East have all these possibilities under consideration."

There is what is running in his mind. He sees the bank going down hill, he sees the storm coming, that it is going to break, he knows the losses that have taken place, he knows that down to this period the capital and reserve of the bank is going to be lost, that the deficit to that period was nearly \$4,000,000, and he says: Now is our chance, we are going to get out while the getting is good, we are going to dispose of our assets, we have \$133,000 at stake here and if the bank goes down and we go with it we will have to put up another \$100,000. I have \$6,600 myself in it, Mr. Kennedy has \$4,300, he will have to put up another \$4,300 and I another \$6,600 and the United Grain Growers another \$100,000, so the thing for us to do is to get out while the getting is good, never mind the public, we have the inside information and we will use it. That is the attitude in that letter, there can be no mistake about it. What does he do? He is sworn in as Minister of the Crown in October, 1917, and he resigns as Director of the bank in January, 1918, but it is not accepted until June at the annual meeting—

Mr. SYMINGTON: No, it is accepted right away.

Mr. REID: Haney writes a letter in which he says it was not accepted until June, 1918, it is in the annual report.

Mr. SYMINGTON: It was accepted but it did not come before the annual meeting until June.

Mr. REID: After this resignation, on June 26th, 1918 (page 473) there is a letter written from Haney to Crerar, Exhibit 167, in which he says:—

"MY DEAR MR. CRRERAR: I herewith enclose you cheque for \$500 Directors fees of the Home Bank for the past year. I make this for the full term of the year, as your successor was appointed only shortly prior to our annual meeting.

"As you will see by our statement, we have made fair progress during the past year, and have every reason to believe it will continue. This I am confident will be gratifying to you who were on the Board for so many years."

Exhibit No. 168 written on the Department of Agriculture letterhead, Minister's office, Ottawa, June 28th, 1918, is Mr. Crerar's reply to Mr. Haney:—

"DEAR MR. HANEY: I have to thank you for your letter of June 26th and the cheque enclosed.

I have not yet had an opportunity to see the report of the bank for the present year, further than a statement of the profits made—which would indicate, as you state, that fair progress had been made during the year."

There is what happens. He resigns from the bank, he takes his \$500 for Directors fees, he knows, from the correspondence that he has been carrying on with Haney, Lash and others that the losses have been tremendous, from the inside

he knows that, he knows that there have been no profits made, and he says he hopes the progress will continue. There was a slight profit made in 1918 I believe, but how can there possibly be any profit that any reasonable man or Accountant would take notice of when the losses down to that date have been \$3,370,000? That is just camouflage, a hiding of the real truth, there could not be any profit under those circumstances, and Crerar knew it.

Then in 1918 he sells part of his own stock, and sells the balance in 1923, and in 1919 what does he do? He sells the whole stock of the Grain Growers amounting to \$100,000 to Mr. Daly, sells out lock, stock and barrel.

Mr. SYMINGTON: Be fair. Mr. Crerar's evidence shows that he had nothing to do with that, it was sold at Winnipeg.

Mr. REID: I say as the result of inside information which Crerar had he posted his Winnipeg principals on the condition of the bank and they sold the stock, and the fact of the matter is that in his letter of April 8, 1916, he says:—

“we would be in a much better position to dispose of our assets prior to the loss of confidence of the public than after that had taken place.”

He wants to get rid of the assets. What assets did they have? They had the stock in the bank. They wanted to save the Grain Growers, and in order to do so, using the inside information he had he disposes of the stock.

Mr. SYMINGTON: Are you suggesting that the assets there referred to are the Grain Growers' assets or the bank's assets?

Mr. REID: That refers I say to the Grain Growers and to the bank.

Mr. SYMINGTON: Surely not. Did you ever hear anything so silly.

His LORDSHIP: That is your argument anyway.

Mr. REID: The point is he did dispose of it, and I say further that a peculiar coincidence about it is that Mr. Kennedy who was a Grain Growers Director, became a Home Bank director in 1908, and in 1914 he addressed the meeting, said he was delighted to be there and delighted with the progress of the bank, hoped they would progress and so on; he resigns in 1919, the same year that the Grain Growers sold their stock to Daly for \$100,000, and he is Vice-President of the Grain Growers.

In other words the Grain Growers, Crerar and Kennedy knew what was in the air, knew what was coming, and they used that inside information to get out while the getting was good, they lost nothing on the Home Bank, in fact made a profit figuring the interest taken as dividends during the time they were directors and shareholders.

Now just a few more words. In the evidence, Exhibit No. 124 (235) Mr. Crerar writes to M. J. Haney on the United Grain Growers letterhead from Winnipeg on January 3, 1918:—

“DEAR MR. HANEY,—In handing you, as I do herewith, my resignation from the directorate of your Bank, I have thought it well to accompany it with this explanatory letter.

“In the first place, let me say that I am placing my resignation in your hands at this particular time for the reason that having accepted a place in the Dominion Cabinet I felt that I ought not to continue to fill the position of a Bank director.

“And, having regard to the somewhat strong terms in which for a considerable time past my Western colleague on the Board and myself have felt it our duty to criticise some features of the Bank's past management and to urge the taking of certain steps that we felt to be to the Bank's advantage, I may say that our views have not changed, and in retiring now from the Board I will still entertain the hope that the views we have so pressed will, to some extent at least, be approved by you and acted upon by the Board. These views are somewhat fully set forth in my letter to you of the 14th June last.”

Now, Mr. Crerar becomes Minister of Agriculture in the Government in October, 1917, he is there as an agriculturalist. I used to hear a gentleman down in the Maritime provinces some years ago say he had often heard of candidates running on one side being called agriculturalists and opposing candidates asking for support because they were farmers, and this man wanted to know the difference: Well I will tell you what it is, a farmer is a man who works the land, an agriculturalist is a man who works the farmer. With all due respect I think Mr. Crerar is an agriculturalist in the true sense of the word, because he certainly set himself to work the farmers.

In October 1917 he became a Member of the Dominion Government and was a Member until 1919, June I think, and he does nothing during that time. He knows the condition of the bank, has all the inside information, is in a position to force his opinions on the Cabinet, to get the audit, the inquiry, to get the information he was asking for year after year as he says himself, but he does not do a single thing. He is like the bad penny, he turns up as a Member of another Government in 1921, he is always on the job when the Government is in power, and in 1921 he gets in again as a supporter of the present Government, and he was there until the bank failed in 1923, and he does not do a single thing, does not lift a finger, we hear nothing about investigation or measures taken to protect the shareholders or depositors, nothing about any inquiry, no single thing done and the bank allowed to drift to ruin with Mr. Crerar's full knowledge of everything, when he was in a position to ask for it and demand it he allows these people to go to their ruin. All those women and children and orphans go to their death and he swims ashore and leaves them behind. I submit that is a most rascally thing to do. I don't wish to say any hard things about Mr. Crerar when he is a member of the House, but I say in view of all these things, that it was a cold, callous, heartless and rascally thing to do, and I think the people of Western Canada will deal with him at the right time in view of the trail of wrong he has left out there. They say:—

“Lives of great men all remind us
We can make our lives sublime,
And, departing, leave behind us
Footprints in the sands of time.”

I am satisfied they will have no trouble to find Crerar's footprints in the West because he has left them big enough and they won't require bloodhounds to find him. I say it was a shameful thing to do, in view of the so-called friend he said he was and the efforts he was making to get an outside audit when he was in a position to do it; he could have brought about an amalgamation of this bank with some other bank; he could have forced the Bankers' Association to take it over; he could have taken some financial means, some steps to save this situation right after he became a member of the Dominion Government in 1917, and as I said yesterday, when in my examination of him I asked him what steps he took after he came to a position in the Cabinet, where he could do something of real worth, he says: If you mean, what did I do with the Directors of the Home Bank to get an investigation and to help the bank, I did nothing; and if you mean to ask me what I did when I came into the Dominion Cabinet, to bring it about, I refuse to answer. There is the position: you will be damned if you do and you will be damned if you don't. The ship goes down, everybody is drowned and lost but Crerar and Kennedy and the United Grain Growers who swim ashore in safety. I do not think that is a position that commends itself to anybody. I am sure it does not to your lordship and it won't to this Government when they consider the circumstances under which this thing has happened. Mr. Crerar seemed to have the idea that he should follow the Biblical expression: “Where your treasure is, there will your heart be also.” And Mr. Crerar's heart was with his stock and the safety of the United Grain Growers. He cared nothing for the people who were shareholders and depositors and he let them go to their doom.

Now, my lord, just one more word. I omitted to make a reference to one thing that I think should be on record, and that is in regard to the prospectus which was issued in the West by what at that time was known as the Grain Growers Company Limited and afterwards became the United Grain Growers of Canada. That prospectus was issued in 1910, and it shows Mr. M. J. Haney on the Board of Directors. The prospectus is not in as an exhibit but I produced it at the hearing.

Mr. SYMINGTON: It is not in.

Mr. REID: Mr. Crerar admitted that he had knowledge of it, he knew about it, and they issued it, his own company issued it.

Mr. SYMINGTON: That does not make any difference; it is not filed in this inquiry.

Mr. REID: I can comment on it.

Mr. SYMINGTON: You can comment on the answers that are in evidence.

Mr. REID: I have no desire to say anything about any document that is not in evidence. I do not want to do that of course. This prospectus which was issued to the farmers of Western Canada was issued for the purpose of inducing the farmers of Western Canada to buy stock in the Home Bank, and it was issued by Mr. Crerar's and Mr. Kennedy's own company. The farmers bought stock in the Home Bank of Canada on the strength of that prospectus; and the United Grain Growers Company, of which Mr. Crerar was President, was paid a commission for selling the stock to the farmers of Western Canada; and stock in the Home Bank of Canada was sold to the farmers of Western Canada right up to seven or eight days before the bank closed its doors.

Mr. SYMINGTON: Not by the Grain Growers Company.

Mr. REID: I am not saying that, but I think I can prove directly that the hundred thousand dollars' worth of stock which Mr. Crerar and the United Grain Growers Company turned over to Mr. Daly was afterwards, within a few weeks, peddled out to the farmers of Western Canada, and the bank then insolvent, bankrupt; so that they lost their capital, lost their resources; and losses were being shown as profits; overdue bad debts running up to \$15,000,000 carried as current loans; and interest being capitalized; the shares had absolutely no worth then, no value, scraps of paper according to the Government's own auditor; and at that very same time the farmers of Western Canada were putting their money in the Home Bank and buying the shares of stock on the faith of the representations sent to them. I hope later on, at another phase of this inquiry, to be able to show that that stock was the United Grain Growers stock that was sold to Mr. Daly, and it was done under an arrangement.

Now, isn't it a rascally thing, when you come to think of it, that the farmers and unsuspecting people who had an abiding faith in these men in the West, men who had sent out a prospectus to these people saying that we want to build up the Home Bank of Canada, we want to make it a farmers' bank, it is a home bank, a bank in which we have faith, and confidence in all these men, and on the strength of that, putting their money on deposit in the Home Bank? The employees of the Grain Growers Company, Mr. Crerar's own employees, put their money in it and lost it. And then these same men to turn around and on the quiet, unknown to anybody, boring from within, or undermining them, as shown in their correspondence, in their letters, at the same time that the bank had gone with no possible hope of ever recovering itself, and Crerar and Haney knew it, they sell out. These are the two conspirators in this bank. These are the two men who could have saved this bank and didn't do it, never lifted a finger to do it, when they had the power, authority and position to do it, six years before the bank failed. The date of the failure is August 17th, 1923, and six years or

five years at least before that, Mr. Crerar and Mr. Haney could have saved that bank. Mr. Crerar was in a position to do it. He could have forced the Bankers' Association to do something, and these losses, privations, and misery that have been brought upon these people by these two cunning tricksters could have been all prevented, but not a single thing was done. You cannot get over that; it is on the record, on the evidence, and shows all too clearly. I submit, my lord, that in your findings—I say it most respectfully—it should be stated that all these complaints were on file, that Crerar and Haney had been sending to the Department, they were there on file when Mr. Crerar became Minister of Agriculture, a member of the Dominion Cabinet, and that it was merely a matter of him taking that file and calling the Bankers' Association to Ottawa and laying the facts before them and saying something must be done at once. There can be no answer and no argument about it, something would have been done at that date. And I think it has been pointed out in evidence here that if the bank had been taken over in 1916, that with fifty cents on the dollar from shareholders, even at that date everyone would have been paid in full. But the point is this, that no one need have lost a dollar; the shareholders might have had their shares split in two, two for one, the same as the Bank of Montreal did with the Merchants Bank; there was no need that they should be lost altogether, and while the shareholders might have lost part of their money, they would have had a run for it and would have had some security.

Now, my lord, I just wish to draw your attention to one thing more, and that is that reference has been made to what can be done to strengthen the Bank Act. One thing I omitted and forgot yesterday, I see it in my notes here, is, that in the Bank Act of Canada there is a clause—I think it is 154—in any event, the sections dealing with the penalties for sending false returns to the Government; it used to be section 154 in the old Act. It is the sections of the Act dealing with the sending of false returns to the Government and what will be done if the Directors do it. Those sections refer to the fact that if any Director makes a false return.

Mr. LAFLEUR: Should we go into that? There are men under indictment for making false returns.

Mr. REID: I am merely suggesting an amendment to the Bank Act, which his lordship might recommend. I am not speaking of the Directors at all; I won't mention their returns. I say that in the new Act or in any amendment that is being made, the section should be amended in this way. It is provided in the Act that if any Director or officer of the Bank sends a statement to the Government "knowingly"; and I think the subsection following says that if he submits a false statement "negligently", and the third case is where he does it "wilfully"; then what I suggest is this, that if it is the desire of the Committee on Banking, or the Government, to amend the Bank Act in such a way as to make it really effective, to make it of some use in the country,—and I am merely drawing this to your lordship's attention as a constructive thing that you can refer to—then it is only necessary to strike out those three words in the Act, "knowingly," "negligently" and "wilfully," and make the signing of a false return in itself an offence, so as to make it automatic, that is whether the Banker or the Director knows it to be false or not; if he submits a statement from the books of the bank, of the bank's affairs, and it is false, make that the offence, and not compel the prosecution to prove that it was done wilfully, negligently or knowingly; make doing of the act itself the offence, and then we will have Directors who will direct banks.

Now, my lord, I think that is all I have to say. I thank your lordship for your kindness in allowing the shareholders to have some little say; and later on, if the investigation is continued at any time, that we will be given a similar privilege to bring forward any information or evidence we may be able to gather for your lordship's information.

ARGUMENT BY MR. LAFLEUR

Mr. Commissioner, as I told your lordship at the beginning of this inquiry, Mr. Symington and myself have been charged with the duty of assisting you, in so far as we can, in this somewhat complicated and arduous inquiry. I think that perhaps it may be useful, before discussing the matter, which has wandered, I think, very far from the original scope of the reference, so far as the depositors' claim is concerned, to draw your lordship's attention to the complaint of the depositors as contained in their petition.

You will find that at page 7 of the record, and you will see that the petitioners state that in the years 1915, 1916 and 1918, representations were made to the Department of Finance respecting the condition of the Home Bank, revealing a state of affairs that would have justified an investigation by the Department of Finance under the powers conferred upon the Minister of Finance under section 56A of the Bank Act, whereby he was authorized to examine and inquire specially into any of the affairs or business of the bank.

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

That is what the petitioners say and they realize the gravity of such a step as is now suggested should have been taken at the time by the Minister of Finance when representations were made to him.

They go on to say that they are "aware that at the time such representations and disclosures were made, the country was at war," and they add that:

"the Minister of Finance, having regard to the public interest, was unwilling to precipitate a bank failure or crisis, or in any way disturb the financial condition of the country, and that for such reason and on other good and sufficient public grounds, may not have deemed it advisable to exercise the power above referred to."

Then they say that

"If such audit had been made your petitioners believe that the condition of the bank would have been shown to be such that its continuance in business could not have been further permitted."

And they say that if the bank had ceased doing business at the time the disclosures were made, the existing assets would have been almost if not quite sufficient to meet all claims of creditors; and they submit that by reason that an audit was not made in accordance with the powers vested in the Minister of Finance, the losses of the depositors ensued, and they should be borne by the public at large.

Now the gist of that is plainly this: that so far from charging remissness, or negligence on the part of the then Minister of Finance, or any other Minister of Finance, they put their claim on the ground that the Minister at the time was faced with conflicting public duties, one of which was an overwhelming and overriding duty of providing finances for the war and avoiding any disturbance of the credit of the country; and the subordinate duty, one which was overborne by the higher and more important public duty, was the looking after the interests of the depositors and creditors of the Home Bank.

