JOURNALS

OF THE

Legislative Assembly

OF THE

PROVINCE OF ONTARIO

From the 19th February to 9th April, 1941
Both Days Inclusive

IN THE FIFTH YEAR OF THE REIGN OF OUR SOVEREIGN LORD
KING GEORGE VI

BEING THE

Sixth Session of the Twentieth Legislature

SESSION 1941

PRINTED BY ORDER OF THE LEGISLATIVE ASSEMBLY

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1941

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No. 1	Public Accounts of the Province of Ontario for the twelve months ending March 31st, 1940. Presented to the Legislature, February 19th, 1941. *Printed.*
No. 2	Estimates of certain sums required for the services of the Province for the year ending 31st March, 1942. Presented to the Legislature, March 14th, 1941. *Printed.*
No. 3	Report of the Minister of Lands and Forests of the Province of Ontario for year ending March 31st, 1940. Presented to the Legislature, February 26th, 1941. *Printed.*
No. 4	Report of the Department of Mines for year ending March 31st, 1941. Presented to the Legislature, April 9th, 1941. *Printed.*
No. 5	Report of the Inspector of Legal Offices for year ending December 31st, 1940. Presented to the Legislature, April 3rd, 1941. *Printed.*
No. 6	Report of the Superintendent of Insurance for year ending December 31st, 1940. Presented to the Legislature, April 9th, 1941. *Printed.*
No. 7	Report of the Registrar of Loan Corporations for year ending December 31st, 1940. Presented to the Legislature, April 9th, 1941. *Printed.*
No. 8	Report of the Department of Public Works for year ending March 31st, 1940. Presented to the Legislature, March 10th, 1941. *Printed.*
No. 9	Annual Report of the Game and Fisheries Department, Ontario, for year ending March 31st, 1940. Presented to the Legislature, April 7th, 1941. *Printed.*
No. 10	Report of the Department of Labour of the Province of Ontario for year ending March 31st, 1940. Presented to the Legislature, February 28th, 1941. *Printed.*
No. 11	Report of the Department of Education, Ontario, for the twelve months ending October 31st, 1940. Presented to the Legislature, April 9th, 1941. *Printed.*
No. 12	Report of the Board of Governors of the University of Toronto for the year ending June 30th, 1940. Presented to the Legislature, February 20th, 1941. *Printed.*

No. 28 Report of the Workmen's Compensation Board of Ontario for the year 1940. Presented to the Legislature, March 28th, 1941. *Printed.*

No. 29 Report of the Ontario Veterinary College for the year 1940. Presented to the Legislature, April 9th, 1941. *Printed.*

No. 30 Report on the Distribution of the Sessional Statutes, 1940, from March 14th, 1940, to March 6th, 1941. Presented to the Legislature, March 10th, 1941. *Not Printed.*

No. 31 Report of the Department of Municipal Affairs for the Province of Ontario for the year ending March 31st, 1941. Presented to the Legislature, April 9th, 1941. *Not Printed.*

No. 32 Report of the Department of Highways for fiscal year ending March 31st, 1940. Presented to the Legislature, April 9th, 1941. *Printed.*

No. 33 Report of the Secretary and Registrar of the Province of Ontario with respect to the administration of The Companies Act, The Extra-Provincial Corporations Tax Act, The Mortmain and Charitable Uses Act and The Companies Information Act for fiscal year ending March 31st, 1940. Presented to the Legislature, April 4th, 1941. *Not Printed*

No. 34 Report of the Commissioner of the Ontario Provincial Police from January 1st, 1940, to December 31st, 1940. Presented to the Legislature, March 28th, 1941. *Printed.*

No. 35 Report of the Ontario Athletic Commission for the period from April 1st, 1939, to March 31st, 1940. Presented to the Legislature, March 11th, 1941. *Not Printed.*

No. 36 Annual Report of the Public Service Superannuation Board, Ontario, for year ending March 31st, 1940. Presented to the Legislature, February 20th, 1941. *Not Printed.*

No. 37 Annual Report of the Civil Service Commissioner of Ontario for year ending March 31st, 1940. Presented to the Legislature, February 21st, 1941. *Not Printed.*

No. 38 Order-in-Council made pursuant to The Ontario Insurance Act and Guarantee Companies' Securities Act, Department of Insurance. Presented to the Legislature, February 20th, 1941. *Not Printed.*

No. 39 Return to an Order of the House dated February 23rd, 1940, That there be laid before this House a Return showing: 1. What purchases of coal were made by the Government during the fiscal year ended March 31st, 1939, indicating (*a*) the institutions or buildings for which coal was purchased, (*b*) the kinds and quantities of coal supplied by each dealer, to each institution, (*c*) the per ton price with respect to each purchase, (*d*) the total amount paid to each dealer with respect to coal supplied to each institution or building.

2. Was the coal purchased on a tender basis. 3. Were tenders advertised for, and if so, when and in what newspapers. 4. Was each dealer who so desired allowed to tender. 5. What was the total quantity of Nova Scotia coal purchased by the Government in the fiscal year ended March 31st, 1939. *Mr. Arnott.* Presented to the Legislature February 20th, 1941. *Not Printed*

No. 40 Annual Report of the Ontario Historical Society for year 1939-1940. Presented to the Legislature, February 20th, 1941. *Not Printed.*

No. 41 Annual Report of the Niagara Parks Commission for year ending March 31st, 1940. Presented to the Legislature, February 20th, 1941. *Printed.*

No. 42 Statement of the Legislative grants apportioned to the Rural Public Schools and all Separate Schools for the year 1940. Presented to the Legislature, February 26th, 1941. *Not Printed.*

No. 43 Supplementary Report of the Ontario Department of Public Welfare in connection with the programme to place British children in Ontario homes for the duration of the war. Presented to the Legislature, February 27th, 1941. *Printed.*

No. 44 Report of the Commission for the Investigation of Cancer Remedies for the year ending December 31st, 1940. Presented to the Legislature, March 10th, 1941. *Not Printed.*

No. 45 Orders-in-Council pertaining to the Department of Education 1940-41. Presented to the Legislature, March 13th, 1941. *Not Printed.*

No. 46 Return to an Order of the House dated March 10th, 1941, That there be laid before this House a Return showing: All letters, memoranda, certificates and documents of whatsoever nature in the possession of the Government or of any member, official or employee of the Government in relation to one John Kluck who was a patient at the Ontario Hospital at Penetanguishene and who was arrested in the City of Toronto in the month of September, 1940, on a charge of murder. *Mr. Frost.* Presented to the Legislature, March 13th, 1941. *Not Printed.*

No. 47 Return showing: 1. What are the names of individual proprietors, names in partnership, directors and shareholders of corporations having beverage room authorities as of January 1st, 1941, for the City of Toronto and also for the County of York, giving transfers since that date. 2. Does the Liquor Commission impose regulations that require authority holders to reveal whether they are sole proprietors and if not, give names of persons associated. *Mr. Stewart.* Presented to the Legislature, March 25th, 1941. *Not Printed.*

No. 48 Copy of agreement between the Government of Ontario and the Government of Canada regarding the proposed Great Lakes, St. Lawrence Basin Development, together with correspondence, documents and Engineer's report regarding the same. Presented to the Legislature, March 26th, 1941. *Not Printed.*

No. 49 Return to an Order of the House dated March 28th, 1941, That there be laid before the House a Return showing: 1. What was the total cost of the shrubs, trees and rose bushes planted on the Queen Elizabeth Way from Toronto to Hamilton, and specify: (*a*) Unit cost with respect to each type of shrub, tree and rose bush; (*b*) Total cost with respect to each type of shrub, tree and rose bush; (c) Name of each vendor and total amount paid each vendor and stating address in each case. 2. What was the total amount of labour costs, trucking costs and all other items incidental to planting. 3. What was the total cost of sodding operations on the Queen Elizabeth Way from Toronto to Hamilton, indicating: (*a*) Unit prices; (*b*) Total cost of sod; (*c*) From whom purchased, address; (*d*) Labour costs; (*e*) Trucking and all other incidental costs. *Mr. Murphy.* Presented to the Legislature March 28th, 1941. *Not Printed.*

No. 50 Report of the Commissioners appointed to inquire into the affairs of Abitibi Power and Paper Company, Limited. Presented to the Legislature, March 31st, 1941. *Printed.*

No. 51 Report of the Ontario Research Foundation for year ending December 31st, 1940. Presented to the Legislature, March 31st, 1941. *Printed.*

No. 52 Return to an Order of the House dated April 2nd, 1941, That there be laid before the House a Return showing: 1. What contracts were awarded in each of the fiscal years 1938, 1939, 1940 to the following companies, namely: Dufferin Paving and Crushed Stone, Limited; Dufferin Construction Company, Limited; National Paving Company, Limited; Construction and Paving Company of Ontario, Limited; Quebec Paving Company, Limited; A. Cope & Sons, Limited; instancing in each case: (*a*) Details as to service or work performed and materials supplied, with unit prices in each case and specifying total amount paid to each company with respect to each contract; (*b*) Any extensions of contracts, giving full particulars in the case of each such extension. 2. What was the total amount paid to each of the aforementioned companies in each of the fiscal years 1938, 1939, 1940 and 1941. 3. Were the contracts and extensions of contracts awarded on a tender basis and was the lowest tender in each case accepted, if not, specify. 4. Were any contracts let on a cost plus basis and if so, give particulars. *Mr. Doucett.* Presented to the Legislature, April 2nd, 1941. *Not Printed.*

No. 53 Order-in-Council and Regulations for the Prevention and Mitigation of Psittacosis, Department of Health. Presented to the Legislature, April 3rd, 1941. *Not Printed.*

No. 54 Certain papers in connection with Hydro-Electric Power reserves. Tabled in the Legislature by the Prime Minister during the course of the Budget Debate, April 3rd, 1941. *Not Printed.*

No. 55 Certain papers in connection with Provincial Loans. Tabled in the Legislature by the Prime Minister during the course of the Budget Debate, April 3rd, 1941. *Not Printed.*

No. 56 Return to an Order of the House dated April 7th, 1941, That there be laid before the House a Return showing: 1. What is the total cost of the addition to the Hydro-Electric Power Commission Head Office since 1937: (*a*) Building; (*b*) Furniture and furnishings; (*c*) Equipment and accessories (1) to date, (2) estimated to complete. 2. Was the expenditure approved by the (*a*) Hydro-Electric Power Commission; (*b*) By the Ontario Government—and what date. 3. Were tenders called. If so, what tenders were received. 4. When was the addition started. 5. What was the cost of the new Hydro-Electric Power Commission building to the end of 1937, contracted for in 1934 or 1935. *Mr. Welsh.* Presented to the Legislature, April 7th, 1941. *Not Printed.*

No. 57 Return to an Order of the House dated April 8th, 1941, That there be laid before the House a Return showing: 1. Please give the amounts of legislative grants paid to Elementary and Secondary Schools in each of the Government's fiscal years for the period 1934 to 1940 inclusive, under the following classifications: Elementary—Public, Separate; Secondary—Continuation, High, Vocational, Collegiate. 2. How are the grants determined. 3. On what basis are the grants computed. 4. Have any grants, other than scheduled grants, been made to either public or separate schools. If so, when and what amount. *Mr. Stewart.* Presented to the Legislature, April 8th, 1941. *Not Printed.*

No. 58 Return to an Order of the House dated April 9th, 1941, That there be laid before the House a Return showing: 1. What lands have been acquired to provide for construction of approaches or other works in connection with the Rainbow Bridge at Niagara Falls, indicating: (*a*) Description of each parcel acquired; (*b*) From whom each parcel was acquired; (*c*) Purchase price of each parcel acquired; (*d*) Whether acquired by mutual agreement or by expropriation; (*e*) Who acted for the Government or any Department, Commission or other agency of the Government in fixing valuations for lands acquired; (*f*) What buildings or other structures were located on each parcel and what disposition was made of such buildings or structures, to whom and under what terms. *Mr. Macaulay.* Presented to the Legislature, April 9th, 1941. *Not Printed.*

No. 59 Report upon the Ontario Training Schools for year ending March 31st, 1941. Presented to the Legislature, April 9th, 1941. *Not Printed.*

No. 60 Report of the Milk Control Board of Ontario for year ending December 31st, 1940. Presented to the Legislature, April 9th, 1941. *Not Printed.*

RETURNS ORDERED BUT NOT BROUGHT DOWN

1. Showing: Return of all letters, correspondence, memoranda, estimates, recommendations, rulings, directions, tenders, orders and documents of whatsoever nature in the possession of the Government or of any member, official, or employee, of the Government, respecting the installation of a lighting system on any part of the Queen Elizabeth Way between Hamilton and Niagara Falls, and including documents relating to purchase of material and contracts relating to the installation.

2. Showing: 1. What purchases were made in the years 1936, 1937, 1938, 1939 and 1940 from the Taylor Hardware Company, either from its head office at New Liskeard, or from any of its branches elsewhere, by all Departments of the Ontario Government, including the Temiskaming and Northern Ontario Railway, giving the total amount of the purchases in each year from each branch of the company by each Department. 2. What was the general nature of the purchases.

3. Showing all correspondence, memoranda, maps, plans, sketches and applications in relation to licenses of occupation relating to parts of lots numbered Eleven and Twelve in the First Concession of the Township of Cavendish, such licenses of occupation being applied for by or on behalf of Frank Williams, Percy Blade, George Goodfellow and George Windover or any of them.

4. Showing: (*a*) The number of motor cars and trucks purchased by the Government since July 11th, 1934, or by any board or commission of the Government, the Hydro-Electric Power Commission of Ontario excepted; (*b*) The department, board or commission for which purchased; (*c*) Date of purchase; (*d*) Make of car or truck; (*e*) Type of car or truck; (*f*) From whom purchased, with address; (*g*) Purchase price; (*h*) Indicating which of the cars and trucks so purchased are still owned by the Government or its board or commissions.

5. Showing: 1. How many agreements have been signed between the Government and companies, firms or individuals, requiring the construction of pulpmills in the Province of Ontario since January 1st, 1936. 2. Give names of companies, firms or individuals and type of mill, capacity, proposed location and date when mill to be completed in each case. 3. Which of the mills have been constructed. 4. Which of the mills are under construction. 5. Which of the contracting companies, firms or individuals are in default with respect to their agreements to build mills, giving default date and particulars of default in each case.

6. Showing: 1. In connection with the Ontario Hospitals at St. Thomas, Port Arthur and Brampton, and in connection with additions or extensions at the Ontario Hospitals at Woodstock and New Toronto: (*a*) What outside architects were employed and what amount was paid to each by the present Government and what amounts are still due or claimed; (*b*) Give the same information in relation to employment of superintending engineers.

JOURNALS

OF THE

LEGISLATIVE ASSEMBLY

OF THE

PROVINCE OF ONTARIO

WEDNESDAY, FEBRUARY 19TH, 1941

PROCLAMATION

ALBERT MATTHEWS

CANADA

PROVINCE OF ONTARIO

GEORGE THE SIXTH by the Grace of God of Great Britain, Ireland and the British Dominions beyond the Seas KING, Defender of the Faith, Emperor of India.

To Our Faithful, the Members elected to serve in the Legislative Assembly of our Province of Ontario, and to every of you—GREETING.

G. D. CONANT, *Attorney-General.*

WHEREAS it is expedient for certain causes and considerations to convene the Legislative Assembly of Our Province of Ontario, WE DO WILL that you and each of you and all others in this behalf interested, on Wednesday, the nineteenth day of February now next, at Our City of Toronto, personally be and appear for the actual Despatch of Business, to treat, act, do and conclude upon those things

which, in Our Legislature of the Province of Ontario, by the Common Council of Our said Province, may by the favour of God be ordained.

HEREIN FAIL NOT.

IN TESTIMONY WHEREOF We have caused these Our Letters to be made Patent and the GREAT SEAL of Our Province of Ontario to be hereunto affixed.

WITNESS:

THE HONOURABLE ALBERT MATTHEWS, LIEUTENANT-GOVERNOR OF OUR PROVINCE OF ONTARIO.

At Our City of Toronto, in Our said Province, this eighteenth day of December in the year of Our Lord one thousand nine hundred and forty and in the fifth year of Our Reign.

BY COMMAND

C. F. BULMER,
Clerk of the Crown in Chancery.

Wednesday, the nineteenth day of February, 1941, being the first day of the Sixth Session of the Twentieth Legislature of the Province of Ontario for the Despatch of Business pursuant to a Proclamation of the Honourable Albert Matthews, Lieutenant-Governor of the Province.

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3 O'CLOCK P.M.

And the House having met,

The Honourable the Lieutenant-Governor of the Province then entered the House and, being seated on the Throne, was pleased to open the Session by the following gracious speech:—

Mr. Speaker and Gentlemen of the Legislative Assembly:

In extending my welcome to you this afternoon I am saddened by the thought that since the last Session four members of the Legislature have passed away. The former Minister of Education, the Honourable Dr. L. J. Simpson, Mr. W. A. Baird and Mr. C. A. Robertson sat in this Chamber for very many years, while Mr. C. V. Gallagher had been a member since 1937. They rendered valuable and faithful service to our Province and I join with you in paying tribute to their memory.

Two new members have been elected and appointed to the Cabinet: Hon. Duncan McArthur as Minister of Education and Hon. Robert Laurier as Minister of Mines. Hon. F. R. Oliver, who has been a member of the Legislature since 1926, has also been appointed as Minister of Public Works. I should like to extend to them my personal good wishes in their high positions.

During the year that has passed activities of the various Departments have been greatly influenced by considerations arising out of the War. The Government has not hesitated to spend money where this was needed for spurring our war effort. The expenditures usually associated with peace time developments and expansion, however, have been curtailed and, as a result, I am happy to inform you that the finances of the Province are in a very satisfactory condition.

I am sorry I cannot speak in the same way of our great agricultural industry. During the last twelve years the average farm income has dropped from 18% of the national income to 8%, although farmers number 30% of Canada's population. As I told you last year, Great Britain was asking us for larger supplies of bacon, cheese and manufactured milk. Ontario farmers co-operated loyally. Over one-half million hogs and nearly nine million pounds more cheese were marketed last year than in 1939. This year, I am informed, Ontario must produce an additional ten million pounds of cheese. Our farmers realize that Great Britain is paying all she can for food, but they themselves are faced with rising labour costs due to the demands of war industries, and increased prices for the things they need. They believe that if the domestic prices of farm products are pegged the prices of the articles they have to purchase should be pegged also. That, however, is a matter beyond provincial jurisdiction. To alleviate this situation, the Government has agreed to bonus cheddar cheese by two cents a pound and to pay a premium of at least 50 cents a head on all marketed hogs grading B-1 and at least $1.00 per head on hogs grading A. The necessary financial provision for these bonuses will be submitted to you. With this practical encouragement, it is hoped that the additional demands will be met. The movement to improve seed grain has now reached forty-one counties and ninety-two seed cleaning plants are operating. The Ontario Veterinary College is making a definite attack upon Bangs disease with very promising results and during the past two years 83,000 cattle have been tested.

Efforts are being made through the medium of the secondary schools of the province, to enlist the help of senior boys and girls in solving the problem of the shortage of farm labour. With the co-operation of the schools and universities, arrangements are being made by which several thousand senior pupils will be given credit for the year's full work at Easter and thus be released from further compulsory attendance at school.

War conditions have greatly increased the work of the Attorney-General's Department, particularly with respect to civil security. This has been met, in part, by a new arrangement for calling out the militia; by increasing the numbers and efficiency of the Provincial Police; by constituting the Ontario Volunteer Constabulary and by sponsoring municipal units of Volunteer Civil Guards. In addition, civilian defence committees, patterned on the Air Raid Precaution plan in England have been formed. Enforcement of the Defence of Canada Regulations relating to subversive activities has thrown added work on the Department. In many cases, the consent of the Attorney-General is required before prosecutions may be instituted and, in the important or difficult cases, officials of the Department have conducted the prosecutions. The fullest assistance has been furnished to the Active Service forces in fire instructions and problems of protection from fire and sabotage. Industrial plants have also been given this service.

The Select Committee appointed to enquire into the administration of justice, under the Chairmanship of the Attorney-General, has completed its work and its report will be presented to you. Legislation to implement some of the recommendations of the Committee will be introduced during the Session.

The demands of the war industries have called for special efforts by the Department of Labour. Plans for new buildings totalling over two million dollars a month have had to be inspected and approved, and the safety and health of the workers closely watched. In this connection a special committee has been formed to deal with concessions sought by firms engaged on war orders. To help supply skilled workmen, the Departments of Labour and Education have co-operated with the Dominion authorities in a training programme which uses the technical and vocational schools and special training centres throughout the Province. Instruction is provided in aircraft mechanics, machine shop practice, woodworking, welding, motor mechanics, fitting, power sewing machine operating, radio, tool and die making. Enrolment is over 2,000, which will probably increase to 5,000 in the near future. Training for 1,600 enlisted men in various mechanical trades is also under way. During the first ten months of the fiscal year approximately 3,000 persons were trained under the Youth Training Programme, 948 of them at the Aircraft Training School at Galt for enlistment in the Royal Canadian Air Force as mechanics and wireless operators. One class of 66 operators took their final tests a few days ago and not a single student failed.

Highway construction was curtailed during the year. Tariff and Exchange regulations, together with the development of war industries in Fort William and Port Arthur, emphasized the need for an all-Canadian highway and has resulted in a determined effort to complete the northern and western roads across the Province with the least possible delay. Last year the work was completed from Nipigon to Geraldton and the remaining link from Geraldton to Hearst will be finished this year. The other main project was the completion to Niagara Falls of the Queen Elizabeth Way. This work was done in record time at reasonable cost, and the growing war traffic has fully warranted this expansion. It is expected that the development from Toronto to Oshawa will be completed this year.

The Department of Health reports that 98 per cent. of all milk sold for fluid consumption is now being pasteurized and there has been a marked reduction in disease which may be milk borne. Typhoid fever has been reduced 50 per cent. and undulant fever 45 per cent. An intensive programme of prevention and control has resulted in another four per cent. decrease in the death rate from tuberculosis, which is now down to 28.9 per 100,000 population as compared with 64.7 for the rest of Canada. Laboratory service to all troops in training in the Province has been continued and advice and assistance given on sanitary problems in the various camps. Legislation will be submitted for compulsory hospital treatment where necessary for persons in an infectious state of pulmonary tuberculosis. A Bill will also be presented to permit the Department to supervise any non-profit insurance scheme for medical and hospital care.

The great importance of securing United States exchange has led the Government to set aside $300,000 this year for tourist publicity, and local tourist associations are co-operating enthusiastically in the campaign. Statistics from

the Game and Fisheries Department indicate the important part it plays in attracting visitors to Ontario. The huge total of 854,000,000 fish of twelve different species were distributed from the 25 hatcheries and rearing stations. During 1939 two short open seasons for beaver resulted in 35,000 pelts being taken. Last year in one open season 20,000 skins were secured, mostly for export to the United States. With a price of over $20 a pelt the value of this will be realized. Revenues of the Department approximated one million dollars, leaving a balance over expenditure of more than $440,000.

Although actual figures may not be disclosed, I can assure you that mining production in Ontario last year was far in excess of any previous year. In gold alone 65 mines established new records. On the Temiskaming and Northern Ontario Railway north of Cochrane, drilling and stripping operations continue to uncover extensive beds of lignite coal of which several million tons have been blocked out. Burning tests of this coal, both raw or processed, in many instances exceed expectations. It is hoped that further investigation will result in the commercial development of this fuel for the homes and industries of northern Ontario. Fewer passengers were carried by the railway, but freight traffic increased considerably and earnings will compare favourably with previous years.

With Scandinavian supplies cut off Great Britain has relied upon Canada to meet her need for forest products. Ontario pulp, paper and lumber producers have co-operated to fill these requirements which, together with normal demands, has resulted in an improved and stable market.

Increased power deliveries for war industries have featured the activities of The Hydro-Electric Power Commission of Ontario. Up to September the increase of the primary peak load, all systems, was about 14 per cent., but in subsequent months, due in part to the continuation of Daylight Saving in certain municipalities, the increase in peak load was 6 to 7 per cent.

Continued development of the mining industries was responsible for an increase of 20 per cent. in the total primary peak loads in the districts served by the Northern Ontario Properties. An additional unit of 7,500 horsepower was added to the Ear Falls development serving the Patricia-St. Joseph district, bringing its capacity up to 17,500 horsepower.

In the rural power districts the construction of about 1,400 miles of rural primary lines was authorized to serve some 10,000 new rural consumers. At present about 19,600 miles of rural primary line serve 123,000 consumers, more than half of which are individual farms.

New power developments to serve the Georgian Bay and Eastern Ontario systems respectively have been started at Big Eddy on the Musquash River and at Barrett Chute on the Madawaska River.

In accordance with the arrangement made with the United States which has permitted the use of additional water at Niagara Falls for war purposes, works required for diverting an equivalent flow of water from the Ogoki River to the Great Lakes have been started, and the Long Lake diversion has been put into operation.

The Commission was able to meet all demands and has taken steps to ensure there shall be ample supplies of power for war industries.

The Department of the Provincial Secretary reports that a small but definite reduction in the number of prisoners is continuing. The Ontario Reformatory, Mimico, and the Industrial Farm, Monteith, have been turned over to the Dominion authorities and with the restricted accommodation the policy of using some prisoners in the road camps in northern Ontario is working out satisfactorily.

Capital expenditures by the Department of Public Works continue to be restricted, but satisfactory progress has been made on the Grand River conservation scheme, which will be completed early this year.

During the year 600 children from Great Britain were brought to Ontario under Government auspices, but several thousand homes were readily available to the Department of Public Welfare which is supervising the well-being of the children during their stay. Many private agencies gave willing co-operation in this work. Among those assisting was the Queen's Park War Service Guild. The Guild has raised $18,000 for war work and has undertaken numerous activities throughout the year, including provision of comforts for more than 700 Civil servants who have enlisted.

The Department of Municipal Affairs reports a decided improvement in municipal finances. Figures for 1940 are not yet available, but during 1939 the gross funded debt was reduced by over sixteen million dollars to the figure of $388,202,000 or $112.75 per capita. This is the lowest figure since 1923 when the debt stood at $376,500,000, or $133.61 per capita. During 1940 the debt was reduced by several more million dollars and when it is recalled that in 1932 municipal debt amounted to $504,000,000, the reduction of this figure by more than $125,000,000 is particularly encouraging. Municipal taxes were also reduced by $2,100,000 during 1939 to the figure of $114,255,000, or $33.18 per capita. This is the lowest figure since 1928 when the total levy was $110,811,000, or $36.67 per capita. Employment has increased steadily during the year, but provision for the large numbers of those who are unemployable remains as a continuing problem.

During the month of January representatives of the different provinces were summoned to Ottawa to discuss the Sirois Report on Dominion-Provincial relations. The Ontario delegates emphasized what this Legislature has affirmed in several resolutions, namely: its desire to co-operate fully towards the successful prosecution of the war. My Ministers considered that the constitutional changes contemplated by the Report with the inevitable dislocation of administrative machinery and personnel would be a deterrent to the war effort, and that the issues involved might well await discussion in the calmer days of peace. As you are aware, the Conference closed without any action being taken on the Report.

In addition to the legislation already mentioned, Bills will be introduced to amend The Income Tax Act by increasing exemptions for patriotic purposes; to extend The Mortgagors' and Purchasers' Relief Act; to amend The Corporation Tax Act; Plant Diseases Act; Milk and Cream Act; Ontario Securities Act;

Division Courts Act; Game and Fisheries Act; Public Health Act; Mental Hospitals Act; Highway Traffic Act and various other statutes.

The Public Accounts for the year ending March 31st, 1940, have been issued and estimates for the ensuing year will shortly be placed before you.

In conclusion, I trust that wise and thoughtful judgment will guide your deliberations. In many countries parliaments of free people such as this no longer exist. They have been crushed by the heel of the foe with whom we are locked in mortal strife. Our victory is their only hope. The battle may be far away, but let us make no mistake, the issue will decide our way of life just as surely as if it were fought within our borders. Soon the conflict will burst with greater fury. Within her island fortress and shielded by the bastions of sea power, Britain must draw from us and our sister nations the resources of men and materials which will enable her to finish the fearful task. Our English-speaking kinsmen in the great republic to the south realize no less than we the basic things for which we fight. Their vast productive power will feed the scales of decency and freedom. From that, and from our united will to win, we can draw hope for final victory. Let us apply ourselves to the task with courage and steadfast purpose and may Divine Providence guide and sustain our efforts.

The Honourable the Lieutenant-Governor was then pleased to retire.

PRAYERS.

Mr. Speaker informed the House that he had received during the recess, as provided by The Legislative Assembly Act, Section 24 (1) and Section 32 (1) notifications of vacancies which had occurred in the membership of the House and had addressed Warrants to the Clerk of the Crown in Chancery for the issue of Writs for the election of Members to serve in the present Legislature for the following Electoral Districts:—

The Electoral District of Simcoe Centre.

The Electoral District of Ottawa East.

The Electoral District of Grey South.

To the Speaker of the Legislative Assembly,
of the Province of Ontario.

Honoured Sir:

I declare that I resign my seat as a Member of the Legislative Assembly of the Province of Ontario, and I do hereby so resign, and I resign as a Member of the Legislature of the Province of Ontario, such resignation of my seat and

membership to take effect on the 8th day of March, 1940, as witness my hand at the City of Toronto this 24th day of February, 1940.

Witness:

J. A. HABEL, M.P.P.

J. J. GLASS.

A. W. ROEBUCK.

Kingston, March 7th, 1940.

To the Honourable the Speaker of the
Legislative Assembly of Ontario,
Parliament Buildings, Toronto, Ontario.

Sir:

I hereby declare my intention of resigning my seat in the Legislative Assembly of Ontario for the Electoral District of Kingston.

And I do hereby resign the same.

And I make this declaration under my hand and seal and in the presence of the undersigned witnesses as provided by Clause (B), subsection (1) of Section 24 of The Legislative Assembly Act.

Signed and sealed on this 7th day of March, A.D. 1940.

Signed and sealed in our presence on the 6th day of March and year above written.

E. COCKBURN.

A. E. DAY.

THOMAS ASHMORE KIDD.

To the Honourable James H. Clark,
Speaker of the Legislative Assembly of the Province of Ontario.

We, the undersigned Mitchell Frederick Hepburn, Member for the said Legislative Assembly for the Electoral Division of Elgin, and Harry Corwin Nixon, Member for the said Legislative Assembly for the Electoral Division of Brant, do hereby notify you that a vacancy has occurred in the representation in the said Legislative Assembly for the Electoral Division of Simcoe Centre by reason of the death of Leonard Jennett Simpson, Member elect for the said Electoral Division of Simcoe Centre.

And we the said Mitchell Frederick Hepburn and Harry Corwin Nixon, Members of the Assembly aforesaid, hereby require you to issue a new Writ for the Election of a Member to fill the said vacancy.

In witness whereof, we have hereunto set our hands and seals on this Twenty-first day of September in the year of our Lord one thousand nine hundred and forty.

Signed and sealed in the presence of

R. H. ELMHIRST.

WINIFRED E. DARKE.

M. F. HEPBURN [Seal]

H. C. NIXON [Seal]

Toronto, September 30th, 1940.

To Major the Honourable J. H. Clark, K.C.,
Speaker of the Legislative Assembly of the Province of Ontario.

Dear Major Clark,

I herewith tender my resignation as Member of the Legislative Assembly of Ontario for the constituency of Ottawa-East.

Yours sincerely,
PAUL LEDUC.

Witness:
HELEN MICHAUD.
HELEN FRYE.

To the Honourable James H. Clark,
Speaker of the Legislative Assembly of the Province of Ontario.

We, the undersigned Harry Corwin Nixon, Member for the said Legislative Assembly for the Electoral Division of Brant, and Gordon Daniel Conant, Member for the said Legislative Assembly for the Electoral Division of Ontario, do hereby notify you that a vacancy has occurred in the representation in the said Legislative Assembly for the Electoral Division of Grey South by reason of acceptance of an office under the Crown, To Wit: the office of Minister of Public Works for the Province, by Farquhar R. Oliver, Member elect for the said Electoral Division of Grey South.

And we the said Harry Corwin Nixon and Gordon Daniel Conant, Members of the Assembly aforesaid, hereby require you to issue a new writ for the Election of a Member to fill the said vacancy.

In witness whereby, we have hereunto set our hands and seals on this Twenty-third day of January in the year of Our Lord one thousand nine hundred and forty-one.

Signed and sealed in the presence of

ALEX. C. LEWIS.

H. C. NIXON [Seal]

G. D. CONANT [Seal]

To the Honourable James H. Clark, K.C.,
Speaker of the Legislative Assembly of Ontario.

We, the undersigned, Harry Corwin Nixon, Member of the said Legislative Assembly for the Electoral Division of Brant, and Harold James Kirby, Member of the said Legislative Assembly for the Electoral Division of Eglinton, do hereby notify you that a vacancy has occurred in the representation in the said Legislative Assembly for the Electoral Division of Cochrane South by reason of the death of Charles V. Gallagher, Member for the said Electoral Division of Cochrane South.

In witness whereof, we have hereunto set our hands and seals on this Fifteenth day of February in the year of our Lord one thousand nine hundred and forty-one.

Signed and sealed in the presence of	H. C. NIXON	[Seal]
ALEX. C. LEWIS.	HAROLD J. KIRBY	[Seal]

To the Honourable James H. Clark, K.C.,
Speaker of the Legislative Assembly of Ontario.

We, the undersigned, Harry Corwin Nixon, Member of the said Legislative Assembly for the Electoral Division of Brant, and Harold James Kirby, Member of the said Legislative Assembly for the Electoral Division of Eglinton, do hereby notify you that a vacancy has occurred in the representation in the said Legislative Assembly for the Electoral Division of Huron-Bruce by reason of the death of Charles A. Robertson, Member for the said Electoral Division of Huron-Bruce.

In witness whereof, we have hereunto set our hands and seals on this Fifteenth day of February in the year of our Lord one thousand nine hundred and forty-one.

Signed and sealed in the presence of	H. C. NIXON	[Seal]
ALEX. C. LEWIS.	HAROLD J. KIRBY	[Seal]

To the Honourable James H. Clark, K.C.,
Speaker of the Legislative Assembly of Ontario.

We, the undersigned, George A. Drew, Member of the said Legislative Assembly for the Electoral Division of Simcoe East, and Leopold Macaulay, Member of the said Legislative Assembly for the Electoral Division of York South, do hereby notify you that a vacancy has occurred in the representation in the said Legislative Assembly for the Electoral Division of High Park by reason of the death of William Alexander Baird, Member for the said Electoral Division of High Park.

In witness whereof we have hereunto set our hands and seals on this Nineteenth day of February in the year of our Lord one thousand nine hundred and forty-one.

Signed and sealed in the presence of } G. A. DREW [Seal]
ALEX. C. LEWIS. } L. MACAULAY [Seal]

Mr. Speaker informed the House that the Clerk had received from the Clerk of the Crown in Chancery and had laid upon the Table certificates of the following elections held since the last Session of the House:—

Electoral District of Simcoe Centre—Duncan McArthur.

Electoral District of Ottawa East—Robert Laurier.

Electoral District of Grey South—Farquhar Robert Oliver.

PROVINCE OF ONTARIO

This is to certify that in virtue of a Writ of Election, dated the Twenty-fourth day of September, A.D. 1940, issued by the Administrator of the Province of Ontario, and addressed to Earl Richardson, Esquire, Returning Officer for the Electoral District of Simcoe Centre, for the election of a Member to represent the said Electoral District of Simcoe Centre in the Legislative Assembly of this Province, in the room of Leonard Jennett Simpson, Esquire, who, since his election as representative of the said Electoral District of Simcoe Centre, has departed this life, Duncan McArthur, Esquire, has been returned as duly elected as appears by the Return of the said Writ of Election, dated the Twenty-third day of October, A.D. 1940, which is now lodged of record in my office.

C. F. BULMER,
Clerk of the Crown in Chancery.

Toronto, October 24th, 1940.

PROVINCE OF ONTARIO

This is to certify that in virtue of a Writ of Election, dated the Twenty-third day of October, A.D. 1940, issued by the Administrator of the Province of Ontario, and addressed to Joachim Sauve, Esquire, Returning Officer for the Electoral District of Ottawa East, for the election of a Member to represent the said Electoral District of Ottawa East in the Legislative Assembly of this Province, in the room of Paul Leduc, Esquire, who, since his election as representative of the said Electoral District of Ottawa East, has resigned, Robert Laurier, Esquire,

has been returned as duly elected as appears by the Return of the said Writ of Election, dated the Ninth day of December, A.D. 1940, which is now lodged of record in my office.

C. F. BULMER,
Clerk of the Crown in Chancery.

Toronto, December 11th, 1940.

PROVINCE OF ONTARIO

This is to certify that in virtue of a Writ of Election, dated the Twenty-third day of January, A.D. 1941, issued by the Honourable the Lieutenant-Governor, and addressed to John McArthur, Esquire, Returning Officer for the Electoral District of Grey South, for the election of a Member to represent the said Electoral District of Grey South in the Legislative Assembly of this Province, in the room of Farquhar R. Oliver, Esquire, who, since his election as representative of the said Electoral District of Grey South, has accepted an office of emolument under the Crown, To Wit: the office of Minister of Public Works for the Province of Ontario, by reason whereof the seat of the said Farquhar R. Oliver, Esquire, has become vacant, Farquhar R. Oliver, Esquire, has been returned as duly elected, as appears by the Return of the said Writ of Election, dated the Seventeenth day of February, A.D. 1941, which is now lodged of record in my office.

C. F. BULMER,
Clerk of the Crown in Chancery.

Toronto, February 17th, 1941.

Duncan McArthur, Esquire, Member for the Electoral District of Simcoe Centre, Robert Laurier, Esquire, Member for the Electoral District of Ottawa East, and Farquhar Robert Oliver, Esquire, Member for the Electoral District of Grey South, having taken the Oaths and signed the Roll, took their seats.

The following Bill was introduced and read the first time:—

Bill (No. 25), intituled, "An Act to amend The Legislative Assembly Act," *Mr. Hepburn* (Elgin).

On motion of Mr. Hepburn (Elgin), seconded by Mr. Nixon (Brant),

Ordered, That the Speech of the Honourable the Lieutenant-Governor be taken into consideration to-morrow.

On motion of Mr. Hepburn (Elgin), seconded by Mr. Nixon (Brant),

Ordered, That Select Standing Committees of this House, for the present Session, be appointed for the following purposes: 1. On Privileges and Elections; 2. On Railways; 3. On Miscellaneous Private Bills; 4. On Standing Orders; 5. On Public Accounts; 6. On Printing; 7. On Municipal Law; 8. On Legal Bills; 9. On Agriculture; 10. On Fish and Game; 11. On Labour.

Which said Committees shall severally be empowered to examine and enquire into all such matters and things as shall be referred to them by the House, and to report from time to time their observations and opinions thereon, with power to send for persons, papers and records.

The Provincial Secretary presented to the House, by command of the Honourable the Lieutenant-Governor:—

Public Accounts of the Province of Ontario for the twelve months ending March 31st, 1940. (*Sessional Papers No. 1.*)

Ordered, That the Public Accounts of the Province be referred to the Standing Committee on Public Accounts.

The House then adjourned at 4.00 p.m.

THURSDAY, FEBRUARY 20TH, 1941

PRAYERS. 3 O'Clock P.M.

The following Petitions were severally brought up and laid upon the Table:—

By Mr. Dunbar, the Petition of the Corporation of the City of Ottawa.

By Mr. Newlands, the Petition of Harold P. Wright, Richard Dawson and George Appleton; also, the Petition of certain Lodges of the Independent Order of Oddfellows in Hamilton.

By Mr. Duncan, the Petition of the London Street Railway Company and the Corporation of the City of London.

By Mr. McEwing, the Petition of the Trustees of the Rockwood Town Hall, the Trustees of the Police Village of Rockwood and the Municipal Council of the Township of Eramosa.

By Mr. Frost, the Petition of the Corporation of the Town of Orillia.

By Mr. Cox, the Petition of the Corporation of the City of Port Arthur and the Public Utilities Commission of the City of Port Arthur.

By Mr. Baker, the Petition of the Corporation of the Township of West Gwillimbury.

By Mr. Gardhouse, the Petition of the Corporation of the Village of Swansea.

By Mr. Kennedy, the Petition of the National Steel Car Corporation, Limited, and others; also, the Petition of the National Steel Car Corporation, Limited.

By Mr. Bégin, the Petition of the Corporation of the County of Carleton.

By Mr. Blakelock, the Petition of the Board of Governors of Appleby School.

By Mr. Strachan, the Petition of the Board of Management of the Daughters of the Empire Preventorium and others; also, the Petition of the Board of Trustees of the Roman Catholic Schools for the City of Toronto; also, the Petition of the Trusts and Guarantee Company, Limited; also, the Petition of the Corporation of the City of Toronto.

By Mr. Drew, the Petition of the Rector and Churchwardens of St. George's Church, Guelph.

By Mr. Fletcher, the Petition of the Corporation of the City of Windsor.

By Mr. Cooper, the Petition of the Corporation of the Township of Teck.

On motion by Mr. Hepburn (Elgin), seconded by Mr. Nixon (Brant),

Ordered, That a Select Committee of nine members be appointed to prepare and report with all convenient dispatch lists of the members to compose the Select Standing Committees ordered by this House, such committee to be composed as follows:—

Messrs. Freeborn (Chairman), Campbell (Kent East), Carr, Glass, Henry, Kennedy, Nixon (Brant), Oliver and Strachan.

The quorum of the said Committee to consist of three Members.

The Order of the Day for the Consideration of the Speech of the Honourable the Lieutenant-Governor at the opening of the Session having been read,

Mr. Carr moved, seconded by Mr. Trottier,

That an humble Address be presented to the Honourable the Lieutenant-Governor as follows:—

To The Honourable Albert Matthews,
Lieutenant-Governor of the Province of Ontario.

We, His Majesty's most dutiful and loyal subjects, the Legislative Assembly of the Province of Ontario, now assembled, beg leave to thank Your Honour for the gracious speech Your Honour has addressed to us.

And a Debate having ensued, it was, on the motion of Mr. Drew,

Ordered, That the Debate be adjourned until Tuesday next.

The Provincial Secretary presented to the House, by command of the Honourable the Lieutenant-Governor:—

Annual Report of the Ontario Historical Society for year 1939-1940. (*Sessional Papers, No. 40.*)

Also, Annual Report of the Public Service Superannuation Board, Ontario, for year ending March 31st, 1940. (*Sessional Papers, No. 36.*)

Also, Annual Report of the Niagara Parks Commission for year ending March 31st, 1940. (*Sessional Papers, No. 41.*)

Also, Report of the Board of Governors of the University of Toronto for year ending June 30th, 1940. (*Sessional Papers, No. 12.*)

Also, Order-in-Council made pursuant to The Ontario Insurance Act and Guarantee Companies' Securities Act, Department of Insurance. (*Sessional Papers, No. 38.*)

Also, Return to an Order of the House dated February 23rd, 1940, That there be laid before this House a Return showing—1. What purchases of coal were made by the Government during the fiscal year ended March 31st, 1939, indicating (*a*) the institutions or buildings for which coal was purchased, (*b*) the kinds and quantities of coal supplied by each dealer, to each institution, (*c*) the per ton price with respect to each purchase, (*d*) the total amount paid to each dealer with respect to coal supplied to each institution or building. 2. Was the coal purchased on a tender basis. 3. Were tenders advertised for, and if so, when and in what newspapers. 4. Was each dealer who so desired allowed to tender. 5. What was the total quantity of Nova Scotia coal purchased by the Government in the fiscal year ended March 31st, 1939. (*Sessional Papers, No. 39.*)

The House then adjourned at 5.40 p.m.

FRIDAY, FEBRUARY 21ST, 1941

PRAYERS. 3 O'CLOCK P.M.

The following Petitions were read and received—

Of the Corporation of the City of Ottawa, praying that an Act may pass extending until the close of the war the time for expropriating certain lands for the widening of Gladstone Avenue.

Of Harold P. Wright, Richard Dawson and George Appleton, praying that an Act may pass incorporating the Petitioners and others as the Society of Cost and Industrial Accountants of Ontario.

Of the London Street Railway Company and the Corporation of the City of London, praying that an Act may pass validating a by-law of the said Corporation and certain agreements between the two parties.

Of the Trustees of the Rockwood Town Hall, the Trustees of the Police Village of Rockwood and the Municipal Council of the Township of Eramosa, praying that an Act may pass vesting the Rockwood Town Hall in the Township of Eramosa in Trust for the Police Village of Rockwood.

Of the Corporation of the Town of Orillia, praying that an Act may pass authorizing the extension of the water power developments of the said Corporation.

Of the Corporation of the City of Port Arthur and the Public Utilities Commission of the City of Port Arthur, praying that an Act may pass authorizing the establishment of a depreciation fund and the installation of an automatic telephone system by the said Public Utilities Commission.

Of the Corporation of the Township of West Gwillimbury, praying that an Act may pass confirming certain by-laws in connection with the assessment and taxation of certain lands in the Holland Marsh.

Of the Corporation of the Village of Swansea, praying that an Act may pass to compel owners of property to connect their premises with the storm sewers, to compel the installation of sanitary conveniences and for other purposes.

Of the National Steel Car Corporation, Limited, and others, praying that an Act may pass incorporating a Company to be known as Malton Water Company for the purpose of supplying water to the Company's plant and to other parties.

Of the National Steel Car Corporation, Limited, praying that an Act may pass validating certain agreements made with various municipal corporations and permitting the Company to operate a sewerage and drainage system as provided by the said agreements.

Of the Corporation of the County of Carleton, praying that an Act may pass to restrict the exemption from taxation of farm lands belonging to the University of Ottawa.

Of the Board of Governors of Appleby School, praying that an Act may pass changing the designation of "Appleby School" to "Appleby College" and to alter the method of electing the Board of Governors.

Of certain Lodges of the Independent Order of Oddfellows in Hamilton, praying that an Act may pass authorizing the investment of Lodge funds in a Company known as the I.O.O.F. Temple, Limited.

Of the Board of Management of the Daughters of the Empire Preventorium, and others, praying that an Act may pass to incorporate the Daughters of the Empire Hospital for Convalescent Children.

Of the Board of Trustees of the Roman Catholic Separate Schools for the City of Toronto, praying that an Act may pass authorizing the Petitioners and others to amalgamate any separate School Districts desirous of doing so into one School District.

Of the Rector and Churchwardens of St. George's Church, Guelph, praying that an Act may pass validating and confirming the purchase by the Petitioners of the real estate and other property of the Priory Club of Guelph.

Of the Trusts and Guarantee Company, Limited, praying that an Act may pass to confirm an agreement between the Petitioners and the Borough of the Town of Colne, England, respecting the Estate of the late Peter Birtwistle.

Of the Corporation of the City of Windsor, praying that an Act may pass to legalize certain retiring allowances being paid to employees of the Corporation, to vest in the Corporation the property of the Border Housing Company and for other purposes.

Of the Corporation of the City of Toronto, praying that an Act may pass to validate retiring allowances to certain employees, to deviate from The Assessment Act so as to permit the use of Mechanical Book-keeping methods and for other purposes.

Of the Corporation of the Township of Teck, praying that an Act may pass to permit the Township to assess the Temiskaming Telephone Co. under Sections 12 and 13 of The Assessment Act, to control the type of buildings to be used for business purposes and for other purposes.

Mr. Conant from the Select Committee appointed to enquire into the Administration of Justice presented the report of the Committee and recommended that it be printed as an appendix to the Journals of the House.

Ordered, That the Report be printed as an appendix to the Journals of the House.

Mr. Freeborn from the Select Committee appointed to strike the Select Standing Committees of the House presented its report which was read as follows, and adopted:—

Your Committee recommends that the Standing Committees of the House as listed hereunder be composed as follows:—

COMMITTEE ON STANDING ORDERS

The Honourable Mr. Hepburn, Messrs. Anderson, Arnott, Baker, Bélanger, Black, Brownridge, Campbell (Kent East), *Carr, Cooper, Croll, Croome, Drew, Duckworth, Elgie, Elliott, Fairbank, Fletcher, Frost, Gardhouse, Glass, Guthrie, Habel, Henry, Houck, Kennedy, King, Lamport, Laurier, Macfie, MacGillivray, MacKay, Miller, Murray, Nixon* (Brant), *Nixon* (Temiskaming), *Oliver, Patterson, Sinclair, Strachan, Welsh*—41.

The Quorum of the said Committee to consist of seven Members.

COMMITTEE ON PRIVILEGES AND ELECTIONS

The Honourable Mr. Hepburn, Messrs. Armstrong, Baker, Bélanger, Black, Brownridge, Carr, Conacher, Conant, Cooper, Croll, Croome, Cross, Dewan, Drew, Duckworth, Duncan, Elgie, Elliott, Fletcher, Freeborn, Frost, Glass, Gordon, Hagey, Heenan, Henry, Hipel, Hunter, Kennedy, King, Kirby, Laurier, Macaulay, Murphy, Murray, McArthur, McQuesten, Nixon (Brant), *Nixon* (Temiskaming), *Oliver, Patterson, Stewart, Strachan, Welsh*—45.

The Quorum of the said Committee to consist of nine Members.

COMMITTEE ON RAILWAYS

The Honourable Mr. Hepburn, Messrs. Acres, Anderson, Armstrong, Arnott, Baker, Bradley, Brownridge, Campbell (Kent East), *Campbell* (Sault Ste. Marie), *Carr, Challies, Conacher, Cooper, Cox, Croome, Dewan, Dickson, Doucett, Duckworth, Dunbar, Duncan, Elgie, Glass, Gordon, Habel, Hagey, Haines, Heenan, Henry, Hepburn* (Prince Edward-Lennox), *Hipel, Hunter, Kelly, Kennedy, Kirby, Macaulay, Macfie, Mercer, Murphy, Murray, McEwing, McQuesten, Nixon* (Temiskaming), *Oliver, Patterson, Reynolds, Sinclair, Smith, Spence, Strachan, Summerville, Trottier, Welsh*—54.

The Quorum of the said Committee to consist of nine Members.

COMMITTEE ON PRIVATE BILLS

The Honourable Mr. Hepburn, Messrs. Acres, Anderson, Armstrong, Arnott, Baker, Ballantyne, Bégin, Bélanger, Bethune, Black, Blakelock, Brownridge, Campbell (Kent East), *Carr, Challies, Conacher, Conant, Cooper, Cox, Croll, Croome, Cross, Dewan, Dickson, Doucett, Downer, Drew, Duckworth, Dunbar, Duncan, Elgie, Elliott, Fairbank, Fletcher, Freeborn, Frost, Gardhouse, Glass, Hagey, Haines, Henry, Hepburn* (Prince Edward-Lennox), *Hipel, Houck, Hunter, Kelly, Kennedy, King, Kirby, Lamport, Laurier, Macaulay, Macfie, MacKay, Miller, Murphy, Murray, McArthur, McEwing, McQuesten, Newlands, Nixon* (Brant), *Nixon* (Temiskaming), *Oliver, Patterson, Reynolds, Sinclair, Smith, Stewart, Strachan, Summerville, Trottier, Welsh*—74.

The Quorum of the said Committee to consist of nine Members.

COMMITTEE ON PUBLIC ACCOUNTS

The Honourable Mr. Hepburn, Messrs. Acres, Anderson, Armstrong, Arnott, Baker, Ballantyne, Bélanger, Black, Blakelock, Bradley, Brownridge, Campbell (Kent East), *Carr, Challies, Conant, Cooper, Cox, Cross, Dewan, Dickson, Doucett, Downer, Drew, Duckworth, Dunbar, Duncan, Elgie, Elliott, Fairbank, Fletcher, Freeborn, Frost, Gardhouse, Glass, Gordon, Habel, Hagey, Heenan, Henry, Hipel, Houck, Kelly, Kennedy, King, Kirby, Lamport, Laurier, Macaulay, Macfie, MacGillivray, MacKay, Mercer, Miller, Murphy, Murray, McArthur, McEwing, McQuesten, Newlands, Nixon* (Brant), *Nixon* (Temiskaming), *Oliver, Patterson, Reynolds, Smith, Stewart, Strachan, Welsh.*—69.

The Quorum of the said Committee to consist of nine Members.

COMMITTEE ON PRINTING

The Honourable Mr. Hepburn, Messrs. Acres, Bégin, Bélanger, Campbell (Kent East), *Challies, Cholette, Conacher, Cooper, Croome, Downer, Dunbar, Duncan, Fairbank, Guthrie, Habel, Henry, Hunter, Kennedy, King, Kirby, Laurier, Murphy, McArthur, McEwing, Nixon* (Brant), *Nixon* (Temiskaming), *Strachan*—28.

The Quorum of the said Committee to consist of five Members.

COMMITTEE ON MUNICIPAL LAW

The Honourable Mr. Hepburn, Messrs. Anderson, Arnott, Ballantyne, Bégin, Bethune, Black, Blakelock, Bradley, Campbell (Kent East), *Carr, Challies, Cholette, Cooper, Cox, Croll, Cross, Dewan, Dickson, Doucett, Drew, Duckworth, Elgie, Elliott, Fletcher, Freeborn, Gardhouse, Glass, Gordon, Habel, Hagey, Haines, Henry, Hepburn* (Prince Edward-Lennox), *Hipel, Houck, Kelly, Kennedy, King, Kirby, Lamport, Macaulay, Macfie, MacGillivray, MacKay, Mercer, Miller, Murphy, Murray, McEwing, McQuesten, Newlands, Oliver, Sinclair, Smith, Spence, Stewart Strachan, Summerville, Trottier*—60.

The Quorum of the said Committee to consist of nine Members.

COMMITTEE ON LEGAL BILLS

The Honourable Mr. Hepburn, Messrs. Anderson, Arnott, Bélanger, Bethune, Bradley, Conant, Cooper, Cox, Croll, Cross, Drew, Elgie, Elliott, Fletcher, Frost, Gordon, Glass, Hagey, Henry, Kennedy, Kirby, Laurier, Macaulay, Murphy, McQuesten, Newlands, Stewart, Strachan—29.

The Quorum of the said Committee to consist of five Members.

COMMITTEE ON AGRICULTURE

The Honourable Mr. Hepburn, Messrs. Acres, Armstrong, Baker, Ballantyne, Bégin, Bethune, Black, Blakelock, Bradley, Brownridge, Campbell (Kent East), *Campbell* (Sault Ste. Marie), *Carr, Challies, Cholette, Croome, Dewan, Dickson, Doucett, Downer, Drew, Duckworth, Duncan, Fletcher, Freeborn, Frost, Gardhouse,*

Guthrie, Habel, Heenan, Henry, Hepburn (Prince Edward-Lennox), *Houck, Hunter, Kennedy, King, Macfie, MacGillivray, Mercer, Miller, Murphy, Murray, McEwing, Nixon* (Brant), *Nixon* (Temiskaming), *Oliver, Patterson, Reynolds, Sinclair, Spence, Strachan, Trottier, Welsh*—54.

The Quorum of the said Committee to consist of nine Members.

COMMITTEE ON FISH AND GAME

The Honourable Mr. Hepburn, Messrs. Acres, Armstrong, Baker, Ballantyne, Bélanger, Black, Blakelock, Bradley, Brownridge, Campbell (Kent East), *Campbell* (Sault Ste. Marie), *Carr, Challies, Cholette, Conacher, Cooper, Cox, Croome, Dewan, Dickson, Doucett, Drew, Duncan, Elgie, Elliott, Fairbank, Fletcher, Freeborn, Gardhouse, Gordon, Guthrie, Habel, Haines, Heenan, Henry, Hepburn* (Prince Edward-Lennox), *Hunter, Kelly, Kennedy, Kirby, Lamport, Macfie, MacGillivray, Mercer, Miller, Murphy, Murray, McEwing, Newlands, Nixon* (Brant), *Nixon* (Temiskaming), *Oliver, Patterson, Reynolds, Sinclair, Smith, Spence, Strachan, Trottier, Welsh*—61.

The Quorum of the said Committee to consist of nine Members.

COMMITTEE ON LABOUR

The Honourable Mr. Hepburn, Messrs. Anderson, Arnott, Blakelock, Challies, Cholette, Conacher, Cross, Dickson, Drew, Duckworth, Dunbar, Elliott, Fairbank, Frost, Gardhouse, Glass, Gordon, Haines, Hagey, Heenan, Hipel, Kelly, Kennedy, King, Kirby, Macaulay, MacKay, McArthur, Newlands, Oliver, Smith, Spence, Stewart, Strachan, Trottier—36.

The Quorum of the said Committee to consist of seven Members.

On motion by Mr. Hepburn (Elgin), seconded by Mr. Nixon (Brant),

Ordered, That Mr. Patterson be appointed as Chairman of the Committee of the Whole House for the present Session.

On motion by Mr. Hepburn (Elgin), seconded by Mr. Nixon (Brant),

Ordered, That a Select Committee be appointed to act with Mr. Speaker in the control and management of the Library, to be composed as follows:—

Messrs. Armstrong (Chairman), Arnott, Bélanger, Black, Duncan, Fairbank, Henry, King and Laurier.

On motion by Mr. Hepburn (Elgin), seconded by Mr. Nixon (Brant),

Ordered, That a Select Committee be appointed to direct the expenditure of any sum set apart in the estimates for art purposes, to be composed as follows:—

Messrs. Hunter (Chairman), Bélanger, Black, Kelly, Kennedy, McQuesten, Murray, Oliver and Patterson.

The following Bills were severally introduced and read the first time:—

Bill (No. 26), intituled, "An Act to amend The Sheriffs Act." *Mr. Conant*

Ordered, That the Bill be read a second time on Monday next.

Bill (No. 27), intituled, "An Act to amend The Administration of Justice Expenses Act." *Mr. Conant.*

Ordered, That the Bill be read a second time on Monday next.

Bill (No. 28), intituled, "An Act to amend The County Judges Act." *Mr. Conant.*

Ordered, That the Bill be read a second time on Monday next.

Bill (No. 29), intituled, "The Mortgagors' and Purchasers' Relief Act, 1941." *Mr. Conant.*

Ordered, That the Bill be read a second time on Monday next.

Bill (No. 30), intituled, "An Act to amend The Surrogate Courts Act." *Mr. Conant.*

Ordered, That the Bill be read a second time on Monday next.

Bill (No. 31), intituled, "An Act to amend The Registry Act." *Mr. Conant.*

Ordered, That the Bill be read a second time on Monday next.

Bill (No. 32), intituled, "An Act to amend The Devolution of Estates Act." *Mr. Conant.*

Ordered, That the Bill be read a second time on Monday next.

Bill (No. 33), intituled, "An Act to amend The Public Health Act." *Mr. Kirby.*

Ordered, That the Bill be read a second time on Monday next.

Bill (No. 34), intituled, "An Act to amend The Private Hospitals Act." *Mr. Kirby.*

Ordered, That the Bill be read a second time on Monday next.

Bill (No. 35), intituled, "An Act to amend The Plant Diseases Act." *Mr. Dewan.*

Ordered, That the Bill be read a second time on Monday next.

The Provincial Secretary presented to the House, by command of the Honourable the Lieutenant-Governor:—

Annual Report of the Civil Service Commissioner of Ontario for year ending March 31st, 1940. (*Sessional Papers, No. 37.*)

The House then adjourned at 3.30 p.m.

MONDAY, FEBRUARY 24TH, 1941

PRAYERS. 3 O'CLOCK P.M.

The following Bill was introduced and read the first time:—

Bill (No. 36), intituled), "An Act to amend The Wolf Bounty Act." *Mr. Nixon* (Brant).

Ordered, That the Bill be read a second time to-morrow.

The following Bills were severally read the second time:—

Bill (No. 26), An Act to amend The Sheriffs Act.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 27), An Act to amend The Administration of Justice Expenses Act.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 28), An Act to amend The County Judges Act.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 29), The Mortgagors' and Purchasers' Relief Act, 1941.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 30), An Act to amend The Surrogate Courts Act.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 31, An Act to amend The Registry Act.

Referred to a Committee of the Whole House to-morrow.

The House then adjourned at 3.30 p.m.

TUESDAY, FEBRUARY 25TH, 1941

PRAYERS. 3 O'CLOCK P.M.

The following Petition was brought up and laid upon the Table:—

By Mr. Cooper, the Petition of the Corporation of the City of Sudbury.

Mr. Glass, from the Standing Committee on Standing Orders, presented their First Report which was read as follows and adopted:—

Your Standing Committee on Standing Orders has carefully examined the following petitions and finds the notices as published in each case sufficient.

Of the Corporation of the County of Carleton, praying that an Act may pass to restrict the exemption from taxation of farm lands belonging to the University of Ottawa.

Of the Board of Governors of Appleby School, praying that an Act may pass changing the designation of "Appleby School" to "Appleby College" and to alter the method of electing the Board of Governors.

Of certain Lodges of the Independent Order of Oddfellows in Hamilton, praying that an Act may pass authorizing the investment of Lodge funds in a Company known as the I.O.O.F. Temple, Limited.

Of Harold P. Wright, Richard Dawson and George Appleton, praying that an Act may pass incorporating the Petitioners and others as the Society of Cost and Industrial Accountants of Ontario.

Of the Corporation of the Township of West Gwillimbury, praying that an Act may pass confirming certain by-laws in connection with the assessment and taxation of certain lands in Holland Marsh.

Of the Corporation of the Village of Swansea, praying that an Act may pass to compel owners of property to connect their premises with the storm sewers, to compel the installation of sanitary conveniences and for other purposes.

Of the Corporation of the City of Windsor, praying that an Act may pass to legalize certain retiring allowances being paid to employees of the Corporation, to vest in the Corporation the property of the Border Housing Company and for other purposes.

Of the Corporation of the City of Toronto, praying that an Act may pass to validate retiring allowances to certain employees, to deviate from The Assessment Act so as to permit the use of mechanical book-keeping methods and for other purposes.

Of the Corporation of the City of Ottawa, praying that an Act may pass extending until after the close of the war the time for expropriating certain lands for the widening of Gladstone Avenue.

Of the Trusts and Guarantee Corporation, praying that an Act may pass to confirm an agreement between the Petitioners and the Borough of Colne, England, respecting the estate of the late Peter Birtwistle.

The following Bills were severally introduced and read the first time:—

Bill (No. 37), intituled, "An Act to amend The Judicature Act." *Mr. Conant.*

Ordered, That the Bill be read a second time to-morrow.

Bill (No. 38), intituled, "An Act to amend The General Sessions Act." *Mr. Conant.*

Ordered, That the Bill be read a second time to-morrow.

Bill (No. 39), intituled, "An Act to amend The Collection Agencies Act, 1939." *Mr. Conant.*

Ordered, That the Bill be read a second time to-morrow.

Bill (No. 2), intituled, "An Act to incorporate the Society of Industrial and Cost Accountants of Ontario." *Mr. Newlands.*

Referred to the Committee on Private Bills.

Bill (No. 12), intituled, "An Act respecting the County of Carleton and the University of Ottawa." *Mr. Bégin.*

Referred to the Committee on Private Bills.

Bill (No. 13), intituled, "An Act respecting Appleby School." *Mr. Blakelock.*

Referred to the Committee on Private Bills.

Bill (No. 1), intituled, "An Act respecting the City of Ottawa." *Mr. Dunbar.*

Referred to the Committee on Private Bills.

Bill (No. 7), intituled, "An Act respecting the Township of West Gwillimbury." *Mr. Baker.*

Referred to the Committee on Private Bills.

Bill (No. 14), intituled, "An Act respecting Certain Lodges of the Grand Lodge of Ontario, Independent Order of Oddfellows." *Mr. Newlands.*

Referred to the Committee on Private Bills.

Bill (No. 18), intituled, "An Act respecting a Trust Settlement of the late Peter Birtwistle and the Corporation of the Borough of Colne (England)." *Mr. Strachan.*

The Order of the Day for resuming the Adjourned Debate on the Motion for consideration of the Speech of The Honourable the Lieutenant-Governor at the opening of the Session, having been read,

The Debate was resumed and, after some time,

Mr. Drew moved, seconded by Mr. Kennedy,

THAT the motion for an address in reply to the Speech from His Honour the Lieutenant-Governor be amended by adding thereto the following words:

"And the members of this Legislature are of the opinion that the Government of Ontario should convey a message to His Majesty's Government of the Dominion of Canada expressing the desire that a Conference of representatives of the Dominion and all provincial governments be convened as soon as possible for the following purposes:

"A. To adopt such measures as may be necessary to assure our greatest possible war effort by inter-governmental co-operation.

"B. To adopt such measures as may be necessary to meet the emergencies created by the war.

"C. To adopt such measures as may be necessary to assure adequate prices for our agricultural products.

"D. To adopt such measures as may be necessary to protect the established rights of Labour.

"E. To devise plans for the rehabilitation of the members of our armed forces and for the re-employment of civilians who will be thrown out of work by post-war industrial readjustments.

"And to consider such other questions relating to the welfare and security of our people as may be deemed advisable."

The Debate continued and, after some time, it was on the motion of Mr. Strachan,

Ordered, That the Debate be adjourned until Thursday next.

The House then adjourned at 5.10 p.m.

WEDNESDAY, FEBRUARY 26TH, 1941

PRAYERS. 3 O'CLOCK P.M.

The following Petition was read and received:—

Of the Corporation of the City of Sudbury, praying that an Act may pass validating a by-law of the Petitioners to impose a charge on certain citizens for the use of water from standpipes in the said City.

The following Bill was introduced and read the first time:—

Bill (No. 40), intituled, "An Act to amend The Partnership Registration Act." *Mr. Conant.*

Ordered, That the Bill be read a second time to-morrow.

The following Bills were severally read the second time:—

Bill (No. 25), An Act to amend The Legislative Assembly Act.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 33), An Act to amend The Public Health Act.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 34), An Act to amend The Private Hospitals Act.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 35), An Act to amend The Plant Diseases Act.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 36), An Act to amend The Wolf Bounty Act.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 38), An Act to amend The General Sessions Act.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 39), An Act to amend The Collection Agencies Act, 1939.

Referred to a Committee of the Whole House to-morrow.

The Provincial Secretary presented to the House, by command of the Honourable the Lieutenant-Governor:—

Report of the Minister of Lands and Forests of the Province of Ontario for year ending March 31st, 1940. (*Sessional Papers No. 3.*)

Also, Statement of the Legislative Grants apportioned to the Rural Public Schools and all Separate Schools for the year 1940, Department of Education. (*Sessional Papers No. 42.*)

The House then adjourned at 3.25 p.m.

THURSDAY, FEBRUARY 27TH, 1941

PRAYERS. 3 O'CLOCK P.M.

The Order of the Day for resuming the Adjourned Debate on the Amendment to the Motion for consideration of the Speech of The Honourable the Lieutenant-Governor at the opening of the Session, having been read,

The Debate was resumed and, after some time, it was on the motion of Mr. Freeborn,

Ordered, That the Debate be adjourned until Tuesday next.

The Provincial Secretary presented to the House, by command of the Honourable the Lieutenant-Governor:—

Supplementary Report of The Ontario Department of Public Welfare in connection with the programme to place British children in Ontario homes for the duration of the War. (*Sessional Papers No. 43.*)

The House then adjourned at 5.05 p.m.

FRIDAY, FEBRUARY 28TH, 1941

PRAYERS. 3 O'CLOCK P.M.

The following Bills were severally introduced and read the first time:—

Bill (No. 41), intituled, "An Act to amend The Magistrate's Act." *Mr. Strachan.*

Ordered, That the Bill be read a second time on Monday next.

Bill (No. 42), intituled, "An Act to amend The Real Estate Brokers Act." *Mr. Conant.*

Ordered, That the Bill be read a second time on Monday next.

Bill (No. 43), intituled, "An Act to amend The Conditional Sales Act." *Mr. Conant.*

Ordered, That the Bill be read a second time on Monday next.

Mr. Duckworth asked the following Question (No. 1):—

1. What payments have been made to Dr. W. H. Avery of the City of Toronto by the Government since the present administration took offices and in relation to what services.

The Honourable the Minister of Health replied as follows:—

1. $2,421.40—Coroner—1937, 1938, 1939 and 1940; $3,850.00—Member of Royal Commission re Mental Hospitals, 1938-1939; $4,250.00—Medical Consultant, Department of Health, October 1st, 1939-February 28th, 1941; $455.36—Travelling Expenses.

Mr. Reynolds asked the following Question (No. 10):—

1. During the calendar year 1940, how many tons of lignite have been mined by the Government in the Northern Ontario fields. 2. To what extent has Northern Ontario lignite been used commercially by the Temiskaming and Northern Ontario Railway or otherwise. 3. How many tons of Northern Ontario lignite have been blocked out and what is the basis of such estimate. 4. Has the Government determined the possibility of briquetting or otherwise treating Northern Ontario lignite with a view to extending its general use as a commercial fuel. 5. What amount has the Government spent during the calendar year 1940 in generally exploring, developing and mining the Northern Ontario lignite fuel beds.

The Honourable the Minister of Mines replied as follows:—

1. 200 tons for testing purposes only. 2. Only in an experimental way in the making of certain burning tests. 3. Two areas totalling 200 acres show a definite commercial tonnage of 7,000,000 tons. Other potential areas are known to exist and drilling on these areas is progressing. 4. No recent tests have been made in briquetting. Tests have, however, been made in steam drying with very satisfactory results. 5. $23,418.58.

Mr. Black asked the following Question (No. 12):—

1. What is the rate of Crown Dues as to spruce pulpwood cut from Crown lands. 2. Is any reduction in Crown Dues in effect at the present time and if so, when was it made effective, giving particulars. 3. What is the present rate of Crown Dues on other classes of pulpwood. 4. Are any special reductions in effect at the present time in relation to pulpwood other than spruce and if so, state particulars.

The Honourable the Minister of Lands and Forests replied as follows:—

1. $1.40 per cord. 2. Yes. By Order-in-Council dated May 10th, 1940, Spruce Pulpwood cut from Crown Lands up to April 1st, 1941, is subject to a reduction of 40 cents from the regular Crown Dues of $1.40 per cord. Spruce Pulpwood cut from Crown Lands and authorized to be exported is not subject to any reduction from the regular Crown Dues of $1.40 per cord. 3. Balsam Pulpwood, 70c. per cord; other Pulpwood, 40c. per cord. 4. No.

Mr. Duckworth asked the following Question (No. 35):—

1. What is the present salary of Mr. Chester S. Walters. 2. Are Mr. Walters' titles and duties still as the Legislative Assembly was informed on March 6th, 1936 (Question No. 78), and if not, specify changes. 3. What amounts have been paid Mr. Chester S. Walters by way of travelling or other expenses: (*a*) In the fiscal year ended March 31st, 1940; (*b*) In the current fiscal year.