Now that is a very intelligible case, and it is one that appeals to one's sympathy; to what extent, it is for Parliament to say; I do not know that it will be for your lordship to pronounce any opinion upon that case; I will examine that feature of the question by and by; but let me say at the moment that as far as that petition is concerned, that is all that was presented to the Government; there was no charge made of remissness in office, of malfeasance in office, or of neglect of any kind.

Now we seem to have wandered very far afield, because the whole trend of the investigation has degenerated on the one hand into a very vigorous, I might almost say ferocious, attack upon the successive Ministers of Finance who held office since 1914.

Mr. McLAUGHLIN: I hope I may be excepted from that.

Mr. LAFLEUR: Well, I think my friend Mr. McLaughlin was less vituperative probably, but I think that he did make the gist of his claim a charge of negligence, and then at the last he made some reference to war conditions as possibly affecting the conduct of the Minister of the Crown in those difficult circumstances; but I understood both Mr. McLaughlin and Mr. Lee to base their claim principally upon the negligence and the errors of judgment of the then Minister of Finance. Mr. Browning, I think relied rather on the allegations of the petition as originally drafted.

Now how far one of the learned counsel went in that direction is apparent from his remarks at pages 697 and following. He charges Sir Thomas White, Sir Henry Drayton and the Hon. Mr. Fielding with being "parties to the wreck of this institution." He says:—

"I charge these gentlemen together that they by their united action with the directors and managers, wrecked this bank and lost our money."

Then he goes on, at the bottom of the page to say:—

"The management looted the bank."

and that these men, who were placed in responsible positions, in the Government of the country, helped them to do it. And then he adds:—

"Are these Finance Ministers coming back to give us our money by reason for their negligence?"

Now that you see is a case wholly different from the one that was set up by the depositors and I am just wondering how far your lordship will feel justified in travelling with the learned Counsel in that direction? That he puts it on the ground of negligence is apparent from what he says at the top of page 698:—

"As one who has suffered by reason of this failure, I am asking this Government for something that in my opinion I am entitled to get. Why? I am entitled to get it by reason of the negligence of the officers."

Then a little further down he says:—

"Sir Thomas tried to steer the ship off these shoals, but did the other gentlemen do so? I leave it for your lordship to say, in answering these questions that have been submitted in our petition, whether we have brought sufficient evidence from which a reasonable man could find that in 1915, 1916 and 1918 things were brought to the attention of the Minister of Finance which under ordinary circumstances, having regard to the surrounding conditions, that the war was on"—and so on—

"The interest of the depositors in this bank were guarded as carefully as they should have been."

He says a little further on:—

"We find that this bank has not been wrecked wholly by the action of the directors, not wholly by reason of the inaction of Sir Thomas White, but it has been wrecked by reason of the inaction of Sir Henry Drayton and the Hon. Mr. Fielding. If my deductions are correct"—

he adds—

"And I think they are."—He says,—

"These three gentlemen are partially responsible for this wreck."

Now I really would like to know on what grounds the present claim is going to stand and be based. Are the learned Counsel abandoning their claim for a sympathetic allowance, because in the circumstances in which the Minister of Finance found himself placed, he had to sacrifice the lesser interest to the greater national interest? Or is this going to be considered as a case based on negligence? On the negligence and remissness of Ministers of the Crown? In the original petition you see no reference made to any of the successors in office of Sir Thomas White. The action complained of and in respect of which redress is sought, is limited to the years 1915, 1916 and 1918. There is no suggestion of any charge being directed against the successors in office of Sir Thomas White. And while I hold no brief for any of these Ministers, I feel that we must be just to them. If I hold no brief for them, I hold no brief against them. I am not directed, nor is my colleague, Mr. Symington, directed to find them guilty in any respect in regard to the affairs of this bank. We have been charged simply, and that is our only mandate, to investigate impartially and we consider it our duty to see that no injustice is done to anyone.

With the exception of Sir Thomas White, not one of these gentlemen has had the opportunity of presenting anything before this Commission. Sir Henry Drayton is not charged in the petition, even by implication. Nor is the Hon. Mr. Fielding. They could not have imagined that it was necessary for them to present any defence before your lordship. As to Sir Thomas White, in spite of his own modest disclaimer, he has presented his own defence; and as your lordship realizes, he presented it with conspicuous ability. But I really feel that we must not be unjust to gentlemen who are not aimed at at all by the petition in any of its allegations, and who have had no opportunity of presenting any defence, and who could not anticipate that their conduct be attacked as it has been.

Now if I do not hold any brief for these Ministers, still less do I hold any brief for the Directors of this bank; and yet I am bound to say that it does not appear to me to be fair to attack either the Western or the Eastern Directors when they are not here to defend themselves. I do not think that it is possible for your lordship to consider the very serious charges that have been levelled against Mr. Haney for example, and Mr. Crerar, in their absence. We invited Mr. Haney to be present and to defend himself if he thought fit; but your lordship knows that we have the evidence that his state of health will not permit his attendance before the Commission; and while it is inevitable that the affairs of the bank during the periods in question should be investigated, and while it is inevitable that Mr. Haney's name should come up and that his correspondence should be commented on, I think we should refrain from any vituperative epithets against him until he has had an opportunity of representing his case.

And still more so would I dissociate myself—and I am sure my friend Mr. Symington will wish to dissociate himself—from the very savage attack which has been made on the Hon. Mr. Crerar. Mr. Crerar was in no way named the object of any unfavourable comment in the petition, or in the claim, of the present depositors, and I am at a loss to understand why his name has been dragged in, because if it is true as the learned Counsel for the shareholders has submitted, that the wrecking of this bank was the work of Mr. Haney and Mr. Crerar, what becomes of the depositors' claim against the Government? I understood the learned Counsel for the shareholders to say that he was in a measure supporting the claim of the depositors, and that would be intelligible, because it would reduce the double liability of his clients, but if he tries to make out, and succeeds in making out, that the wrecking of this bank is due to the machinations and to the conspiracy between Mr. Haney and Mr. Crerar—

Mr. REID: And the Government, I said.

Mr. LAFLUR: No, the learned Counsel charged them with wrecking this bank, and if that is so, I cannot see where the Government comes in, or where the responsibility of the Minister comes in.

Now when this proceeding began, my friend Mr. Symington and I very anxiously considered what course should be adopted in view of the different interests that were involved, and of the proceedings that were actually pending. As your lordship knows, with respect to the Directors who were in office just before the bank failed, prosecutions have been launched against them and they are now under indictment, and we came to the conclusion that it would be improper and unfair to prejudice either the rights of the Crown, prosecuting them, or the rights of the defence, by investigating any more than was unavoidable, the history of the bank in its later stages; because, as I understand it, the Directors are charged with making false returns in the years immediately preceding the insolvency of the bank; and we have avoided dwelling upon any feature of the case which might in any way trench upon the ground that is going to be traversed in these prosecutions, and I hope we have successfully avoided entering into that domain. At any rate, we have endeavoured to avoid injuring the case of either the prosecution or the defence.

Then again we thought that we should abstain from investigating the claim of the shareholders who are represented before your lordship by my friend, Mr. Reid, and for the very obvious reason, that that is also the subject of litigation in the Ontario Courts and we thought it would not be proper to go over the same ground and perhaps prejudge matters which were sub judice. For example, it appeared to me it was not relevant for us to consider the alleged irregularity or illegality in the commencement of the bank's operations by reason of their having failed to get a certificate within a year, because all that would go to establishing a possible defence of the shareholders in the proceedings a possible defence of the shareholders in the proceedings directed against them to enforce the double liability, but, as far as I can see, it has nothing whatever to do with the depositors of this bank.

I therefore think that it would be grossly unfair for us when we are confining our attention to the depositors' claim against the Government to make the inquiry on this head a pretext for attacking persons who are not here, but defendants themselves.

As I said before, of course, it was inevitable that some mention should be made of names of those who figured in the transactions from 1916 to 1918, and that the bank's affairs during those years should, to an extent, be examined, but only so far as was necessary for the decision of the question now submitted to your lordship.

The Petition being such as I have described, the Orders in Council were framed to meet the allegation of the depositors' Petition, and you will see that the first Order in Council, at page 5 of the record, closely follows the words of the Petition, and it puts to your lordship questions arising directly on those allegations.

As your lordship knows, the scope of the Order in Council was afterwards enlarged in response to requests made in the House of Commons so as not to restrict the inquiry to those years but to extend them from the time of the bank's creation until its failure. I do not think, however, that that will add anything to the depositors' case. I do not think that we have in evidence any representations made at any other time than 1916, and 1918, and while the inquiry was widened I do not think anything turns upon that. It may affect the further inquiry with respect to the general condition of the bank's affairs, but, as far as the depositors, claim is concerned, I do not think the enlargement of the scope of the inquiry has any significance.

I am not going over all the evidence which has been so thoroughly examined by the learned counsel who have preceded me, and all the more so because my friend, Mr. Symington, has undertaken to prepare the exact references to the correspondence, and to the oral testimony, so as to facilitate your lordship's work, but I will just very briefly, and in the most general way, state what I think should be your lordship's answer to the questions propounded in the Order in Council, which you will find on page 5.

You are first asked:

"Whether, in the years 1915, 1916 and 1918, representations were made to the Department of Finance of the Dominion of Canada respecting the condition of the Home Bank of Canada, and, if so, what representations were so made."

Now, undoubtedly, the following representations were made. First, representations were made to Sir Thomas White as to the unwillingness of the Directors in Toronto to give information to their Western colleagues.

In the second place, representations were made that enormous loans had been made without adequate security, those loans being quite out of proportion to the capital and reserves of the bank.

Then in the third place, representations were made that there prevailed a vicious practice of carrying into profit and loss considerable amounts representing the unpaid interest on doubtful accounts, and of declaring dividends on the strength of these fictitious earnings.

In the fourth place, the probability was clearly hinted at, by Mr. Lash himself, that the bank might have to liquidate.

Those are in substance, I think, the most important if not all the representations that were made. They were not all contained, perhaps, at the origin in the first memoranda that were furnished by Mr. Fisher along with the supporting file of documents, but in the course of the correspondence and interviews with Sir Thomas White all of these matters were the subject of discussion.

I do not think your lordship will have any doubt in finding that at least these representations were made at the time in 1916 and 1918.

I pass on now to the second question which is put to your lordship, and that is:

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

To this question Sir Thomas White has raised an objection on the ground that your lordship had no right to pass upon his conduct when he was in the exercise of his functions as Minister of Finance unless he were charged with dishonesty, with bad faith in the exercise of his duties, and he cited Todds' Parliamentary Government to establish that a Minister is responsible to Parliament, and to Parliament only, for the discharge of his duties while in office.

I think, with deference to the very able argument that he presented upon this point, that Sir Thomas White was entirely in error as to the scope and meaning of this second paragraph in the Order in Council. I do not think that that requests your lordship, or imposes upon your lordship the duty of passing upon the quality, as he put it, of his actions as Minister of Finance. I think all that you are required to do is to see whether such a state of facts existed as would have enabled him to exercise the permissive and admittedly discretionary powers which he could exercise under Section 56A of the Bank Act. That

is what you are asked to state, whether the condition of the bank was such as would have enabled him to act, as would have justified him in acting. Conceivably, there might be conditions, while the Act gave him certain powers, where he could not exercise them, because the conditions did not exist. If a trivial accusation had been made against the bank which could be disproved on mere inspection of the documents, or if the accusation came from a source which was not worthy of credence, why, under those circumstances it might well be that the Minister would not be justified.

But here the Minister himself treated the charges as being most serious and coming from a quarter which entitled them to his serious consideration, and all as I take it that you have to report on is whether or not those conditions did exist, whether the bank was in such a condition that a Minister could reasonably and properly have exercised those powers.

I was all the more surprised at this objection being raised by Sir Thomas White, because I understood from him during his examination, and during his argument, that he welcomed this investigation, and welcomed the opportunity of placing before the public of Canada his own justification for his conduct, and feeling that he was anxious to get an opportunity of defending his conduct, I put questions to him on that very point.

You will find at page 345 that I put these questions to him:

“Q. As a result of the memorandum and other documents filed with you by Mr. Fisher you proceeded under Section 113 of the Bank Act to ask for report?—A. I did.

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

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

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

Q. Did you call on the auditor for a report under Section 56A of the Act?—A. Right.”

Now, how can Sir Thomas object to your lordship answering that question when he has answered it himself? He has given the answer, and it is the answer I should have expected him to give, and now I do not see the utility of raising a nice constitutional question to know whether or not this Commission, or any other Commission appointed under the Inquiries Act, can criticise the official acts of a Minister in the exercise of his duties. That is not the question before us at all. The question is one purely of fact, and Sir Thomas White so understood it, and he answered the questions, and I submit there can be no harm in your lordship taking his answer, because he knows as well as anybody whether the facts justified him in taking the course that he did, and that is all that is meant by that question. So I do not think your lordship will be troubled at all with the constitutional difficulty.

The next question is number 3, and is:

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

On that point, again I do not think your lordship need experience the slightest difficulty, because we know now that nothing was done except to require an investigation to be made from the inside.

In view of the evidence before Sir Thomas White that the members of the Board in the East had persistently withheld information from their co-Directors in the West, one is led to ask one's self “What could have been the utility of an

inside audit?" And, in that connection I would ask your lordship's consideration to the observations made by the late Chief Justice Meredith in the case of the Farmers' Bank, which was a case, in many respects, analogous to this. But I am going to refer to it by and by, as it is the only precedent that appears to exist in our annals for a petition of this kind, a petition for indemnity or compassionate assistance, and I will hand this paper in, which is a return made to the Governor in Council by the Commissioner containing his findings on the questions submitted to him.

At page 9 of this judgment, or of these findings, you will find the following observation. Perhaps I should explain to your lordship that the Petition in this case was a petition for indemnity on the ground that the Farmers' Bank had been allowed to start its operations by receiving a certificate which had been improvidently issued without verifying the charges of fraud which were made by certain persons who resisted the application for a certificate. The argument was that if the bank had received no certificate then there would have been no bank operating, and, therefore no loss. It is something like my friend Mr. Reid's argument, that if this bank had not been revived in 1905 after the expiration of the delay for getting the certificate no loss would have been incurred.

Mr. REID: I beg your pardon, I did not say the bank had been revived. I say they did not reincorporate the bank.

Mr. LAFLEUR: I understood that my learned friend urged this as an argument, that is, the non-existence of the bank, to establish that if the bank had been allowed to die, to remain dead, then there would have been no loss. Well, that, of course, is in any case only a remote cause, and the proximate cause of the disaster in the Farmers' Bank was found by the learned Chief Justice to be the mismanagement by the Directors. These remarks were made in the course of the judgment delivered by the Chief Justice. You will find them page 9. The Minister had asked for assurances with respect to the facts which were charged against the promoters, and he relied on the word of one Travers who had given the assurance for which the Minister had asked, and the information which had been conveyed to the Minister had come from gentlemen of standing, and if it was accurate then the declaration of this man Travers was untrue, and the learned Chief Justice says:

"it would seem to have been almost an idle thing to ask for an assurance that there was no foundation for the statements that had been made to the Minister from the very man whose honesty was in question and unwise to have acted on that assurance."

That is a principle I ask your lordship to apply in this case. It is not binding on your lordship, of course, but I think it was very unwise to rely upon the statements of these Directors whose reluctance to furnish information to their co-Directors in the West had been complained of, and ultimately that is what was done. Reliance was placed upon the report of Mr. Haney, which, as I think, was clearly established, contained a tissue of erroneous information in regard to fundamental objections that were being made by the Western Directors.

I think, therefore, that your lordship will have no difficulty in reporting what action, if any, was taken by the Minister of Finance upon the representations that might have been made.

I want to refer also to the observations made by Chief Justice Meredith in the same case of the Farmers' Bank on another question which presents itself in both these cases.

You will remember that, for a considerable time, the Western Directors persistently asked for an external audit. They said they would not be satisfied with an inside audit. After a time, yielding, I think, to the desire of the

Eastern Directors, and particularly Mr. Haney, there was an abandonment of this request for an external audit, as appears from Mr. Crerar's letter of the 20th March, 1916. Now, Sir Thomas White had previously taken the stand in his letter of the 17th February, 1916, which you will find at page 162, that even on the request of the Winnipeg Directors he would not stay his hand, because he felt that if an inquiry of this kind was justified upon the information received he should be very cautious in staying his hand and abandoning the inquiry, even though some kind of a compromise or settlement was made between the different Directors.