The Honourable the Prime Minister and Provincial Treasurer replied as follows:—

1. $10,000.00 per annum for 2 positions—Controller of Finances and Deputy Provincial Treasurer. 2. No. He relinquished the position of Deputy Minister of Public Works on July 1st, 1937. 3. (*a*) $1,014.00—Expenses to Australia and return; (*b*) None.

The following Bills were severally read the second time:—

Bill (No. 32), An Act to amend The Devolution of Estates Act.

Referred to a Committee of the Whole House on Monday next.

Bill (No. 37), An Act to amend The Judicature Act.

Referred to a Committee of the Whole House on Monday next.

Bill (No. 40), An Act to amend The Partnership Registration Act.

Referred to a Committee of the Whole House on Monday next.

The House resolved itself into a Committee to consider Bill (No. 26), An Act to amend The Sheriffs Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time on Monday next.

The House resolved itself into a Committee to consider Bill (No. 27), An Act to amend The Administration of Justice Expenses Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time on Monday next.

The House resolved itself into a Committee to consider Bill (No. 28), An Act to amend The County Judges Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time on Monday next.

The House resolved itself into a Committee to consider Bill (No. 29), The Mortgagors' and Purchasers' Relief Act, 1941, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time on Monday next.

The House resolved itself into a Committee to consider Bill (No. 30), An Act to amend The Surrogate Courts Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time on Monday next.

The House resolved itself into a Committee to consider Bill (No. 31), An Act to amend The Registry Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time on Monday next.

The House resolved itself into a Committee to consider Bill (No. 25), An Act to amend The Legislative Assembly Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time on Monday next.

The House resolved itself into a Committee to consider Bill (No. 33), An Act to amend The Public Health Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time on Monday next.

The House resolved itself into a Committee to consider Bill (No. 34), An Act to amend The Private Hospitals Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time on Monday next.

The House resolved itself into a Committee to consider Bill (No. 35), An Act to amend The Plant Diseases Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time on Monday next.

The House resolved itself into a Committee to consider Bill (No. 36), An Act to amend The Wolf Bounty Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time on Monday next.

The House resolved itself into a Committee to consider Bill (No. 38), An Act to amend The General Sessions Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time on Monday next.

The House resolved itself into a Committee to consider Bill (No. 39), An Act to amend The Collection Agencies Act, 1939, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time on Monday next.

The Provincial Secretary presented to the House, by command of the Honourable the Lieutenant-Governor:—

Report of the Department of Labour of the Province of Ontario for year ending March 31st, 1940. (*Sessional Papers No. 10.*)

The House then adjourned at 4.15 p.m.

MONDAY, MARCH 3RD, 1941

PRAYERS. 3 O'CLOCK P.M.

The following Bills were severally introduced and read the first time:—

Bill (No. 44), intituled, "An Act to amend The Costs of Distress Act." *Mr. Conant.*

Ordered, That the Bill be read a second time on Wednesday next.

Bill (No. 45), intituled, "An Act respecting Bailiffs." *Mr. Conant.*

Ordered, That the Bill be read a second time on Wednesday next.

Bill (No. 46), intituled, "An Act to amend The Companies Act." *Mr. Nixon* (Brant).

Ordered, That the Bill be read a second time on Wednesday next.

Mr. Summerville asked the following Question (No. 3):—

1. Who is the owner of the Royal Cecil Hotel in Toronto. 2. What is the name of the Authority holder. 3. When was the Authority first issued. 4. Has the Authority at any time been suspended and if so when, for what periods and why.

The Honourable the Prime Minister replied as follows:—

1, 2 and 3. A Standard Hotel License was issued to James Franceschini in 1932. In July, 1934, an authority in connection with these premises was issued to the Dufferin Construction Co., Limited, and continued in this name since. Since July, 1940, these premises have been operated under the control and supervision of Price, Waterhouse and Co., Chartered Accountants, who are the local representatives of the Custodian of Enemy Property. 4. No.

Mr. Murphy asked the following Question (No. 31):—

1. What was the total number of Liquor Control Board stores when the present Government took office. 2. Since the present Government took office how many stores have been opened by the Liquor Control Board, specifying: (*a*) Location of store; (*b*) Date of opening in each case. 3. Since the present Government took office how many stores have been closed by the Liquor Control Board, specifying: (*a*) Location; (*b*) Date of closing; (*c*) Reason for closing. 4. How many Liquor Control Board stores were in operation on December 31st, 1940.

The Honourable the Prime Minister replied as follows:—

1. 124. 2. 6 Stores opened as follows: Tilbury, May 29th, 1935; Morrisburg, June 8th, 1935; South Porcupine, Feb. 15th, 1936; Collingwood, June 28th, 1938; Geraldton, July 21st, 1938; Bracebridge, June 29th, 1939. 3. 1 Store closed, namely: (*a*) 334 London Street, Windsor; (*b*) January 18th, 1936; (*c*) It was found that satisfactory service to the public could be given in Windsor with four stores in operation instead of five. 4. 129.

Mr. Murphy asked the following Question (No. 32):—

1. How many persons are employed as censors in the stores operated by the Liquor Control Board of Ontario. 2. What is their average salary.

The Honourable the Prime Minister replied as follows:—

1. There is no position in the service of the Liquor Control Board which is classed as that of "Censor". It is presumed that information is desired with respect to permit endorsers and issuers. In 45 stores, 62 employees are engaged in endorsing and issuing permits. In the remaining 84 stores, this work is done by employees who spend the greater part of their time on other store work. 2. $29.00 per week.

Mr. Murphy asked the following Question (No. 33):—

1. What was the total amount paid by the Department of Game and Fisheries to any other Department of the Government in relation to enforcement of Game and Fish laws between April 1st, 1937, and March 31st, 1940, and from April 1st, 1940, to December 31st, 1940, indicating the amounts paid to the respective Departments.

The Honourable the Provincial Secretary replied as follows:—

1.	Apr. 1st, 1937, to Mar. 31st, 1940	April 1st, 1940, to Dec. 31st, 1940
Ontario Provincial Police.....	$5,538.41	$804.16
Ontario Provincial Air Service.....	748.00	65.00
	$6,286.41	$869.16

The following Bills were read the third time and were passed:—

Bill (No. 26), An Act to amend The Sheriffs Act.

Bill (No. 27), An Act to amend The Administration of Justice Expenses Act.

Bill (No. 28), An Act to amend The County Judges Act.

Bill (No. 29), The Mortgagors' and Purchasers' Relief Act, 1941.

Bill (No. 30), An Act to amend The Surrogate Courts Act.

Bill (No. 31), An Act to amend The Registry Act.

Bill (No. 25), An Act to amend The Legislative Assembly Act.

Bill (No. 33), An Act to amend The Public Health Act.

Bill (No. 34), An Act to amend The Private Hospitals Act.

Bill (No. 35), An Act to amend The Plant Diseases Act.

Bill (No. 36), An Act to amend The Wolf Bounty Act.

Bill (No. 38), An Act to amend The General Sessions Act.

Bill (No. 39), An Act to amend The Collection Agencies Act, 1939.

The following Bills were severally read the second time:—

Bill (No. 41), An Act to amend The Magistrates Act.

Referred to the Committee on Legal Bills.

Bill (No. 42), An Act to amend The Real Estate Brokers Act.

Referred to a Committee of the Whole House on Wednesday next.

Bill (No. 43), An Act to amend The Conditional Sales Act.

Referred to a Committee of the Whole House on Wednesday next.

On the motion of Mr. Hepburn (Elgin), seconded by Mr. Nixon (Brant),

Ordered, That as a mark of respect to the memory of the late Sir Frederick Banting, and as an expression of the realization by this Legislative Assembly of Ontario of the great loss sustained by this, his native province, and by Canada, through his untimely and tragic death, when this House adjourns to-day it do stand adjourned until Wednesday next, the 5th instant.

The House then adjourned at 4.25 p.m.

WEDNESDAY, MARCH 5TH, 1941

PRAYERS. 3 O'CLOCK P.M.

The following Petitions were severally brought up and laid upon the Table:—

By Mr. Habel, the Petition of the Corporation of the Town of Timmins.

By Mr. Smith, the Petition of the Corporation of the County of Waterloo.

Mr. Elliott, from the Standing Committee on Private Bills, presented their First Report which was read as follows and adopted:—

Your Committee beg to report the following Bills without amendment:—

Bill (No. 1), An Act respecting the City of Ottawa.

Bill (No. 2), An Act to incorporate the Society of Industrial and Cost Accountants of Ontario.

Bill (No. 7), An Act respecting the Township of West Gwillimbury.

Bill (No. 13), An Act respecting Appleby School.

Your Committee beg to report the following Bill with one amendment:—

Bill (No. 12), An Act respecting the County of Carleton and the University of Ottawa.

Mr. Glass, from the Standing Committee on Standing Orders, presented their Second Report which was read as follows and adopted:—

Your Standing Committee on Standing Orders has carefully examined the following Petitions and finds the notices as published in each case sufficient:—

Of the London Street Railway Company and the Corporation of the City of London, praying that an Act may pass validating a by-law of the said Corporation and certain agreements between the two parties.

Of the National Steel Car Corporation Limited and others, praying that an Act may pass incorporating a Company to be known as the Malton Water Company for the purpose of supplying water to the Company's plant and to other parties.

Of the National Steel Car Corporation, Limited, praying that an Act may pass validating certain agreements made with various municipal corporations and

permitting the Company to operate a sewerage and drainage system as provided by the said agreements.

Of the Rector and Churchwardens of St. George's Church, Guelph, praying that an Act may pass validating and confirming the purchase by the Petitioners of the real estate and other property of the Priory Club of Guelph.

Of the Board of Trustees of the Roman Catholic Separate Schools for the City of Toronto, praying that an Act may pass authorizing the Petitioners and others to amalgamate any Separate School Districts desirous of doing so into one School District.

Of the Corporation of the City of Port Arthur and the Public Utilities Commission of the City of Port Arthur, praying that an Act may pass authorizing the establishment of a depreciation fund and the installation of an automatic telephone system by the said Public Utilities Commission.

Of the Board of Management of the Daughters of the Empire Preventorium praying that an Act may pass to incorporate the Daughters of the Empire Hospital for Convalescent Children.

Of the Trustees of the Rockwood Town Hall, the Trustees of the Police Village of Rockwood and the Municipal Council of the Township of Eramosa, praying that an Act may pass vesting the Rockwood Town Hall in the Township of Eramosa in trust for the Police Village of Rockwood.

Of the Corporation of the Town of Orillia, praying that an Act may pass authorizing the extension of the water power development of the said Corporation.

The following Bills were severally introduced and read the first time:—

Bill (No. 3), intituled, "An Act respecting the London Street Railway Company and the Corporation of the City of London." *Mr. Duncan.*

Referred to the Committee on Private Bills.

Bill (No. 4), intituled, "An Act respecting the Rockwood Town Hall." *Mr. McEwing.*

Referred to the Committee on Private Bills.

Bill (No. 5), intituled, "An Act respecting the Town of Orillia." *Mr. Frost.*

Referred to the Committee on Private Bills.

Bill (No. 6), intituled, "An Act respecting the City of Port Arthur and the Public Utilities Commission of Port Arthur." *Mr. Cox.*

Referred to the Committee on Private Bills.

Bill (No. 15), intituled, "An Act to incorporate the Daughters of the Empire Hospital for Convalescent Children." *Mr. Strachan.*

Referred to the Committee on Private Bills.

Bill (No. 8), intituled, "An Act respecting the Village of Swansea." *Mr. Gardhouse.*

Referred to the Committee on Private Bills.

Bill (No. 19), intituled, "An Act respecting the City of Windsor." *Mr. Fletcher.*

Referred to the Committee on Private Bills.

Bill (No. 47), intituled, "An Act to amend The Summary Convictions Act." *Mr. Conant.*

Ordered, That the Bill be read a second time to-morrow.

Bill (No. 48), intituled, "An Act to Confirm Tax Sales." *Mr. McQuesten.*

Ordered, That the Bill be read a second time to-morrow.

Bill (No. 49), intituled, "An Act respecting Business Brokers." *Mr. Conant.*

Ordered, That the Bill be read the second time to-morrow.

Mr. Challies asked the following Question (No. 4):—

1. What amounts have been spent for maintenance on the Long Lac diversion since the works have been put into operation for the driving of pulpwood by: (*a*) The Government of the Province of Ontario; (*b*) The Hydro-Electric Power Commission of Ontario. 2. Of the amounts spent for maintenance, what amounts have been repaid by the Pulpwood Supply Company, Limited, giving date and amount of each payment. 3. What amounts are still due the Government by the Pulpwood Supply Company, Limited, with respect to maintenance charges on the Long Lac diversion. 4. Are any persons employed in operation of sluices or other mechanisms in connection with dams or other works connected with the Long Lac diversion by the Government or by the Hydro-Electric Power Commission of Ontario and if so state: (*a*) Names; (*b*) Date appointed; (*c*) By whom paid; (*d*) Rate of remuneration; (*e*) Whether permanent, temporary or seasonal employees.

The Honourable the Minister of Lands and Forests replied as follows:—

1. (*a*) $115.31; (*b*) $198.05. 2. $198.05—Paid to Hydro-Electric Power Commission of Ontario, June 12th, 1940. 3. Nil. 4. (*a*) H. A. Johnson and H. Hart, by the Province; (*b*) H. A. Johnson, Oct. 26th, 1938, H. Hart, Aug. 9th, 1939; (*c*) Both by Province. (Half Johnson's wages charged back to Pulp-

wood Supply Co.); (*d*) H. A. Johnson, $3.00 per day, excluding Sundays; H. Hart, $2.75 per day, including Sundays; (*e*) Johnson—full-time temporary employee; Hart—part-time temporary employee. (Hart is gauge reader and watchman during winter months, and during summer months does this work incidental to fire-ranging.)

Mr. Kennedy asked the following Question (No. 7):—

1. What is the acreage of land acquired in connection with the Ontario Hospital at Brampton. 2. For each of the fiscal years ending March 31st, 1939, and March 31st, 1940, and for the period April 1st, 1940, to January 31st, 1941, what amounts were expended by the Government on ordinary account in relation to the Ontario Hospital at Brampton. 3. Of the amounts mentioned in (2) what amounts in each period mentioned were in relation to farm operation. 4. Who are the employees at the Ontario Hospital at Brampton, specifying: (*a*) Name; (*b*) Title and duties; (*c*) Rates of remuneration.

The Honourable the Minister of Health replied as follows:—

1. 300 acres.

2. (*a*) Ordinary accounts for fiscal year ending March 31st, 1939—

Farm Expenses	$1,278.55	
Salaries	150.00	
		$1,428.55

(*b*) Ordinary accounts for fiscal year ending March 31st, 1940—

Supplies and Repairs	$5,660.49	
Salaries	162.50	
		$5,822.99

(*c*) Ordinary accounts April 1st, 1940, to January 31st, 1941—

Supplies and Repairs	$2,979.72	
Salaries	1,165.14	
Public Works Expenditure	275.73	
		$4,420.69

3. Total amounts for each fiscal year were charged to farm operation, except $275.73 spent by Public Works Department.

4. Charles E. McLean, Farm Hand, Group 2, duties—Farm Hand and Watchman—$900. Joseph B. Strangways, Farm Hand, Group 2, duties—Farm Hand and Watchman—$825.

Mr. Spence asked the following Question (No. 15):—

1. What was the total amount spent up to December 31st, 1940, on the Ogoki Diversion project by: (*a*) The Hydro-Electric Power Commission of Ontario; (*b*) The Government of the Province of Ontario. 2. What is the estimated cost of finishing the project. 3. What contractors were employed on the work and what amount was paid to each and by whom. 4. Was any of the work done by day labour; if so what amount was spent in this connection and by whom. 5. Is

any work being done on the project at the present time and if so, give particulars. 6. Does any benefit enure to the Province by reason of the work done to date, and, if so, give particulars.

The Honourable the Prime Minister replied as follows:—

1. (*a*) $167,912.49; (*b*) Nil. 2. $5,072,373.49. 3. Crawley & McCracken Co., Ltd. (boarding camps), $11,640.80 by the Hydro-Electric Power Commission of Ontario. Starrat Airways & Transportation Co., Ltd. (freight transportation). No payments made up to December 31st, 1940. 4. All construction done by day labour. $9,348.90 paid by Hydro-Electric Power Commission of Ontario. 5. Work is proceeding on transportation of materials and equipment and the erection of camps. 6. The Province benefits by the use of an additional 5,000 c.f.s. of water at Niagara, from which the Hydro-Electric Power Commission of Ontario generates additional power, and for which the Province of Ontario receives increased water rentals.

Mr. Challies asked the following Question (No. 16):—

1. What amounts have been paid (1) by private companies, (2) Hydro-Electric Power Companies to the Government of Ontario in the form of water rentals for the years 1936-1940 inclusive.

The Honourable the Prime Minister replied as follows:—

1.	1936	$273,974.82
	1937	237,753.57
	1938	256,762.11
	1939	249,656.54
	1940	240,116.46
2.	1936	$119,044.58
	1937	139,659.23
	1938	171,111.39
	1939	156,362.63
	1940	162,412.98

In addition to the above, the following amounts for rentals covering the Queenston Power Plant, Electrical Development Plant and the Ontario Power Co. were paid to the Niagara Falls Park Commission:

1936	$461,708.12
1937	459,744.45
1938	419,576.82
1939	427,196.54
1940	456,610.02

Mr. Challies asked the following Question (No. 17):—

1. What total amounts have been paid in the form of or in lieu of taxes by the Hydro-Electric Power Commission for plants, etc., on the Niagara River to any Municipality for the years 1936-1940 inclusive.

The Honourable the Prime Minister replied as follows:—

CHIPPAWA VILLAGE TAXES—

1936	$ 863.99	
1937	842.12	
1938	858.59	
1939	858.43	
1940	824.48	
		$ 4,247.61

GRANTHAM TOWNSHIP TAXES—

1936 Ordinary Taxes	$4,497.84	
1936 School Taxes	3,209.66	
Adjustment of School Taxes for Years 1933 to 1935 inclusive paid during year 1936	7,825.28	
		$15,532.78
1937	14,101.88	
1938	14,000.00	
1939	14,162.04	
1940	14,086.12	
		$ 71,882.82

CITY OF NIAGARA FALLS TAXES—

1936	$50,000.00	
1937	78,070.35	
1938	77,779.67	
1939	77,653.11	
1940	77,545.95	
		$361,049.08

NIAGARA TOWNSHIP TAXES—

1936	$ 402.50	
1937	414.43	
1938	372.78	
1939	355.32	
1940	338.46	
		$ 1,883.49

STAMFORD TOWNSHIP TAXES—

1936	$45,000.00	
1937	75,000.00	
1938	75,000.00	
1939	75,000.00	
1940	75,000.00	
		$345,000.00

WILLOUGHBY TOWNSHIP TAXES—

1936	$ 5.15	
1937	5.04	
1938	5.04	
1939	5.06	
1940	4.74	
		$ 25.03

Taxes paid by H.E.P.C. to Municipalities on Niagara River, 1936 to 1940 inclusive $784,088.03

Mr. Challies asked the following Question (No. 18):—

1. What system or systems secured power from the Chats Falls Plant during the Hydro year 1939-40, and what was the 20-minute peak in horse-power per month in each case. 2. What system or systems were charged for the carrying charges of the frequency changer at the Chats Falls plant and what was the yearly charge and how allocated.

The Honourable the Prime Minister replied as follows:—

1. Niagara 25 cycle system and Eastern Ontario System.

20-MINUTE PEAKS DELIVERED

	Niagara 25 cycle System	Eastern Ontario System
November, 1939	227,882 H.P.	28,820 H.P.
December	227,212 "	28,485 "
January, 1940	227,882 "	28,485 "
February	218,498 "	0 "
March	190,348 "	0 "
April	221,180 "	0 "
May	219,840 "	26,469 "
June	184,986 "	0 "
July	193,029 "	27,480 "
August	197,050 "	0 "
September	195,710 "	13,619 "
October	219,840 "	8,311 "

2. Niagara System. These carrying charges were allocated against all power users in the Niagara System in proportion to the horse-power load sold to each during the first 10 months of the year. From September 1st due to a change in conditions under which power was delivered the rate was changed whereby the Eastern Ontario system was charged $35,000 per year; this figure representing half the estimated fixed and operating charges of the frequency changer set. This charge for the months of September and October, 1940, amounted to $5,833.34.

Total Charges Fiscal Year 1939-40—$70,763.88.

Niagara System share—$64,930.54.

Eastern Ontario share—$5,833.34.

Mr. Challies asked the following Question (No. 19):—

What is the total amount paid by Ontario Rural Hydro users under the 8% Dominion War Tax for the Hydro year 1939-40.

The Honourable the Prime Minister replied as follows:—

$331,001.65.

Mr. Challies asked the following Question (No. 20):—

Have any new contracts or extension of previous contracts or agreement or understanding been made with any Quebec Power Company since May, 1937, in reference to supply of Electric Energy. If any, give names of Companies and particulars as to (*a*) Amount of energy; (*b*) Load Factor; (*c*) Date; (*d*) Price; (*e*) Point of delivery; (*f*) Voltage.

The Honourable the Prime Minister replied as follows:—

Four contracts, each dated 14th December, 1937, were validated by Ontario Statute of 1938, Chapter 27, where they are printed in full as schedules of the Act. They are with the following companies:

1. 60-cycle—Gatineau Power Company,
2. 25-cycle—Gatineau Power Company,
3. Beauharnois Light, Heat and Power Company,
4. Maclaren-Quebec Power Company.

In addition, in accordance with the said 1937 contract with Maclaren-Quebec Power Company, the Commission advanced to 1st July, 1940, the increase of 20,000 horse-power due 1st November, 1940, making the contract demand 80,000 horse-power.

Also an understanding has been reached for advancing to 1st November, 1941, the next block of 20,000 horse-power due on 1st November, 1944.

Further, an understanding has been reached with the said company for increase of the maximum under the 1937 contract from 100,000 horse-power to 125,000 horse-power at the same price and load factor, namely, $12.50 per horse-power per year and 70 per cent load factor.

Mr. Challies asked the following Question (No. 40):—

1. What was the total revenue from customers served by the Abitibi Canyon Development for the Hydro year 1939-1940. 2. What were: (*a*) Operating expenses; (*b*) Maintenance cost; (*c*) Interest charges; (*d*) Other current expenses for the same period. 3. What are the total accumulated reserves to October 31st, 1940: (*a*) Sinking Fund; (*b*) Depreciation; (*c*) Contingencies and rate stabilization; (*d*) Any other reserves. 4. What was the capital cost in the years 1939-1940.

The Honourable the Prime Minister replied as follows:

1. $3,643,758.33. 2. (*a*) $314,179.77; (*b*) $168,724.81; (*c*) $1,029,262.31; (*d*) $1,233,955.37. 3. (*a*) $3,823,635.52; (*b*) $1,707,393.11; (*c*) $537,328.70; (*d*) Nil. 4. Capital cost at October 31st, 1939—$28,748.18 (Expenditures for year—$749,944.01); Capital cost at October 31st, 1940—$28,932,701.49 (Expenditures for year—$184,434.31).

Mr. Welsh asked the following Question (No. 47):—

1. Which Ontario Hospitals are equipped for the showing of motion pictures with sound. 2. Which Ontario Hospitals are not equipped for the showing of motion pictures with sound. 3. What steps, if any, have been taken to implement the recommendation on Page 63 of the Dr. Sam Hamilton report that moving pictures with sound should be provided for every institution (1937 Session, Sessional Paper No. 53).

The Honourable the Minister of Health replied as follows:—

1. Woodstock, Orillia, New Toronto, Brockville, Kingston, Toronto, Hamilton, Cobourg, Penetanguishene, London. 2. Fort William, Langstaff, Whitby. 3. Sound projectors have been purchased for the Ontario Hospitals at Kingston, Brockville, New Toronto, Woodstock and Orillia.

Mr. Welsh asked the following Question (No. 48):—

1. What has been the total amount expended by the Province to date by way of capital expenditure on the Ontario Hospital at St. Thomas. 2. What amounts, if any, are due to or claimed by, contractors or others as holdbacks, amounts in dispute or otherwise with respect to capital costs at the Ontario Hospital at St. Thomas, giving details.

The Honourable the Minister of Public Works replied as follows:

1. $6,199,827.35. 2. All contracts completed and final payments made.

Mr. Welsh asked the following Question (No. 49):—

1. Have any buildings other than the Administration Building been constructed in connection with the Ontario Hospital at Port Arthur; if so, give particulars. 2. What amount has been spent to December 31st, 1940, on the construction of the Ontario Hospital at Port Arthur on: (*a*) Capital account including land purchases, construction, etc.; (*b*) Ordinary account, including maintenance, salaries and wages of staff, heating, etc. 3. Are any amounts due to or claimed by contractors or others with respect to construction costs or other capital items and, if so, give particulars. 4. What staff is employed at the Port Arthur Hospital giving names, salary or wage rates and date employed. 5. Is any use being made of the administration building and, if so, specify. 6. Have any proposals been made as to using the administration building for other than mental hospital purposes, and, if so, give particulars.

The Honourable the Minister of Public Works replied as follows:—

1. No. 2. (*a*) $224,675.24; (*b*) $48.15. 3. No. 4. None. 5. Leased to Department of National Defence for duration of the war and six months thereafter. 6. Answered by No. 5.

Mr. Macaulay asked the following Question (No. 54):—

1. Since April 1st, 1937, what solicitors have been appointed to the Inside Service, stating: (*a*) Name of Solicitor; (*b*) Date of appointment; (*c*) Initial salary; (*d*) Present salary; (*e*) Department to which attached. 2. Was the certificate of the Civil Service Commissioner issued with respect to each appointment, and, if not, specify. 3. Was the minimum salary exceeded in any case according to the Classification of the Civil Service and if so, specify, giving reasons.

The Honourable the Attorney-General replied as follows:—

1.—

(*a*)	(*b*)	(*c*)	(*d*)	(*e*)
Flahiff, Terrence F.	Oct. 11, 1938	$50 per month	$2,400.00	Attorney-General
Gallagher, Mary H.	Sept. 23, 1940	$1,500.00	$2,080.00	Attorney-General
Henry, Edwin M.	Nov. 16, 1937	$1,500.00	$1,800.00	Attorney-General
Hope, Clarence P.	Jan. 1, 1938	$3,600.00	$3,600.00	Attorney-General
Martin, Walter M.	May 16, 1938	$3,000.00	$4,000.00	Attorney-General
Moffat, Keith P.	June 1, 1940	$125.00 month	$125.00 month	Attorney-General
Sharp, Roy C.	July 11, 1939	$125.00 month	$166.66 month	Attorney-General
Egener, Fred T.	June, 1937	$75.00 month	$150.00 month	Health
Metzler, James B.	Jan. 3, 1939	$3,000.00	$3,000.00	Lands and Forests
Van Every, Alan	May 10, 1937	$3,000.00	$3,000.00	Municipal Affairs
Ellis, Arthur	Nov. 1, 1940	$125.00 month	$125.00 month	Treasury
Little, Vernon H.	Aug. 3, 1937	$1,500.00	$1,600.00	Treasury (Resigned Aug. 8th, 1939)
Lewis, Roderick G.	Sept. 6, 1939	$125.00 month	$125.00 month	Treasury
Perrett, John F.	July 7, 1938	$1,500.00	$1,500.00	Treasury (Enlisted Sept. 3rd, 1940)
Rich, Byron W.	July 8, 1938	$1,500.00	$1,500.00	Treasury
Stewart, William E.	May 10, 1937	$200.00 month	$2,400.00	Treasury (Dismissed March 15th, 1939)

2. Yes. 3. No.

Mr. Challies asked the following Question (No. 59):—

What was the total payment made by the Hydro-Electric Power Commission to each of the Quebec Power Companies for 25 cycle and 60 cycle power for each month for the years 1938-39.

The Honourable the Prime Minister replied as follows:—

25 CYCLE POWER PURCHASED DURING THE FISCAL YEARS 1938-1939:

	Beauharnois	Gatineau	MacLaren-Quebec	Ottawa Valley	Total
November, 1937	.....	$ 186,020.83	$ 41,666.67	$ 100,000.00	$ 327,687.50
December, 1937	$ 75,604.84	208,416.67	41,666.67	100,000.00	425,688.18
January, 1938	130,208.33	208,416.67	41,666.67	98,774.57	479,066.24
February, 1938	130,208.33	208,416.67	41,666.66	97,951.06	478,242.72
March, 1938	130,208.33	208,416.67	41,666.66	99,243.74	479,535.40
April, 1938	130,208.33	208,416.67	41,666.66	94,426.64	474,718.30
May, 1938	130,208.33	208,416.67	41,666.66	93,166.23	473,457.89
June, 1938	130,208.33	208,416.67	41,666.67	100,000.00	480,291.67
July, 1938	130,208.33	208,416.67	41,666.67	93,611.85	473,903.52
August, 1938	130,208.33	208,416.67	41,666.67	84,874.57	465,166.24
September, 1938	130,208.33	208,416.67	41,666.67	81,903.67	462,195.34
October, 1938	130,208.33	208,416.63	41,666.67	88,988.07	469,279.70
	$1,377,688.14	$2,478,604.16	$500,000.00	$1,132,940.40	$5,489,232.70

25 CYCLE POWER PURCHASED DURING THE FISCAL YEARS 1938-1939—Continued

	Beauharnois	Gatineau	MacLaren-Quebec	Ottawa Valley	Total
November, 1938	$ 156,250.00	$ 239,770.83	$ 62,500.00	$ 84,364.92	$ 542,885.75
December, 1938	156,250.00	239,770.83	62,500.00	79,951.51	538,472.34
January, 1939	156,250.00	239,770.83	62,500.00	69,572.55	528,093.38
February, 1939	156,250.00	239,770.83	62,500.00	75,025.08	533,545.91
March, 1939	156,250.00	239,770.83	62,500.00	79,630.83	538,151.66
April, 1939	156,250.00	239,770.83	62,500.00	90,067.08	548,587.91
May, 1939	156,250.00	239,770.83	62,500.00	94,101.94	552,622.77
June, 1939	156,250.00	239,770.83	62,500.00	98,495.16	557,015.99
July, 1939	156,250.00	239,770.83	62,500.00	100,000.00	558,520.83
August, 1939	156,250.00	239,770.83	62,500.00	96,807.47	555,328.30
September, 1939	156,250.00	239,770.83	62,500.00	78,921.81	537,442.64
October, 1939	156,250.00	239,770.83	62,500.00	77,215.53	535,736.36
	$1,875,000.00	$2,877,249.96	$750,000.00	$1,024,153.88	$6,526,403.84

60 CYCLE POWER PURCHASED DURING THE FISCAL YEARS 1938-1939:

	Gatineau Company (For City of Ottawa)	Gatineau Company (For System Use)	Gatineau Company (For Maxville R.P.D.)	Total
November, 1937	$ 18,301.25	$ 52,562.50	.....	$ 70,863.75
December, 1937	17,964.83	52,562.50	.....	70,527.33
January, 1938	18,084.92	52,562.50	.....	70,647.42
February, 1938	17,619.25	52,562.50	.....	70,181.75
March, 1938	17,744.83	52,562.50	.....	70,307.33
April, 1938	17,832.83	52,562.50	.....	70,395.33
May, 1938	18,192.17	52,562.50	.....	70,754.67
June, 1938	17,930.00	52,562.50	.....	70,492.50
July, 1938	16,504.58	52,562.50	.....	69,067.08
August, 1938	17,149.00	52,572.50	.....	69,711.50
September, 1938	18,283.83	52,562.50	.....	70,846.33
October, 1938	17,967.58	62,500.00	$583.33	81,050.91
	$213,575.07	$640,687.50	$583.33	$854.845.90

60 CYCLE POWER PURCHASED DURING THE FISCAL YEARS 1938-1939:

	Gatineau Company (For City of Ottawa)	Gatineau Company (For System Use)	Gatineau Company (For Maxville R.P.D.)	Total
November, 1938	$ 18,094.08	$ 62,500.00	$ 583.33	$ 81,177.41
December, 1938	18,155.50	62,500.00	583.33	81,238.83
January, 1939	18,279.25	62,500.00	583.33	81,362.58
February, 1939	17,827.33	62,500.00	583.33	80,910.66
March, 1939	17,712.75	62,500.00	583.33	80,796.08
April, 1939	18,179.33	62,500.00	583.33	81,262.66
May, 1939	18,218.75	62,500.00	583.33	81,302.08
June, 1939	18,182.08	62,500.00	583.34	81,265.42
July, 1939	16,819.92	62,500.00	583.34	79,903.26
August, 1939	17,308.50	62,500.00	583.34	80,391.84
September, 1939	18,106.00	62,500.00	583.34	81,189.34
October, 1939	18,099.58	62,500.00	607.50	81,207.08
	$214,983.07	$750,000.00	$7,024.17	$972,007.24

Mr. Kennedy asked the following Question (No. 67):—

1. Is Dr. Sophie Bookhalter employed in the Department of Health for Ontario. 2. If so, where is Dr. Bookhalter employed, what was the date of her appointment, what is the nature of her duties and what is her official title and salary. 3. Who aside from members of the Government and officials of the Government recommended Dr. Bookhalter's appointment. 4. Was Dr. Bookhalter a resident of Ontario when appointed and if not, where was she residing. 5. What special qualifications, if any, has Dr. Bookhalter in relation to her work.

The Honourable the Minister of Health replied as follows:—

1. Yes. 2. Ontario Hospital, Woodstock, date of appointment May 1st, 1940, physician in the Epileptic Division of the Ontario Hospital, Woodstock, Medical Interne $200.00 per month less perquisites. 3. Dr. Helen Boyle, Lady Chichester Hospital, Hove, Sussex, England, and Dr. Stafford Lewis, St. Bernard's Hospital, Southall, England. 4. No. 348 Manitoba Avenue, Winnipeg, Manitoba. 5. Post-graduate training in the following hospitals: September, 1936, to April, 1937, House Physician at Lady Chichester Hospital for Early Nervous Disorders, Hove, Sussex, England; May 1st, 1937, to August 31st, 1937, House Physician at St. Andrews Hospital, London; September, 1937, to September, 1938, Assistant Medical Officer, Beverley Road Hospital, Hull, England; October 1st, 1938, to April 30th, 1939, Clinical Assistant, Maudsley Hospital, London, England; Diploma of Psychological Medicine, London University, November, 1939.

Mr. Doucett asked the following Question (No. 45):—

1. What amounts have been paid by the Government or by any Board or Commission of the Government to Armand Racine, K.C., specifying: (*a*) Date of each payment; (*b*) Amount of each payment; (*c*) Nature of services rendered; (*d*) Total amount paid. 2. What amounts are due to or claimed by Armand Racine to date.

The Honourable the Prime Minister replied as follows:—

1. (*a*), (*b*), (*c*) and (*d*)—In 1934 Mr. Racine received $6,400 for services and expenses as Commissioner enquiring into the operation of the Temiskaming and Northern Ontario Railway, and $650 for services and expenses as Commissioner investigating the operations of the Niagara Parks Commission. As a member of the T. & N.O. Commission from October 21st, 1934, to May 8th, 1935, he received $1,487.71 salary, and $390 expenses. 1. Since the above-named payments, Mr. Racine has performed no further services for the Government, its boards or commissions, except as Public Trustee, and no further amounts are due or claimed. He was appointed Public Trustee on October 2nd, 1940, at a salary of $7,000 per annum.

The Order of the Day for resuming the Adjourned Debate on the Amendment to the Motion for consideration of the Speech of The Honourable the Lieutenant-Governor at the opening of the Session, having been read,

The Debate was resumed and, after some time, it was, on the motion of Mr. Duckworth,

Ordered, That the Debate be adjourned until to-morrow.

The House then adjourned at 5.15 p.m.

THURSDAY, MARCH 6TH, 1941

PRAYERS. 3 O'CLOCK P.M.

The following Petitions were read and received:—

Of the Corporation of the Town of Timmins, praying that an Act may pass authorizing the Town of Timmins to collect poll tax for residents of the Town from employers of such men who are employed outside the Town limits.

Of the Corporation of the County of Waterloo, praying that an Act may pass to validate an agreement made by the Petitioner with the Corporation of the City of Galt and the Corporation of the City of Kitchener.

Mr. Stewart asked the following Question (No. 5):—

1. What decorative or commemorative features were built by the Department of Highways in connection with the Queen Elizabeth Way near Fort Erie. 2. Of what do these features essentially consist. 3. Who designed them and what was he paid for his work. 4. What was the contract price. 5. Who was the contractor. 6. What was the contractor paid: (*a*) Under the terms of his contract; (*b*) For extras or extensions.

The Honourable the Minister of Highways replied as follows:—

1. None. 2. See answer to 1. 3. See answer to 1. 4. See answer to 1. 5. See answer to 1. 6. See answer to 1.

Mr. Stewart asked the following Question (No. 6):—

1. For how many miles on the Kingston Road east of Toronto have posts equipped with reflectors been installed. 2. What was the cost of this equipment, including the installation. 3. On what other highways and to what extent has this equipment been installed. 4. Who made the respective installations and

what was each contractor paid with respect to each installation. 5. What is the average cost, per post, of each installation, including the reflectors.

The Honourable the Minister of Highways replied as follows:—

1. 3.9. 2. $800.00. 3. Queen Elizabeth Way from Oakville Bridge to Campbell's Corners, 11 miles; Highway No. 2 at Long Branch, 1 mile; Old Queen Street, 3 miles; Highway No. 8, between Galt and Preston, 1 mile; and for short distances on other highways throughout the Province at bad curves, approaches to narrow bridges, steep hills, etc. 4. All installations made by Department labour forces. 5. 3, 1½" button type, on one side of post only, $2.75; 3, 1½" button type, on two sides of post, $3.80; 2, 3" button type, on one side of post only, $4.25; 2, 3" button type, on two sides of post, $6.50.

Mr. Hepburn (Prince Edward-Lennox) asked the following Question (No. 8):—

1. How many motor cars have been purchased by the Government to be used in Highway patrol work in place of motorcycles. 2. With respect to each car purchased state: (*a*) Name of manufacturer; (*b*) From whom purchased; (*c*) Price of each vehicle. 3. Were competitive tenders secured and if not, why not. 4. How many such cars is it estimated will be in use by: (*a*) December 31st, 1941; (*b*) December 31st, 1942. 5. How many such cars will be required to entirely replace the motor cycles now used. 6. What is the estimated annual cost of operating each car, stating: (*a*) Estimated cost of gasoline, oil, repairs, tire replacements and other charges other than depreciation; (*b*) Write off for depreciation. 7. What is the annual average cost to the Government in relation to the operation of a motor cycle in Highway patrol work.

The Honourable the Attorney-General replied as follows:—

1. Forty-six (46). 2. (*a*) The General Motors of Canada, Limited; (*b*) The General Motors of Canada, Limited; (*c*) Five (5) motor cars at $770.00 each. Four (4) coupes and one (1) coach were purchased as follows: Four (4) coupes for $677.40 and trade-in of eight used motorcycles owned by Government; One (1) coach purchased for $355.60 with trade-in of 1938 model Chevrolet coach. Thirty-six (36) motor cars at $716.00 each. 3. (i) Competitive tenders for the first five motor cars were not secured. The model and specifications were not then settled and it was impracticable to secure tenders because of uncertainty in the specifications and the changes made from time to time; (ii) Competitive tenders were secured for the four coupes and the lowest tender was accepted; (iii) Competitive tenders were not secured for the coupe as this was a trade-in in the ordinary course, the car traded in having travelled 58,000 miles; (iv) Competitive tenders were secured for the thirty-six (36) motor cars and the lowest tender was accepted. 4. (*a*) Forty-six (46); (*b*) Eighty-two (82). 5. One hundred and sixteen (116). 6. (*a*) $540.00 per car per annum; (*b*) $150.00 per car per annum. 7. Motor cars—$690.00 per car per annum. Motorcycles—$550.00 per motorcycle per annum.

Mr. Dunbar asked the following Question (No. 9):—

1. What was the indebtedness of the Niagara Parks Commission as of March 31st, 1940, and December 31st, 1940, indicating: (*a*) Funded debt, provincially guaranteed; (*b*) Unfunded debt, provincially guaranteed; (*c*) Funded debt, not provincially guaranteed; (*d*) Unfunded debt, not provincially guaranteed.

The Honourable the Prime Minister replied as follows:—

	March 31st, 1940	Dec. 31st, 1940
(*a*) Funded debt, provincially guaranteed	$3,667,367.70	$4,039,394.65
(*b*) Unfunded debt, provincially guaranteed	Nil	Nil
(*c*) Funded debt, not provincially guaranteed	Nil	Nil
(*d*) Unfunded debt, not provincially guaranteed	166,080.57	25,719.25
	$3,833,448.27	$4,065,113.90
Less cash on hand and in bank	16,626.79	266,315.51
	$3,816,821.48	$3,798,798.39

Mr. Black asked the following Question (No. 13):—

1. What amount was spent by the Government to February 15th, 1941, with respect to Air Raid Precautions: (*a*) As to materials purchased giving particulars as to kinds and quantities purchased, name of each vendor and amount paid to each vendor; (*b*) As to all other expenditures. 2. What Air Raid Precautions material is now on hand stating: (*a*) Points at which stored; (*b*) Kinds and quantities of material stores at each point. 3. What official is in general charge of Air Raid Precautions for the Province and generally, what have been his activities in the matter.

The Honourable the Prime Minister replied as follows:—

1. (*a*) Nil. All materials have been supplied by the Department of National Defence; (*b*) Nil. All expenditures to date ($1,035.34) have been covered by grant from the Dominion Government. 2 (*a*) and (*b*). It is not deemed in the public interest to disclose this information. 3. The Ontario Civilian Defence Committee is in general charge of Air Raid Precautions in the Province. The Executive Committee is as follows: Chairman, G. D. Conant; Vice-Chairman, H. S. McCready; Secretary, H. D. McNairn; Controller of Police Services, H. S. McCready; Controller of Fire Services, W. J. Scott; Controller of Medical Services, Dr. B. T. McGhie; Controller of Public Utility Services, R. A. McAllister; Controller of Transportation, R. M. Smith. The activities of the Ontario Civilian Defence Committee have been and are being directed at: (*a*) The creation of volunteer civilian organizations in the municipalities designated by the Department of National Defence for the protection of life and property in the event of any emergency occasioned by the war; (*b*) Co-operation with and assistance to such municipalities in the formation, organization, instruc-

tion and training of local units; (*c*) The co-ordination in conjunction with the Federal authorities of the organization and work of all C. D. C. units in Ontario.

Mr. Welsh asked the following Question (No. 52):—

1. On January 31st, 1941, how many patients at the Ontario Hospital, Orillia, were: (*a*) In residence; (*b*) Boarded out; (*c*) On probation. 2. On January 31st, 1941, how many applications for admission to the Ontario Hospital, Orillia, were on file, which could not be dealt with because of lack of room. 3. How many patients were discharged from the Ontario Hospital at Orillia during the fiscal year ending March 31st, 1940, and during the fiscal year 1941 to January 31st, 1941. 4. How many of the discharged patients mentioned in (3) were placed in gainful occupations through the efforts of the Hospital organization. 5. What was the proper patient capacity of the Orillia Hospital according to the report of Dr. Sam Hamilton. 6. How many pairs of shoes were manufactured at the Ontario Hospital at Orillia during the fiscal year ending March 31st, 1940. 7. What was the sale value of the shoes mentioned in (6). 8. How many pairs of shoes were sold from the Ontario Hospital at Orillia during the fiscal year ending March 31st, 1940. 9. What was the sales value of the shoes mentioned in (8). 10. Have any additional lands been purchased for use in connection with the Ontario Hospital at Orillia and, if so, state: (*a*) Description of lands acquired; (*b*) From whom acquired; (*c*) Purchase price of each parcel; (*d*) Date of purchase.

The Honourable the Minister of Health replied as follows:

1. (*a*) 1980, (*b*) 10, (*c*) 106. 2. 1,558. 3. 80 were discharged during the fiscal year ending March 31st, 1940, and 69 were discharged during the fiscal year 1941 to January 31st, 1941. 4. 88. 5. 1,500. 6. 4,050. 7. $10,425.00. 8. 3,858. 9. $9,945.00. 10. No.

Mr. Welsh asked the following Question (No. 53):—

1. What buildings at the Ontario Hospital at Hamilton were destroyed by fire in or about the month of August, 1940. 2. At what hour was the fire discovered. 3. What was the size of each building destroyed, of what construction, for what ordinarily used and what stock ordinarily was housed therein. 4. What was the estimated value of each of the buildings destroyed. 5. What was the quantity and value of property destroyed other than buildings and including: (*a*) Live stock; (*b*) Hay, grain and feeds; (*c*) Implements and other farm equipment; (*d*) Other property, specifying. 6. At the time of the fire, what was the live stock at the Hospital, specifying: (*a*) Horses; (*b*) Cattle; (*c*) Hogs; (*d*) Other stock. 7. What disposition has been made of this stock. 8. Have steps been taken to replace the buildings destroyed; if so, state: (*a*) Actual or estimated replacement costs; (*b*) Date when replacement will be effected. 9. Were buildings or property insured; if so state amount of insurance collected. 10. Is there any arrangement in existence whereby the Hamilton Fire Brigade will assist in protecting Hospital property; if so, when was it made

and what are the terms thereof. 11. What fire brigades assisted in combatting the fire. 12. Was an ample water supply available for fire-fighting purposes; if not, why not. 13. Was an investigation made as to cause of, responsibility for and circumstances surrounding, the fire, and if so, by whom. 14. If investigation held, what were the findings as to cause, surrounding circumstances and responsibility. 15. If the dairy herd at the Hospital has been sold or placed elsewhere, state arrangements as to milk supply, indicating: (*a*) From whom secured; (*b*) Cost per gallon or hundred weight; (*c*) Average monthly cost.

The Honourable the Minister of Health replied as follows:—

1. Cow Barn, Horse Barn and Overflow Barn, completely; Isolation Barn and Dairy Room, partly. 2. 9.30 a.m. August 28th, 1940. 3. Cow Barn—120′ x 80′, frame with stone foundation, stabling cattle and granary; Horse Barn—100′ x 30′, frame, stabling horses and granary; Overflow Barn—60′ x 30′, frame, stabling colts and calves and granary; Isolation Barn—20′ x 32′, frame with cement foundation, isolation of sick animals; Dairy Room—28′ x 18′, cement block, pasteurizing milk. 4. Cow Barn, $7,600, Horse Barn, $3,400, Overflow Barn, $2,500, Isolation Barn, $800, Dairy Room, $600. 5. (*a*) None; (*b*) $2,068.78; (*c*) $425; (*d*) None. 6. (*a*) Horses, 26; (*b*) Cattle, 106; (*c*) Hogs, 325; (*d*) Poultry, 4,420. 7. Horses moved to another building, cattle moved to Hickory Farm with exception of 35 heifers moved to Brampton, Ontario Hospital. Other stock not moved. 8. No. 9. No. 10. Yes, verbal agreement of long standing Hamilton Fire Brigade comes on telephone call. 11. City of Hamilton Fire Brigade and Ontario Hospital Fire Brigade. 12. Yes. 13. Yes, by an Inspector of the Fire Marshal's Department. 14. First report did not define cause or responsibility, later findings indicated that fire was started by a patient. 15. Dairy herd has not been sold or placed elsewhere.

Mr. Spence asked the following Question (No. 62):—

1. Who is the Deputy Fire Marshal of Ontario. 2. When was he appointed. 3. What is his salary. 4. What are his specific qualifications for the position.

The Honourable the Attorney-General replied as follows:

1. The position of Deputy Fire Marshal has been vacant since the promotion of William H. Stringer to the office of Commissioner of Police for Ontario. 2. Answered by 1. 3. Answered by 1. 4. Answered by 1.

Mr. Duckworth asked the following Question (No. 65):—

1. How many pupils are enrolled during the current school year at the Ontario School for the Blind at Brantford. 2. How many pupils have graduated therefrom in each of the school years 1930 to 1940, inclusive. 3. How many employees are there on: (*a*) The teaching staff; (*b*) The business office staff;

(*c*) All other staffs. 4. Are any graduates of the School employed therein and if so, how many, indicating the number in the several categories. 5. Who is the Principal or Superintendent. 6. When was he appointed. 7. What was his initial salary and what is his present salary. 8. What are his academic qualifications; what are his special qualifications and where and how acquired. 9. What was the revenue from the School in 1938, 1939 and 1940 fiscal years from (*a*) Fees; (*b*) All other sources. 10. What was the gross cost of operation in each of the fiscal years mentioned in (9). 11. What was the gross per capita per day in each of the fiscal years mentioned in (9). 12. What is the amount of farm and garden land cultivated in conjunction with the School. 13. How many graduates in the school years ending in 1938, 1939 and 1940, respectively, were placed in gainful occupation with the assistance of the School organization.

The Honourable the Minister of Education replied as follows:

1. 170. 2. 1930, 12; 1931, 13; 1932, 20; 1933, 12; 1934, 6; 1935, 4; 1936, 8; 1937, 10; 1938, 10; 1939, 17; 1940, 13. 3. (*a*) 15 full time, 4 part time; (*b*) 4. (*c*) 31. 4. 4—2 teachers of music, 1 supervisor of boys, 1 instructress in knitting. 5. Superintendent—H. J. Vallentyne. 6. January 1st, 1935. 7. $5,000.00, $5,000.00. 8. Bachelor of Arts, Queen's University, Master of Arts, University of Toronto, Principal, Port Perry Public School—1 year; Assistant Principal, Toronto Public Schools—7 years (also critic teacher for teachers-in-training); Principal, Toronto Public Schools—12 years; Public School Inspector, Toronto—5 years; Special Lecturer, Toronto Normal School—1 year; Summer School Lecturer, Mount Allison University, New Brunswick—1 term. 9. (*a*) 1938, $12,900.00; 1939, $11,733.33; 1940, $14,233.33; (*b*) 1938, $8,157.62; 1939, $7,817.11; 1940, $7,297.42. 10. 1938, $87,921.33; 1939, $90,234.35; 1940, $90,828.89. 11. 1938, $1.55; 1939, $1.47; 1940, $1.48. 12. 31 acres, more or less. 13. 1938—all; 1939—all; 1940—all, with the possible exception of two.

The Order of the Day for resuming the Adjourned Debate on the Amendment to the Motion for consideration of the Speech of The Honourable the Lieutenant-Governor at the opening of the Session, having been read,

The Debate was resumed and, after some time, it was, on the motion of Mr. Summerville,

Ordered, That the Debate be adjourned until to-morrow.

The House then adjourned at 5.30 p.m.

FRIDAY, MARCH 7TH, 1941

PRAYERS. 3 O'CLOCK P.M.

The following Bills were severally introduced and read the first time:—

Bill (No. 17), intituled, "An Act respecting St. George's Church, Guelph." *Mr. Drew.*

Referred to the Committee on Private Bills.

Bill (No. 10), intituled, "An Act respecting National Steel Car Corporation, Limited." *Mr. Kennedy.*

Referred to the Committee on Private Bills.

Bill (No. 50), intituled, "An Act to amend The Highway Traffic Act." *Mr. Macaulay.*

Ordered, That the Bill be read a second time on Monday next.

Mr. Hepburn (Prince Edward-Lennox) asked the following Question (No. 27):—

1. For the fiscal years ending March 31st, 1939, and 1940, what amount was paid to the Ontario Cheese Producers Marketing Board under the provisions of The Ontario Farm Products Control Act.

The Honourable the Minister of Agriculture replied as follows:—

1. Nil.

Mr. Acres asked the following Question (No. 29):—

1. Is the Agricultural Demonstration Farm at New Liskeard in operation. 2. What expenditures, specifying capital and ordinary, have been made with respect to the operation of this farm in each of the fiscal years ending March 31st, 1936, 1937, 1938 and 1939.

The Honourable the Minister of Agriculture replied as follows:—

1. Yes.

	Ordinary	Capital
2. 1936	$12,252.92	.....
1937	10,670.22	.....
1938	11,993.16	.....
1939	12,909.99	.....

Mr. Frost asked the following Question (No. 34):—

1. What payments were made to John Cowan, as Commissioner under The Succession Duty Act, in the matter of inquiry into the Spencer estate. 2. What other payments, if any, have been made to Mr. Cowan as fees, salary, honoraria, allowances or otherwise and for what services other than his remuneration as Crown Attorney and Clerk of the Peace for Lambton County, specifying dates of payments.

The Honourable the Prime Minister and Provincial Treasurer replied as follows:—

1. $1,600.00 paid May 5th, 1936, as Commissioner appointed under The Succession Duty Act to inquire into the Estates of William Spencer, Jane Spencer, Josephine McTaggart, Charles Norman Spencer, William Melville Spencer, Adelene A. Spencer and Caroline Bagley Spencer. 2. Nil.

Mr. Doucett asked the following Question (No. 50):—

1. From January 1st, 1936, to December 31st, 1940, what special Crown Prosecutors have been appointed to assist at Assizes or other Courts, stating: (*a*) Name; (*b*) Legal matter or assize; (*c*) Per diem or other rate of remuneration; (*d*) Total amount paid each special prosecutor.

The Honourable the Attorney-General replied as follows:—

(*a*) Name	(*b*) Legal Matter or Assize	(*c*) Per Diem or other Rate of Remuneration	(*d*) Total Amount Paid
J. C. McRuer, K.C.	Toronto Winter Assize, 1936	.....	$1,301.70
D. Sher	Toronto Winter Assize, 1936	$15 per diem	195.00
J. L. Wilson	Toronto Winter Assize, 1936	.....	300.00
G. N. Gordon, K.C.	Peterboro Spring Assizes, 1936	$50 per diem	131.00
D. L. McCarthy, K.C.	London Spring Assize, 1936	$150 per diem	1,367.40
P. V. Ibbetson	Port Arthur Spring Assize, 1936	$50 per diem	97.00
F. W. Griffiths, K.C.	Toronto Spring Assize, 1936	$50 per diem	904.45
M. Lerner	London Fall Assizes, 1937	$50 per diem	160.90
H. H. Donald, K.C.	Cobourg Fall Assize, 1937	$50 per diem	321.05
E. S. Livermore, K.C.	St. Thomas Fall Assize, 1937	$50 per diem	197.00
C. P. Hope, K.C.	Napanee Fall Assize, 1937	$50 per diem	530.82
J. C. Anderson	Barrie Fall Assizes, 1937	$50 per diem	513.90
T. M. J. Galligan	Pembroke Fall Assize, 1937	$50 per diem	506.00
C. P. Hope, K.C.	North Bay Fall Assize, 1937	$50 per diem	339.20
E. S. Livermore, K.C.	Brantford Spring Assize, 1938	$50 per diem	290.90
J. H. McDonald, K.C.	Cochrane Fall Assize, 1938	$50 per diem	575.75
E. S. Livermore, K.C.	Welland Fall Assize, 1938	$50 per diem	562.10
Salter Hayden, K.C.	Toronto Spring Assize, 1939	.....	550.66

Mr. Macaulay asked the following Question (No. 55):—

1. Who are the members of the Niagara Falls Bridge Commission. 2. What remuneration, if any, has been paid to the members of the Niagara Falls Bridge Commission and on what basis is such remuneration paid.

The Honourable the Prime Minister replied as follows:—

1. Hon. T. B. McQuesten, K.C., Hamilton, Ontario; C. Ellison Kaumeyer, Chippawa, Ontario; Archie J. Haines, M.P.P., Jordan, Ontario; Ross Harstone, Hamilton, Ontario; Samuel M. Johnson, Lockport, New York; Ralph Hockstetter, Buffalo, New York; F. H. Krull, Niagara Falls, New York; Will Alban Cannon, Niagara Falls, New York. 2. The Commissioners receive no remuneration. This is clearly covered by Section 8 of Public Resolution No. 117, Seventy-fifth Congress, Chapter 490, Third Session, a Joint Resolution creating the Niagara Falls Bridge Commission.

Mr. Macaulay asked the following Question (No. 61):—

1. How many magistrates were dismissed or were asked for their resignations by the present administration since July 15th, 1934. 2. How many of such magistrates served more than two years prior to their dismissal or removal.

The Honourable the Attorney-General replied as follows:

1. July 15th, 1934, to October 11th, 1937	91
October 12th, 1937, to date	4
Total	95

2. Eighty-five (85).

Mr. Kennedy asked the following Question (No. 64):—

1. In each fiscal year since the present Government took office, what payments have been made to Cockfield, Brown and Co., Ltd.

The Honourable the Prime Minister and Provincial Treasurer replied as follows:—

1933-34	$ 1,919.01
1934-35	17,997.88
1935-36	14,152.35
1936-37	23,922.91
1937-38	89,442.52
1938-39	17,035.65
1939-40	22,548.45
Total	$187,018.77

The above sums represent the total cost of advertising, including preparation of material, etc., the agents retaining 15 per cent as their fee.

Mr. Drew moved, seconded by Mr. Kennedy,

THAT the members of this Legislature approve of the principle that every public building actually needed for the effective prosecution of our war effort be made available whenever required but they believe there is no justification for taking over the buildings of the Ontario Agriculture College, for use as a wireless training school, and that better and quicker results will be obtained by erecting wooden buildings for that purpose.

And a debate having arisen, after some time, with the unanimous consent of the House, the Motion was withdrawn.

With the unanimous consent of the House, Mr. Nixon (Brant) moved, seconded by Mr. Oliver,

That the Members of this Legislature approve of the policy of the Government as outlined in a telegram sent by the Premier of Ontario on September 5th, 1939, to the Right Honourable W. L. Mackenzie King, Prime Minister of Canada, Ottawa, which reads in part: "This administration further offers every co-operation in releasing for use of the militia provincial buildings, lands, or any other asset that you might require, including our entire provincial air service. In regard to personnel am also offering now the use of our six tubercular clinics made up of skilled, trained and efficient doctors and technicians who can serve a very useful purpose in assisting with proper medical inspection of volunteers to Canadian army. The services of all departments of Government are available to you."

The Motion being put to the House was carried by unanimous vote.

The House then adjourned at 5.00 p.m.

MONDAY, MARCH 10TH, 1941

PRAYERS. 3 O'CLOCK P.M.

On the motion of Mr. Strachan, seconded by Mr. Dickson,

Ordered, That owing to the present situation in Great Britain and notwithstanding the provisions of Rule No. 76 of this House, Bill (No. 18), "An Act respecting a Trust Settlement of the late Peter Birtwistle and the Corporation of the Borough of Colne (England)" be not referred to the Commissioners of Estates Bills but be referred direct to the Committee on Private Bills for consideration and a report thereon, and that the provisions of Rules No. 76 and No. 77 be suspended so far as they relate to the said Bill.

The following Bills were severally introduced and read the first time:—

Bill (No. 51), intituled, "An Act to amend The Municipal Act." *Mr. Strachan.*

Ordered, That the Bill be read a second time to-morrow.

Bill (No. 9), intituled, "An Act to incorporate Malton Water Company." *Mr. Kennedy.*

Referred to the Committee on Private Bills.

Bill (No. 52), intituled, "An Act to amend The Municipal Act." *Mr. Kennedy.*

Ordered, That the Bill be read a second time to-morrow.

Bill (No. 53), intituled, "An Act to amend The Mental Hospitals Act." *Mr. Kirby.*

Ordered, That the Bill be read a second time to-morrow.

Bill (No. 54), intituled, "An Act respecting the subsidizing of Cheese and Hogs produced in Ontario." *Mr. Dewan.*

Ordered, That the Bill be read a second time to-morrow.

Bill (No. 55), intituled, "An Act respecting the Rainbow Bridge." *Mr. McQuesten.*

Ordered, That the Bill be read a second time to-morrow.

Bill (No. 56), intituled, "An Act to amend The Weed Control Act." *Mr. Kennedy.*

Ordered, That the Bill be read a second time to-morrow.

On motion of Mr. Frost, seconded by Mr. Black,

Ordered, That there be laid before this House a Return of all letters, memoranda, certificates and documents of whatsoever nature in the possession of the Government or of any member, official or employee of the Government in relation to one John Kluck who was a patient at the Ontario Hospital at Penetanguishene and who was arrested in the City of Toronto in the month of September, 1940, on a charge of murder.

Mr. Hepburn (Prince Edward-Lennox) asked the following Question (No. 2):—

1. Other than King's Highways or other roads, what public buildings or other public works are under construction by the Government, stating in each case: (*a*) Name, location and purpose of each project; (*b*) Estimated total cost of each project; (*c*) Probable date of completion of each project.

The Honourable the Minister of Public Works replied as follows:—

1. (*a*) Building being erected at Winston (formerly Swastika) for the purpose of a Division Office Building for the Department of Highways; (*b*) Estimated cost—$10,000; (*c*) Date of completion—July 1st, 1941.

Mr. Murphy asked the following Question (No. 24):—

1. What amount was spent by the Government in the erection of a comfort station at Port Burwell in the constituency of Elgin. 2. What municipal bodies or officials, organizations or individuals requested the Government to install this convenience. 3. What was paid by the Government for: (*a*) Land; (*b*) Construction of buildings and furnishing and installing equipment. 4. From whom was the land purchased and what was the area. 5. To whom were contracts let for buildings, and for furnishing and installation of equipment and state amount paid to each. 6. Is a caretaker or other staff furnished by the Government to look after maintenance of the convenience, and if so, give particulars. 7. Is installation of this comfort station part of a general programme on the part of the Government to install such stations generally at summer resorts or elsewhere and if so, state at what points similar installations have been made.

The Honourable the Minister of Public Works replied as follows:—

1. $5,144.63. 2. The Council of the Township of Bayham and others. 3. (*a*) No land purchased; (*b*) $5,144.63. 4. See 3 (*a*).

5. C. A. Walker—Construction of Building $3,648.60
Robert Rankin & Son—Plumbing 1,496.03

$5,144.63

6. No. 7. The beach on which this station is located is one of the most desirable on Lake Erie and attracts a large number of tourists during the Summer months, being conveniently located to the King's Highway No. 19, and provision of these facilities was necessary for sanitary purposes. No similar convenience has been provided elsewhere, such provision being dependent on local conditions.

Mr. Stewart asked the following Question (No. 30):—

1. How many seizures of furs have been made under the provisions of Game and Fisheries enactments and relative laws during the fiscal years 1939 and 1940 and from April 1st, 1940, to December 31st, 1940. 2. In how many cases in each of the periods mentioned in (1) were the seized pelts or furs sold and what

was the amount realized from such sales in each of the periods. 3. In how many cases in each of the periods mentioned in (1) were the seized pelts or furs returned to the parties from whom they were seized. 4. Where furs or pelts were seized in each of the periods mentioned in (1) state: (*a*) Number of prosecutions in each period; (*b*) Number of convictions registered in each period; (*c*) Number of fines imposed and total amount of fines imposed in each period; (*d*) Number and total amount of such fines paid in each period; (*e*) Number of prison terms imposed in each period; (*f*) Number of acquittals in each period.

The Honourable the Provincial Secretary replied as follows:—

	1938-39	1939-40	April 1st to December 31st, 1940
1.	124	123	109
2.	120—$14,179.23	123—$4,539.60	68—$17,766.23
3.	3	None	1
4. (*a*)	109	106	101
(*b*)	107 (2 remands)	105 (2 remands) (1 suspension)	100 (1 remand)
(*c*)	103—$24,810.00	101—$4,654.00	92—$14,262.00
(*d*)	90—$7,447.00	82—$2,347.00	80—$11,140.00
(*e*)	16	20	20
(*f*)	2	1	1

Mr. Reynolds asked the following Question (No. 38):—

1. What were the peak loads and kilowatt hours purchased from each of the Quebec Power Companies for 25 cycle and 60 cycle power for each month of the years 1938-1939. 2. What amount was paid for standby services, or secondary sundry power, during the above months.

The Honourable the Prime Minister replied as follows:

1. PEAK LOADS IN HORSE-POWER AND KILOWATT-HOURS

TWENTY-MINUTE PEAKS IN HORSEPOWER

1938

Month	Gatineau Power Co. 220,000 volt, 25 cycle Contract	MacLaren-Quebec Power Company	Beauharnois Light, Heat & Power Company	Ottawa Valley Power Company	GATINEAU POWER COMPANY—60 CYCLE		
					110 Kv. Delivery	11 Kv. Delivery	Treadwell Delivery
January....	162,466	41,555	126,005	98,525	41,957	20,107	
February...	164,477	42,225	126,005	99,196	41,957	19,571	
March.....	164,477	42,225	127,346	103,217	41,957	19,839	
April.....	165,147	41,555	126,676	93,163	44,571	20,107	
May.....	166,488	42,225	127,346	98,535	41,957	20,107	
June.....	166,890	54,290	126,676	89,142	41,957	19,839	
July.....	161,796	44,906	126,676	87,131	41,957	18,499	
August.....	167,158	44,236	126,005	90,483	41,957	19,035	
September..	166,488	41,555	126,676	96,515	41,957	20,241	
October....	167,560	41,555	126,005	104,558	60,054	20,107	
November..	202,681	61,662	150,804	109,249	61,796	20,107	97
December..	203,083	65,684	151,475	111,930	64,075	20,107	129

KILOWATT-HOURS

Month	Gatineau Power Co. 220,000 volt, 25 cycle Contract	MacLaren-Quebec Power Company	Beauharnois Light, Heat & Power Company	Ottawa Valley Power Company	Gatineau Power Company—60 Cycle		
					110 Kv. Delivery	11 Kv. Delivery	Treadwell Delivery
1939							
January....	203,753	69,705	150,804	103,887	63,003	20,375	105
February...	203,753	65,684	150,804	111,260	62,332	19,839	129
March.....	203,083	63,003	150,804	96,515	62,466	19,839	125
April.....	203,753	67,694	151,475	95,174	61,930	20,107	157
May.....	205,764	63,003	151,475	93,499	62,735	20,241	185
June.....	203,753	64,343	151,475	91,153	61,662	20,107	185
July.....	204,424	65,013	152,145	97,185	60,322	18,767	129
August.....	204,424	64,343	151,475	99,196	60,322	19,169	217
September..	205,362	65,013	152,145	108,579	60,054	20,375	225
October....	204,424	64,343	152,145	114,611	64,343	19,973	209
November..	266,086	63,673	152,145	113,941	65,013	20,107	209
December..	276,139	64,343	154,826	113,606	65,684	20,107	194
1938							
January....	58,601,300	14,831,000	48,750,000	30,603,550	15,809,600	6,053,400	
February...	54,682,300	14,030,000	45,330,000	28,146,800	14,719,500	5,365,800	
March.....	61,415,700	15,759,000	49,800,000	32,003,700	15,018,000	5,724,000	
April.....	57,956,900	14,880,000	46,350,000	27,935,950	15,717,100	5,389,200	
May.....	59,503,400	14,730,000	46,910,000	28,026,900	15,747,200	5,508,000	
June.....	59,937,300	15,195,000	48,630,000	25,112,800	15,960,500	4,980,600	
July.....	58,788,500	15,090,000	46,610,000	25,084,950	15,298,000	4,696,200	
August.....	62,449,000	15,718,000	51,150,000	26,376,950	16,472,000	4,847,400	
September..	58,368,100	14,950,000	49,890,000	28,498,100	16,314,000	5,304,600	
October....	59,988,380	14,674,000	48,150,000	31,565,350	22,564,870	5,461,200	
November..	75,903,800	22,745,000	60,990,000	28,629,050	22,778,000	5,547,600	16,800
December..	77,485,400	22,847,000	59,380,000	26,982,450	23,483,000	6,055,200	21,300
1939							
January....	77,644,100	22,764,000	60,530,000	26,135,200	23,139,000	6,057,000	18,300
February...	70,283,600	21,115,000	56,340,000	24,466,500	21,033,000	5,385,600	25,800
March.....	79,207,800	23,628,000	63,320,000	27,256,950	23,598,000	5,722,200	27,900
April.....	73,769,400	21,616,000	58,410,000	29,958,200	22,128,900	5,432,400	30,900
May.....	76,556,500	23,566,000	62,740,000	32,800,750	23,394,700	5,664,600	39,300
June.....	76,471,200	22,792,000	70,820,000	30,786,300	22,954,000	5,072,400	31,200
July.....	75,807,500	22,668,000	60,710,000	29,764,050	22,457,000	4,874,400	26,700
August.....	79,840,400	23,188,000	62,670,000	30,146,200	23,584,000	4,865,400	47,400
September..	75,329,600	22,696,000	60,230,000	25,540,900	22,616,000	5,344,200	41,400
October....	76,671,200	23,084,000	61,500,000	30,407,950	23,177,000	5,716,800	42,000
November..	98,924,700	22,740,000	60,930,000	34,218,250	22,791,000	5,731,200	37,200
December..	98,862,540	23,124,000	60,935,680	29,122,650	23,071,460	6,037,200	43,200

2. No payments were made for standby services or secondary sundry power during the years 1938 and 1939.

Mr. Challies asked the following Question (No. 39):—

1. What was the total peak power taken each month in horse-power from each of the Quebec Power Companies in 25 cycle and 60 cycle power since December, 1939.

The Honourable the Prime Minister replied as follows:—

TWENTY-MINUTE PEAKS IN HORSEPOWER

1940 Month	Gatineau Power Co. 220,000 volt, 25 cycle Contract	MacLaren-Quebec Power Company	Beauharnois Light, Heat & Power Company	Ottawa Valley Power Company	Gatineau Power Company—60 Cycle		
					110 Kv. Delivery	11 Kv. Delivery	Treadwell Delivery
January....	276,810	68,365	150,938	113,941	63,003	20,241	185
February...	277,480	65,013	151,609	109,249	63,003	19,973	181
March.....	278,150	66,354	152,279	95,174	61,662	20,107	185
April.....	274,799	61,662	151,475	110,590	68,364	20,375	173
May.....	268,097	61,662	151,609	109,920	63,003	20,509	193
June.....	266,086	64,343	152,279	92,493	63,673	19,169	181
July.....	264,075	85,791	150,938	97,185	63,673	20,107	185
August.....	265,416	87,131	151,609	98,525	64,343	20,107	201
September..	265,416	94,504	150,804	97,855	63,003	20,107	209
October....	264,075	86,461	152,145	109,920	63,673	19,839	197
November..	274,129	86,461	152,145	111,260	67,024	20,375	193
December..	278,150	89,142	151,475	111,930	63,003	20,241	201

Mr. Challies asked the following Question (No. 41):—

1. What is the total amount of horse-power of electric energy being exported during 1939, 1940 to Massena, N.Y., by the, or through, the Hydro-Electric Power Commission: (*a*) From what Company or source is the energy secured by the Commission; (*b*) Where is the energy measured as a basis for payment by the N.Y. interests to the Commission; (*c*) Where is the energy measured as a basis for payment by the Commission to Company supplying the energy; (*d*) What is the Load Factor; (*e*) What price per horse-power does the Hydro-Electric Power Commission receive for this energy; (*f*) Is the price paid in United States or Canadian funds.