That very question presented itself in the case of the Farmer's Bank. In that case an objection had been entered to the granting of the certificate, and subsequently the people who were objecting to the granting of the certificate were settled with, and were paid, and these are the observations of the Chief Justice upon that feature of the case. He says:

"That the verbal information I have mentioned was conveyed to Mr. Fielding was not denied though he stated that, as I have no doubt was the fact, no formal objection to the granting of the certificate was made either by Sir Edmund Osler or by Mr. Henderson. That, however, in my opinion, is immaterial.

"I do not suggest that the Minister would have been justified because of the information conveyed to him in recommending that the certificate should not be granted, or that the Treasury Board because of it would not have been justified in refusing to grant it, but, having received the information, it was in my opinion incumbent on the Treasury Board to have investigated the charges that had been made before coming to a conclusion as to whether or not the certificate should be given.

"The officials of the Department of Finance appear to have treated

Mr. McCarthy's letter as if it had never existed, and, in my opinion,—"

Mr. McCarthy had written on behalf of those who were objecting to the granting of the certificate, and when this settlement was arrived at, and the Department was notified of the compromise, then they treated, as the learned Chief Justice says "Mr. McCarthy's letter as if it had never existed," and he goes on:

"and, in my opinion, in that they erred, for although Mr. McCarthy on the 2nd November, 1906, wrote to the Minister informing him that the claims made by his clients had been 'settled by their subscriptions being taken up by some parties interested in the Bank and refunding the money paid by the individuals or returning the notes which had been given and had withdrawn the objections which he had made on behalf of his clients to the issue of the certificates, Mr. McCarthy did not in any way intimate that the information he conveyed to the Minister as to the way in which the \$250,000 had been made up had been found to be incorrect."

Here, of course, we have a similar state of things. In 1906 a sort of undertaking arrived at between the Western Directors, and, on the strength of that, the investigation appears to have been abandoned.

Then again we have later on, in 1918, Mr. Machaffie's charge and his subsequent recantation.

Mr. McLAUGHLIN: He did not recant the charge he put in.

Mr. LAFLEUR: No, no, but he recanted to the extent of saying that the letter which he had intended to send to Sir Thomas White was based on hear-

say, but the original charges which he actually communicated in writing to Sir Thomas White were never recanted, no doubt about that, and it must have satisfied your lordship that even as to the allegations which were contained in that projected letter to Sir Thomas White he really had nothing to retract.

I was rather amazed to hear my friend, Sir Thomas White, suggest that I had been too tender with the witness because I did not use vituperative language, I suppose, and because I did not treat him as perhaps some other counsel might have felt disposed to treat him. He imagined that I had failed to bring out all that there was in the incident. I thought that I had done enough, not being before a jury, to convince your lordship as to what credit, if any, was to be given to that witness in regard to his motives, or acting as he did. It does not appear to me that even if his motives were not as disinterested as those of some others who made representations, if those objections were well founded, coming as they did from a trained banker who knew all the affairs of the bank, they were entitled to consideration, and his recantation should not have been allowed to have any effect on the investigation.

That is all I have to say in regard to paragraph 3.

I would ask your lordship now to turn your attention to the fourth question, which asks:

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

Now, it is always more or less conjectural to answer a question like that, but Sir Thomas White admits that if he had known what he now knows, and what I submit could have been known if a proper external audit had been made, he would have prevented the bank from going on and taking money from the public. It is true that might probably not have helped the existing depositors. It would have saved the subsequent depositors, and there would then have been a conflict between the interests of the two classes of depositors. But, in any event, he is convinced that he could have done something in the way of having this bank taken over by another bank.

The fifth question asks:

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

I am not going to dwell upon the first part of the question, the financial condition, because my friend, Mr. Symington, will give you the references to that, generally speaking, though there can be no controversy as to the condition in those years. The capital of the bank had been practically wiped out. Its reserves were gone, it was not making any profits, the dividends were being paid out of imaginary profits, fictitious profits, and it was in a very disturbing condition at the time.

What steps, you are asked, could have been taken then to save the situation? Here again we have the testimony both of Sir Thomas White and of Sir Henry Drayton indicating what they could have done. They said they were confident that they could have drawn the attention of the Bankers' Association to this state of affairs, and that some of the strong banks would have been induced to take this bank over.

It is perfectly true, as Sir Thomas White contends, that if any drastic steps had been taken in wartime, and even in time of peace, by sending an auditor from the Department into the bank to make an external audit without taking any precautions, the results might have been disastrous, but that is not what suggests itself to any prudent man, what did suggest itself to the

mind of Mr. Lash who had great experience in these matters, who had been counsel for the Bankers' Association for a number of years, and who was in the bank himself as Vice-President, and who had been a Director. What suggested itself to him at once was that this matter should be dealt with by the Bankers' Association, a friendly Association. It would have been a friendly investigation and audit. It need have excited no comment, and, as Sir Thomas White says, when you get any of the officials of the Bankers' Association to look into the affairs of a bank the rumour goes around that you are going to have a merger, and instead of depreciating the stock of the bank it tends to raise the value of that stock.

Now, that was not *only* the thought that occurred to Mr. Lash, it was the thought that occurred to Sir Thomas White, and in the earlier period of these conferences, and of this correspondence, it was insistent upon them that that was the natural and the obvious remedy, to lay the matter before the Bankers' Association. Quite true, Sir Thomas says that the Bankers' Association is an Association which has not the funds permitting it to acquire a bank. No one suggests that for a moment, but the Bankers' Association is one which contains representatives of all the great banks in Canada, and when a weak bank is in a dangerous condition it is in the interest of the strong bank to prevent a financial crisis, even in peace time.

It is incredible that this situation could not have been remedied, that steps could not have been taken instead of the fact, which was admitted, of allowing the bank to go on and trusting to the new management retrieving the disastrous condition which was then apparent, or which would have been apparent if anybody but the Directors and their own auditor had really examined the accounts.

I do not need to refer to what your lordship must have gathered during the course of the examination of the witnesses, and that is, that such irregularity, such a continuous practice as the passing of these fictitious profits, fictitious earnings to profit and loss account and using that in order to justify the declaration of dividends. That was apparent on the face of the books. It did not need any valuation of securities. There were vital and very dangerous features which would have been disclosed at once on a mere examination of the books of the bank by any independent auditor.

What I respectfully suggest is that this natural course, this obvious course, was not followed, simply because both Mr. Lash and Sir Thomas White yielded to the pressure of these Directors who did not desire any external audit to take place. And we know the result. We know the report, which was sent to Sir Thomas White on behalf of the Directors and signed by Mr. Haney, was wholly unreliable and contained a tissue of false returns. That being so, I think it is my duty to ask your lordship to consider whether it is desirable for you to do anything beyond finding these facts as I have put them to you.

I do not think you need, at this stage of the inquiry, report on any further facts which might be opened by the enlargement of the scope of the Commission because, as I say, we have not got any proof of any other representations being made to any other Ministers of Finance. Certainly Sir Henry Drayton did not have any brought to his notice otherwise than by his succeeding to his predecessor in title, and getting the file of Sir Thomas White. It does not appear to me that there is anything in the evidence which justifies you in finding that any other or further representations were made to Sir Thomas White's successors. As to Sir Henry Drayton, as I was saying, all that he had was the file that was in the Department. As far as any Minister coming into office is concerned, the matter had been practically a closed chapter, was ended, and we see that Sir Henry Drayton takes up the matter with Mr. Miller Lash owing to the illness and subsequent death of Mr. Z. A. Lash, in order to see if there is anything new, and nothing new appears to have been disclosed. And to all outward appearances, at that time the bank was going on. The dividends had

been raised successively from five per cent to six per cent, and from six per cent to seven per cent, and there were no danger signals at the time when Sir Henry Drayton came into office. He always felt, and he says he felt, that this was a weak bank, and he says that he told Mr. Fielding, in a casual way, that he possibly might have to deal with the Home Bank as he had dealt with the Banque Nationale, but that is not of a nature to create any alarm. What Sir Henry Drayton had done in connection with the Banque Nationale was merely to make advances to that bank under the provisions of the Finance Act, and that is what the Government does whenever one of the weaker banks desires some financial assistance and is prepared to give the necessary security for the advance. But there was nothing that was brought to the attention either of Sir Henry Drayton's or still less to Mr. Fielding's notice, of any alarming condition in the affairs of the Home Bank.

I do not think your lordship will have any difficulty in making findings to that effect. That being so, I submit that the very vicious attack which was made on both of the successors of Sir Thomas White is utterly unproved, and that there was no justification for the assertion that they had been grossly remiss in their duty, and had participated with the Directors in writing this letter.

As to Sir Thomas White, I would only say this: I think we must acquit Sir Thomas White of any remissness and want of activity in dealing with the objections and representations which were made to him. On the contrary, he appears to have shown a most remarkable activity in spite of the enormous load he had to carry in connection with his war work, and I quite agree that he certainly devoted a great deal of time, and a great deal of attention, and a great deal of thought to this matter, which, after all, was a small matter in comparison with the very serious interests that were occupying the attention of himself and his colleagues at the time.

At most I suppose it could be said that he had misplaced confidence in men who had deceived him, and that he may have committed an error of judgment in allowing an investigation to take place from the inside instead of having the Bankers' Association conduct the investigation as he originally desired, and as Mr. Lash also originally desired. I think that is all that can be said in regard to any charge of negligence, but I do not conceive that it is your lordship's duty to pass upon that point. Your lordship can very properly, without criticising the Minister's exercise of his discretion, find all the facts that are necessary to enable either Parliament or the Banking Committee to come to a conclusion on the subject.

And your lordship will notice that you are not obliged to go any further than that. It is true that in the Commission appointing you you are required and directed to report to the Governor-General-in-Council the result of your investigation together with the evidence taken before you and any opinion you may see fit to express thereon. There is no compulsion at all, and it occurred to me that perhaps it might assist your lordship to know if there were any precedents at all. Well the only precedent we have been able to find is this case of the Farmers' Bank, where a similar claim was presented, which in that case was based on the alleged negligence of the Department of Finance. You will find on looking through this report by Chief Justice Meredith that he confined himself to making findings upon the facts, and abstained from expressing any opinion as to the conduct of the Minister in the exercise of such discretion as the Act conferred upon him. And he also abstained expressly from making any recommendation as to a compassionate allowance being made to the depositors. I do not know what your lordship's intentions may be in that regard, but I may say that in the case of the Farmers' Bank the House of Commons passed an indemnity Bill on the ground that a moral liability

had resulted from the Government's neglect. The matter afterward came up in the Senate and the Senate rejected the bill. Now in spite of all the endeavours that we have made to find other precedents that is the only one we have found. I suppose I need hardly cite authority to your lordship to say that even if gross negligence on the part of the Crown's officers and servants were established, there can be no liability for tort. Ever since the case of the Viscount of Canterbury against the Attorney-General in 1843 (12 Law Journal, Chancery, 281) that doctrine has been constantly followed and applied. As you will recollect that was an action on a petition of right for damages suffered by the petitioner for injury to his property while he was Speaker of the House of Commons. When the Houses of Parliament were burnt down the property of the Speaker in his chambers was destroyed, as he alleged through the negligence of the Crown servants. There is a long line of cases in our own Courts, our Supreme Court as you will remember in the case of *Queen vs McFarlane* 7 S.C., 216 and *Queen vs McLeod* 7 S.C., 1. The only exception of course is where the Statute itself imposes liability on the Crown, for instance in the case of accidents on public works. There is a statute which creates the Exchequer Court and gives certain powers to that Court. That statute has been held to create a statutory right of indemnity against the Crown for torts committed by servants of the Crown, but otherwise there is no recourse. If there is any recourse at all it is against the officers of the Crown when they have neglected or refused to perform a statutory duty. You find an example of that in the case of *Fulton v. Norton*, 1908 appeal cases, 451. That is a case where the Provincial Secretary had failed and refused to submit to the Lieutenant-Governor-in-Council as he was bound to do under the statute a petition of right which claimed damages from the Government of British Columbia and it was held that he was obliged by the statute to submit this, and having failed to do that he would be personally liable in damages, but there was no claim against the Crown. And there never is unless it is established by statute, and here of course there is none.

So that, although some learned counsel seemed to say that they had a case of negligence against the Crown by reason of the ill-timed action or misguided action of one of the Ministers, and inaction of the other two Ministers, it is clear that they could not have any legal remedy. The question will be for Parliament to decide whether they have any moral claim. It is for your lordship to say whether you care or think it proper to express an opinion and make any recommendation on that point. As I said I do not think you are obliged to do so, and I think the responsibility must ultimately rest with Parliament if any bill of indemnity is to be passed to relieve the depositors.

I will not take any more of your lordship's time. My friend Mr. Symington will supplement my observations.

I have also, like the other counsel, to thank you for your unfailing courtesy and for the great patience with which you have listened to this prolonged case. I am glad to say that while my friends the counsel for the depositors and counsel for the shareholders cannot see eye to eye with me, there have been no unpleasant incidents in our intercourse, and that they have facilitated us as we have endeavoured to facilitate them, in getting at the real facts of this case.

ARGUMENT BY MR. SYMINGTON, K.C.

May it please your lordship, I wish to associate myself with Mr. Lafleur's remarks in respect to any attacks which have been made upon anybody in this Commission. A perusal of the Commission and of the Orders in Council leaves the task imposed upon your lordship and on counsel in this investigation a comparatively simple one. It is to answer questions and, if you deem it advis-

able, to give an opinion. No charges were made against any individual whatsoever, and I must say that I did feel very much like interfering, but did not, when certain people were attacked here before this Commission in a way which I think was absolutely unjustified, not only by the fact that they were not represented, but the fact that the evidence did not in any way justify it.

I propose to assist your lordship if I can in the consideration of the questions which have been put to you. I refer to page 5, the first question asked is:

"1. Whether, in the years 1915, 1916 and 1918 representations were made to the Department of Finance of the Dominion of Canada respecting the condition of the Home Bank of Canada, and, if so, what representations were so made?"

The question resolves itself into two branches and three subheads. Taking the first one, which I would call 1A, it would be whether representations were made in 1915, and I think we are all on common ground that there is no evidence that there were any representations made in 1915, and therefore the answer to that question would be, No.

Similarly, 1B, whether there were representations made in 1916, obviously the answer must be, Yes. Representations were made to the Government in the month of January, 1916. Exhibits Nos. 2 to 42 inclusive on pages 12 to 75 of the record comprises a file submitted by James Fisher, K.C. of Winnipeg acting on behalf of the three Western Directors of the bank, Messrs. Crerar, Perse and Kennedy, to Sir Thomas White, Minister of Finance on the 22nd January, 1916, and furnish conclusive evidence of the correct answer to that question. If your lordship wants evidence that Sir Thomas got them, exhibit No. 43 on page 75; No. 44 on page 76; and No. 45 on page 76, are acknowledgments that the Minister received those representations.

While I think that covers the representations anticipated in the question, non the less those representations led to certain further information being received in the correspondence which arose out of them. Exhibits Nos. 43 to 63, on pages 75 to 109 of the record show the correspondence in the Department in connection with those representations contained in Exhibits 2 to 42. Those exhibits and pages cover what was in the public file in the Department of Finance. Exhibits Nos. 68 to 87 on pages 159 to 177 of the record cover the Exhibits produced by Sir Thomas White from his own file, showing the additional correspondence arising out of those representations.

The next branch is 1C, whether representations were made in 1918; that is answered by Exhibits Nos. 88 to 177 which show that representations as to the Home Bank were made by a Mr. Machaffie, late assistant to the President, to Sir Thomas White under date of August 29th, 1918. Exhibit No. 89 on page 179 is an acknowledgment of the receipt of those representations by the Minister. Exhibit Nos 90 to 109 on pages 179 to 208 of the record show the correspondence arising out of the representations contained in Exhibit No. 88.

Exhibits Nos 64 and 65 on pages 118 to 127 and 141 to 153 produced by Sir Henry Drayton from his private file show the subsequent correspondence which in a sense might be said to have arisen out of both complaints, because both were before Sir Henry Drayton.

So the answer to part 1 of the questions would be as to 1915, No; as to 1916, Yes; and as to 1918, Yes.

The second part of the question is: What representations were so made. That is a more difficult question. In 1916—we can now eliminate 1915 throughout—Exhibit No. 5 on page 17, is the general memorandum giving the Minister a short summary by the Western Directors of the position of that bank. That memorandum has been covered pretty thoroughly by counsel for the depositors and I do not propose to take up time analyzing it for your lordship, but rather

will I summarize in the end what seem to me to be the representations which were made throughout the whole correspondence. But I give these individual references as being the more important ones.

Exhibit No. 2 on page 12 is another memorandum submitted at that time to the Minister, it is marked "Re Prudential Trust loan." It is a memorandum in connection with that loan and is important apart altogether from the size of the transaction because it discloses certain actions which, on analysis, would perhaps have surprised most bankers to learn that things of that character were carried on in the bank.

Exhibits Nos. 6 and 7 on pages 19 and 20 set forth some very extraordinary procedure with regard to this loan, and exhibit No. 8 on page 22 immediately following, shows the appointment of Mr. Barnard to a Directorship in spite of the facts set forth in that memorandum.

Exhibit No. 9 on page 23 shows the protest of the Western Directors against such procedure.

Exhibit No. 10 is rather an important letter written by Mr. Persse which discusses the general position of the management of that bank at some length and discloses the interior difficulties and objectionable features in detail.

Exhibit No. 35 on page 59 shows the Frost indebtedness of one and three quarter million dollars.

There are altogether some 42 exhibits there, but I have only given references to the important ones. I submit that the perusal of the whole file shows the following representations were made, and answer the question as to what representations were made in 1916. The representations showed:

(1) That the paid up capital of the bank was about \$2,000,000 and that it had four very questionable accounts of a doubtful and frozen character amounting to \$4,800,000.

(2) Misrepresentation by the management to the Directors.

(3) Inability of the Directors to get reliable information.

(4) The desire of the Western Directors to secure a change of management.

(5) The apparent reluctance of the Eastern Directors to any change in management.

(6) Lack of confidence on the part of the Western Directors in the Eastern Directors and management.

(7) Unreliability of statements issuing from the General Manager's office.

(8) Unsatisfactory settlement of large accounts without consultation with the Western Directors.

(9) Appointment of new Directors without consultation with or knowledge of the Western Directors.

(10) The annual returns were made to the government without being submitted to the Western Directors.

(11) There was no inspection of the Main Office.

(12) That a full investigation ought to be made into the affairs of the bank generally by a special Auditor appointed by the Department.

I think those summarize the representations which were made to the Minister of Finance in 1916:

Then with respect to what representations were made in 1918, that involved only an analysis of Exhibit No. 88 on page 178:

(1) That refers to the previous representations made by Mr. Fisher as solicitor for the Western Directors, that is it recalled what I have set forth to you now to the mind of the Minister.

(2) It points out that the hoped for sale of the British Columbia timber limits had not taken place.

(3) That the dividends for 1916 and 1917 were based on the addition of unpaid interest to doubtful accounts, and that thirty per cent more than the dividend came from the Frost account alone.

(4) That the bank was speculating in a shipbuilding industry on a profit sharing basis with certain Directors.

(5) That the 1918 dividend was based on such speculative profit.

(6) The aggregate risk of the public was much greater in 1918 than when Mr. Fisher interviewed the Minister in 1916.

(7) That dividends for three years were furnished by the increase of deposits.

(8) That the writing up of the Frost account would account for the whole capital of the bank.

(9) That Section 153 of the Bank Act, that is the provision as to the returns, was being violated.

(10) That the Auditor was incapable.

(11) That important matters were concealed from the Board and so the protection contemplated by Section 58 of the Bank Act was lacking.

(12) That transactions in which the President and his friends had a personal interest were becoming rather frequent, and in some cases, disastrous.

(13) That important information was being withheld from Mr. Lash.

(14) That the arrangements previously made by the Minister with Messrs. Haney and Lash do not afford the public an adequate measure of protection.

I am not suggesting that all those are true, I am simply reciting to you what seem to me to be the representations which were made, and an answer to the question: "What representations were so made?"

Coming then to question No. 2:

"Whether, if such representations were made, a state of affairs was revealed concerning the condition of the said bank such as would have justified an investigation under the powers conferred upon the Minister of Finance by Section 58A of the Bank Act."

Mr. Lafleur has dealt with the position he takes with respect to that question and Sir Thomas White's objection from a legal standpoint. May I say that I entirely agree with Sir Thomas's statement of the law, but that in my judgment that question is not a question which is calculated to hold any Minister of the Crown responsible to anybody but Parliament. It is not a question which of necessity either condemns or appraises Sir Thomas White, it is, whether there were representations which would have justified him or any other Minister in making an independent investigation.

Now you have in the summary which I have just given in answer to the question "What representations were made," the information to deal with that, but I think it is useful to refer to certain exhibits as to the effect the representations had on the mind of the Minister at the time. Mr. Lafleur has given the references in the evidence to Sir Thomas White's answers as to what he did, which perhaps summarize pretty well the influences upon his mind, still that evidence was given some years after the fact.

Now with respect to the 1916 representations, Exhibit No. 43 on page 75, being a letter from Sir Thomas White to James Mason, was the first and immediate reaction made upon his mind when he read those representations. He immediately called for information under Section 113 of the Bank Act with respect to the three largest accounts which had been named in the memorandum presented by Mr. Fisher. In other words he immediately reacted in the way I think even at this period of time one would judge his mind would react, he started in and called for returns under section 113, which is a return from the Board, virtually to make the Board responsible. Your lordship understands

the theory of the Bank Act, to make them responsible for returns made to a Minister, that those returns must be correct or the punishment provided in the Act falls upon them.

He also reacted as shown by Exhibit No. 46 on page 78; by writing to the Auditor of the bank, Mr. Jones, and calling upon him under Section 58A to enquire into the accounts mentioned in his letter to Mr. Mason the General Manager, and to report to him in all proper detail.

Those were the immediate reactions upon Sir Thomas White's mind of the representations made in 1916. Those were the reactions which the Bank Act apparently contemplated, and he dealt with it under the two sections of the Act which gave him the power to do so, and at that moment and up to that time nobody could suggest that Sir Thomas White had not done exactly what he should have done; with this possible exception, and this is not a matter of criticism, because it is a matter of discretion; that at that time in any event he wrote to the Bank's Auditor although he had discretion under the section to select some other auditor.

Now I will recall that immediately General Mason received that letter he wrote and asked Sir Thomas White if he was to have the thirty days in which to make these returns. Exhibit No. 45, page 77, indicates that Sir Thomas recognized the seriousness of the situation, because he would not limit himself to giving him the thirty days, he says that the charges are so serious that:

"I think it advisable that your reply should be completed and forwarded at as early a date as possible. Your Board may be able to report to me upon one or more of the accounts in question at an earlier date than would be possible in the case of other or others."

So that it would seem upon the exhibits produced from that time, that there had been produced upon Sir Thomas's mind a realization of the very serious situation which had arisen through the Directors of the bank doing something which as far as I know is unheard of in the history of banking in this country, bringing to the attention of the Minister of Finance complaints and fears with respect to their own institution.

Then we have Exhibit No. 48 on page 79, letter from Sir Thomas White to Mr. Fisher acknowledging receipt of his communication and pointing out that he has drawn to the attention of the President and the Auditor of the bank "The accounts about which I understand from you your clients were principally concerned, namely, the Prudential Trust Company account, the A. C. Frost & Company account, and the Pellatt accounts, requesting detailed information and explanation."

Then we have Exhibit No. 54 on page 86, which was an answer to a letter from Mr. Fisher in which he had pointed out that he had had a telegram from Mr. Lash suggesting that there should not be this outside audit, and that if the Winnipeg Directors would withdraw their objection he could probably arrange it. Sir Thomas wrote to Mr. Fisher on that subject saying:

"The position I have taken with Mr. Lash is that I desire the statement which I have asked for on the complaint lodged by you on behalf of the Western Directors. It does not appear to me that I would be justified in foregoing my request for such information on the ground that the Board is now in harmony. You make certain definite, explicit charges which I conceived it my duty to investigate. When I receive the report in those matters from the Home Bank from Mr. Lash I shall have to determine the course proper for me to take."

So that letter explains what Sir Thomas had in mind; here were definite, specific charges and he calls upon the Bank under Section 113, and upon the Auditor under Section 56A to furnish him with certain information, "and

irrespective of what anybody thinks or suggests I will come to a conclusion when I have got the information as to what is the proper thing for me to do."

Exhibit No. 56 on page 87 is a letter to Mr. Lash from Sir Thomas White, and it indicates that pressure was being brought to bear upon Sir Thomas by Mr. Lash and others to delay the matter pending the valuation of certain accounts or securities, as opposed to any audit. He suggests to Mr. Lash that even though those valuations should be satisfactory he does not know that he ought to accept them, and he feels that he must at an early date draw the matter to the attention of the Bankers' Association, as the Bankers' Association could do this very thoroughly, meaning, this is really an investigation into the affairs, a valuation as opposed to an audit, and they could arrange to do this very thoroughly and much more efficiently than any official I could name for that purpose. We can follow Sir Thomas White's mind very clearly down to that point.

Then Exhibit No. 70 on page 160, being a letter of the 14th February, 1916. from Mr. Lash to Sir Thomas White in which he says (162)—

"I felt satisfied that you would prefer not to have the statements sent to you in the meantime. They would only embarrass you because you could form no opinion as to your duty without further investigation and that you would have to decide what sort of further investigation should take place. There is no doubt in my mind that if we get a new and efficient man to look into the whole situation he will be able to do it thoroughly without the result which would necessarily follow if the investigation were ordered by you. I mean by this that the matter would not become a public comment."

Now there apparently is the germ of what subsequently governed the actions of all parties in this investigation. If they got a good man it could be satisfactorily done from the inside without the public comment and the possible results which would come to the bank if it became a matter of public comment.

Mr. McLAUGHLIN: In that letter of the 29th Mr. Lash says:

"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."

Mr. SYMINGTON: Yes, quite so, but what I am pointing out is that in Exhibit 70 there is as I see it, no matter what was said in the meantime, the germ which controlled the actions of the Minister and the Directors and Mr. Lash. Because if you follow it through, Exhibit No. 71 being Sir Thomas's answer to that Exhibit No. 70, where that germ as I find it first appears, Sir Thomas demurs to some extent, he says:

"The position is that I have been made aware by the Winnipeg Directors of a certain condition which is most disturbing. It does not appear to me that I would be justified in staying enquiry because the Winnipeg Directors may ask me to suspend action. The real question is whether the bank, having regard to the condition which will be disclosed by the statements should be allowed to continue business with the public. I shall be glad, therefore, if you will send me the statements."

He received the statements, apparently being handed to him by Mr. Lash in Ottawa. Following that the first suggestion made to Mr. Lash is to do nothing until he gets the Pellatt securities in shape, because that is going to improve the condition of the bank. Then follows the suggestion that they should await the return of Mr. Haney and Mr. Crerar from their British Columbia trip, ending with Sir Thomas waiting for that return, the meeting of the Directors which as you remember, lasted three days in Toronto, March 16th, 17th and

18th, followed by the trip to Ottawa of Mr. Haney and Mr. Lash, they presenting the letter from Mr. Crerar which they had got from him stating that owing to the change in management matters had improved and he thought it could be handled from the inside. "at this juncture" is the language of the letter. Apparently with that letter, and armed with the minutes of the meetings Mr. Lash and Mr. Haney were able to persuade Sir Thomas White, and they did persuade him in my judgment, that this bank could pull through, could better its position, was in good hands, and therefore he should not make an inspection as had been originally suggested by the Western Directors. In any event, as far as one can read from the correspondence a long time afterward, that seems to have been the workings of Sir Thomas's mind at that time.

That of course is not required in order for you to answer this question, I have gone through it only as assistance to your lordship in considering whether the representations would have justified it, in trying to show you what passed through this man's mind at the time.

Now the situation in 1918, in answer to the second part of that question; I think your lordship must recognize the much more serious character of the representations in 1918 than in 1916. Because not only does it recall to the Minister's mind the very serious representations made in 1916, but it discloses the all-material fact that the Minister had been deceived, that the promises were not being carried out, and that certain very objectionable features, namely the paying of dividends out of unearned interest, had been at this date in any event established even though it had not been at the previous time.

Sir Thomas seemed to take that representation very seriously, as shown by Exhibit No. 90 on page 179. His immediate reaction to that letter was his letter to Mr. Lash enclosing copy of the letter received from Mr. Machaffie.

"I shall be glad if you will take the matter up with the Board of Directors and have a report prepared dealing with the several charges made. I regard the matter as of the utmost public importance, and it is my intention to have a thorough investigation made through the Bankers Association or otherwise. Before taking this step, however, I wish to have a reply from Mr. Haney and his Board."

That was how it had impressed Sir Thomas's mind before he left on his western trip and before he had some correspondence with Mr. Lash.

As a result of his trip the accounts which he received in answer to that were not received until January 29th following. I only mention it at this stage to indicate how the representations affected the mind of the Minister at the moment. The answer to the question will largely come from the perusal of the representations which were made, upon them and your lordship's interpretation of them must depend the answer to question No. 2.

Question No. 3;

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

1916 being the first representations. Exhibit No. 43, page 75, called for information from the General Manager under Section 113 of the Bank Act; Exhibit No. 46 on page 78, called for information from the bank's Auditor under Section 56A. Exhibit No. 68 on page 159, shows his interview with Messrs. Haney and Barnard; Exhibit No. 70 on page 160, is a long letter from Mr. Lash in answer to an inquiry from Sir Thomas, setting forth very material information to the Minister, from Mr. Lash, in which he says that he has said some time ago that the general management was woefully defective; he learned that the Winnipeg Directors were unable to obtain from the management sufficient information to deal with the accounts; he expressed to Mr. Fisher his opinion

about the management and told him that unless new management was introduced the position of the bank would become more complicated and might become hopeless, and so on. That is a very long letter, and apparently at that stage a very frank letter setting forth to the Minister an answer to the inquiries he had made. Exhibit 71 is his answer to that.

Exhibit 52, page 81, is some information he got from Mr. Fisher.

Exhibit 53, page 83, is information from Mr. Fisher.

Exhibit 55, page 86, a letter from Sir Thomas White to Mr. Fisher.

Then Exhibit 63, page 93 contains statements which were obtained from the bank in answer to the demand under section 113.

Exhibit 55, page 87, is rather important, I think, because after receiving those memoranda from the Board, which the Minister says appear to be complete in character he is still not satisfied. He says: (Ex. 55, page 87 line 9):

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

"Yesterday in answer to my recent request for information, I received memoranda upon the Pellatt and Pellatt, A. C. Frost Company, and Prudential Trust Company accounts. These memoranda appear to be fairly complete in character, but, of course, the principal question which arises is that of the value of the collateral held for advances made. I understand that Messrs. Haney and Crerar have been appointed a special Committee to proceed to British Columbia for the purpose of making an investigation respecting the timber limits." and so on.

So that even after the Minister had received the return under section 113, he was still in a state of doubt as to what he should do.

Exhibit 59, page 89; not having received any answer from the auditor under 56A, he now writes to the auditor, not insisting upon his previous request, but he asks him for a detailed statement showing advances, repayments, and interest charges on the A. C. Frost Company account.

"The Western members of the Board have thought it desirable that I should obtain this information."

Exhibit 72, page 163 is a letter to Sir Thomas from Mr. Lash, under date February 29th, 1916, and which shows the workings, as it seems to me, of this germ about the new manager, because at that date Mr. Lash has more or less thrown up his hands as to being able to secure a competent person who could undertake the general management, without first fully investigating the position.

He says:

"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, as it might be important that the Association should feel able to rely upon his report, if their assistance were asked, instead of having to get a further report from their own nominee."

Apparently Mr. Lash was working then upon the theory of getting an outside man who would make the investigation and who would become the general manager. He says, I cannot find a man and therefore we had better ask the Bankers' Association to suggest a man, because if his investigation discloses that

we cannot go on and it must be taken over, there need not to be two investigations, because this man will be one in whom the Bankers' Association will have confidence.

Then there is a reply to that at page 165, in Exhibit 73.

Exhibit 61, pages 90 and 91, contains the statements which the Minister received from Mr. Jones in answer to his demand for particulars or details of the Frost account. It apparently shows correctly the position of that account. There would seem to be no dispute, because there is nothing credited at all, it is shown that the interest is charged up, and charged in the balance of the account. The auditor, so far as that report is concerned, seems to have given all the information that could possibly be got in figures; showing the advances when made, the interest, all of which had been added, and credits practically nil.

Then there is Exhibit 73 at page 165, and Exhibit 74 at pp. 165 and also 167.

Exhibit 76, at pp. 167 and 168.

I am giving you these purely to show what the Minister did, because that is what you are asked to reply. I will summarize them afterwards.