The Honourable the Prime Minister replied as follows:—

1. The total horse-power exported during 1939-1940 to Massena, N.Y., by the, or through, the Hydro-Electric Power Commission was as follows:

	20-Min. Peak H.P.	Load Factor	
1939—December	23,000	90.0%	Delivery commenced December 29th, 1939
1940—January	23,000	90.0%	
February	23,000	90.0%	
March	23,000	90.0%	
April	23,000	90.0%	
May	23,000	90.0%	
June	26,680	90.0%	
July	26,680	90.0%	
August	43,418	86.3%	
September	45,550	88.5%	
October	44,414	89.9%	
November	43,875	91.6%	
December	45,114	91.8%	

(*a*) From December 29th, 1939, to August 3rd, 1940, the Commission secured the

power for export to Massena from the Beauharnois Light, Heat and Power Company at 60 cycles in lieu of 25 cycle power to the Niagara system under the 25 cycle contract with this Company. After August 3rd, 1940, the export was secured from the surplus power available on the Niagara and Eastern Ontario systems; (*b*) International Boundary; (*c*) Company's plants; (*d*) Load Factor is given in table above; (*e*) $14.50 per horsepower per year plus 2.47 mills per kilowatt-hour for energy in excess of 90 per cent load factor, plus payment of export tax on energy; (*f*) The price is paid in Canadian funds.

Mr. Doucett asked the following Question (No. 44):—

1. Are the lands of the Industrial Farm, Burwash, constituted a Game Preserve; if so, when was such action taken. 2. Is any hunting or fishing allowed within the boundaries of the Industrial Farm, Burwash, detailing any prohibitions in effect under the Game and Fishery laws.

The Honourable the Provincial Secretary replied as follows:—

1. Yes, with modifications. By Order-in-Council May 1st, 1934: gazetted May 5th of same year. 2. Modifications permitting hunting and fishing are provided for by subsections (*b*) and (*c*) of Section 1 and section 2 of the Order-in-Council, and are:

(*b*) provided, however, that officers of the Burwash Industrial Farm, designated by the Superintendent of the Institution, may hunt thereon in accordance with the provisions of The Game and Fisheries Act;

(*c*) From the aforementioned area, the Department of Game and Fisheries may, under permit, authorize their own officers or officers of the Burwash Industrial Farm to remove predatory animals or vermin; or take game birds or animals for educational or scientific purposes; or transfer any surplus stock of game when conditions warrant such action; and

2. provided, however, that Officers of the Burwash Industrial Farm, designated by the Superintendent of the Institution may fish therein, in accordance with the provisions of the Game and Fisheries Act and Regulations, and further, provided that this does not apply to the taking of fish under authority given by the Department of Game and Fisheries for propagation purposes or for the stocking of public waters.

Mr. Challies asked the following Question (No. 57):—

What was the 20-minute peak demand for electric energy for the Eastern Ontario Hydro-Electric Power System for the months of January, November and December for the year 1940 and January, 1941, for total primary and total primary and secondary.

The Honourable the Prime Minister replied as follows:—

EASTERN ONTARIO SYSTEM

TOTAL SYSTEM (PRIMARY AND SECONDARY) 20-MIN. PEAKS

1940—January	143,856	horse-power
November	151,250	"
December	153,164	"
1941—January	151,606	"

TOTAL SYSTEM PRIMARY 20-MIN. PEAKS

1940—January	137,556	horse-power
November	151,250	"
December	153,164	"
1941—January	151,606	"

Mr. Challies asked the following Question (No. 58):—

What was the total peak power sold on the Niagara System, inclusive of power used for steam production, export power, contractual obligations and peak demand, for the months of January, November and December for the year 1939-40.

The Honourable the Prime Minister replied as follows:—

NIAGARA 25 AND 60 CYCLE SYSTEM

	Total Peak Power Sold (Generated and Purchased Peak)		Additional Quantities which Customers were entitled to under Contract	
1939—January	1,412,064	horse-power	50,000	horse-power
November	1,485,925	"	35,000	"
December	1,514,879	"	30,000	"
1940—January	1,507,775	"	32,000	"
November	1,537,265	"	27,000	"
December	1,589,544	"	24,000	"

Mr. Acres asked the following Question (No. 83):—

1. In how many municipalities does the Liquor Control Board require that beverage rooms close earlier than twelve o'clock midnight, and state: (*a*) Name of each municipality in which earlier closing is required; (*b*) Closing hour in each case; (*c*) Date that earlier closing became effective in each case. 2. Have any municipal requests for earlier closing been refused by the Liquor Control Board and if so, give particulars.

The Honourable the Prime Minister replied as follows:—

1. Thirty-eight (38) municipalities have prepared local by-law requiring the

closing of beverage rooms earlier than twelve o'clock midnight, and the Board have approved of such by-laws.

(*a*)	(*b*)		(*c*)
Peterboro	Monday to Friday,	11 p.m.	
	Saturday	10 p.m.	Apr. 17th, 1937
Elora	Monday to Friday,	12 p.m.	
	Saturday,	11 p.m.	Apr. 24th, 1937
Westport	Monday to Saturday,	11 p.m.	Apr. 24th, 1937
Blandford Twp.	Monday to Saturday,	11 p.m.	Apr. 27th, 1937
Walkerton	Monday to Saturday,	11 p.m.	May 1st, 1937
Brant Twp.	Monday to Saturday,	11 p.m.	May 4th, 1937
Georgetown	Every week day at	11 p.m.	May 7th, 1937
Brantford	Monday to Saturday,	11 p.m.	May 10th, 1937
Listowel	Monday to Friday,	11 p.m.	
	Saturday,	10 p.m.	May 11th, 1937
Madoc	Monday to Saturday,	11 p.m.	May 17th, 1937
Brockville	Monday to Saturday,	10 p.m.	May 20th, 1937
Plantagenet N. Twp.	Monday to Friday,	11 p.m.	
	Saturday	12 p.m.	May 31st, 1937
Newcastle	Monday to Friday,	11 p.m.	
	Saturday,	10.30 p.m.	May 31st, 1937
Whitby	Monday to Saturday,	11 p.m.	June 10th, 1937
Hastings	Monday to Friday,	11.30 p.m.	
	Saturday,	11 p.m.	June 11th, 1937
Trenton	Monday to Saturday,	11 p.m.	July 1st, 1937
Finch Twp.	Monday to Saturday,	10.45 p.m.	June 23rd, 1937
Thedford	Monday to Saturday,	11 p.m.	Aug. 24th, 1937
Paris	Monday to Saturday,	11 p.m.	Nov. 24th, 1937
Anson Twp.	Monday to Saturday,	11 p.m.	Nov. 26th, 1937
Minden Twp.	Monday to Saturday,	11 p.m.	Nov. 27th, 1937
Gananoque Town (Oct. to May only)	Monday to Saturday,	11 p.m.	Dec. 1st, 1937
Hearst Town	Monday to Saturday,	11 p.m.	Dec. 21st, 1937
Brussels Village	Monday to Saturday,	11 p.m.	Feb. 15th, 1938
Cobourg	Monday to Saturday,	11 p.m.	May 6th, 1938
Mount Forest	Monday to Saturday,	11 p.m.	May 11th, 1938
Tavistock	Monday to Saturday,	11.30 p.m.	June 20th, 1938
Oshawa	Cancelling May 26th, 1937		June 30th, 1938
Hanover	Monday to Saturday,	11 p.m.	Aug. 19th, 1938
Southampton	Monday to Saturday,	11 p.m.	Aug. 19th, 1938
Port Hope	Monday to Saturday,	11 p.m.	Sept. 30th, 1938
Erin	Saturday only,	11 p.m.	Oct. 21st, 1938
Delhi	Monday to Friday,	12 p.m.	
	Saturday,	11.30 p.m.	Jan. 18th, 1939
Sutton	Monday to Saturday,	11.30 p.m.	June 15th, 1940
Rosseau	Monday to Saturday,	11 p.m.	July 16th, 1940
Parry Sound	Monday to Saturday,	11 p.m.	Aug. 12th, 1940
Bala	Monday to Saturday,	11 p.m.	Sept. 2nd, 1940
Douro Twp.	Monday to Saturday,	10 p.m.	Feb. 25th, 1941

2. None.

Mr. Arnott asked the following Question (No. 85):—

1. What was the total expenditure in connection with the Royal Commission which investigated the affairs of the Ontario Reformatory at Guelph following the riots of 1937. 2. What amounts were paid and to whom and for what services.

The Honourable the Provincial Secretary replied as follows:—

1. Total Cost		$6,294.96
2. His Honour Judge J. Madden, Commissioner—		
Services	$1,500.00	
Expenses	162.60	
		$1,662.60
Mr. R. Bone—Legal Services		1,000.00
Mr. S. W. Brown—Reporting		1,917.65
Mr. J. G. Gillanders—		
Legal Services	$1,500.00	
Expenses	95.73	
		1,595.73
Sundries		118.98
		$6,294.96

The above information is listed on Page Q-8, Public Accounts 1937.

Mr. Welsh asked the following Question (No. 88):—

1. How many physicians, senior assistant physicians, graduate medical internes, other medical internes and dentists were employed at the Psychiatric Hospital, Toronto, as of January 31st, 1941, and state in each case name, position held, salary, and if not in receipt of salary, stating honorarium or perquisites allowed in lieu thereof. 2. How many physicians from the Ontario Hospital staffs were on January 31st, 1941, attached to the staff of the Psychiatric Hospital, Toronto, for additional training or other purpose and give names and salaries. 3. What consultants were attached to the staff of the Psychiatric Hospital, Toronto, as of January 31st, 1941, also giving title and rate of salary, honoraria or other emolument in each case. 4. How many persons were employed at the Psychiatric Hospital, Toronto, as of January 31st, 1941, specifying: (*a*) Full-time employees; (*b*) Part-time employees and (*c*) Consultants. 5. What was the average number of patients in residence at the Psychiatric Hospital, Toronto, during the year ending January 31st, 1941. 6. How many Psychiatric Hospital employees are engaged in the out-patient clinic. 7. How many patients were treated in the out-patient clinic at the Psychiatric Hospital, Toronto, during the twelve months ended January 31st, 1941. 8. What was the average gross per capita cost and net per capita cost of maintaining a patient in the Psychiatric Hospital for the year ending March 31st, 1940.

The Honourable the Minister of Health replied as follows:—

1. (6) C. B. Farrar, Superintendent, $5,000 per annum; J. G. Dewan,

Assistant Physician, $1,700 per annum; M. Jackson, Assistant Physician, $3,000 per annum; E. P. Lewis, Director Out-patient Department, $4,400 per annum; J. M. Meiners, Senior Undergraduate Medical Interne, $300 plus 3 meals per day; A. Whiteside, Medical Interne, $120 plus 3 meals per day. 2. (9) Dr. Keith M. McGregor, Assistant Physician, $2,400 per annum; Dr. Florence Nichols, Assistant Physician, $2,400 per annum; Dr. Ernest G. Goddard, Assistant Physician, $2,400 per annum; Dr. W. Wm. S. Campbell, Assistant Physician, $2,400 per annum; Dr. G. C. Ferrier, Assistant Physician, $2,400 per annum; Dr. Roger M. Billings, Assistant Physician, $2,400 per annum; Dr. Earl V. Metcalfe, Assistant Physician, $2,400 per annum; Dr. Gordon H. Lugsdin, Assistant Physician, $2,400 per annum; Dr. Burdett H. McNeel, Assistant Physician, $2,700 per annum. 3. G. Boyer, Consultant Neurologist and Instructor, $10 per week; H. W. Johnston, Consultant in Gynaecology, $10 per week; E. A. Linell, Consultant Neuropathologist, $50 per month; W. H. Lowrey, Consultant and Instructor Opthalmology, $10 per week; K. G. McKenzie, Consultant in Neuro-Surgery, $10 per week; C. Rae, Consultant Nose and Throat, $10 per week; T. Owen, Part-time Medical Consultant, $1,000 per annum. 4. (*a*) 65 full-time employees plus 4 Post-graduate student nurses (full time); (*b*) 3 part-time employees; (*c*) 6 Consultants. 5. (62). 6. (6). 7. 1,710. 8. Gross per capita cost, $5.51; Net per capita cost, $4.42.

The following Bills were severally read the second time:—

Bill (No. 1), An Act respecting the City of Ottawa.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 2), An Act to incorporate the Society of Industrial and Cost Accountants of Ontario.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 7), An Act respecting the Township of West Gwillimbury.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 13), An Act respecting Appleby School.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 50), An Act to amend The Highway Traffic Act.

Referred to the Committee on Municipal Laws.

Bill (No. 44), An Act to amend The Costs of Distress Act.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 45), An Act respecting Bailiffs.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 46), An Act to amend The Companies Act.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 47), An Act to amend The Summary Convictions Act.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 49), An Act respecting Business Brokers.

Referred to a Committee of the Whole House to-morrow.

The Provincial Secretary presented to the House, by command of the Honourable the Lieutenant-Governor:—

Report of the Department of Public Works for year ending March 31st, 1940. (*Sessional Papers No. 8.*)

Also, Report on the Distribution of the Sessional Statutes, 1940, from March 14th, 1940, to March 6th, 1941. (*Sessional Papers No. 30.*)

Also, Report of the Commission for the Investigation of Cancer Remedies for the year ending December 31st, 1940. (*Sessional Papers No. 44.*)

The House then adjourned at 4.50 p.m.

TUESDAY, MARCH 11TH, 1941

PRAYERS. 3 O'CLOCK P.M.

Mr. Glass, from the Standing Committee on Standing Orders, presented their Third Report which was read as follows and adopted:—

Your Committee has carefully considered the following Petitions and finds the Notices as published in each case sufficient:—

Of the Corporation of the Township of Teck, praying that an Act may pass to permit the Township to assess the Temiskaming Telephone Company under Sections 12 and 13 of The Assessment Act, to control the type of buildings to be used for business purposes, and for other purposes.

Of the Corporation of the City of Sudbury, praying that an Act may pass validating a by-law of the Petitioners to impose a charge on certain citizens for the use of water from standpipes in the said City.

Your Committee recommends that Rule No. 63 of Your Honourable House be suspended in this that the time for introducing Private Bills be extended until and inclusive of Tuesday, the 18th day of March next.

Ordered, That the time for introducing Private Bills be extended until and inclusive of Tuesday, the 18th day of March next.

The following Bills were severally introduced and read the first time:—

Bill (No. 11), intituled, "An Act respecting the City of Toronto." *Mr. Strachan.*

Referred to the Committee on Private Bills.

Bill (No. 16), intituled, "An Act respecting the Board of Trustees of the Roman Catholic Separate Schools for the City of Toronto." *Mr. Strachan.*

Referred to the Committee on Private Bills.

Bill (No. 20), intituled, "An Act respecting the Township of Teck." *Mr. Cooper.*

Referred to the Committee on Private Bills.

Bill (No. 21), intituled, "An Act respecting the City of Sudbury." *Mr. Cooper.*

Referred to the Committee on Private Bills.

Bill (No. 57), intituled, "An Act to amend The Jurors Act." *Mr. Strachan.*

Ordered, That the Bill be read a second time to-morrow.

Bill (No. 58), intituled, "An Act to amend The Venereal Diseases Prevention Act." *Mr. Kirby.*

Ordered, That the Bill be read a second time to-morrow.

Mr. Acres asked the following Question (No. 22):—

1. How many hogs were lost in 1940 at the Ontario Agricultural College at Guelph as a result of hog cholera. 2. What was their value. 3. When was the outbreak of cholera detected and when was it brought under control.

The Honourable the Minister of Agriculture replied as follows:—

1. 239. 2. $7,000. 3. First detected September 14th, 1940. Brought under control September 30th, 1940.

Mr. Acres asked the following Question (No. 26):—

1. What was the total expense to the Province of Ontario involved in delivery of the Clydesdale stallion, Craigie Realization, at the Ontario Agricultural College, including purchase price and all transportation and other charges relating to delivery of the animal. 1. When did the animal arrive at the Ontario Agricultural College. 3. When did he die. 4. Has the Government any information as to his progeny, and if so, what is the number thereof. 5. How many of his progeny are now owned by the Province and where are they located.

The Honourable the Minister of Agriculture replied as follows:—

1. $3,082.00. 2. April, 1935. 3. June, 1940. 4. Twenty-seven foals. 5. Eight—at the Ontario Agricultural College, Guelph.

Mr. Acres asked the following Question (No. 63):—

1. Does the Department of Agriculture carry insurance covering public liability and property damage risks on automobiles owned by the Province of Ontario and operated in connection with activities of the Department of Agriculture. 2. If so, what, on December 31st, 1940, were the names of the companies carrying the insurance, the amounts of the policies, the premiums paid with respect to each policy and the names and addresses of the agents through which the insurance was placed. 3. How many automobiles are covered by such policies.

The Honourable the Minister of Agriculture replied as follows:—

1. Yes. 2. The insurance was carried with Lloyd's of London. Legal Liability, $10,000 to $20,000 limits; Property Damage, $1,000 limit. Premium for the year January 1st, 1940, to December 31st, 1940, $750.56; Agent—Anglo-Canadian Underwriters, Limited, 80 Richmond St. W., Toronto; Sub-Agent—Tomenson, Saunders, Smith and Garfat, 12 Wellington St. East, Toronto. 3. 64 cars and 10 trucks.

Mr. Frost asked the following Question (No. 84):—

1. Who were the members of the Milk Control Board in each of the fiscal years ending March 31st, 1938, 1939 and 1940. 2. During the same fiscal years, what was each member paid: (*a*) By way of salary, honorarium or other allowance; (*b*) By way of travelling and other expenses. 3. In each of the fiscal years mentioned in (1), how many legally constituted meetings of the Board have been held.

The Honourable the Minister of Agriculture replied as follows:—

Members	Salaries 1938	Honor-ariums	Travelling Expenses	Meetings
J. E. Houck, Chairman.....	$4,500.00		$ 61.73	
J. S. Beck, Member.....	3,737.50		92.11	
J. A. MacFeeters, Member.....		$2,325.00	15.25	663
J. B. Nelson, Secretary.....	2,641.67		58.13	

Members	Salaries	Honor-ariums	Travelling Expenses	Meetings
	1939			
J. E. Houck, Chairman (1 month)	350.00			
C. M. Meek, Chairman (10¾ months)	4,028.23		391.45	
J. S. Beck, Member	3,750.00		89.14	
J. A. MacFeeters, Member		360.00	6.35	1,049
E. Kitchen, Member		212.50		
J. B. Nelson, Secretary	2,650.00		163.79	
	1940			
C. M. Meek, Chairman	4,500.00		473.72	
J. S. Beck, Member	3,750.00		26.15	749
E. Kitchen, Member		1,300.00		
J. B. Nelson, Secretary	2,650.00		231.45	

The Order of the Day for resuming the Adjourned Debate on the Amendment to the Motion for consideration of the Speech of The Honourable the Lieutenant-Governor at the opening of the Session, having been read,

The Debate was resumed and, after some time, it was, on the motion of Mr. Oliver,

Ordered, That the Debate be adjourned until Thursday next.

The Provincial Secretary presented to the House, by command of the Honourable the Lieutenant-Governor:—

Report of the Department of Health, Ontario, 1940. (*Sessional Papers No. 14.*)

Also, Report of the Minister of Public Welfare, Province of Ontario, for fiscal year 1939-1940. (*Sessional Papers No. 19.*)

Also, Report of the Ontario Athletic Commission for the period from April 1st, 1939, to March 31st, 1940. (*Sessional Papers No. 35.*)

The House then adjourned at 5.40 p.m.

WEDNESDAY, MARCH 12TH, 1941

PRAYERS. 3 O'CLOCK P.M.

On Motion of Mr. Hepburn (Elgin), seconded by Mr. Nixon (Brant),

Ordered, That this House will on Friday next resolve itself into the Committee of Supply.

On motion of Mr. Hepburn (Elgin), seconded by Mr. Nixon (Brant),

Ordered, That this House will on Friday next resolve itself into the Committee on Ways and Means.

The following Bills were severally introduced and read the first time:—

Bill (No. 59), intituled, "An Act respecting British Child Guests." *Mr. Hipel.*

Ordered, That the Bill be read a second time to-morrow.

Bill (No. 60), intituled, "An Act to amend The Northern Development Act." *Mr. Dewan.*

Ordered, That the Bill be read a second time to-morrow.

Bill (No. 61), intituled, "An Act to amend The Railway Act." *Mr. Brownridge.*

Ordered, That the Bill be read a second time to-morrow.

Bill (No. 62), intituled, "An Act to amend The Agricultural Representatives Act." *Mr. Dewan.*

Ordered, That the Bill be read a second time to-morrow.

Bill (No. 63), intituled, "An Act to amend The Milk and Cream Act." *Mr. Dewan.*

Ordered, That the Bill be read a second time to-morrow.

Mr. Murphy asked the following Question (No. 25):—

1. What individuals or organizations recommended the founding of Ipperwash Park in the County of Lambton. 2. Who acted as valuator for the Government in the purchase of the land. 3. Aside from the purchase price of $10,000

what amount has been spent on Ipperwash Park by way of: (*a*) Capital expenditure; (*b*) Ordinary expenditure. 4. What improvements have been placed on the property by the Government. 5. What staff are employed at the Park, stating: (*a*) Name; (*b*) Date appointed; (*c*) Whether temporary, permanent or seasonal; (*d*) Salary or wage rates. 6. Who is the Superintendent of the Park, when was he appointed and what is his salary. 7. What Department of the Government is concerned with administering the affairs of the Park.

The Honourable the Minister of Lands and Forests replied as follows:—

1. The late M. D. McVicar, M.L.A., Ross Gray, M.P., Wm. Guthrie, M.P.P. Petitions from over one thousand citizens representing forty-six different communities of Southwest Ontario and resolution dated March 5th, 1934, by the Municipal Corporation of the Township of Bosanquet renewing a previous resolution of the said Corporation dated October 3rd, 1932. 2. J. L. Morris, C.E., D.E. 3. (*a*) Capital, $14,699.13; (*b*) Ordinary, $7,938.87. 4. 1937-38—Improvement to roads including rock fill where creek cut through beach at west approach to bridge, rebuilt old bridge; Installed twenty picnic tables; Underbrushing and thinning northern portion of property now comprising picnic grounds and camping area; Construction of modern lavatory equipped with wash basins; Drainage northern area. 1938-39—Installed lighting system throughout Park; Buildings: Store with living quarters above, picnic pavilion, office with living quarters for caretaker; Tile drained central area; Graded camping area and leveled sand dune to east of camping area using fill in low areas to central section; Planted 30,000 trees in southwest corner of Park. 1939-40—Built garage and workshop; Complete water system with pump house to east of camping area and water mains running to all buildings and public water taps at convenient points installed; Roads improved, banks cut down; Filled in area west of west traffic road; Built retaining wall; Planted 4,500 large trees in sand dunes west of creek. 5. (*a*) Norman Moody; (*b*) 10th June, 1938; (*c*) Temporary; (*d*) $2.50 per diem. 6. No permanent superintendent. Fred Malloy on temporary basis at $4.00 per diem during tourist season. 7. Department of Lands and Forests.

Mr. Summerville asked the following Question (No. 37):—

Has the Hydro-Electric Power Commission purchased any power plants since 1937, and if so give particulars in each case as to: (*a*) Installed capacity; (*b*) Price paid; (*c*) Kilowatt hour capacity in normal year and normal capacity; (*d*) Date of construction; (*e*) Location; (*f*) Date of purchase.

The Honourable the Prime Minister replied as follows:—

No power plants have been purchased since 1937.

Mr. Challies asked the following Question (No. 42):—

1. What is the estimated cost of the new development at Barrett Shute on the Madawaska River, exclusive of storage facilities. 2. What is the estimated

cost of storage facilities. 3. What is the proposed installed horse-power of the plant. 4. What is the estimated maximum capacity of the plants at normal efficiency with spare equipment. State amount of latter. 5. What is the average annual horse-power capacity of plant in a normal year, utilizing the storage above named in (2). 6. What is the estimated annual load factor of plant utilizing the water available in a normal year in the most economical manner.

The Honourable the Prime Minister replied as follows:—

1. $5,304,000.00. 2. $1,754,000.00. 3. 54,000 electrical horse-power. 4. 54,000 horse-power including spare equipment of 5,000 horse-power. 5. 32,500 horse-power. 6. 60%.

Mr. Challies asked the following Question (No. 43):—

What is the total horse-power exported or sold each month to persons or corporations in the United States, giving names in each case with point of delivery, by the Hydro-Electric Power Commission of Ontario during each of the years 1939 and 1940; (*a*) Peak horse-power; (*b*) Kilowatt hours; (*c*) Price per horse-power.

The Honourable the Prime Minister replied as follows:—

TOTAL POWER EXPORTED AT THE INTERNATIONAL BOUNDARY

	(*a*) Peak Horse-power	(*b*) Kilowatt-hours	(*a*) Peak Horse-power	(*b*) Kilowatt-hours
	1939		1940	
January	170,375	74,836,270	181,367	53,408,211
February	170,375	68,475,200	166,488	51,558,577
March	166,890	71,412,600	164,611	58,789,203
April	208,713	60,293,500	219,571	78,902,448
May	225,871	75,736,731	222,788	96,773,503
June	234,316	76,749,486	225,335	96,541,158
July	223,190	72,456,800	226,005	107,801,611
August	224,263	87,335,700	247,453	101,960,918
September	220,241	72,453,700	261,930	98,945,380
October	204,290	57,171,600	199,598	76,377,960
November	157,775	63,732,600	237,131	95,025,880
December	183,440	54,201,222	253,217	106,211 817

NOTE:—In January, 1938, with the collapse of the Upper Steel Arch Bridge at Niagara Falls, the Canadian Niagara Power Company lost their export connections at this point, and to assist the company the Commission exported over its own transmission facilities and its own surplus export license a total of 84,363,800 Kilowatt-hours for the Canadian Niagara Power Company not included in the above tabulation.

Prior to December 29th, 1939, all export power went to the Niagara Hudson Power Corporation, or its subsidiaries. On December 29th, 1939, deliveries were commenced at Cornwall to the Cedars Rapids Transmission Company, Ltd., for export to the Aluminum Company of America at Massena, New York.

(*c*) For firm export of 45,000 kilowatts (60,322 horse-power), the price is $12.50 (U.S. funds) per horse-power per year up to 40,000 kilowatts, and 2.5 mills (U.S. funds) per kilowatt-hour for all energy between 40,000 and 45,000 kilowatts. For surplus power exported at the Niagara River, exclusive of the power exported for the Canadian Niagara Power Company, the Commission received during 1939 and 1940 an average net value (gross revenue less export tax), equivalent in Canadian funds to 1.07 mills per kilowatt-hour. For export deliveries at Cornwall the price is $14.50 (Canadian funds) per horse-power per year plus 2.47 mills (Canadian funds) per kilowatt-hour for energy in excess of 90 per cent load factor, plus payment of export tax on energy.

Mr. Welsh asked the following Question (No. 46):—

1. On December 31st, 1940, how many patients were in residence at the Ontario Hospital at Langstaff, formerly commonly known as the Toronto Gaol Farm for Men. 2. Are both male and female patients treated at the Ontario Hospital, Langstaff, and if so specify number of each sex as of December 31st, 1940. 3. What alterations and repairs were necessary to convert the buildings and plant at the Toronto Gaol Farm, Langstaff, into a mental hospital, specifying: (*a*) Nature of repairs and alterations; (*b*) Name of contractor or contractors making such repairs and alterations; (*c*) Amount paid each contractor with respect to each contract; (*d*) Total cost of repairs and alterations performed on day labour or other basis aside from contracts. 4. What furniture and furnishings, and equipment, was purchased with respect to the Ontario Hospital at Langstaff, specifying: (*a*) General description of furniture and furnishings, and equipment; (*b*) Names of persons supplying furniture, furnishings and equipment with amount paid to each. 5. Were repairs and alterations and supplying of furniture, furnishings and equipment on a competitive tender basis. 6. Who is the Superintendent of the Ontario Hospital at Langstaff, stating salary and date of appointment. 7. Who is the Steward at the Ontario Hospital at Langstaff, stating date of appointment, salary and particulars of former office and business experience. 8. How many persons are employed on the staff of the Ontario Hospital at Langstaff. 9. What disposition was made of the staff of the former Toronto Gaol Farm for Men at Langstaff giving names and particulars in each case.

The Honourable the Minister of Health replied as follows:—

1. 327. 2. Male only. 3. (*a*) Installation of window guards and repairing electric pole line; repairs to heating equipment; (*b*) Lundy Fence Company, Hydro-Electric Power Commission; (*c*) Lundy Fence Company, $1,761,00, Hydro-Electric Power Commission, $106.31; (*d*) None. 4. The agreement with the City of Toronto provided for the Province to take over and use all the items of general equipment, furnishings, tools, etc., in use at the Farm and to return such goods or equal value at the termination of the agreement. (*a*) Grates, jacket for Gothic Heater, repairs to Gurney Water Heater, grates for boiler,

chairs, lamps, tables, wardrobes, dressers, radio, rugs and curtains. (*b*) Boiler furnaces and stove parts, $133.13; Robert Simpson Co., Ltd., $59.65; T. Eaton Co., Ltd., $305.65; Canadian General Electric Co., $24.95; Gordon MacKay, Ltd., $53.75. 5. Tenders invited for supplying and erection of window guards. Electrical work carried out by the Hydro Commission on the basis of their estimate. Items of furnishings and equipment were of a minor nature and were selected and purchased direct on this account. 6. Dr. T. D. Cumberland who is also superintendent of Ontario Hospital, New Toronto; annual salary for two positions, $5,600 less perquisites; appointed July 1st, 1913. 7. Mr. K. M. Pack, appointed as Steward February 1st, 1940; $1,800 per annum less perquisites; appointed to Department of Lands and Forests July 3rd, 1931, transferred to Department of Health, Ontario Hospital, Woodstock, as Clerk, March 1st, 1936, and transferred to Ontario Hospital, St. Thomas, as Clerk, May 1st, 1939. 8. 57.

9. PERMANENT STAFF

Name	Position	Disposition	Present Salary
Basher, G. H.	Superintendent	Enlisted—and on leave.	
Armstrong, A.	Sergeant	Transferred Toronto Gaol	$1,900.00
Armstrong, K.	Guard	Salary paid to November 20th, 1939. Dispensed with services.	
Bennett, A.	Guard	Salary paid to November 20th, 1939. Dispensed with services.	
Bennett, R.	Guard	Transferred Ontario Reformatory, Mimico; later, enlisted—and on leave.	
Clarke, W. B.	Guard	Transferred Toronto Gaol	$1,500.00
Cooper, R. S.	Clerk of Records	Transferred Toronto Gaol	$1,680.00
Creighton, E.	Guard	Transferred Industrial Farm, Burwash. Resigned December 31st, 1939.	
Cuttance, R.	Guard	Transferred Ontario Hospital, Langstaff	$1,500.00
Glover, J. A.	Guard	Enlisted—and on leave.	
Harrison, F. W.	Guard	Transferred Ontario Hospital, Langstaff. Resigned January 16th, 1940.	
Henry, J. P.	Guard	Enlisted—and on leave.	
Holmes, R.	Engineer	Transferred Ontario Hospital, Langstaff	$2,123.16
Hull, G.	Guard	Transferred Ontario Hospital, Langstaff	$900.00
Jacobs, S. W.	Guard	Enlisted—and on leave.	
Johnston, J. W.	Guard	Transferred Ontario Reformatory, Mimico; later, enlisted—and on leave.	
Kidd, E. H.	Guard	Transferred Ontario Hospital, Langstaff. Resigned May 4th, 1940.	
Leece, C. F.	Guard	Transferred Toronto Gaol	$1,500.00
Maguire, R.	Guard	Retired on pension.	
Mathews, A. T.	Guard	Transferred Toronto Gaol	$1,500.00
Mitchell, E. J.	Guard	Transferred Toronto Gaol	$1,500.00
McComb, A.	Guard	Transferred Ontario Reformatory, Mimico. Services unsatisfactory—dismissed October 23rd, 1939.	
McComb, I.	Guard	Employed Toronto Gaol, May 3rd, 1940, to July 2nd, 1940. Appointed Temporary staff, Toronto Gaol, August 21st, 1940	$1,500.00
McLean, Dr. G. D.	Surgeon	Retired to private practice. Salary paid to November 20th, 1939.	
Quantz, E. P.	Farm Foreman	Retired on pension.	
Reid, J.	Night Sergeant	Transferred Toronto Gaol	$1,650.00
Sackfield, H.	Guard	Transferred Ontario Hospital, Langstaff	$1,500.00
Suter, H.	Guard	Transferred Ontario Hospital, Langstaff	$1,125.00
Tyndall, W.	Guard	Retired on pension.	
Woodhead, S. T.	Guard	Transferred Toronto Gaol	$1,500.00

TEMPORARY STAFF

Name	Position	Appointed	Disposition	Present Salary
Allan, A. L.	Temporary Guard	Sept. 12th, 1939	Salary paid to November 20th, 1939. Dispensed with services.	
Doyle, J. M.	Temporary Guard	May 8th, 1939	Salary paid to November 20th, 1939. Dispensed with services.	
Foreman, D. J.	Temporary Guard	Nov. 5th, 1936	Transferred Industrial Farm, Burwash. (Unfit medically, January 31st, 1940.) Dispensed with services.	
Holden, P.	Temporary Guard	Apr. 24th, 1939	Transferred Ontario Hospital, Langstaff	$1,050.00
Johnston, E. H.	Temporary Guard	July 22nd, 1939	Salary paid to Novembe 20th, 1939. Dispensed with services.	
Kerr, J.	Temporary Guard	Oct. 31st, 1936	Transferred Ontario Hospital, Langstaff. Resigned May 4th, 1940.	
Metcalf, B. E.	Temporary Guard	Sept. 22nd, 1939	Transferred Provincial Secretary's Dept., Oct. 22nd, 1939	$1,200.00
MacIntyre, A. A.	Chef-Guard	Mar. 1st, 1938	Transferred Ontario Training School for Boys, Bowmanville	$1,200.00
McHale, W.	Temporary Guard	May 5th, 1937	Transferred Industrial Farm, Burwash; later, Toronto Gaol	$1,500.00
Risebrough, R.	Temporary Guard	Mar. 24th, 1937	Transferred Industrial Farm, Burwash. Resigned May 9th, 1940.	

Mr. Black asked the following Question (No. 69):—

1. In cases of deaths of patients in Ontario Hospitals, is it the practice to call a Coroner. 2. Since November 1st, 1934, in how many cases have Coroners been called to Ontario Hospitals in connection with deaths of patients. 3. What is the total amount paid since November 1st, 1934, to Coroners in connection with their visits to Ontario Hospitals in relation to deaths of patients. 4. Since November 1st, 1934, how many Coroners' inquests have been held in relation to deaths of patients in Ontario Hospitals.

The Honourable the Attorney-General replied as follows:—

1. Yes. 2. 4,363. 3. $22,291.00. 4. 28.

Mr. Doucett asked the following Question (No. 74):—

1. Was Mr. A. N. Middleton, Public Trustee, superannuated, and if so, when. 2. Who is his successor. 3. When was he appointed. 4. What is his salary. 5. What are his special qualifications for the position. 6. How many employees are on the staff in the office of the Public Trustee. 7. What was the total cost of operating the office of the Public Trustee in the fiscal years ending March 31st, 1938, March 31st, 1939, and March 31st, 1940. 8. On December

31st, 1940, how many estates of Ontario Hospital patients were being administered by the Public Trustee. 9. How many estates or matters, other than estates of mental hospital patients, were being administered by the Public Trustee on December 31st, 1940.

The Honourable the Attorney-General replied as follows:—

1. Mr. A. N. Middleton applied for superannuation under Section 26, Subsection 1 (*d*) of The Public Service Act. This was granted effective from April 30th, 1940. 2. Armand Racine, K.C. 3. October 1st, 1940. 4. Seven thousand dollars ($7,000) per annum. 5. Mr. Racine has been a barrister and solicitor for 20 years. He was appointed one of His Majesty's counsel learned in the law in the year 1934. He has enjoyed a large practice as counsel and as a solicitor. 6. Permanent—33; Temporary—2; Total 35 as of March 1st, 1941. 7. Fiscal year ending March 31st, 1938—$63,731.96; Fiscal year ending March 31st, 1939—$67,830.03; Fiscal year ending March 31st, 1940—$66,711.58. 8. 2,599 estates. 9. 2,292 estates.

Mr. Reynolds asked the following Question (No. 90):—

1. Why was the property known as "Camp Scholfield" located near Bowmanville offered for sale by the Government. 2. What tenders, if any, were received by the Government for purchase of the property, specifying name of each tenderer and price tendered. 3. Has the property been sold and if so to whom and for what amount. 4. In the deed of gift of the property from the late H. C. Scholfield to the Government, were any conditions attached as to the use to be made of the property and as to proceeds of sale should the property be sold and, if so, what were the conditions. 5. What present summer camp facilities are used for the inmates of the Boys' School at Bowmanville.

The Honourable the Provincial Secretary replied as follows:—

1. Expensive to maintain: Upkeep of 10 buildings, and a large dining hall, plumbing, power, fuel, bedding, athletic equipment, dishes, etc.; Paying and maintaining of Counsellors to supplement permanent staff; Wages, fuel and food for caretaker for ten months; Gas, oil and upkeep of vehicles used in transport of boys and supplies to and from the main school. The opening of camp meant dividing staff and virtually running two institutions. On April 7th, 1938, the Dining Hall at Camp, together with the equipment stored therein, was completely demolished by fire. 2. The property was advertised for sale in the Globe and Mail, the Evening Telegram of Toronto and the Canadian Statesman of Bowmanville, on June 5th, 1940. McArthur and Company, Toronto, acting for E. A. Craig, $1,500.00; Ivan M. Hobbs, Bowmanville, $500.00. 3. Sold to the highest bidder, E. A. Craig, for $1,500.00. 4. No conditions. 5. Rather than rebuild the Camp it was decided to try a "Summer School" amid the beautiful surroundings of the main School property. The younger children were particularly well provided for with an interest programme in a natural park at a bend in the creek. A dam was constructed by the boys which insured warm water for swimming all season. (At the lake the water was seldom warm enough for swimming during the month of July.) All boys in addition to the maintenance

work of the School participate in a well-organized Summer programme consisting of sports, organized games, and swimming. Boys with satisfactory conduct records are given a Summer vacation to their homes.

The House resolved itself into a committee, severally to consider the following Bills:—

Bill (No. 1), An Act respecting the City of Ottawa.

Bill (No. 2), An Act to incorporate the Society of Industrial and Cost Accountants of Ontario.

Bill (No. 7), An Act respecting the Township of West Gwillimbury.

Bill (No. 13), An Act respecting Appleby School.

Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the several Bills without Amendments.

The House resolved itself into a Committee to consider Bill (No. 37), An Act to amend The Judicature Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report progress, and to ask for leave to sit again.

Resolved, That the Committee have leave to sit again to-morrow.

The House resolved itself into a Committee to consider Bill (No. 40), An Act to amend The Partnership Registration Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time to-morrow.

The House resolved itself into a Committee to consider Bill (No. 42), An Act to amend The Real Estate Brokers Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time to-morrow.

The House resolved itself into a Committee to consider Bill (No. 43), An Act to amend The Conditional Sales Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time to-morrow.

The House resolved itself into a Committee to consider Bill (No. 44), An Act to amend The Costs of Distress Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time to-morrow.

The House resolved itself into a Committee to consider Bill (No. 45), An Act respecting Bailiffs, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time to-morrow.

The House resolved itself into a Committee to consider Bill (No. 46), An Act to amend The Companies Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time to-morrow.

The House resolved itself into a Committee to consider Bill (No. 47), An Act to amend The Summary Convictions Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time to-morrow.

The Order of the Day for resuming the Adjourned Debate on the Amendment to the Motion for consideration of the Speech of The Honourable the Lieutenant-Governor at the opening of the Session, having been read,

The Debate was resumed and, after some time, it was, on the motion of Mr. Oliver,

Ordered, That the Debate be adjourned until to-morrow.

The House then adjourned at 4.40 p.m.

THURSDAY, MARCH 13TH, 1941

PRAYERS. 3 O'CLOCK P.M.

Mr. Elliott, from the Standing Committee on Private Bills, presented their Second Report which was read as follows and adopted:—

Your Committee beg to report the following Bills without amendment:—

Bill (No. 3), An Act respecting the London Street Railway Company and The Corporation of the City of London.

Bill (No. 4), An Act respecting the Rockwood Town Hall.

Bill (No. 6), An Act respecting the City of Port Arthur and the Public Utilities Commission of Port Arthur.

Your Committee beg to report the following Bills with certain amendments:—

Bill (No. 8), An Act respecting the Village of Swansea.

Bill (No. 19), An Act respecting the City of Windsor.

Your Committee would recommend that the fees less the penalties, if any, and the actual cost of printing be remitted on Bill No. 4, An Act respecting the Rockwood Town Hall, on the ground that it relates to a charitable institution.

Ordered, That the fees less the penalties, if any, and the cost of printing, be remitted on Bill (No. 4), An Act respecting the Rockwood Town Hall, on the ground that it relates to a charitable institution.

The following Bills were severally introduced and read the first time:—

Bill (No. 64), intituled, "An Act to amend The Mining Act." *Mr. Laurier.*

Ordered, That the Bill be read a second time to-morrow.

Bill (No. 65), intituled, "An Act to provide for the Suspension of Grand Juries during the Present War." *Mr. Conant.*

Ordered, That the Bill be read a second time to-morrow.

Mr. Acres asked the following Question (No. 28):—

1. Has the Government any information respecting an epidemic of hog cholera in the western part of the Province during the year 1940. 2. If so:

(*a*) What measures were taken by the Government in the matters of localizing and checking the epidemic; (*b*) How many hogs were affected and destroyed; (*c*) What was the approximate value of the hogs destroyed; (*d*) Has any measure of compensation been granted by the Government to hog owners and, if so, give particulars.

The Honourable the Minister of Agriculture replied as follows:—

1. Yes. 2. (*a*) Epidemics such as hog cholera and any work in connection with health of animals is specifically the responsibility of the Health of Animals Branch of the Dominion Department of Agriculture, Ottawa. Though the Provincial Government has no definite control, yet officers of the Ontario Department of Agriculture in the Counties where hog cholera existed co-operated not only with the farmers but also with the officials of the Dominion Health of Animals Branch. The losses in some sections were so severe and the complaints coming into local provincial offices so numerous that the Ontario Department of Agriculture requested a conference with the Federal officer in charge. As a result local organization was effected which made the control much more efficient. The Ontario Department also inserted an advertisement in the press advising producers of hogs who had not already become affected the policy which they should adopt in order to protect themselves. (*b*) No information. (*c*) No information. (*d*) Compensation is granted under the rules and regulations of the Federal Department of Agriculture.

Mr. Acres asked the following Question (No. 66):—

1. Since April 1st, 1935, what Cold Storage Warehouses, Co-operative or otherwise, have received assistance from the Province of Ontario by way of loans or grants. 2. Where are they located. 3. What is their capacity in each case. 4. What grants or loans were made to each by the Province. 5. What are the names of the Managers of the enterprises in each case. 6. In what cold storage plants or warehouses which have received provincial assistance by way of grant or loan is a locker system in use whereby individuals may store meats, vegetables, etc., in individual lockers or compartments.

The Honourable the Minister of Agriculture replied as follows:—

Name	Location	Capacity	Loan	Name of Manager	Locker System
Aldershot Distributing Co-Operative Company Ltd..	Aldershot	60,000 hampers	$47,160	W. O. Galloway	Yes
Elgin Growers Co-operative Limited.....	St. Thomas	42,000 "	27,500	W. B. Blewett	Yes
Georgian Bay Fruit Growers Limited.....	Thornbury	75,000 "	6,000	Geo. Mitchell	Yes
Middlesex Growers Co-Operative Limited.....	Strathroy	30,000 "	9,000	C. S. Wilkie	No
Oxford Fruit Co-operative Limited.....	Woodstock	50,000 "	5,000	Geo. Laird	Yes
Kent Fruit Growers Co-operative Limited.....	Blenheim	20,000 "	12,000	Jas. Slocombe	No

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Mr. Downer asked the following Question (No. 80):—

1. What appointments have been made in the Criminal Investigation Branch of the Ontario Provincial Police since the present Government took office, stating: (*a*) Name of appointee; (*b*) Date of appointment; (*c*) Salary; (*d*) Official title; (*e*) Indicating whether by promotion or outside appointment.

The Honourable the Attorney-General replied as follows:—

(*a*) Name of Appointee	(*b*) Date of Appointment	(*c*) Salary	(*d*) Official Title	(*e*) Promotion or or Outside Appointment
Miller, John (retired on superannuation April 23rd, 1938)	Mar. 15, 1935	$4,000 per annum	Senior Inspector, C.I.B.	Promotion
Boyd, Albert B. (retired on superannuation June 1st, 1940).....	Dec. 1, 1938	3,600 per annum	Acting Chief Inspector, C.I.B.	Promotion
McCready, Herbert S.....	May 21, 1940	3,500 per annum	Deputy Commissioner	Outside (Tor. City Police)
Ward, Albert H....	Feb. 1, 1941	3,200 per annum	Chief Inspector, C.I.B.	Promotion
Lougheed, Wm. H..	June 1, 1937	3,000 per annum	Inspector, C.I.B.	Promotion
MacKay, George...	June 1, 1937	2,400 per annum	Inspector, C.I.B.	Promotion
Wilson, Alex. S.....	Nov. 1, 1939	2,400 per annum	Inspector, C.I.B.	Promotion
Noakes, Harry.....	May 1, 1940	2,400 per annum	Inspector, C.I.B.	Promotion

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Mr. Kennedy asked the following Question (No. 91):—

1. Since April 1st, 1935, how many Magistrates have ceased to hold office, and indicate: (*a*) Name of Magistrate, address; (*b*) Jurisdiction; (*c*) Date of cessation of duties; (*d*) Rate of remuneration; (*e*) Indicating whether dismissed, requested to resign, resigning voluntarily, superannuated, deceased or as the case may be; (*f*) Reason for dismissals or requested resignations. 2. Since April 1st, 1935, how many Magistrates have been appointed by the Government, and indicate: (*a*) Name of Magistrate, address; (*b*) Jurisdiction; (*c*) Date of appointment; (*d*) Rate of remuneration.

The Honourable the Attorney-General replied as follows:—

(a) 1. Name of Magistrate and Address	(b) Jurisdiction	(c) Date of Cessation of Duties	(d) Rate of Remuneration	(e) Dismissed or	(f) Reason
T. W. Scandrett, London	Province (Appointed City of London)	Dec. 14, 1935	$5,000.00	Dismissed	Services unsatisfactory
J. J. J. Weir, Kitchener	Province	Dec. 1, 1935	3,000.00	Deceased	
E. W. Cross, Simcoe	Province	Dec. 10, 1935	3,000.00	Voluntarily Resigned	
D. J. McDonnell (Deputy), Cornwall	Province	Oct. 15, 1935	1,500.00	Deceased	
E. S. Livermore, St. Thomas	Province	Oct. 14, 1936	3,500.00	Voluntarily Resigned	
W. E. Kelley, Simcoe	Province	May 27, 1937	3,000.00	Voluntarily Resigned	Transferred to Crown Attorney
A. A. Winter, Simcoe	Province	Dec. 4, 1939	3,000.00	Deceased	
D. Davidson (Deputy), Mimico	Province	Feb. 1, 1937	2,500.00	Deceased	
L. J. C. Bull, Brampton	Province	Feb. 28, 1938	3,000.00	Dismissed	Services unsatisfactory
J. Cowan, Toronto	Province (Appointed City of Toronto)	May 11, 1938	6,000.00	Dismissed	Conduct unbecoming a Magistrate
T. O'Connor, Toronto	Province (Appointed City of Toronto)	June 1, 1936	6,000.00	Voluntarily Resigned	
J. T. Kirkland, Almonte	Province	Apr. 7, 1938	3,000.00	Deceased	
J. E. Jones, Toronto	Province (Appointed City of Toronto)	May 31, 1938	6,000.00	Resignation Requested	Due to Age—72
J. A. Shea, Kingston	Province	Jan. 1, 1940	3,000.00	Voluntarily Resigned	Appointed Judge
F. W. Major, Gore Bay	Province	May 16, 1940	1,800.00	Deceased	
W. A. Smith, Kingsville	Province	Dec. 16, 1940	2,000.00	Deceased	
M. D. McCrimmon, St. Thomas	Province	Oct. 19, 1940	3,500.00	Deceased	
J. McCormick, Winchester	Province	Nov. 1, 1940	2,500.00	Resignation Requested	Due to Age and Ill Health—77
J. A. Kinney, Kenora	Province	Mar. 31, 1936	2,500.00	Dismissed	Services unsatisfactory

2. (a) Name of Magistrate and Address	(b) Jurisdiction	(c) Date of Appointment	(d) Rate of Remuneration	Remark
D. B. Menzies, London	Provincial (Appointed for City of London)	Dec. 15, 1935	$5,000.00	
W. E. Kelly, Simcoe	Provincial	Dec. 10, 1935	3,000.00	Resigned May 27, 1937
P. C. Bergeron, Cornwall	Provincial	Oct. 15, 1935	3,000.00	
J. Cowan, Toronto	Provincial (Appointed for City of Toronto)	June 1, 1936	6,000.00	Dismissed May 11th, 1938
M. D. McCrimmon, St. Thomas	Provincial	Oct. 14, 1936	3,500.00	Deceased October 19, 1940
A. A. Winter, Simcoe	Provincial	May 27, 1937	3,000.00	Deceased December 4, 1939
W. F. Woodliffe, Brampton	Provincial	May 19, 1937	3,000.00	
F. C. Gullen, Toronto	Provincial (Appointed for City of Toronto)	May 16, 1938	5,000.00	
L. C. Prentice, Toronto	Provincial (Appointed for City of Toronto)	June 1, 1938	5,000.00	
R. Forsyth, Toronto	Provincial (Appointed for City of Toronto)	June 1, 1938	5,000.00	
R. Thomas (Deputy), Bracebridge	Provincial	Jan. 17, 1938	1,500.00	
D. C. Smith, Smith's Falls	Provincial	May 10, 1938	3,000.00	
J. B. Garvin, Kingston	Provincial	Jan. 15, 1940	3,000.00	
W. J. Golden, Little Current	Provincial	Aug. 1, 1939	1,200.00	
E. D. Smith, St. Thomas	Provincial	Nov. 2, 1940	3,000.00	
R. G. Groom, Tillsonburg	Provincial	Feb. 1, 1941	3,000.00	
Judge D. O'Connell, Toronto	Provincial	Mar. 1, 1936	1,200.00	Senior Magistrate—District No. 6
J. McEwan, Sault Ste. Marie	Provincial	Nov. 1, 1939	2,000.00	
W. M. Cooper, Sudbury	Provincial	Apr. 1, 1936	3,000.00	

APPOINTMENTS PRO TEMPORE—RELIEVING FOR MILITARY SERVICE, ILLNESS AND VACATIONS

2. (a) Name of Magistrate and Address	(b) Jurisdiction	(c) Date of Appointment	(d) Rate of Remuneration	Remarks
G. Longman, Barrie	Provincial	May 15, 1937	$15.00 (per diem)	Part time or relieving Magistrate to replace full time Magistrates on vacation or ill
R. Hossack, Toronto	Provincial	Dec. 14, 1939	Nil	Appointed Magistrate to complete jurisdiction as Juvenile Court Judge
H. S. Mott, Toronto	Provincial	Jan. 23, 1940	Nil	Appointed Magistrate to complete jurisdiction as Juvenile Court Judge
H. R. Polson, Toronto	Provincial	May 17, 1939	Nil	Appointed Magistrate to facilitate work as Assistant Inspector of Legal Offices
H. S. McCready, Toronto	Provincial	Sept. 18, 1940	Nil	Appointed Magistrate to facilitate work, issuing warrants, etc., as Dep. Commr. Provincial Police
A. H. Lieff, Ottawa	Provincial	Dec. 1, 1939	3,000.00	Relieving Magistrate Clayton on Military Service
T. M. J. Galligan, Pembroke	Provincial	Aug. 6, 1940	2,500	Relieving Magistrate MacGregor on Military Service
J. P. Madden, Ottawa	Provincial	May 31, 1940	15.00 (per diem)	Part time or relieving Magistrate to replace full time Magistrates on vacation or ill
J. C. M. German, Toronto	Provincial	Jan. 31, 1940	20.00 (per diem)	Part time or relieving Magistrate to replace full time Magistrates on vacation or ill
S. C. Platus, Timmins	Provincial	July 9, 1940	15.00 (per diem)	Part time or relieving Magistrate to replace full time Magistrates on vacation or ill
M. G. Gould, North Bay	Provincial	June 20, 1938	15.00 (per diem)	Part time or relieving Magistrate to replace full time Magistrates on vacation or ill
A. Bond, Toronto	Provincial	Nov. 3, 1938	Nil	Deceased April 7, 1940
R. J. Gillen, Brantford	Provincial	Oct. 1, 1940	3,000.00	Relieving S. A. Jones on six months' leave of absence
Col. A. E. Kirkpatrick, Toronto	Provincial	Sept. 26, 1936	Nil	To Qualify for Toronto Police Commission

The following Bills were read the third time and were passed:—

Bill (No. 1), An Act respecting the City of Ottawa.

Bill (No. 2), An Act to incorporate the Society of Industrial and Cost Accountants of Ontario.

Bill (No. 7), An Act respecting the Township of West Gwillimbury.

Bill (No. 13), An Act respecting Appleby School.

Bill (No. 40), An Act to amend The Partnership Registration Act.

Bill (No. 42), An Act to amend The Real Estate Brokers Act.

Bill (No. 43), An Act to amend The Conditional Sales Act.

Bill (No. 44), An Act to amend The Costs of Distress Act.

Bill (No. 45), An Act respecting Bailiffs.

Bill (No. 46), An Act to amend The Companies Act.

Bill (No. 47), An Act to amend The Summary Convictions Act.

The Order of the Day for resuming the Adjourned Debate on the Amendment to the Motion for the consideration of the Speech of The Honourable the Lieutenant-Governor of the Province of Ontario, at the opening of the Session, having been read,

The Debate was resumed and, after some time,

Mr. Oliver, seconded by Mr. Laurier, moved in Amendment to the Amendment:—

That all the words in the Amendment after the word "and" commencing the second paragraph thereof be struck out and the following be substituted therefor:—

"this House has received with great satisfaction Your Honour's advice on the actions of your Ministers in aid of the war efforts of Canada and approves the various steps reported in Your Honour's address by means of which every co-operation is being and shall be extended to the Dominion authorities in order that the efforts of this Province shall be as effective as possible in bringing to a successful conclusion the struggle in which we are engaged."

The Debate was resumed, and after some time,

The Amendment to the Amendment having been put was carried on the following Division:—

YEAS

Anderson
Armstrong
Baker
Ballantyne
Bégin
Bethune
Blakelock
Bradley
Brownridge
Campbell (Kent, East)
Carr
Cholette
Conacher
Conant
Cooper
Cox
Croome
Cross
Dickson
Duncan
Elliott
Fairbank
Fletcher
Freeborn
Gardhouse
Glass
Gordon
Guthrie
Hagey
Haines
Heenan
Hepburn (Elgin)
Hipel
Houck
Hunter
King
Kirby
Laurier
Macfie
MacGillivray
MacKay
Mercer
Miller
Murray
McEwing
McQuesten
Newlands
Nixon (Brant)
Nixon (Temiskaming)
Oliver
Patterson
Sinclair
Smith
Strachan
Trottier—55

NAYS

Acres
Arnott
Black
Challies
Doucett
Downer
Drew
Duckworth
Frost
Henry
Hepburn (Prince Edward-Lennox)
Kennedy
Macaulay
Murphy
Reynolds
Spence
Stewart
Welsh—18

PAIRS

Campbell (Sault Ste. Marie)	—	Summerville
Croll	—	Dunbar
Lamport	—	Elgie

The Motion, as amended, having been submitted, was then carried on the same Division.

And it was,

Resolved, That an humble Address be presented to The Honourable the Lieutenant-Governor of the Province of Ontario, as follows:—

To the Honourable Albert Matthews,
Lieutenant-Governor of the Province of Ontario.

We, His Majesty's most dutiful and loyal subjects, the Legislative Assembly

of the Province of Ontario, now assembled, beg leave to thank Your Honour for the gracious speech Your Honour has addressed to us.

And this House has received with great satisfaction Your Honour's advice on the actions of Your Ministers in aid of the War efforts of Canada and approves the various steps reported in Your Honour's address by means of which every co-operation is being and shall be extended to the Federal authority in order that the efforts of this Province shall be as effective as possible in bringing to a successful conclusion the struggle in which we are engaged.

The Address, having been read the second time, was agreed to.

Ordered, That the Address be engrossed and presented to The Honourable The Lieutenant-Governor by those Members of this House who are Members of the Executive Council.

The Provincial Secretary presented to the House, by command of the Honourable the Lieutenant-Governor:—

Orders-in-Council pertaining to the Department of Education, 1940-41. (*Sessional Papers No. 45.*)

Also, Return to an Order of the House dated March 10th, 1941, That there be laid before this House a Return showing: All letters, memoranda, certificates and documents of whatsoever nature in the possession of the Government or of any member, official or employee of the Government in relation to one John Kluck who was a patient at the Ontario Hospital at Penetanguishene and who was arrested in the City of Toronto in the month of September, 1940, on a charge of murder. (*Sessional Papers No. 46.*)

The House then adjourned at 4.15 p.m.

FRIDAY, MARCH 14TH, 1941

PRAYERS. 3 O'CLOCK P.M.

Mr. Hepburn delivered to Mr. Speaker a message from The Lieutenant-Governor, signed by himself; and the said message was read by Mr. Speaker, and is as follows:—

ALBERT MATTHEWS

The Lieutenant-Governor transmits Estimates of certain sums required for the services of the Province for the year ending 31st March, 1942, and recommends them to the Legislative Assembly.

Toronto, March 14th, 1941.

(*Sessional Papers No. 2.*)

Ordered, That the message of The Lieutenant-Governor, together with the Estimates accompanying the same, be referred to the Committee of Supply.

The Order of the Day for the House to resolve itself into the Committee of Supply having been read,

Mr. Hepburn moved,

That Mr. Speaker do now leave the Chair and that the House resolve itself into the Committee of Supply.

And a Debate having ensued, it was, on the motion of Mr. Macaulay,

Ordered, That the Debate be adjourned until Tuesday next.

During the course of his presentation of the Budget the Prime Minister and Provincial Treasurer laid on the Table the following statements:—

HYDRO-ELECTRIC RADIAL ACT

LIST SHOWING THE CORPORATIONS, THEIR RESPECTIVE SHARES OF THE TOTAL LIABILITIES AS OF MARCH 31ST, 1941, AND THE RESPECTIVE AMOUNTS OF THEIR DEBENTURES DEPOSITED AS COLLATERAL SECURITY WITH THE COMMISSION UNDER THE 1914 ACT

PORT CREDIT-ST. CATHARINES

Name of Corporation	Respective Shares of Total Liabilities as of March 31st, 1941	Respective Amounts of Debentures Deposited as Collateral
Township of Grantham	$ 9,442.77	$ 141,604.00
" " Louth	41,473.34	621,935.00
" " Clinton	34,872.86	522,954.00
" " North Grimsby	31,216.69	468,126.00
" " Barton	20,941.09	314,033.00
" " East Flamboro	19,626.54	294,320.00
" " Nelson	27,590.26	413,744.00
" " Trafalgar	39,656.53	594,690.00
" " Toronto	17,893.82	268,336.00
Village of Beamsville	3,788.67	56,815.00
" " Grimsby	7,494.86	112,393.00
Town of Burlington	10,639.42	159,549.00
" " Oakville	14,950.23	224,194.00
City of St. Catharines	45,914.79	688,539.00
" " Hamilton	432,043.21	6,478,928.00
Totals—Port Credit-St. Catharines	$ 757,545.08	$11,360,160.00

TORONTO-PORT CREDIT

Township of Toronto	$ 64,272.33	$ 220,542.00
" " Etobicoke	116,960.66	401,335.00
Village of Port Credit	15,751.74	54,050.00
Town of New Toronto	23,970.03	82,250.00
" " Mimico	32,406.90	111,200.00
City of Toronto	1,235,716.08	4,240,196.00
Totals—Toronto-Port Credit	$1,489,077.74	$ 5,109,573.00
Grant Totals of both Radials	$2,246,622.82	$16,469,733.00

THE FUNDED DEBT OF ONTARIO

DETAIL SUMMARY OF ESTIMATED CHANGES IN FUNDED DEBT FOR THE FISCAL YEAR ENDING MARCH 31ST, 1941

As at March 31st, 1940 (after deducting Sinking Funds)		$618,744,454.48
ADD—Sale of Debentures:		
RM—2%, due May 1st, 1941/45	$ 6,285,000.00	
RN—3¼%, due May 1st, 1952/55	15,000,000.00	
RP—3¼%, due November 1st, 1948/50	10,000,000.00	
RQ—2%, due November 1st, 1941/45	6,000,000.00	
TI—4¾%, due November 1st, 1942	1,500,000.00	38,785,000.00
		$657,529,454.48
LESS—Redemptions:		
At Maturity—		
May 15th, 1940—AL—4%	$ 502,000.00	
May 15th, 1940—AP—4½%	443,000.00	
June 1st, 1940—AS—4%	432,000.00	
June 1st, 1940—RK—1½%	1,200,000.00	
June 15th, 1940—BE—3%	8,153,500.00	
August 1st, 1940—RC—2%	10,000,000.00	
November 1st, 1940—AK—4½%	800,000.00	
December 1st, 1940—AH—4½%	700,000.00	
January 15th, 1941—AJ—4½%	800,000.00	
January 15th, 1941—AR—4½%	386,000.00	
January 15th, 1941—RE—2%	8,000,000.00	
February 1st, 1941—SS—6%	8,349,500.00	
	$39,766,000.00	
Railway Aid Certificates	76,992.00	
Sinking Fund Provisions—Current Year—		
Instalments	1,086,655.27	
Earnings	15,609.97	40,945,257.24
Estimated as at March 31st, 1941 (after deducting Sinking Funds)		$616,584,197.24
Total Redemptions	$40,945,257.24	
Total New Issues	38,785,000.00	
Net Decrease	$ 2,160,257.24	

PROVINCE OF ONTARIO

TEMPORARY LOANS—TREASURY BILLS

(Estimated to be outstanding as at March 31st, 1941)

Date of Maturity	Date of Issue	Rate %	Series	Amount Outstanding	Where Payable
1941, June 1st	1938, June 1st	1.65%	RT-N	$ 5,000,000.00	Canada
June 29th	1940, June 29th	1¼% Disc.	RT-X	2,000,000.00	"
Aug. 1st	1938, Aug. 1st	1.65	RT-O	4,500,000.00	"
Aug. 1st	Aug. 1st	1.65	EJ	2,500,000.00	"
Sept. 1st	1940, Sept. 1st	1.75	RT-AD	2,000,000.00	"
Sept. 1st	Sept. 1st	1.75	RT-Z	2,000,000.00	"
Sept. 1st	Sept. 1st	1.75	RT-AB	5,000,000.00	"
Sept. 3rd	Sept. 3rd	1½% Disc.	RT-Y	1,000,000.00	"
Sept. 13th	Sept. 13th	1.75	RT-AA	2,000,000.00	"
Sept. 13th	Sept. 13th	1.75	RT-AB	5,000,000.00	"
Sept. 13th	Sept. 13th	1.75	RT-Z	5,000,000.00	"
Sept. 13th	1938, Dec. 1st	1.65	RT-T	5,000,000.00	"
Sept. 15th	1940, Sept. 15th	1.75	RT-AC	2,000,000.00	"
Nov. 1st	Nov. 1st	1.75	RT-U	10,000,000.00	"
Dec. 21st	Dec. 21st	1.75	RT-AE	8,000,000.00	"
				$61,000,000.00	

This is a reduction of $3,000,000.00 in the amount of Treasury Bills outstanding at April 1st, 1940.