Exhibit 79, Page 169, is a letter to Sir Thomas, from Mr. Lash on March 20th, 1916, where he sets forth for the Minister's information, what he and the management had done to meet the situation, leading up to the interview which they subsequently had, and the results of which are set forth at length in Exhibit 83 at page 172. In other words, Mr. Lash on March 20th wrote Sir Thomas and told him what had been done at the Directors' meeting, the changes in management, the improvement in certain securities, as apparently a preparation for the visit on March 22nd, to the Minister; and in Exhibit 83, page 172 you will find a memorandum signed by Mr. Lash and concurred in by Mr. Haney and apparently concurred in by Sir Thomas, as shown by his answer in Exhibit 84, setting forth in detail what occurred at that interview. The result was that Sir Thomas decided, rightly or wrongly, to give the new management, as it was termed Mr. Haney and Mr. Machaffie, a chance to bring the bank to a better position.

Now all those documents, my lord, it seems to me may be briefly summarized in answer to the question "What did the Minister do?" in this way: that the Minister at first determined to act strictly in accordance with the Bank Act under section 56A and section 113. Secondly, that after getting these reports he decided that the Bankers Association should be called in to make a report, on the ground that apart from an auditor's statement, some investigation or valuation was necessary. That Mr. Lash, representing the bank, was in agreement at first with that proposed method of dealing with the situation, and then changed his mind; that Mr. Lash then procured a delay in any steps being taken pending the securing of the Pellatt loan and pending reports upon the properties in B. C. and New Orleans, that Mr. Lash and the Eastern Directors persuaded Mr. Crerar first that an outside audit would mean closing the bank's doors, and that otherwise the bank could pull through. That the report on the valuation of the holdings did show an improvement and the possibility of an eventual realization. Crerar and Haney, re the West; Haney, New Orleans; and Lash, re the Pellatt. That Mr. Lash strongly recommended Mr. Haney; that Haney was taking hold vigorously; that Machaffie had been brought from Winnipeg, a trained banker, in whom, the Western Directors had confidence. That General Mason had been eliminated. That Sir Thomas and Mr. Crerar had great confidence in Mr. Lash. That all these things were brought to the attention of first, Mr. Crerar and then Sir Thomas, and having persuaded Mr. Crerar, and having apparently given evidence of a desire and a determination to handle this bank properly, that Sir Thomas was induced to hold his hand

for the present. Because, that is all he said he did; that he was induced by those representations to hold his hand for the present. And that is shown by Exhibit 84, page 175, when he says, he will hold his hand but he reserves the right at any time to approach the Bankers' Association.

Then he receives Exhibit 86, page 176, a report in June from Mr. Haney, who in writing that letter would seem to indicate, one would think, some good faith, because it was not necessary for Mr. Haney to write that letter, but he voluntarily says that as you are asking to keep in touch with the bank, I am sending you this report.

Now, there would seem to be no doubt that Sir Thomas White and Mr. Lash and I think Mr. Crerar were given wrong information and were misled. There would seem to be no doubt that Sir Thomas relied largely on Mr. Lash and his opinion of Mr. Haney. And there would seem to be no doubt that Mr. Lash relied on Mr. Haney. In any event the above show the steps that were taken on the 1916 representations. Those references I think cover it fully and my comments of course are comments of my own and not of your lordship, but the Exhibits show the answer to the question as to what action was taken in 1916 upon those representations.

Now what action was taken in 1918?

That is shown by Exhibit 90, page 179. That is a letter that I have already read, I think. It is from Sir Thomas to Mr. Lash, saying these various serious charges have been made and he is going to have a thorough investigation made by the Bankers' Association, but before doing it he wants a reply from Mr. Haney and his Board. Exhibit 92, page 180 is a reply from Mr. Lash to Sir Thomas White, not sending the information, as Mr. Haney is away, but the germ of one of the conclusions which affected the matter later, is there. He says:

"I know that Mr. Machaffie has had strained relations with Mr. Haney for some time past, and what he says about the Home Bank and Mr. Haney must be regarded in that light. I think I told you that the profits of last year were quite sufficient to pay the dividend without crediting unpaid interest as profits. My last interview with Mr. Haney, relating to Home Bank affairs, showed a decided improvement in the condition."

Now there of course is a letter, not very long, and not containing much information, but it does create an issue immediately with Mr. Machaffie's statement about the profits coming out of interest; and Mr. Lash states that he had told Sir Thomas that the profits of last year were quite sufficient, and therefore I take it that the inference would be, that I know about last year, and therefore Mr. Machaffie's statement as to last year is wrong, because I tell you it is, and you will probably find that his other statements are similarly inaccurate or wrong.

Then Exhibits 93, 94 and 95, at pages 181 and 182, are simply letters explaining the delay, as to why the Minister's demand has not been attended to.

And Exhibit 96, page 182 is a report signed by Mr. Haney and said to be the unanimous resolution of the Board of Directors of the Home Bank of Canada on October 29th, 1918, certified by M. J. Haney.

That report is a very skilfully drawn document, and if analyzed, I think at that time would have disclosed the fact that the truth was not being told the Minister. However, as a result of that and perhaps other circumstances, nothing very much was done. Sir Thomas replies in Exhibit 97, page 187, indicating that he has perused that report with some care, because he says to Mr. Lash that it is stated in the Board's report that no unpaid interest upon account No. 3 or other inactive accounts has been credited to profits since

May 31st, 1917. You will remember that he had been promised that it would not be credited in 1916 or 1917. Then he says: "This would seem to imply that for many years interest has been added to principal of accounts which were not capable of liquidation or reduction and that such added interest is therefore now represented as part of the bank's capital or reserve in its public statements." So that Sir Thomas apparently perused that report of the Board and accepted it as being true, and accepted the admission, which it was, that profits had been added in 1916 and 1917, but that they were not now being added, and as a result he asks for reports on the accounts Numbers 2, 3 and 4 on page 5 of the Board's report, and, "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." Which would seem to be a very proper step for the Minister to take.

Then Exhibit 105, page 191 is a letter from Mr. Lash, enclosing the particulars of these three accounts, which particulars are Exhibits 107, at page 194, 108 at page 196, and 109 at page 201.

That covers the steps taken by Sir Thomas White under the 1918 complaints. His confidence in Mr. Lash is apparently still of the greatest, and he was undoubtedly perhaps lulled into a sense of security by that confidence; a comparison of the statements with the previous ones filed in 1916 would however have disclosed a position utterly at variance with the Directors' report, and one wonders how far one must go, because in spite of the criticisms which have been made throughout as to the inaction in this matter, it does seem to me, from a perusal of what was done, sir, and what was filed, that if there had been somebody in the Department who took these long reports and seriously studied them, that the whole face of the position of this bank would have been exposed at once; if a technical practical man had been there to study and compare these reports which were filed in 1916 and which were filed in 1918 more particularly when they could be compared with the monthly and annual returns which are made to the Department month by month, the weakness would seem to have been not that Sir Thomas did not get information, that is did not take reasonable steps to get the information, but that there was no one there to deduct the mis-information which was given to him. In any event, those are the steps taken and those Exhibits I think cover the steps taken by the Minister as the result of those representations.

Now after the resignation of Sir Thomas White, although this perhaps is not entirely within the question, certain other steps were taken by Sir Henry Drayton arising out of these representations.

These are contained in Exhibit 64 at pages 117 to 123; and Exhibit 65, pages 125, 127 and 141. Then there were also personal interviews with Mr. Daly. Apparently Sir Henry relied on Mr. Miller Lash and subsequently on Mr. Daly, and these accounts were not studied carefully and compared with the previous accounts on the file. In other words, the weakness seems to have been, to my mind, not so much the getting of the information as what you did with it after you got it. Then I submit that on Mr. Roberts' evidence there was nothing to call Mr. Fielding's attention to the matter whatsoever, and he did nothing. In other words, to make that clear, Mr. Roberts states that that file was put, in February 1916, in the Departmental files, and there was not a thing to cause Mr. Fielding to go back to it; that is to go back seven years or six years in that file and look up these complaints made by the Western Directors. In other words, there was absolutely nothing to attract the Minister's attention to the fact that there was or had ever been a complaint on file with respect to the Home Bank.

That finishes, sir, my observations upon the third question, and as it is one o'clock, I presume this will be an appropriate time to adjourn?

His LORDSHIP: Yes.

Proceedings stand adjourned at 1 p.m. Tuesday 20th May, 1924, until 2.30 p.m.

AFTERNOON SESSION

OTTAWA, ONT., TUESDAY, 20th May, 1924.

Proceedings resumed at 2.30 p.m.

ARGUMENT BY Mr. SYMINGTON, resumed:

Mr. SYMINGTON: My lord, at the time of adjournment I had endeavoured to deal with the first four of the specific questions asked in the Petition, and the fifth question is:

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

His LORDSHIP: Mr. Symington, may I ask you if you place any particular meaning upon that expression “present depositors” in the fourth question? You have passed it.

Mr. SYMINGTON: Oh, yes, my lord, I have not dealt with that. I will deal with that now.

His LORDSHIP: I was just watching, with interest, to hear what you had to say about that.

Mr. SYMINGTON: Yes, my lord. I have not dealt with question 4 at all. I dealt with question 3. Then question 4:

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

1915 I can eliminate. 1916, I take up.

Now, my lord, it is very difficult to look back at a situation eight years ago, and, to a large extent, I must concur in the observation of Sir Thomas White of the difficulties your lordship must have in placing your mind in a position to judge of what might or might not have happened under conditions as they existed then. The evidence would seem to show that if there had been a proper audit under Section 56A in 1916 there would have been disclosed a situation essentially different from what it apparently was in the Minister's mind.

By a proper audit, I accept the evidence of Mr. Clarkson and Mr. Edwards, that a proper audit is more than a mere adding up, or copying, or compilation of figures. Sir Thomas White seems to indicate that possibly Mr. Clarkson and Mr. Edwards are a little above the ordinary run of auditors in the matter of their ability to appraise as well as audit, but whether that is or is not so I think it is clear that, in any event, a proper audit, even a comparison of the books of that bank at that time would have disclosed, as I say, a situation essentially different from what was in the Minister's mind.

Mr. Clarkson, at page 253, says that he has not formed an opinion as to the exact position of the bank in 1916. He was very careful, apparently, to guard

himself in that respect. Mr. Clarkson recognized, I think, the difficulty of placing himself in a position to judge in 1916 when 1916 was long since past, and he also recognized that his mind and judgment must have inevitably been influenced by what he himself had discovered in the light of the subsequent fiasco.

At page 274 he says that the losses, in his judgment, throughout the whole history of the bank, were from nine to nine and a half millions.

Mr. McLAUGHLIN: That is over and above the capital and reserve?

Mr. SYMINGTON: Yes. At page 275 he says the losses since 1916 have been seven and a half to seven and three-quarters to eight million dollars, and fresh advances since 1916 over and above the capital and reserve, although that question as to "over and above capital and reserve" seems to be somewhat confused, because a little later on in the page, Mr. Lee says:

"Exclusive of capital and reserves.—A. No, that amount has been lost. Now, Mr. McLaughlin, how much of the nine and a half millions, I mean over and above this seven and a half millions was lost subsequent to May, 1916, or prior, I am not prepared to say."

That was his final statement at page 275 on that subject.

At page 283 he says:

"In 1916. He must have felt that the bank was not earning profits sufficient to continue payment of dividends without capitalizing interest on accounts which were in jeopardy or at least in deep water; and that being the case, the situation must have appealed to him as a serious situation."

Now, that was in answer to direct questioning as to what would have happened if an auditor had gone in, and that is about as far as Mr. Clarkson will go. "That he must have felt that it would have been a serious situation".

At pages 285-6, he again, at some length, goes over that subject, and says he would have found a very serious situation, but he cannot say definitely what position he would have found.

And he finally says, at page 286:

"A. But the point I want to make, Mr. Lafleur, is, that I don't think any auditor would want to say that there was a very serious loss in it, in view of the reports which were in the bank with regard to that timber. He certainly would have called attention to the account, an absolute lock-up, no interest being paid on it.

Q. Would not that be a danger signal? Here is a man who has got timber properties of immense value as he believes, and he does not think it worth his while to protect those properties by paying interest. Would not that be a danger signal to any auditor?—A. So far as Frost is concerned, he has not for a long period of time been able to pay interest on these things, personally; there is no question about it. If you ask me if there are any danger signs. I say there were a great many danger signs; I say this revenue income situation was one."

I think I may fairly summarize Mr. Clarkson's evidence upon that subject as a guarded statement, that he could not say what the position of the bank was, or what the auditor would have discovered other than he would have discovered a serious situation, and more particularly on this interest-earning basis.

Mr. Edwards was examined upon that point, and at page 499 he made a statement which governs, and must be considered in your consideration of his other evidence, and that was that his evidence with regard to the position of certain accounts and certain losses which were estimated in connection with those accounts must of necessity be tinged to a certain extent by his knowledge of what has subsequently happened.

So that when Mr. Edwards makes his statement it is almost subject to that overriding consideration on his part, which was a perfectly natural one, that his judgment upon that point must be viewed in the light of what he learned of subsequent proceedings. Now, having that in mind, at page 507 he places the losses, up to and including 1916, at \$3,370,000. He dealt with how he made that up, and he made that up by virtually a valuation of certain assets, made in 1923.

MR. McLAUGHLIN: 1916.

MR. SYMINGTON: No, he made it up in 1923, that is, he was trying to value and appraise the situation in 1916, his value and appraisal being made in 1923.

Your lordship must recognize, of course, that this is a very difficult thing to do, and that, at most, it would largely be an approximation. For instance, he puts among that loss \$400,000 for Home Bank shares taken over in the Banque Internationale. Well, of course, that is predicated entirely upon the opinion that Home Bank shares at that time were worthless. As a matter of fact, they may have been worthless, but throughout the course of years that follow that stock sold and sold quite readily, apparently, in the market, stock prices that would have realized a large part of that \$400,000. The reason, of course, Mr. Edwards puts it in as a loss of \$400,000 is because in his judgment at that time the capital and reserve was gone and, therefore, it was worth nothing.

But that just indicates one of the difficulties of trying, in 1923, to appraise on the basis of what you could get for something in 1916.

He puts the Frost timber account loss at that moment at \$850,000. At the same time there was, in fact, on file in the bank Elliott's cruisers' reports, subsequently Lacey's cruisers' reports, and the report of Mr. Haney and Mr. Crerar of their visit to British Columbia looking into the question of the value of that security, and they apparently unanimously reported that there was no loss of \$850,000 but, in fact, there was a margin at that time of about three-quarters of a million dollars. They turn out to be wrong, though Mr. Crerar is of the opinion still, apparently, that had vigorous steps been taken in 1916, 1917 or 1918, to have disposed of that timber, they would have got all their money and there would have been no loss. Whether he is right or whether he is wrong, I do not think anybody can say. There is apparently no doubt that at that time timber was selling at a price which would have realized a great deal more than the appraised value.

Mr. Edwards puts the Prudential Trust loans at an absolute loss of \$500,000. Technically speaking, that is probably correct. I do not know that technically speaking even it was correct. The railway security had apparently gone. The Prudential security at that time was in the position that nobody knew whether the Prudential Trust Company were liable or not, and I do not know that anybody to-day knows whether the Prudential was liable or not. But, as a matter of fact, arising out of that transaction was the saving of New Orleans Railway, the electric railway, the Algiers Railway which, apparently from the liquidator's evidence, will reimburse the bank, certainly to some extent. He did not want to say how far, because he is negotiating, but it is another indication of how difficult it is for Mr. Edwards or anybody else to have appraised a loss in 1916.

He puts the Pellatt loss at \$750,000 in the direct loan, and the subsidiary at \$300,000. Those securities, you will remember, were partly stock and partly real estate. Apparently as eminent a person as Mr. Lash at that time thought the Pellatt securities would realize absolutely their face value. And so on with the others. I simply quote those to show that, although Mr. Edwards states, in his best opinion, which he was giving perfectly impartially, that amount, namely, the capital and reserve, and something more, had disappeared, still I think we must view it in the light of an attempted appraisal made some seven or eight years after the event, and, therefore, perhaps cannot be considered as accurate as one made at the time could have been.

Then Mr. Edwards, at page 513, puts the later losses, the total loss, at \$7,527,000, considerably less than Mr. Clarkson puts it. They do not agree by several millions, but that is what happens, I take it, if auditors are endeavouring to appraise values without having people who are experts giving an expert opinion upon them.

Later, at page 513, in dealing with the situation up to 1916, I think his first figures disclose a loss of a million dollars more than capital and reserve. He states there that the liabilities and assets would have been, roughly speaking, about the same in 1916. In other words, the capital and reserve would have been wiped out, but the depositors would have had security there for roughly one hundred cents on the dollar.

Mr. McLAUGHLIN: With the double liability.

Mr. SYMINGTON: No, I think not, because I was examining him upon the statement which he put in, in view of his lordship's question:

"Mr. SYMINGTON: If you look at 1916, the liabilities are shown as \$18,000,000 and the assets \$21,000,000. Now, as I take it, Mr. Edwards, you say as a result of your investigation that those assets would have been reduced by about \$3,000,000?—A. Yes.

Q. That would have been the exact situation, therefore the liabilities and assets would have been, roughly speaking, about the same?—A. Yes.

Mr. SYMINGTON: Is that what your lordship wanted?

His LORDSHIP: I wanted him to say that. You have put that in his evidence and he assents to it, that is all right. Then assuming that all the other assets were liquid and could be realized upon, that would have left pretty nearly enough money for the depositors?—A. Pretty nearly.

Q. The deposits were ten millions and better at that time. Of course that would wipe the shareholders out absolutely?—A. Quite.

Q. And if there had been any lack of funds to satisfy the depositors the double liability would be there to meet that, presumably?—A. Yes."

So that that indicates, of course, again, that Mr. Edwards' valuation is largely an estimate.

At page 507 he shows the profits which were shown by this bank, and he says that they were shown as \$1,873,000, or an overstatement of \$2,747,000 odd. In other words, there was a loss of \$900,000 in operating apart from any capital losses, and Mr. Edwards estimates that from 1916 to 1923, apart from any capital losses, there was a loss of \$900,000, as I take his figures.

Then dividends were paid out during all those years, and, of course, that would be a further loss. Roughly speaking, the dividends were \$90,000 a year.

Then Exhibit 170, at page 495, shows the deposits and how they increased, but I think your lordship must take this Exhibit subject to an Exhibit which Mr. Lee subsequently put in and which I have not the number of. But Exhibit 170 shows that from 1916 to 1923 the deposits increased nine million dollars.

Exhibit 177, as you will notice, does not agree with Exhibit 170, and it was stated that, being a later Exhibit furnished by Mr. Clarkson, you must take it as being the more correct.

Mr. McLAUGHLIN: What page is that on?

The SECRETARY: Page 570, sir.

Mr. SYMINGTON: Exhibit 170 shows ten million dollars in May, 1916, and seventeen millions in May, 1923, this being the total deposits. If you take out the preferred claims they show that in the ordinary deposits there were \$9,300,000 in May, 1916, and \$16,000,000 in August, 1923, at the time the bank failed.

Mr. McLAUGHLIN: They were less than that in August.

Mr. SYMINGTON: I have looked up the original. That heading should read "August, 1923."

The SECRETARY: The original shows August.

Mr. SYMINGTON: So that there was an increase of \$7,000,000 in the ordinary deposits between the two years, 1916 and 1923; there is a loss of \$900,000 dividends paid, and whatever capital losses were made in that period.

So much for what Sir Thomas describes as the auditor's statement. On the other hand, there is the evidence of valuations made at the time, the apparent belief that the bank was solvent, and the question which he, Sir Thomas, quite properly asks, "Could anyone say what an energetic management realizing on securities, conservatively husbanding the resources of the bank, taking advantage of growing deposits and extension of business could have done?"

From that viewpoint, apparently, Mr. Lash, Mr. Crerar, the other Directors, Mr. Machaffie, Mr. Bird, and Mr. Adair, seem to have thought that at that time the bank could have bettered its position, that it had bettered its position, and would either stand on its own feet or make a satisfactory amalgamation.

I will submit to your lordship that an outside investigation would have produced some action. It is difficult to say how much would have been lost at that time, but certainly much less than in 1923.

I think, with respect to 1918, that the situation is a little different, and it does seem to me that an audit in 1918 would have disclosed a state of affairs that would have precluded the bank carrying on. Supposing charges had been made, an investigation at that time into those charges, directed towards those charges would, I think, in the light of subsequent events, have proved most of them to be true.

On the other hand, of course, the deposits had decreased from May, 1918, to May, 1923, but the deposits not entitled to a preference had increased some \$3,800,000.

Now, whether any bank could have been found to take this bank over in 1916, or in 1918, is, of course, speculative. Sir Henry Drayton gave the opinion that apparently in 1923 the bank could have been taken over. In the light of the evidence, personally I must question Sir Henry's judgment that a bank would pay apparently some ten million dollars or more to take over the Home Bank, but the fact that even under those conditions he comes before this Commission and says he thinks it could have been taken over would indicate that probably in the earlier years it could have been taken over.

Sir Thomas White rather indicates in his evidence that it could have been taken over. Different Finance Ministers have different views about amalgamations. Some are inclined to force them, others are not inclined to force them, and some are largely opposed to them, but so far as the evidence here is concerned, I think there is evidence upon which your lordship might find that there at least was a very strong probability that, in 1916, that bank could have been taken over.

If the bank had been taken over in 1916, of course, the then depositors, which is not the question asked here, would not have lost. If it had been taken over in 1918 probably the then depositors would not have lost. Certainly if it had been taken over in 1916, the present depositors, which is the language of your question, could not possibly have lost. Even though it were not taken over by paying one hundred cents on the dollar those who are depositors now and who were not depositors then would not have lost. The question answers itself, and seems rather idle as to what would have happened to the present depositors, because those who were not depositors then, of course, could not have

possibly lost. You cannot say what would have happened. Of course, if taken over they would not have lost. If wound up, if you take Mr. Edwards' statement, apart altogether from the cost of liquidation and so on, according to his judgment the double liability would have satisfied the depositors in 1916. There is no evidence that it would have satisfied in 1918. What would have happened in 1918, if that audit had been made with respect to the position of the present depositors, there is not a tittle of evidence. Rather there are figures showing that the bank was steadily losing money. Of course the deposits were increasing. I think the only answer probably your lordship could make to that is that the loss to the present depositors would be less. I do not think there is any evidence that justifies any definite finding as to anything like an approximate amount with respect to that question, and, further than that, I think it is almost impossible and difficult to go.

And so I pass, sir, to the fifth question:

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

As to the financial condition of the Home Bank in 1916, I think that has largely been discussed under the previous head. Mr. Clarkson says probably the capital and reserve was gone. Mr. Edwards says about the same thing, and I think this does not take into account the effect of closing the doors which forces liquidation, and cost of winding up, and these estimates must, of necessity, be tinged in the light of subsequent events, and so far as your lordship is concerned, the only evidence is that, roughly speaking, the capital and reserve of the bank was gone. That is about the only evidence you have.

You can have argument too, that that did not necessarily ruin a bank. The bank had continuing earning power, growing deposits. Marginal losses, as Sir Thomas puts it, in certain accounts, often show it is possible to argue, and I think argue rightly, that that bank might still have recovered, but so far as the financial condition goes which is the question, the only evidence upon which you could make a finding, my submission is that the capital and reserve was gone in 1916. With respect to 1918 conditions were not any better, but, if anything, and I think clearly, were worse.

There had been a loss in dividends of \$220,000 up to that time, but it is impossible to say what portion of the capital losses took place in those years 1916 to 1918. My own judgment, on looking at the various statements, is, that the losses in those two years were not as great as they were in subsequent periods. That is my own judgment, it is an inference from the figures, but to make a finding upon it is difficult. There is no definite evidence upon it, but a perusal of the figures which Mr. Edwards filed, as to the losses and overstatement of added interest in each year, would seem to indicate that there was not a great deal of capital loss in those two years but some.

Then, my lord, having that in mind, "What steps if any could have been taken by the Government to save the situation?"

I submit that the Government could by an inspection, either through its own officers or by means of the Bankers' Association, have found out the situation. The bank could have been wound up with consequently no loss to the people who subsequently became depositors, and probably with some saving to the depositors at the time. The amount of such saving is speculative, and nobody could hazard at this time an accurate estimate. If you want to take the estimates of Mr. Edwards and Mr. Clarkson, they probably would have received their money. Secondly, it was possible an amalgamation might have been arranged, in which case the depositors would not have lost.

But I submit that it is impossible to say at this stage definitely whether any bank would have been willing to take a bank over, either in 1916 or in 1918, and, as illustrative of that, Mr. Machaffie at page 393 gives some evidence that is rather important on that point. He said that in the midwinter of 1917 he drew up a list of accounts, Exhibit 137, page 393, totalling \$7,900,000 of which \$2,400,000 were all right, and \$5,500,000 were accounts which would not be acceptable by another bank at their face value.

Now, Machaffie was a banker. He said he had in mind the bank being taken over, and as early as midwinter 1917 he drew up Exhibit 137 showing five and a half million dollars that other banks would not have been willing to accept.

It is all very well to say what banks would or would not do. It is all very well to say "any bank would have been glad to take over the Home Bank because of its connection," and so on, but if you place before the management of a bank, one that is caring for its shareholders, a proposition to take over a bank in that position, and can show what that management would do, well, there is no evidence here of it, and I personally have some considerable doubt in the face of that statement of Mr. Machaffie's, as a banker in 1917, whether that bank could have been taken over, or if taken over, whether it could have been taken over without loss to the depositors.

However, whether it was taken over or not, it is clear that there would have been less loss to the present depositor. How much less there is no evidence here to show. If Mr. Machaffie's statement is right, it would seem to be clear it was a selling proposition. The capital and reserve, and considerably more, were gone.

These are considerations for your lordship, considerations which, I think, are very difficult to answer. There is a chance that it could have been taken over. There is the possibility it might have been wound up. In either case, the loss to the present depositors would have been less. How much less I do not think your lordship can say.

Now, my lord, the only other thing is that section of your Commission which authorizes you to express any opinion you may see fit to express.

His LORDSHIP: Before you pass from that, Mr. Symington, as you read the Commission, is it incumbent upon me to make any reference to the amount of loss?

Mr. SYMINGTON: No, my lord. It is not asked specifically. It says, in that particular question, "What steps could have been taken to save the situation?" That means, what steps could have been taken to try and effect an amalgamation which, perhaps, might have saved the situation. Steps could have been taken to wind it up which would not have saved the situation then but would have saved the situation now.

Mr. LEE: For future depositors.

Mr. SYMINGTON: No, the future depositors are not mentioned in that section. "Saving the situation" is a very broad and general sort of a question, and leaves to your lordship a wide discretion as to the nature of the answer you shall make to it. My submission to you, for your consideration, has been that they could have wound it up, or they could have tried and might have effected an amalgamation. That is all I can say they might have done.

With respect to that section of your Commission which authorizes you to express any opinion you may see fit to express on any and all of these matters. I venture to suggest to your lordship that your lordship should express an opinion, in setting forth your facts, that no one before this Commission, at least the depositors in their Petition, have not set up any legal claim. That in so far as counsel have set up a legal claim in their argument, based upon negligence, I venture to suggest to your lordship—

Mr. McLAUGHLIN: We never set up a legal claim.

Mr. SYMINGTON: My friend has said he did not. I do not know why an argument is based upon negligence unless it is to set up a legal claim.

Mr. McLAUGHLIN: The Crown is not liable for negligence.

Mr. SYMINGTON: Your lordship then can set up the view that there is no legal liability on the part of the Government, no legal claim and no legal liability on the part of the Government to reimburse these depositors.

In addition to that, my lord, you have allowed a great deal of latitude to us all before this Commission, latitude which went beyond certainly what in my submission the exact wording of the Commission justifies. As a result of that, certain people have been subject, upon the record, to very serious personal attacks, most of them not here to defend themselves. Most of those attacks, in my judgment, were made unjustly, and without a title of evidence to substantiate them, and I would suggest for your lordship's consideration whether it would not be your lordship's duty to express an opinion upon those reflections cast upon those gentlemen whether they are justified or whether they are not.

Then, my lord, as to the moral responsibility, or as to a compassionate plea for the depositors. I venture to submit to your lordship that that is not a judicial matter upon which your lordship should make any recommendation. The giving of money on a compassionate plea must essentially be for Parliament and for the representatives of the people. Somebody has said it is the function of the Government to transfer one person's money to another. I do not know but that may have been said cynically, but if it is anybody's job it is Parliament's, and, therefore, it would seem to me that the finding of fact places Parliament in the position to judge upon the merits of the compassionate plea.

There is, however, one point I think your lordship might comment upon, and that is so abundantly clear that it seems unnecessary to mention it, and that is, the cause of this loss, the approximate cause of this failure, or the reckless management of that bank. Questions have arisen. The question was raised in the Farmers' Bank case, and in the discussion which I have seen upon it, and in the findings there, I think a finding of that kind, if that is the true fact, is a finding which would enable Parliament to view the matter in the proper light. If however you have an idea of making a recommendation, your lordship will find very few precedents. As Mr. Lafleur stated we have endeavoured to trace precedents, I have looked up the Birkbeck Bank case, I have had London communicated with, and I am advised that there is no precedent in England for the claim of the depositors.

Mr. McLAUGHLIN: McGregor's Bank.

Mr. SYMINGTON: No, not McGregor's or any other bank. In any event that is the information I got, the Department communicated with London and so informed me. The precedent Mr. Lafleur quoted is the Farmers Bank case of Canada, a case strongly similar to this in many ways, particularly in its essentials, in the negligence or inaction alleged. I do not propose to go into it here but if your lordship wants to find the arguments pro and con you can find them in Hansard in 1914, the strongest case that could be made out on both sides, I think very little was left unsaid in that debate as to the reasons why depositors should be paid a compassionate allowance and as to the reasons why not. As I said, I am not recommending to your lordship that you do make any such recommendation, but if you consider it your duty you can at any rate find a good deal of information on the subject there.

In closing I desire to join Mr. Lafleur in thanking you for the very kindly way in which you have conducted this Commission and for the courtesy that you have extended to myself.

ARGUMENT BY MR. McLAUGHLIN, K.C.

My lord: In the first place I may say our petition shows that we do not claim that we have any claim that could be enforced in a Court of Law. Without quoting any authority, there is not any doubt that a Minister of the Crown is not legally liable either for the advice he gives his sovereign or for the exercise of prerogatives. Neither is the Crown liable at all, either by petition of right or otherwise, for the discretionary exercise of prerogatives.

Consequently we proceeded in this way by a petition. We set forth a case not claiming any legal liability, but that the circumstances were such that on ordinary principles of justice that appeal to all right-thinking men the depositors have an equitable and moral right; that the Crown, while not legally liable and not compellable to do anything, is inviolably just, and when a case is presented in which the application of these principles of justice which appeal to reasonable men require it, the Crown will of its mere motion grant full, adequate and complete justice. That is the foundation of our claim.

Consequently I am not referring to any legal precedents. The case of the Farmers Bank was presented in the same way, and the Crown adopted the view of the Farmers Bank depositors and the Government brought in a Bill which passed the Commons and was rejected by the Senate, and probably would have been brought on again the next year if it had not been that the war came on. This was I think in the session just before the war.

Sir Thomas White objected to some extent to the truth of our petition, because we stated in the petition that representations had been made in 1915 and 1916 and that what Sir Thomas White did was to refer the matter to Mr. Lash instead of making any investigation himself. Sir Thomas apologised afterward as to casting any reflection upon us because the facts stated in our petition were taken from a published, signed interview by him published in various newspapers of Canada, which he has put in at pages 322 and 324 of the evidence. That interview stated that these representations had been made to him and that he had referred the matter to Mr. Lash. When we made the petition we under the impression that Mr. Lash was acting for the Government, because it was so indicated in Sir Thomas White's interview. Therefore it was a surprise to us to find when we investigated the papers afterward, which were not all available to us until they were produced here by Mr. Roberts,—that is the first time I ever saw them,—that Mr. Lash never acted for the Minister but acted always for the Home Bank. I might say here that I appreciate Sir Thomas White's sympathy with the depositors, he thinks we have a good moral and compassionate claim and if we had only proceeded in some other way he would have heartily supported us. I only hope Sir Thomas will be broad-minded enough to feel that if the depositors have a moral claim, or a claim on the generosity and sympathy of Parliament, the mere fact that they were unfortunate in the counsel they selected should not deprive them, not only of his passive sympathy but his active assistance.

There were certain things that Sir Thomas White asked you find that I wish to refer to a moment. He asked you to make a finding as to this file. Of course we have made no charges as to any impropriety as to this file, and personally I do not believe that any existed, but if it is necessary to make any finding as to that I have no objection.