PROVINCE OF ONTARIO

CONTINGENT LIABILITIES

BONDS, ETC., GUARANTEED BY THE PROVINCE

(Estimated as at March 31st, 1941)

Total (as per Public Accounts, March 31st, 1940)			$134,651,515.66
ADD—New Guarantees for Fiscal Year ending March 31st, 1941—			
Co-Operative Associations		$ 5,000.00	
Park Commissions		3,000,000.00	
Power Commissions		17,000,000.00	20,005,000.00
			$154,656,515.66
LESS—Principal Maturities redeemed or to be redeemed during Fiscal Year ending March 31st, 1941—			
By Province of Ontario—			
Housing	$ 100,879.40		
Municipalities	4,425.01		
Schools	12,933.62		
		118,238.03	
By Municipalities, etc.—			
Co-Operative Associations	$ 13,424.03		
Housing	117,525.97		
Municipalities	54,962.70		
Park Commissions	2,608,000.00		
Power Commissions	18,276,000.00		
Railways	916,000.00		
Schools	214,512.73		
Universities	95,345.98	22,295,771.41	22,414,009.44
			$132,242,506.22
LESS—Sinking Fund Deposits for Fiscal Year ending March 31st, 1941			27,761.81
Estimated Net Contingent Liability of the Province as at March 31st, 1941			$132,214,744.41

SUMMARY

Contingent Liability of the Province—March 31st, 1940	$134,651,515.66
Estimated Contingent Liability of the Province—March 31st, 1941	132,214,744.41
Estimated Decrease	$ 2,436,771.25

INTERIM STATEMENT OF GROSS ORDINARY EXPENDITURE

FISCAL YEAR APRIL 1ST, 1940—MARCH 31ST, 1941

10 Months Actual—2 Months Forecast—12 Months

DEPARTMENT	Detail	Gross Ordinary Expenditure
1—AGRICULTURE		$ 2,100,000.00
2—ATTORNEY-GENERAL		3,200,000.00
3—EDUCATION		12,730,000.00
4—GAME AND FISHERIES		530,000.00
5—HEALTH:		
Main Office and Branches	$1,200,000.00	
Hospitals Branch	9,700,000.00	10,900,000.00
6—HIGHWAYS		13,036,400.00
7—INSURANCE		59,000.00
8—LABOUR		783,000.00
9—LANDS AND FORESTS		2,166,000.00
10—LEGISLATION		270,000.00
11—LIEUTENANT-GOVERNOR		10,000.00
12—MINES		320,000.00
13—MUNICIPAL AFFAIRS		3,059,900.00
14—PRIME MINISTER		172,500.00
15—PROVINCIAL AUDITOR		115,100.00
16—PROVINCIAL SECRETARY:		
Main Office and Registrar-General's Branch	141,000.00	
Reformatories and Prisons Branch	2,242,000.00	2,383,000.00
17—PROVINCIAL TREASURER:		
Main Office	1,080,000.00	
Budget Committee Office	9,500.00	
Controller of Revenue Branch	395,700.00	
Motion Picture Censorship and Theatre Inspection Branch	36,700.00	
Post Office	143,600.00	
Savings Office	265,900.00	1,931,400.00
18—PUBLIC WELFARE:		
Main Office and Branches	416,000.00	
Old Age Pensions Commission	3,479,000.00	
Mothers' Allowances Commission	4,813,000.00	8,708,000.00
19—PUBLIC WORKS		665,000.00
MISCELLANEOUS:		
Hydro Radials	1,250,000.00	
Miscellaneous Grants	4,400.00	1,254,400.00
STATIONERY ACCOUNT		70,800.00
		$ 64,464,500.00
PUBLIC DEBT—Interest, Exchange, etc.		32,676,400.00
		$ 97,140,900.00
ADD: Unemployment Direct Relief and Administration thereof		4,315,000.00
		$101,455,900.00

INTERIM STATEMENT OF GROSS CAPITAL PAYMENTS

FISCAL YEAR APRIL 1ST, 1940—MARCH 31ST, 1941

10 Months Actual—2 Months Forecast—12 Months

DEPARTMENT	GROSS CAPITAL PAYMENTS		
	Works and Resources	Loan Advances	Trust Fund Repayments
AGRICULTURE	.....	$ 17,000.00	.....
EDUCATION	$ 65,638.43	.....	.....
GAME AND FISHERIES	5,293.32	.....	.....
HIGHWAYS	16,818,536.02	.....	.....
LABOUR	.....	60,000.00	.....
LANDS AND FORESTS	331,440.10	.....	.....
PRIME MINISTER—			
Public Service Superannuation Fund	.....	.....	$ 863,261.87
PROVINCIAL TREASURER:			
Main Office	.....	1,195,378.72	311,096.58
Hydro-Electric Power Commission	1,375,000.00	30,000.00	.....
PUBLIC WELFARE:			
Dominion Government:			
Old Age Pensions for Blind Commission	.....	10,050,000.00	.....
PUBLIC WORKS	389,498.96	.....	.....
MISCELLANEOUS	.....	.....	3,202.66
	$18,985,406.83	$11,352,378.72	$1,177,561.11

SUMMARY

Works and Resources	$18,985,406.83
Loan Advances	11,352,378.72
Trust Fund Repayments	1,177,561.11
	$31,515,346.66

INTERIM STATEMENT OF GROSS ORDINARY REVENUE

FISCAL YEAR APRIL 1ST, 1940—MARCH 31ST, 1941

10 Months Actual—2 Months Forecast—12 Months

DEPARTMENT	Detail	Gross Ordinary Revenue
1—AGRICULTURE		$ 322,000.00
2—ATTORNEY-GENERAL		930,000.00
3—EDUCATION		105,000.00
4—GAME AND FISHERIES		976,000.00
5—HEALTH:		
Main Office and Branches	$ 70,000.00	
Hospitals Branch	1,509,000.00	1,579,000.00
6—HIGHWAYS:		
Main Office	49,000.00	
Gasoline Tax Branch	26,000,000.00	
Miscellaneous Permits Branch	110,000.00	
Motor Vehicles Branch	9,000,000.00	35,159,000.00

7—INSURANCE		$220,000.00
8—LABOUR		90,000.00
9—LANDS AND FORESTS		5,000,000.00
10—LEGISLATION		9,000.00
11—MINES		2,330,000.00
12—MUNICIPAL AFFAIRS:		
Main Office	$8,000.00	
Municipal Board	19,000.00	27,000.00
13—PRIME MINISTER		16,000.00
14—PROVINCIAL SECRETARY:		
Main Office and Registrar-General's Branch	390,000.00	
Reformatories and Prisons Branch	923,000.00	1,313,000.00
15—PROVINCIAL TREASURER:		
Main Office—Subsidy	2,941,424.28	
Interest	72,840.28	
Liquor Control Board	10,500,000.00	
Controller of Revenue Branch:		
Succession Duty	11,000,000.00	
Corporations Tax	23,000,000.00	
Race Tracks	611,000.00	
Income Tax	6,800,000.00	
Security Transfer Tax	275,000.00	
Land Transfer Tax	230,000.00	
Law Stamps	350,000.00	
Motion Picture Censorship and Theatre Inspection	200,000.00	
Savings Office	266,000.00	56,246,264.56
16—PUBLIC WORKS		61,000.00
		$104,383,264.56
PUBLIC DEBT—Interest, etc.		9,673,000.00
		$114,056,264.56

SUMMARY

Gross Ordinary Revenue		$114,056,264.56
Less: Gross Ordinary Expenditure (before providing for Unemployment Direct Relief, Provision for Sinking Funds and Maturing Railway Aid Certificates		95,977,300.00
Surplus: (before providing for Unemployment Direct Relief, Provision for Sinking Fund, and Maturing Railway Aid Certificates		18,078,964.56
Less: Unemployment Direct Relief and Administration thereof	$4,315,000.00	
Provision for Sinking Fund	1,086,600.00	
Maturing Railway Aid Certificates	77,000.00	
		5,478,600.00
Interim Surplus		$ 12,600,364.56

INTERIM STATEMENT OF GROSS CAPITAL RECEIPTS

FISCAL YEAR APRIL 1ST, 1940—MARCH 31ST, 1941

10 Months Actual—2 Months Forecast—12 Months

DEPARTMENT	GROSS CAPITAL RECEIPTS		
	Works and Resources	Loan Repayments	Trust Fund Deposits
AGRICULTURE	$	$ 5,765.00	.....
ATTORNEY-GENERAL	.....	5,000.00	$ 150.00
HIGHWAYS	13,380.50	.....	.....
LABOUR	.....	60,000.00	.....
LANDS AND FORESTS	46,220.82	.....	.....
MINES	52,191.03	.....	.....
MUNICIPAL AFFAIRS	.....	35,500.00	.....
PRIME MINISTER:			
Public Service Superannuation Fund	.....	.....	1,323,204.83
PROVINCIAL SECRETARY	.....	.....	16,295.27
PROVINCIAL TREASURER:			
Main Office	.....	3,666,619.31	204,701.24
Hydro-Electric Power Commission	.....	7,772,237.68	.....
PUBLIC WELFARE:			
Old Age and Pensions for the Blind Commission.	.....	10,050,000.00	.....
PUBLIC WORKS	4,981.70	.....	.....
	$116,774.05	$21,595,121.99	$1,544,351.34

SUMMARY

Works and Resources	$ 116,774.05
Loan Repayments	21,595,121.99
Trust Fund Deposits	1,544,351.34
	$23,256,247.38

PROVINCE OF ONTARIO

DETAILED SUMMARY ACCOUNTING FOR ESTIMATED DECREASE IN GROSS DEBT FOR THE YEAR ENDING MARCH 31ST, 1941

GROSS DEBT DECREASED BY:			
Surplus—			
Surplus on Ordinary Account	$12,600,364.56		
Provisions Charged to Ordinary Expenditure:			
Retirement of Railway Certificates	76,992.00		
Sinking Fund Instalments	1,086,655.27	$13,764,011.83	
Discount on Debentures, etc., written off		960,058.93	
Earnings on Sinking Fund Investments (Net)		15,609.97	
Loan Repayments—			
Hydro-Electric Power Commission of Ontario	7,718,676.91		
Agricultural Development Board	2,564,000.00		
Housing Loans	35,500.00		
Tile Drainage (Net)	89,284.41		
Miscellaneous (Net)	126,200.80	10,533,662.12	
Increase in Reserves		3,648.32	$25,276,991.17
GROSS DEBT INCREASED BY:			
Capital Disbursements—			
Highways, Public Buildings, Public Works, etc.		18,985,406.83	
Less—Capital Receipts		109,106.45	
		$18,876,300.38	
Discount on Debentures, etc., issued during year		758,492.69	
Payments re Guaranteed Debentures (Net)		296,118.85	19,930,911.92
Estimated Decrease as at March 31st, 1941			$ 5,346,079.25

BUDGET FORECAST OF ORDINARY REVENUE

FISCAL YEAR APRIL 1ST, 1941—MARCH 31ST, 1942

DEPARTMENT	Detail	Gross Ordinary Revenue	Application of Revenue to Expenditure	Detail	Net Ordinary Revenue
1—AGRICULTURE		$ 291,153.00			$ 291,153.00
2—ATTORNEY-GENERAL		1,021,070.00	$ 130,670.00		890,400.00
3—EDUCATION		60,000.00			60,000.00
4—GAME AND FISHERIES		1,000,000.00			1,000,000.00
5—HEALTH:					
Main Office and Branches	$ 60,830.00		3,200.00	$ 57,630.00	
Hospital Branch	1,390,560.00	1,451,330.00		1,390,560.00	1,448,130.00
6—HIGHWAYS:					
Main Office and Branches	10,000.00			10,000.00	
Gasoline Tax Branch	26,500,000.00			26,500,000.00	
Miscellaneous Permits Branch	90,000.00			90,000.00	
Motor Vehicles Branch	9,500,000.00	36,100,000.00		9,500,000.00	36,100,000.00
7—INSURANCE		210,000.00			210,000.00
8—LABOUR		80,000.00			80,000.00
9—LANDS AND FORESTS		5,000,000.00			5,000,000.00
10—LEGISLATION		10,000.00			10,000.00
11—MINES		2,500,000.00	5,000.00		2,495,000.00
12—MUNICIPAL AFFAIRS:					
Main Office and Municipal Board		21,110.00			21,110.00
13—PRIME MINISTER:					
King's Printer—Ontario Gazette		14,400.00			14,400.00
14—PROVINCIAL SECRETARY:					
Main Office and Registrar-General's Office	330,000.00			330,000.00	
Reformatories and Prisons Branch	912,000.00	1,242,000.00	702,000.00	210,000.00	540,000.00
15—PROVINCIAL TREASURER:					
Main Office—Subsidy	2,941,424.00			2,941,424.00	
Interest	73,000.00			73,000.00	
Liquor Control Board	12,000,000.00			12,000,000.00	
Controllerof Revenue Branch:					
Succession Duty	12,000,000.00			12,000,000.00	
Corporations Tax	23,000,000.00			23,000,000.00	
Race Tracks	525,000.00			525,000.00	
Income Tax	5,000,000.00			5,000,000.00	
Security Transfer Tax	350,000.00			350,000.00	
Land Transfer Tax	225,000.00			225,000.00	
Law Stamps	365,000.00			365,000.00	
Motion Picture Censorship and Theatre Inspection Branch.	175,000.00			175,000.00	
Savings Office	261,174.48	56,915,598.48	261,174.68		56,654,424.00
16—PUBLIC WORKS		49,000.00			49,000.00
MISCELLANEOUS		100,000.00	100,000.00		
		$106,065,661.48	$ 1,202,044.48		$104,863,617.00
PUBLIC DEBT—Interest, etc.	$ 8,364,696.66		8,364,696.66		
Foreign Exchange	749,417.23	9,114,113.89	749,417.23		
TOTAL		$115,179,775.37	$10,316,158.37		$104,863,617.00

SUMMARY

Net Ordinary Revenue	$104,863,617.00
Net Ordinary Expenditure (not including Unemployment Relief)	90,135,553.04
EXCESS OF ORDINARY REVENUE OVER ORDINARY EXPENDITURE	$ 14,728,063.96
Estimated Net Expenditure on account of Unemployment Direct Relief and administration thereof	4,985,000.00
SURPLUS FORECAST	$ 9,743,063.96

BUDGET FORECAST OF ORDINARY EXPENDITURE

FISCAL YEAR APRIL 1ST, 1941—MARCH 31ST, 1942

DEPARTMENT	Detail	Gross Ordinary Expenditure	Application of Revenue to Expenditure	Detail	Net Ordinary Expenditure
1—AGRICULTURE		$ 5,984,117.50			$ 5,984,117.50
2—ATTORNEY-GENERAL		3,070,645.00	$ 130,670.00		2,939,975.00
3—EDUCATION		13,588,630.00			13,588,630.00
4—GAME AND FISHERIES		619,000.00			619,000.00
5—HEALTH:					
Main Office and Branches	$ 1,310,860.00		3,200.00	$ 1,307,660.00	
Hospitals Branch	9,474,825.00	10,785,685.00		9,474,825.00	10,782,485.00
6—HIGHWAYS:					
Main Office and Branches	12,925,000.00			12,925,000.00	
Motor Vehicles Branch	400,000.00	13,325,000.00		400,000.00	13,325,000.00
7—INSURANCE		62,425.00			62,425.00
8—LABOUR		815,000.00			815,000.00
9—LANDS AND FORESTS		2,278,175.00			2,278,175.00
10—LEGISLATION		272,450.00			272,450.00
11—LIEUTENANT-GOVERNOR		10,000.00			10,000.00
12—MINES		367,275.00	5,000.00		362,275.00
13—MUNICIPAL AFFAIRS:					
Main Office and Municipal Board	94,590.00			94,590.00	
Subsidy—1 Mill—To cities, towns, incorporated villages and townships	3,000,000.00	3,094,590.00		3,000,000.00	3,094,590.00
14—PRIME MINISTER		407,065.00			407,065.00
15—PROVINCIAL AUDITOR		118,200.00			118,200.00
16—PROVINCIAL SECRETARY:					
Main Office and Registrar-General's Branch	147,050.00			147,050.00	
Reformatories and Prisons Branch	1,910,500.00	2,057,550.00	702,000.00	1,208,500.00	1,355,550.00
17—PROVINCIAL TREASURER:					
Main Office	835,940.00			835,940.00	
Budget Committee Office	9,420.00			9,420.00	
Controller of Revenue Branch	404,460.00			404,460.00	
Motion Picture Censorship and Theatre Inspection Branch	44,025.00			44,025.00	
Post Office	148,140.00			148,140.00	
Savings Office	261,174.48	1,703,159.48	261,174.48		1,441,985.00
18—PUBLIC WELFARE:					
Main Office	219,975.00			219,975.00	
Children's Aid Branch	188,200.00			188,200.00	
Old Age Pensions Commission and Pensions for the Blind	3,564,000.00			3,564,000.00	
Mothers' Allowances Commission	4,660,650.00	8,632,825.00		4,660,650.00	8,632,825.00
19—PUBLIC WORKS		665,000.00			665,000.00
MISCELLANEOUS		104,400.00	100,000.00		4,400.00
		$ 67,961,191.98	$ 1,202,044.48		$66,759,147.50
PUBLIC DEBT—Interest, etc.		30,609,433.63	8,364,696.66		22,244,736.97
Foreign Exchange		1,881,085.80	749,417.23		1,131,668.57
TOTAL		$100,451,711.41	$10,316,158.37		$90,135,553.04
ADD: Estimated Net Expenditure on account of Unemployment Direct Relief and the Administration thereof		4,985,000.00			4,985,000.00
GRAND TOTAL		$105,436,711.41	$10,316,158.37		$95,120,553.04

BUDGET FORECAST OF CAPITAL RECEIPTS

FISCAL YEAR APRIL 1ST, 1941—MARCH 31ST, 1942

DEPARTMENT	CAPITAL RECEIPTS		
	Works and Resources	Loan Repayments	Trust Fund Deposits
AGRICULTURE	.....	$ 2,500.00	.....
HIGHWAYS	$ 5,000.00	.....	.....
LABOUR	.....	35,000.00	.....
LANDS AND FORESTS	36,000.00	.....	.....
MINES	52,000.00	.....	.....
MUNICIPAL AFFAIRS	.....	14,200.00	.....
PRIME MINISTER:			
Public Service Superannuation Fund	.....	.....	$1,341,531.62
PROVINCIAL TREASURER:			
Main Office	.....	3,361,780.71	158,368.45
Hydro-Electric Power Commission	.....	1,747,619.34	.....
PUBLIC WELFARE:			
Dominion Government—			
Old Age Pensions Commission	.....	10,035,000.00	.....
Pensions for Blind	.....	256,500.00	.....
PUBLIC WORKS	375.00	.....	.....
	$93,375.00	$15,452,600.05	$1,499,900.07

SUMMARY

Works and Resources	$ 93,375.00
Loan Repayments	15,452,600.05
Trust Fund Deposits	1,499,900.07
	$17,045,875.12

BUDGET FORECAST OF CAPITAL PAYMENTS

FISCAL YEAR APRIL 1ST, 1941—MARCH 31ST, 1942

DEPARTMENT	CAPITAL PAYMENTS		
	Works and Resources	Loan Advances	Trust Fund Repayments
AGRICULTURE	.....	$ 25,000.00	.....
EDUCATION	$ 65,638.43	.....	.....
GAME AND FISHERIES	20,000.00	.....	.....
HIGHWAYS	13,000,000.00	.....	.....
LABOUR	.....	35,000.00	.....
LANDS AND FORESTS	375,000.00	.....	.....
PRIME MINISTER:			
Public Service Superannuation Fund	.....	.....	$ 950,000.00
PROVINCIAL TREASURER:			
Main Office	.....	1,355,088.58	291,488.56
Hydro-Electric Power Commission	750,000.00	60,000.00	.....
PUBLIC WELFARE:			
Dominion Government:			
Old Age Pensions Commission	.....	10,035,000.00	.....
Pensions for Blind	.....	256,500.00	.....
PUBLIC WORKS	292,000.00	.....	.....
	$14,502,638.43	$11,766,588.58	$1,241,488.56

SUMMARY

Works and Resources	$14,502,638.43
Loan Advances	11,766,588.58
Trust Fund Repayments	1,241,488.56
	$27,510,715.57

The House then adjourned at 4.10 p.m.

MONDAY, MARCH 17TH, 1941

PRAYERS. 3 O'CLOCK P.M.

Before the Orders of the Day were called Prime Minister Hepburn introduced to the House the Honourable Claude Pepper, United States Senator for the State of Florida, one of the most vigorous proponents of the Lease-Lend Bill for Aid to Great Britain and her allies in the present war, which had just been adopted by the United States Congress on recommendation of President Franklin D. Roosevelt.

Senator Pepper, in a brief address, referred feelingly to the good neighbour feeling existing between his country and Canada and assured the House of the fullest support of the United States to the British Empire until the Axis war of aggression has been terminated in favour of the democratic countries of the World.

Mr. Drew, leader of the Opposition, expressed the thanks of the House to the Senator for his visit and his encouraging and inspiring address.

The following Petition was brought up and laid upon the Table:—

By Mr. Newlands, the Petition of the Board of Park Management of the City of Hamilton.

The following Bills were severally introduced and read the first time:—

Bill (No. 66), intituled, "An Act to amend The Sanatoria for Consumptives Act." *Mr. Kirby.*

Ordered, That the Bill be read a second time to-morrow.

Bill (No. 67), intituled, "An Act to amend The Mining Tax Act." *Mr. Laurier.*

Ordered, That the Bill be read a second time to-morrow.

Bill (No. 68), intituled, "An Act to amend The Jurors Act." *Mr. Conant.*

Ordered, That the Bill be read a second time to-morrow.

Bill (No. 69), intituled, "An Act to amend The Voters' Lists Act." *Mr. Conant.*

Ordered, That the Bill be read a second time to-morrow.

Bill (No. 70), intituled, "An Act to amend The Natural Gas Conservation Act."

Ordered, That the Bill be read a second time to-morrow.

Bill (No. 71), intituled, "An Act respecting Relief to Municipalities regarding Hydro-Electric Radials." *Mr. McQuesten.*

Ordered, That the Bill be read a second time to-morrow.

Mr. Kennedy asked the following Question (No. 68):—

1. What steps, if any, have been taken by the Government to ascertain the facts respecting the shooting of pheasants in East York Township and generally throughout the Don River valley and what measures, if any, have been taken looking to effectual game protection in this area.

The Honourable the Provincial Secretary replied as follows:—

East York Township and Don River Valley patrolled by Game and Fishery Overseer, North York Police and Deputy Game Wardens. Twenty-five seizures and fourteen prosecutions in the last three years from this particular area.

Mr. Kennedy asked the following Question (No. 78):—

1. In each fiscal year since the present Government took office, and including the period from April 1st, 1940, to date, what amounts have been paid, and to whom, as Iron Ore Bounty. 2. In each case mentioned in (1), state the number of tons of ore on which bounty was paid and the mines from which such ore was produced.

The Honourable the Minister of Mines replied as follows:—

Payments of Iron Ore Bounty have been made since the present Government took office to March 1st, 1941, to Algoma Ore Properties Limited on ore mined from the Helen Mine, as follows:—

Period	Tons of Beneficiated Ore	Bounty
Fiscal Year ending March 31st, 1940	111,485	$118,705.37
Eleven months prior from April 1st, 1940, to March 1st, 1941	298,829	313,864.14

Mr. Black asked the following Question (No. 86):—

1. Who are the members of the Workmen's Compensation Board, including Chairman and specifying date of appointment and salary in each case. 2. How many persons are employed by the Workmen's Compensation Board at date. 3. What persons have been appointed to the staff of the Workmen's Compensation Board since April 1st, 1938, specifying date of appointment, address at date of appointment and commencing salary together with official title. 4. What officials or employees of the Workmen's Compensation Board have been dismissed or requested to resign since April 1st, 1938, giving official title, salary and reason for dismissal or request for resignation in each case.

The Honourable the Minister of Labour replied as follows:—

1.

Name	Position	Date of Appointment	Salary
John Harold	Chairman	Feb. 21, 1938	$8,500 per year
D. J. Galbraith	Vice-Chairman	June 12, 1935	7,000 per year
W. D. Smith	Commissioner	Jan. 1, 1940	6,500 per year

2. 286 at March 11th, 1941.

3.

Name	Date of Appointment	Address at Date of Appointment	Commencing Salary	Official Title
Samis, Dr. Jas. Clifford	May 1, 1938	Kingston	$3,000 per yr.	Medical Officer
Gruetzner, Ruth	May 2, 1938	Hanover	62.50 per mo.	Filing Clerk
Haines, Wm. R.	May 25, 1938	Toronto	25.00 per wk.	P. R. Auditor

Name	Date of Appointment	Address at Date of Appointment	Commencing Salary	Official Title
Cuthbert, J. A.	May 25, 1938	Toronto	$25.00 per wk.	P. R. Auditor
Services terminated Apr. 30, 1939.				
Kippen, D. J.	May 25, 1938	Maxville	25.00 per wk.	P. R. Auditor
Stone, D. E.	May 25, 1938	Renfrew	25.00 per wk.	P. R. Auditor
Footitt, Geo. W.	June 1, 1938	Acton	70.00 per mo.	Clerk
On leave since Aug. 31, 1940—on active service.				
Sansone, Paul	June 17, 1938	Toronto	65.00 per mo.	File Clerk
Filion, Loretta	June 20, 1938	Cornwall	65.00 per mo.	Steno. and Typist
Wilson, Geo. H.	June 20, 1938	Paris	110.00 per mo.	Pensions Investigator
Left on account of ill-health, Apr. 30, 1940.				
Turnbull, Helen H.	June 20, 1938	Brantford	65.00 per mo.	File Clerk
Fleet, Hilliard E.....	June 28, 1938	Toronto	25.00 per wk.	P. R. Auditor
Carling, Russell J.	June 28, 1938	Toronto	25.00 per wk.	P. R. Auditor
Services terminated Sept. 15, 1938.				
Shoemaker, John R.	June 29, 1938	Toronto	25.00 per wk.	P. R. Auditor
Services terminated Aug. 20, 1938.				
Brennan, Dr. J. H. L.	July 1, 1938	Haileybury	300.00 per mo.	Medical Officer, Silicosis Station
Campbell, Glena	July 7, 1938	Port Arthur	70.00 per mo.	Steno. and Clerk, Silicosis Station
MacBride, Gordon G.	Sept. 6, 1938	Brantford	25.00 per wk.	P. R. Auditor
Fraser, Grant	Sept. 6, 1938	Ripley	65.00 per mo.	File Clerk
McGee, Jos. O.	Oct. 3, 1938	Toronto	25.00 per wk.	P. R. Auditor
Taylor, Dr. Wm.	Oct. 15, 1938	Hamilton	250.00 per mo.	Medical Officer, Silicosis Station
Pritchard, Audry P.	Oct. 24, 1938	Toronto	62.50 per mo.	Clerk
Noble, M. Olive	Nov. 1, 1938	Toronto	2,000 per yr.	Director, Occupational Therapy
Resigned Nov. 30, 1939, to be married.				
Symington, Kay	Nov. 7, 1938	Kirkland Lake	65.00 per mo.	Steno., Silicosis Stn.
Stewart, Thelma B.	Nov. 7, 1938	Toronto	90.00 per mo.	Physiotherapy Aide
On leave since Oct. 22, 1940—active service.				
Jarvis, Ada	Nov. 14, 1938	Toronto	62.50 per mo.	File Clerk
Watson, John A.	Nov. 16, 1938	Toronto	65.00 per mo.	File Clerk
Left as at June 27, 1940.				
Whelan, Carson	Nov. 29, 1938	Toronto	62.50 per mo.	Clerk
Smith, Hetty V.	Dec. 1, 1938	Toronto	90.00 per mo.	Aide, Occupational Therapy
Burnham, Gladys	Dec. 15, 1938	Sutton	62.50 per mo.	File Clerk
Stewart, Marian O.	Dec. 20, 1938	Millgrove	62.50 per mo.	File Clerk
Absent since Aug. 31, 1940—illness.				
Sweitzer, Andrew E.	Jan. 1, 1939	Toronto	75.00 per mo.	Instructor—Occupational Therapy
Flanagan, Jack	Jan. 23, 1939	Sudbury	70.00 per mo.	Assistant, Silicosis Station
On leave since Aug. 26, 1940—active service.				
Davis, S. Ross	Jan. 30, 1939	Toronto	70.00 per mo.	Computer
Wilson, Edna	Jan. 30, 1939	Toronto	62.50 per mo.	Clerk
Resigned May 22, 1940, to be married.				
Marshall, Ruby E.	Jan. 31, 1939	Ancaster	62.50 per mo.	Stenographer
Anderson, Mary	Mar. 1, 1939	Bolton	62.50 per mo.	Clerk
Meyers, Lois	Mar. 1, 1939	Campbellford	62.50 per mo.	File Clerk
Iviney, Pearl	Mar. 20, 1939	Toronto	62.50 per mo.	Clerk
Johnston, Walter J.	Mar. 31, 1939	Grafton	90.00 per mo.	Clerk
Lewin, Marjorie L.	May 1, 1939	Toronto	62.50 per mo.	Clerk
Gillies, Marjorie A.	May 25, 1939	Paris	62.50 per mo.	Typist
Campbell, John	June 1, 1939	Toronto	100.00 per mo.	Clerk, Rehabilitation Dept.
Blackman, Walter	June 15, 1939	Toronto	65.00 per mo.	Computer
Sellers, Wm. F. P., Jr.	June 19, 1939	Toronto	65.00 per mo.	Clerk
On leave since Oct. 9, 1940—active service.				
Holden, Irvine S.	June 19, 1939	Toronto	25.00 per wk.	P. R. Auditor
Brown, Doris E.	June 26, 1939	Toronto	62.50 per mo.	Clerk
Scott, Dr. F. M.	July 24, 1939	Stratford	250.00 per mo.	Medical Officer
Black, Geo. S.	Aug. 18, 1939	Toronto	85.00 per mo.	Clerk
Farrell, Dr. Wm. A.	Sept. 1, 1939	Geraldton	250.00 per mo.	Medical Officer, Silicosis Station
Mackerrow, Marg't M.	Oct. 1, 1939	Toronto	62.50 per mo.	Stenographer
Klein, Johanne	Oct. 2, 1939	Toronto	90.00 per mo.	Aide, Physiotherapy Dept.
Smith, Nora C.	Oct. 20, 1939	Chatham	62.50 per mo.	File Clerk
Left Oct. 12, 1940, to be married.				

Name	Date of Appointment	Address at Date of Appointment	Commencing Salary	Official Title
Wilson, Audrey	Oct. 20, 1939	Toronto	$62.50 per mo.	Typist
Farquharson, Ailsa	Oct. 25, 1939	Toronto	62.50 per mo.	Stenographer
On leave since June 24, 1940—illness.				
Buckley, Hazel	Oct. 25, 1939	Mount Dennis	62.50 per mo.	Typist
McCleary, James	Nov. 6, 1939	Toronto	85.00 per mo.	Clerk
Campbell, Evelyn B.	Nov. 10, 1939	Toronto	65.00 per mo.	Stenographer
Armstrong, Frances	Dec. 1, 1939	Humber Bay	62.50 per mo.	Clerk and Typist
Forbes, Josephine M.	Dec. 1, 1939	Toronto	90.00 per mo.	Aide, Occupational Therapy Dept.
On leave since Jan. 8, 1941—active service.				
Smith, Dorothy E.	Dec. 11, 1939	Toronto	62.50 per mo.	Clerk
Perelman, Sally	Dec. 11, 1939	Toronto	62.50 per mo.	Stenographer
Fortune, Geo. F.	Dec. 18, 1939	Toronto	100.00 per mo.	Clerk
Manson, Irwin	Jan. 2, 1940	Harrowsmith	80.00 per mo.	Clerk
Edwards, Eleanor I.	Jan. 22, 1940	Toronto	62.50 per mo.	Typist
Birk, Barbara	Mar. 2, 1940	Toronto	62.50 per mo.	File Clerk
Bastedo, Gilbert N.	Mar. 26, 1940	Toronto	100.00 per mo.	Utility Clerk
Bee, Evelyne I.	Apr. 22, 1940	Paris	62.50 per mo.	Stenographer
Preston, Dr. F. C.	Apr. 24, 1940	Malton	3,000 per yr.	Medical Officer
Stewart, Victoria E.	May 20, 1940	Toronto	62.50 per mo.	File Clerk
Resigned Nov. 30, 1940.				
Fleming, James	May 28, 1940	Toronto	75.00 per mo.	File Clerk
On leave since Oct. 28, 1940—active service.				
Black, Elsie J.	June 10, 1940	Paris	65.00 per mo.	Computer, Typist
Left service Nov. 26, 1940, for another position.				
Culliford, Alma G.	June 10, 1940	Toronto	62.50 per mo.	Clerk
MacFarlane, Jessie	June 11, 1940	Toronto	62.50 per mo.	File Clerk
Stoddart, Geo. W. W.	June 17, 1940	Toronto	25.00 per wk.	Assessment Investigator
Bloss, Wm. E.	June 18, 1940	Toronto	100.00 per mo.	Clerk, Rehabilitation Dept.
Kerr, Wm. R.	July 2, 1940	Toronto	65.00 per mo.	File Clerk
Gallagher, Rita	July 11, 1940	Toronto	62.50 per mo.	Typist
Poole, Geo. R.	Sept. 3, 1940	Ridgeway	100.00 per mo.	Clerk
Flaherty, Stanley J.	Sept. 3, 1940	Toronto	45.00 per mo.	Office Boy
Neilson, Gregor	Sept. 4, 1940	Sudbury	50.00 per mo.	Junior Technician, Silicosis Station
Dwyer, Margaret M.	Sept. 9, 1940	Toronto	65.00 per mo.	Assistant Claimants' Interviewer
Campbell, Jean H.	Sept. 9, 1940	Toronto	65.00 per mo.	Stenographer
Nelles, Dr. John V.	Sept. 16, 1940	Ottawa	3,000 per yr.	Medical Officer, Silicosis Station
Dunlop, Helen C. W.	Sept. 16, 1940	Toronto	62.50 per mo.	Typist
Hills, E. John	Sept. 23, 1940	Toronto	62.50 per mo.	Clerk
Ellis, Robt. C.	Oct. 1, 1940	Toronto	100.00 per mo.	P. R. Auditor
Bradwin, Meta	Oct. 7, 1940	Toronto	65.00 per mo.	Clerk
Bickerton, Geo.	Oct. 7, 1940	Toronto	110.00 per mo.	Assessment Investigator
Services terminated Dec. 7, 1940.				
Grove, Ethel M.	Oct. 12, 1940	Toronto	62.50 per mo.	Typist
Hayman, Elda A.	Oct. 14, 1940	Toronto	62.50 per mo.	File Clerk
Crisp, Richard S.	Oct. 15, 1940	Toronto	65.00 per mo.	Junior Clerk
McKay, Frances M.	Oct. 21, 1940	Toronto	62.50 per mo.	File Clerk
Torrance, Mary F.	Oct. 22, 1940	Toronto	80.00 per mo.	Aide, Physiotherapy Clinic
Left Feb. 28, 1941, to be married.				
McConnell, Mary H.	Oct. 22, 1940	Toronto	80.00 per mo.	Aide, Physiotherapy Clinic
Butler, Kenneth R.	Oct. 28, 1940	Toronto	65.00 per mo.	Audit Clerk
Cheyne, William J.	Oct. 28, 1940	Toronto	62.50 per mo.	File Clerk
Campbell, Barbara H.	Nov. 1, 1940	Timmins	62.50 per mo.	Steno., Silicosis Stn.
Spence, Elsie W.	Nov. 1, 1940	Toronto	62.50 per mo.	Stenographer
Beamish, Elizabeth A.	Nov. 1, 1940	Toronto	62.50 per mo.	Typist
Gilbert, Ruth M.	Nov. 1, 1940	Paris	62.50 per mo.	Typist
Rogers, Dorothy H.	Nov. 1, 1940	Toronto	65.00 per mo.	Stenographer
Langford, Doris	Nov. 1, 1940	Mitchell	62.50 per mo.	Typist
Munroe, Alvin F.	Nov. 1, 1940	Ottawa	110.00 per mo.	P. R. Auditor
Chappel, Ruth E.	Nov. 4, 1940	Toronto	62.50 per mo.	File Clerk
Lavery, Christine V.	Nov. 11, 1940	Toronto	62.50 per mo.	File Clerk
Bourke, Margaret C.	Nov. 11, 1940	Toronto	62.50 per mo.	File Clerk
Cain, Mrs. Lulu M.	Nov. 13, 1940	Toronto	62.50 per mo.	File Clerk
Myatt, Phyllis E.	Nov. 13, 1940	Toronto	62.50 per mo.	File Clerk

Name	Date of Appointment	Address at Date of Appointment	Commencing Salary	Official Title
Somerville, Mrs. Emma Resigned Feb. 18, 1941.	Nov. 25, 1940	Toronto	$65.00 per mo.	Stenographer
Sedgwick, Mrs. E. Marion	Dec. 2, 1940	Toronto	75.00 per mo.	Clerk
Steel, Margaret	Dec. 2, 1940	Toronto	62.50 per mo.	File Clerk
Jeffrey, Emily	Dec. 2, 1940	Toronto	65.00 per mo.	Stenographer
Sayers, Harry W. R.	Dec. 9, 1940	Richmond Hill	100.00 per mo.	P. R. Auditor
Belfie, Shirley H.	Jan. 6, 1941	Waterford	62.50 per mo.	Typist and Clerk
Smith, N. Fae	Jan. 10, 1941	Toronto	65.00 per mo.	Typist
Bolton, Dorelle A.	Jan. 13, 1941	Toronto	80.00 per mo.	Aide, Occupational Therapy Clinic
Youles, Gladys	Jan. 15, 1941	Toronto	62.50 per mo.	Clerk
McRobert, June	Jan. 20, 1941	Toronto	62.50 per mo.	Clerk
McArthur, Winnifred	Jan. 20, 1941	Toronto	62.50 per mo.	Clerk
Costigan, Helen E.	Jan. 20, 1941	Long Branch	62.50 per mo.	Clerk
O'Connor, Alice	Jan. 21, 1941	Toronto	62.50 per mo.	Clerk, Clinic
Graham, Ralph	Feb. 1, 1941	Weston	110.00 per mo.	Technician, Silicosis Station
Lang, John	Feb. 1, 1941	Kirkland Lake	2,000 per yr.	Supt. Mine Rescue Station
Pless, Katherine	Feb. 3, 1941	Toronto	65.00 per mo.	Typist and Clerk
Payne, Walter J.	Feb. 3, 1941	St. John's, Newfoundland	75.00 per mo.	Technician, Silicosis Station
Taylor, Mrs. Mary	Feb. 7, 1941	Toronto	45.00 per mo.	Supervisor Lunch Room
McDermid, Barbara E.	Feb. 17, 1941	Toronto	80.00 per mo.	Aide, Physiotherapy Clinic
Hales, Wm. G. E.	Mar. 1, 1941	Toronto	95.00 per mo.	Utility Clerk
Pinkham, Neil W.	Mar. 3, 1941	Toronto	75.00 per mo.	Clerk
Auston, Frances B.	Mar. 3, 1941	Toronto	80.00 per mo.	Aide, Physiotherapy Clinic
Skells, Edna F.	Mar. 6, 1941	Toronto	62.50 per mo.	Stenographer

4.

Name	Official Title	Salary	Date of Termination of Services
Faulkner, Dr. Geo.	Medical Officer and X-Ray Technician, Silicosis Stn.	$250.00 per mo.	June 30, 1938
Shoemaker, John R.	P. R. Auditor	25.00 per week	Aug. 20, 1938
Carling, Russell J.	P. R. Auditor	30.00 per week	Sept. 15, 1938
Clark, Robt.	Technician, Silicosis Station	40.00 per week	Jan. 23, 1939
Young, Russell B.	Pensions Investigator	115.00 per month	Jan. 28, 1939
Cuthbert, John A.	P. R. Auditor	30.00 per week	Apr. 30, 1939
MacMillan, Norman	Clerk	95.00 per month	June 30, 1940
Kennedy, W. J.	Assessment Investigator	1,800 per year	Oct. 31, 1940
Bickerton, Geo. M.	Assessment Investigator	110.00 per month	Dec. 7, 1940

The services of the above-mentioned members of the staff were discontinued because they were found not suitable for the work.

Mr. Stewart asked the following Question (No. 96):—

1. Has the ministry any knowledge of cessation of mining activity in and about Kirkland Lake, and if so, what are the reasons.

The Honourable the Minister of Mines replied as follows:—

1. No. There have been changes in the tonnage of ore treated from time to time, but these changes, including reduction of tonnage, are matters of engineering policy and certainly do not indicate cessation of mining activities in and about Kirkland Lake.

Mr. Macaulay asked the following Question (No. 100):—

1. Are any Issuers of Automobile Licenses acting as Insurance Agents.

2. If so, give names and addresses.

The Honourable the Attorney-General replied as follows:—

1. Yes. 2. Mr. Homer Lockhart, Sarnia, Ontario; Mr. Cephas Sleep, Port Perry, Ontario; Mr. David T. Hodgson, Bracebridge, Ontario; Mr. A. Wilson Lang, Timmins, Ontario.

The following Bills were severally read the second time:—

Bill (No. 3), An Act respecting The London Street Railway Company and the Corporation of the City of London.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 4), An Act respecting the Rockwood Town Hall.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 6), An Act respecting the City of Port Arthur and the Public Utilities Commission of Port Arthur.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 8), An Act respecting the Village of Swansea.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 51), An Act to amend The Municipal Act.

Referred to the Committee on Municipal Law.

Bill (No. 52), An Act to amend The Municipal Act.

Referred to the Committee on Municipal Law.

Bill (No. 57), An Act to amend The Jurors Act.

Referred to the Committee on Legal Bills.

Bill (No. 61), An Act to amend The Railway Act.

Referred to the Committee on Municipal Law.

Bill (No. 53), An Act to amend The Mental Hospitals Act.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 58), An Act to amend The Venereal Diseases Prevention Act.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 60), An Act to amend The Northern Development Act.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 62), An Act to amend The Agricultural Representatives Act.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 63), An Act to amend The Milk and Cream Act.

Referred to a Committee of the Whole House to-morrow.

The Order of the Day for the second reading of Bill (No. 19), An Act respecting the City of Windsor, having been read,

Ordered, That the Order be discharged, and that the Bill be referred back to the Committee on Private Bills for further consideration.

The Order of the Day for the second reading of Bill (No. 56), An Act to amend The Weed Control Act, having been read,

Ordered, That the Order be discharged, and that the Bill be withdrawn.

The House again resolved itself into a Committee to consider Bill (No. 37), An Act to amend The Judicature Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill with certain amendments.

Ordered, That the Amendments be taken into consideration forthwith.

The Amendments, having been read the second time, were agreed to.

Ordered, That the Bill be read the third time to-morrow.

The House then adjourned at 5.20 p.m.

TUESDAY, MARCH 18TH, 1941

PRAYERS. 3 O'CLOCK P.M.

The following Petition was read and received:—

Of the Board of Park Management of the City of Hamilton, praying that an Act may pass incorporating a body to be known as Royal Botanical Gardens and authorizing the transfer to the said Corporation the property known as Royal Botanical Gardens.

Mr. Elliott, from the Standing Committee on Private Bills, presented their Third Report which was read as follows and adopted:—

Your Committee begs to report the following Bills without amendment:—

Bill (No. 15), An Act to incorporate the Daughters of the Empire Hospital for Convalescent Children.

Bill (No. 17), An Act respecting St. George's Church, Guelph.

Bill (No. 18), An Act respecting a Trust Settlement of the late Peter Birtwistle and the Corporation of the Borough of Colne (England).

Your Committee beg to report the following Bill with certain amendments:—

Bill (No. 5), An Act respecting the Town of Orillia.

Mr. Glass, from the Standing Committee on Standing Orders, presented the following as their Fourth and Final Report which was read as follows and adopted:—

Your Standing Committee on Standing Orders has carefully examined the following Petitions and finds the notices as published in each case sufficient:—

Of the Corporation of the Town of Timmins praying that an Act may pass authorizing the Town of Timmins to collect poll tax for residents of the Town from employers of such men who are employed outside the Town limits.

Of the Corporation of the County of Waterloo, praying that an Act may pass to validate an agreement made by the Petitioner with the Corporation of the City of Galt and the Corporation of the City of Kitchener.

In connection with Bill (No. 24), "An Act respecting Royal Botanical Gardens" your Committee recommends that this Bill be introduced in the House and be referred for consideration by the Committee on Private Bills, free from the requirements of Rule No. 66 regarding advertising of notice and that the provisions of Rule No. 66 be suspended so far as they relate to this Bill.

Ordered, That Bill (No. 24), "An Act respecting Royal Botanical Gardens" be introduced in the House and referred for consideration by the Committee on Private Bills, free from the requirements of Rule No. 66 regarding advertising of notice and that the provisions of Rule No. 66 be suspended so far as they relate to this Bill.

The following Bills were severally introduced and read the first time:—

Bill (No. 22), intituled, "An Act respecting the Town of Timmins." *Mr. Habel.*

Referred to the Committee on Private Bills.

Bill (No. 23), intituled, "An Act respecting the County of Waterloo and the Cities of Kitchener and Galt." *Mr. Smith.*

Referred to the Committee on Private Bills.

Bill (No. 24), intituled, "An Act respecting Royal Botanical Gardens." *Mr. Newlands.*

Referred to the Committee on Private Bills.

Mr. Murphy asked the following Question (No. 21):—

1. What is the total amount paid to date for lighting equipment in connection with the Queen Elizabeth Highway. 2. How many of the new monogrammed light standards have been installed. 3. What was the total cost of complete equipment and installation of these standards.

The Honourable the Minister of Highways replied as follows:—

1. $365,159.67. 2. 158. 3. $15,324.16.

Mr. Black asked the following Question (No. 51):—

1. Does the Province of Ontario receive any direct revenue by reason of the renovation of Old Fort Henry at Kingston and, if so, what amount has been received up to January 31st, 1941. 2. Have any amounts been spent in connection with the rehabilitation of Old Fort Henry over and above the sum of $831,895.10 as reported in the Votes and Proceedings of February 23rd, 1940. 3. If so, what additional amounts have been so spent. 4. In connection with the rehabilitation of Old Fort Henry, have any amounts been paid to W. L. Somerville, Architect, over and above the sum of $36,044.18 reported in the Votes and Proceedings of February 23rd, 1940. 5. If so, what additional amounts have been paid Mr. Somerville. 6. Has the work of rehabilitation been completed and if not, what is the estimated cost of completion. 7. Has the Province of Ontario assumed any responsibility as to the continuing maintenance of the fort or of the roads built or used in connection with the rehabilitation programme,

and, if so, give particulars. 8. Is the fort in whole or in part, open to tourists or visitors at the present time.

The Honourable the Prime Minister replied as follows:—

1. $13,230.73 was received by the Province prior to the Fort being occupied by the Dominion Government. 2. No. 3. See answer to (2). 4. No. 5. See answer to (4). 6. Yes. 7. The Fort being used for war purposes, the Dominion Government assumes all responsibility. 8. No.

Mr. Henry asked the following Question (No. 71):—

1. What is the total mileage of Provincial Highways in the organized counties that has been added since July 10th, 1934. 2. How many miles have been paved on such mileage since assumption into the Provincial System.

The Honourable the Minister of Highways replied as follows:—

1. 1,854.64. 2. 272.37.

Mr. Downer asked the following Question (No. 79):—

1. How many tourist booklets were purchased in each of the fiscal years ending March 31st, 1939 and 1940, and during the period April 1st, 1940, to December 31st, 1940. 2. From whom were the books purchased. 3. What was the unit price in each case and what was the total amount paid the vendor in each case. 4. Who supplied the photographs and what was the total amount paid to each person supplying photographs in each of the periods mentioned in (1).

The Honourable the Prime Minister replied as follows:—

1, 2, 3 and 4. The Ontario Booklets have been prepared by The Travel and Publicity Bureau and not purchased as a unit. Paper, plates and cover designs were bought separately and then contract for printing let. Practically all photographs were supplied by Canadian National Railways, Canadian Pacific Railways, Dominion Travel Bureau, Ontario Highways Department, various municipalities and tourist resorts. Numbers and costs of the booklet are as follows:—

Fiscal year ending March 31st, 1939: George Davis Company—purchase of plates, $795.60; Provincial Paper Mills—paper, $6,887.29; Brigdens Limited—design and original plates and nickletypes for cover, $500.40; London Printing & Lithographing Co., Ltd.—printing 160,200 copies, $3,992.85; Total, $12,176.14. Northern Ontario Booklet, preparation and printing 81,017 copies—Rolfe, Clarke, Stone, Ltd., $5,161.36.

Fiscal year ending March 31st, 1940: "Travel Ontario on the King's Highways"—Royal Year Official Travel Booklet—Leslie M. Smith, cover design and plates, $310.00; Sutherland Press, printing and pebbling cover, $1,129.27;

Bomac Engravers, Ltd., $3,403.61; Paper—Provincial Paper Mills & Alliance Paper Mills, $6,733.34; London Printing & Lithographing Co., Ltd.—printing 156,350 copies, $5,133.45; Total, $16,709.67. Northern & Northwestern Ontario Booklet, Canadian Geographical Society—preparation and printing 50,000 copies, $5,000.00; 16,675 additional copies of previous Ontario Booklet with electros and cartons, Alex Anderson, printer, $1,412.36.

Fiscal year ending March 31st, 1941: "Ontario Welcomes You"—Official travel booklet—preparation of cover, Bomac Engravers, Ltd., $172.29; Paper—Provincial Paper Mills & Alliance Paper Mills, $4,519.48; Printing 102,950 copies, London Printing & Lithographing Co., Ltd., $3,009.91; Total, $7,701.68. "Northern and Northwestern Ontario Booklet"—preparation and printing 103,800 copies at .06c, Canadian Geographical Society, $6,228.00.

Mr. Murphy asked the following Question (No. 93):—

1. During the fiscal year 1941, what quantities of sand have been bought by the Government up to December 31st, 1940, in connection with paving and other works incidental to completion of Queen Elizabeth Way between Burlington and Niagara Falls, specifying: (*a*) Quantity of sand purchased from each company, firm or individual; (*b*) Unit price with respect to each purchase and total amount paid to each company, firm or individual; (*c*) Indicating whether purchases were made by competitive tender; whether the lowest tender was accepted in each case and if not, give complete list of tenders with reason why lowest tender was not accepted.

The Honourable the Minister of Highways replied as follows:—

1. None.

On motion of Mr. Hepburn (Elgin), seconded by Mr. Nixon (Brant),

Ordered, That when this House adjourns to-day it do stand adjourned until four-thirty of the clock to-morrow afternoon out of respect to the memory of the late Joseph E. Thompson, former Speaker of this Legislative Assembly.

The Order of the Day for resuming the Adjourned Debate on the Motion that Mr. Speaker do now leave the Chair, and that the House resolve itself into the Committee of Supply, having been read,

The Debate was resumed,

And after some time it was on the motion of Mr. Duckworth,

Ordered, That the Debate be adjourned until Thursday next.

The House then adjourned at 4.45 p.m.

WEDNESDAY, MARCH 19TH, 1941

PRAYERS. 4.30 O'CLOCK P.M.

Mr. Strachan, from the Standing Committee on Legal Bills, presented their Report which was read as follows and adopted:—

Your Committee begs to report the following Bills with certain amendments:—

Bill (No. 41), "An Act to amend The Magistrates Act."

Bill (No. 57), "An Act to amend The Jurors Act."

Mr. Spence asked the following Question (No. 87):—

1. Since August 31st, 1934, what is the total amount of Succession Duty free bonds bought in by the Government. 2. What is the total amount of Succession Duty free bonds still outstanding, giving details as to the various issues.

The Honourable the Prime Minister and Provincial Treasurer replied as follows:—

Series	Succession Duty Free Bonds and Stock Outstanding, August 31st, 1934	Purchased for Cancellation Prior to Maturity	Retired at Maturity	Outstanding as at March 14th, 1941
3½% Bonds and Stock, due July 1st, 1936	$ 148,000.00	$ 97,350.00	$ 50,650.00	$ .....
3½% Bonds and Stock, Series "A"	665,950.00	356,300.00	309,650.00	.....
3½% Bonds and Stock, Series "B"	224,000.00	217,000.00	.....	7,000.00
3½% Bonds and Stock, Series "C & D"	1,188,400.00	559,100.00	.....	629,300.00
	$2,226,350.00	$1,229,750.00	$360,300.00	$ 636,300.00
4% Inscribed Stock	1,547,175.70	5,840.00	.....	1,541,335.70
4½% Inscribed Stock	834,412.54	98,720.32	.....	735,692.22
	$4,607,938.24	$1,334,310.32	$360,300.00	$2,913,327.92

Of the $636,300 of bonds and stock, $7,000 mature and will be redeemed on the 1st of May, 1941, and $629,300 mature and will be redeemed on the 1st of November, 1941.

Of the $2,277,027.92 of 4 and 4½% outstanding inscribed stock payable in London, England, there is now held in the Provincial Sinking Funds, inscribed stock purchased for account of the Province of Ontario by the Trustees, the Bank of Montreal, London, England, as follows:—

4%	$ 881,648.93
4½%	479,641.50
Total	$1,361,290.43

In respect to the balance outstanding, viz.:—

4%	$ 659,686.77
4½%	256,050.72
Total	$ 915,737.49

arrangements are now in progress with the Bank of Canada to redeem all of the outstanding inscribed stock, amounting to $915,737.49, in order to provide additional Canadian dollars to the British Government to assist in war financing.

In the result, there will be no outstanding Province of Ontario Succession Duty free bonds, stocks or other obligations after November 1st, 1941.

Mr. Downer asked the following Question (No. 89):—

1. Who are the members of the Grand River Conservation Commission as provided by Chapter 15, Statutes of Ontario, 2 George VI, 1938, and when was each appointed and by whom. 2. Who are the Chairman, the Vice-Chairman and the Secretary-Treasurer of the Commission. 3. What are the names and addresses of the Board of Engineers and who is the Chairman. 4. What amount, if any, has been paid by the Government in connection with the Grand River conservation scheme. 5. What works have been completed to date under the Grand River conservation scheme, what remain to be completed and when is the scheme expected to be completed. 6. What is the estimated total cost of the scheme, what is the estimated share of the cost to each municipality which is a member and what is the estimated total cost to the Government.

The Honourable the Minister of Public Works replied as follows:—

1. Commissioners	Year Appointed	Municipality
E. T. Sterne	1938	Brantford
Mayor J. P. Ryan	1940	Brantford
F. P. Adams	1938	Brantford
Marcel Pequegnat	1938	Kitchener
George W. Gordon	1938	Kitchener
Mayor W. S. McKay	1938	Galt
William Philip	1938	Galt
Mayor J. P. McCammon	1940	Paris
Mayor William J. Pelz	1941	Preston
Mayor W. D. Brill	1941	Waterloo
Udney Richardson	1938	Elora
Hugh Templin	1938	Fergus

2. Chairman	William Philip	Galt
Vice-Chairman	Marcel Pequegnat	Kitchener
Secretary-Treasurer	F. P. Adams	Brantford
3. H. G. Acres	Chairman	Niagara Falls
C. C. Fairchild	O.L.S.	Brantford
Herbert Johnston	O.L.S.	Kitchener

4. Amount paid by Provincial Government to date, $464,453.18.

5. Work on the Shand Dam, located on the Grand River about three miles above the Municipality of Fergus, has been completed as follows:—

   (*a*) All earth excavation and fill has been completed.

   (*b*) All concrete has been placed except a gap in the spillway section of the dam 40 feet wide and about 18 feet in height which was left to pass the spring floods. This can be closed as soon as the matter of the C.P.R. bridge located above the dam has been settled.

   (*c*) The steel gates for regulating the flow of the river have been fabricated and will be put in place as soon as the gap in the spillway is closed.

   (*d*) Road diversions and property purchases are nearly completed. The remaining work on the Shand Dam will be completed this summer.

6. The estimated total cost of the Shand Dam project is $1,652,333.00, which will be divided among the different governments and municipalities as follows:—

Total Estimated Cost		$1,652,333.00
Provincial Government's Share, 37½%	$619,624.00	
Federal Government's Share, 37½%	619,624.00	
Municipalities Share, 25%	413,085.00	
		1,652,333.00

Municipalities' share divided as follows:—

Brantford	38.43%	$158,748.57
Kitchener	28.76%	118,803.24
Galt	16.25%	67,126.31
Waterloo	6.00%	24,785.10
Preston	4.27%	17,638.73
Paris	3.47%	14,334.05
Fergus	2.02%	8,344.32
Elora	.80%	3,304.68
	100.00%	$413,085.00

NOTE.—An application for the abandonment of the Fergus-Cataract branch of the C.P.R. line is now before the Board of Transport Commissioners for Canada. If the application is not granted a portion of the line will have to be relocated, which will increase the estimated cost by approximately $220,000.00, of which increased amount the Province will be required to contribute 37½%; provision for this contingency has been provided for in the 1941-42 Estimates.

The construction of a dam at the outlet to the Luther Marsh has been considered but will not be proceeded with for the duration of the war; the aforementioned estimates do not include this project.

The following Bill was read the third time and was passed:—

Bill (No. 37), An Act to amend The Judicature Act.

The following Bills were severally read the second time:—

Bill (No. 15), An Act respecting the Daughters of the Empire Preventorium.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 17), An Act respecting St. George's Church, Guelph.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 18), An Act respecting the Peter Birtwistle Estate Settlement.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 48), An Act to confirm Tax Sales.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 59), An Act respecting British Child Guests.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 64), An Act to amend The Mining Act.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 67), An Act to amend The Mining Tax Act.

Referred to a Committee of the Whole House to-morrow.

The Order of the Day for the second reading of Bill (No. 68), An Act to amend The Jurors Act, having been read, and a debate having arisen, after some time it was, on the motion of Mr. Murray,

Ordered, That the Debate be adjourned until to-morrow.

The House then adjourned at 6.00 p.m.

THURSDAY, MARCH 20TH, 1941

PRAYERS. 3.00 O'CLOCK P.M.

Mr. Elliott, from the Standing Committee on Private Bills, presented their Fourth Report which was read as follows and adopted:—

Your Committee begs to report the following Bill without amendment:—

Bill (No. 21), An Act respecting the City of Sudbury.

Your Committee begs to report the following Bill with certain amendments:—

Bill (No. 11), An Act respecting the City of Toronto.

With respect to Bill (No. 20), An Act respecting the Township of Teck, this Bill was withdrawn with the approval of the Committee. Your Committee would recommend that the fees less the penalties, if any, and the actual cost of printing be remitted.

Ordered, That the fees less the penalties, if any, and the actual cost of printing be remitted on Bill (No. 20), An Act respecting the Township of Teck, the same having been withdrawn with the approval of the Committee.

The following Bill was introduced and read the first time:—

Bill (No. 72), intituled, "An Act to Ratify and Confirm a certain agreement entered into between His Majesty the King and the Algoma Central and Hudson Bay Railway Company." *Mr. Conant.*

Ordered, That the Bill be read a second time to-morrow.

Mr. Stewart asked the following Question (No. 94):—

1. Are power users not given in their power contracts the exact voltage, to guide them in purchasing transformers, the Commission having in the contracts a clause "allowing for 10% more or less"—this leeway often causing great loss to power users. If such conditions exist, give reasons.

The Honourable the Prime Minister replied as follows:—

Commercial power cannot be supplied by a Power Company on an economical basis at an exact predetermined voltage, and, in making contracts for a supply of power, it is standard practice to specify the normal voltage of supply in the power agreement and provide for a variation in voltage of 10 per cent above or below the normal voltage.

All Manufacturing Companies making transformers design them with taps by means of which power can be received at the delivered voltage, which may vary, as above set out, and by selection of the proper transformer tap deliver power to the Customer's motors at the voltage required. This standard practice does not result in loss to power users.

Mr. Stewart asked the following Question (No. 95):—

1. Is it the policy of the Ontario Hydro Power Commission to require of persons, desiring the use of hydro in Northern Ontario, to make large deposits of cash (refusing to accept bonding companies' bonds) before the Commission will extend power service, while a competitive company in the same area does not demand cash guarantees. If so, why.

The Honourable the Prime Minister replied as follows:—

In supplying power to mines in Northern Ontario, it has been the Commission's practice to ask customers operating new, undeveloped and unestablished mines to deposit satisfactory bonds with the Commission in amounts sufficient, so that should the customer default on his contract and/or cease taking power within two or three years after power is first supplied, the Commission is protected against loss in having to scrap the transmission line and equipment installed to serve the customer.

Should the customer, however, continue to take power, these bonds are returned to him on a standard basis, as set out in the power agreement.

It is our understanding that competitive Power Companies in the district also demand somewhat similar protection from new mining customers.

Mr. Kennedy asked the following Question (No. 107):—

1. Who are the members of the Temiskaming and Northern Ontario Railway Commission and when was each appointed. 2. What is their rate of salary or other remuneration. 3. What other positions, if any, are held by the Commissioners with the Temiskaming and Northern Ontario Railway or with the Ontario Government and state salaries or other remuneration in connection therewith.

The Honourable the Prime Minister replied as follows:—

1. A. H. Cavanagh, who was appointed as member and Vice-Chairman 28th April, 1936, and as Chairman 1st April, 1940. 2. No remuneration for these positions. 3. Mr. Cavanagh is also General Manager of the Railway at a salary of $12,000 a year.

Mr. Kennedy asked the following Question (No. 108):—

1. Is Mr. Wishart Campbell employed in the Ontario Public Service. 2. If so, in what capacity. 3. When was he appointed. 4. What is his salary. 5. Does he give full time to his duties in the public service.

The Honourable the Prime Minister and Provincial Treasurer replied as follows:—

1. No. 2, 3, 4 and 5. Answered by 1.

The Order of the Day for resuming the Adjourned Debate on the Motion that Mr. Speaker do now leave the Chair, and that the House resolve itself into the Committee of Supply, having been read,

The Debate was resumed,

And after some time it was, on the motion of Mr. Strachan,

Ordered, That the Debate be adjourned until Tuesday next.

The House then adjourned at 5.30 p.m.

FRIDAY, MARCH 21ST, 1941

PRAYERS. 3 O'Clock P.M.

The following Bills were severally introduced and read the first time:—

Bill (No. 73), intituled, "An Act to amend The Income Tax Act (Ontario)." *Mr. Conant.*

Ordered, That the Bill be read a second time on Monday next.

Bill (No. 74), intituled, "An Act to amend The Corporations Tax Act, 1939." *Mr. Conant.*

Ordered, That the Bill be read a second time on Monday next.

Mr. Macaulay asked the following Question (No. 98):—

1. How many miles of lighting system is installed on the Kingston Road east of Toronto. 2. When was this system put into operation. 3. Since the

system was put in operation what have been the maintenance costs in each fiscal year including current, replacement of bulbs, repairs and all other items.

The Honourable the Minister of Highways replied as follows:—

1. 1.4. 2. January 2nd, 1940. 3. 1939-40 (3 months), $475.38; 1940-41 (11 months), $1,709.55.

Mr. Macaulay asked the following Question (No. 102):—

1. What mileage of paving, if any, has been done on the new four-lane highway between Highland Creek and Oshawa. 2. With respect to the section of highway mentioned in (1), what mileage of paving remains to be done. 3. With respect to the section of highway mentioned in (1): (*a*) What mileage of grading has been completed; (*b*) What mileage of grading remains to be done.

The Honourable the Minister of Highways replied as follows:—

1. None. 2. 17.2. 3. (*a*) 17.2 approximately 65% completed; (*b*) 17.2 approximately 35% to be completed.

Mr. Acres asked the following Question (No. 103):—

1. Is Walter Woodward still Assistant Inspector under the Woodmen's Employment Act; if not, what is his present position. 2. What is his present salary.

The Honourable the Minister of Lands and Forests replied as follows:—

1. Yes. 2. $250.00 a month.

Mr. Kennedy asked the following Question (No. 120):—

1. What was the rate of provincial per diem paid or payable to Sanatoria for Consumptives and the total amount of provincial grant to Sanatoria for Consumptives paid in each hospital year from October 1st, 1933, to September 30th, 1940. 2. Has the rate been determined for the hospital year commencing Ocrober 1st, 1941, and if so, what is it. 3. Does the per diem rate vary from year to year, and, if so, how is it determined.

The Honourable the Minister of Health replied as follows:—

Provincial per diem grant for the	Adults	Infants	Indigents from Unorganized Territory	Total
Year ending Sept. 30, 1934...	$ .69⅜	.....	$2.00	$ 738,397.54
Year ending Sept. 30, 1935...	.67½	.....	2.00	741,538.38
Year ending Sept. 30, 1936	.67½	.....	2.00	760,506.82
Year ending Sept. 30, 1937...	.57½	.....	2.00	670,860.35
9 months to June 30, 1938...	.57½	.....	2.00–	
3 months to Sept. 30, 1938...	2.07½	$1.00	2.00	1,136,592.45
Year ending Sept. 30, 1939...	2.00	1.00	2.00	2,311,556.58
*3 months to Dec. 31, 1939...	2.00	1.00	2.00	581,428.94
Year ending Dec. 31, 1940...	2.00	1.00	2.00	2,370,531.00

*On October 1, 1939, the hospital year was changed to end of December 31st.

2. No. 3. Yes, but cannot exceed $2.07½. It is determined on the basis of the actual financial status of the sanatoria following a study of the expense and revenue returns submitted to the Department.

Mr. Duckworth asked the following Question (No. 126):—

1. How many Prisons, Gaol Farms, Industrial Farms or other penal institutions have been converted into Mental Hospitals by the present Government and are now operated as such. 2. Where are they located. 3. What were their former designations. 4. What was the patient population as of December 31st, 1940.

The Honourable the Provincial Secretary replied as follows:—

1. 3. 2. Langstaff, Concord and Fort William, Ontario. 3. Industrial Farm, Langstaff; Industrial Farm, Concord; Fort William Industrial Farm. 4. The patient population as of December 31st, 1940, is as follows:—

Langstaff	327	male patients in residence
Concord	73	female " " "
Fort William	90	male " " "

The following Bills were severally read the second time:—

Bill (No. 11), An Act respecting the City of Toronto.

Referred to a Committee of the Whole House on Monday next.

Bill (No. 21), An Act respecting the City of Sudbury.

Referred to a Committee of the Whole House on Monday next.

Bill (No. 66), An Act to amend The Sanatoria for Consumptives Act.

Referred to a Committee of the Whole House on Monday next.

Bill (No. 70), An Act to amend The Natural Gas Conservation Act.

Referred to a Committee of the Whole House on Monday next.

The Order of the Day for the second reading of Bill (No. 5), An Act respecting the Town of Orillia, having been read,

And a debate having arisen,

After some time it was, on the motion of Mr. Heenan,

Ordered, That the Debate be adjourned until Monday next.

On motion of Mr. McQuesten, seconded by Mr. Dewan,

Ordered, That this House do forthwith resolve itself into a Committee to consider a certain proposed Resolution respecting the payment by the Government of certain moneys so called for by Bill (No. 71).

Mr. Hepburn (Elgin) acquainted the House that His Honour the Lieutenant-Governor, having been informed of the subject matter of the proposed Resolution, recommends it to the consideration of the House.

The House then resolved itself into the Committee.

(*In the Committee*)

Resolved—(*a*) That payment of $500,000.00 out of the Highway Improvement Fund to The Hydro-Electric Power Commission of Ontario for the credit of the account of the railway from the City of Toronto to the Village of Port Credit, and the railway from the Village of Port Credit to the City of St. Catharines which were authorized and undertaken under The Hydro-Electric Railway Act, 1914, on the books of the Commission as a consideration for the transfer by the Commission to His Majesty, represented by the Minister of Highways for Ontario, of the lands described in Schedule "A" to Bill No. 71, "An Act respecting Relief to Municipalities regarding Hydro-Electric Railways," be validated and confirmed; and

(*b*) That the liabilities of the said railways outstanding after the reductions indicated in the said Bill and amounting to $1,246,622.82 as of the 31st day of March, 1941, be assumed by the Province and be paid by the Treasurer of Ontario to the Commission out of the Consolidated Revenue Fund.

Mr. Speaker resumed the Chair; and Mr. Patterson reported, that the Committee had come to a certain Resolution.

Ordered, That the Report be now received.

Resolved—(*a*) That payment of $500,000.00 out of the Highway Improvement Fund to The Hydro-Electric Power Commission of Ontario for the credit of the account of the railway from the City of Toronto to the Village of Port Credit, and the railway from the Village of Port Credit to the City of St. Catharines which were authorized and undertaken under the Hydro-Electric Railway Act, 1914, on the books of the Commission as a consideration for the transfer by the Commission to His Majesty, represented by the Minister of Highways for Ontario, of the lands described in Schedule "A" to Bill No. 71, "An Act respecting Relief to Municipalities regarding Hydro-Electric Railways", be validated and confirmed; and

(*b*) That the liabilities of the said railways outstanding after the reductions indicated in the said Bill and amounting to $1,246,622.82 as of the 31st day of March, 1941, be assumed by the Province and be paid by the Treasurer of Ontario to the Commission out of the Consolidated Revenue Fund.

The Resolution having been read the second time, was agreed to, and referred to the House on Bill (No. 71).

The following Bill was read the second time:—

Bill (No. 71), An Act respecting Relief to Municipalities regarding Hydro-Electric Radials.

Referred to a Committee of the Whole House on Monday next.

The House resolved itself into a Committee, severally to consider the following Bills:—

Bill (No. 3), An Act respecting The London Street Railway Company and the Corporation of the City of London.

Bill (No. 4), An Act respecting the Rockwood Town Hall.

Bill (No. 6), An Act respecting the City of Port Arthur and the Public Utilities Commission of Port Arthur.

Bill (No. 8), An Act respecting the Village of Swansea.

Bill (No. 15), An Act respecting the Daughters of the Empire Preventorium.

Bill (No. 17), An Act respecting St. George's Church, Guelph.

Bill (No. 18), An Act respecting the Peter Birtwistle Estate Settlement.

Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the several Bills without Amendments.

Ordered, That the Bills reported be severally read the third time on Monday next.

The House resolved itself into a Committee to consider Bill (No. 60), An Act to amend The Northern Development Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time on Monday next.

The House resolved itself into a Committee to consider Bill (No. 62), An Act to amend The Agricultural Representatives Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time on Monday next.

The House resolved itself into a Committee to consider Bill (No. 63), An Act to amend The Milk and Cream Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time on Monday next.

The House resolved itself into a Committee to consider Bill (No. 59), An Act respecting British Child Guests, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time on Monday next.

The House resolved itself into a Committee to consider Bill (No. 64), An Act to amend The Mining Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time on Monday next.

The House resolved itself into a Committee to consider Bill (No. 67), An Act to amend The Mining Tax Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill with certain amendments.

Ordered, That the Amendments be taken into consideration forthwith.

The Amendments, having been read the second time, were agreed to.

Ordered, That the Bill be read the third time on Monday next.

The Provincial Secretary presented to the House, by command of the Honourable the Lieutenant-Governor —

Annual Report of the Hospitals Division on Ontario Hospitals for the Mentally Ill, Mentally Defective, Epileptic and Habituate Patients for year ending March 31st, 1940. (*Sessional Papers No. 15.*)

Also, Report of Provincial Auditor, 1939-40. (*Sessional Papers No. 27.*)

The House then adjourned at 3.50 p.m.

MONDAY, MARCH 24TH, 1941

PRAYERS. 3 O'CLOCK P.M.

Immediately following prayers Prime Minister Hepburn announced that the Assembly was honoured by the presence of Mr. Wendell L. Willkie, "Good Will Ambassador from the United States," accompanied by Mrs. Willkie. Before presenting Mr. Willkie the Prime Minister officially welcomed Mrs. Willkie to the Legislative Assembly of Ontario and assured her that the people of Ontario were honoured by her presence.

Mr. Hepburn then introduced Mr. Willkie as a man "who has attained undying fame as a friend of Britain and a friend of humanity." He welcomed his great assistance in starting Canada's drive for her War Service Fund. Britain, he pointed out, is looking to Canada to do a great share in meeting the attacks of the Hun and nothing but an "all out" effort will be sufficient. Canada would measure up to her responsibilities and would, in common with other units of the British Empire, do her share in providing men, munitions and materials to aid in prosecuting the War to a successful conclusion.

"By his action in visiting Britain," said Mr. Hepburn, "by his actions there

and in the United States, by his words and his enthusiasm, Mr. Willkie has demonstrated that he is one of those men who are prepared to sacrifice their own interests, to sacrifice their time and material prospects in order that freedom and democracy may be preserved on this Earth."

"The free people of the British Empire," he said, "and the enslaved nations of Europe looking longingly for deliverance, will never forget the prompt and efficient aid received by them from our guest of this afternoon."

"I have been much moved," said Mr. Willkie, "by the splendid reception we have received in Toronto. I have been much moved by the welcome extended to me when I recently had the pleasure of visiting Our Mother Country, England. For the people of the British Isles I cannot sufficiently express my admiration."

"I am doing what I am doing, I am saying what I am saying, in England, in the United States, in Canada, because to me, next to my family, liberty is the most precious thing in life. I am glad to be received in the Legislative Assembly of Ontario where the functions of our democratic liberty are being pursued."

Mr. Willkie declared that we must all admit that democracy has not functioned with the efficiency which could reasonably be demanded of it, that the leaders of democracy during the past twenty years had not measured up to the duties of their positions.

"The real test of the world to-day," he said, "is whether or not the Democratic system can be so effective as to compete successfully with the totalitarian system. The success of democracy in that test calls for a higher type of service than we have had from our public men in the past. I call upon you members of this Legislative Assembly of Ontario to give to the people a finer, higher type of leadership in order that our institutions may be preserved for us and for the world. We carry two flags, one to stop totalitarian aggression, and one to carry on the liberties handed down to us by our forefathers. Let us see that we carry them both to the utmost success."

Colonel Drew, leader of the Opposition, expressed the appreciation of the Assembly and of the packed galleries to Mr. and Mrs. Willkie.

"By two remarks, Sir," said Colonel Drew, "you have shown how far above party politics you have risen. When you said to the Senate Committee in Washington, 'He is my President,' you demonstrated your sincerity and breadth of vision; when, this afternoon, you referred to Great Britain as 'Our Mother Country' you raised yourself high above the common run of men and gave witness to that good feeling which has developed and will continue to develop between these great nations in whose hands rests the fate of the world."

Mr. Drew recalled that the Legislative Chamber had welcomed many distinguished visitors, notably, less than two years ago, our King and Queen. To-day we added an illustrious name to that list.

He called attention to the British and American flags suspended above the Throne, a new departure in honour of our guest and said, "We echo to the utmost

the feeling expressed by you regarding the preservation of freedom. We are sitting to-day beneath two flags which represent that feeling and we are sure that those two flags together will preserve that freedom for the world.'

The Prime Minister then moved, seconded by Mr. Drew, and it was unanimously

Resolved, That this Legislative Assembly of Ontario in Parliament assembled desires to express and to record on the Journals of the House the appreciation of its Members, and of the people of Ontario, whom they represent, of the action of Mr. Wendell Willkie in visiting Ontario and in addressing this Assembly, and to assure him that his attitude in aid of the defence of the British Empire has secured for him the affection and admiration of all the people of Canada. And this Assembly further desires to express through Mr. Willkie to the President and the people of the United States this token of the sincere gratitude of Ontario for the action taken by the Government of that Country in support of democracy and freedom in our World.

The Prime Minister then moved that, out of respect to the Assembly's distinguished guest, the House adjourn.

And the House was accordingly adjourned at 3.30 p.m.

TUESDAY, MARCH 25TH, 1941

PRAYERS. 3 O'CLOCK P.M.

The following Petition was brought up and laid upon the Table:—

By Mr. Strachan, the Petition of the Corporation of the City of Toronto.

Mr. Elliott, from the Standing Committee on Private Bills, presented their Fifth Report which was read as follows and adopted:—

Your Committee begs to report the following Bills without amendment:—

Bill (No. 14), An Act respecting Certain Lodges of the Grand Lodge of Ontario, Independent Order of Odd Fellows.

Bill (No. 23), An Act respecting the County of Waterloo and the Cities of Kitchener and Galt.