He asked further for a finding as to his acceptance of a retainer or fee of \$1,500 for advice given to the bank upon the 13th of August. That is a matter we did not bring up, one there is no charge made about. He makes no complaint against us but his complaint is about remarks that have been made in the newspapers. As far as that matter is concerned I have expressed no opinion and do not desire to express any, and it is a thing I do not think your lordship should

make any finding on whatsoever. Public men are always liable to criticism, Sir Thomas White seems to be naturally, and probably a little more than ordinarily, sensitive. He says he has been maligned by the newspapers throughout this country, although he says three quarters of them are in his favour, which surely ought to be sufficient to satisfy any public man. Anyway as your lordship has been a public man you know that it is one of the penalties, or perhaps the perquisites of public life, to receive newspaper criticism, it is not a thing that public men ought to worry over to ask your lordship to make any finding upon. It is only one of the thousand petty ills that flesh is heir to.

I quite agree with his argument that he was not only not compellable but that he should not produce the advice that he gave the Directors of this Bank. I am quite satisfied that the advice would be honest and good advice, but it appears that the bank did not follow it because it has been decided in our Ontario Courts in the Central Bank case, Wells & McMurchy, that the deposits taken by a bank after they knew they would have to suspend payment were fraudulently taken, so that this bank went on from Monday the 13th to Friday the 17th taking additional deposits, took some \$2,800 from my friend Mr. Lee about an hour before the bank closed, these moneys were all fraudulently taken, and I am sure your lordship will have a good deal of sympathy for Mr. Lee owing to the way he has been treated, I think he is deserving even as much sympathy as my friend Sir Thomas White is by reason of the newspaper criticism he has received.

Sir Thomas gave a good deal of attention to matters of law, matters which seemed to me not to require any authorities to support them, just like the question of giving in evidence the advice he gave his clients, it required no authority for your lordship to understand that simple proposition of law. When it comes down to the question of jurisdiction I agree with what my learned friend Mr. Lafleur and my learned friend Mr. Symington have said. Sir Thomas devoted a great deal of time to show that I was wrong in the first place when I said that the Crown and the Ministers of the Crown were not compellable, that the word "must" was not properly applicable to them. The moment he had entirely established and satisfied himself about that he showed that the Ministers were not accountable to any Court except Parliament. That is simply the principle I stated in the first instance, that the Minister acting as a Minister is not accountable to any Court. That has been decided in England more than 100 years ago. I do not remember the name of the case, but when the matter came up the Court refused to hear the Minister, refused to take his explanation, said the matter was disposed of entirely, he was not responsible to the Court for the advice he gave to the Crown or for the Crown's prerogative as long as he was within the law. The fact that the Bank Act says "shall" in a number of cases, merely Ministerial acts where the Minister is simply *persona designata* and in every case where "shall" is used would be liable because the Minister when he breaks the law is liable just as anyone else, but when acting as the Minister of the Crown in the exercise of the Royal prerogative he certainly is not accountable to anyone.

At the same time however, the Minister of the Crown is subject to criticism; every newspaper in the land and every subject of His Majesty has not the right but the privilege of criticising the Ministers of the Crown for everything they do. If your lordship is disposed to make an criticism or give any opinion as to the advisability or wisdom of any action the Minister took I think you have the same right, not only as Commissioner, but as citizen to express such criticism as you may think proper. And there is precedent in that case of the Farmers Bank, Sir William Meredith expressed his views with reference to the action that ought to have been taken by the Right Hon. Mr. Fielding in connection with the issue of the Charter or certificate to that bank. In fact if Sir Thomas

should get a judgment that would take away our right of criticism of Ministers of the Crown, he would take all the fun out of politics and a large proportion of the pleasure of His Majesty's subjects.

Sir Thomas gave a very learned discussion on the impossibility of coming to any conclusion as to past events. He defined very fully "retrospective imagination." In that respect I say his opinion is contrary to the opinion of the ages. The general opinion is that history written at the moment is not as reliable as history written years afterward when passions have died out and one is able to look upon the matters in question with a calm and judicial mind. If Sir Thomas White's view about that is correct then the people who have had the greatest retrospective imagination in modern times would be men like Gibbon, yet Gibbon wrote a better history of Rome than any contemporary did; or Motley, who wrote a better history of the Dutch Republic than any Dutchman of the period; or Macaulay or Greene in writing their histories, yet they wrote far better histories than contemporaries could have done. And I think that on investigating this matter your lordship will have sufficient of that kind of retrospective or historical imagination to enable you to come to a fairly truthful conclusion on the questions submitted to you.

Now I think Sir Thomas misconceived the purpose of this investigation. He seemed to be obsessed with the idea that it was a personal attack upon himself. We are representing 60,000 depositors, all of whom have suffered materially, and many thousands of whom have suffered and will suffer far more than Sir Thomas White can possibly suffer in connection with this investigation; and I think we may be excused for not altogether agreeing with him. I want to say that in drawing the petition and supporting the petition before your lordship I have endeavoured as far as was possible to cast no personal reflections upon any man. If my learned friend Mr. Lafleur thought I was too hard upon Sir Thomas White, Sir Thomas did not think so himself, as he stated in his argument and stated to me personally that I had treated him absolutely fairly. I feel that I have retrospective imagination enough to visualize the condition that Sir Thomas was in at that time almost better than he can do it himself, as I think an outsider, an independent party, can give a better history and interpret better the minds of people who were engaged at a particular period in particular events than the people can themselves, because their passions and interests and feelings are so engrossed that they cannot take a judicial attitude.

Sir Thomas was very eloquent as to what would have happened if he had closed the bank, it would have been the greatest sacrilege that had ever occurred since the days of Martin Luther. That I think was a rather extreme view, many crimes have been committed since those by Martin Luther if he committed any. Then Sir Thomas turned around and said there was absolutely no danger of my closing the bank, I would not have allowed it to fail under any circumstances, I would have had another bank take it over, and I know I could. Then he went on to emphasize that still further by the beautiful simile of an exploratory operation, how, if he had closed the Home Bank, he would have been in the same position as a doctor if an action had been brought against him for not killing a man at the proper time to prevent him from doing damage afterward. I hardly think that is applicable. Although Sir Thomas seemed to think differently, I think it is a proper thing if the Minister finds that a bank is on the eve of insolvency, is no longer to be trusted with the deposits of the public, is in such a condition that if the public knew or had an inkling of the facts they would cease to deposit their money in it, it is not only a proper thing to kill that bank, but, whether it is his compellable duty or not, it is his political duty to exercise the trust that is imposed upon him in the exercise of the royal prerogative to stop that bank; put an end to it.

Then the argument that an inspection under Section 56A would by virtue of the inspection itself have brought about the failure of the bank, which might

have been disastrous, of course is not supported by the evidence. I agree entirely with what my learned friend Mr. Lafleur said about that. He speaks about an inspection that would have been advertised, would be known, but the Bankers Association, whom he was going to ask at one time to name a man to make the inspection could easily have taken such measures as would have enabled that to be done quite secretly, there was no obligation on the part of the Minister to have the public or the employees of the bank know for what purpose the man was there, they might think it was for the purpose of another bank taking it over, far more likely than anything else. Mr. Edwards, Mr. Clarkson and Mr. Machaffie have all shown that such an investigation could have been made without any danger to the bank.

We all agree that a terrible mistake was made when an investigation was not ordered at that time. If it had been made Sir Thomas White admits, and we all do, that the truth, or a great portion of the truth, would have been disclosed, conditions would have been brought to light either in 1916 or 1918 which would have rendered it apparent that the bank should not be permitted to continue in business; and if that investigation had been made and those conditions discovered the loss to the depositors would have been prevented.

Now Mr. Lafleur and Mr. Symington have gone over so much of the evidence that I need only touch a few points that they have overlooked. With a great deal of what they have said I agree, although I think they did not take the matter as seriously as myself, because Mr. Lee and I have been right up against a turbulent crowd of depositors, and we succeeded at the first big meeting of these depositors when every branch except one was represented, we succeeded with a great deal of difficulty in getting the depositors to consent to take this matter up as we have done, controlling that body of depositors, all of whom felt sore and many of whom had extreme views, preventing them from creating an amount of trouble in this country in connection with its banking institutions and the general credit and business of the country which would have been very disastrous. We have been up against that all the time and up to the present have succeeded in controlling them, because as I have stated before the banking and commercial and industrial interests of this country are so linked together, the banks being the organizers and distributors of credit, the heart's blood of our industrial system, that anything that affects the credit of the banks so affects the business of the country that if even ten per cent of the depositors were to withdraw their money the banks would have so much less to carry on the industrial and commercial and agricultural interests of the country that a panic would result. So as business men we felt that it was of the greatest importance that anything of that kind should be checked. Our Committee did not succeed absolutely in checking it, there was one run on one bank, but there would have been many if it had not been for the efforts we made.

Another thing Sir Thomas White said was that if he had the conclusion to call in the Bankers' Association it would have been giving this bank into the hands of its rivals who would have been interested in wrecking it. I have not that belief about the Canadian Bankers' Association. Sir Thomas seems to have been so obsessed with the idea that he must by all means establish in your lordship's mind, and through you in the mind of the country, that he was absolutely inviolable, that he put up case after case which will not stand even on its own feet. I am sure that the Bankers' Association would act on a different principle altogether. They would be interested in saving a bank, not in wrecking it. They would be like the Disciplinary Committees of the various Law Societies or the Medical Societies, no person ever questions that they treat every case with the utmost sympathy, and only in extreme cases do they impose the penalties which they are authorized to impose by law. The Bankers' Association has been organized and authorized by Parliament for that very purpose, it was the belief of Parliament that the Association would treat banking difficulties

that came before them fairly and sympathetically and in the best interests of the bank that was in difficulties, not trying to crush out a rival.

Sir Thomas White asked you to make a lot of findings; (1) Honest dealing. (2) Faithful performance of duty. (3) Diligence. (4) Sound judgment. (5) Tremendous kindness. (6) That he does not regard himself as capable of saying what he should have done if war conditions had not existed. I think it is not necessary for your lordship to make findings on questions of that kind. We are not making any attack on Sir Thomas White personally. Notwithstanding his anxiety I think his reputation will stand anything we have said, certainly anything I have said, and as far as my friend Mr. Lee is concerned he is quite able to take care of himself.

Now we come to the question that your lordship had to answer, which is the important thing; and as I have gone very carefully over the exhibits, and my learned friend over the evidence, before, I do not intend to bother you with saying very much. Of course the first question, representations were made. You are asked what those representations were, and Mr. Symington had stated fairly fully what they were, I do not want to repeat. But I would like to add this further; the representations stated that an officer of the bank had been suspended for refusing to sign the monthly returns, indicating in that way that the monthly returns sent to the Government and by the Government published for the use of the public were false. They also stated that these returns showed that there were no call loans or current loans outside of Canada, and that this Prudential loan being a direct loan on the bonds of the New Orleans Railway were outside of Canada. They showed clearly that the returns being made to the Government were false, in carrying all these disputed accounts and frozen accounts at their face value on the books and in the returns. Now I pass over the three accounts that have been particularly mentioned and take the schedule to Mr. Adair's report, which showed that they were carrying at their full face value in the Toronto office accounts which were not properly secured and certain accounts, for instance one for \$19,000 or \$20,000 of a concern that was in liquidation from which not more than \$5,000 would be recovered, yet it was carried and reported to the Government as good for the full amount. I think it was the Canadian Debenture Association (I have no copy of that schedule because it was not printed), where a large amount was carried as a loan when as a matter of fact it was the ownership of stock by the bank which had been purchased in the name of the Manager but which the bank had financed, it was not a loan at all. Representations will show, not in the original representation but the subsequent correspondence, Exhibit No. 53, that Mr. Barnard had stated,—and he was a Director of the bank at that time,—that he was not liable at all but was merely an agent for the bank in the purchase of this stock, and Mr. Edwards finds that to have been the case, it was just ownership by the bank of 2622 shares of its own stock. Mr. Edwards has worked out Mr. Adair's report and shows that on items set forth in that report there was a loss of about \$700,000 at that time.

These all show that the bank was continually making false returns to the Government, so I will ask you to add that to what Mr. Symington has said about what these representations showed. •

The second question is whether, if such representations were made, a state of affairs was revealed concerning the condition of the bank which would have justified an investigation under the powers conferred upon the Minister by Section 56A. Now as Mr. Lafleur and Mr. Symington have both agreed, and Sir Thomas White in his evidence, and especially in his cross-examination by Mr. Lafleur, said that undoubtedly such an investigation was justified, I think it is entirely unnecessary for me to say anything further; but without any evidence whatever, any representations coming from the quarter they did and being of

such a serious nature, your lordship will have no hesitation in saying that if ever an investigation was justified under Section 56A it was in this case.

Then the third question, what action if any was taken by the then Minister of Finance upon such representations as may have been; well he got a report from the management under Section 113 of the Act, that is he got certain statements. He did not get any report under Section 56A from anybody, he asked for one from Mr. Jones and afterward withdrew his request as he states in his evidence, he never made Mr. Jones his auditor under Section 56A, he was never paid and the only return he got from him was a copy of the ledger page of the Frost account.

All the rest of the correspondence back and forward between Sir Thomas White and Mr. Lash and Mr. Fisher and Mr. Crerar is not doing anything under the Bank Act, it is merely preliminary correspondence in order that he might finally make up his mind whether he would do anything or not. He finally made up his mind, as Mr. Symington has said, that he would stay his hand for the present. That is the last letter he wrote, so that is what he did, owing to representations made to him by Mr. Lash and Mr. Haney. That was certainly a great mistake, that was the mistake which has brought about the terrible disaster which has occurred. We are not saying for a moment that Sir Thomas White did not act in good faith, we are not questioning his honesty or integrity in the matter, but we do question the propriety, not from a legal point of view because we admit his discretion, he might no matter what facts were stated, no matter how clearly it was proved that the bank was absolutely insolvent, he might refuse to investigate and we would be helpless from the legal point of view. But from a political point of view he would no doubt be disposed of.

Now it was very unfortunate that an investigation under 56A was not made, that is that an independent investigation was not made. It would not have been difficult, even a very small amount of information, such as the way the dividends were being paid, the written up interest on dead accounts in 1915 was \$116,000 more than the total alleged profits of the bank. In 1916—which of course he could not have investigated at that time—he could have found out very shortly afterward however, that the same condition existed.

He did take the assurance from Mr. Lash that no further interest would be added to the Frost or New Orleans accounts, or paid in dividends from them. He also took the assurance that a thorough inside investigation would be made by Mr. Haney and Mr. Machaffie. He says that Haney and Machaffie never promised him any report, but if he took an assurance from them that they would make a thorough investigation was it not a reasonable and natural inference that he expected a report of that investigation? What value from a public point of view or for determining what action he would take in the future or otherwise? He says "I will stay my hand for the present, leaving it open for myself to take whatever action I think right in the public interest in the future." What value for determining what action he would take would an inside investigation have that was never to be reported to him? I submit that assurance was that an inside investigation should be had and a full and complete report made to him.

He also took a further assurance that all important business transactions should be under the control of Mr. Haney and the Western Directors. Then he left it. There was a letter a couple of months afterwards from Mr. Haney and a reply which is of no importance. He left the matter and paid absolutely no attention to it for two years and five months. He says he felt as great a responsibility toward the public in the exercise of his duties as would a counsel towards his client. What junior clerk in a law office would allow even a comparatively small matter that had been entrusted to his care to lie dormant for nearly two and a half years without any investigation?

Now I have known Sir Thomas White intimately and for a long time, and I have a great deal of regard and respect for him, and under ordinary circumstances I could not understand Sir Thomas White doing that, because he is a careful man and a diligent man and an honest man, and everything I could say in his favour I would say, and he has been kind enough to say some nice things about me; and I know all that in 1913 just before the war, when there was trouble with a number of life insurance companies in Toronto, how promptly and efficiently he acted in the case because I had the pleasure of assisting him to save one institution; but Sir Thomas White tried to take too much burden on his own shoulders. He read from his book here about the terrible conditions that existed during the war. Now I approve of every good word of that, and those of us who had sons on the fighting line know how we felt and know the terrible strain that it was, and I can quite appreciate his burden, in fact I am not arguing. I am talking from what I feel to be the absolute truth beyond a question, that Sir Thomas White was so overloaded and so engrossed with war work for that two years and five months, that he forgot about the Home Bank, and I don't blame him at all personally. He admitted, in answer to the questions your lordship asked him, that the war situation was a factor, although he was not conscious of what effect it might have had upon his mind, if any. I think that is about the effect of it, and I admit his manliness in saying that he makes no excuse at all, but receives the whole burden upon his shoulders; yet I think we have to recreate the situation around him, and we can better tell what influenced his mind and what troubled his mind during that period without applying any too much retrospective imagination to come to a conclusion as to the real state of affairs.