The following Bills were severally introduced and read the first time:—

Bill (No. 75), intituled, "An Act to amend The Bees Act." *Mr. Dewan.*

Ordered, That the Bill be read a second time to-morrow.

Bill (No. 76), intituled, "An Act to amend The Milk Control Act." *Mr. Dewan.*

Ordered, That the Bill be read a second time to-morrow.

Bill (No. 77), intituled, "The School Law Amendment Act, 1941." *Mr. Nixon* (Brant)

Ordered, That the Bill be read a second time to-morrow.

Mr. Murphy asked the following Question (No. 75):—

1. Who is the Representative of the Government on the Toronto and York Roads Commission. 2. Who was the former Representative. 3. When was he replaced.

The Honourable the Minister of Highways replied as follows:—

1. No one. 2. No one. 3. See answer to (2).

Mr. Macaulay asked the following Question (No. 99):—

1. What portion of Queen Elizabeth Way between Hamilton and Niagara Falls is being provided with an illuminating system; state mileage. 2. To date, what portion has been provided with a lighting system and on what portion does the work remain to be completed. 3. What has been spent on the lighting system to date and what is estimated cost of completing the work on that portion of the highway for which the illumination programme has been adopted. 4. What is the per light cost of the installation. 5. From whom were the following items purchased, what were unit prices and what was total amount paid each firm, company or individual, stating when each order was placed: (*a*) Poles; (*b*) Lighting fixtures, including lamps; (*c*) Wiring. 6. Who made or is to make the installation and under what terms. 7. What is the estimated annual maintenance cost in the section included, specifying: (*a*) Power costs; (*b*) All other maintenance charges.

The Honourable the Minister of Highways replied as follows:—

1. From the Windermere Cut-off to Thorold Road—36.5 miles. 2. All of the portion mentioned in (1) has been provided with a lighting system. 3. On the portion mentioned in (1) the amount spent to date is $263,432.82. The estimated cost of completing the work is $15,000.00. 4. On the portion mentioned in (1) the per light cost of installation is $133.28. 5. All items of equip-

ment purchased by Hydro-Electric Power Commission of Ontario. 6. Hydro-Electric Power Commission of Ontario at actual cost. 7. (*a*) $25,000.00; (*b*) $7,500.00.

Mr. Elgie asked the following Question (No. 109):—

1. As of January 1st, 1935, and January 1st, 1941, how many authorities issued by the Liquor Control Board of Ontario were in effect in the following categories in relation to the sale of beer and wine: (*a*) Standard hotels; (*b*) Social clubs; (*c*) Soldier and labour clubs; (*d*) Military messes; (*e*) Railways; (*f*) Steamships. 2. How many hotels in the Province on the dates mentioned in (1) had standard hotel licenses but without authority to sell beer or wine.

The Honourable the Prime Minister replied as follows:—

1.	Jan. 1st, 1935	Jan. 1st, 1941
(*a*) Hotels, Standard	1,102	1,197
(*b*) Clubs, Social	110	132
(*c*) Clubs, Veteran and Labour	81	105
(*d*) Military Messes	61	159
(*e*) Railways	1	1
(*f*) Steamships	4	10

(Steamship Authorities shown were not in operation on January 1st, 1935, or 1941.)

2.	Jan. 1st, 1935	Jan. 1st, 1941
Hotels, Standard	215	121

(Without Authorities.)

Mr. Acres asked the following Question (No. 119):—

1. How many members of the Civil Service of Ontario are over the age of 70, specifying: (*a*) Number drawing superannuation; (*b*) Number continuing to draw salary but not superannuation.

The Honourable the Prime Minister replied as follows:—

1. (*a*) 13; (*b*) 8.

NOTE:—When a superannuated Civil Servant is retained, his salary is reduced by the amount of his allowance.

Mr. Acres asked the following Question (No. 128):—

1. What authorities for the sale of liquor are in force in the Town of Wallaceburg and state: (*a*) Name of hotel, club or as the case may be; (*b*) Name of authority holder; (*c*) Date authority originally granted.

The Honourable the Prime Minister replied as follows:—

HOTELS AND CLUBS IN WALLACEBURG, ONTARIO

(*a*) Name of Hotel or Club	(*b*) Name of Authority Holder	(*c*) Date of Original Issue
Kent Hotel	C. Van Watteghem	6th Nov., 1939
Tecumseh Hotel	A. J. Mahoney	31st July, 1934
Wallaceburg Hotel	H. C. Hunter	23rd July, 1934
Canadian Legion, Branch No. 18	Same as (*a*)	25th July, 1934

In respect to Question (No. 97) regarding the holders of beverage room authorities in Toronto, the Hon. Mr. Nixon requested that this Question be made an Order for a Return and on the motion of Mr. Stewart, seconded by Mr. Murphy,

Ordered, That there be laid before this House a Return showing:—

1. What are the names of individual proprietors, names in partnerships, directors and shareholders of corporations having beverage room authorities as of January 1st, 1941, for the City of Toronto and also for the County of York, giving transfers since that date. 2. Does the Liquor Commission impose regulations that require authority holders to reveal whether they are sole proprietors and if not, give names of persons associated.

The following Bills were read the third time and were passed:—

Bill (No. 3), An Act respecting The London Street Railway Company and the Corporation of the City of London.

Bill (No. 4), An Act respecting the Rockwood Town Hall.

Bill (No. 6), An Act respecting the City of Port Arthur and the Public Utilities Commission of Port Arthur.

Bill (No. 8), An Act respecting the Village of Swansea.

Bill (No. 15), An Act respecting the Daughters of the Empire Preventorium.

Bill (No. 17), An Act respecting St. George's Church, Guelph.

Bill (No. 18), An Act respecting the Peter Birtwistle Estate Settlement.

Bill (No. 60), An Act to amend The Northern Development Act.

Bill (No. 62), An Act to amend The Agricultural Representatives Act.

Bill (No. 63), An Act to amend The Milk and Cream Act.

Bill (No. 59), An Act respecting British Child Guests.

Bill (No. 64), An Act to amend The Mining Act.

Bill (No. 67), An Act to amend The Mining Tax Act.

The Order of the Day for resuming the Adjourned Debate on the Motion that Mr. Speaker do now leave the Chair, and that the House resolve itself into the Committee of Supply, having been read,

The Debate was resumed,

And after some time it was, on the motion of Mr. Doucett,

Ordered, That the Debate be adjourned until Thursday next.

The Provincial Secretary presented to the House, by command of the Honourable the Lieutenant-Governor:—

Return to an Order of the House, dated March 25th, 1941,

That there be laid before this House a Return showing: 1. What are the names of individual proprietors, names in partnership, directors and shareholders of corporations having beverage room authorities as of January 1st, 1941, for the City of Toronto and also for the County of York, giving transfers since that date. 2. Does the Liquor Commission impose regulations that require authority holders to reveal whether they are sole proprietors and if not, give names of persons associated. (*Sessional Papers No. 47.*)

The House then adjourned at 5.10 p.m.

WEDNESDAY, MARCH 26TH, 1941

PRAYERS. 3 O'CLOCK P.M.

The following Petition was read and received:—

Of the Corporation of the City of Toronto, praying that the Legislative Assembly appoint a Commission of Experts to revise The Assessment Act.

Mr. Carr, from the Standing Committee on Municipal Law, presented their First Report, which was read as follows and adopted:—

Your Committee begs to report the following Bill with one amendment:—

Bill (No. 50), An Act to amend The Highway Traffic Act.

Your Committee beg to report the following Bill without amendment:—

Bill (No. 61), An Act to amend The Railway Act.

The following Bill was introduced and read the first time:—

Bill (No. 78), intituled, "An Act to amend The Municipal Act." *Mr. McQuesten.*

Ordered, That the Bill be read a second time to-morrow.

Mr. Elgie asked the following Question (No. 112):—

1. Who are the auditors for the Liquor Control Board of Ontario. 2. What remuneration have they received from the Government or the Liquor Control Board in each of the fiscal years from 1935 to 1940, inclusive.

The Honourable the Prime Minister replied as follows:—

1. Robertson, Robinson, McCannell & Dick, Chartered Accountants, Toronto. 2. This firm upon appointment commenced their duties on April 1st, 1940, and from that date to February 28th, 1941, have been paid $12,066.63. During the fiscal years from November 1st, 1934, to March 31st, 1940, the Auditors of the Liquor Control Board of Ontario were Brokenshire, Scarff and Co., Chartered Accountants, of Windsor and Toronto, and were paid as follows:—

For 5 months ending March 31st, 1935	$ 4,298.22
For 12 months ending March 31st, 1936	10,000.00
For 12 months ending March 31st, 1937	13,548.87
For 12 months ending March 31st, 1938	13,000.00
For 12 months ending March 31st, 1939	13,237.82
For 12 months ending March 31st, 1940	15,000.00

Mr. Henry asked the following Question (No. 121):—

1. Under what terms was the Toronto Gaol Farm for Women taken over by the Province of Ontario from the City of Toronto and when. 2. What has been the cost to the Government as to operating the former Toronto Gaol Farm for Women as a mental hospital since opening as such giving amounts for each fiscal year and specifying: (*a*) Capital expenditure; (*b*) Ordinary expenditure. 3. State average number of patients in residence for each fiscal year since opening

and number in residence December 31st, 1940. 4. State average number of staff for each fiscal year since opening and total staff as of December 31st, 1940.

The Honourable the Provincial Secretary replied as follows:—

1. The Women's Farm at Concord (not including farm lands) was leased from the City of Toronto for a period of three years from March 1st, 1937, at a rental of $3,500.00 per annum and taxes to provide accommodation for mental tuberculosis patients. The Province agreed to maintain the buildings and plant and to restore same to their original condition on the expiration of the lease. A supplementary agreement was entered into with the City of Toronto when the lease expired in February, 1940, which provided for occupancy by the Province of the whole institution for the duration of the war without payment of rent, but reimbursing the City for fire insurance premiums and such municipal taxes as may be payable to the Township of Vaughan.

2. (*a*) None.

(*b*) By Public Works Department:

Year ending March 31st, 1937	$1,671.99
Year ending March 31st, 1938	1,305.28
Year ending March 31st, 1939	457.57
Year ending March 31st, 1940	178.00

By Health Department:

Year ending March 31st, 1937	$ 6,367.33
Year ending March 31st, 1938	44,491.71
Year ending March 31st, 1939	45,193.18
Year ending March 31st, 1940	39,968.44

3. Year ending March 31st, 1938 70
Year ending March 31st, 1939 73
Year ending March 31st, 1940 67
December 31st, 1940 73

4. Year ending March 31st, 1938 24
Year ending March 31st, 1939 26
Year ending March 31st, 1940 23
December 31st, 1940 40

Mr. Acres asked the following Question (No. 130):—

1. Who is the Chief Commissioner of the Liquor Control Board of Ontario. 2. When was he appointed. 3. What is his salary.

The Honourable the Prime Minister replied as follows:—

1. The Honourable Arthur St. Clair Gordon. 2. April 29th, 1939. 3. $8,000.00 per annum.

The Order of the Day for resuming the Adjourned Debate on the Motion that Mr. Speaker do now leave the Chair, and that the House resolve itself into the Committee of Supply, having been read,

The Debate was resumed,

And after some time it was, on the motion of Mr. Challies,

Ordered, That the Debate be adjourned until Thursday next.

The Provincial-Secretary presented to the House, by command of the Honourable the Lieutenant-Governor:—

Copy of agreement between the Government of Ontario and the Government of Canada regarding the proposed Great Lakes-St. Lawrence Basin Development, together with correspondence, documents and engineer's reports regarding the same. (*Sessional Papers No. 48.*)

The House then adjourned at 5.00 p.m.

THURSDAY, MARCH 27TH, 1941

PRAYERS. 3 O'CLOCK P.M.

Mr. Miller, from the Standing Committee on Fish and Game, presented their Report which was read as follows and adopted:—

Your Standing Committee on Fish and Game begs leave to report as follows:—

Your Committee held two meetings, the first on March 19th, the second on March 20th. Delegations were heard from the Northern Ontario Tourist Trade Association, Sudbury Sportsmen's Association, Essex County Sportsmen's Association, Kent County Sportsmen's Association, Norfolk County Sportsmen's Association and Peterborough Game and Fish Association. Recommendations submitted to the Committee by these bodies were referred to the Department.

In connection with a recommendation for a Provincial Rod License, Hon. Mr. Nixon stated that there could be no further taxation of any type this year.

Mr. Elliott, from the Standing Committee on Private Bills, presented their Sixth and Final Report which was read as follows and adopted:—

Your Committee begs to report the following Bill without amendment:—

Bill (No. 24), An Act respecting The Royal Botanical Gardens.

Your Committee begs to report the following Bills with certain amendments:—

Bill (No. 9), An Act to incorporate Malton Water Company.

Bill (No. 10), An Act respecting National Steel Car Corporation, Limited.

Bill (No. 16), An Act respecting the Roman Catholic Separate Schools for the City of Toronto.

Bill (No. 19), An Act respecting the City of Windsor.

Bill (No. 22), An Act respecting the Town of Timmins.

Mr. Drew asked the following Question (No. 60):—

1. What was the total amount paid for the advertisement appearing in papers throughout Ontario under the heading "These are the Facts." 2. Who prepared this advertisement. 3. Who gave instructions for its publication. 4. Were arrangements for its publication made direct or through an advertising agency. 5. If through an advertising agency, what was the name of the agency.

The Honourable the Prime Minister replied as follows:—

1. $21,381.10. 2. James Fisher Advertising Agency. 3. The Honourable the Prime Minister and Provincial Treasurer. 4. Arrangements were made through the James Fisher Advertising Agency. 5. Answered by No. 4.

Mr. Macaulay asked the following Question (No. 101):—

1. With respect to bus lines operating on King's Highways, are any measures taken by the Government to see that proper bus accommodation is provided for passengers; if so, what is the nature of the measures taken. 2. Are there any rules or regulations of the Government to require that proper seating accommodation is provided for passengers and if so what are the requirements. 3. Are there any rules or regulations on the part of the Government to prevent the aisles in busses operating on the King's Highways being crowded by standing passengers; if so, what are the requirements and what measures are taken to enforce them.

The Honourable the Minister of Highways replied as follows:—

1. Services are under observation of inspectors of Department of Highways and complaints regarding inadequacy of service are promptly investigated and readjustment of schedules of operations required where necessary or desirable in the public interest. 2. Yes. Regulations passed pursuant to the Public Vehicles Act restrict standing passengers to one-third of the number for which seats are provided. Regulations are enforced by special inspectors attached to the Department of Highways and by Provincial Police Officers. 3. See answer to 2.

Mr. Kennedy asked the following Question (No. 106):—

1. What was the gold production of Ontario in each year from 1930 to 1940: (*a*) In ounces; (*b*) In dollars. (State closing date for year; value per ounce used in conversion to dollars.) 2. Give the same data as requested in (1) as to: (*a*) Silver; (*b*) Platinum.

The Honourable the Minister of Mines replied as follows:—

1. GOLD

Year ending December	(*a*) Ounces	(*b*) Value $	Value $ per ounce
1930	1,736,012	$ 35,923,260	$20.69
1931	2,085,815	45,043,837	21.60
1932	2,287,394	53,418,449	23.35
1933	2,155,518	61,044,951	28.32
1934	2,105,341	72,808,688	34.58
1935	2,220,336	78,068,169	35.16
1936	2,378,494	83,308,179	35.02
1937	2,587,094	90,508,689	34.98
1938	2,896,477	101,945,441	35.20
1939	3,086,060	112,114,762	36.33
1940 (Preliminary)	3,261,334	125,566,006	38.50

2 (*a*) SILVER

1930	10,531,243	$ 3,998,112	$ .38
1931	6,603,027	1,880,860	.28
1932	6,216,490	1,910,937	.31
1933	5,375,030	1,912,934	.36
1934	5,523,938	2,600,393	.47
1935	6,320,670	4,068,906	.64
1936	5,218,354	2,325,850	.45
1937	4,701,865	2,093,764	.45
1938	4,316,558	1,865,798	.43
1939	4,690,166	1,891,437	.40
1940 (Preliminary)	5,477,701	2,026,749	.37

2 (*b*) PLATINUM METAL

Year ending December	(*a*) Ounces	(*b*) Value $	Value $ per ounce
1930	34,000	$ 1,542,172	$45.358
1931	44,725	1,595,117	35.665
1932	27,151	1,091,674	40.207
1933	24,746	856,190	34.599
1934	116,177	4,488,712	38.691
1935	105,335	3,444,455	32.700
1936	131,551	5,319,922	40,440
1937	139,355	6,751,774	48.450
1938	161,310	5,196,279	32.213
1939 } 1940 }	No figures have been published for these years at request of the Dominion Government as suppression of such information is desirable as a war measure.		

Mr. Henry asked the following Question (No. 116):—

1. How many dentists are employed in institutions within the jurisdiction of the Department of the Provincial Secretary, and state: (*a*) Name of dentist and date of appointment; (*b*) Name of institution in each case; (*c*) Whether appointment part time or full time; (*d*) Salary, or if part time, basis of remuneration; (*e*) Amount paid each dentist in the fiscal year ended March 31st, 1940, and also during the period April 1st, 1940, to December 31st, 1940.

The Honourable the Provincial Secretary replied as follows:—

1. Five Dentists employed.

(*a*) Name and Date of Appointment	(*b*) Name of Institution
Dr. H. B. Black—Nov. 19, 1927	Andrew Mercer Reformatory.
Dr. G. A. Cowan—Jan. 1, 1939	Ontario Training School for Girls, Galt.
Dr. R. E. Dinniwell—Sept. 24, 1934	Ontario Training School for Boys, Bowmanville.
Dr. J. H. Stitt—Jan. 1, 1939	Industrial Farm, Burwash.
Dr. E. S. Burrows—Jan. 1, 1939	Ontario Reformatory, Guelph.
Dr. W. S. Hand } Dr. R. A. Wylie } —As required	Industrial Farm, Seagram.

(*c*) All appointments are for part time services.

(*d*) Basis of remuneration:

Mercer Reformatory	$ 8.00 per half day.
Ontario Training School for Girls, Galt	10.00 per half day.
Ontario Training School for Boys, Bowmanville	20.00 per day.
Industrial Farm, Burwash	20.00 per day.
Ontario Reformatory, Guelph	8.00 per half day.
Industrial Farm, Seagram	20.00 per day, plus Railway Fare.

(*e*) Amount Paid in Fiscal Year ending March, 1940		Apr. 1st to Dec. 31st, 1940
Dr. H. B. Black	—$ 416.00	$312.00
Dr. G. A. Cowan	— 920.00	770.00
Dr. R. E. Dinniwell	— 1,020.00	780.00
Dr. J. H. Stitt	— 1,080.00	840.00
Dr. E. S. Burrows	— 408.00	640.00
Dr. D. M. Foster	— 416.00	.....
Dr. W. G. S. McLennan	— 416.00	104.00 (3 months
Dr. W. S. Hand	— (plus $3.15 exp.)	20.00 only)
Dr. R. A. Wylie	— (plus 17.00 exp.)	40.00

Mr. Henry asked the following Question (No. 117):—

1. What is the name, address and date of appointment of each member of the Ontario Board of Parole. 2. What amount has been paid to each member of the Ontario Board of Parole for the fiscal years 1938, 1939, and 1940 as (*a*) per diem allowance and (*b*) travelling and living expenses. 3. What is the rate of per diem allowance. 4. During the fiscal years 1938, 1939 and 1940 what members of the Ontario Board of Parole received honoraria for special services and what amount was paid to each of such members in each of the fiscal years mentioned. 5. What was the nature of the special services performed during the fiscal years 1938, 1939 and 1940 by members of the Ontario Board of Parole and who ordered or requested that such special services be performed. 6. What was the legislative authority for the honoraria mentioned in (4).

The Honourable the Provincial Secretary replied as follows:

1. Judge J. F. McKinley, 2 Queen Street, Ottawa, Ontario—Appointed Jan. 12th, 1932, also appointed Chairman on same date; Mr. Leon J. Long, Stratford, Ontario—Appointed Nov. 23rd, 1932; Col. A. F. Hatch, 71 Melrose Avenue, Hamilton, Ontario—Appointed Oct. 17th, 1933; Mr. R. S. Clark, Guelph, Ontario—Appointed Jan. 22nd, 1936; Mrs. D. Strachan, Toronto, Ontario—Appointed Nov. 5th, 1935; Mr. W. B. Common, Department of Attorney-General, Toronto, Ontario—Appointed June 22nd, 1936.

2. (*a*) and (*b*)—

Fiscal Year ending March 31st, 1938

	Allowance	Expenses
R. S. Clark	$480.00	$355.00
W. B. Common	.....	56.90
A. F. Hatch	360.00	261.20
L. J. Long	510.00	592.50
J. F. McKinley	390.00	766.71
Mrs. D. Strachan	75.00	.....

Fiscal Year ending March 31st, 1939

	Allowances	Expenses
R. S. Clark	$420.00	$210.00
W. B. Common	.....	27.60
A. F. Hatch	390.00	340.60
L. J. Long	525.00	642.70
J. F. McKinley	390.00	789.70
Mrs. D. Strachan	75.00	.....

Fiscal Year ending March 31st, 1940

R. S. Clark	$315.00	$128.00
A. F. Hatch	450.00	548.90
L. J. Long	540.00	717.60
J. F. McKinley	450.00	884.50
Mrs. D. Strachan	90.00	.....

3. $15.00 per day. 4. 1938—R. S. Clark, $1,000.00; L. J. Long, $1,000.00. 1939—R. S. Clark, $750.00; L. J. Long, $750.00. 1940—Nil. 5. Extra responsibility, time and work because of absence and illness of other members of the Board of Parole. This was done with the consent of the Honourable the Provincial Secretary. 6. Special Warrants in accordance with Audit Act, Chapter 24, R.S.O. 1937, Section 13, subsection 1, clause B.

Mr. Acres asked the following Question (No. 124):—

1. How many mining claims were (*a*) staked, (*b*) leased, (*c*) patented, in each fiscal year, 1930 to 1940, inclusive, and for the period April 1st, 1940, to December 31st, 1940. 2. How many Miners' Licenses were issued in each of the periods mentioned in (1).

The Honourable the Minister of Mines replied as follows:—

1 (*a*)	1930	3,886
	1931	5,779
	1932	4,945
	1933	8,077
	1934	16,888
	1935	9,440
	1936	17,295
	1937	15,292
	1938	9,047
	1939	6,772
	1940	4,667

(These figures are given on the basis of calendar year rather than fiscal year in keeping with records available. As there is very little activity in the period January 1st to March 31st, there would be very little change in the figures on the fiscal year basis.)

		(*b*)	(*c*)
	November, 1929, to October, 1930	100	362
	November, 1930, to October, 1931	92	279
	November, 1931, to October, 1932	110	222
	November, 1932, to October, 1933	112	405
	November, 1933, to October, 1934	127	415
	November, 1934 to March, 1935	16	318
	April, 1935, to March, 1936	107	495
	April, 1936, to March, 1937	218	354
	April, 1937, to March, 1938	259	786
	April, 1938, to March, 1939	232	545
	April, 1939, to March, 1940	319	704
	April, 1940, to end of calendar year	219	415
2.	1930		7,432
	1931		6,982
	1932		5,702
	1933		7,278
	1934		12,068
	1935		10,179
	1936		13,131
	1937		13,855
	1938		9,669
	1939		7,713
	1940		5,470

(Note explanatory remarks accompanying answer to 1 (*a*).)

Mr. Reynolds asked the following Question (No. 132):—

Is teak wood being used in any of the executive offices in the new Hydro building, University Avenue, Toronto. If so: (*a*) In what offices; (*b*) Estimated cost; (*c*) From whom purchased.

The Honourable the Prime Minister replied as follows:—

No teak wood authorized by the Commission for the finishing of any of its offices.

Mr. Macaulay asked the following Question (No. 134):—

1. What was the cost per mile to the Government in each of the fiscal years ending March 31st, 1939, and March 31st, 1940, for roadside maintenance on King's Highways including the cutting of grass, hay and weeds, removing leaves, papers and other debris, reseeding and replanting, trimming of trees, shrubs, etc.

The Honourable the Minister of Highways replied as follows:—

Year ending March 31st, 1939—$24.92. Year ending March 31st, 1940—$27.55.

The Order of the Day for resuming the Adjourned Debate on the Motion that Mr. Speaker do now leave the Chair, and that the House resolve itself into the Committee of Supply, having been read,

The Debate was resumed,

And after some time it was, on the motion of Mr. Hepburn (Prince Edward-Lennox),

Ordered, That the Debate be adjourned until Tuesday next.

The House then adjourned at 6.00 p.m.

FRIDAY, MARCH 28TH, 1941

PRAYERS. 3 O'CLOCK P.M.

On the motion of Mr. Nixon (Brant), seconded by Mr. Hipel,

Ordered, That the Provincial Auditor be and is hereby authorized to pay the salaries of the Civil Service employees and other necessary payments following the close of the present fiscal year on March 31st, 1941, and until Supply for the ensuing fiscal year is voted by this House, such payments to be charged to the proper appropriations following the voting of Supply.

The following Bill was introduced and read the first time:—

Bill (No. 79), An Act to amend The Power Commission Insurance Act. *Mr. Houck.*

Ordered, That the Bill be read a second time on Monday next.

On motion of Mr. Macaulay, seconded by Mr. Drew,

Ordered, That there be laid before this House a Return of all letters, correspondence, memoranda, estimates, recommendations, rulings, directions, tenders, orders and documents of whatsoever nature in the possession of the Government or of any member, official, or employee, of the Government, respecting the installation of a lighting system on any part of the Queen Elizabeth Way between Hamilton and Niagara Falls, and including documents relating to purchase of material and contracts relating to the installation.

In respect to Question (No. 77) regarding the cost of planting trees and shrubs and sodding on Queen Elizabeth Way from Toronto to Hamilton, the Hon. Mr. Nixon requested that this Question be made an Order for a Return and on the motion of Mr. Murphy, seconded by Mr. Stewart,

Ordered, That there by laid before this House a Return showing:—

1. What was the total cost of the shrubs, trees and rose bushes planted on the Queen Elizabeth Way from Toronto to Hamilton, and specify: (*a*) Unit cost with respect to each type of shrub, tree and rose bush; (*b*) Total cost with respect to each type of shrub, tree and rose bush; (*c*) Name of each vendor and total amount paid each vendor and stating address in each case. 2. What was the total amount of labour costs, trucking costs and all other items incidental to planting. 3. What was the total cost of sodding operations on the Queen Elizabeth Way from Toronto to Hamilton, indicating: (*a*) Unit prices; (*b*) Total cost of sod; (*c*) From whom purchased, address; (*d*) Labour costs; (*e*) Trucking and all other incidental costs.

Mr. Reynolds asked the following Question (No. 36):—

1. How many Rural Power Districts under the jurisdiction of the Hydro-Electric Power Commission has: (*a*) Deficits; (*b*) Surpluses; for the years 1935-40 inclusive, with total amounts in each case for each year, after provision was made for depreciation and sinking fund charges. 2. What changes, if any, have been made in reserve provisions: (*a*) Depreciation; (*b*) Sinking Fund; (*c*) Contingencies; for Rural Power Districts since October 31st, 1939.

The Honourable the Prime Minister replied as follows:—

1. RURAL POWER DISTRICTS

SURPLUS OR DEFICIT, 1935 TO 1940 INCLUSIVE—EACH YEAR

	SURPLUS FOR YEAR		DEFICIT FOR YEAR	
Year	Amount	No. of Districts	Amount	No. of Districts
1935	$124,482.71	67	$ 97,172.05	104
1936	171,394.26	90	61,650.77	84
1937	197,595.72	85	100,231.14	92
1938	189,046.92	65	125,846.11	113
1939	247,322.42	67	195,435.31	117
1940	275,438.75	69	201,767.63	115

2. No change.

Mr. Kennedy asked the following Question (No. 122):—

1. What amount has been collected by way of Provincial Land Tax in each fiscal year since the tax was imposed. 2. What arrears were outstanding as of December 31st, 1940. 3. What amount of tax was in dispute as of December 31st, 1940. 4. What companies, firms or individuals claim that their respective holdings are not liable for this tax and what is the amount claimed by the Province in each case. 5. Has legal action been initiated by the Province to settle the matter referred to in (4) and if so, against whom, when, and in what amounts; if not, why not.

The Honourable the Minister of Lands and Forests replied as follows:—

1. Fiscal year ending October 31st, 1926	$ 1,412.75
Fiscal year ending October 31st, 1927	76,088.68
Fiscal year ending October 31st, 1928	157,551.83
Fiscal year ending October 31st, 1929	127,580.59
Fiscal year ending October 31st, 1930	139,832.01
Fiscal year ending October 31st, 1931	131,851.20
Fiscal year ending October 31st, 1932	119,728.08
Fiscal year ending October 31st, 1933	119,135.06
Fiscal year ending October 31st, 1934	131,447.74
November 1st, 1934, to March 31st, 1935	107,301.57
Fiscal year ending March 31st, 1936	131,928.13
Fiscal year ending March 31st, 1937	178,880.63
Fiscal year ending March 31st, 1938	234,941.97
Fiscal year ending March 31st, 1939	129,228.01
Fiscal year ending March 31st, 1940	133,945.12
Total	$1,920,853.27

2. $65,959.02. 3. None. 4. There was a large amount owing by the Algoma Central and Hudson Bay Railway Company up to the end of 1939, and this Company claimed that The Provincial Land Tax Act was not intended to apply to their land holdings; this contention has not been admitted by the Crown. However, a settlement has been effected between the Company and the Crown which is embodied in Bill No. 72, now before the House. Exemption has been granted generally to farmers in unorganized territory actually engaged in cultivating their lands and also to the owners of humble homes in hamlets which lack municipal organization. 5. Answered by (4).

Mr. Challies asked the following Question (No. 127):—

1. What was the total peak power sold on the Niagara System inclusive of power used for steam production, export power contractual obligations and peak demand for the months of January, November and December for the years 1939-40, divided into (*a*) Primary and secondary power; (*b*) List of companies securing secondary power and amount in each case, as indicated in (*a*).

The Honourable the Prime Minister replied as follows:—

NIAGARA 25 AND 60 CYCLE SYSTEM

(*a*) Primary and Secondary Power.

	Total Peak Power Sold (Generated and Purchased Peak)			Additional Quantities which Customers were entitled to under Primary Contracts
	Total	Primary	Secondary	
January, 1939	1,412,064 H.P.	1,139,276 H.P.	272,788 H.P.	50,000 H.P.
November, 1939	1,485,925 "	1,285,523 "	200,402 "	35,000 "
December, 1939	1,514,879 "	1,262,064 "	252,815 "	30,000 "
January, 1940	1,507,775 "	1,286,595 "	221,180 "	32,000 "
November, 1940	1,537,265	1,341,822 "	195,443 "	27,000 "
December, 1940	1,589,544 "	1,336,059 "	253,485 "	24,000 "

NOTE:—The primary and secondary loads shown in the above table are the simultaneous quantities at the time of the total generated and purchased peak and, therefore, are not necessarily the maximum primary or secondary loads of the month.

(*b*) List of companies securing secondary power and amount in each case as indicated in (*a*):

1939

	January	November	December
Beaver Wood Fibre Co.	0 H.P.	4,021 H.P.	0 H.P.
Canadian Niagara Power Co.	105,496 "	9,383 "	83,914 "
Gatineau Power Co.	53,619 "	0 "	0 "
Interlake Paper Co.	6,702 "	7,373 "	0 "
North Amer. Cyanamid Co.	58,043 "	86,863 "	82,842 "
Ontario Paper Co.	40,885 "	85,389 "	81,367 "
Provincial Paper Co.	8,043 "	7,373 "	4,692 "
	272,788 "	200,402 "	252,815 "

1940

	January	November	December
Canadian Niagara Power Co.	20,912 H.P.	59,786 H.P.	113,405 H.P.
Cedars Rapids Trans. Co.	24,933 "	49,464 "	48,525 "
North Amer. Cyanamid Co.	86,193 "	86,193 "	91,555 "
Ontario Paper Co.	80,429 "	0 "	0 "
Provincial Paper Co.	8,713 "	0 "	0 "
	221,180 "	195,443 "	253,485 "

Mr. Doucett asked the following Question (No. 143):—

In connection with the advertisement regarding the Rowell-Sirois Conference entitled "These are the Facts": 1. What was the amount paid for the stereotyped plates and mounting for same. 2. What was the cost of expressing these plates to the different newspapers which carried this advertisement throughout the Province. 3. What was the cost of wiring, telephoning, etc., instructions regarding these advertisements to the newspapers carrying same. 4. Did all newspapers in Ontario get this advertisement. If not, what newspapers did not, and why.

The Honourable the Prime Minister replied as follows:—

1. $2,379.49. 2. $106.75. 3. $88.83. 4. No. All daily newspapers and almost all weekly newspapers in Ontario received the advertisement. A list of the papers which did not receive the advertisement is not available but it is believed that the information was sufficiently advertised to bring it to the attention of every citizen in the Province.

The Order of the Day for resuming the Adjourned Debate on the Motion that Mr. Speaker do now leave the Chair, and that the House resolve itself into the Committee of Supply, having been read,

The Debate was resumed,

And after some time it was, on the motion of Mr. Smith,

Ordered, That the Debate be adjourned until Tuesday next.

The Order of the Day for resuming the Adjourned Debate on the motion for the Second Reading of Bill (No. 5), An Act respecting the Town of Orillia, having been read,

The Debate was resumed,

And after some time it was, on the motion of Mr. Frost,

Ordered, That the Bill be read a second time.

The following Bills were severally read the second time:—

Bill (No. 12), An Act respecting the County of Carleton and the University of Ottawa.

Referred to a Committee of the Whole House on Monday next.

Bill (No. 14), An Act respecting Certain Lodges of Ontario I.O.O.F.

Referred to a Committee of the Whole House on Monday next.

Bill (No. 23), An Act respecting the County of Waterloo and the Cities of Kitchener and Galt.

Referred to a Committee of the Whole House on Monday next.

Bill (No. 24), An Act respecting the Royal Botanical Gardens.

Referred to a Committee of the Whole House on Monday next.

Bill (No. 75), An Act to amend The Bees Act.

Referred to a Committee of the Whole House on Monday next.

Bill (No. 77), The School Law Amendment Act, 1941.

Referred to a Committee of the Whole House on Monday next.

The Order of the Day for the second reading of Bill (No. 76), An Act to amend The Milk Control Act, having been read,

And a Debate having ensued,

After some time it was, on the motion of Mr. Nixon (Brant),

Ordered, That the Debate be adjourned until Monday next.

The Provincial Secretary presented to the House, by command of the Honourable the Lieutenant-Governor:—

Report of the Workmen's Compensation Board of Ontario for the year 1940. (*Sessional Papers No. 28.*)

Also, Report of the Commissioner of the Ontario Provincial Police from January 1st, 1940, to December 31st, 1940. (*Sessional Papers No. 34.*)

Also, Return to an Order of the House dated March 28th, 1941, That there be laid before the House a Return showing—1. What was the total cost of the shrubs, trees and rose bushes planted on the Queen Elizabeth Way from Toronto to Hamilton, and specify: (*a*) Unit cost with respect to each type of shrub, tree and rose bush; (*b*) Total cost with respect to each type of shrub, tree and rose bush; (*c*) Name of each vendor and total amount paid each vendor

and stating address in each case. 2. What was the total amount of labour costs, trucking costs and all other items incidental to planting. 3. What was the total cost of sodding operations on the Queen Elizabeth Way from Toronto to Hamilton, indicating: (*a*) Unit prices; (*b*) Total cost of sod; (*c*) From whom purchased, address; (*d*) Labour costs; (*e*) Trucking and all other incidental costs. (*Sessional Papers No. 49.*)

The House then adjourned at 5.10 p.m.

MONDAY, MARCH 31ST, 1941

PRAYERS. 3 O'CLOCK P.M.

The following Bills were severally introduced and read the first time:—

Bill (No. 80), intituled, "An Act to amend The Division Courts Act." *Mr. Conant.*

Ordered, That the Bill be read a second time to-morrow.

Bill (No. 81), intituled, "An Act to amend The Temiskaming and Northern Ontario Railway Act." *Mr. Hepburn* (Elgin).

Ordered, That the Bill be read a second time to-morrow.

Mr. Black asked the following Question (No. 11):—

1. Did F. A. O'Connor, Director of Purchasing in the Department of Health, resign voluntarily, was he requested to resign or was he dismissed. 2. If he was requested to resign or dismissed why was such action taken. 3. What was his salary at the time of leaving the service. 4. Was he given any consideration by way of superannuation or leave of absence with salary when leaving the service and if so, state particulars. 5. Has a successor been appointed and if so, state name, official title, date of appointment and what persons recommended his appointment to the Minister of Health or to any other member of the Government. 6. If no successor has been appointed who is carrying on the work formerly done by Mr. F. A. O'Connor.

The Honourable the Minister of Health replied as follows:—

1. Requested to resign. 2. Services no longer necessary. 3. $5,000.00. 4. No. 5. No. 6. Mr. J. G. Morrison.

Mr. Henry asked the following Question (No. 72):—

1. What is the mileage of the Queen Elizabeth Highway from the West limits of the City of Toronto to the North Limits of the City of Niagara Falls. 2. What is the total expenditure since July 10th, 1934, to date on such Highway.

The Honourable The Minister of Highways replied as follows:—

1. 74.15.

2. Property	$ 2,123,402.38
Structures	2,461,547.15
Small structures, grading, drainage, lighting and paving	8,662,105.33
	$13,247,054.86

Mr. Duckworth asked the following Question (No. 73):—

1. What are the names and salaries of all employees and members of the Hydro-Electric Power Commission now receiving salaries of over $5,000 per year—what increases with amounts have each been paid since January, 1936. 2. What are the names of all employees and members of the Hydro-Electric Power Commission who have received any fees, retainers or honoraria over and above their regular hydro salaries from any sources whatever for engineering or economic services or advice—stating names of firms and persons paying, with amount each received each year since July, 1934.

The Honourable the Prime Minister replied as follows:—

1. Names and present monthly salaries and monthly increases with amounts paid since January, 1936 (all gross figures before deductions):—A. Aeberli, $435.42; W. L. Amos, $453.75; E. G. Archer, $425.00, $41.67; A. E. Davison, $472.88; J. Dibblee, $750.00, $95.83, $150.00; W. P. Dobson, $600.00, $47.08, $25.00; H. C. DonCarlos, $932.92; G. F. Drewry, $504.17; T. U. Fairlie, $525.00, $42.08; D. Forgan, $575.00; $89.58, $50.00; A. H. Frampton, $450.00, $96.06, $100.00; A. C. Goodwin, $425.00; $41.67; W. G. Hanna, $500.00, $88.33; W. G. Hewson, $459.17; Dr. T. H. Hogg, $2,083.33, $92.08, $416.67, $416.66; O. Holden, $700.00, $52.08, $75.00; Hon. W. L. Houck, $666.67; A. H. Hull, $700.00, $103.37; T. C. James, $504.17; R. T. Jeffery, $1,125.00, $67.08, $125.00; J. J. Jeffery, $662.92; A. G. Lang, $500.00, $27.12; A. W. Manby, $450.00, $20.25, $40.00, $50.00; G. J. Mickler, $459.17; T. R. Millar, $460.00, $46.75; O. S. Mitchell, $450.00, $75.00; J. R. Montague, $460.00, $27.25, $45.00; H. J. Muehleman, $550.00, $24.58; A. H. McBride, $504.17; M. J. McHenry, $833.33; D. A. McKenzie, $482.92; A. McPherson, $450.00, $36.25, $50.00; G. Pace, $482.92;

W. G. Pierdon, $932.92; S. M. Richardson, $482.92; F. A. Robertson, $435.42; A. S. Robertson, $465.00, $38.33, $15.00; H. D. Rothwell, $500.00, $20.83, $20.00; B. O. Salter, $475.00, $39.58; G. Service, $435.42; C. B. Sharpe, $475.00, $39.58; G. B. Smith, $435.42; J. A. Smith, $666.67; J. J. Traill, $425.00, $13.33; G. E. Waller, $624.59; J. N. Wilson, $459.17; E. M. Wood, $450.00, $75.22; R. B. Young, $475.00, $14.58, $25.00. 2. The Commission's records do not contain this information.

Mr. Acres asked the following Question (No. 104):—

1. What is the estimated forest area in Ontario burnt over in each of the calendar years 1937, 1938, 1939 and 1940, stating as to each year the number of acres as to Forest Districts. 2. What are the estimated total quantities of timber and pulpwood destroyed and the estimated value thereof or alternately, if quantities and values destroyed are not known, state quantities of timber and pulpwood estimated to be on the burnt areas and give value thereof, stating basis for calculation as to value.

The Honourable the Minister of Lands and Forests replied as follows:—

1. Forest Areas Burned Over:

District	1937 (acres)	1938 (acres)	1939 (acres)	1940 (acres)
Sioux Lookout	88,079	4,840	4,774	80,445
Kenora	31,912	5,430	13,661	2,968
Fort Frances	299	98,454	117	4,010
Port Arthur	45,741	8,867	5,750	13,167
Kapuskasing	6,471	359	164	10,165
Cochrane	2,708	3,702	269	1,006
North Bay	7,238	870	214	527
Sudbury	22,984	3,477	2,146	2,539
Sault Ste. Marie	16,186	11,041	614	3,479
Parry Sound	1,479	256	181	1,240
Algonquin Park	1,189	414	290	1,269
Tweed	460	535	918	799
Totals	224,746	138,245	29,098	121,614

2. Estimated Quantities of Timber on Areas Burned Over:

	1937	1938	1939	1940
Sawlogs (F.B.M.)	8,333,869	2,568,183	722,327	348,450
Pulpwood (Cords)	442,660	117,386	17,615	77,082
Fuelwood (Cords)	158,365	72,512	14,920	74,767
Ties (Pieces)	51,007	5,165	664	8,690
Cedar Poles (Pieces)	465	83	60	400
Cedar Posts (Pieces)	7,285	2,665	1,835	375

Estimated Value of Timber on Areas Burned Over at Crown Stumpage Dues:

	1937	1938	1939	1940
Sawlogs	$ 20,659.15	$ 5,826.09	$ 1,776.73	$ 866.82
Pulpwood	556,178.38	84,774.64	22.274.10	85,421.70
Fuelwood	49,838.14	21,123.93	4,261.18	20,292.56
Ties	5,100.70	516.50	66.40	869.00
Cedar Poles	117.75	30.25	22.75	100.00
Cedar Posts	145.70	53.30	36.70	7.50
Totals	$632,039.82	$112,324.71	$28,468.86	$107,557.58

NOTE.—These figures include all timber in areas inaccessible and accessible, unmarketable and marketable.

Mr. Kennedy asked the following Question (No. 110):—

1. How many acres of mining lands are there in Ontario: (*a*) Under lease; (*b*) Staked but not patented. 2. How many acres of mining lands are patented. 3. What is the annual acreage tax with respect to the lands mentioned in (1) and (2). 4. During the last complete fiscal year (specifying), what was the gross amount received in provincial taxation from: (*a*) Leased mining lands; (*b*) Patented mining lands; (*c*) Staked but unpatented mining lands. 5. What are the arrearages at close of last fiscal year respecting the items mentioned in (4). 6. During the last complete fiscal year, how many (*a*) leases, (*b*) stakings and (*c*) patents were cancelled for non-payment of taxes and also for failure to perform work.

The Honourable the Minister of Mines replied as follows:—

1. (*a*) Approximately 54,778 acres; (*b*) Approximately 883,120 acres. 2. Approximately 815,956 acres. 3. (1*a*) 5c. per acre; (1*b*) nil; (2) 5c. per acre. 4. Fiscal year 1939-40 (*a*) $2,738.91; (*b*) $40,797.82; (*c*) Nil. 5. (*a*) $3,352.14; (*b*) $20,696.54; (*c*) Nil. 6. (*a*) Nil; (*b*) No stakings were cancelled for non-payment of taxes, as unpatented claims are not subject to tax. 8,397 claims were cancelled for failure to perform work, non-renewal of license and non-application for patent; (*c*) 800.

Mr. Macaulay asked the following Question (No. 135):—

1. What amounts have been collected by the Government in each fiscal year from April 1st, 1935, to March 31st, 1940, by way of Gasoline Tax. 2. What purchasers or classes of purchasers are by Regulation under The Gasoline Tax Act entitled to refunds of Gasoline Tax paid to the Government. 3. What refunds of Gasoline Tax have been made to each class of purchaser in each of the fiscal years from April 1st, 1935, to March 31st, 1940. 4. Since April 1st, 1935, how many prosecutions have been made under the provisions of The Gasoline Tax Act, how many convictions have been secured and what is the total amount imposed in fines as the result of such prosecutions also specifying in how many

cases imprisonment has been imposed. 5. In each of the fiscal years from April 1st, 1935, to March 31st, 1940, what amounts have been paid or allowed as fees, commissions or other remuneration for collecting Gasoline Tax.

The Honourable the Minister of Highways replied as follows:—

1.	12 months ending	March 31st, 1936	$16,001,013.26
	12 " "	March 31st, 1937	17,201,669.29
	12 " "	March 31st, 1938	19,253,179.05
	12 " "	March 31st, 1939	20,125,036.04
	12 " "	March 31st, 1940	27,428,149.51

2. The Regulations passed pursuant to The Gasoline Tax Act provide, as follows:—

1.—(1) Where it is shown to the satisfaction of the Minister that gasoline purchased by a city or separated town was purchased for the sole use of supplying motive power for commercial motor vehicles belonging to such city or separated town and used exclusively within the limits thereof, the Minister may upon the application of the clerk of such city or separated town, remit the amount of the charge or tax or any part thereof paid upon the purchase of such gasoline, to the city or separated town.

(2) Where it is shown to the satisfaction of the Minister that gasoline has been purchased for a purpose other than that of supplying motive power for motor vehicles on the highways of Ontario, and has not or will not be used for such purpose, the Minister may upon the application of the purchaser of such gasoline remit the charge or tax paid by the purchaser.

(3) No such remission shall be made unless an application therefor in the form prescribed by the Minister, accompanied by properly receipted invoices, is forwarded to the Minister within six months from the date upon which payment was made for the gasoline in respect of which the remission is sought.

2.

	TWELVE MONTHS ENDING				
	Mar. 31/36	Mar. 31/37	Mar. 31/38	Mar. 31/39	Mar. 31/40
Farming	$405,404.80	$ 474,092.75	$ 619,103.29	$ 727,963.50	$1,060,300.87
Manufacturing	122,173.91	338,679.34	401,562.60	356,186.92	515,988.74
Stationary Engines	105,162.04	187,256.22	159,458.22	136,657.28	165,044.47
Motor Boats	110,948.82	103,383.10	102,732.95	107,005.55	149,409.89
Contracting	79,173.78	62,111.14	50,956.14	53,549.13	76,566.32
Municipal Trucks	34,881.34	54,440.37	47,830.50	48,570.15	72,169.25
Cleaning	15,731.93	42,365.52	47,066.48	46,697.80	63,917.41
Aeroplanes	20,304.04	39,904.77	40,818.81	36,628.01	60,882.84
Government	7,582.73	6,274.95	5,789.97	7,218.70	9,616.16
Railways	24,446.30	38,784.26	33,493.21	19,005.86	34,396.57
Lumbering	21,676.85	35,450.43	44,995.10	42,052.27	57,963.11
Cities, Towns and Municipalities	13,881.25	31,249.41	13,564.17	11,382.88	14,575.78
American	17,651.77	25,800.06	25,227.06	27,176.58	38,905.41
Miscellaneous	.....	.....	16,416.08	1,152.51	3,053.57
	$979,019.56	$1,439,792.32	$1,609,014.58	$1,621,247.14	$2,322,790.39

4. All prosecutions made under Criminal Code.

5. Fiscal Year Ending March 31st, 1936.....$261,930.26
" " " March 31st, 1937..... 287,979.65
" " " March 31st, 1938..... 322,299.10
" " " March 31st, 1939..... 335,995.27
" " " March 31st, 1940..... 346,276.95

Mr. Carr asked the following Question (No. 139):—

1. What is the estimated forest area in Ontario burnt over in each of the calendar years 1930, 1931, 1932 and 1933, stating as to each year the number of acres as to Forest Districts. 2. What are the estimated total quantities of timber and pulpwood destroyed and the estimated value thereof or alternately, if quantities and values destroyed are not known, state quantities of timber and pulpwood estimated to be on the burnt areas and give value thereof, stating basis for calculation as to value.

The Honourable the Minister of Lands and Forests replied as follows:—

1. Forest Areas Burned Over:

District	1930 (acres)	1931 (acres)	1932 (acres)	1933 (acres)
Hudson	153,035	4,736	454,665	22,169
Kenora	33,922	10,997	29,247	133,131
Rainy River			1,675	5,518
Port Arthur	448,033	27,622	40,675	18,721
Oba	43,881	30,320	33,504	94,088
Cochrane	4,711	8,141	39,540	8,173
North Bay	1,618	2,444	25,074	3,207
Sudbury	4,140	9,532	31,296	8,018
Sault Ste. Marie	11,311	24,323	3,726	37,924
Georgian Bay	1,483	4,110	1,166	16,369
Algonquin	5,719	11,161	15,539	1,592
Trent	3,956	4,901	2,914	1,048
Totals	711,809	138,287	679,021	349,958

2. Estimated Quantities of Timber on Areas Burned Over with Estimated Value at Crown Stumpage Dues:

	1933	
	Quantity	Value
Sawlogs (Feet Board Measure)	3,542,120	$ 8,816.03
Pulpwood (Cords)	339,480	428,436.42
Fuelwood (Cords)	30,423	10,905.59
Ties (Pieces)	59,288	5,928.80
Cedar Poles (Pieces)	110	55.00
Cedar Posts (Pieces)	1,500	30.00
Total Value		$454,171.84

NOTE.—These figures include all timber in areas inaccessible and accessible, unmarketable and marketable.

Statistics relating to quantities and values of timber on areas burned over were not collected prior to 1933.

The following Bills were severally read the second time:—

Bill (No. 9), An Act to incorporate Malton Water Company.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 10), An Act respecting National Steel Car Corporation Limited.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 16), An Act respecting the Roman Catholic Separate Schools for the City of Toronto.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 19), An Act respecting the City of Windsor.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 22), An Act respecting the Town of Timmins.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 72), An Act to Ratify and Confirm a certain agreement entered into between His Majesty the King and the Algoma Central and Hudson Bay Railway Company.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 73), An Act to amend The Income Tax Act (Ontario)

Referred to a Committee of the Whole House to-morrow.

Bill (No. 78), An Act to amend The Municipal Act.

Referred to the Committee on Municipal Law.

Bill (No. 79), An Act to amend The Power Commission Insurance Act.

Referred to a Committee of the Whole House to-morrow.

On motion of Mr. Hepburn (Elgin), seconded by Mr. Nixon (Brant),

Ordered, That this House do forthwith resolve itself into a Committee to consider a certain proposed Resolution respecting certain amendments to The Corporations Tax Act.

The Prime Minister acquainted the House that His Honour the Lieutenant-Governor, having been informed of the subject matter of the proposed Resolution, recommends it to the consideration of the House.

The House then resolved itself into the Committee.

(*In the Committee*)

Resolved, That the provisions of subsection 2 of section 6 of The Corporations Tax Amendment Act, 1939, be amended so as to provide that,—

(*a*) every incorporated company upon which taxes are imposed by sections 3 to 9 of The Corporations Tax Amendment Act, 1939, shall for the fiscal year of such incorporated company ending in 1942 pay a further tax equal to twenty-five per centum of the taxes imposed upon such incorporated company thereby;

(*b*) the tax imposed upon an incorporated company by subsection 1 of section 14 of The Corporations Tax Act, 1939, shall be at the rate of five per centum calculated upon the net income of the incorporated company for the fiscal year ending in 1942, and

(*c*) the tax imposed upon an incorporated company by section 15 of The Corporations Tax Act, 1939, shall be at the rate of five per centum calculated upon the net income as therein defined for the fiscal year ending in 1942.

Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had come to a certain Resolution.

Ordered, That the Report be now received.

Resolved, That the provisions of subsection 2 of section 6 of The Corporations Tax Amendment Act, 1939, be amended so as to provide that—

(*a*) every incorporated company upon which taxes are imposed by sections 3 to 9 of The Corporations Tax Amendment Act, 1939, shall for the fiscal year of such incorporated company ending in 1942 pay a further tax equal to twenty-five per centum of the taxes imposed upon such incorporated company thereby:

(*b*) the tax imposed upon an incorporated company by subsection 1 of section 14 of The Corporations Tax Act, 1939, shall be at the rate of five per centum calculated upon the net income of the incorporated company for the fiscal year ending in 1942, and

(*c*) the tax imposed upon an incorporated company by section 15 of The Corporations Tax Act, 1939, shall be at the rate of five per centum calculated upon the net income as therein defined for the fiscal year ending in 1942.

The Resolution having been read the second time, was agreed to, and referred to the House on Bill (No. 74), An Act to amend The Corporations Tax Act, 1939.

On motion of Mr. Hepburn (Elgin), seconded by Mr. Nixon (Brant),

Ordered, That this House do forthwith resolve itself into a Committee to consider a certain proposed Resolution respecting the payment of subsidies to producers of cheese and hogs in Ontario.

The Prime Minister acquainted the House that His Honour the Lieutenant-Governor, having been informed of the subject matter of the proposed Resolution, recommends it to the consideration of the House.

The House then resolved itself into the Committee.

(*In the Committee*)

Resolved, That during such periods as the Lieutenant-Governor in Council may prescribe, a subsidy shall be payable out of the Consolidated Revenue Fund—

(*a*) to every person who produces milk in Ontario which is subsequently produced into cheese, of an amount, to be fixed by the Lieutenant-Governor in Council, not exceeding two cents for each pound of cheese produced from such milk;

(*b*) to every person who produces hogs in Ontario and sells them through regular trade channels to be processed, of an amount, to be fixed by the Lieutenant-Governor in Council, not exceeding $1 for each hog so produced, sold and processed.

Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had come to a certain Resolution.

Ordered, That the Report be now received.

Resolved, That during such periods as the Lieutenant-Governor in Council may prescribe, a subsidy shall be payable out of the Consolidated Revenue Fund—

(*a*) to every person who produces milk in Ontario which is subsequently produced into cheese, of an amount, to be fixed by the Lieutenant-Governor in Council, not exceeding two cents for each pound of cheese produced from such milk;

(*b*) to every person who produces hogs in Ontario and sells them through regular trade channels to be processed, of an amount, to be fixed by the Lieutenant-Governor in Council, not exceeding $1 for each hog so produced, sold and processed.

The Resolution having been read the second time, was agreed to, and referred to the House on Bill (No. 54), "An Act respecting the subsidizing of Cheese and Hogs produced in Ontario."

The House resolved itself into a Committee, severally to consider the following Bills:—

Bill (No. 11), An Act respecting the City of Toronto.

Bill (No. 21), An Act respecting the City of Sudbury.

Bill (No. 5), An Act respecting the Town of Orillia.

Bill (No. 14), An Act respecting Certain Lodges of Ontario I.O.O.F.

Bill (No. 23), An Act respecting the County of Waterloo and the Cities of Kitchener and Galt.

Bill (No. 24), An Act respecting the Royal Botanical Gardens.

Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the several Bills without any amendments.

Ordered, That the Bills reported be severally read the third time to-morrow.

The House resolved itself into a Committee to consider Bill (No. 41), An Act to amend The Magistrates Act, and, after some time spent therein, Mr. Speaker resumed the Chair: and Mr. Patterson reported, That the Committee had directed him to recommend that the Bill be referred back to the Committee on Legal Bills for further consideration.

Resolved, That Bill (No. 41) be referred back to the Committee on Legal Bills for further consideration.

The House resolved itself into a Committee to consider Bill (No. 57), An

Act to amend The Jurors Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time to-morrow.

The House resolved itself into a Committee to consider Bill (No. 50), An Act to amend The Highway Traffic Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time to-morrow.

The House resolved itself into a Committee to consider Bill (No. 61), An Act to amend The Railway Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time to-morrow.

The House resolved itself into a Committee to consider Bill (No. 32), An Act to amend The Devolution of Estates Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill with certain amendments.

Ordered, That the Amendments be taken into consideration forthwith.

The Amendments, having been read the second time, were agreed to.

Ordered, That the Bill be read the third time to-morrow.

The House resolved itself into a Committee to consider Bill (No. 49), An Act respecting Business Brokers, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him not to report the Bill.

The House resolved itself into a Committee to consider Bill (No. 48), An Act to confirm Tax Sales, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time to-morrow.

The House resolved itself into a Committee to consider Bill (No. 71), An Act respecting Relief to Municipalities regarding Hydro-Electric Radials, and after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time to-morrow.

The House resolved itself into a Committee to consider Bill (No. 70), An Act to amend The Natural Gas Conservation Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time to-morrow.

The House resolved itself into a Committee to consider Bill (No. 75), An Act to amend The Bees Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill with certain amendments.

Ordered, That the Amendments be taken into consideration forthwith.

The Amendments, having been read the second time, were agreed to.

Ordered, That the Bill be read the third time to-morrow.

The House resolved itself into a Committee to consider Bill (No. 77), The School Law Amendment Act, 1941, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report some progress, and directed him to ask for leave to sit again.

Resolved, That the Committee have leave to sit again to-morrow.

The Provincial Secretary presented to the House, by command of the Honourable the Lieutenant-Governor:—

Report of The Ontario Research Foundation for year ending December 31st, 1940. (*Sessional Papers No. 51.*)

Also, Report of the Commissioners appointed to inquire into the affairs of Abitibi Power and Paper Company Limited, March, 1941. (*Sessional Papers No. 50.*)

The House then adjourned at 5.25 p.m.

TUESDAY, APRIL 1ST, 1941

PRAYERS. 3 O'CLOCK P.M.

Mr. Nixon (Temiskaming), from the Committee on Agriculture, presented the following as their Report which was read as follows and adopted:—

Your Committee met on four occasions. At its first meeting, February 27th, Mr. Nixon (Temiskaming) was elected Chairman of the Committee. A programme of activities for the Session was drafted to include discussions of hog and cheese bonuses, egg-grading and other problems relative to agriculture.

The Minister, Mr. Dewan, said reason for the bonusing of hogs and cheese was the fixing of prices not carrying a reasonable margin and cited the importance of these two products as regards quotas to Britain. He said effective methods were being undertaken to check bootlegging of hogs and cheese from other provinces.

At its second meeting, March 5th, the Committee discussed egg-grading regulations and it was decided to invite a federal egg-grading Inspector to outline the new system and its problems.

The third meeting, March 12th, was devoted to consideration of Bill (No. 54), An Act respecting the Subsidizing of Cheese and Hogs produced in Ontario. Mr. Dewan informed the Committee that it seemed necessary to leave the payment of bonuses to regulation and said that domestic packers have made representation to continue purchase of hogs and pay bonuses on live grade as well as rail grade basis.

William Watson, of the Live Stock Branch, outlined the status of hog production in Canada and told of the heavy competition to Eastern Canada hogs that is coming from the Western Provinces.

Mr. O'Neill, Director of the Live Stock Branch, said that if the Province is to protect the small packer it should require him to co-operate by buying on rail grade.

At its fourth meeting, March 26th, the Committee heard A. C. Curran, Federal Egg-Grading Inspector, discuss egg-grading regulations. Mr. Curran described the various grades and cited benefits to be derived from the new system. He reported 432 applications for registered grading stations received and certificates issued to 200.

The following Bills were severally introduced and read the first time:—

Bill (No. 82), intituled, "An Act to amend The Securities Act." *Mr. Conant.*

Ordered, That the Bill be read a second time to-morrow.

Bill (No. 83), intituled, "An Act to amend The Cemetery Act." *Mr. Kirby.*

Ordered, That the Bill be read a second time to-morrow.

Mr. Duckworth asked the following Question (No. 23):—

1. What was the total number of persons employed in the Civil Service of Ontario, excluding outside boards and commissions and the Liquor Control Board: (*a*) on the Permanent Staff; (*b*) on the Temporary Staff; on the following dates, viz.:—July 11th, 1934; October 31st, 1935; March 31st, 1935; March 31st, 1936; March 31st, 1937; March 31st, 1938; March 31st, 1939; March 31st, 1940; December 31st, 1940. 2. How many persons were contributors to the Ontario Public Service Superannuation Fund on each of the dates mentioned in (1), and indicating in each instance the number of contributors who were employees of the Liquor Control Board. 3. On each of the dates mentioned in (1), how many retired Civil Servants were in receipt of Superannuation allowances. 4. On each of the dates mentioned in (1) how many (*a*) widows and (*b*) other dependents of deceased Civil Servants were in receipt of Superannuation allowances.

The Honourable the Prime Minister replied as follows:—

	1.		2.		3.	4.	
	(*a*) Permanent	(*b*) Temporary	Contributors	Liquor Control Board	Retired Civil Servants	(*a*) Widows	(*b*) Other Dependents
July 11, 1934.....	5,525	1,705	6,092	854	474	268	3
October 31, 1935..	6,079	485	6,066	431	574	310	3
March 31, 1935...	5,984	791	6,122	482	542	289	3
March 31, 1936...	5,983	671	6,362	684	582	302	3
March 31, 1937...	6,047	916	6,665	701	571	332	7
March 31, 1938...	6,810	792	7,206	717	599	343	6
March 31, 1939...	6,838	901	7,434	735	582	377	6
March 31, 1940...	6,504	1,260	7,390	728	569	407	6
December 31, 1940	6,069	1,673	7,013	694	589	420	6

Mr. Acres asked the following Question (No. 105):—

1. What amount has been paid by the Government to each member of the Cabinet by way of travelling expenses: (*a*) In the month of March, 1936; (*b*) In each fiscal year from 1937 to 1940, inclusive; (*c*) In the period April 1st, 1940, to December 31st, 1940.

The Honourable the Prime Minister and Provincial Treasurer replied as follows:—

1. (*a*)	Month of March, 1936
Hon. Peter Heenan.....	$154.63
Hon. Paul Leduc.....	20.00

(*b*)

	Fiscal Year Ended March 31st			
	1937	1938	1939	1940
Hon. Duncan Marshall	$1,000.00	$500.00		
Hon. P. M. Dewan		250.00	$950.00	$725.00
Hon. A. W. Roebuck	2,175.00			
Hon. G. D. Conant		300.00	625.00	475.00
Hon. L. J. Simpson	600.00	225.00	700.00	700.00
Hon. H. J. Kirby			326.52	460.85
Hon. D. A. Croll	650.00			
Hon. N. O. Hipel				600.00
Hon. Paul Leduc	235.00	165.00	450.00	569.00
Hon. E. W. Cross		400.00	400.00	500.00
Hon. C. A. Campbell		500.00	6.20	

(*c*)

	April 1st to December 31st, 1940
Hon. P. M. Dewan	$450.00
Hon. G. D. Conant	400.00
Hon. L. J. Simpson	100.00
Hon. H. J. Kirby	488.72
Hon. N. O. Hipel	200.00
Hon. Paul Leduc	136.00
Hon. R. L. Laurier	50.00
Hon. E. W. Cross	500.00

Mr. Habel asked the following Question (No. 144):—

1. What amounts of money were paid to each Minister of the Government for travelling expenses from January 1st, 1930, to July 12th, 1934. 2. What Ministers of the Government had automobiles and chauffeurs provided for their use during this period and what was the total cost for operating each car, including wages, uniforms and expenses of chauffeur. 3. (*a*) What Ministers of the Government have had automobiles and chauffeurs provided for their use since July 12th, 1934; (*b*) What was the cost of same.

The Honourable the Prime Minister replied as follows:—

1.	1930	1931	1932	1933	1934 (to July 12/34)
Hon. G. Howard Ferguson	$2,000				
Hon. William Finlayson	850	$ 900	$ 300	$ 700	$ 500
Hon. Chas. McCrea	1,000	1,250	975	1,000	500
Hon. Dr. Forbes Godfrey	1,000				
Hon. Dr. J. M. Robb	125	1,000	500	500	650
Hon. W. G. Martin	250	1,000	925	850	600
Hon. Dr. J. D. Monteith	1,000	1,000	1,000	1,000	600
Hon. Lincoln Goldie	1,000				
Hon. Leopold Macaulay	150	1,000	700	850	500
Hon. J. S. Martin	500				
Hon. T. L. Kennedy	250	1,000	1,000	1,800	650

1.—Continued

	1930	1931	1932	1933	1934 (to July 12/34
Hon. E. A. Dunlop		$1,000	$1,000	$1,000	$500
Hon. G. H. Challies		125	650	600	400
Hon. W. H. Price		500	500	500	500
	$8,125	$8,775	$7,550	$8,800	$5,400

2.

1930		Cost of Operating
Premier	Hon. H. G. Ferguson	$2,759.30
Treasurer	Hon. J. D. Monteith	
	Hon. E. A. Dunlop	2,988.33
Health	Hon. Dr. Forbes Godfrey	
	Hon. Dr. J. M. Robb	3,077.95
Provincial Secretary	Hon. Lincoln Goldie	
	Hon. Leopold Macaulay	3,193.57
Highways	Hon. G. S. Henry	2,744.95
Agriculture	Hon. J. S. Martin	
	Hon. T. L. Kennedy	3,294.87
Mines	Hon. Charles McCrea	3,143.03
Attorney-General	Hon. W. H. Price	2,901.54
Lands and Forests	Hon. Wm. Finlayson	3,968.78
Public Works	Hon. G. S. Henry	
	Hon. J. D. Monteith	290.30
		$28,362.62

1931

Premier	Hon. G. H. Ferguson	
	Hon. G. S. Henry	$2,465.54
Treasurer	Hon. E. A. Dunlop	1,982.15
Health	Hon. Dr. J. M. Robb	2,370.06
Provincial Secretary	Hon. Leopold Macaulay	
	Hon. G. H. Challies	3,536.23
Highways	Hon. G. S. Henry	
	Hon. Leopold Macaulay	1,575.69
Agriculture	Hon. T. L. Kennedy	2,728.89
Mines	Hon. Charles McCrea	2,526.65
Attorney-General	Hon. W. H. Price	3,101.57
Lands and Forests	Hon. Wm. Finlayson	3,634.27
Public Works	Hon. J. D. Monteith	2,913.19
Welfare	Hon. W. G. Martin	3,989.67
		$30,823.91

1932

Premier	Hon. G. S. Henry	$3,145.76
Treasurer	Hon. E. A. Dunlop	2,844.84
Health	Hon. Dr. J. M. Robb	2,944.58
Provincial Secretary	Hon. G. H. Challies	3,308.06
Highways	Hon. Leopold Macaulay	3,715.31

		1932—Continued	Cost of Operating
Agriculture	Hon. T. L. Kennedy		$3,211.03
Mines	Hon. Charles McCrea		3,085.28
Attorney-General	Hon. W. H. Price		3,476.39
Lands and Forests	Hon. Wm. Finlayson		4,329.70
Public Works	Hon. Dr. J. D. Monteith		3,226.75
Welfare	Hon. W. G. Martin		3,490.29
			$36,778.09

1933

Premier	Hon. G. S. Henry	$2,537.81
Treasurer	Hon. E. A. Dunlop	2,398.54
Health	Hon. Dr. J. M. Robb	2,697.12
Provincial Secretary	Hon. G. H. Challies	3,302.09
Highways	Hon. Leopold Macaulay	3,254.63
Agriculture	Hon. T. L. Kennedy	3,405.64
Mines	Hon. Charles McCrea	3,410.09
Attorney-General	Hon. W. H. Price	3,229.15
Lands and Forests	Hon. Wm. Finlayson	3,337.11
Public Works	Hon. Dr. J. D. Monteith	3,194.84
Welfare	Hon. W. G. Martin	3,714.21
		$34,481.23

To July 11th, 1934

Premier	Hon. G. S. Henry	$2,158.22
Treasurer	Hon. G. S. Henry	Nil
Health	Hon. Dr. J. M. Robb	1,886.17
Provincial Secretary	Hon. G. H. Challies	1,442.52
Highways	Hon. Leopold Macaulay	1,946.65
Agriculture	Hon. T. L. Kennedy	2,174.16
Mines	Hon. Charles McCrea	2,077.43
Attorney-General	Hon. W. H. Price	2,078.46
Lands and Forests	Hon. Wm. Finlayson	2,408.61
Public Works	Hon. Leopold Macaulay	Nil
Welfare	Hon. W. G. Martin	2,291.48
		$18,463.70

3. (*a*) None; (*b*) Nil.

Mr. Freeborn asked the following Question (No. 145):—

1. Who have been members of the Liquor Control Board since its inception.
2. What were the salaries of the different members.

The Honourable the Prime Minister replied as follows:—

1. and 2.	D. B. Hanna	$20,000.00	per annum
	Hon. Dr. R. J. Manion	10,000.00	" "
	S. McClenaghan	10,000.00	" "
	Hon. Sir Henry L. Drayton	20,000.00	" "
	His Honour J. M. McNamara	10,000.00	" "
	E. G. Odette	10,000.00	" "
	A. N. Smith	7,000.00	" "
	Hon. A. St. Clair Gordon	8,000.00	" "

The following Bills were read the third time and were passed:—

Bill (No. 14), An Act respecting Certain Lodges of Ontario I.O.O.F.

Bill (No. 23), An Act respecting the County of Waterloo and the Cities of Kitchener and Galt.

Bill (No. 24), An Act respecting the Royal Botanical Gardens.

Bill (No. 57), An Act to amend The Jurors Act.

Bill (No. 50), An Act to amend The Highway Traffic Act.

Bill (No. 61), An Act to amend The Railway Act.

Bill (No. 11), An Act respecting the City of Toronto.

Bill (No. 21), An Act respecting the City of Sudbury.

Bill (No. 5), An Act respecting the Town of Orillia.

Bill (No. 32), An Act to amend The Devolution of Estates Act.

Bill (No. 48), An Act to confirm Tax Sales.

Bill (No. 71), An Act respecting Relief to Municipalities regarding Hydro-Electric Radials.

Bill (No. 70), An Act to amend The Natural Gas Conservation Act.

Bill (No. 75), An Act to amend The Bees Act.

The Order of the Day for resuming the Adjourned Debate on the Motion that Mr. Speaker do now leave the Chair, and that the House resolve itself into the Committee of Supply, having been read,

The Debate was resumed,

And after some time it was, on the motion of Mr. Challies,

Ordered, That the Debate be adjourned.

The Provincial Secretary presented to the House, by command of the Honourable the Lieutenant-Governor:—

Report of the Liquor Control Board of Ontario for year ending March 31st, 1940. (*Sessional Papers No. 20.*)

The House then adjourned at 5.35 p.m.

WEDNESDAY, APRIL 2ND, 1941

PRAYERS. 3 O'CLOCK P.M.

Mr. Campbell (Kent East) presented the report of the Standing Committee on Printing which was read as follows and adopted:—

The Standing Committee on Printing presents the following as its Report:—

Your Committee recommends that the Supplies Allowance per member for the current Session be fixed at $25.00.

Your Committee recommends the purchase of copies of the Canadian Parliamentary Guide, the Canadian Almanac and the Canada Year Book for distribution to the Members of the Assembly.

Your Committee recommends that Sessional Papers for the current year be printed in the following quantities:—

Public Accounts	2,050
Estimates	2,000
Lands and Forests	1,550
Mines	3,100
Legal Offices	375
Superintendent of Insurance: Abstract	1,050
Detailed	1,150
Registrar of Loan Corporations: Abstract	500
Detailed	750
Public Works	375
Highways	700
Game and Fisheries	850
Labour	950
Education	1,550
University of Toronto	400
Births, Marriages and Deaths	350
Department of Health	1,600
Ontario Hospital for Mentally Subnormal and Epileptics	700
General Hospitals, Hospitals for Incurables, Sanatoria and Red Cross Hospitals	850
Prisons and Reformatories	1,058
Industrial Training Schools	858
Public Welfare	850
British War Guests	600
Liquor Control Board	1,350
Department of Agriculture (Minister)	1,850
Department of Agriculture (Statistics)	3,850
Temiskaming and Northern Ontario Railway	500
Ontario Municipal Board	650
Hydro-Electric Power Commission	3,750
Provincial Auditor	400

Workmen's Compensation Board	3,350
Ontario Veterinary College	1,350
Northern Development Act	550
Provincial Police	500
Ontario Research Foundation	1,350
Niagara Parks Commission	650
Fire Marshal	1,250

Mr. Strachan, from the Standing Committee on Legal Bills, presented the following as their Second and Final Report which was read as follows and adopted:—

Your Standing Committee on Legal Bills to whom was referred Bill (No. 41), An Act to amend The Magistrates Act, begs leave to report the Bill with certain amendments.

The following Bills were severally introduced and read the first time:—

Bill (No. 84), intituled, "An Act to amend The Public Service Act." *Mr. Conant.*

Ordered, That the Bill be read a second time to-morrow.

Bill (No. 85), intituled, "An Act to amend The Highway Traffic Act." *Mr. McQuesten.*

Ordered, That the Bill be read a second time to-morrow.

Bill (No. 86), intituled, "An Act to amend The Beach Protection Act." *Mr. Laurier.*

Ordered, That the Bill be read a second time to-morrow.

Bill (No. 87), intituled, "An Act to amend The Ontario Municipal Board Act. *Mr. McQuesten.*

Ordered, That the Bill be read a second time to-morrow.

Bill (No. 88), intituled, "An Act to amend The Surveys Act." *Mr. Heenan.*

Ordered, That the Bill be read a second time to-morrow.

Bill (No. 89), intituled, "An Act to amend The Local Improvement Act." *Mr. McQuesten.*

Ordered, That the Bill be read a second time to-morrow.

Mr. Kennedy asked the following Question (No. 133):—

1. What was the cost of erecting the monument at or near the Humber Bay entrance to the Queen Elizabeth Way. 2. What contracts were let by the Government respecting this monument, specifying: (*a*) Name of each contractor doing work or furnishing material; (*b*) Amount of each contract. 3. Who designed the monument and what was the total amount paid or to be paid him for design and supervision. 4. What amounts remain to be paid respecting this monument and to whom.

The Honourable the Minister of Highways replied as follows:—

1. $23,828.79. 2. (*a*) Scott-Jackson Construction Ltd.; (*b*) Construction of monument $16,650.00, Construction of base $4,834.85, Total $21,484.85; Stone for concrete, cement, piling and reinforcing steel supplied by Department, $2,343.94. 3. W. L. Somerville, $844.85. 4. Nil.

Mr. Macaulay asked the following Question (No. 136):—

1. What contracts for the grading, construction or improvement of highways or bridges have been let by the Department of Highways without advertisement for tenders since April 27th, 1939, to date, giving: (*a*) Date of contract; (*b*) Name of contractor; (*c*) Amount paid; (*d*) Location of work; (*e*) Mileage or length of construction. 2. What extensions of contracts have been let by the Department of Highways without advertisement for tenders since April 27th, 1939, to date, giving: (*a*) Date of extension; (*b*) Date of original contract referred to by extension; (*c*) Name of contractor; (*d*) Amount paid; (*e*) If no separate quantities kept under (*d*) give amount paid under contract and extension combined; (*f*) Location of work; (*g*) Mileage or length of construction.

The Honourable the Minister of Highways replied as follows:—

	(*a*) Date of Contract	(*b*) Contractor's Name	(*c*) Amount Paid	(*d*) Location of Work	(*e*) Mileage or Length of Contract
39-130	Aug. 10, 1939	A. Cope & Sons, Ltd.	$15,310.99	Church Street to Brown s Line on Queen Street	2.3 miles
39-144	Oct. 4, 1939	Brennan Paving Co. Limited	57,979.20	Barrie west, Highway No. 90	7 miles
39-145	Oct. 4, 1939	Brennan Paving Co. Limited	30,274.22	West from Contract No. 39-144 to Camp Borden	4.5 miles
40-148	Nov. 16, 1939	Brennan Paving Co. Limited	26,707.74	Highway No. 90; Pine River Diversion and 2,000 ft. north	Bridge and grading two diversions
39-149	Mar. 6, 1940	Standard Paving, Limited	6,444.83	Marten Lake, Highway No. 11	130 ft. bridge
40-118	Dec. 24, 1940	Wainwright Construction Co.	1,407.81	Exeter	Bridge

Invitation tenders were asked for on all these contracts.

Mr. Hepburn (Prince Edward-Lennox) asked the following Question (No. 142):—

1. How many Old Age Pensions were granted in each of the Counties of Prince Edward, Hastings, Northumberland and Lennox and Addington in each of the years 1937, 1938, 1939, 1940, and the amounts thereof. 2. How many Mothers' Allowances were granted in each of the foregoing counties in each of the aforesaid years and the amount thereof.

The Honourable the Minister of Welfare replied as follows:—

1. Old Age Pensions—

	1937		1938		1939		1940	
	No.	Amount	No.	Amount	No.	Amount	No.	Amount
Prince Edward	51	$2,058.90	48	$1,631.51	59	$2,235.62	58	$2,173.96
Hastings	160	5,134.40	142	4,567.59	161	5,981.53	133	4,853.59
*Northumberland-Durham	201	7,436.21	186	6,404.16	182	6,919.65	145	5,360.46
Lennox and Addington	79	2,555.17	68	2,571.59	55	2,105.00	55	1,886.55

2. Mothers' Allowances—

	1937		1938		1939		1940	
	No.	Amount	No.	Amount	No.	Amount	No.	Amount
Prince Edward	13	$ 430.00	9	$ 260.00	11	$ 370.00	5	$ 180.00
Hastings	32	965.00	39	1,145.00	31	930.00	29	890.00
Northumberland	22	805.00	19	585.00	20	705.00	11	390.00
Lennox and Addington	8	230.00	10	305.00	10	350.00	10	265.00

*Records for Old Age Pension purposes, pertaining to United Counties, are kept together.

Mr. Challies asked the following Question (No. 146):—

1. What amounts, with dates, have been paid by the Government to the Hydro-Electric Power Commission since February 1st, 1940, under The Rural Hydro-Electric Power District Service Act of 1930.

The Honourable the Prime Minister replied as follows:—

1. Nil.

In respect to Question (No. 138) regarding the awarding of contracts to certain construction companies in the fiscal years 1938, 1939 and 1940, the Hon. Mr. Hepburn (Elgin) requested that this Question be made an Order for a Return and on the motion of Mr. Doucett, seconded by Mr. Dunbar,

Ordered, That there be laid before this House a Return showing:—1. What contracts were awarded in each of the fiscal years 1938, 1939, 1940 to the following companies, namely: Dufferin Paving and Crushed Stone, Limited; Dufferin Construction Company, Limited; National Paving Company, Limited; Construction and Paving Company of Ontario, Limited; Quebec Paving Company, Limited; A. Cope & Sons, Limited; instancing in each case: (*a*) Details as to service or work performed and materials supplied, with unit prices in each case and specifying total amount paid to each company with respect to each contract;

(*b*) Any extensions of contracts, giving full particulars in the case of each such extension. 2. What was the total amount paid to each of the aforementioned companies in each of the fiscal years 1938, 1939, 1940 and 1941. 3. Were the contracts and extensions of contracts awarded on a tender basis and was the lowest tender in each case accepted, if not, specify. 4. Were any contracts let on a cost plus basis and if so, give particulars.

The motion of Mr. Drew, seconded by Mr. Kennedy, That the proposed St. Lawrence development and other public undertakings throughout the Province create an urgent demand for effective planning and supervision of remodelling, re-establishment, reclamation and reconstruction, which in the opinion of this Legislature calls for the immediate creation of an Ontario Town and Country Planning Commission with authority to recommend and supervise plans for reconstruction, reclamation, and development in the rural and urban areas throughout the Province of Ontario wherever deemed necessary and advisable, having been called,

And a Debate having arisen, after some time, the Motion having been put, was lost on the following Division:—

YEAS

Acres
Arnott
Challies
Doucett
Downer
Drew
Duckworth
Elgie
Frost
Henry
Hepburn (Prince Edward-Lennox)
Kennedy
Macaulay
Murphy
Reynolds
Spence
Stewart
Summerville—18

NAYS

Anderson
Baker
Ballantyne
Bégin
Bethune
Blakelock
Campbell (Kent, East)
Carr
Cholette
Conacher
Cooper
Croome
Cross
Dewan
Dunbar
Duncan
Elliott
Fairbank
Fletcher
Freeborn
Glass
Gordon
Guthrie
Habel
Hagey
Haines
Heenan
Hepburn (Elgin)
Hipel
Houck
Hunter
Kelly
King
Laurier
Macfie
MacGillivray
MacKay
Mercer
Miller
Murray
McQuesten
Newlands
Nixon (Brant)
Nixon (Temiskaming)
Oliver
Patterson
Sinclair
Smith
Trottier—49

PAIRS

Welsh — Campbell

The Order of the Day for resuming the Adjourned Debate on the Motion that Mr. Speaker do now leave the Chair, and that the House resolve itself into the Committee of Supply, having been read,

The Debate was resumed,

And after some time it was, on the motion of Mr. Henry,

Ordered, That the Debate be adjourned until to-morrow.

The Provincial Secretary presented to the House, by command of the Honourable the Lieutenant-Governor:—

Return to an Order of the House dated April 2nd, 1941, That there be laid before the House a Return showing:—1. What contracts were awarded in each of the fiscal years 1938, 1939, 1940 to the following companies, namely: Dufferin Paving and Crushed Stone, Limited; Dufferin Construction Company, Limited; National Paving Company, Limited; Construction and Paving Company of Ontario, Limited; Quebec Paving Company, Limited; A. Cope & Sons, Limited; instancing in each case: (*a*) Details as to service or work performed and materials supplied, with unit prices in each case and specifying total amount paid to each company with respect to each contract; (*b*) Any extensions of contracts, giving full particulars in the case of each such extension. 2. What was the total amount paid to each of the aforementioned companies in each of the fiscal years 1938, 1939, 1940 and 1941. 3. Were the contracts and extensions of contracts awarded on a tender basis and was the lowest tender in each case accepted, if not, specify. 4. Were any contracts let on a cost plus basis and if so, give particulars. (*Sessional Papers No. 52.*)

The House then adjourned at 11.25 p.m.

THURSDAY, APRIL 3RD, 1941

PRAYERS. 3 O'CLOCK P.M.

Mr. Carr, from the Standing Committee on Municipal Law, presented their Second and Final Report which was read as follows and adopted:—

Your Committee has carefully considered the provisions of Bills Nos. 51, 52 and 78 to amend The Municipal Act, and such of their provisions as have been approved of have been embodied in a Bill entitled "The Municipal Amendment Act, 1941."

The following Bills were severally introduced and read the first time:—

Bill (No. 90), intituled, "The Statute Law Amendment Act, 1941." *Mr. Conant.*

Ordered, That the Bill be read a second time to-morrow.

Bill (No. 91), intituled, "An Act to amend The Department of Municipal Affairs Act." *Mr. McQuesten.*

Ordered, That the Bill be read a second time to-morrow.

Bill (No. 92), intituled "The Municipal Amendment Act, 1941." *Mr. McQuesten.*

Ordered, That the Bill be read a second time to-morrow.

Mr. Spence asked the following Question (No. 14):—

1. What is the cost from November 1st, 1934, to December 31st, 1940, of construction and maintenance of Highway No. 11 from North Bay to Cochrane. 2. What is the cost from November 1st, 1934, to December 31st, 1940, of construction and maintenance on the highway from Porquis Junction to Timmins. 3. What amounts have been spent for construction, maintenance and all other charges with respect to the highways mentioned in (1) and (2) during the period of three years ending December 31st, 1940. 4. How many miles of the highways mentioned in (1) and (2) have been paved, and what was the average paving cost per mile. 5. In the fiscal years 1939, 1940 and 1941 what contracts have been let with respect to the highways mentioned in (1) and (2), giving in each case name of contractor, description of work awarded, unit prices and total amount paid each contractor with respect to each contract. 6. Were any extensions granted or extras allowed with respect to the contracts mentioned in (5) and if so, give particulars. 7. Were any contracts let on a cost plus basis and if so, give particulars.

The Honourable the Minister of Highways replied as follows:—

1. Construction, $14,407,037.79; Maintenance, $1,095,879.50. 2. Construction, $1,464,147.97; Maintenance, $168,605.97. 3. (1) Construction, $10,873,962.23; Maintenance, $660,163.40; (2) Construction, $821,476.66; Maintenance, $112,478.37.

4.

			Miles Paved	Average Cost per Mile
(1)	1934-36	3" Retread Surface	17	$17,761.90
	1936-37	Mixed Macadam	54.4	13,665.51
	1938-39	Mulch	4	5,400.00
	1939	Mixed Macadam	10	13,793.43
(2)	1924-26	6 miles of Bituminous Penetration	....	27,238.91
	1929-32	Above 6 miles seal coated and repaired	....	5,466.54
	1938-39	Concrete on above 6 miles and 5.2 added	....	27,229.85

5. (1) Contract 39-07 Standard Paving Ltd.,
Grading and Culverts—
Amount paid Contractor.....$464,673.86

Unit Prices

Clearing	$ 45.00 per acre
Grubbing	70.00 per acre
Earth Excavation	.25 c. y.
Rock Excavation	1.38 c. y.
Rock Excavation (winter prices)	1.80 c. y.
Parks, Clearing, Grubbing and Levelling	216.00 per acre
24" C.I.P. (placing)	.60 l. f.
Concrete	11.00 c. y.
Earth Excavation Structures	1.00 c. y.
Rock Excavation Structures	2.50 c. y.
Rip Rap, hand laid	2.00 c. y.
¾" Crushed Gravel	.80 ton
Blowing Muskeg (dynamite)	11.00 case
Top Dressing	.35 c. y.
Board Allowance	.15 per man day

Contract 39-08 C. V. Billie & Son,
Grading and Culverts—
Amount paid Contractor.....$451,826.69

Unit Prices

Clearing	$ 40.00 per acre
Grubbing	75.00 per acre
Earth Excavation	.30 c. y.
Rock Excavation	1.49 c. y.
Rip Rap, hand laid	2.50 c. y.
Concrete in Structures	13.00 c. y.
Earth Excavation Structures	1.00 c. y.
Rock Excavation Structures	2.25 c. y.
Crushed Gravel, ¾"	1.00 ton
Dynamite Fill Settlement	11.00 case
Top Dressing	.45 c. y.
Board Allowance	.15 per man day

Contract 39-09 C. V. Billie & Son,
Grading and Culverts—
Amount paid Contractor.....$423,749.61

Unit Prices

Clearing	$ 25.00 per acre
Grubbing	25.00 per acre
Earth Excavation	.25 c. y.
Rock Excavation	1.47 c. y.
Rip Rap, hand laid	2.50 c. y.
24" C.I.P.	1.00 l. f.
Concrete in Structures	12.50 c. y.
Earth Excavation, Structures	1.00 c. y.

Rock Excavation, Structures	$	2.25 c. y.
Crushed Gravel, ¾"		1.00 ton
Dynamite Swamp Shoot		10.50 case
Top Dressing		.45 c. y.
Clearing Right-of-Way		40.00 per acre
Board Allowance		.15 per man day
Earth Top Dressing		1.00 c. y.

Contract 39-41 King Paving Co., Ltd.,
Crushed Gravel at 79½c. ton—
Amount paid Contractor.....$7,950.00

Contract 39-45 Curran & Briggs, Ltd.,
Crushed Gravel at 89c. ton—
Amount paid Contractor.....$13,347.90

Contract 39-46 Curran & Briggs, Ltd.,
Crushed Gravel at 85c. ton—
Amount paid Contractor.....$8,500.00

Contract 59-47 Curran & Briggs, Ltd.,
Crushed Gravel at $1.08 ton—
Amount paid Contractor.....$34,426.72

Contract 39-92 Warren Bituminous Paving Co.,
Macadam Pavement—
Amount paid Contractor.....$91,436.21

Unit Prices

Earth Excavation	$	.35 c. y.
Rock Excavation		4.00 c. y.
Hot Mix Gravel		1.75 ton
Applying Primer		.015 gal.
1" Asphaltic Concrete Top		1.98 ton
¾" Foundation Course		.70 ton
Scarifying and Reshaping		.025 s. y.
Agricultural 6" Tile		.25 l. f.
Porous Backfill		.65 ton
8" C.I.P.		.20 l. f.
Sodding, staked		.20 s. y.
Wire Mesh Laid		.05 s. y.
Curb and Gutter		.29 l. f.

Contract 39-149 Standard Paving, Ltd.,
Bridge Substructure—
Amount paid Contractor.....$6,444.83

Unit Prices

Structure Foundation	$	2.00 c. y.
Concrete in Substructure		14.00 c. y.
Concrete in Superstructure		18.00 c. y.
Placing Reinforcing Steel		40.00 ton
Rip Rap (W.O. No. 444)		3.00 c. y.

Contract 39-149A Runnymede Iron & Steel Co.,
Steel Superstructure for Bridge, lump sum.....$11,420.00

Contract 40-323 Municipal Spraying & Oiling Co., Ltd.,
Surface Treatment—
Amount paid Contractor.....$5,061.48

Unit Prices

Applying Bituminous Material.....$ .02 gal.
Application Chips..... 1.25 ton

Contract 40-359 Curran & Briggs, Ltd.,
Gravel at $1.37 ton—
Amount paid Contractor.....$13,700.00

Contract 40-361 J. Maguire Contracting Co., Ltd.,
Gravel at $1.40 ton—
Amount paid Contractor.....$14,000.00

Contract Project 3276 Hadley & McHaffie Const. Co., Ltd.,
Gravel (crushed) at 92c. ton—
Amount paid Contractor.....$13,799.22

5. (2) Contract 39-47 Curran & Briggs, Ltd.,
Crushed Gravel at $1.08 ton—
Amount paid Contractor.....$8,640.62

Contract 39-48 Northern Paving & Materials, Ltd.,
Crushed Gravel at $1.30 ton—
Amount paid Contractor.....$26,014.30

Contract 39-112 R. A. Blyth,
Grading approaches, Schumacher Overhead—
Amount paid Contractor.....$25,473.70

Unit Prices

Waste Mine Rock Fill.....$ .55 c. y.
¾" Crushed Gravel..... 1.35 ton
Earth Cover..... .60 c. y.

6. Contract 39-47 Curran & Briggs, Ltd.,
Extended from 9,000 tons of Crushed Gravel to 40,000 tons placed where directed.

7. No.

Mr. Acres asked the following Question (No. 118):—

1. What amount remains to be paid by the Province and to whom on account of the construction of the Ontario Government Building at the Canadian National Exhibition, Toronto, giving particulars as to each payment still to be made. 2. Since the present Government took office, what departments of the Government have exhibited in this building in each year of the Canadian National

Exhibition. 3. Has any revenue accrued to the Government by reason of space in this building being used by other exhibitors and if so, give particulars. 4. What was the total amount to be paid by the Province to the City of Toronto or to the Canadian National Exhibition in connection with the construction of the Ontario Government Building at the Canadian National Exhibition.

The Honourable the Minister of Public Works replied as follows:—

1. All payments completed in accordance with agreement with the City of Toronto. 2. 1934—Department of Health; 1935—None; 1936—Game and Fisheries Department; 1937—Game and Fisheries Department; 1938—Game and Fisheries Department; 1939—Game and Fisheries Department; 1940—Game and Fisheries Department. 3. None. An Agreement between the Province and the City of Toronto provides that the Province of Ontario Building shall be the property of the City and shall be maintained by the City so long as the Canadian National Exhibition Association continues to hold its exhibitions, the Province having the right to use the building at any and all times for the purpose of exhibiting the resources of the Province. 4. $600,000.00.

Mr. Stewart asked the following Question (No. 151):—

1. What qualifications are required by the Department of Education for Inspector of Secondary Schools. 2. Has Mr. Andre Lemieux such qualifications. 3. Who has been appointed to assume the duties formerly discharged by Mr. Woodley. Has more than one person been appointed to assume his duties.

The Honourable the Minister of Education replied as follows:—

1. There are no regulations setting forth the qualifications required for "Inspectors of Secondary Schools." Subsection (3) of section 3 of The Department of Education Act states that "the Minister may appoint such inspectors, teachers and officers for purposes of instruction, supervision and administration as he may deem expedient." 2. Mr. Henri Lemieux holds a B.A. degree from Laval University and a High School Assistant's certificate from the Ontario College of Education. He taught in the Plantagenet High School from September, 1923, until June, 1925, and in the Cornwall Collegiate Institute from September, 1925, until October, 1927. He was then appointed Associate Principal of the Sturgeon Falls Model School. When this Model School was discontinued in 1935, he was appointed to the staff of the University of Ottawa Normal School, which position he held until he was appointed a High School Inspector in January, 1941. 3. Mr. H. H. Walker, of the Department of Municipal Affairs, was appointed Chief Accountant of the Department of Education, but shortly after war broke out he was granted leave of absence to do work for the British Purchasing Commission in New York. Mr. Colin Campbell was then transferred to this post from the Ontario Securities Commission. The duties of the Secretary of The Teachers and Inspectors' Superannuation Commission, formerly discharged by Mr. Woodley, are being performed by Mr. C. A. Brown, a member of the staff of the Department of Education.

The Order of the Day for resuming the Adjourned Debate on the Motion

that Mr. Speaker do now leave the Chair, and that the House resolve itself into the Committee of Supply, having been read,

The Debate was resumed, and after some time,

Mr. Drew moved in Amendment, seconded by Mr. Macaulay, That Debate on the Motion "That this House resolve itself into the Committee of Supply" be adjourned and that the estimates for the current year as submitted to the House be referred back to the Executive Council with instructions to decrease the total amount of supply asked from the House by the sum of at least $25,000,000.

The Prime Minister, in the course of his address, tabled certain papers in connection with Hydro-Electric Power reserves (*Sessional Papers No. 54*) and Provincial Loans (*Sessional Papers No. 55.*)

The Debate continued and, after some time,

The Amendment, having been put, was declared lost on the following Division:—

YEAS

Acres
Arnott
Black
Challies
Doucett
Downer
Drew
Duckworth
Dunbar
Elgie
Frost
Hepburn (Prince Edward-Lennox)
Kennedy
Macaulay
Murphy
Reynolds
Spence
Stewart
Summerville—19

NAYS

Anderson
Ballantyne
Bégin
Bethune
Blakelock
Bradley
Brownridge
Campbell (Kent, East)
Carr
Cholette
Conant
Cooper
Croome
Cross
Dewan
Dickson
Duncan
Elliott
Fairbank
Fletcher
Freeborn
Gardhouse
Glass
Gordon
Guthrie
Habel
Hagey
Haines
Heenan
Hepburn (Elgin)
Hipel
Hunter
Kelly
King
Kirby
Laurier
Macfie
MacKay
Mercer
Miller
Murray
McEwing
McQuesten
Newlands
Nixon (Brant)
Nixon (Temiskaming)
Oliver
Patterson
Smith
Strachan
Trottier—51

PAIRS

Welsh — Houck
Henry — Baker

The Main Motion having then been put was carried on the following Division:—

YEAS

Anderson
Ballantyne
Bégin
Bethune
Blakelock
Bradley
Brownridge
Campbell (Kent, East)
Carr
Cholette
Conant
Cooper
Croome
Cross
Dewan
Dickson
Duncan
Elliott
Fairbank
Fletcher
Freeborn
Gardhouse
Glass
Gordon
Guthrie
Habel
Hagey
Haines
Heenan
Hepburn (Elgin)
Hipel
Hunter
Kelly
King
Kirby
Laurier
Macfie
MacKay
Mercer
Miller
Murray
McEwing
McQuesten
Newlands
Nixon (Brant)
Nixon (Temiskaming)
Oliver
Patterson
Smith
Strachan
Trottier—51

NAYS

Acres
Arnott
Black
Challies
Doucett
Downer
Drew
Duckworth
Dunbar
Elgie
Frost
Hepburn (Prince Edward-Lennox)
Kennedy
Macaulay
Murphy
Reynolds
Spence
Stewart
Summerville—19

PAIRS

Houck — Welsh
Baker — Henry

And the House, according to Order, resolved itself into the Committee of Supply.

(*In the Committee*)

Resolved, That there be granted to His Majesty, for the services of the fiscal year ending March 31st, 1942, the following sum:—

128. To defray the expenses of the Office of Lieutenant-Governor....$10,000.00

Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had come to a Resolution; also, That the Committee had directed him to ask for leave to sit again.

Ordered, That the Report be received to-morrow.

Resolved, That the Committee have leave to sit again to-morrow.

The Provincial Secretary presented to the House, by command of the Honourable the Lieutenant-Governor:—

Order-in-Council and Regulations for the Prevention and Mitigation of Psittacosis, Department of Health. (*Sessional Papers No. 53.*)

Also, Annual Report of The Hydro-Electric Power Commission of Ontario for year ending October 31st, 1940. (*Sessional Papers No. 26.*)

Also, Annual Report of the Temiskaming and Northern Ontario Railway Commission for year ending March 31st, 1940. (*Sessional Papers No. 23.*)

Also, Report of the Inspector of Legal Offices for year ending December 31st, 1940. (*Sessional Papers No. 5.*)

The House then adjourned at 10.20 p.m.

FRIDAY, APRIL 4TH, 1941

PRAYERS. 3 O'CLOCK P.M.

The following Bill was introduced and read the first time:—

Bill (No. 93), intituled, "The Assessment Amendment Act, 1941." *Mr. McQuesten.*

Ordered, That the Bill be read a second time on Monday next.

Mr. Acres asked the following Question (No. 82):—

1. In each of the fiscal years ending October 31st, 1934, March 31st, 1935, 1936, 1937, 1938, 1939 and 1940 and for the period April 1st, 1940, to December 31st, 1940, how many permits for the purchase of liquor were issued in the following categories and what revenue accrued in each case, viz.: (*a*) Individual Annual Liquor Permits; (*b*) Individual Beer and Wine Permits; (*c*) Single Permits (25 cents); (*d*) Individual Non-Resident Permits (1 month); (*e*) Special Permits to druggists; (*f*) Permits of any other type. 2. On what date was the Single Purchase Permit placed in use. 3. When was the issue of Beer and Wine Permits discontinued.

The Honourable the Prime Minister replied as follows:—

1.

	Fiscal Year Ending October 31st, 1934		Fiscal Year (5 mos.) Ending March 31st, 1935		Fiscal Year Ending March 31st, 1936		Fiscal Year Ending March 31st, 1937	
	Number	Revenue	Number	Revenue	Number	Revenue	Number	Revenue
Resident (Individual Annual)	178,517	$357,034.00	60,867	$121,734.00	4,489	$ 8,978.00	50,839	$101,678.00
*Resident Extensions	.....	.....	.....	.....	70,215	52,661.25	.....	.....
Resident Beer and Wine 102,008								
Less Conversions 14,089								
	87,919	87,919.00	.....	.....	.....	.....	.....	.....
Single Purchase	77,602	19,400.50	664,394	166,098.50	1,847,444	461,861.00	2,729,566	682,391.50
Temporary (Individual Non-resident)	12,374	22,157.00	39	78.00	140	280.00	44	88.00
Druggists	1,518	3,036.00	1,455	2,910.00	72	144.00	1,571	3,142.00
*Druggists Extensions	.....	.....	.....	.....	1,425	1,068.75	.....	.....
Other Permits	9,265	4,994.50	1,132	1,017.50	1,945	1,135.25	2,352	1,633.00

*Due to the change in the Provincial fiscal year all Individual and Special Liquor Permits which expired on October 31st, 1935, were extended to March 31st, 1936, upon the payment of 75 cents.

Permits issued on and after November 1st, 1935, and valid only until March 31st, 1936, were also issued for the five months' period for the same fee.

	Fiscal Year Ending March 31st, 1938		Fiscal Year Ending March 31st, 1939		Fiscal Year Ending March 31st, 1940		For the Period April 1st, 1940, to Dec. 31st, 1940	
	Number	Revenue	Number	Revenue	Number	Revenue	Number	Revenue
Resident (Individual Annual)	50,880	$101,760.00	47,420	$ 94,840.00	45,016	$ 90,032.00	39,759	$ 79,518.00
Single Purchase	3,116,729	779,182.25	3,136,171	784,042.75	2,732,493	683,123.25	2,549,674	637,418.50
Temporary (Individual Non-resident)	49	98.00	43	86.00	17	34.00	26	52.00
Druggists	1,583	3,166.00	1,600	3,200.00	1,634	3,268.00	1,635	3,270.00
Other Permits	2,588	1,760.25	2,287	1,627.00	2,112	1,473.00	1,612	1,202.50

2. August 1st, 1934. 3. July 23rd, 1934.

Mr. Acres asked the following Question (No. 123):—

1. Has the Federal Government made any representations to the Government of the Province of Ontario with a view to taking over the Employment Offices, presently under provincial control. 2. If so, when were such representations made and what was the nature thereof.

The Honourable the Minister of Labour replied as follows:—

1. Yes. 2. Letter of September 23rd, 1940, advising that the Unemployment Insurance Act contains provisions for the establishment of national employment offices and the Federal subsidy would necessarily be withdrawn when the plan is in operation. It also invited suggestions on such measures as might be taken to ensure the co-operation of the Province with the Dominion Government.

Mr. Summerville asked the following Question (No. 148):—

1. If the Employment Office at 70 Lombard Street, Toronto, has been or is presently to be closed, what disposition has been or is proposed to be made of the premises, stating particulars.

The Honourable the Minister of Labour replied as follows:—

Employment Service of Canada, Ontario Government Offices, 70 Lombard St., Toronto, was closed on October 31st, 1940, and was immediately occupied by the Workmen's Compensation Board Clinic.

Mr. Kennedy asked the following Question (No. 155):—

1. What purchases of coal were made during the fiscal year ended March 31st, 1940, with respect to each of the Ontario Hospitals indicating (*a*) The kinds and quantities of coal purchased with respect to each hospital; (*b*) The per ton price in each instance; (*c*) Name of dealer in each instance; (*d*) The total amount paid to each dealer with respect to coal supplied to each hospital. 2. Was the coal purchased on a delivered basis; if not give particulars as to cost of trucking or other delivery arrangement. 3. How many specimens of coal delivered were tested as to B.T.U. value, ash content, etc., and were any deductions in payments made or bonuses paid with respect to coal varying from standards specified, giving particulars. 4. Was the coal purchased on a competitive tender basis. 5. Were tenders advertised for, and if so, when and in what newspapers. 6. Was each dealer who so requested allowed to tender. 7. What was the total quantity of Nova Scotia coal purchased for use in Ontario Hospitals during the fiscal year ended March 31st, 1940. 8. What quantity of Nova Scotia coal was purchased for use in each of the Ontario Hospitals during the fiscal year ended March 31st, 1940; from what dealers was the Nova Scotia coal purchased in each case, at what price per ton and what was the total amount paid each dealer with respect to such Nova Scotia coal.

The Honourable the Minister of Health replied as follows:—

1. PURCHASE OF COAL MADE DURING THE FISCAL YEAR ENDED MARCH 31ST, 1940

Ontario Hospitals	(a) Kind	(a) Tonnage	(b) Price per Ton	(c) Name of Dealer	(d) Total Amount of Each Dealer's Contracts	
Brockville	¾ Slack Bit.	1,650	$ 6.25	J. R. Bresnan & Son	$10,312.50	
	Anth. Stove	45	12.00	J. R. Bresnan & Son	540.00	
	Anth. Nut	32	12.00	J. R. Bresnan & Son	384.00	
						$11,236.50
	¾ Slack Bit.	1,650	6.25	Central Can. Coal Co.	10,312.50	
	Anth. Stove	45	12.00	Central Can. Coal Co.	540.00	
	Anth. Egg	26	12.00	Central Can. Coal Co.	312.00	
						11,164.50
Cobourg	Mine Run Bit.	2,200	5.16	Valley Camp Coal Co.	11,352.00	
						11,352.00
	Anth. Stove	60	11.75	Wm. Jenning & Co.	705.00	
	Anth. Egg	15	11.75	Wm. Jenning & Co.	176.25	
	Anth. Pea	1	10.00	Wm. Jenning & Co.	10. 0	
						891.25
Fort William	Bit. Steam	300	6.50	Murphy Coal Co.	1,850.00	
	Anth. Stove	13	13.50	Murphy Coal Co.	175.50	
	Anth. Egg	13	13.50	Murphy Coal Co.	175.50	
						2,201.00
Hamilton	¾ Lump Bit.	5,500	5.39	Canada Coal	29,645.00	
						29,645.00
	Anth. Stove	300	9.95	Ferrey Coal Co.	2,985.00	
	Anth. Nut	5	9.95	Ferrey Coal Co.	49.75	
						3,034.75
			(1750)	5.10 Main Bldg.....$8,925.00		
Kingston	2" Slack Bit.	2,125	Balance	Morris Coal Co.		
			375	5.70 Mowat.....$2,137.50		
					11,062.50	
	¾ Lump Bit.	250	5.35	Morris Coal Co.	1,337.50	
	Anth. Egg	275	12.50	Morris Coal Co.	3,437.50	
						15,837.50
	2" Slack Bit.	2,125	Bal. 1,750	5.10 Main Bldg.		
			375	5.70 Mowat Drury		
				Supplies 8,925.00		
				2,137.50		
					11,062.50	
	¾ Lump Bit.	250	5.35	Drury Supplies	1,337.50	
						12,400.00
London	Mine Run Bit.	5,000	5.25	Elias Rogers Coal Co.	26,250.00	
						26,250.00
	Anth. Stove	240	9.68	Wm. Heanan & Son	2,323.20	
						2,323.20
New Toronto	¾ Slack Bit.	6,000	4.74	Elias Rogers Coal Co.	28,440.00	
	Anth. Stove	275	9.62	Elias Rogers Coal Co.	2,645.50	
	Anth. Nut	25	9.62	Elias Rogers Coal Co.	240.50	
						31,326.00
	Anth. Blower	15	7.69	Conger Lehigh Coal Co.	115.35	
						115.35
New Toronto Concord	Mine Run Bit.	200	5.45	Canada Coal Co.	1,090.00	
	Pocahontas	40	8.00	Canada Coal Co.	320.00	
						1,410.00
	Anth. Nut	5	11.00	Standard Fuel Co. Ltd.	55.00	
						55.00
Orillia	2" Slack Bit.	6,000	5.24	Elias Rogers Coal Co.	31,440.00	
						31.440.00
	Anth. Stove	220	10.40	Sarjeant Co., Ltd.	2,288.00	
						2,288.00
Penetang	Mine Run Bit.	500	5.10	Sarjeant Co., Ltd.	2,550.00	
	Anth. Stove	50	11.05	Sarjeant Co., Ltd.	552.50	
						3,102.50
St. Thomas	2" Slack Bit.	10,000	4.74	W. H. Swift & Co.	47,400.00	
						47,400.00

1. PURCHASE OF COAL MADE DURING THE FISCAL YEAR ENDED MARCH 31ST, 1940—Continued

Ontario Hospitals	(a) Kind	(a) Tonnage	(b) Price per Ton	(c) Name of Dealer	(d) Total Amount of Each Dealer's Contracts	
Toronto	2" Slack Bit.	2,200	4.87	Canada Coal Co.	10,714.00	
	¾ Lump Bit.	600	5.53	Canada Coal Co.	3,318.00	
						14,032.00
	Anth. Nut	100	8.99	Elias Rogers Coal Co.	899.00	
	Anth. Stove	25	8.99	Elias Rogers Coal Co.	224.75	
						1,123.75
Whitby	2" Slack Bit.	1,000	5.05	McLaughlin Coal Co.	5,050.00	
	¾ Slack	6,500	4.85	McLaughlin Coal Co.	31,525.00	
	Anth. Stove	260	9.60	McLaughlin Coal Co.	2,496.00	
						39,071.00
Woodstock	2" Slack Bit.	4,800	5.35	Elias Rogers Co. Ltd.	25,680.00	
						25,680.00
	Anth. Stove	75	12.50	Crown Lumber Coal & Supplies	937.50	
	Scotch Anth. Nut	30	15.25	Crown Lumber Coal & Supplies	457.50	
						1,395.00

2. Yes. 3. 24 specimens—no deductions or bonuses. 4. Yes. 5. No. 6. Yes. 7. None. 8. None.

The House resolved itself into a Committee to consider Bill (No. 41), An Act to amend The Magistrates Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time on Monday next.

The House resolved itself into a Committee to consider Bill (No. 12), An Act respecting the County of Carleton and the University of Ottawa, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill with certain amendments.

Ordered, That the Amendments be taken into consideration forthwith.

The Amendments having been read a second time were agreed to.

Ordered, That the Bill be read the third time on Monday next.

The House resolved itself into a Committee, severally to consider the following Bills:—

Bill (No. 9), An Act to incorporate Malton Water Company.

Bill (No. 10), An Act respecting National Steel Car Corporation, Limited.

Bill (No. 19), An Act respecting the City of Windsor.

Bill (No. 22), An Act respecting the Town of Timmins.

Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the several Bills without amendments.

Ordered, That the Bills reported be severally read the third time on Monday next.

On motion of Mr. McQuesten, seconded by Mr. Hepburn (Elgin),

Ordered, That this House do forthwith resolve itself into a Committee to consider a certain proposed Resolution respecting the payment of $12,000 per year to the City of Niagara Falls in lieu of taxes on property taken for the Rainbow Bridge.

Mr. Hepburn (Elgin) acquainted the House that His Honour the Lieutenant-Governor, having been informed of the subject matter of the proposed Resolution, recommends it to the consideration of the House.

The House then resolved itself into the Committee.

(*In the Committee*)

Resolved, That there be paid out of the Consolidated Revenue Fund to the City of Niagara Falls in the Province of Ontario the annual sum of $12,000 in the year 1941 and in each year thereafter until and including the year 1980.

Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had come to a certain Resolution.

Ordered, That the Report be now received.

Resolved, That there be paid out of the Consolidated Revenue Fund to the City of Niagara Falls in the Province of Ontario the annual sum of $12,000 in the year 1941 and in each year thereafter until and including the year 1980.

The Resolution having been read the second time was agreed to and referred to the House on Bill (No. 55).

The House again resolved itself into a Committee to consider Bill (No. 77), The School Law Amendment Act, 1941, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill with certain amendments.

Ordered, That the Amendments be taken into consideration forthwith.

The Amendments, having been read the second time, were agreed to.

Ordered, That the Bill be read the third time on Monday next.

The House resolved itself into a Committee to consider Bill (No. 53), An Act to amend The Mental Hospitals Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time on Monday next.

The House resolved itself into a Committee to consider Bill (No. 58), An Act to amend The Venereal Diseases Prevention Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time on Monday next.

The House resolved itself into a Committee to consider Bill (No. 66), An Act to amend The Sanatoria for Consumptives Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time on Monday next.

The House resolved itself into a Committee to consider Bill (No. 72), An Act to Ratify and Confirm a certain agreement entered into between His Majesty the King and the Algoma Central and Hudson Bay Railway Company, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time on Monday next.

The House resolved itself into a Committee to consider Bill (No. 73), An Act to amend The Income Tax Act (Ontario), and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill with certain amendments.

Ordered, That the Amendments be taken into consideration forthwith.

The Amendments, having been read the second time, were agreed to.

Ordered, That the Bill be read the third time on Monday next.

The House resolved itself into a Committee to consider Bill (No. 79), An Act to amend The Power Commission Insurance Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time on Monday next.

Resolved, That the Committee have leave to sit again on Monday next.

The following Bills were severally read the second time:—

Bill (No. 74), An Act to amend The Corporations Tax Act, 1939.

Referred to a Committee of the Whole House on Monday next.

Bill (No. 80), An Act to amend The Division Courts Act.

Referred to a Committee of the Whole House on Monday next.

Bill (No. 84), An Act to amend The Public Service Act.

Referred to a Committee of the Whole House on Monday next.

Bill (No. 90), The Statute Law Amendment Act, 1941.

Referred to a Committee of the Whole House on Monday next.

Bill (No. 83), An Act to amend The Cemetery Act.

Referred to a Committee of the Whole House on Monday next.

Bill (No. 85), An Act to amend The Highway Traffic Act.

Referred to a Committee of the Whole House on Monday next.

Bill (No. 86), An Act to amend The Beach Protection Act.

Referred to a Committee of the Whole House on Monday next.

Bill (No. 87), An Act to amend The Ontario Municipal Board Act.

Referred to a Committee of the Whole House on Monday next.

Bill (No. 89), An Act to amend The Local Improvement Act.

Referred to a Committee of the Whole House on Monday next.

Bill (No. 88), An Act to amend The Surveys Act

Referred to a Committee of the Whole House on Monday next.

Bill (No. 55), An Act respecting the Rainbow Bridge.

Referred to a Committee of the Whole House on Monday next.

Bill (No. 81), An Act to amend The Temiskaming and Northern Ontario Railway Act.

Referred to a Committee of the Whole House on Monday next.

Bill (No. 76), An Act to amend The Milk Control Act.

Referred to a Committee of the Whole House on Monday next.

The Provincial Secretary presented to the House, by command of the Honourable the Lieutenant-Governor:—

Report of the Secretary and Registrar of the Province of Ontario with respect to the Administration of The Companies Act, The Extra-Provincial Corporations Tax Act, The Mortmain and Charitable Uses Act, and The Companies Information Act for fiscal year ending March 31st, 1940. (*Sessional Papers No. 33.*)

The House then adjourned at 5.05 p.m.

MONDAY, APRIL 7TH, 1941

PRAYERS. 3 O'CLOCK P.M.

The following Bills were severally introduced and read the first time:—

Bill (No. 94), intituled, "An Act to amend The Fatal Accidents Act." *Mr. Elgie.*

Ordered, That the Bill be read a second time to-morrow.

Bill (No. 95), intituled, "An Act to amend The Insurance Act." *Mr. Strachan.*

Ordered, That the Bill be read a second time to-morrow.

Bill (No. 96), intituled, "An Act respecting a certain Bond Mortgage made by the Abitibi Power and Paper Company Limited to the Montreal Trust Company." *Mr. Conant.*

Ordered, That the Bill be read a second time to-morrow.

Mr. Kennedy asked the following Question (No. 81):—

1. How many Veterans whose cases were dealt with in the Hunter Report tabled in the Legislature at the 1935 Session have been reinstated. 2. Give names and date of reinstatement in each case. 3. How many, whose names remain on the list, are eligible for reinstatement, have not been reinstated.

The Honourable the Prime Minister replied as follows:—

1. 185.

2.

Name	Date of Reinstatement	Name	Date of Reinstatement
Cooper, William	Apr. 15, 1936	Lynch, Simon	May 3, 1935
Kennedy, Harry	Apr. 27, 1936	Laginskie, John	June 11, 1936
Porter, Peter	Oct. 10, 1936	McIntyre, Frank	May 1, 1935
Gillard, M. V.	Apr. 16, 1936	Simond, Michael	May 13, 1935
Heaven, A. C.	Apr. 16, 1936	Ladouceur, E.	Apr. 29, 1935
Harvey, A. L.	Apr. 16, 1936	Cross, Robert	Apr. 1, 1935
McIntyre, D. A.	Apr. 16, 1936	Kingerski, W.	Apr. 1, 1935
Reid, R. G.	Apr. 16, 1936	Wallace, Fred	Apr. 1, 1935
Westaway, H. W.	Apr. 16, 1936	Foote, C. E.	May 1, 1938
Swartman, G.	Apr. 16, 1936	Boucher, F.	May 18, 1935
Overbury, R. F.	Apr. 16, 1936	Horn, M. R.	Apr. 20, 1935
Belair, E.	June 1, 1936	Duncan, H.	Sept. 21, 1934
Ford, A. W.	June 8, 1936	Etmanskie, P. H.	May 7, 1936
Breadner, C.	June 6, 1936	Hicks, Elvin	October, 1936
Ade, Walter	Oct. 1, 1936	Johnston, Ernie	October, 1935
Allan, John W.	Apr. 10, 1936	Pousette, A. C. B.	March, 1935
Brown, Orloff H.	Dec. 10, 1936	Washburn, A.	March, 1935
Hotchkiss, William	May 1, 1936	Fox, Charles	
Joyner, Edward	June 19, 1936	McCaughey, R. W.	Nov. 7, 1934
Kerr, Walter B.	July 1, 1936	Martin, C.	Oct. 6, 1936
Kreutzwiser, H. A.	Oct. 1, 1936	Sutherland, W.	Dec. 1, 1935
McManus, Walter B.	Nov. 2, 1936	Corkhill, F.	Available from time to time.
Robertson, William	Sept. 21, 1936		
Tengesdal, Osmund	Nov. 24, 1936	Anderson, John	Nov. 26, 1936
Thomson, Andrew W.	Apr. 1, 1936	Anderson, Ed.	May 2, 1936
Twyman, Henry L.	July 13, 1936	Colman, Charles	June 17, 1936
Campbell, Robert A.	Aug. 1, 1936	Dyer, Herb	Jan. 29, 1934
Satterley, Frederick J.	Oct. 4, 1937	Herbert, Cecil	Apr. 10, 1936
McWilliams, Hugh C.	Apr. 1, 1935	Jackson, J. E.	January, 1935
Latimer, R. George	Oct. 6, 1934	Leavoy, R.	Jan. 1, 1935
Henderson, C. T.	Apr. 17, 1935	Miller, W.	Apr. 13, 1936
Colley, J. W.	Aug. 1, 1937	Montgomery, R.	Dec. 16, 1936
McArthur, John	Apr. 1, 1935	Phipps, H. R.	May 4, 1936
Welch, N.	May 6, 1935	Savord, Joseph	Nov. 2, 1936
Ellis, W. J.	Apr. 4, 1935	Scott, W. A.	July 6, 1936
Guertin, E.	Apr. 15, 1935	Smith, W. T.	May 19, 1936
Johnson, Charles	Apr. 26, 1935	Templeton, J. F.	May 13, 1935
McEwen, A. H.	Nov. 10, 1938	Welch, D. H.	Nov. 23, 1936

The remaining 110 are listed in Return number 63 of 1936.

3. Thirty-eight names were stricken from the Hunter Report as improperly included and the balance formed the eligible list, but it is not known how many have died, left the Province, or passed the age of seventy.

Mr. Duckworth asked the following Question (No. 125):—

1. How many road camps for the detention of prisoners have been placed in operation since the present Government took office, specifying: (*a*) Total number established and location of each; (*b*) Number and location of camps in use, December 31st, 1940. 2. What was the total amount expended to December 31st, 1940, in connection with each camp as to: (*a*) Cost of construction, furnishing and other capital costs; (*b*) Operating costs. 3. What was the opening date for each camp. 4. For the period April 1st, 1940, to December 31st, 1940, what was, with respect to each camp: (*a*) Average number of inmates; (*b*) Average number of staff. 5. What road construction or other construction of public works has been accomplished to December 31st, 1940, with respect to each of the camps established. 6. Detail particulars as to purchase and rental of road machinery and construction machinery and equipment for use in connection with road camps.

The Honourable the Provincial Secretary replied as follows:—

1. (*a*) Three (Industrial Farm, Seagram)—
Camp No. 1—Lukinto Lake, 10 miles east of Long Lac.
Camp No. 2—West Camp, 4 miles east of Long Lac.
Camp No. 3—David Lake, 19 miles east of Long Lac.

(*b*) Two—Lukinto Lake and David Lake.

2. (*a*)

	Provincial Secretary's Dept.	Highways Dept.	Total
Camp No. 1.....	$ 7,756.21	$26,400.00	$34,156.21
Camp No. 2.....	4,073.20	6,750.00	10,823.20
Camp No. 3.....	6,609.80	17,580.00	24,189.80
	$18,439.21	$50,730.00	$69,169.21

(*b*)

Camp No. 1.....	$ 55,695.83
Camp No. 2.....	24,024.17
Camp No. 3.....	34,480.81
	$114,200.81

3. Camp No. 1—January 5th, 1940.
Camp No. 2—March 1st, 1940.
Camp No. 3—May 3rd, 1940.

4. (*a*) Camp No. 1—97.7 April 1st to December 31st, 1940.
Camp No. 2—50.3 April 1st to July 31st, 1940.
Camp No. 3—90.8 May 3rd to December 31st, 1940.

(*b*) Camp No. 1—13 April 1st to December 31st, 1940.
Camp No. 2—7 April 1st to July 31st, 1940.
Camp No. 3—12 May 3rd to December 31st, 1940.

5. Roadwork accomplished by inmates of the Seagram Industrial Farm to December 31st, 1940. Clearing 405 acres; Grubbing 240 acres; Ditching 10,000 cubic yards; Earth Excavation 300,000 cubic yards; Log Culverts (5), 5,240 lineal feet. In doing the above work, 47 miles of tote road were built of which 42 miles are passable by truck.

6. *Road equipment purchased:* 4, D30, 2 yd. International Dump Trucks at $1,125.00 each. *Road equipment taken over on rental purchase plan:* 2, D7, Caterpillars with angledozers at $630.00 per month for each combination, for 10 months; 1, RD7, Caterpillar with angledozer at $630.00 per month, for 10 months; 1, D7, Caterpillar with snow plow at $510.00 per month, for 10 months. *Road equipment rented:* 1, 75B, Lorrain Gas Shovel, 1¼ yd., with dipper stick and dragline boom at $750.00 per month; 4, 2 yd. Ford Dump Trucks at $5.00 per day each; 1, RD7, Caterpillar with angledozer at $4.00 per hour, including operator's wages; 1 set Heavy Duty Tractor Sleighs at $35.00 per month. 1 set Heavy Duty Tractor Sleighs at $45.00 per month.

Mr. Acres asked the following Question (No. 129):—

1. From April 1st, 1937, to December 31st, 1940, what is the number of flying hours in Government-owned airplanes of each Minister of the Government. 2. What other passengers have been carried on these trips, accompanying the various Ministers. 3. From April, 1937, to December 31st, 1940, what is the number of flying hours in Government-owned airplanes of each Civil Servant of the Province except those employed in the Provincial Air Force and as fire or forest rangers. 4. How many airplanes are now owned by the Province. 5. How many airplanes have been purchased by the Province since the present Government took office. 6. From whom were the airplanes mentioned in (5) purchased in each case, what was date of purchase and what was the cost of each; also state type of airplane. 7. Since the present Government took office, how many airplanes have been manufactured by the Province under manufacturing rights purchased from A. H. to L. D. Buhl. 8. Since April 1st, 1936, how many accidents have happened to Ontario Government airplanes. 9. Were any planes destroyed, and if so, when, where and what was value of each. 10. Where did the accidents occur and when, and when planes were salvaged, what was cost of repairs in each case.

The Honourable the Minister of Lands and Forests replied as follows:—

1. MINISTER OF LANDS AND FORESTS

Date	Hours	Passengers
July 29th, 1937	.40	Minister W. C. Cain
July 30th, 1937	3.00	Minister W. C. Cain
July 31st, 1937	.25	Minister and party of 2
August 1st, 1937	2.20	Minister and party of 2
August 14th, 1937	2.45	Minister
August 15th, 1937	2.40	Minister

MINISTER OF LANDS AND FORESTS—Continued

Date	Hours	Passengers
August 17th, 1937	2.45	Minister L. Fine
August 18th, 1937	.45	Minister H. Fine
August 24th, 1938	2.05	Minister
October 19th, 1938	1.05	Minister and party of 2
July 2nd, 1939	1.30	Minister and party of 2
August 31st, 1939	1.05	Minister and party of 2
September 1st, 1939	1.35	Minister
September 1st, 1939	2.25	Minister
September 2nd, 1939	2.45	Minister
May 21st, 1940	1.35	Minister
September 25th, 1940	1.15	Minister
Total	27.60	

MINISTER OF PUBLIC WORKS

Date	Hours	Passengers
September 19th, 1938	1.10	Minister R. A. McAllister
September 21st, 1940	2.45	Minister R. A. McAllister Mayor Parker
September 22nd, 1938	2.00	Minister
September 23rd, 1938	4.10	Minister R. A. McAllister
July 1st, 1939	1.15	Minister
Total	10.80	

ATTORNEY-GENERAL

Date	Hours	Passengers
August 23rd, 1938	2.50	Attorney-General and party of 2
May 26th, 1940	.30	Attorney-General and party of 1
May 28th, 1940	.35	Attorney-General
Total	3.15	

MINISTER OF AGRICULTURE

Date	Hours	Passengers
July 6th, 1938	.45	Minister

2. See answer to 1.

3. Inspector A. S. O'Hara, Dept. of Health ..... 9.30 hours
S. Harris, Dept. of Health ..... 3.20 "
Nurse Abbott, Dept. of Health ..... 3.20 "
Inspector D. E. Moore, Dept. of Health ..... 2.45 "
Inspector S. Shannon, Dept. of Education ..... 1.15 "
Constable J. Higgins, Dept. of Attorney-General ..... 4.55 "
Inspector A. R. Knight, Dept. of Attorney General ..... 2.80 "
Constable Blain, Dept. of Attorney-General ..... 1.45 "
Constable P. J. Poland, Dept. of Attorney-General ..... 2.50 "
Constable L. E. Nix, Dept. of Attorney-General ..... .90 "
Constable R. G. Pike, Dept. of Attorney-General ..... 3.60 "
Constable D. Hamilton, Dept. of Attorney-General ..... .30 "
Constable F. Christie, Dept. of Attorney-General ..... 2.80 "
Crown Attorney E. D. Wilkins, Dept. of Attorney-General .. 4.30 "
Sergeant W. A. Page, Dept. of Attorney-General ..... 4.30 "
Magistrate W. M. Cooper, Dept. of Attorney-General ..... 5.65 "
Crown Attorney O'Flynn, Dept. of Attorney-General ..... .65 "
Constable T. S. Crawford, Dept. of Attorney-General ..... .35 "
W. B. Common, K.C., Dept. of Attorney-General ..... 3.35 "
Actg. Cr. Attorney J. McEwen, Dept. of Attorney-General .. 4.05 "
Official Court Reporter S. Watkinson, Dept. of Attorney-General ..... 4.05 "
Constable H. S. Johns, Dept. of Attorney-General ..... 1.05 "
Constable W. F. Gray, Dept. of Attorney-General ..... 7.30 "
E. L. Torrey, Investigator, Dept. of Public Welfare ..... 1.20 "
K. M. Morrison, Dept. of Public Welfare ..... 11.20 "
W. A. Grant, Dept. of Public Welfare ..... 7.30 "
J. A. Dignam, Provincial Auditor's Office ..... 1.25 "
G. H. Evans, Provincial Auditor's Office ..... 1.25 "
A. L. McDougall, Dept. of Highways ..... 2.15 "
H. R. Phipps, Dept. of Highways ..... 6.35 "
E. Smith, Dept. of Highways ..... 4.15 "
C. H. Nelson, Dept. of Highways ..... 11.15 "
F. Frances, Dept. of Highways ..... 4.15 "
C. Tackaberry, Dept. of Highways ..... 7.00 "
A. M. Mills, Dept. of Highways ..... 1.45 "
A. E. Cave, Dept. of Mines ..... .55 "
D. F. Cooper, Dept. of Mines ..... 2.80 "
M. W. Bartley, Dept. of Mines ..... .20 "
J. Hardman, Dept. of Game and Fisheries ..... 2.40 "
R. D. Windsor, Dept. of Game and Fisheries ..... 23.40 "
W. Faubert, Dept. of Game and Fisheries ..... 9.45 "
C. D. Liddle, Dept. of Game and Fisheries ..... 10.70 "
W. McKenzie, Hydro-Electric Power Commission ..... 3.40 "
G. Taylor, Hydro-Electric Power Commission ..... 3.40 "
W. Catton, Dept. of Provincial Secretary ..... 1.35 "

4. 28. 5. 9.

6.

Purchased From	Date	Cost	Type
Stinson Aircraft Corpn., Wayne, Mich.	June, 1937	$24,055.28	Stinson, SR-9F

Purchased From	Date	Cost	Type
Stinson Aircraft Corpn., Wayne, Mich.....	June, 1937	24,055.28	Stinson, SR-9F
British North American Airways, Toronto, Ont.	April, 1938	16,000.00	Stinson, SR-9F
British North American Airways, Toronto, Ont.	April, 1938	16,000.00	Stinson, SR-9F
Stinson Aircraft Corpn., Wayne, Mich.....	Feb., 1938	24,874.73	Stinson, SR-9-FM
Stinson Aircraft Corpn., Wayne, Mich.....	Feb., 1938	24,800.96	Stinson, SR-9-FM
Stinson Aircraft Corpn., Wayne, Mich.....	Sept., 1940	25,549.99	Stinson, SR-10
Irving Oil Co., Ltd., St. John, New Brunswick.	Jan., 1941	12,500.00	Stinson, SR-9F
Graham & Howe, Attorneys-at-Law, Seattle, Wash.....	Jan., 1941	18,219.00	Stinson, SR-9-FM

7. 4. 8. 10. 9. Yes.

Type	When	Where	Value
D. H. 61	May 23, 1936	Gander Lake (Sioux Lookout District)	$ 4,000.00
Moth	June 8, 1936	Port Arthur	1,500.00
Moth	Aug. 12, 1936	Near Upper Manitou Lake, Twin Lakes	1,500.00
Moth	Mar. 18, 1940	Sault Ste. Marie	1,500.00
Buhl	June 22, 1940	Small Lake near Meggisans Lake, Algoma District	10,734.00
Vedette	Aug. 30, 1940	Orient Bay	2,500.00

10. Accidents happened at Gander Lake (Sioux Lookout District), Port Arthur, Small Lake near Upper Twin Lakes, Caribou Lake, Sault Ste. Marie (2), Garden River, Small Lake near Meggisans Lake, Orient Bay and Biscotasing. Cost of repairs to machines salvaged—Moth, $1,960.14; Moth, $2,246.20; Buhl, $10,629.56; and one Moth now being repaired at an estimated cost of $1,000.00 to $1,500.00.

Mr. Acres asked the following Question (No. 131):—

1. Since April 1st, 1937, what Royal Commissions have been appointed by the Government and indicate: (*a*) Subject of investigation; (*b*) Who have been employed in each case, including Commissioners, Counsel, experts, engineers, reporters and others; (*c*) The amount paid to each of those mentioned in (*b*); (*d*) Total cost in each case.

The Honourable the Prime Minister replied as follows:—

1. (*a*) A Royal Commission to investigate the affairs and financial position of the Abitibi Power & Paper Co., Ltd.; (*b*) Hon. Mr. Justice McTague, A. E.

Dyment, Esq., Sir James Dunn, Mr. G. W. Mason, K.C., Mr. R. M. Fowler, Mr. H. O. Taylor, Official Reporter, Mr. E. S. Thorne, Registrar; (*c*) H. O. Taylor, $1,883.10; E. S. Thorne, $277.50; Total $2,160.60; (*d*) $2,160.60 plus incidental miscellaneous expenditures of $145.32, making a total expenditure of $2,305.92.

ROYAL COMMISSION TO INVESTIGATE ONTARIO HOSPITALS

1. Honorarium—		
Commissioner Dr. W. H. Avery		$ 3,850.00
2. Travelling Expenses—		
(*a*) Commissioners:		
C. R. Magone	$397.97	
L. Conacher	268.25	
(*b*) Registrar:		
A. E. Baker	229.55	
(*c*) Counsel:		
E. H. Silk	357.75	
(*d*) Shorthand Reporters:		
F. J. Sperapani	228.15	
(*e*) Constable:		
H. G. Rogers	112.55	
		1,594.22
3. Shorthand Transcriptions—		
Canadian Newspaper Services		425.40
4. Miscellaneous—		
Telegrams, Telephone, Stationery, Printing, Postage and Sundry Expenses		502.34
Total Cost		$ 6,371.96

ROYAL COMMISSION INTO HIGHWAY TRANSPORTATION IN ONTARIO

1. Honoraria—		
Mr. Justice Chevrier	$6,000.00	
E. R. Sayles	5,000.00	
Professor Young	5,000.00	
		$16,000.00
2. Travelling Expenses—		
Mr. Justice Chevrier	$ 226.10	
E. R. Sayles	1,809.20	
		2,035.30
3. Counsel—		
Mr. Joseph Singer		4,100.00
4. Economist—		
M. D. Wilson		10,263.90

5. Registrar—		
D. C. Wells		$ 1,724.81
6. Shorthand Reporters—		
R. Brydie	$7,108.00	
H. Redmond	245.24	
E. M. Halter	44.79	
O. Robitaille	100.00	
		7,498.03
7. Advertising—		
Evening Telegram	$ 53.55	
Globe Printing Co.	54.60	
Toronto Star, Ltd.	51.54	
		159.69
8. Printing—		
Mundy, Goodfellow Printing Co., Ltd.		1,429.50
9. Caretaker—		
J. H. Best		100.00
10. Witnesses—		
Sundry Persons		282.84
11. Stationery—		
Callow Bros.	$ 60.70	
Grand & Toy, Ltd.	81.60	
Litho Print, Ltd.	68.46	
Might Directories, Ltd.	111.98	
Stainton & Evis, Ltd.	49.00	
Warwick Bros. & Rutter, Ltd.	25.37	
		397.11
12. Miscellaneous—		
Postage, Telegrams, Telephone and Sundry Expenses		542.10
Total Cost		$44,533.28

ROYAL COMMISSION TO INVESTIGATE THE HOMEWOOD SANITARIUM

(*b*) F. H. Barlow, Esq., K.C., Master of the Supreme Court of Ontario, was appointed Commissioner. The following reporters were employed: N. R. Butcher & Co.; Alice B. Cabeldu; L. Harding; Dr. W. W. Barraclough, called as an expert witness.

(*c*) F. H. Barlow paid $1,000 honorarium (by the Attorney-General); F. H. Barlow, $183.30 expenses; N. R. Butcher & Co., $112.60; Alice B. Cabeldu, $310.25; L. Harding, $119.40; Dr. W. W. Barraclough, $120.00, expert witness fees; Dr. W. W. Barraclough, $27.00, expenses.

In addition to the sums set out in (*c*), the following amounts were spent: Mrs. Eva P. McIntosh, a witness, $30.00, as conduct money; Miscellaneous, $20.90.

(*d*) Total cost, $1,923.45.

Mr. Spence asked the following Question (No. 157):—

1. How many loans were made to settlers by the Settlers' Loan Commissioner. 2. How many of these loans were outstanding in whole or in part on December 31st, 1940. 3. What amount of these loans was outstanding on December 31st, 1940, and of the total amount indicate: (*a*) Amount in arrears; (*b*) Amount not in arrears. 4. What amount of interest was past due on December 31st, 1940. 5. What agency is now collecting these loans. 6. When was the position of Settlers' Loan Commissioner abolished. 7. When was the practice of making loans to Settlers under The Northern Development Act abolished, or discontinued.

The Honourable the Minister of Agriculture replied as follows:—

1. 5,827. 2. 2,400. 3. (*a*) Amount in arrears (Principal), $415,251.55; (*b*) Amount not in arrears (Principal), deferred payments, $123,910.08; Total, $539,161.63. 4. $169,490.60. 5. Commissioner of Agricultural Loans. 6. By Order-in-Council dated 20th May, 1936, the duties of the Settlers' Loan Commissioner were transferred to the Commissioner of Agricultural Loans, who was authorized to act, without remuneration, in the place of the former Settlers' Loan Commissioner. 7. October 31st, 1934.

Mr. Summerville asked the following Question (No. 158):—

1. What was (*a*) the quantity and (*b*) the value of the stock of common brick and of tapestry brick at the Ontario Brick and Tile Plant at Mimico on December 31st, 1940. 2. What was the value of the stock of the following products at the Ontario Brick and Tile Plant, Mimico, as of December 31st, 1940, viz.; (*a*) Floor and wall tile; (*b*) Spanish roofing tile; (*c*) Hollow building tile; (*d*) Agricultural tile. 3. When was the manufacture of clay products discontinued at this institution.

The Honourable the Provincial Secretary replied as follows:—

	(*a*) Quantity	(*b*) Value
1. Common Brick	377,439	$5,073.39
Tapestry Brick	124,036	2,527.25
Total	501,475	$7,600.64

2. (*a*) $8,464.27; (*b*) $651.03; (*c*) $24,497.17; (*d*) $2,680.08. 3. January 13th, 1940—Plant closed due to war conditions.

Mr. Doucett asked the following Question (No. 162):—

1. How much was spent for motor car rentals by each Department of the Government in the fiscal year ending March 31st, 1940. 2. How much was paid to members of the civil service for the same period with respect to mileage for use of their motor cars on Government business, specifying the amount spent by each Department. 3. What is the present mileage rate allowed with respect to

personally-owned motor cars used by members of the civil service on Government business and what are the present rules and regulations respecting such allowances.

The Honourable the Minister of Highways replied as follows:—

1. Car Rentals—Agriculture, $24,899.77; Education, $1,895.23; Health, $1,195.85; Labour, $316.89; Lands & Forests, $2,014.28; Mines, $1,744.28; Provincial Secretary, $710.44; Provincial Treasurer, $4.50; Public Welfare, $5,116.38; Public Works, $35.01. 2. Mileage Allowances—Agriculture, $74,946.31; Attorney-General, $103,073.29; Education, $44,737.70; Game & Fisheries, $20,176.65; Health, $19,001.21; Highways, $285,197.02; Insurance, $1,837.84; Labour, $32,922.79; Lands & Forests, $52,832.98; Mines, $3,685.24; Municipal Affairs, $2,647.61; Prime Minister, $213.77; Provincial Auditor, $689.53; Provincial Secretary, $12,065.35; Provincial Treasurer, $7,781.23; Public Welfare, $85,357.40; Public Works, $4,115.79. 3. Mileage Rate—Five cents a mile in Southern Ontario, and seven cents a mile in Northern Ontario. The dividing line between Southern and Northern Ontario is as follows:—

"Beginning at Penetanguishene through Midland follow Highway No. 12 to its junction with No. 7 north of Sunderland. Follow No. 7 eastward to Perth, No. 15 to Carleton Place, No. 29 to Arnprior, No. 17 to Renfrew, the paved County Road from Renfrew through Douglas to Pembroke, No. 17 Pembroke to Chalk River; the above named Highways to be included in Southern Ontario.

There is also a ruling that on direct trips to places served by rail, railway fare only may be charged.

In respect to Question (No. 76), regarding the cost of the Hydro-Electric Power Commission addition to Head Office, the Hon. Mr. Hepburn (Elgin) requested that this Question be made an Order for a Return and on the motion of Mr. Challies, seconded by Mr. Kennedy,

Ordered, That there be laid before this House a Return showing: 1. What is the total cost of the addition to the Hydro-Electric Power Commission Head Office since 1937: (*a*) Building; (*b*) Furniture and furnishings; (*c*) Equipment and accessories (1) to date, (2) estimated to complete. 2. Was the expenditure approved by the (*a*) Hydro-Electric Power Commission; (*b*) By the Ontario Government—and what date. 3. Were tenders called. If so, what tenders were received. 4. When was the addition started. 5. What was the cost of the new Hydro-Electric Power Commission building to the end of 1937, contracted for in 1934 or 1935.

The following Bills were read the third time and were passed:—

Bill (No. 41), An Act to amend The Magistrates Act.

Bill (No. 12), An Act respecting the County of Carleton and the University of Ottawa.

Bill (No. 9), An Act to incorporate Malton Water Company.

Bill (No. 10), An Act respecting National Steel Car Corporation, Limited.

Bill (No. 19), An Act respecting the City of Windsor.

Bill (No. 22), An Act respecting the Town of Timmins.

Bill (No. 77), The School Law Amendment Act, 1941.

Bill (No. 53), An Act to amend The Mental Hospitals Act.

Bill (No. 58), An Act to amend The Venereal Diseases Prevention Act.

Bill (No. 66), An Act to amend The Sanatoria for Consumptives Act.

Bill (No. 72), An Act to Ratify and Confirm a certain agreement entered into between His Majesty the King and the Algoma Central and Hudson Bay Railway Company.

Bill (No. 73), An Act to amend The Income Tax Act (Ontario).

Bill (No. 79), An Act to amend The Power Commission Insurance Act.

The following Bills were severally read the second time:—

Bill (No. 54), An Act respecting the subsidizing of Cheese and Hogs produced in Ontario.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 82), An Act to amend The Securities Act.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 91), An Act to amend The Department of Municipal Affairs Act.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 92), The Municipal Amendment Act, 1941.

Referred to a Committee of the Whole House to-morrow.

Bill (No. 93), The Assessment Amendment Act, 1941.

Referred to a Committee of the Whole House to-morrow.

The House resolved itself into a Committee to consider the following Bill:—

Bill (No. 16), An Act respecting the Roman Catholic Separate Schools for the City of Toronto.

Mr. Speaker resumed the Chair; and Mr. Carr reported, That the Committee had directed him to report the Bill with an Amendment.

The Amendment, having been read the second time, was agreed to.

Ordered, That the Bill be read the third time to-morrow.

The House resolved itself into a Committee to consider Bill (No. 80), An Act to amend The Division Courts Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Carr reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time to-morrow.