When this matter came up he published the interview which appears on page 322 and 324 of the evidence, in which he very strongly emphasized war conditions, and the fact that he could not possibly during that period permit a bank to fail, and that he feared the putting in of an auditor would cause the bank to fail. Now he refers to our petition, but we just took it word for word from his statement, and he is responsible for that statement and we give him credit for it. That must be taken with reference to his statement as to war conditions, that under the war conditions that existed people were very nervous, and that owing to war conditions he could not possibly permit a bank to fail and that he thought putting in an outside auditor might have that effect; that is not his own judgment, but the judgment of Mr. Haney, which finally Mr. Lash adopted against his own opinion that he emphasized so strongly in his letter of the 29th February, and he finally yielded to Mr. Lash and Mr. Haney, yielded to their fear that an investigation might cause a run which would be disastrous at that period.

Now he has expressed a great deal more strongly than I could the great stress he was under during that period; and surely, like the Government, human life and human capacity has got some limitations. He goes on to state how he was working eighteen hours a day. In his argument he tells us that he could not sleep at night, and how some time afterwards he had a nervous breakdown, and how it has destroyed his capacity for work for ten years of his life. We have got to give him the credit for all that. Now under ordinary circumstances Sir Thomas White never would have neglected the Home Bank. He never would have allowed it to rest for two years and a half; he never would have let it drop at all without getting independent information upon which he could rely. I feel that so strongly because I know what his action was in connection with other financial institutions, where he would not allow any such leeway at all, and where he was pressed for leeway by some of the people who he regards so highly now.

So I think your lordship must find, if you express any opinion upon that, that under the circumstances an investigation was justified. But before I come to that let me say this further, that while Sir Thomas says he did not like these accounts and he thought there would be large marginal losses upon them, and while Mr. Adair shows that there would be large losses upon a great many other accounts, they took month after month following this correspondence, returns from the bank, and we know that in these returns there was no allowance made for depreciation until 1918, I think it was—I am not sure about that date—and no allowance made for these bad debts, yet they took month after month and published returns which information in the hands of the Department showed to be false.

Now when charges of so serious a nature are made, I think your lordship will find that an investigation is justified. I think you will not find that correspondence with the directors of the bank, and yielding to the pressure of the directors not to make an investigation, was the proper thing to do. If you were to find that, I think it would destroy confidence in banking institutions to a very great extent; and destroy confidence in the Government's administration of the Bank Act.

Human powers are limited, and I believe Sir Thomas White, as I said in my examination, that I wondered he got the time even to write the letters that he did, and beyond question if it had not been for the terrible pressure of the war and the overwork that he was under, would have given this a much more thorough examination and investigation than he did.

Just another point I want to refer to as to the examination he made of those 43 exhibits, which cover about 63 pages. The subsequent correspondence shows that he never read them. I do not blame him for that, because he had not the time. In all the subsequent correspondence, he only refers to the three accounts, the Prudential, the Pellatt and the Frost; he never mentions in his subsequent correspondence the Barnard account, which is referred to by a separate memorandum, and which was subsequently referred to in Mr. Fisher's letter. Exhibit 52 and 53. He never mentions it at all. He never mentions the various accounts referred to in Mr. Adair's report. The reasonable explanation is that he had not time, and that no man in his position, no matter how diligent and how great he might be, had time to do all the work he had to do at that time, and to give this matter proper attention.

Therefore as to question 3 your lordship will answer that he obtained ledger statements of three accounts under section 113 of the Bank Act. That he had a great deal of correspondence as to whether he would or would not have an investigation under section 56A of the Bank Act, and that finally he determined not to have any investigation but to stay his hand for the present.

Is not that fair that that is what he did? I ask my learned friends? I like to be absolutely fair, and I would like my learned friends to agree with me about that; but is not that exactly what he did? The correspondence with Lash was no investigation, and the correspondence with Fisher was no investigation, and the correspondence with Mr. Crerar. And he withdrew as he said, his request for an investigation by Mr. Jones; he never employed him and never paid him anything. So that outside of obtaining a report under section 113 of the Bank Act, he made no investigation at all but he had a great deal of correspondence as to whether he would or would not, and the result of the correspondence was that he decided not to have one at that time, but to stay his hand pending an inside investigation by Mr. Haney and Mr. Machaffie, the report of which he never received and never asked for. I am not blaming him at all. He was doing great and good work all the time, more than any ordinary man could have done, and more than he should have been required to do.

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

Well, both Mr. Lafleur and Mr. Symington agree with me that such an investigation would have found out the true state and would have found out that the bank could not go on. I think Mr. Edwards' evidence is the best evidence as to that, because he has made a special study of the point for the purpose of finding out what the result would have been. He has given his attention to that and we all know he is one of the very ablest and most impartial auditors in Canada.

I may say that our Committee were considering in the first place the retaining of an accountant to make an investigation for us, but we were so poor, and when we learned that Mr. Edwards had been appointed by the Government we all felt entirely satisfied that no matter by whom he was appointed his investigation would be fair to the best of his ability, and would be able, and it was entirely unnecessary for us to employ an accountant and pay large fees, which we would have to endeavour to collect from such of the depositors as were willing to contribute in order to have any further investigation.

Now his investigation shows that in 1916 there was a loss of \$3,370,000, which would have disposed of the bank's capital and reserve and about a million dollars additional. Probably if the bank were liquidated at that time, and with the double liability, there would have been enough to pay the depositors in full. Now that is the very best evidence we have, and Mr. Edwards could not, I suppose absolutely free his mind from the conditions that exist at the present time, and from the history of the transaction. But he no doubt did the very best he could, and the very best any man could, to make a true estimate of what an independent auditor would have found if he had audited the bank at that time. Then as to the position in 1918, I agree with my learned friend Mr. Symington that the losses that occurred between 1916 and 1918 were probably not very great, except the amounts that had been paid out in dividends, which were not earned and which were clearly lost, and such losses as the bank actually made, in operating, which are shown by Mr. Clarkson's evidence.

At pages 270 and following, Mr. Clarkson's evidence shows the losses which were made from year to year, and these can be checked up and will show the situation of the bank in 1918. Now in 1918 war conditions still existed, and under ordinary circumstances, if war conditions did not exist, you can hardly understand how the Minister, when these charges were made by Mr. Machaffie, took no other steps than to ask for a report from the president of the bank and the bank's counsel. He asked for no independent evidence. Now Sir William Meredith, in the Farmers' Bank case, has emphasized that when charges are made against people, to take the word of a man against whom a charge is made and dispose of it without any further investigation, is wrong. In the Farmers' Bank case which has been cited to you by Mr. Lafleur, the party who made the complaint withdrew them. That was thought to be no reason why they should not be investigated.

The answer to question 4 then would be that an audit would have found out the true state of the bank, and would have shown that the bank in 1916 was insolvent and that if liquidated at that time, with a reasonable recovery for the double liability, the depositors would have been paid in full.

Now in 1918, the answer would be I should submit, that it was insolvent to a little greater extent, but that there still would have been enough to have paid the depositors in full, taking into consideration the double liability, which would be \$1,946,000, if all were recovered; if sixty per cent were recovered, there would have been enough; and I believe the recovery in the various banks that have failed has run up to about eighty per cent, so that there would have been enough to have paid the depositors in full.

Question 5 is much the same as question 4, and what I have stated with reference to question 4 is also applicable to question 5.

I submit that all these matters have been covered, and your lordship having given the matter the most careful attention, will be able to answer all these questions without serious difficulty.

Then as to any opinions that your lordship may express, I think your lordship should, from an historical point of view, and using the calm judgment of to-day, with reference to the affairs of eight years ago, which is a better judgment than the judgment that could have been formed at the time, the whole philosophy of history has established that, that you will visualize the period, and that you will find the true situation. Sir Thomas White's whole evidence, and especially his argument the other day, shows it. In his evidence he says, in answer to my question, that his head, from the basement to the attic was filled with the war and its problems, and that the war questions were the dominating things in his mind during the whole period. I think you will visualize the situation that he was in, and I believe in the regular sequence of cause and effect. The effect is clear in this case, that Sir Thomas White did not get the information that he ought to have got. There is a cause for that, and the cause for that is that he was working eighteen hours a day, that he was overworked, and overpowered, and over-engrossed. I don't mean to say engrossed to too great an extent, or more than was required by the war problems, but too great an extent to give the consideration to the Home Bank that it required. His time was sufficiently occupied as Finance Minister with war financing, and yet he was acting Premier at that time also. But public opinion in this country, as Sir Thomas White has himself agreed, would never be satisfied that a Minister of Finance, under ordinary circumstances, did his duty, if he had charges so serious as these laid before him and satisfied himself with the answers of the bank officers only. Sir William Meredith, under circumstances that were not strenuous like these, so held in the Farmers' Bank case. Therefore, as I say, there is cause and effect in this case. The effect is that he did not obtain any independent investigation whatever. The second effect was that he forgot about the matter for two years and a half. The cause was his engrossment on account of the terrible situation of the country at that time; I will ask your lordship to visualize that and to express a full and complete opinion on that point and recognize the fact that you can better determine the state of Sir Thomas White's mind at that time than he can himself. He says at the close of his argument: "I do not regard myself capable of saying what I should have done," considering the stress that he was under.

I think it would be a good thing if an opinion were expressed by your lordship that when serious charges are made against a bank or against any other financial institution, the only kind of an investigation that is real and reliable is one by a person who is independent of the Board or management of the Bank.

Your lordship might also express an opinion, as some evidence has been given, as to the effect of this disaster on so many people. Sir Thomas White says it is a disaster which is just as much deserving of consideration as one caused by a volcano or a conflagration would be; that the Home Bank was just as truly blown up by fraud and deceit as a physical structure might have been blown up by dynamite.

One other point. My learned friend Mr. Symington seems to have got a letter which says that there is no precedent in England for any compensation being made to bank depositors of a ruined bank. There is however, one precedent and I have obtained a copy of the English Hansard in which it is reported. The Parliamentary Debates of Tuesday, 12th December, 1922. The case is McGrigor's Bank. The Government could not have been held liable

on any evidence whatever in that case, but to show how careful the Government of Britain is that people shall not suffer from anything with which the Government is even remotely associated, this action was taken. During the time of the war every officer was notified that he could either be paid directly by the War Office or through any bank that he might appoint as his agent. A great many of the officers, probably the majority of them, preferred to be paid through a bank, as a bank could look after supplying their families and could send them any money they wanted, if they wanted any, and dispose of the rest according to direction, which the War Office could not do. McGrigor's Bank was one of the banks which a great number of officers had appointed as their agent. I may say that the officers were all notified that the Government took no responsibility as to the action or solvency of these agents. But the result of it was that the officers who had appointed McGrigor's Bank as their agent, left their deposits with the bank, and the fact of the Government using McGrigor's bank as one of the agents for the payment of officers, gave the bank a certain amount of prestige; the fact that the Government had not refused to recognize it; and the result was that while the Government denied all liability, and quite properly so, they brought in a bill and passed it, paying the depositors of McGrigor's Bank fifty cents on the dollar.

Mr. SYMINGTON: Not paying the depositors.

Mr. McLAUGHLIN: Paying all the depositors.

Mr. SYMINGTON: Oh no, they paid the officers, whose money had been put there by the Government, as their agents for distribution. Purely the army officers and their wives.

Mr. LAFLURE: The words are these:

"The estimate provides for the relief of certain sufferers by the failure of Messrs McGrigor's Bank, who were Army agents and bankers. It is proposed to make an ex gratia payment towards the losses of Army officers and others whose connection with the bank occurred through their connection with the firm as Army agents, and the sum required to pay a 10s. dividend to such customers over and above what is received by the liquidation of the assets by the Official Receiver, is estimated to amount, with the costs of distribution, to £340,000."

Mr. SYMINGTON: I read a little further, Mr. McLaughlin, and I am satisfied, it was only the Army people who got their money.

Mr. McLAUGHLIN: All parties who were connected with the firm as Army agents, or were connected with the bank as Army agents.

Of course, Parliament is not bound by any precedent, but I may say I am not asking your lordship to make any recommendation as to what the Government should do, so far as what Bill they should bring in or what compensation they should give. I do not think that is submitted to the Commissioner, and that is a matter of the responsibility of Ministers. I do not think it is constitutional for the Minister to rely on your opinion or report as to his policy. The Government submits the matter to you to find the facts then on the facts they will frame the policy and be responsible to Parliament for that policy. They do not ask you to frame or suggest a policy to them. Am I right about that?

His LORDSHIP: That seems to be the most reasonable construction.

Mr. McLAUGHLIN: I think I am right about that. I submit your lordship has had the matter very fully set before you, and we probably extended it much more fully if the matter had not been going further than your lordship; we understood that this evidence was being printed for the benefit of members of Parliament and of the Banking and Commerce Committee, and for that reason we thought it wise and proper to put everything in.

I thank your lordship for your very exceeding courtesy and patience during this investigation; and I am sure your lordship knowing that we desire to obtain such relief as the Government and Parliament determine to give us, at as early a date as possible, will give us an interim report at your earliest convenience. I am sure I do not need to say anything about that.

Mr. LEE: Will your lordship bear with me for a couple of minutes? I had not intended to reply, had it not been for the remarks which my learned friend of the Government Council, Mr. Lafleur drew to your lordship's attention.

I might point out to your lordship that when the petition of the depositors was presented certain allegations were there made, and there were certain representations made to the depositors, and when the Order in Council was drawn it was restricted to certain things; but when that was extended, I might point out that the Government was prepared to have the fullest possible investigation made and to authorize the Commission to investigate the affairs of the Bank from the issue of its charter down to the date of its failure.

"The Committee of the Privy Council therefore advise that the powers of the Commissioner under the said Order in Council be not limited to the specific years 1915, 1916 and 1918 referred to in the petition of the depositors, but should extend to an investigation of the affairs of the said bank during the whole interval between the issue of the bank's charter and the failure of the said bank, including any representations made to the Government of the day as to its condition, any action taken by way of the Ministers of Finance upon such representations as may have been made, and the effect on the position of the depositors of any audit under section 56A of the Bank Act if made at any time in consequence of such representations."

Now what I say in answer to the learned Council is this, my lord: that therefore this investigation being a wide free, open, investigation as the Government desired, and as the Order in Council contemplated, it certainly was within the scope of Council to make reference to and make deductions from the facts and the circumstances as he saw fit here, so long as he did those in a reasonable way. And so far as that is concerned, my lord, while I am quite aware of what my learned friend Mr. Lafleur said regarding the matter of compensation to these depositors, I beg to say to your lordship that in any references I made to Sir Thomas White, or to Sir Henry Drayton or to Mr. Fielding, that I have shown all through my address that I was not quarrelling with these gentlemen so much as with the system of the Finance Department by which a bank could be wrecked under the circumstances as they are disclosed to your lordship and so nothing should go out from this Commission that I am attacking Sir Thomas White, or Sir Henry Drayton, or Mr. Fielding but I am attacking the Finance Department of this country, represented by Sir Thomas White, represented by Sir Henry Drayton, and represented by Mr. Fielding during the time that they were presiding over this Department.

Now Sir Thomas White and all of the gentlemen are just as much the servants of the people as I am the servant of my clients, and it is their duty, and the duty of the Department, to look carefully over the matters of banking in this country, and it was in that capacity that I was presenting to your lordship my argument regarding the financial system and the Finance Department represented by these gentlemen.

Now so far as we are concerned, my lord, Sir Thomas White has asked you to give him a certificate of his honesty in this matter. We have never questioned Sir Thomas White's honesty. The depositors of this bank have never questioned it. And we have never questioned particularly his diligence. But we have questioned that that diligence, which he so carefully carried out during certain periods of the war, did not result in anything; and we have questioned

the diligence that took place afterwards by his successors; and that is all that we were asking when we presented this petition.

I desire also to thank your lordship for your kind courtesy and the great patience with which you have listened to the depositors' case.

HIS LORDSHIP: Gentlemen, if that concludes the argument on this branch of the case, it will be taken under consideration.

When shall we reassemble?

MR. LAFFUR: Under the circumstance that your lordship will desire some time for deliberation?

HIS LORDSHIP: Yes.

MR. LAFFUR: I suppose the only kind of adjournment we can take will be sine die, to reassemble at the call of your lordship through the secretary.

HIS LORDSHIP: Yes, the Commission will adjourn, subject to call through the secretary. Notice will be given to you, gentlemen, when the work will be resumed.

Proceedings stand adjourned at 4.35 p.m. Tue-day 20th day of May, 1924, sine die.