The House resolved itself into a Committee to consider Bill (No. 84), An Act to amend The Public Service Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Carr reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time to-morrow.

The House resolved itself into a Committee to consider Bill (No. 83), An Act to amend The Cemetery Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Carr reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time to-morrow.

The House resolved itself into a Committee to consider Bill (No. 85), An Act to amend The Highway Traffic Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Carr reported, That the Committee had directed him to report the Bill with certain amendments.

Ordered, That the Amendments be taken into consideration forthwith.

The Amendments, having been read the second time, were agreed to.

Ordered, That the Bill be read the third time to-morrow.

The House resolved itself into a Committee to consider Bill (No. 86), An Act to amend The Beach Protection Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time to-morrow.

The House resolved itself into a Committee to consider Bill (No. 87), An Act to amend The Ontario Municipal Board Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill with certain amendments.

Ordered, That the Amendments be taken into consideration forthwith.

The Amendments, having been read the second time, were agreed to.

Ordered, That the Bill be read the third time to-morrow.

The House resolved itself into a Committee to consider Bill (No. 89), An Act to amend The Local Improvement Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill with certain amendments.

Ordered, That the Amendments be taken into consideration forthwith.

The Amendments, having been read the second time, were agreed to.

Ordered, That the Bill be read the third time to-morrow.

The House resolved itself into a Committee to consider Bill (No. 88), An Act to amend The Surveys Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time to-morrow.

The House resolved itself into a Committee to consider Bill (No. 81), An Act to amend The Temiskaming and Northern Ontario Railway Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time to-morrow.

The House resolved itself into a Committee to consider Bill (No. 55), An Act respecting the Rainbow Bridge, and, after some time spent therein, Mr. speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill with certain amendments.

Ordered, That the Amendments be taken into consideration forthwith.

The Amendments, having been read the second time, were agreed to.

Ordered, That the Bill be read the third time to-morrow.

The House resolved itself into a Committee to consider Bill (No. 76), An Act to amend The Milk Control Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill with certain amendments.

Ordered, That the Amendments be taken into consideration forthwith.

The Amendments, having been read the second time, were agreed to.

Ordered, That the Bill be read the third time to-morrow.

The House resolved itself into a Committee to consider Bill (No. 74), An Act to amend The Corporations Tax Act, 1939, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time to-morrow.

The House, according to Order, again resolved itself into the Committee of Supply.

(*In the Committee*)

Resolved, That there be granted to His Majesty, for the services of the fiscal year ending March 31st, 1942, the following sums:—

66.	To defray the expenses of the Main Office, Department of Health	$ 278,300.00
67.	To defray the expenses of the Maternal and Child Hygiene and Public Health Nursing Branch, Department of Health	28,450.00
68.	To defray the expenses of the Dental Service Branch, Department of Health	13,600.00
69.	To defray the expenses of the Inspection of Training Schools for Nurses Branch, Department of Health	17,450.00

70.	To defray the expenses of the Epidemiology Branch, Department of Health	$ 208,400.00
71.	To defray the expenses of the Venereal Diseases Branch, Department of Health	157,650.00
72.	To defray the expenses of the Tuberculosis Prevention Branch, Department of Health	170,440.00
73.	To defray the expenses of the Industrial Hygiene Branch, Department of Health	70,900.00
74.	To defray the expenses of the Sanitary Engineering Branch, Department of Health	48,900.00
75.	To defray the expenses of the Laboratory Branch, Department of Health	153,400.00
76.	To defray the expenses of the Laboratory Division Branch, Department of Health	82,370.00
77.	To defray the expenses of the Hospitals, General Office, Grants, etc., General Expenses, Ontario Hospitals, Department of Health	3,831,850.00
78.	To defray the expenses of the Ontario Hospital, Brampton, Department of Health	7,975.00
79.	To defray the expenses of the Ontario Hospital, Brockville, Department of Health	412,600.00
80.	To defray the expenses of the Ontario Hospital, Cobourg, Department of Health	160,300.00
81.	To defray the expenses of the Ontario Hospital, Fort William, Department of Health	68,800.00
82.	To defray the expenses of the Ontario Hospital, Hamilton, Department of Health	547,300.00
83.	To defray the expenses of the Ontario Hospital, Kingston, Department of Health	445,900.00
84.	To defray the expenses of the Ontario Hospital, Langstaff, Department of Health	131,200.00
85.	To defray the expenses of the Ontario Hospital, London, Department of Health	623,900.00
86.	To defray the expenses of the Ontario Hospital, New Toronto, Department of Health	515,800.00
87.	To defray the expenses of the Ontario Hospital, New Toronto, Concord Unit, Department of Health	39,100.00
88.	To defray the expenses of the Ontario Hospital, Orillia, Department of Health	571,200.00
89.	To defray the expenses of the Ontario Hospital, Penetanguishene, Department of Health	254,400.00
90.	To defray the expenses of the Ontario Hospital, Toronto, Department of Health	467,000.00
91.	To defray the expenses of the Ontario Hospital, Whitby, Department of Health	703,300.00
92.	To defray the expenses of the Ontario Hospital, Woodstock, Department of Health	567,800.00
93.	To defray the expenses of the Toronto Psychiatric Hospital, Department of Health	126,400.00
1.	To defray the expenses of the Main Office, Department of Agriculture	353,407.50

2.	To defray the expenses of the Statistics and Publications Branch, Department of Agriculture	$ 12,225.00
3.	To defray the expenses of the Agricultural and Horticultural Societies Branch, Department of Agriculture	125,720.00
4.	To defray the expenses of the Live Stock Branch, Department of Agriculture	73,775.00
5.	To defray the expenses of the Institutes Branch, Department of Agriculture	70,335.00
6.	To defray the expenses of the Dairy Branch, Department of Agriculture	128,280.00
7.	To defray the expenses of the Milk Control Board, Department of Agriculture	49,350.00
8.	To defray the expenses of the Fruit Branch, Department of Agriculture	95,705.00
9.	To defray the expenses of the Agricultural Representatives Branch, Department of Agriculture	330,300.00
10.	To defray the expenses of the Crops, Seeds and Weeds Branch, Department of Agriculture	44,488.00
11.	To defray the expenses of the Co-operation and Markets Branch, Department of Agriculture	31,375.00
12.	To defray the expenses of the Kemptville Agricultural School, Department of Agriculture	96,560.00
13.	To defray the expenses of the Ontario Veterinary College, Department of Agriculture	84,258.00
14.	To defray the expenses of the Western Ontario Experimental Farm, Department of Agriculture	29,536.00
15.	To defray the expenses of the Demonstration Farm, New Liskeard, Department of Agriculture	13,320.00
16.	To defray the expenses of the Demonstration Farm, Hearst, Department of Agriculture	5,800.00
17.	To defray the expenses of the Northern Ontario Branch, Department of Agriculture	24,375.00
18.	To defray the expenses of the Ontario Agricultural College, Department of Agriculture	807,308.00
19.	To defray the expenses of the Co-operation and Markets Branch, Department of Agriculture	25,000.00
94.	To defray the expenses of the Main Office, Department of Highways	401,800.00
95.	To defray the expenses of the Division Offices, Department of Highways	420,000.00
96.	To defray the expenses of the Municipal Roads Branch, Department of Highways	75,000.00
97.	To defray the expenses of the Gasoline Tax Branch, Department of Highways	72,000.00
98.	To defray the expenses of the Miscellaneous Permits Branch, Department of Highways	21,000.00
99.	To defray the expenses of the Motor Vehicles Branch, Department of Highways	170,000.00
136.	To defray the expenses of the Main Office, Department of Prime Minister	19,400.00
137.	To defray the expenses of the Office of Executive Council, Department of Prime Minister	11,025.00

138.	To defray the expenses of the Travel and Publicity Bureau, Department of Prime Minister	$ 300,000.00
139.	To defray the expenses of the Office of Civil Service Commissioner, Department of Prime Minister	11,460.00
140.	To defray the expenses of the Office of King's Printer, Department of Prime Minister	36,775.00
141.	To defray the expenses of the Office of Controller of Finances, Department of Prime Minister	11,910.00
152.	To defray the expenses of the Main Office, Department of Provincial Treasurer	87,640.00
153.	To defray the expenses of the Office of Budget Committee, Department of Provincial Treasurer	9,420.00
154.	To defray the expenses of the Motion Picture Censorship and Theatre Inspection Branch, Department of Provincial Treasurer	44,025.00
155.	To defray the expenses of the Controller of Revenue Branch, Department of Provincial Treasurer	404,460.00
156.	To defray the expenses of the Post Office, Department of Provincial Treasurer	148,140.00
157.	To defray the expenses of the Main Office, Department of Provincial Treasurer	800,000.00
142.	To defray the expenses of the Office of Provincial Auditor	112,200.00
58.	To defray the expenses of the Main Office, Department of Game and Fisheries	75,100.00
59.	To defray the expenses of the Districts, Department of Game and Fisheries	230,500.00
60.	To defray the expenses of the Game Animals and Birds, Department of Game and Fisheries	25,000.00
61.	To defray the expenses of the Macdiarmid, Department of Game and Fisheries	3,000.00
62.	To defray the expenses of the Biological and Fish Culture Branch, Department of Game and Fisheries	240,000.00
63.	To defray the expenses of the Grants, Department of Game and Fisheries	5,400.00
64.	To defray the expenses of the Wolf Bounty, Department of Game and Fisheries	40,000.00
65.	To defray the expenses of the Main Office, General, Department of Game and Fisheries	20,000.00
143.	To defray the expenses of the Main Office, Department of Provincial Secretary	57,785.00
144.	To defray the expenses of the Registrar-General's Branch, Department of Provincial Secretary	80,265.00
145.	To defray the expenses of the Main Office, Reformatories and Prisons Branch, Department of Provincial Secretary	172,500.00
146.	To defray the expenses of the Board of Parole, Department of Provincial Secretary	17,000.00
147.	To defray the expenses of the Ontario Reformatory, Guelph, Department of Provincial Secretary	776,000.00
148.	To defray the expenses of the Mercer Reformatory, Toronto, Department of Provincial Secretary	142,000.00
149.	To defray the expenses of the Industrial Farm, Burwash, Department of Provincial Secretary	560,000.00

150.	To defray the expenses of the Ontario Training School for Boys, Bowmanville, Department of Provincial Secretary	$ 154,000.00
151.	To defray the expenses of the Ontario Training School for Girls, Galt, Department of Provincial Secretary	89,000.00
101.	To defray the expenses of the Main Office, Department of Labour	71,635.00
102.	To defray the expenses of the Industry and Labour Board, Department of Labour	13,555.00
103.	To defray the expenses of the Apprenticeship Branch, Department of Labour	27,430.00
104.	To defray the expenses of the Boiler Inspection Branch, Department of Labour	32,000.00
105.	To defray the expenses of the Factory Inspection Branch, Department of Labour	10,595.00
106.	To defray the expenses of the Board of Examiners of Operating Engineers, Department of Labour	26,980.00
107.	To defray the expenses of the Employment Offices, Department of Labour	75,000.00
108.	To defray the expenses of the Minimum Wage Branch, Department of Labour	38,975.00
109.	To defray the expenses of the Composite Inspection Division Branch, Department of Labour	110,830.00
110.	To defray the expenses of the War Emergency Training Branch, Department of Labour	400,000.00
111.	To defray the expenses of the Ontario Government Employment Offices, Department of Labour	35,000.00
158.	To defray the expenses of the Main Office, Department of Public Welfare	219,975.00
159.	To defray the expenses of the Children's Aid Branch, Department of Public Welfare	188,200.00
160.	To defray the expenses of the Mothers' Allowances Commission, Department of Public Welfare	4,660,650.00
161.	To defray the expenses of the Old Age Pensions Commission, Department of Public Welfare	3,564,000.00
162.	To defray the expenses of the Old Age Pensions Commission Branches, Department of Public Welfare	10,291,500.00
129.	To defray the expenses of the Main Office, Department of Mines	280,525.00
130.	To defray the expenses of the Gas and Oil Well Inspector's Branch, Department of Mines	10,000.00
131.	To defray the expenses of the Sulphur Fumes Arbitrator, Department of Mines	5,000.00
132.	To defray the expenses of the Temiskaming Testing Laboratories, Department of Mines	24,750.00
133.	To defray the expenses of the Offices of Mining Recorders, Department of Mines	39,000.00

Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had come to several Resolutions; also, That the Committee had directed him to ask for leave to sit again.

Ordered, That the Report be received to-morrow.

Resolved, That the Committee have leave to sit again to-morrow.

The Provincial Secretary presented to the House, by command of the Honourable the Lieutenant-Governor:—

Return to an Order of the House dated April 7th, 1941, That there be laid before the House a Return showing: 1. What is the total cost of the addition to the Hydro-Electric Power Commission Head Office since 1937: (*a*) Building; (*b*) Furniture and furnishings; (*c*) Equipment and accessories (1) to date, (2) estimated to complete. 2. Was the expenditure approved by the (*a*) Hydro-Electric Power Commission; (*b*) By the Ontario Government—and what date. 3. Were tenders called. If so, what tenders were received. 4. When was the addition started. 5. What was the cost of the new Hydro-Electric Power Commission building to the end of 1937, contracted for in 1934 or 1935. (*Sessional Papers No. 56.*)

Also, Annual Report of the Game and Fisheries Department, Ontario, for year ending March 31st, 1940. (*Sessional Papers No. 9.*)

The House then adjourned at 11.20 p.m.

TUESDAY, APRIL 8TH, 1941

PRAYERS. 3 O'CLOCK P.M.

The following Bill was introduced and read the first time:—

Bill (No. 97), intituled, "An Act for Raising Money on the Credit of the Consolidated Revenue Fund." *Mr. Hepburn* (Elgin).

Ordered, That the Bill be read the second time to-morrow.

Mr. Drew asked the following Question (No. 70):—

1. What were the total expenses to the Province of Ontario for the attendance at the Dominion-Provincial Conference in Ottawa of cabinet ministers and all others accompanying the delegation. 2. (*a*) Were any fees or expenses paid in connection with the Conference other than to members of the Government and Government officials; (*b*) If so, give names of persons and amounts.

The Honourable the Prime Minister replied as follows:—

1. $535.40 for Departmental Officials; no bills rendered by Cabinet Ministers. 2. Nothing paid to date; no bills rendered.

Mr. Stewart asked the following Question (No. 140):—

1. What was the gallonage and sales value of beer sales for the year ending

March 31st, 1940. 2. State the gallonage and value of beer sold through: (*a*) Authority holders; (*b*) All other sources, giving details; (*c*) Total sales.

The Honourable the Prime Minister replied as follows:—

1. 27,350,306 gallons; $29,439,979.95 value. 2. (*a*) 18,386,797 gallons, $16,612,456.80 value; (*b*) 8,963,509 gallons, $12,827,523.15 value; (*c*) Answered by Number 1.

Mr. Macaulay asked the following Question (No. 154):—

1. What mileage of the highway from North Bay to Sault Ste. Marie is paved. 2. What amounts were spent on the North Bay to Sault Ste. Marie highway in each of the fiscal years 1937, 1938, 1939 and 1940 and for the period April 1st, 1940, to December 31st, 1940, indicating in each case: (*a*) Capital expenditures; (*b*) Ordinary expenditures. 3. Give location and lengths of various mileages paved.

The Honourable the Minister of Highways replied as follows:—

1. 77.23 miles.

	(*a*)	(*b*)
2. Year ending March 31st, 1937	$ 417,739.88	$ 57,717.71
Year ending March 31st, 1938	2,853,162.24	252,644.30
Year ending March 31st, 1939	3,091,084.20	289,036.31
Year ending March 31st, 1940	1,729,243.12	269,411.39
April 1st to December 31st, 1940	559,207.74	289,217.34

3. North Bay, Westerly	Gravel Mulch	2.50
Sutrgeon Falls, Easterly	Concrete	10.20
Wahnapitae, Easterly	Concrete	7.90
Sudbury, Easterly	Concrete	6.50
Sudbury, Westerly	Retread	12.20
Spanish, East and West	Concrete	7.00
Blind River, Easterly	Concrete	5.04
Blind River, Westerly	Concrete	4.08
Sault Ste. Marie, Easterly	Retread	.62
From 0.62 miles East of Sault Ste. Marie, Easterly	Concrete	21.19

Mr. Stewart asked the following Question (No. 163):—

1. Where were the motor car markers for 1939 and 1940 produced. 2. How many were manufactured in each of the years mentioned in (1), specifying the different types. 3. What was the manufacturing cost of single plates, sets of two plates and sets of three plates respectively. 4 What was the selling price to the Department of Highways in each of the cases mentioned in (3). 5. If manufactured at the Ontario Reformatory, Guelph, what was the number of paid help employed and in connection with such paid help state: (*a*) Name of employee; (*b*) Home address of employee; (*c*) Category of each employee; (*d*) Wage rate of each employee and total amount paid each in each of the years

mentioned in (1). 6. Who, if anyone, was employed to give general oversight and direction respecting manufacturing operations, what was his home address and what were the general terms and conditions as to his services and remuneration therefor.

The Honourable the Minister of Highways replied as follows:—

1. The Ontario Reformatory, Guelph.

2.

	1939	1940
Passenger Plates	622,017 pairs	602,019 pairs
Commercial Plates	90,000 pairs	90,000 pairs
Trailer Plates	50,000 only	50,000 only
Two Purpose Plates	3,500 pairs	3,000 pairs
Doctor's Plates	6,000 pairs	6,000 pairs
Motor "Dealers" Plates	1,700 pairs	1,700 pairs
Motor Cycle Plates	6,500 sets of 3	6,500 sets of 3
Public Vehicle Plates	900 pairs	900 pairs
School Vehicle Plates	150 pairs	150 pairs
Sample Plates	100 only	100 only
Public Commercial Vehicle	9,150 only	8,850 only

3.

	1939 (cents)	1940 (cents)
Passenger Plates	.079145 per pair	.076754 per pair
Commercial Plates	.099129 per pair	.086267 per pair
Trailer Plates	.048243 only	.043924 only
Two Purpose Plates	.074191 per pair	.075423 per pair
Doctor's Plates	.075623 per pair	.077043 per pair
Motor Dealer's Plates	.071494 per pair	.072976 per pair
Motor Cycle Plates	.058325 per set of 3	.060598 per set of 3
Motor Cycle Dealers	.084800 per set of 3	.076000 per set of 3
Public Commercial Vehicles	.029614 only	.029938 only
Public Vehicle	.039378 per pair	.041500 per pair
School Vehicle	.041400 per pair	.041733 per pair
Sample Plates	.041200 only	.046700 only

4. The price charged to the Department of Highways for the manufacture of license plates for the years 1939 and 1940 was eight and one-half cents per pair for all types of plates.

5. Four. (*a*) Of the four, Mr. J. Whiteside only is employed by the Ontario Reformatory, Guelph. Names of other three not known; (*b*) Home address of Mr. Whitesides is 18 Boult Avenue, Guelph. Addresses of other three not known; (*c*) Mr. Whiteside employed as Guard in charge of prisoners, and to supervise release and shipment of all license plates authorized by the Department of Highways, Ontario. The remaining three men consisted of one supervisor, one pressman and one packer; (*d*) Salary of Mr. Whiteside was $1,500.00 per annum. Wage rates and amounts paid to the other three not known.

6. The St. Thomas Metal Signs Limited, and Frederick Sutherland (home address, St. Thomas, Ontario). General terms and condition of services were as follows: (1) Direction and supervision of production of license plates in accord-

ance with the specifications of the Department of Highways, Ontario; (2) The maintenance of the Motor Marker Plant at the Ontario Reformatory, Guelph, in good running order and the provision of all dies used in the production of license plates; (3) The provision and payment of wages of all the necessary skilled labour used in the production of license plates. Remuneration paid for above services for 1939 and 1940 markers was one and three-quarter cents per pair for all types of license plates.

Mr. Challies asked the following Question (No. 164):—

1. For the years 1933, 1934, 1936, 1937, 1938 and 1939: (*a*) How many persons were sentenced to prison in the Province; (*b*) What was the average per capita cost per diem, for the maintenance of inmates in Ontario Reformatories and Industrial Farms; (*c*) What was the total number of days' stay of inmates in the Ontario Reformatories and Industrial Farms.

The Honourable the Provincial Secretary replied as follows:—

1. (*a*)	1933	14,538
	1934	13,509
	1936	16,356
	1937	20,618
	1938	23,649
	1939	27,926
(*b*)	1933	$ .9049
	1934	1.1169
	1936	1.1613
	1937	1.2529
	1938	1.5820
	1939	1.3503
(*c*)	1933	615,719
	1934	537,658
	1936	475,902
	1937	529,714
	1938	533,314
	1939	597,309

Mr. Downer asked the following Question (No. 165):—

1. Upon what date was the beer authority to the Dopolovora Society, located in the Casa d'Italia, Barton Street East, Hamilton, granted. 2. What person or persons recommended that the said authority be granted. 3. Who were the members of said Society at time authority was granted. 4. Upon what date was this authority withdrawn. 5. For what reason or reasons was it withdrawn.

The Honourable the Prime Minister replied as follows:—

1. 30th January, 1940. 2. Application of the Organization considered on its merits, and Authority granted by the Board. 3. See list below. 4. 25th June, 1940. 5. Organization banned by amendment to Defence of Canada Regulations.

HAMILTON DOPOLAVORO SOCIETY

644-646 Barton St. E., Hamilton, Ont.

CERTIFIED LIST OF MEMBERS AS OF MARCH 6TH, 1940

Alboini, V.
Andreatta, A.
Baffi, G.
Bartolini, A.
Bartolini, S.
Bergamaschi, N.
Berti, S.
Bin, M.
Bianco, A.
Borrillo, A.
Borrillo, D.
Bracci, P.
Bucci, A.
Campanaro, M.
Cantelmo, P.
Capponi, G.
Celeste, C.
Celeste, M.
Cianciolo, L.
Ciavarella, M.
Ciavarro, A.
Colamartini, I.
Colangelo, B.
Colangelo, U.
Corsini, D.
Corsini, R.
Corrado, N.
Corso, G.
Crustolo, M.
Cupido, G.
D'Alessandro, G.
D'Ambrosio, C.
D'Amore, F.
D'Angelo, R.
D'Aurelio, D.
De Conno, P.
Del Col, G.
Del Piero, A.
De Rubeis, A.
De Rubeis, F.
De Rubeis, F.
Di Bernardo, F.
Di Cenzo, E.
Di Cenzo, F.
DiCenzo, M.
Di Filippo, D.
Di Filippo, L.
Di Gennaro, L.
D'Iorio, P.
Di Medio, T.
Distefan, P.
Di Stefano, A.
Emili, G.
Emili, N.
Faiella, R.
Fazio, M.
Ferrara, F.
Ferri, P.
Finocchio, M.
Fioravante, D.
Fratesi, A.
Friscolanti, L.
Galanti, S.
Galassi, G.
Galassi, R.
Galasso, R.
Gattafoni, L.
Ghilardi, A.
Giacinti, G.
Giacinti, S.
Genovesi, M.
Giacomelli, O.
Gris, M.
Iacchetti, F.
Iampietro, E.
Iampietro, M.
Intini, D.
Lanza, J.
Lanza, J.
Lanza, L.
Lo Cicero, V.
Malisani, G.
Mancini, P.
Maragno, C.
Marangoni, G.
Marcogliese, A.
Pari, T.
Marinelli, D.
Marini, C.
Martini, S.
Martini, A.
Mascia, L.
Masi, F.
Masi, N.
Mastrodicasa, A.
Mataloni, G.
Mauro, A.
Mondolo, A.
Montemurri, F.
Montesanto, G.
Montesanto, V.
Mostacci, P.
Nervino, R.
Nusca, E.
Olivieri, A.
Olivieri, A.
Olivieri, D.
Olivieri, P.
Paglari, L.
Pantalone, A.
Paolone, A.
Paolone, P.
Parente, (N)
Pataracchia, H.
Peroni, P.
Piovesana, A.
Quaglia, O.
Quaglia, G.
Ranalli, A.
Ranalli, F.

Ranalli, V.
Rizzuto, B.
Roncaioli, G.
Salciccioli, E.
Salciccioli, T.
Sanguiro, E.
Santarelli, E.
Savelli, D.
Sbranchella, T.
Sebastiani, P.
Sebastiano, R.
Sergi, A.
Serravalle, E.
Sguigna, E.
Silenzi, A.
Spallacci, N.
Spallacci, S.
Spezza, A.
Susi, P.
Tatti, G.
Tatti, V.
Termini, N.
Troisi, S.
Verticchio, E.
Villani, N.
Viola, A.
Viola, F.
Zaffiro, F.
Barrese, H.

Certified correct,

(Signed) A. DEL PIERO,
Secretary-Treasurer.

Hamilton, March 6th, 1940.

Mr. Downer asked the following Question (No. 166):—

1. Upon what date was the beer authority to the Italo-Canadian Club, Bay Street, Hamilton, granted. 2. What person or persons recommended that the said authority be granted. 3. Who were the members of said Society at time authority was granted. 4. Upon what date was this authority withdrawn. 5. For what reason or reasons was it withdrawn.

The Honourable the Prime Minister replied as follows:—

1. 1st April, 1940. 2. Application of the Organization considered on its merits, and Authority granted by the Board. 3. See list below. 4. 31st March, 1941. 5. On recommendation of the Inspection Department of the Board.

LIST OF SOME OF THE MEMBERS OF HAMILTON ITALIZAN RECREATION CLUB

Agro, Sam
Agro, Dr. V.
Agro, Carmen
Agro, Sam
Arnone, Edward
Arnone, Charles
Belluzzi, John
Belluzzi, Ugo
Bartollotta, Joe
Borsellino, Joe
Basilio, John
Borsellino, C.
Borsellino, Nick
Borsellino, Ed
Borsellino, S.
Bartollotta, C.
Bartollotta, S.
Barone, Vincenzo
Capobianco, L.
Cappelli, John
Castigilione, A.
Comiglio, R.
Castellani, J.
Campanella, N.
Campanella, Salvadore
Campanella, John
Cappelli, Anthony
Chiodo, Peter
Chrecioli, Charles
Chiarelli, T.
Ciaravella, A.
Cicero, Charles
Cicero, Samuel
Curto, P.
Curto, Sam
Curto, Angelo
Curto, Joe
Curto, John
D'Aurelia, Dominic
Deluca, John
Deluca, Aldo
Figliola, Joseph
Figliola, Charles
Florio, Manfredo
Florio, Rudolph
Iacone, A.
Ingrassia, Frank
Ingrassia, Jerry
Nardella, L.
Pitirri, Felice
Rallo, Joe
Restivo, Joe
Re, Anthony
Sardo, Angelo
Sardo, B.
Scime, Edward
Scime, Samuel

Speziale, V.
Speziale, P.
Tazzeo, James
Unelli, Angelo
Unelli, A.
Valvasori, E.
Zamprogna, M.
Zamprogna, Hugo

Mr. Downer asked the following Question (No. 167):—

1. Who are the members of the staff of the Dufferin County Gaol at Orangeville. 2. What are their respective titles, dates of appointment and salaries. 3. Who recommended their respective appointments to the Sheriff of Dufferin County, to the Provincial Secretary or to any member of the Government. 4. From April 1st, 1939, to December 31st, 1940, how many prisoners have escaped from the Orangeville Gaol. 5. From April 1st, 1939, to December 31st, 1940, have any members of the staff at Orangeville Gaol been dismissed or requested to resign and if so who were they and why were their services dispensed with. 6. Have any disciplinary measures been taken with respect to the present staff at Orangeville Gaol in relation to the escape of prisoners and, if so, give particulars. 7. Have any steps been taken by the Government with a view to merging the Orangeville Gaol with the Peel County Gaol at Brampton and, if so, specify.

The Honourable the Provincial Secretary replied as follows:—

1. H. A. Coutts, R. N. Crowe, Mrs. H. A. Coutts, Dr. W. H. Leach. 2. Gaoler—Appointed December 28th, 1939, effective January 6th, 1940, salary $1,200.00; Turnkey—Appointed December 28th, 1939, effective January 15th, 1940, salary $1,000.00; Matron—Appointed December 28th, 1939, effective January 15th, 1940, salary $300.00; Surgeon—Appointed June 24th, 1935, salary $125.00. 3. Recommended and appointed by the Sheriff and approved by the Lieutenant-Governor in Council, on the recommendation of the Provincial Secretary. 4. Two—September 28th, 1939, and April 16th, 1940. 5. Yes. W. C. Barber, Gaoler, Mrs. W. C. Barber, Matron, and Mr. W. R. Campbell, Turnkey. Services unsatisfactory. 6. Yes. A special investigation was conducted by a departmental Inspector into the circumstances surrounding the escape of April 16th, 1940. Mr. Coutts, the Gaoler, and Mr. Crowe, the Turnkey, were reprimanded and warned. 7. No.

Mr. Downer asked the following Question (No. 115):—

1. What payments have been made by the Federal Government to the Province in each fiscal year from 1930 to 1940 and for the period April 1st, 1940, to January 31st, 1941, for (*a*) Aid with respect to direct relief; (*b*) Aid with respect to relief works. 2. For each of the periods mentioned in (1), what is the total amount of payments made by the Province to municipalities for: (*a*) Direct relief; (*b*) Aid in respect of relief works. 3. For each of the periods mentioned in (1), what expenditure has been made by the Province in respect to relief in territory without municipal organization specifying: (*a*) Amounts paid for direct relief; (*b*) Amount paid in respect to relief works.

The Honourable the Minister of Welfare replied as follows:—

DEPARTMENT OF HIGHWAYS

1. (*a*) Nil.

(*b*)

1931-32	$ 400,000.00
1932-33	1,209.11
1933-34	Nil
1934-35	286,148.57
1935-36	528,834.12
1936-37	2,459,727.80
1937-38	1,390,595.74
1938-39	1,877,032.43
1939-40	1,796,913.03
April 1st, 1940, to January 31st, 1941	81,952.02

2. (*a*) Nil; (*b*) Nil. 3. (*a*) Nil; (*b*) Unemployment Relief Act: Net expenditure on secondary and development roads in Northern Ontario—

1937-38	$5,252,160.47
1938-39	4,485,627.91

DEPARTMENT OF NORTHERN DEVELOPMENT

1. (*a*) Nil.

(*b*)

1930-31	See Department of Labour
1931-32	" " " "
1932-33	" " " "
1933-34	$1,992,101.54
1934-35	Nil
1935-36	4,274,746.86
1936-37	3,860,006.30

2. (*a*) Nil; (*b*) Nil. 3. (*a*) Nil; (*b*) Unemployment Relief Act: Net expenditure on roads in Northern Ontario—

1930-31	$ 382,520.31 (See also Department of Labour)
1931-32	See Department of Labour
1932-33	See Department of Labour
1933-34	$18,351,770.29
1934-35	8,736,266.74
1935-36	8,807,779.62
1936-37	2,456,994.33

1.	Direct Relief (*a*)	Relief Works (*b*)	
1929-30	Nil	Nil	Department of Labour
1930-31	$ 782,763.63	$ 3,850,000.00	" " "
1931-32	3,908,348.53	7,917,992.87	" " "
1932-33	9,766,409.39	348,244.93	" " "
1933-34	10,799,822.49	752,678.88	Dept. of Public Welfare
1934-35	3,309,036.29	95,617.78	" " " "
1935-36	9,042,206.08	120,296.64	" " " "
1936-37	9,932,640.01	776.89	" " " "
1937-38	6,054,000.00	.....	" " " "
1938-39	5,608,640.53	.....	" " " "
1939-40	7,462,693.55	.....	" " " "
1940—Jan. 31, 1941	2,271,050.37	.....	" " " "

2.	Direct Relief Gross (*a*)	Relief Works Gross (*b*)	
1929-30	$ 24,218.91	Nil	Department of Labour
1930-31	1,563,988.47	5,635,636.28	" " "
1931-32	3,749,392.67	3,032,081.09	" " "
1932-33	18,808,524.55	108,890.13	" " "
1933-34	25,423,754.97	2,962,991.46	Dept. of Public Welfare
1934-35	10,338,076.99	652,792.14	" " " "
1935-36	29,190,374.22	368,160.70	" " " "
1936-37	21,382,910.74	13,410.08	" " " "
1937-38	15,232,087.16	54,000.00	" " " "
1938-39	14,955,467.94	27,026.94	" " " "
1939-40	15,755,642.62	452.51	" " " "
1940—Jan. 31, 1941	6,270,891.27	.....	" " " "

3.	Direct Relief Gross (*a*)	Relief Works Gross (*b*)	
1929-30	Nil	Nil	
1930-31	$ 75.56	$ 2,102,500.00	Department of Labour
1931-32	175,294.68	11,949,724.43	" " "
1932-33	2,111,802.90	4,225,628.53	" " "
1933-34	2,024,246.79	.....	Dept. of Public Welfare
1934-35	466,272.30	.....	" " " "
1935-36	1,693,217.10	.....	" " " "
1936-37	1,600,141.81	.....	" " " "
1937-38	528,991.02	.....	" " " "
1938-39	541,676.93	.....	" " " "
1939-40	545,911.24	.....	" " " "
1940—Jan. 31, 1941	245,631.33	.....	" " " "

Mr. Doucett asked the following Question (No. 160):—

1. How many automobiles were owned by the Government on December 31st, 1940. 2. How many trucks were owned by the Government on December 31st, 1940. 3. Specify the number of automobiles owned by and attached to each department or board or commission of the Government on December 31st, 1940—the Hydro-Electric Power Commission of Ontario excepted.

The Honourable the Minister of Highways replied as follows:—

1. See answer to 3. 2. 484. 3. Department of Education, Nil; Department of Lands and Forests, 6; Department of Mines, 5; Department of Labour, Nil; Department of Treasury, Nil; Department of Prime Minister, Nil; Department of Provincial Secretary, 3; Department of Game and Fisheries, 3; Department of Health, 25; Department of Highways, 3; Department of Agriculture, 65; Department of Public Works, Nil; Department of Attorney General, 67; T. & N.O. Railway Commission, Nil; Niagara Parks Commission, 2; Liquor Control Board, Nil; Workmen's Compensation Board, Nil.

Mr. Downer asked the following Question (No. 168):—

1. What relief payments were made to Township of King in 1940 and 1941. 2. Were any payments, direct or indirect, made to any organization or corporation in the Township of King in the way of assistance to families placed on land in 1940 and 1941.

The Honourable the Minister of Welfare replied as follows:—

1. 1940, $1,357.96; 1941, $348.39. 2. No.

In respect to Question (No. 141) regarding Legislative Grants to Elementary and Secondary Schools the Hon. Mr. Hepburn (Elgin) requested that this Question be made an Order for a Return and on the motion of Mr. Stewart, seconded by Mr. Arnott, it was

Ordered, That there be laid before this House a Return showing: 1. Please give the amounts of legislative grants paid to Elementary and Secondary Schools in each of the Government's fiscal years for the period 1934 to 1940 inclusive, under the following classifications: Elementary—Public, Separate; Secondary—Continuation, High, Vocational, Collegiate. 2. How are the grants determined. 3. On what basis are the grants computed. 4. Have any grants, other than scheduled grants, been made to either public or separate schools. If so, when and what amount.

The Order of the Day for the second reading of Bill (No. 94), An Act to amend The Fatal Accidents Act, having been read,

And the Motion having been put, was declared to be lost.

The Order of the Day for the second reading of Bill (No. 95), An Act to amend The Insurance Act, having been read,

Ordered, That the Order be discharged, and that the Bill be withdrawn.

The Order of the Day for resuming the Adjourned Debate on the Motion for the second reading of Bill (No. 68), An Act to amend The Jurors Act, having been read,

The Debate was resumed,

And after some time it was on the motion of Mr. Hepburn (Elgin),

Ordered, That the Debate be adjourned.

The Order of the Day for the second reading of Bill (No. 65), An Act to provide the Suspension of Grand Juries during the Present War, having been read,

The Hon. Mr. Conant moved,

That the Order be discharged, and that the Bill be withdrawn.

The Motion having been put failed for lack of a unanimous vote.

The following Bill was read the second time:—

Bill (No. 96), An Act respecting a certain Bond Mortgage made by the Abitibi Power and Paper Company Limited to the Montreal Trust Company.

Referred to a Committee of the Whole House to-day.

The following Bills were read the third time and were passed:—

Bill (No. 16), An Act respecting the Roman Catholic Separate Schools for the City of Toronto.

Bill (No. 80), An Act to amend The Division Courts Act.

Bill (No. 84), An Act to amend The Public Service Act.

Bill (No. 83), An Act to amend The Cemetery Act.

Bill (No. 85), An Act to amend The Highway Traffic Act.

Bill (No. 86), An Act to amend The Beach Protection Act.

Bill (No. 87), An Act to amend The Ontario Municipal Board Act.

Bill (No. 89), An Act to amend The Local Improvement Act.

Bill (No. 88), An Act to amend The Surveys Act.

Bill (No. 81), An Act to amend The Temiskaming and Northern Ontario Railway Act.

Bill (No. 55), An Act respecting the Rainbow Bridge.

Bill (No. 76), An Act to amend The Milk Control Act.

Bill (No. 74), An Act to amend The Corporations Tax Act, 1939.

The House resolved itself into a Committee to consider Bill (No. 90), The Statute Law Amendment Act, 1941, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report progress, and directed him to ask for leave to sit again.

Resolved, That the Committee have leave to sit again to-morrow.

The House resolved itself into a Committee to consider Bill (No. 54), An Act respecting the subsidizing of Cheese and Hogs produced in Ontario, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time to-morrow.

The House resolved itself into a Committee to consider Bill (No. 82), An Act to amend The Securities Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time to-morrow.

The House resolved itself into a Committee to consider Bill (No. 91), An Act to amend The Department of Municipal Affairs Act, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time to-morrow.

The House resolved itself into a Committee to consider Bill (No. 92), The Municipal Amendment Act, 1941, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time to-morrow.

The House resolved itself into a Committee to consider Bill (No. 93), The Assessment Amendment Act, 1941, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had Directed him to report the Bill with certain amendments.

Ordered, That the Amendments be taken into consideration forthwith.

The Amendments, having been read the second time, were agreed to.

Ordered, That the Bill be read the third time to-morrow.

The House resolved itself into a Committee to consider Bill (No. 96), An Act respecting a certain Bond Mortgage made by the Abitibi Power and Paper Company Limited to the Montreal Trust Company, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time to-morrow.

The House, according to Order, again resolved itself into the Committee of Supply.

(*In the Committee*)

Resolved, That there be granted to His Majesty, for the services of the fiscal year ending March 31st, 1942, the following sums:—

34.	To defray the expenses of the Main Office, Department of Education	$ 77,600.00
35.	To defray the expenses of the Legislative Library, Department of Education	16,750.00
36.	To defray the expenses of the Public Records and Archives, Department of Education	5,200.00
37.	To defray the expenses of the Public and Separate School Education Branch, Department of Education	5,721,400.00
38.	To defray the expenses of the Inspection of Schools Branch, Department of Education	546,600.00
39.	To defray the expenses of the Departmental Examinations Branch, Department of Education	222,100.00
40.	To defray the expenses of the Text-Books Branch, Department of Education	67,500.00

41.	To defray the expenses of the Training Schools Branch, Department of Education	$ 104,450.00
42.	To defray the expenses of the Toronto Normal and Model Schools, Department of Education	129,725.00
43.	To defray the expenses of the Ottawa Normal School, Department of Education	44,550.00
44.	To defray the expenses of the London Normal School, Department of Education	43,050.00
45.	To defray the expenses of the Hamilton Normal School, Department of Education	43,650.00
46.	To defray the expenses of the Peterborough Normal School, Department of Education	36,680.00
47.	To defray the expenses of the Stratford Normal School, Department of Education	34,400.00
48.	To defray the expenses of the North Bay Normal School, Department of Education	38,550.00
49.	To defray the expenses of the University of Ottawa Normal School, Department of Education	81,450.00
50.	To defray the expenses of the High Schools and Collegiate Institutes Branch, Department of Education	890,500.00
51.	To defray the expenses of the Public Libraries Branch, Department of Education	106,700.00
52.	To defray the expenses of the Vocational Education Branch, Department of Education	1,858,450.00
53.	To defray the expenses of the Ontario Training College for Technical Teachers, Department of Education	27,500.00
54.	To defray the expenses of the Superannuated Teachers, Department of Education	8,800.00
55.	To defray the expenses of the Provincial and other Universities, Department of Education	1,836,000.00
56.	To defray the expenses of the Ontario School for the Deaf, Belleville, Department of Education	161,925.00
57.	To defray the expenses of the Ontario School for the Blind, Brantford, Department of Education	94,100.00
134.	To defray the expenses of the Main Office, Department of Municipal Affairs	63,655.00
135.	To defray the expenses of the Ontario Municipal Board, Department of Municipal Affairs	30,935.00
112.	To defray the expenses of the Main Office, Department of Lands and Forests	183,300.00
113.	To defray the expenses of the Agents, Department of Lands and Forests	28,000.00
114.	To defray the expenses of the Rondeau Provincial Park, Department of Lands and Forests	16,375.00
115.	To defray the expenses of the Ipperwash Beach Provincial Park, Department of Lands and Forests	4,000.00
116.	To defray the expenses of the Forests Branch, Department of Lands and Forests	85,000.00
117.	To defray the expenses of the Forests Service, Department of Lands and Forests	1,600,000.00
118.	To defray the expenses of the Air Service, Department of Lands and Forests	263,000.00

119.	To defray the expenses of the Radio Service, Department of Lands and Forests	$ 45,000.00
120.	To defray the expenses of the Woodmen's Employment Act, Department of Lands and Forests	8,500.00
121.	To defray the expenses of the Clearing Townsites and Removal of Fire Hazards, Department of Lands and Forests	20,000.00
122.	To defray the expenses of the Insect Control and Tree Diseases, Department of Lands and Forests	17,000.00
123.	To defray the expenses of the Main Office, Surveys, etc., Department of Lands and Forests	55,000.00
124.	To defray the expenses of the Forests Service, Department of Lands and Forests	320,000.00
20.	To defray the expenses of the Main Office, Department of Attorney-General	76,200.00
21.	To defray the expenses of the Supreme Court, Department of Attorney-General	85,175.00
22.	To defray the expenses of the Shorthand Reporters, Department of Attorney-General	33,050.00
23.	To defray the expenses of the Toronto and York Crown Attorney's Office, Department of Attorney-General	27,500.00
24.	To defray the expenses of the Land Titles Office, Department of Attorney-General	25,300.00
25.	To defray the expenses of the Drainage Referees, Department of Attorney-General	2,550.00
26.	To defray the expenses of the Criminal Justice Accounts, Department of Attorney-General	986,200.00
27.	To defray the expenses of the Public Trustee's Office, Department of Attorney-General	67,750.00
28.	To defray the expenses of the Official Guardian's Office, Department of Attorney-General	34,950.00
29.	To defray the expenses of the Accountant's Office, Supreme Court of Ontario, Department of Attorney-General	21,970.00
30.	To defray the expenses of the Fire Marshal's Office, Department of Attorney-General	59,700.00
31.	To defray the expenses of the Inspector of Legal Offices, Department of Attorney-General	81,050.00
32.	To defray the expenses of the Law Enforcement Branch (Provincial Police), Department of Attorney-General	1,365,200.00
33.	To defray the expenses of the Ontario Securities Commission, Department of Attorney-General	63,000.00
100.	To defray the expenses of the Main Office, Department of Insurance	62,425.00
163.	To defray the expenses of the Main Office, Department of Public Works	79,100.00
164.	To defray the expenses of the General Superintendence, Department of Public Works	19,500.00
165.	To defray the expenses of the Lieutenant-Governor's Apartment, Department of Public Works	4,600.00
166.	To defray the expenses of the Legislative and Departmental Buildings, Department of Public Works	411,400.00
167.	To defray the expenses of the Osgoode Hall, Department of Public Works	37,000.00

168.	To defray the expenses of the Educational Buildings, Department of Public Works	$ 10,600.00
169.	To defray the expenses of the Agricultural Buildings, Department of Public Works	10,700.00
170.	To defray the expenses of the Training Schools, Department of Public Works	2,200.00
171.	To defray the expenses of the District Buildings, Department of Public Works	12,625.00
172.	To defray the expenses of the Ontario Hospitals, Department of Public Works	50,000.00
173.	To defray the expenses of the Ontario Reformatories, Department of Public Works	475.00
174.	To defray the expenses of the Public Works, Department of Public Works	15,000.00
175.	To defray the expenses of the Ontario Government Office Building, Kingston, Department of Public Works	3,800.00
176.	To defray the expenses of the Ontario Hospitals, Department of Public Works	15,000.00
177.	To defray the expenses of the Reformatories, Department of Public Works	10,000.00
178.	To defray the expenses of the District Buildings, Department of Public Works	1,000.00
179.	To defray the expenses of the Fish Hatcheries, Department of Public Works	5,000.00
180.	To defray the expenses of the Public Works, Department of Public Works	261,000.00
181.	To defray the expenses of the Miscellaneous	104,400.00
125.	To defray the expenses of the Office of the Speaker, Department of Legislation	254,525.00
126.	To defray the expenses of the Office of the Law Clerk, Department of Legislation	13,125.00
127.	To defray the expenses of the Office of Crown-in-Chancery, Department of Legislation	4,800.00

Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had come to several Resolutions.

Ordered, That the Report be received to-morrow.

The Provincial Secretary presented to the House, by command of the Honourable the Lieutenant-Governor:—

Return to an Order of the House dated April 8th, 1941, That there be laid before the House a Return showing: 1. Please give the amounts of legislative grants paid to Elementary and Secondary Schools in each of the Government's fiscal years for the period 1934 to 1940 inclusive, under the following classifications: Elementary—Public, Separate; Secondary—Continuation, High, Vocational, Collegiate. 2. How are the grants determined. 3. On what basis are the grants computed. 4. Have any grants, other than scheduled grants, been made to either public or separate schools. If so, when and what amount. (*Sessional Papers No. 57.*)

Mr. Cooper, from the Select Committee appointed to inquire into the administration of the Department of Lands and Forests, presented their Report and recommended that it be printed as an appendix to the Journals of the House which recommendation was concurred in as follows:—

Your Select Committee appointed on April 27th, 1939, to inquire into the administration, licensing, sale, supervision and conservation of natural resources by the Department of Lands and Forests begs leave to report that it has completed its deliberations and herewith presents its report which contains the views and recommendations of a majority of the Committee and also the views and recommendations of a minority of the Committee, and recommends that the report be printed as an appendix to the Journals of the House.

The House then adjourned at 10.50 p.m.

WEDNESDAY, APRIL 9TH, 1941

PRAYERS. 3 O'CLOCK P.M.

Mr. Kennedy asked the following Question (No. 56):—

1. What contracts have been let in relation to construction on the Trans-Canada Highway since November 1st, 1940, specifying: (*a*) Name of contractor; (*b*) Mileage and location in relation to each contract; (*c*) Work covered by each contract; (*d*) Unit prices and estimated or actual total costs respecting each contract.

The Honourable the Minister of Highways replied as follows:—

1. (*a*) Malvern Construction Co., Limited; (*b*) Bridge over Batchewana River in Township of Fisher between Sault Ste. Marie and Montreal River; (*c*) Construction of substructure and floor of Batchewana Bridge; (*d*) Unit Prices:

1.	Clearing	$75.00 per acre
2.	Grubbing and close cutting	75.00 per acre
3.	Earth excavation, grading	.50 per cu. yd.
4.	Rock excavation, grading	2.00 per cu. yd.
5.	Placing 24″ C.I. pipe	.50 per lin. ft.
6.	Placing 18″ C.I. pipe	.40 per lin. ft.
7.	Excavation from caissons	.50 per cu. yd.
8.	Concrete in caissons	4.00 per cu. yd.
9.	Concrete in substructure	10.00 per cu. yd.
10.	Concrete in superstructure	14.00 per cu. yd.
11.	Concrete in handrail posts	14.00 per cu. yd.
12.	Placing reinforcing steel	12.50 per ton
13.	Erect and paint steel handrail	.20 per lin. ft.
14.	Sheet piling driven	.30 per lin. ft.
15.	Removal of existing structure	500.00 lump sum
16.	Supply and place crushed gravel surfacing	1.50 per cu. yd.

Estimated total cost of Contract:

Contract Tender	$15,844.50	
Department Materials	29,121.20	
Department Engineering	2,600.00	
Department Sundry Construction	947.50	
		$48,513.20

Mr. Stewart asked the following Question (No. 92):—

1. What was the gross debt of the Municipalities in the Province of Ontario when the present Government took office, using the nearest date for which consolidated figures are available. 2. What is the gross debt of the Municipalities in the Province of Ontario at the present time, using the latest date for which consolidated figures are available. 3. What was the gross debt of the Province of Ontario when the present Government took office, using nearest date for which consolidated figures are available. 4. What is the gross debt of the Province of Ontario at the present time, using latest date for which consolidated figures are available.

The Honourable the Prime Minister and Provincial Treasurer replied as follows:—

	Total Debt (Less Sinking Fund)
1. As at December 31st, 1934	$427,323,899
2. As at December 31st, 1939	324,878,331
	Gross Debt (Less Sinking Fund)
3. As at October 31st, 1934	$655,760,852
4. As at March 31st, 1940	737,077,996

Mr. Elgie asked the following Questions (Nos. 111 and 114):—

1. For the fiscal years ending October 31st, 1934, March 31st, 1935 (5 months), March 31st, 1936, March 31st, 1937, March 31st, 1938, March 31st, 1939, March 31st, 1940, and for the 10 months' period April 1st, 1940, to January 31st, 1941: (*a*) What was the gallonage of beer, ale and allied products sold by breweries and brewery warehouses for resale in standard hotels holding authorities to sell beer or beer and wine; (*b*) What was the wholesale price to authority holders of the beer, ale and allied products mentioned in (*a*); (*c*) What was the gallonage of native wine sold for resale in standard hotels holding authorities to sell beer and wine; (*d*) What was the wholesale price to authority holders in standard hotels of the wine referred to in (*c*); (*e*) What was the quantity and value of beers, ales and allied products sold by the Liquor Control Board of Ontario to standard hotels holding authorities for the sale of beer or beer and wine; (*f*) What was the quantity and value of imported or foreign wine sold by the Liquor Control Board of Ontario to standard hotels holding authorities for the sale of beer and wine.

1. With respect to each of the following classes of authority holder under the Liquor Control Board of Ontario, viz.: Social Clubs; Soldier and Labour Clubs; Military Messes; Railways; Steamships, and for each of the fiscal years ending October 31st, 1934, March 31st, 1935 (5 months), March 31st, 1936, March 31st, 1937; March 31st, 1938, March 31st, 1939, March 31st, 1940, and for the ten months' period April 1st, 1940, to January 31st, 1941: (*a*) What was the gallonage of beer, ale and allied products sold by breweries and brewery warehouses for resale; (*b*) What was the wholesale price of the beer, ale and allied products mentioned in (*a*) to the authority holders; (*c*) What was the gallonage of native wine sold for resale; (*d*) What was the wholesale cost to the authority holders of the wine referred to in (*c*); (*e*) What was the quantity and value of beers, ales and allied products sold by the Liquor Control Board of Ontario to the authority holders; (*f*) What was the quantity and value of imported or foreign wine sold by the Liquor Control Board of Ontario to the authority holders.

The Honourable the Prime Minister replied as follows:—

	For 12 months ending Oct. 31, 1934	For 5 months ending Mar. 31, 1935	For 12 months ending Mar. 31, 1936	For 12 months ending Mar. 31, 1937
Question 111 (*a*) and (*e*)—Gallons	*	*	12,777,568	14,239,605
Question 114 (*a*) and (*e*)—Gallons	*	*	*	*
Question 111 (*b*) and (*e*)—Value	*	*	*	*
Question 114 (*b*) and (*e*)—Value	*	*	*	*
Question 111 (*c*) and (*f*)—Gallons	*	*	*	*
Question 114 (*c*) and (*f*)—Gallons	*	*	*	*
Question 111 (*d*) and (*f*)—Value	*	*	$116,625.27	$132,823.44
Question 114 (*d*) and (*f*)—Value	*	*	*	*

	For 12 months ending Mar. 31, 1938	For 12 months ending Mar. 31, 1939	For 12 months ending Mar. 31, 1940	For 10 months ending Jan. 31, 1941
Question 111 (*a*) and (*e*)—Gallons	16,046,557	15,499,835	17,136,802	16,243,983
Question 114 (*a*) and (*e*)—Gallons	*	1,107,837	1,249,995	1,869,695
Question 111 (*b*) and (*e*)—Value	*	$13,797,656.55	$15,223,592.45	$15,757,368.65
Question 114 (*b*) and (*e*)—Value	*	$1,222,709.30	$1,388,864.35	$2,114,087.05
Question 111 (*c*) and (*f*)—Gallons	*	*	*	*
Question 114 (*c*) and (*f*)—Gallons	*	*	*	*
Question 111 (*d*) and (*f*)—Value..	$122,687.48	$105,099.20	$111,954.31	$119,778.69
Question 114 (*d*) and (*f*)—Value	*	$31,899.79	$32,100.97	$33,281.07

* This information is not available for these years.

NOTE:—The records of the Liquor Control Board of Ontario, while kept in a sufficiently comprehensive manner to ensure the collection of all revenue have not been maintained in such detail as will permit the submission of the information asked for under the numerous classifications.

The available statistics are submitted above and represent:—

Question No. 111 (*a*) and (*e*)—The total gallonage of beer sold to hotel authority holders during the ten months' period ending January 31st, 1941, and for the preceding five fiscal years.

Question No. 114 (*a*) and (*e*)—The total gallonage of beer sold to all other authority holders during the ten months ending January 31st, 1941, and during the two preceding fiscal years.

Question No. 111 (*b*) and (*e*)—The value of beer sold to hotel authority holders during the ten months ending January 31st, 1941, and during the two preceding fiscal years.

Question No. 114 (*b*) and (*e*)—The value of beer sold to all other authority holders during the same fiscal periods.

Question No. 111 (*d*) and (*f*)—The value of all wine sold to hotel authority holders during the ten months ending January 31st, 1941, and during the five preceding fiscal years.

Question No. 114 (*d*) and (*f*)—The value of all wine sold to all other authority holders during the ten months ending January 31st, 1941, and during the two preceding fiscal years.

Mr. Macaulay asked the following Question (No. 137):—

1. What contracts have been let and by what Department, Commission or other agency of the Government for the construction of the Rainbow Bridge at Niagara Falls and all approaches and other works incidental thereto, specifying: (*a*) Name of contractor; (*b*) Nature of work to be performed and materials to be supplied in each case; (*c*) Contract price in each case; (*d*) Date of each contract; (*e*) Date set for completion of each contract. 2. Were all contracts let by public tender. 3. Give names and amounts of unsuccessful tenders. 4. Was the lowest tender accepted in each instance and if not give particulars. 5. What is the estimated date for completion and opening of the structure. 6. What is the total estimated cost of Ontario's share of the completed structure including approaches and all other related works.

The Honourable the Minister of Highways replied as follows:—

1. CONTRACTS LET BY THE DEPARTMENT OF HIGHWAYS

Contract 40-99

(*a*) J. N. Pitts; (*b*) Concrete work, earth and rock excavation, etc., up to the road level of the Canadian Approach Plaza. The contractor supplies all necessary materials except cement and reinforcing steel which are supplied by the Department; (*c*) $118,330.00; (*d*) 7th August, 1940; (*e*) 15th July, 1941.

Contract 40-105

(*a*) Brennan Paving Co., Ltd.; (*b*) Stone work, shelf angles, backing block, etc., up to the parapet level of the Canadian Approach Plaza. The contractor supplies stone and all other necessary materials except cement and wedge shaped slots for stone anchors which are supplied by the Department; (*c*) $85,280.00; (*d*) 11th November, 1940; (*e*) 12th May, 1941.

Contract 40-119

(*a*) Brennan Paving Co., Ltd.; (*b*) General construction (except work to be done by mechanical trades) of the Customs and Immigration Building, Canopies

and Shelters on the Canadian Approach Plaza. The contractor supplies all materials for the general construction of those buildings except materials to be supplied under mechanical trade contracts and cement and reinforcing steel which are supplied by the Department; (*c*) $280,452.00; (*d*) 3rd February, 1941; (*e*) 15th August, 1941.

Contract 40-120

(*a*) George C. Abbott, Ltd.; (*b*) Plumbing, heating and ventilation for the buildings on the Canadian Approach Plaza. The contractor supplies all labour, materials, equipment and fixtures necessary for the installation of complete plumbing, heating and ventilating systems; (*c*) $81,500.00; (*d*) 3rd February, 1941; (*e*) 15th August, 1941.

Contract 40-121

(*a*) Canadian Comstock Co., Ltd.; (*b*) Electrical work for the buildings on the Canadian Approach Plaza. The contractor supplies all labour, material and equipment for the electrical work including telephone conduit; (*c*) $30,870.00; (*d*) 3rd February, 1941; (*e*) 15th August, 1941.

Contract 40-122

(*a*) The Grover Company; (*b*) Installation of a pneumatic tube system in the buildings on the Canadian Approach Plaza. The contractor supplies all labour, material and equipment necessary for the installation of a complete pneumatic tube system to and from the Customs Cabins and Card Return Cabins; (*c*) $7,165.00; (*d*) 3rd February, 1941; (*e*) 15th August, 1941.

2. Yes.

3. Contract 40-99—

Carter-Halls-Aldinger Co., Ltd.	$119,338.50
Rayner Construction, Ltd.	157,759.50
Frid Construction Co., Ltd.	123,554.67
Dominion Construction Corporation, Ltd.	149,382.50

Contract 40-105—

J. N. Pitts	$111,322.00
The Ritchie Cut-Stone Co., Ltd.	117,000.00
Sharp Bros. Cut-Stone Co., Ltd.	134,315.00

Contract 40-119—

J. N. Pitts Construction Co., Ltd.	$285,000.00
Frid Construction Co., Ltd.	297,000.00
Anglin-Norcross	320,960.00
Goldie Construction Co., Ltd.	315,620.00
Frid Construction Co.	308,744.00

Contract 40-120—

B. J. Miller	$85,736.00

Contract 40-121—

Ontario Electric Const.	$37,163.00
E. L. R. Roxborough Electric	37,287.00
Canada Electric Co.	39,073.00

Contract 40-122—

The Lamson Company	$8,291.00

4. Yes. 5. Estimated date for completion of work—31st October, 1941; Estimated date for opening—15th November, 1941. 6. $800,000.00.

Mr. Duckworth asked the following Question (No. 149):—

1. How many Old Age Pensions have been discontinued during the period January 1st, 1937, up to the present time. 2. How many Old Age Pensions have been reduced, in regard to amount payable, during the same above period.

The Honourable the Minister of Welfare replied as follows:—

1. 31,028 cancellations. By reason of death—26,094; by transfer to other provinces—796; due to failure to disclose assets or other misrepresentation at time of application, increased earning power of unmarried children, altered economic status—4,138. 2. 3,266 reductions due to failure to disclose assets or other misrepresentation at time of application, increased earning power of unmarried children, altered economic status.

Mr. Doucett asked the following Question (No. 159):—

1. What did the Department of Public Highways pay per barrel for cement used on highways for years 1937, 1938, 1939 and 1940. 2. What quantity of cement was used during each year 1937, 1938, 1939 and 1940. 3. What firms supplied cement to the Department of Public Highways for 1937, 1938, 1939 and 1940. 4. What firms supplied metal culverts to the Department of Public Highways for 1937, 1938, 1939 and 1940, and what was the price.

The Honourable the Minister of Highways replied as follows:—

1. Standard Brand Cement—
   Same prices prevailed for 1937, 1938, 1939 and 1940.
   Southern Ontario—$2.07 per barrel. Less discount 10 cents per barrel 20 days. F.O.B. destination.
   Northern Ontario—$2.07 per barrel. Less discount 10 cents per barrel 20 days. Price for Northern Ontario includes freight cost up to 14 cents per 100 lbs. Freight cost in excess of 14 cents added to Net Price.

XXX Brand Cement—

1937	$2.60	per	barrel,	plus	freight	to	destination
1938	2.60	"	"	"	"	"	"
1939	2.35	"	"	"	"	"	"
1940 (to July 1st)	2.35	"	"	"	"	"	"
1940 (from July 1st)	2.00	"	"	"	"	"	"

2. 1937—1,291,154 Barrels.
1938— 481,547 "
1939— 318,859 "
1940— 583,129 "

3. 1937—Canada Cement Co., Ltd., and Alfred Rogers, Ltd.
1938—Canada Cement Co., Ltd., and Alfred Rogers, Ltd.
1939—Canada Cement Co., Ltd., and Alfred Rogers, Ltd.
1940—Canada Cement Co., Ltd., and Alfred Rogers, Ltd.
In addition a number of small purchases were made from dealers throughout the Province.

4. Canada Ingot Iron Co., Ltd., Pedlar People, Ltd., Metallic Roofing Co., Ltd., Canada Culvert Co., Ltd., Roofers Supply Co., Ltd., Corrugated Pipe Co., Ltd., E. S. Hubbell & Sons.

All the above firms supplied pipe during the years 1937, 1938, 1939 and 1940 at the same prices.

PRICES—1937

CORRUGATED GALVANIZED CULVERTS—COPPER BEARING STEEL PIPE

Diam.	Gauge	Standard Round C. L.	Standard Round L. C. L.	Paved Invert C. L.	Paved Invert L. C. L.
8"	18	$ .72	$ .78	$ .81	$ .87
	16	.88	.95	.97	1.04
	14	1.09	1.16	1.19	1.26
10"	18	.82	.86	.92	.96
	16	.95	.99	1.06	1.10
	14	1.19	1.23	1.31	1.35
12"	16	1.07	1.10	1.19	1.22
	14	1.29	1.33	1.43	1.47
	12	1.65	1.76	1.79	1.90
15"	16	1.31	1.37	1.46	1.52
	14	1.50	1.55	1.67	1.72
	12	2.23	2.37	2.41	2.55
18"	16	1.50	1.55	1.68	1.73
	14	1.80	1.86	2.01	2.07
	12	2.63	2.80	2.85	3.02
	10	3.21	3.43	3.43	3.65
21"	16	1.80	1.86	2.02	2.08
	14	2.12	2.19	2.38	2.45
	12	3.06	3.28	3.32	3.54
	10	3.68	3.92	3.94	4.18

PRICES—1937—Continued

CORRUGATED GALVANIZED CULVERTS—COPPER BEARING STEEL PIPE

Diam.	Gauge	Standard Round C. L.	Standard Round L. C. L.	Paved Invert C. L.	Paved Invert L. C. L.
24″	16	$ 2.09	$ 2.16	$ 2.37	$ 2.44
	14	2.48	2.56	2.77	2.85
	12	3.30	3.43	3.59	3.72
	10	4.34	4.63	4.65	4.94
30″	16	2.52	2.61	2.89	2.98
	14	3.11	3.22	3.48	3.59
	12	4.28	4.45	4.65	4.82
	10	5.61	5.98	6.03	6.40
36″	16	2.88	2.99	3.32	3.43
	14	3.57	3.70	4.01	4.14
	12	4.97	5.15	5.41	5.59
	10	6.34	6.78	6.79	7.23
42″	16	3.55	3.70	4.07	4.22
	14	4.40	4.57	4.92	5.09
	12	5.85	6.07	6.37	6.59
	10	7.18	7.46	7.70	7.98
48″	14	5.04	5.23	5.68	5.87
	12	6.70	6.94	7.34	7.58
	10	7.94	8.24	8.58	8.88
	8	8.94	9.58	9.68	10.32
54″	12	8.12	8.68	8.81	9.37
	10	9.09	9.48	9.78	10.17
	8	10.00	10.69	10.89	11.58
60″	12	9.09	9.47	9.90	10.28
	10	10.26	10.71	11.07	11.52
	8	11.07	11.88	12.10	12.91
72″	12	10.73	11.18	11.74	12.19
	10	12.09	12.65	13.10	13.64
	8	13.16	14.17	14.39	15.40
84″	12	12.45	12.97	13.66	14.18
	10	14.03	14.64	15.24	15.85
	8	15.36	16.57	16.76	17.97
96″	12	14.04	14.56	15.55	16.07
	10	16.23	16.76	17.74	18.27
	8	17.99	19.04	19.50	20.55

Prices F.O.B. any Railway Station in Ontario.

Coupling bands free with lengths of 8 feet or more.

Coupling bands on less than 8 feet, charged as the price of 1 foot of pipe.

C. L. means—Car Load Lots. L. C. L. means—Less than Car Load Lots. Prices given per foot.

PRICES—1938

CORRUGATED GALVANIZED CULVERTS—COPPER BEARING STEEL PIPE

Diam.	Gauge	Standard Round C. L.	Standard Round L. C. L.	Paved Invert C. L.	Paved Invert L. C. L.	Asbestos Bonded C. L.	Asbestos Bonded L. C. L.
8″	18	$ .74	$ .76	$ .90	$ .92	$ .98	$ 1.00
	16	.81	.83	.98	1.00	1.08	1.10
	14	.93	.96	1.11	1.14	1.23	1.26
10″	18	.84	.86	1.04	1.06	1.16	1.18
	16	.92	.95	1.13	1.16	1.27	1.30
	14	1.00	1.03	1.22	1.25	1.38	1.41
12″	16	.97	1.00	1.21	1.24	1.33	1.36
	14	1.13	1.17	1.38	1.42	1.52	1.56
	12	1.61	1.66	1.87	1.92	2.03	2.08
15″	16	1.24	1.28	1.54	1.58	1.68	1.72
	14	1.41	1.46	1.73	1.78	1.89	1.94
	12	1.98	2.04	2.31	2.37	2.49	2.55
18″	16	1.42	1.47	1.78	1.83	1.95	2.00
	14	1.70	1.76	2.10	2.16	2.27	2.33
	12	2.36	2.44	2.76	2.84	2.95	3.03
	10	3.01	3.11	3.43	3.53	3.64	3.74
21″	16	1.65	1.70	2.07	2.12	2.30	2.35
	14	1.98	2.05	2.41	2.48	2.66	2.73
	12	2.76	2.85	3.20	3.29	3.47	3.56
	10	3.52	3.64	3.97	4.09	4.27	4.39
24″	16	1.94	2.00	2.42	2.48	2.64	2.70
	14	2.32	2.40	2.87	2.95	3.12	3.20
	12	3.15	3.26	3.70	3.81	4.00	4.11
	10	4.02	4.16	4.57	4.71	4.89	5.03
30″	16	2.35	2.43	.....	.....	.....	.....
	14	2.91	3.00	3.51	3.60	3.83	3.92
	12	3.87	4.00	4.51	4.64	4.87	5.00
	10	5.03	5.20	5.71	5.88	6.11	6.28
36″	16	2.83	2.92	.....	.....	.....	.....
	14	3.49	3.60	4.15	4.26	4.53	4.64
	12	4.74	4.90	5.44	5.60	5.84	6.00
	10	6.25	6.45	7.00	7.20	7.45	7.65
42″	16	3.29	3.40	.....	.....	.....	.....
	14	4.37	4.50	5.07	5.20	5.52	5.65
	12	6.22	6.40	6.94	7.12	7.44	7.62
	10	7.46	7.70	8.20	8.44	8.76	9.00
48″	14	4.91	5.06	5.66	5.81	6.17	6.32
	12	6.89	7.10	7.66	7.87	8.26	8.47
	10	8.51	8.78	9.30	9.57	9.91	10.18
	8	10.77	11.10	.....	.....	.....	.....
54″	14	5.63	5.80	.....	.....	.....	.....
	12	7.79	8.03	8.74	8.98	9.45	9.69
	10	9.70	10.00	10.65	10.95	11.42	11.72
	8	12.30	12.67	.....	.....	.....	.....

PRICES—1938—Continued

CORRUGATED GALVANIZED CULVERTS—COPPER BEARING STEEL PIPE

Diam.	Gauge	Standard Round C. L.	Standard Round L. C. L.	Paved Invert C. L.	Paved Invert L. C. L.	Asbestos Bonded C. L.	Asbestos Bonded L. C. L.
60″	12	8.70	$ 8.96	$ 9.82	$ 10.08	$ 10.58	$ 10.84
	10	10.87	11.20	11.99	12.32	12.83	13.16
	8	13.10	13.50	14.22	14.62	15.25	15.65
72″	12	10.48	10.80	11.78	12.10	12.68	13.00
	10	12.80	13.20	14.10	14.50	15.10	15.50
	8	15.81	16.30	17.11	17.60	18.21	18.70
84″	12	12.23	12.60	13.73	14.10	14.73	15.10
	10	15.18	15.65	16.68	17.15	17.80	18.27
	8	18.43	19.00	19.93	20.50	21.18	21.75
96″	12	13.98	14.40	15.68	16.10	16.78	17.20
	10	17.36	17.90	19.06	19.60	20.28	20.82
	8	20.99	21.65	22.69	23.35	24.04	24.70

Prices F.O.B. any Railway Station in Ontario.

Coupling bands free with lengths of 8 feet or more.

Coupling bands on less than 8 feet, charged at the price of 1 foot of pipe.

C. L. means—Car Load Lots. L. C. L. means—Less than Car Load Lots. Prices given per foot.

HEL-COR PIPE

6″ Diameter 18 Gauge, perforated and coated with asphalt.....$ .40 L. Ft.
45 Degree Elbows..... 4.00 Each
90 Degree Elbows..... 7.00 Each

Laterals and Tees—Same price as 45 Degree Elbows.

Y's—Same price as 90 Degree Elbows.

Couplers extra in all cases at 40c. each.

Freight prepaid. On shipment of 3,000 feet or more to one destination—5% discount. Terms—Net 30 days.

PRICES—1939

CORRUGATED GALVANIZED CULVERTS—COPPER BEARING STEEL PIPE

Diam.	Gauge	Standard Round C. L.	Standard Round L. C. L.	Paved Invert C. L.	Paved Invert L. C. L.	Asbestos Bonded C. L.	Asbestos Bonded L. C. L.
8″	18	$ .72	$ .74	$ .88	$ .90	$ .96	$ .98
	16	.79	.81	.96	.98	1.06	1.08
	14	.90	.93	1.08	1.11	1.20	1.23
10″	18	.81	.83	1.01	1.03	1.13	1.15
	16	.89	.92	1.10	1.13	1.24	1.27
	14	.97	1.00	1.19	1.22	1.35	1.38

PRICES—1939—Continued

CORRUGATED GALVANIZED CULVERTS—COPPER BEARING STEEL PIPE

Diam.	Gauge	Standard Round C. L.	Standard Round L. C. L.	Paved Invert C. L.	Paved Invert L. C. L.	Asbestos Bonded C. L.	Asbestos Bonded L. C. L.
12″	16	$ .94	.97	$ 1.18	$ 1.21	$ 1.30	$ 1.33
	14	1.09	1.13	1.34	1.38	1.48	1.52
	12	1.56	1.61	1.82	1.87	1.98	2.03
15″	16	1.20	1.24	1.50	1.54	1.64	1.68
	14	1.37	1.42	1.69	1.74	1.85	1.90
	12	1.92	1.98	2.25	2.31	2.43	2.49
18″	16	1.38	1.43	1.74	1.79	1.91	1.96
	14	1.65	1.71	2.05	2.11	2.22	2.28
	12	2.29	2.37	2.69	2.77	2.88	2.96
	10	2.92	3.02	3.34	3.44	3.55	3.65
21″	16	1.60	1.65	2.02	2.07	2.25	2.30
	14	1.92	1.99	2.35	2.42	2.60	2.67
	12	2.67	2.76	3.11	3.20	3.38	3.47
	10	3.41	3.53	3.86	3.98	4.16	4.28
24″	16	1.88	1.94	2.38	2.44	2.60	2.66
	14	2.25	2.33	2.80	2.88	3.05	3.13
	12	3.05	3.16	3.60	3.71	3.90	4.01
	10	3.90	4.04	4.45	4.59	4.77	4.91
30″	16	2.28	2.36	2.88	2.96	3.18	3.26
	14	2.82	2.91	3.42	3.51	3.74	3.83
	12	3.75	3.88	4.39	4.52	4.75	4.88
	10	4.87	5.04	5.55	5.72	5.95	6.12
36″	16	2.74	2.83	3.40	3.49	3.76	3.85
	14	3.38	3.49	4.04	4.15	4.42	4.53
	12	4.59	4.75	5.29	5.45	5.69	5.85
	10	6.06	6.26	6.81	7.01	7.26	7.46
42″	16	3.19	3.30	3.89	4.00	4.31	4.42
	14	4.24	4.37	4.94	5.07	5.39	5.52
	12	6.03	6.21	6.75	6.93	7.25	7.43
	10	7.23	7.47	7.97	8.21	8.53	8.77
48″	14	4.76	4.91	5.50	5.66	6.01	6.17
	12	6.68	6.89	7.45	7.66	8.01	8.22
	10	8.25	8.52	9.04	9.31	9.65	9.92
	8	10.44	10.77	11.24	11.57	11.85	12.18
54″	14	5.46	5.63	6.41	6.58	7.09	7.26
	12	7.55	7.79	8.50	8.74	9.21	9.45
	10	9.40	9.70	10.35	10.65	11.12	11.42
	8	11.92	12.29	12.87	13.24	13.70	14.07
60″	12	8.43	8.69	9.56	9.81	10.32	10.57
	10	10.53	10.86	11.65	11.98	12.49	12.82
	8	12.70	13.10	13.82	14.22	14.74	15.14
72″	12	10.16	10.48	11.46	11.78	12.36	12.68
	10	12.40	12.80	13.78	14.18	14.78	15.18
	8	15.32	15.81	16.62	17.11	17.72	18.21

PRICES—1939

CORRUGATED GALVANIZED CULVERTS—COPPER BEARING STEEL PIPE

Diam.	Gauge	Standard Round C. L.	Standard Round L. C. L.	Paved Invert C. L.	Paved Invert L. C. L.	Asbestos Bonded C. L.	Asbestos Bonded L. C. L.
84″	12	$ 11.85	$ 12.22	$ 13.35	$ 13.72	$ 14.35	$ 14.72
	10	14.71	15.18	16.21	16.68	17.33	17.80
	8	17.86	18.43	19.36	19.93	20.61	21.18
96″	12	13.55	13.97	15.22	15.67	16.22	16.77
	10	16.82	17.36	18.52	19.06	19.74	20.28
	8	20.34	21.00	22.04	22.70	23.39	24.05

Prices F.O.B. any Railway Station in Ontario.
Coupling bands free with lengths of 8 feet or more.
Coupling bands on less than 8 feet, charged at the price of 1 foot of pipe.

C. L. means—Car Load Lots. L. C. L. means—Less than Car Load Lots.
Prices given per foot.

HEL-COR PIPE

6″ Diameter 18 Gauge, perforated and asphalt coated ..... $ .36 L. Ft.
6″ Diameter 18 Gauge, perforated and asphalt coated, Revised ..... .34 L. Ft.
45 Degree Elbows ..... 4.00 Each
90 Degree Elbows ..... 7.00 Each

Laterals and Tees—Same price as 45 Degree Elbows.
Y's—Same price as 90 Degree Elbows.
Couplers extra at price of each of one foot of pipe.
Freight included South of Earlton and East of Sault Ste. Marie.

PRICES—1940

CORRUGATED GALVANIZED CULVERTS—COPPER BEARING STEEL PIPE

Diam.	Gauge	Standard Round C. L.	Standard Round L. C. L.	Paved Invert C. L.	Paved Invert L. C. L.	Asbestos Bonded C. L.	Asbestos Bonded L. C. L.
8″	18	$ .74	$ .76	$ .90	$ .92	$ .98	$ 1.00
	16	.81	.83	.98	1.00	1.08	1.10
	14	.93	.96	1.11	1.14	1.23	1.26
10″	18	.83	.85	1.03	1.05	1.15	1.17
	16	.92	.95	1.13	1.16	1.27	1.30
	14	1.00	1.03	1.22	1.25	1.38	1.41
12″	16	.97	1.00	1.21	1.24	1.33	1.36
	14	1.12	1.16	1.37	1.41	1.51	1.55
	12	1.61	1.66	1.87	1.92	2.03	2.08
15″	16	1.24	1.28	1.54	1.58	1.68	1.72
	14	1.41	1.46	1.73	1.78	1.89	1.94
	12	1.98	2.04	2.31	2.37	2.49	2.55
18″	16	1.42	1.47	1.78	1.83	1.95	2.00
	14	1.70	1.76	2.10	2.16	2.27	2.33
	12	2.36	2.44	2.76	2.84	2.95	3.03
	10	3.01	3.11	3.43	3.53	3.64	3.74

PRICES—1940—Continued

CORRUGATED GALVANIZED CULVERTS—COPPER BEARING STEEL PIPE

Diam.	Gauge	Standard Round C. L.	Standard Round L. C. L.	Paved Invert C. L.	Paved Invert L. C. L.	Asbestos Bonded C. L.	Asbestos Bonded L. C. L.
21″	16	$ 1.65	$ 1.70	$ 2.07	$ 2.12	$ 2.30	$ 2.35
	14	1.98	2.05	2.41	2.48	2.66	2.73
	12	2.75	2.84	3.19	3.28	3.46	3.55
	10	3.52	3.64	3.97	4.09	4.27	4.39
24″	16	1.94	2.00	2.44	2.50	2.66	2.72
	14	2.32	2.40	2.87	2.95	3.12	3.20
	12	3.14	3.25	3.69	3.80	3.99	4.10
	10	4.02	4.16	4.57	4.71	4.89	5.03
30″	16	2.35	2.43	2.95	3.03	3.25	3.33
	14	2.91	3.00	3.51	3.60	3.83	3.92
	12	3.87	4.00	4.51	4.64	4.87	5.00
	10	5.02	5.19	5.70	5.87	6.10	6.27
36″	16	2.82	2.91	3.48	3.57	3.84	3.93
	14	3.48	3.59	4.14	4.25	4.52	4.63
	12	4.73	4.89	5.43	5.59	5.83	5.99
	10	6.25	6.45	7.00	7.20	7.45	7.65
42″	16	3.29	3.40	3.99	4.10	4.41	4.52
	14	4.37	4.50	5.07	5.20	5.52	5.65
	12	6.22	6.40	6.94	7.12	7.44	7.62
	10	7.45	7.69	8.19	8.43	8.75	8.99
48″	14	4.91	5.06	5.65	5.81	6.16	6.32
	12	6.89	7.10	7.66	7.87	8.22	8.43
	10	8.51	8.78	9.30	9.57	9.91	10.18
	8	10.76	11.09	11.56	11.89	12.17	12.50
54″	14	5.63	5.80	6.58	6.75	7.26	7.43
	12	7.78	8.02	8.73	8.97	9.44	9.68
	10	9.69	9.99	10.64	10.94	11.41	11.71
	8	12.29	12.66	13.24	13.61	14.07	14.44
60″	12	8.69	8.95	9.82	10.07	10.58	10.83
	10	10.86	11.19	11.98	12.31	12.82	13.15
	8	13.09	13.49	14.01	14.61	15.13	15.53
72″	12	10.47	10.79	11.77	12.09	12.67	12.99
	10	12.78	13.18	14.16	14.56	15.16	15.56
	8	15.79	16.28	17.09	17.58	18.19	18.68
84″	12	12.22	12.59	13.72	14.09	14.72	15.09
	10	15.17	15.64	16.67	17.14	17.79	18.26
	8	18.41	18.98	19.91	20.48	21.16	21.73
96″	12	13.97	14.39	15.64	16.09	16.64	17.19
	10	17.34	17.88	19.04	19.58	20.26	20.80
	8	20.97	21.63	22.67	23.33	24.02	24.68

Prices F.O.B. any Railway Station in Ontario.
Coupling bands free with lengths of 8 feet or more.
Coupling bands on less than 8 feet, charged at the price of 1 foot of pipe.

C. L. means—Car Load Lots. L. C. L. means—Less than Car Load Lots.
Prices given per foot.

HEL-COR PIPE

6″ Diameter 18 Gauge, perforated and asphalt coated	$ .39 L. Ft. Delivered in S. Ontario
6″ Diameter 16 Gauge, perforated and asphalt coated	.53 L. Ft. Delivered in S. Ontario
6″ Diameter 18 Gauge, perforated and asphalt coated	.41 L. Ft. Delivered in N. Ontario
6″ Diameter 16 Gauge, perforated and asphalt coated	.56 L. Ft. Delivered in N. Ontario
8″ Diameter 18 Gauge, perforated and asphalt coated	.53 L. Ft. Delivered in S. Ontario
8″ Diameter 16 Gauge, perforated and asphalt coated	.66 L. Ft. Delivered in S. Ontario
8″ Diameter 18 Gauge, perforated and asphalt coated	.56 L. Ft. Delivered in N. Ontario
8″ Diameter 16 Gauge, perforated and asphalt coated	.71 L. Ft. Delivered in N. Ontario

Couplers included in above prices.
Non-perforated pipe deduct .01 per L. Ft.

NOTE:—8″ Pipe only—On quantities less than 300 feet prices apply for 20-foot lengths only. Where other lengths specified prices are as standard culvert schedule with the option of supplying standard round culverts coated.

Mr. Downer asked the following Question (No. 169):—

1. What was the cost of the construction of the following highways: No. 24—Shelburne to Collingwood—1940, Duntroon to Stayner—1940; No. 89—Shelburne to Cookstown—1940. 2. What was the cost of maintenance of the above highways in 1940. 3. Give names of maintenance employees and amount received by each in 1940.

The Honourable the Minister of Highways replied as follows:—

1. Nil.

2. No. 24—Shelburne to Collingwood $27,362.25
No. 91—Duntroon to Stayner 2,710.45
No. 89—Shelburne to Cookstown 17,250.12

3.

T. E. Mason	$861.00	M. Magill	$ 38.15
W. Lovegrove	187.25	B. Lennox	14.70
J. Nichol	4.20	R. W. Smalley	8.40
D. Nicholl	2.45	S. Dennison	193.55
H. Fleming	2.45	T. Herron	1.05
E. Gosley	1.40	B. Keast	6.30
F. Anderson	4.90	F. Eldon	4.90
G. Mason	5.60	N. McNight	2.80

A. Michaels	$ 4.90
E. Irvin	107.80
H. Jebb	25.20
W. Smalley	8.40
A. Mason	103.80
D. Applegate	3.50
G. Drennan	3.50
H. Crooke	9.45
W. Vernon	7.70
S. Johnston	5.60
D. Tracey	9.80
V. Langley	5.60
John Quail	721.00
W. Broughton	273.35
M. Walsh	64.45
H. Fleming	1.05
C. Milne	15.40
H. Halliday	3.85
R. J. Little	7.35
W. Allan	35.35
G. Orvis	251.13
G. Gilpin	199.32
H. Bailey	80.45
P. Saigeon	46.93
G. Fewster	69.99
A. Huskinson	100.67
R. Moffat	27.55
G. Orvis	458.04
G. Fewster	413.26
A. Dayton	23.80
R. McGhee	1.40
V. Orvis	22.05
H. Webster	48.30
J. Dinsmore	47.60
T. Jenners	1.05
J. Walwark	81.20
R. Moffatt	39.62
W. Fossett	24.85
H. Proctor	53.64
V. Hebden	45.15
W. Hunter	52.69
E. Cave	21.15
M. Proctor	6.30
I. Davie	41.65
P. Saigeon	15.95
B. Brophy	533.32
M. Coutts	229.95
A. Taylor	35.70
A. McDermid	306.60
W. Perry	38.50
M. Fox	36.00
W. Coutts	52.30
F. Nichol	$ 1.75
J. Taylor	2.80
C. Nixon	8.40
J. King	4.20
T. Handie	2.45
W. Upton	2.80
J. Vernon	7.70
C. Button	7.70
W. Ayerst	12.25
D. Draper	54.10
H. Weston	14.00
E. Fleming	2.80
J. Heslip	192.22
F. O'Hearne	298.55
D. Quail	33.60
T. Amess	176.92
H. Cooke	23.80
E. J. Nichol	16.80
H. Halliday	436.48
H. Crooke	291.67
R. Cowan	509.57
W. McNabb	279.47
E. Petterson	57.76
C. Pardoe	87.85
G. Pendleton	39.70
R. Madill	18.33
E. Oldfield	269.30
W. Stewart	249.00
C. McGhee	60.37
H. Dayton	2.80
M. Hardwick	96.60
W. Harrison	25.20
C. Webster	62.95
E. Huxley	96.95
J. Spencely	21.70
R. Vause	24.45
L. Jenners	51.10
G. Cleary	63.85
D. Webster	53.90
E. Facknie	60.20
R. Hurd	21.35
J. Brown	79.45
M. McQuarrie	1.57
W. Reddick	60.20
E. Page	29.40
A. Stewart	35.00
C. McDonald	211.80
F. Raymond	180.95
G. Stoll	120.40
C. Forgie	25.90
G. Stangroom	140.00
D. Taylor	16.80

W. Jordan	$124.95	C. McBride	$ 58.80
D. Buie	25.90	D. Campbell	60.55
J. Long	78.40	S. Gibson	57.40
A. Coe	65.10	M. Sawden	19.60
J. McQuillan	38.85	O. Coombs	82.25
J. McBride	160.30	C. Goldsmith	28.00
C. Holden	44.80	G. Raney	30.80
F. Currie	29.40	J. McMillan	1.75
M. McClean	26.40	C. Webb	28.00
E. Bush	40.60	J. McGregor	25.20
V. Lamont	92.40	W. Dey	30.80
J. McCarl	44.75	H. Scutt	26.60
A. McBride	44.80	F. Edwards	17.15
R. Edwards	20.30	C. Hackett	5.60
J. Briggs	34.30	C. Ferguson	11.40
R. Miller	12.25	D. Miller	1.75
D. Hall	14.35	G. Elyea	42.00
A. McDonald	2.80	J. Bell	2.80
F. Hewston, Sr.	9.45	F. Hewston, Jr.	1.40
N. McDermid	12.25	H. Lloyd	10.85
R. McBride	42.00	F. Webb	30.45
D. McDermid	1.40	W. Baker	1.40
A. Allan	31.85	R. Hawman	18.20
F. Vancise	2.80	R. Kenwell	19.60
E. Granger	29.40	D. Cottrill	15.40
I. Kenwell	2.80	N. McCarl	25.15
C. Newton	4.20	A. Walker	4.20
N. Thompson	11.90	F. Jelly	9.45
J. McDonald	3.50	J. Ferguson	28.70
W. McClean	19.60	A. Roney	2.80
B. Gibson	15.75	F. Young	2.80
N. Campbell	17.50	F. Sampson	2.80
R. Sampson	2.80	D. Campbell	8.40
D. Sampson	2.80	W. Campbell	2.80

Mr. Kennedy asked the following Question (No. 156):—

1. Is the Ontario Research Foundation continuing its experiments and research work relating to the control of contagious abortion (Bang's disease), by work with the remaining herds of cattle at the Ontario Hospitals; if not, when were the experiments discontinued. 2. Over what period did the experiments extend and what amount was paid the Ontario Research Foundation in this connection. 3. At what Ontario Hospitals are dairy herds maintained. 4. Which of the herds at the Ontario Hospitals are T. B. tested. 5. Which of the herds at the Ontario Hospitals are blood tested regularly in relation to contagious abortion (Bang's disease).

The Honourable the Minister of Agriculture replied as follows:—

1. No; 1934. 2. 1931-34; $5,735.52. 3. Brockville, Kingston, Whitby,

Hamilton, Langstaff, Orillia, Penetang, Woodstock. 4. All Ontario Hospital herds are tested for T. B. 5. All herds except those at Kingston and Hamilton which are under Calfbrand Vaccination Programme.

In respect to Question (No. 147) regarding the purchases in certain years from Taylor Hardware Company by Ontario Government and the Temiskaming and Northern Ontario Railway,

The Hon. Mr. Hepburn (Elgin) requested that this Question be made an Order for a Return and on the motion of Mr. Dunbar, seconded by Mr. Doucett,

Ordered, That there be laid before this House a Return showing: 1. What purchases were made in the years 1936, 1937, 1938, 1939 and 1940 from the Taylor Hardware Company, either from its head office at New Liskeard, or from any of its branches elsewhere, by all Departments of the Ontario Government, including the Temiskaming and Northern Ontario Railway, giving the total amount of the purchases in each year from each branch of the company by each Department. 2. What was the general nature of the purchases.

In respect to Question (No. 161) regarding the lands required re construction of approaches of Rainbow Bridge at Niagara Falls,

The Hon. Mr. Hepburn (Elgin) requested that this Question be made an Order for a Return and on the motion of Mr. Macaulay, seconded by Mr. Kennedy,

Ordered, That there be laid before this House a Return showing: 1. What lands have been acquired to provide for construction of approaches or other works in connection with the Rainbow Bridge at Niagara Falls, indicating: (*a*) Description of each parcel acquired; (*b*) From whom each parcel was acquired; (*c*) Purchase price of each parcel acquired; (*d*) Whether acquired by mutual agreement or by expropriation; (*e*) Who acted for the Government or any Department, Commission or other agency of the Government in fixing valuations for lands acquired; (*f*) What buildings or other structures were located on each parcel and what disposition was made of such buildings or structures, to whom and under what terms.

On motion of Mr. Hepburn (Elgin), seconded by Mr. Nixon (Brant),

Ordered, That this House do forthwith resolve itself into a Committee to consider a certain proposed Resolution respecting the borrowing of money on the Consolidated Revenue Fund.

Mr. Hepburn (Elgin), acquainted the House that His Honour the Lieutenant-Governor, having been informed of the subject matter of the proposed Resolution, recommends it to the consideration of the House.

The House then resolved itself into the Committee.

(*In the Committee*)

Resolved,

1. That the Lieutenant-Governor in Council be authorized to raise from time to time by way of loan such sum or sums of money as may be deemed expedient for any or all of the following purposes, that is to say: For the public service, for works carried on by commissioners on behalf of Ontario, for the covering of any debt of Ontario on open account, for paying any floating indebtedness of Ontario, and for the carrying on of the public works authorized by the Legislature; Provided that the principal amount of any securities issued and the amount of any temporary loans raised under the authority of this Act, including any securities issued for the retirement of the said securities or temporary loans, at any time outstanding, shall not exceed in the whole Twenty Million Dollars ($20,000,000).

2. That the aforesaid sum of money may be borrowed for any term or terms not exceeding forty years, at such rate as may be fixed by the Lieutenant-Governor in Council and shall be raised upon the credit of the Consolidated Revenue Fund of Ontario, and shall be chargeable thereupon.

3. That the Lieutenant-Governor in Council may provide for a special sinking fund with respect to the issue herein authorized, and such sinking fund may be at a greater rate than the one-half of one per centum per annum specified in subsection 3 of section 3 of *The Provincial Loans Act.*

Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had come to a certain Resolution.

Ordered, That the Report be now received.

Resolved,

1. That the Lieutenant-Governor in Council be authorized to raise from time to time by way of loan such sum or sums of money as may be deemed expedient for any or all of the following purposes, that is to say: For the public service, for works carried on by commissioners on behalf of Ontario, for the covering of any debt of Ontario on open account, for paying any floating indebtedness of Ontario, and for the carrying on of the public works authorized by the Legislature; Provided that the principal amount of any securities issued and the amount of any temporary loans raised under the authority of this Act, including any securities issued for the retirement of the said securities or temporary loans, at any time outstanding, shall not exceed in the whole Twenty Million Dollars ($20,000,000).

2. That the aforesaid sum of money may be borrowed for any term or terms not exceeding forty years, at such rate as may be fixed by the Lieutenant-Governor in Council and shall be raised upon the credit of the Consolidated Revenue Fund of Ontario, and shall be chargeable thereupon.

3. That the Lieutenant-Governor in Council may provide for a special sinking fund with respect to the issue herein authorized, and such sinking fund

may be at a greater rate than the one-half of one per centum per annum specified in subsection 3 of section 3 of *The Provincial Loans Act.*

The Resolution having been read the second time was agreed to and referred to the House on Bill (No. 97).

The following Bill was read the second time:—

Bill (No. 97), An Act for Raising Money on the Credit of the Consolidated Revenue Fund.

Referred to a Committee of the Whole House to-day.

The House again resolved itself into a Committee to consider Bill (No. 90), The Statute Law Amendment Act, 1941, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill with certain amendments.

Ordered, That the Amendments be taken into consideration forthwith.

The Amendments, having been read the second time, were agreed to.

Ordered, That the Bill be read the third time to-day.

The House resolved itself into a Committee to consider Bill (No. 97), An Act for Raising Money on the Credit of the Consolidated Revenue Fund, and, after some time spent therein, Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had directed him to report the Bill without any amendment.

Ordered, That the Bill be read the third time to-day.

The following Bills were read the third time and were passed:—

Bill (No. 54), An Act respecting the subsidizing of Cheese and Hogs produced in Ontario.

Bill (No. 82), An Act to amend The Securities Act.

Bill (No. 91), An Act to amend The Department of Municipal Affairs Act.

Bill (No. 92), The Municipal Amendment Act, 1941.

Bill (No. 93), The Assessment Amendment Act, 1941.

Bill (No. 96), An Act respecting a certain Bond Mortgage made by the Abitibi Power and Paper Company Limited to the Montreal Trust Company.

Bill (No. 90), The Statute Law Amendment Act, 1941.

Bill (No. 97), An Act for Raising Money on the Credit of the Consolidated Revenue Fund.

Mr. Patterson, from the Committee of Supply, reported the following Resolution:—

Resolved, That Supply in the following amounts and to defray the expenses of the Government Departments named be granted to His Majesty for the year ending March 31st, 1942:—

DEPARTMENT OF AGRICULTURE:

Main Office	$ 353,407.50
Statistics and Publications Branch	12,225.00
Agricultural and Horticultural Societies Branch	125,720.00
Live Stock Branch	73,775.00
Institutes Branch	70,335.00
Dairy Branch	128,280.00
Milk Control Board	49,350.00
Fruit Branch	95,705.00
Agricultural Representatives Branch	330,300.00
Crops, Seeds and Weeds Branch	44,488.00
Co-operation and Markets Branch	31,375.00
Kemptville Agricultural School	96,560.00
Ontario Veterinary College	84,258.00
Western Ontario Experimental Farm	29,536.00
Demonstration Farm, New Liskeard	13,320.00
Demonstration Farm, Hearst	5,800.00
Northern Ontario Branch	24,375.00
Ontario Agricultural College, Guelph	807,308.00
Co-operation and Markets Branch	25,000.00

DEPARTMENT OF ATTORNEY-GENERAL:

Main Office	76,200.00
Supreme Court	85,175.00
Shorthand reporters	33,050.00
Toronto and York Crown Attorney's Office	27,500.00
Land Titles Office	25,300.00
Drainage Referees	2,550.00
Criminal Justice Accounts	986,200.00
Public Trustee's Office	67,750.00
Official Guardian's Office	34,950.00
Accountant's Office—Supreme Court of Ontario	21,970.00
Fire Marshal's Office	59,700.00
Inspector of Legal Offices	81,050.00
Law Enforcement Branch (Provincial Police)	1,365,200.00
Ontario Securities Commission	63,000.00

DEPARTMENT OF EDUCATION:

Main Office	77,600.00
Legislative Library	16,750.00
Public Records and Archives	5,200.00
Public and Separate School Education	5,721,400.00
Inspection of Schools	546,600.00
Departmental Examinations	222,100.00

DEPARTMENT OF EDUCATION—Continued

Text Books	$ 67,500.00
Training Schools	104,450.00
Toronto Normal and Model Schools	129,725.00
Ottawa Normal School	44,550.00
London Normal School	43,050.00
Hamilton Normal School	43,650.00
Peterborough Normal School	36,680.00
Stratford Normal School	34,400.00
North Bay Normal School	38,550.00
University of Ottawa Normal School	81,450.00
High Schools and Collegiate Institutes	890,500.00
Public Libraries	106,700.00
Vocational Education	1,858,450.00
Ontario Training College for Technical Teachers	27,500.00
Superannuated Teachers	8,800.00
Provincial and other Universities	1,836,000.00
Ontario School for the Deaf, Belleville	161,925.00
Ontario School for the Blind, Brantford	94,100.00

DEPARTMENT OF GAME AND FISHERIES:

Main Office	75,100.00
Districts	230,500.00
Game Animals and Birds	25,000.00
Macdiarmid	3,000.00
Biological and Fish Culture Branch	240,000.00
Grants	5,400.00
Wolf Bounty	40,000.00
Main Office—General	20,000.00

DEPARTMENT OF HEALTH:

Main Office	278,300.00
Maternal and Child Hygiene and Public Health Nursing Branch	28,450.00
Dental Service Branch	13,600.00
Inspection of Training Schools for Nurses Branch	17,450.00
Epidemiology Branch	208,400.00
Venereal Diseases Branch	157,650.00
Tuberculosis Prevention Branch	170,440.00
Industrial Hygiene Branch	70,900.00
Sanitary Engineering Branch	48,900.00
Laboratory Branch	153,400.00
Laboratory Divisions	82,370.00
Hospitals Branch	3,831,850.00

Ontario Hospitals:

Brampton	7,975.00
Brockville	412,600.00
Cobourg	160,300.00
Fort William	68,800.00

DEPARTMENT OF HEALTH—Continued	
Hamilton	$ 547,300.00
Kingston	445,900.00
Langstaff	131,200.00
London	623,900.00
New Toronto	515,800.00
New Toronto—Concord Unit	39,100.00
Orillia	571,200.00
Penetanguishene	254,400.00
Toronto	467,000.00
Whitby	703,300.00
Woodstock	567,800.00
Toronto Psychiatric	126,400.00
DEPARTMENT OF HIGHWAYS:	
Main Office	401,800.00
Division Offices	420,000.00
Municipal Roads Branch	75,000.00
Gasoline Tax Branch	72,000.00
Miscellaneous Permits Branch	21,000.00
Motor Vehicles Branch	170,000.00
DEPARTMENT OF INSURANCE:	
Main Office	62,425.00
DEPARTMENT OF LABOUR:	
Main Office	71,635.00
Industry and Labour Branch	13,555.00
Apprenticeship Branch	27,430.00
Boiler Inspection Branch	32,000.00
Factory Inspection Branch	10,595.00
Board of Examiners of Operating Engineers	26,980.00
Ontario Government Employment Offices	75,000.00
Minimum Wage Branch	38,975.00
Composite Inspection Division	110,830.00
War Emergency Training	400,000.00
Ontario Government Employment Offices	35,000.00
DEPARTMENT OF LANDS AND FORESTS:	
Main Office	183,300.00
Agents	28,000.00
Rondeau Provincial Park	16,375.00
Ipperwash Beach Provincial Park	4,000.00
Forests Branch	85,000.00
Forests Service	1,600,000.00
Air Service	263,000.00
Radio Service	45,000.00
Woodmen's Employment Act	8,500.00
Clearing Townsites and Removal of Fire Hazards	20,000.00
Insect Control and Tree Diseases	17,000.00
Main Office—Surveys, etc.	55,000.00
Forests Service—Reforestation	320,000.00

DEPARTMENT OF LEGISLATION:	
Office of the Speaker	$ 254,525.00
Office of the Law Clerk	13,125.00
Office of Crown-in-Chancery	4,800.00
OFFICE OF LIEUTENANT-GOVERNOR	10,000.00
DEPARTMENT OF MINES:	
Main Office	280,525.00
Gas and Oil Well Inspectors' Branch	10,000.00
Sulphur Fumes Arbitrator	5,000.00
Temiskaming Testing Laboratories	24,750.00
Offices of Mining Recorders	39,000.00
DEPARTMENT OF MUNICIPAL AFFAIRS:	
Main Office	63,655.00
Ontario Municipal Board	30,935.00
DEPARTMENT OF PRIME MINISTER:	
Main Office	19,400.00
Office of Executive Council	11,025.00
Travel and Publicity Bureau	300,000.00
Office of Civil Service Commissioner	11,460.00
Office of King's Printer	36,775.00
Office of Controller of Finances	11,910.00
OFFICE OF PROVINCIAL AUDITOR	112,200.00
DEPARTMENT OF PROVINCIAL SECRETARY:	
Main Office	57,785.00
Registrar-General's Branch	80,265.00
Reformatories and Prisons Branch:	
Main Office	172,500.00
Board of Parole	17,000.00
Ontario Reformatory, Guelph	776,000.00
Mercer Reformatory, Toronto	142,000.00
Industrial Farm, Burwash	560,000.00
Ontario Training School for Boys—Bowmanville	154,000.00
Ontario Training School for Girls—Galt	89,000.00
DEPARTMENT OF PROVINCIAL TREASURER:	
Main Office	87,640.00
Office of Budget Committee	9,420.00
Motion Picture Censorship and Theatre Inspection Branch	44,025.00
Controller of Revenue Branch	404,460.00
Post Office	148,140.00
Main Office	800,000.00

DEPARTMENT OF PUBLIC WELFARE:

Main Office, Grants—Refuges, Orphanages, etc.	$ 219,975.00
Children's Aid Branch	188,200.00
Mothers' Allowances Commission	4,660,650.00
Old Age Pensions Commission	3,564,000.00
Old Age Pensions Commission Branches	10,291,500.00

DEPARTMENT OF PUBLIC WORKS:

Main Office	79,100.00
Public Buildings, Maintenance and Repairs:	
General Superintendence	19,500.00
Lieutenant-Governor's Apartment	4,600.00
Legislative and Departmental Buildings	411,400.00
Osgoode Hall	37,000.00
Educational Buildings	10,600.00
Agricultural Buildings	10,700.00
Training Schools	2,200.00
District Buildings	12,625.00
Ontario Hospitals	50,000.00
Ontario Reformatories	475.00
Public Works	15,000.00
Ontario Government Office Building—Kingston	3,800.00
Ontario Hospitals	15,000.00
Ontario Reformatories	10,000.00
District Buildings	1,000.00
Fish Hatcheries	5,000.00
Public Works	261,000.00
MISCELLANEOUS	104,400.00

The Resolution, having been read a second time, was concurred in.

The House, according to Order, resolved itself into the Committee of Ways and Means.

(*In the Committee*)

Resolved, That there be granted out of the Consolidated Revenue Fund of this Province a sum not exceeding Fifty-eight million, three hundred and forty thousand, four hundred and seventy-two dollars and fifty cents to meet the Supply to that extent granted to His Majesty.

Mr. Speaker resumed the Chair; and Mr. Patterson reported, That the Committee had come to a Resolution.

Ordered, That the Report be received forthwith.

Mr. Patterson, from the Committee on Ways and Means, reported a Resolution, which was read as follows:—

Resolved, That there be granted out of the Consolidated Revenue Fund of this Province a sum not exceeding Fifty-eight million, three hundred and forty thousand, four hundred and seventy-two dollars and fifty cents to meet the Supply to that extent granted to His Majesty.

The Resolution, having been read the second time, was agreed to.

The following Bill was then introduced and read the first time:—

Bill (No. 98), intituled, "An Act for granting to His Majesty certain sums of Money for the Public Service of the Financial Year ending the 31st day of March, 1942." *Mr. Hepburn* (Elgin).

Ordered, That the Bill be read the second time forthwith.

The Bill was then read a second time.

Ordered, That the Bill be read a third time forthwith.

The Bill was then read the third time and passed.

On motion of Mr. Elgie, seconded by Mr. Acres,

Ordered, That there be laid before this House a Return showing all correspondence, memoranda, maps, plans, sketches and applications in relation to licenses of occupation relating to parts of lots numbered Eleven and Twelve in the First Concession of the Township of Cavendish, such licenses of occupation being applied for by or on behalf of Frank Williams, Percy Blade, George Goodfellow and George Windover or any of them.

On motion of Mr. Doucett, seconded by Mr. Downer,

Ordered, That there be laid before this House a Return showing: (*a*) The number of motor cars and trucks purchased by the Government since July 11th, 1934, or by any board or commission of the Government, the Hydro-Electric Power Commission of Ontario excepted; (*b*) The department, board or commission for which purchased; (*c*) Date of purchase; (*d*) Make of car or truck; (*e*) Type of car or truck; (*f*) From whom purchased, with address; (*g*) Purchase price; (*h*) Indicating which of the cars and trucks so purchased are still owned by the Government or its boards or commissions.

The motion of Mr. Challies, That there be laid before this House a Return showing: All correspondence, memoranda, telegrams, agreements or contracts

between the Government or the Hydro-Electric Power Commission, and any or all power companies relative to the export of power now being made to Massena, New York, was, with the consent of the House, withdrawn.

The motion of Mr. Challies, That there be laid before this House a Return showing: 1. What licenses have been granted by this Government for the export of pulpwood cut from Crown Lands in each of the calendar years 1937, 1938, 1939, and 1940, indicating: (*a*) To whom export licenses were granted, with address; (*b*) Number of licenses granted to each individual or firm; (*c*) Date of export clearances; (*d*) Date of Orders-in-Council authorizing; (*e*) Kinds and quantities of pulpwood covered by each export clearance; and (*f*) Value of pulpwood covered by each export clearance; (*g*) Other dues charged by Government. 2. State how value of pulpwood is determined. 3. What licenses have been granted by this Government for the export of all timber other than pulpwood cut from Crown Lands in each of the calendar years 1937, 1938, 1939 and 1940, indicating: (*a*) To whom export licenses were granted, with address; (*b*) Number of licenses granted to each exporter; (*c*) Date of export clearances; (*d*) Date of Orders-in-Council authorizing; (*e*) Kinds and quantities of timber covered by each export clearance; (*f*) Value of timber covered by each export clearance; (*g*) Other dues charged by Government. 4. State how value of timber is determined. 5. What was the total value of (*a*) pulpwood and (*b*) timber cut from Crown Lands and exported in the calendar years 1937, 1938, 1939 and 1940, was, with the consent of the House, withdrawn.

Mr. Drew moved, seconded by Mr. Welsh,

That in the opinion of this Legislature the administration and control of the forest resources of this Province should be placed under the direction of a public body to be known as the Ontario Forest Resources Commission, organized along similar lines and with similar powers to those of the Ontario Hydro-Electric Power Commission.

And a Debate having arisen,

After some time the Motion, having been put, was lost on the following Division:—

YEAS

Acres	Duckworth	Macaulay
Arnott	Dunbar	Murphy
Black	Elgie	Reynolds
Challies	Frost	Spence
Cox	Henry	Stewart
Doucett,	Hepburn	Summerville
Downer	(Prince Edward-Lennox)	Welsh—22
Drew	Kennedy	

NAYS

Anderson
Ballantyne
Bégin
Belanger
Bethune
Bradley
Brownridge
Carr
Cholette
Conacher
Conant
Cooper
Croome
Dewan
Dickson
Elliott
Fairbank
Fletcher
Freeborn
Gardhouse
Gordon
Guthrie
Habel
Hagey
Haines
Heenan
Hepburn (Elgin)
Hipel
Kelly
King
Kirby
MacGillivray
MacKay
Mercer
Miller
Murray
McQuesten
Newlands
Nixon (Brant)
Nixon (Temiskaming)
Oliver
Patterson
Sinclair
Smith
Strachan
Trottier—46

On motion by Mr. Hepburn (Elgin), seconded by Mr. Nixon (Brant),

Ordered, That the full Sessional Indemnity be paid to those members of the Assembly whose services with the defence forces of Canada prevented their attendance and also to those members absent on account of illness or other unavoidable cause; and that the Sessional Indemnity of Mr. Campbell (Sault Ste. Marie) and Mr. Croll (Windsor-Walkerville) be paid to the wives of the two members named.

In respect to Question (No. 152), regarding agreements for construction of pulp mills,

The Hon. Mr. Hepburn (Elgin) requested that this Question be made an Order for a Return and on the motion of Mr. Black, seconded by Mr. Henry, it was

Ordered, That there be laid before this House a Return showing: 1. How many agreements have been signed between the Government and companies, firms or individuals, requiring the construction of pulp mills in the Province of tario since January 1st, 1936. 2. Give names of companies, firms or individuals and type of mill, capacity, proposed location and date when mill to be completed in each case. 3. Which of the mills have been constructed. 4. which of the mills are under construction. 5. Which of the contracting companies, firms or individuals are in default with respect to their agreements to build mills, giving default date and particulars of default in each case.

In respect to Question (No. 153), regarding architects employed on Ontario Hospitals,

The Hon. Mr. Hepburn (Elgin) requested that this Question be made an Order for a Return and on the motion of Mr. Kennedy, seconded by Mr. Challies, it was

Ordered, That there be laid before this House a Return showing: 1. In connection with the Ontario Hospitals at St. Thomas, Port Arthur and Brampton, and in connection with additions or extensions at the Ontario Hospitals at Woodstock and New Toronto: (*a*) What outside architects were employed and what amount was paid to each by the present Government and what amounts are still due or claimed; (*b*) Give the same information in relation to employment of superintending engineers.

The Provincial Secretary presented to the House, by command of the Honourable the Lieutenant-Governor:—

Return to an Order of the House dated April 9th, 1941, That there be laid before the House a Return showing: 1. What lands have been acquired to provide for construction of approaches or other works in connection with the Rainbow Bridge at Niagara Falls, indicating: (*a*) Description of each parcel acquired; (*b*) From whom each parcel was acquired; (*c*) Purchase price of each parcel acquired; (*d*) Whether acquired by mutual agreement or by expropriation; (*e*) Who acted for the Government or any Department, Commission or other agency of the Government in fixing valuations for lands acquired; (*f*) What buildings or other structures were located on each parcel and what disposition was made of such buildings or structures, to whom and under what terms. (*Sessional Papers No. 58.*)

Also, Report upon the Ontario Training Schools for year ending March 31st, 1941. (*Sessional Papers No. 59.*)

Also, Report upon the Prisons and Reformatories of the Province of Ontario for year ending March 31st, 1941. (*Sessional Papers No. 18.*)

Also, Report of the Milk Control Board of Ontario for year ending December 31st, 1940. (*Sessional Papers No. 60.*)

Also, Report of the Statistics Branch, Department of Agriculture, Ontario, for year 1940. (*Sessional Papers No. 22.*)

Also, Report of the Ontario Veterinary College for the year 1940. (*Sessional Papers No. 29.*)

Also, Report relating to the Registration of Births, Marriages and Deaths in the Province of Ontario for year ending December 31st, 1940. (*Sessional Papers No. 13.*)

Also, Report of the Department of Education, Ontario, for the twelve months ending October 31st, 1940. (*Sessional Papers No. 11.*)

Also, Report of the Minister of Agriculture, Ontario, for the year ending March 31st, 1940. (*Sessional Papers No. 21.*)

Also, Report of the Registrar of Loan Corporations for year ending December 31st, 1940. (*Sessional Papers No. 7.*)

Also, Report of the Superintendent of Insurance for the year ending December 31st, 1940. (*Sessional Papers No. 6.*)

Also, Report on the Hospitals and Sanatoria of the Province of Ontario for year ending December 31st, 1940. (*Sessional Papers No. 16.*)

Also, Report of the Department of Municipal Affairs for the Province of Ontario for the year ending March 31st, 1941. (*Sessional Papers No. 31.*)

Also, Report of the Department of Mines for year ending March 31st, 1941. (*Sessional Papers No. 4.*)

Also, Report of the Ontario Municipal Board to December 31st, 1940. (*Sessional Papers No. 24.*)

Also, Report of the Department of Highways for fiscal year ending March 31st, 1940. (*Sessional Papers No. 32.*)

The Honourable the Lieutenant-Governor entered the Chamber of the Legislative Assembly and being seated upon the Throne,

Mr. Speaker addressed His Honour in the following words:—

May it please Your Honour:

The Legislative Assembly of the Province has at its present Sittings thereof passed several Bills to which, in the name and on behalf of the said Legislative Assembly, I respectfully request Your Honour's Assent.

The Clerk Assistant then read the titles of the Acts that had passed severally as follows:—

The following are the titles of the Bills to which Your Honour's Assent is prayed:—

An Act respecting the City of Ottawa.

An Act to Incorporate the Society of Cost and Industrial Accountants of Ontario.

An Act respecting the London Street Railway Company and the Corporation of the City of London.

An Act respecting the Rockwood Town Hall.

An Act respecting the Town of Orillia.

An Act respecting the City of Port Arthur and the Public Utilities Commission of Port Arthur.

An Act respecting the Township of West Gwillimbury.

An Act respecting the Village of Swansea.

An Act to Incorporate Malton Water Company.

An Act respecting National Steel Car Corporation, Limited.

An Act respecting the City of Toronto.

An Act respecting the County of Carleton and the University of Ottawa.

An Act respecting Appleby School.

An Act respecting certain Lodges of the Grand Lodge of Ontario, Independent Order of Oddfellows.

An Act to Incorporate the Daughters of the Empire Hospital for Convalescent Children.

An Act respecting the Board of Trustees of the Roman Catholic Separate Schools for the City of Toronto.

An Act respecting St. George's Church, Guelph.

An Act respecting a Trust Settlement of the late Peter Birtwistle and the Corporation of the Borough of Colne (England).

An Act respecting the City of Windsor.

An Act respecting the City of Sudbury.

An Act respecting the Town of Timmins.

An Act respecting the County of Waterloo and the Cities of Kitchener and Galt.

An Act respecting Royal Botanical Gardens.

An Act to amend the Legislative Assembly Act.

An Act to amend The Sheriffs' Act.

An Act to amend The Administration of Justice Expenses Act.

An Act to amend The County Judges Act.

The Mortgagors' and Purchasers' Relief Act, 1941.

An Act to amend The Surrogate Courts Act.

An Act to amend The Registry Act.

An Act to amend The Devolution of Estates Act.

An Act to amend The Public Health Act.

An Act to amend The Private Hospitals Act.

An Act to amend The Plant Diseases Act.

An Act to amend The Wolf Bounty Act.

An Act to amend The Judicature Act.

An Act to amend The General Sessions Act.

An Act to amend The Collection Agencies Act.

An Act to amend The Partnership Registration Act.

An Act to amend The Magistrates Act.

An Act to amend The Real Estate Brokers Act.

An Act to amend The Conditional Sales Act.

An Act to amend The Costs of Distress Act.

An Act respecting Bailiffs.

An Act to amend The Companies Act.

An Act to amend The Summary Convictions Act.

An Act to confirm Tax Sales.

An Act to amend The Highway Traffic Act.

An Act to amend The Mental Hospitals Act.

An Act respecting the Subsidizing of Cheese and Hogs produced in Ontario.

An Act respecting the Rainbow Bridge.

An Act to amend The Jurors' Act.

An Act to amend The Venereal Diseases Prevention Act.

An Act respecting British Child Guests.

An Act to amend The Northern Development Act.

An Act to amend The Railway Act.

An Act to amend The Agricultural Representatives' Act.

An Act to amend The Milk and Cream Act.

An Act to amend The Mining Act.

An Act to amend The Sanatoria for Consumptives Act.

An Act to amend The Mining Tax Act.

An Act to amend The Natural Gas Conservation Act.

An Act respecting Relief to Municipalities regarding Hydro-Electric Railways.

An Act to ratify and confirm a certain Agreement entered into between His Majesty the King and The Algoma Central and Hudson Bay Railway Company.

An Act to amend The Income Tax Act (Ontario).

An Act to amend The Corporations Tax Act, 1939.

An Act to amend The Bees Act.

An Act to amend The Milk Control Act.

The School Law Amendment Act, 1941.

An Act to amend The Power Commission Insurance Act.

An Act to amend The Division Courts Act.

An Act to amend The Temiskaming and Northern Ontario Railway Act.

An Act to amend The Securities Act.

An Act to amend The Cemetery Act.

An Act to amend The Public Service Act.

An Act to amend The Highway Traffic Act.

An Act to amend The Beach Protection Act.

An Act to amend The Ontario Municipal Board Act.

An Act to amend The Surveys Act.

An Act to amend The Local Improvement Act.

The Statute Law Amendment Act, 1941.

An Act to amend The Department of Municipal Affairs Act.

The Municipal Amendment Act, 1941.

The Assessment Amendment Act, 1941.

An Act respecting a certain Bond Mortgage made by the Abitibi Power and Paper Company Limited, to the Montreal Trust Company.

An Act for raising money on the Credit of the Consolidated Revenue Fund.

To these Acts the Royal Assent was announced by the Clerk of the Legislative Assembly in the following words:—

"In His Majesty's name, His Honour the Lieutenant-Governor doth assent to these Acts."

Mr. Speaker then said:—

May it please Your Honour:

We, His Majesty's most dutiful and faithful subjects, the Legislative Assembly of the Province of Ontario, in Session assembled, approach Your Honour with sentiments of unfeigned devotion and loyalty to His Majesty's person and Government, and humbly beg to present for Your Honour's acceptance a Bill intituled, "An Act for granting to His Majesty certain sums of money for the Public Service of the financial year ending the 31st day of March, 1942."

To this Act the Royal Assent was announced by the Clerk of the Legislative Assembly in the following words:—

"The Honourable the Lieutenant-Governor doth thank His Majesty's dutiful and loyal Subjects, accept their benevolence and assent to this Bill in His Majesty's name.'

His Honour was then pleased to deliver the following speech:—

Mr. Speaker and Gentlemen of the Legislative Assembly:

As you have completed your Sessional duties, I am now able to relieve you of further attendance and, in doing so, I wish to express my appreciation for the services you have rendered.

During the Session, we were all shocked to hear of the death in the course of duty of Sir Frederick Banting. No words from me can express our profound

sense of loss at the passing of this native son of Ontario, whose development of insulin for the treatment of diabetes ranks amongst the greatest discoveries of medical science. His death is a loss, not only to Canada but to the world. It was very fitting that this Legislature, which made financial provision for continuing Dr. Banting's research work, should adjourn for a day in a tribute to his memory.

The effect of the war is noticeable in some of the legislation you have passed, particularly with respect to the subsidies you have provided for cheese and hogs. Great Britain now depends very materially on Ontario for bacon and cheese and my Ministers deemed it absolutely imperative that supplies should not fall off at a time when the costs of production were rising far more rapidly than the prices our farmers were receiving for their produce. I am confident that our citizens generally will accept cheerfully this common contribution to the war effort and that the people of Great Britain will appreciate the step you have taken. The offer to turn over to the Dominion Government certain buildings at the Ontario Agricultural College constitutes a further contribution by the Province to the war effort.

I was pleased to note that information presented to the House by the Minister of Labour indicated that during the past year time lost in Ontario due to strikes had been reduced to only a small fraction of previous years. Both employers and employees are to be commended for the good will they have shown in co-operating with the Department to this end, at a time when production is so vital for war purposes. During the Session, many of you had the opportunity of visiting the Aircraft School at Galt and seeing the extent of the work being carried on there, which has served as a model for similar projects in other provinces.

Several of the recommendations of the Select Committee appointed to enquire into the administration of justice, have been made effective by amendments to various statutes. These will help to simplify procedure and improve practice in the civil and criminal courts and will bring about certain economies in dealing with the ever-increasing amount of business coming before the courts. The law has been altered to make more generous provisions for the widow from the estate of a man who dies without making a will.

As I intimated at the opening of the Session, the finances of the Province are in a very satisfactory condition. This was demonstrated by the record surplus presented in the Budget of the Provincial Treasurer. I wish to thank you for the financial provision you have made for carrying on the affairs of the Province during the next twelve months. It is encouraging to know that this provision will be made without recourse to borrowing, except for refunding maturing issues, and that a surplus of receipts over all expenditures is again anticipated.

In closing, may I say that no one can be unmindful that throughout your debates there has been emphasized that essential unity which, during time of war, knits the people of this Province so closely together. As a citizen of Ontario I have been more than gratified by this evidence of co-operation while, as the representative of His Majesty the King, I am proud indeed of this spirit of loyalty and devotion. It is this same spirit which will ensure our final victory. The way may be long and hard, but there are signs which indicate the progress being made. While you have been in Session, the Congress and Senate of the United States

have voted decisively for unrestricted aid to our cause and the great President of the Republic has declared that this support will continue until the blackout of barbarism has been lifted. That stirring message brought renewed hope and confidence, not only to those who are fighting the battle of freedom by land, on sea and in the air, but to the nations now suffering oppression. For us, that message had a deeper significance when it was supplemented by inspiring addresses in this Assembly by Senator Claude Pepper and later by Mr. Wendall L. Willkie, Republican Candidate in the recent Presidential election in the United States. To these high-minded and eminent leaders of American public opinion, we cannot be sufficiently grateful and they helped to strengthen our resolve that the dark ages of tyranny and slavery shall not return to the earth. With faith in our cause and the stern voice of duty as our guide, let us all in the coming months devote ourselves in whatever ways we can to the great crusade in which the free democracies of the world are joined and, in the end, under Divine Providence, victory will be ours.

The Provincial Secretary then said:—

Mr. Speaker and Gentlemen of the Legislative Assembly:—

It is the will and pleasure of The Honourable the Lieutenant-Governor that this Legislative Assembly be prorogued and this Legislative Assembly is according prorogued.

Journals of the Legislative Assembly

PROVINCE OF ONTARIO

1941

APPENDIX No. 1

Final Report and Proceedings of the Select Committee of the Legislative Assembly appointed to inquire into the Administration of the Department of Lands and Forests

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MEETINGS FROM APRIL 22ND, 1940 TO MAY 7TH, 1940, INCLUSIVE

Session of 1941

For Proceedings of Meetings from December 1st, 1939 to February 24th, 1940, see Journals of 1940

REPORT OF THE SELECT COMMITTEE

To the Honourable the Legislative Assembly of the Province of Ontario:

GENTLEMEN:

Your Select Committee appointed on April 27th, 1939, to inquire into the administration, licensing, sale, supervision and conservation of natural resources by the Department of Lands and Forests, begs leave to report that it has completed its deliberations and herewith presents its report which contains the views and recommendations of a majority of the Committee and also the views and recommendations of a minority of the Committee, and recommends that the report be printed as an appendix to the Journals of the House.

All of which is respectfully submitted.

J. M. COOPER,
Chairman.

Committee Room,
April 8th, 1941.

Report of the Select Committee appointed to investigate, inquire into and report upon all matters pertaining to the administration, licensing, sale, supervision and conservation of natural resources by the Department of Lands and Forests.

MAJORITY REPORT

REPORT OF THE SELECT COMMITTEE APPOINTED TO INVESTIGATE, INQUIRE INTO AND REPORT UPON ALL MATTERS PERTAINING TO THE ADMINISTRATION, LICENSING, SALE, SUPERVISION AND CONSERVATION OF NATURAL RESOURCES BY THE DEPARTMENT OF LANDS AND FORESTS

The Select Committee of the Legislature appointed to investigate, inquire into and report upon all matters pertaining to the administration, licensing, sale, supervision and conservation of natural resources by the Department of Lands and Forests begs leave to submit the following report:

Upon the motion of Mr. G. A. Drew, seconded by Mr. L. A. Macaulay, it was ordered on the 18th day of April, 1939:

> "That a Select Committee of this House be appointed to investigate, inquire into and report upon all matters pertaining to the administration, licensing, sale, supervision and conservation of natural resources by the Department of Lands and Forests."

Pursuant to the above resolution, it was further ordered on motion of Mr. M. F. Hepburn, seconded by Mr. H. C. Nixon, on the 27th day of April, 1939:

> "That the Select Committee of this House authorized by the House on the 18th instant to investigate, inquire into and report on all matters pertaining to the administration, licensing, sale, supervision and conservation of natural resources by the Department of Lands and Forests be constructed as follows and be authorized to sit during the recess of the House: Mr. Leduc, Chairman, and Messrs. Campbell (Sault Ste. Marie), Cooper, Drew, Elliott, Nixon (Brant), Nixon (Temiskaming), Oliver, Spence and Welsh."

In accordance with the above resolutions, the Select Committee initiated its proceedings on the 1st day of December, 1939, at which all members were present with the exception of Mr. Campbell (Sault Ste. Marie) who was on active service with His Majesty's forces.

The Select Committee under date of December 1st, 1939, resolved:

> "That the Chairman of this Committee do ask the House to appoint an additional member to the Committee in the place and stead of the Honourable Colin A. Campbell, now on active service, and also for leave for the Committee to sit concurrently with the House, and to ask also that power be given to the Committee to summon witnesses and to order the production of documents."

Mr. Leduc presented the first report of the Select Committee to the House on the 10th day of January, 1940, which was read and adopted.

On the same day it was ordered by the House:

"That the name of Mr. Heenan be substituted for the name of Mr. Campbell (Sault Ste. Marie) in the list of members named by this House on Thursday, April 27th, 1939, to constitute a Select Committee as authorized by the House on Tuesday, April 18th, 1939, to investigate, inquire into and report on all matters pertaining to the administration, licensing, sale, supervision and conservation of natural resources by the Department of Lands and Forests."

And

"That the Select Committee shall have full power and authority to call for persons, papers and things, and to examine witnesses under oath, and the Assembly doth hereby command and compel the attendance before the said Select Committee of such persons and the production of such papers and things as the said Select Committee may deem necessary for any of its proceedings or deliberations, for which purpose the Honourable the Speaker may issue his warrant or warrants."

On February 20th, 1940, Mr. Leduc presented an interim report which was adopted by the House, dealing with the calling of a conference by the Minister of Lands and Forests on the utilization of forest resources, and further, dealing with the amending of Statutes to permit the export of peeled pulpwood from lands patented as railway subsidies, or the empowering of the Minister of Lands and Forests to authorize the export of such pulpwood on an annual permit basis under Departmental regulations.

On February 24th, 1940, a further interim report was presented by Mr. Leduc, declaring that the Committee had held twenty meetings, and requesting the House for permission to continue its sittings during the recess. Accordingly it was resolved by the House:

"That the Select Committee of this House, appointed by the House on Tuesday, April 18th, 1939, to investigate, inquire into and report upon all matters pertaining to the administration, licensing, sale, supervision and conservation of natural resources by the Department of Lands and Forests, is hereby authorized to sit during the recess following the present Session of this Assembly."

On April 22nd, 1940, the Select Committee resumed its sittings and continued until May 7th, 1940, twelve sittings being held and a considerable amount of evidence with regard to the subject matter was submitted to the Committee.

On May 7th, 1940, the sittings of the Select Committee were adjourned *sine die*, to be reconvened at the call of the Chair.

Under date of October 9th, 1940, the resignation of Mr. Leduc as a member of the Legislative Assembly was presented to and accepted by the Executive Council. Accordingly it became necessary to appoint in his place and stead an Acting Chairman, and at the request of the members of the Select Committee

a meeting was convened on the 20th day of November, 1940, at which Mr. J. M. Cooper was appointed Acting Chairman of the Select Committee.

The Select Committee now submits its report in the following manner:

The Committee, in the course of its Sittings, heard detailed and lengthy evidence relating to the administration of the Department of Lands and Forests and the methods employed by that Department in dealing with those natural resources of the Crown which are entrusted to its administration. In this report reference will be made to the many matters specifically referred to in the evidence before the Committee, including briefs, letters, maps, photographs and photostatic prints, statistical surveys, pamphlets and publications, as also other representations received by mail and filed as exhibits.

Evidence was submitted to the Committee showing the original development of the Department of Lands and Forests and the methods of procedure in administering its affairs.

The Statute constituting the old Crown Lands Department was passed over one hundred and ten years ago, and during that long span of years the handling of the natural resources largely devolved upon this Department. In the early days colonizing the land, road building, the handling of timber, controlling the mines and minerals, protecting the wild life and the dealing, generally, with all matters pertaining to the rivers, streams and water powers of the country were comprised within the functions of the Department. Later on, with the expansion of settlement in Northern Ontario, the Department, through its Minister, was entrusted with the administration of the special Statute known as The Northern Development Act.

As population increased and the frontiers were moved northward additional demands were made upon the Government and it was found necessary from time to time to create new Departments to provide essential services. The terminology "Crown Lands" in turn was changed to "Lands and Forests", and this in turn to "Lands, Forests and Mines", and the latter, some twenty years ago, again changed to "Department of Lands and Forests".

From the parent Department there grew the Department dealing with Colonization Roads, the Department of Game and Fisheries and the Department of Mines, as well as the Department of Northern Development.

The Committee is cognizant of the fact that the development in this Department has extended over many decades and considers that the routine, gradually evolved as the result of years of experience, should not lightly be disturbed. The procedure followed has proved satisfactory and eminently suitable to the proper and effective administration of the natural resources coming within the jurisdiction of the Department, and the Department should continue to keep in close touch with the changes and developments in the industries using the raw materials under the direction and control of the Crown. And further careful study should be made of the economic and other problems arising out of the war with a view to being in the best possible position to meet emergent situations.

The present Department, as the name implies, covers two outstanding and somewhat distinct units, "Lands" and "Forests".

Under "Lands" come—

(*a*) Surveys, involving the running of base and meridian lines, outlining and subdividing of townships, etc.

(*b*) Sales, leases, location and grants of lands for settlers and the general disposition of all Crown areas covering summer resorts, mill sites, water lots, etc.

(*c*) Water powers and the leasing of same for commercial and industrial purposes.

(*d*) Public Parks such as Algonquin, Quetico and Rondeau.

Under "Forests" come—

(*a*) Cruising, surveying and estimating timber areas.

(*b*) Selling and disposing of timber limits.

(*c*) Forest Fire Protection.

(*d*) Reforestation.

The Committee heard all witnesses who desired to give evidence or who were requested to give evidence in respect of the subject matters of investigation. On no occasion was it necessary to issue a subpoena for any witness but all attended voluntarily and submitted themselves to examination. In view of the fact that the greater proportion of the revenue of the Department is derived from the sale of timber, the bulk of the evidence bore upon this branch and the relations of timber operators with this branch of the Department. The Committee therefore, while recognizing the importance of land matters, will report at the outset and at greater length upon forests and timber administrations.

TIMBER ADMINISTRATION

The forest resources of the Crown in the Province of Ontario are enormous. Up to the present time over 100,000,000 acres of the forest area have been brought under the supervision and fire protection system established by the Crown and about three-quarters of this area has been surveyed. In addition to this area, there are vast tracts of land in the north country which, while they are at present neither supervised nor considered accessible for immediate utilization, yet they represent an additional tremendous reserve of forest growth which will some day provide large revenues for the Province of Ontario. In order to give an idea of the size of the forest areas of this Province, it can be stated that Northern Ontario as a whole comprises about 355,000 square miles and that it is greater in area than England, Ireland, Scotland, France and Belgium combined.

On the area at present supervised and protected by the Crown it is estimated that there are the following quantities of timber:

181,682,000 cords of spruce
26,000,000 cords of balsam
79,000,000 cords of jackpine
6,000,000,000 feet, board measure, of white and red pine
3,000,000,000 feet, board measure, of maple and yellow birch
487,000,000 feet, board measure, of other hard woods
792,000,000 feet, board measure, of hemlock

Up to December 31st, 1939, 16,042 square miles or 10,266,880 acres of forest lands were under timber license. The areas which were under pulp concessions at the same date totalled 65,307 square miles or 41,796,000 acres; only a portion therefore of the presently supervised forest regions of the Province have been allocated for cutting.

Many difficulties have been encountered in the efforts made to bring forest areas into production and in some instances the Government has assisted in providing facilities. As an illustration of what can be accomplished, the Committee desires to point out that the diversion of the waters of Long Lac into Lake Superior made available vast resources of pulpwood and of timber which had been regarded as inaccessible and therefore too costly to cut. In addition to the creation of facilities for driving timber, the Long Lac diversion also made available increased water powers which it is noted have become extremely important because of the war. The cost which is chargeable to timber operations in connection with this project has not been paid by the Government but has been assessed against and is being paid by the pulp concessionaire.

In passing, the Committee desires to point out that should the proposed diversion into Lake Nipigon of the waters of the Ogoki River now flowing into James Bay be effected, the probability is that such diversion will make available timber now unmarketable. In view of these facts the Committee believes that the participation of the Government in such worthy projects should be encouraged, and when the future offers opportunity in this respect the Government would be further justified in taking effective steps to make available inaccessible Crown timber resources.

AUTHORITY OVER TIMBER

A great deal of evidence was presented to the Committee relative to the subject of disposing of timber limits. The Committee found that a substantial portion of the timber resources of the Province had been alienated or were free from the control of the Crown. These fell into the following classifications:

(1) Settlers' or freehold lands,
(2) Indian lands,
(3) Railway grants,
(4) Veteran grants.

(1) Settlers' or Freehold Lands

Wherever settlement is permitted and land is granted to settlers, the Government loses the right to deal further with the timber on the lands so

granted. The settler, immediately upon obtaining his patent, becomes the owner of the timber on the land designated in his patent, with the possible exception of pine trees, which, for many years, have been reserved in certain sections from this patent. The settler can apparently strip his land of the timber without provision or regard for a future crop. The settler is not subjected to selective cutting or any other restrictions. The Department of Lands and Forests has, it is true, spent considerable money upon an educational programme designed to bring to these and other classes of grantees methods of harvesting and foresting which are of proven value, but there is no compulsory restriction with respect to the adoption of any method. This important phase of the subject under discussion will be dealt with further by the Committee under the heading of "Reforestation".

(2) Indian Lands

Indian Lands have always come under the jurisdiction of the Federal Government. Having this in mind, it is the recommendation of the Committee that a close spirit of co-operation be maintained at all times with the Department of Indian Affairs in order that some common policy in the disposition of timber may be reached.

(3) Railway Grants

Railway grants consist of large tracts of timber lands which were given throughout the years of the Dominion's expanding industrial and railway growth, and were designed to aid and encourage the construction of railways during these years. In effect, the grants were in the nature of a subsidy granted by way of special legislation. Such grants in this Province were made to the Grand Trunk Pacific Railway, the Algoma Central Railway, and the Manitoulin and North Shore Railway Company, the latter becoming at a later date the Algoma Eastern Railway Company. Once these conveyances were completed, the Government lost its control over the timber on the lands contained in the Grant. While it may not be possible to frame a recommendation of the Committee in this respect, it is the Committee's desire to express its thought in this matter; wherever possible, and if practical to do so, the Government should endeavour to reacquire these lands with the ultimate purpose of being better able to make effective a consistent timber policy throughout the Province. In a subsequent part of this Report, the Committee will deal further with this, under the heading of "Administration by Commission".

(4) Veteran Grants

Following the Boer War a gratuity of 160 acres of land for services rendered was granted to those who had served in the War. This Gratuity was later exended to apply to Veterans of 1866 and resulted in the granting of some 16,000 Certificates for land allotment. Large areas were thus alienated and in some districts extend over groups of townships. The timber included in these grants is now out of the control of the Government and is in a position similar to that on the areas held and controlled by the Railways.

While the Committee would, in the interests of the forest resources of the Province, prefer to see some general policy with regard to the cutting of timber which would embrace all parties so engaged, individual or corporate, it is to be

pointed out that virtually all of the grants made in the above instances, and particularly those grants made to railways, have been long since granted. The situation which is therefore discussed by the Committee at this point is no new situation, and is not to be imputed to any existing Department. In true fact, the principle which motivated the grants to railways contained, at that time, much merit, and the Committee intends to refrain from any discussion of the grants as such. Its purpose, at the moment, is to point out its desire that such railway subsidy lands, where possible and practical, be reacquired, and thus be brought within a general and effective plan of conservation and supervision of forest resources.

THE IMPORTANCE OF THE FOREST PRODUCTS INDUSTRY

As a necessary preliminary to a discussion of the different branches of the forest products industry it is felt that something should be said in reference to the importance of the industry as a whole in the economic and social life of Canada. The best manner in which to exemplify the place of this great factor in the national life is to compare it with other industries which are generally recognized as of paramount value to Canada. Everyone will admit that the wheat crop of the West and the gold produced from our mines have played great roles in bringing about the prosperity and well-being of the nation. Yet it has been established in evidence before the Committee that the part of the forest products industry has been equally vital in importance. It may come as a surprise to many to know that in the year 1937 the total value of forest products exported from this country was placed at $190,068,000.00, and that for the years 1938 and 1939 the value of newsprint alone which was exported exceeded the value of wheat exports by an average of slightly over ten million dollars in each year, and newsprint was second only to gold in its value to this country for the period mentioned.

The forest products industry has an important position in Ontario because our forests constitute one of the chief assets of the Province. Again, evidence was given to the effect that ninety per cent of the newsprint industry of Canada was located in the Provinces of Ontario and Quebec, and it is estimated that the newsprint mills use 40 to 50 percentum of total power consumption in the two provinces. By direct employment newsprint mills alone support a population equivalent to the total combined populations of Chicoutimi, Granby, Kingston, Belleville, St. Hyacinthe, Guelph, St. Jerome, Sherbrooke, St. Thomas, Stratford, Valleyfield, Sarnia, Hull, Peterborough, Sorel, Levis and Sudbury.

If, therefore, it can be said that one branch of the industry is of such great importance to Ontario and Quebec, it can be readily understood that the entire forest products industry in the two provinces is of major significance. Not only does it supply direct employment to a large number of workers, but it uses the goods and wares of many other industries. It should be emphasized that the forests products industry is one which is not passing from the scene. In the opinion of the Committee the importance of wood and wood products in industry is increasing rather than diminishing, and new uses for wood are being constantly discovered.

The circumstances just related have to do with private enterprise, and the Committee feels that it should say something as to the position of the Depart-

ment of Lands and Forests, which is the guardian of the great public supply of raw materials necessary to support all branches of the forest products industry. The chief concern which must actuate all dealings by the Department in reference to Crown timber is to put, as far as practicable, the accessible commercial forests of the Province on a sustained yield basis, and to supply adequate protection and supervision to prevent the devastating inroads of fire and pest. In using the term "sustained yield basis" the Committee has in mind the general forestry principle of cutting timber within the limits of the estimated annual growth or increment of a given forest area. In this fashion a perpetual crop, and therefore a lasting revenue to the Crown will be ensured.

DIVISION OF FOREST PRODUCTS INDUSTRY

The Timber industry may be classified in three main divisions:

1. The saw-log or lumbering industry.
2. The pulpwood industry.
3. The pulp and paper industry.

One of the most important developments which has taken place in the economic life of Canada since the turn of the century has occurred in the pulp and paper industry. This country has been favoured with great stands of spruce, balsam and other species and pulpwood which are readily accessible to the waters of the Great Lakes, whence they can be cheaply transferred to domestic and export markets. At the time that we speak of the pulp and paper industry and the prominence which it has attained, we should not be unmindful of the great role played by its fellow, the saw-log or lumbering industry is rooted in our history, and there are few Canadians indeed who have been stirred by the tales which have come down to us from the times when the great forests of Southern Ontario were yielding to the bushman's axe. It is interesting to note that while more stress may seem to be laid on the pulp and paper branch of the forest products industry, nevertheless lumbering is being and will be carried on vigorously. As a Committee, we feel that any erroneous impression which may arise that this, the senior branch of all forest operations, has lost in its importance in the Province of Ontario should be dispelled, for such is not the case; it still waxes strong and vigorous, and it is making a notable contribution, along with other industries, in the war effort of this country.

Out of the development of the pulp and paper industry and the continued importance of the saw-log or lumbering industry, there has arisen at times a conflict of interest between the pulpwood operators and the saw-log operators. The former are usually pulp and paper companies who have obtained under long-term concession agreements the right to cut certain, but not necessarily all, species or classes of pulpwood and saw-log timber on a given area of land. The latter usually have acquired by public competition the right to cut and remove the saw-log timber, and at times the pulpwood and fuelwood on a given area, subject to the terms of the advertised Conditions of Sale. In the case of the saw-log operator his right to cut and remove the timber continues for the period stipulated in the Conditions of Sale may be renewed. In the case of the pulpwood concessionaire his rights usually extend for a period of twenty-one years and may be renewed in accordance with the terms of his agreement with the

Crown or pursuant to the provisions of the Crown Timber Act Regulations. Now, while it is generally conceded by both technical and practical foresters that the best plan in a timber operation would be to have a single interest responsible for the cutting of all types of timber and of taking the run of the forest, this is not always possible due to the special requirements of different classes of operators who may be interested only in particular species of timber. Operators are jealous of their respective interests, and when, therefore, rights to cut various kinds or classes of timber have been granted to two or more different operators on the same area of forest land and operations are sought to be carried on simultaneously by two or more of such parties so that it can be said that there is actually a dual operation about to commence or that it has commenced, it rests with the Department of Lands and Forests to see to it that the operation of each party is carried on with proper consideration for the rights of interest of the other, and this will include not only supervision of bush operation but also of driving the streams on the watershed. That dual operations do create problems, it is generally conceded, but the advantages to be gained thereby outweigh the difficulties occasioned, since they represent in themselves the practical application of proper forestry principles, which recommend the cutting and utilization of the run of the forest. From the standpoint of the Crown it can be said that wherever a dual operation has been installed the Department has the benefit of the additional revenue in Crown dues and bonuses on kinds or classes of timber which might otherwise have gone to waste. As it has indicated before, where it is not possible to have one operator responsible for the harvesting of all kinds of classes of timber on a given forest area, the Committee recommends the practice of permitting dual operations.

SAW-LOG OR LUMBERING INDUSTRY

Only a few witnesses appeared before the Committee to give evidence exclusively upon the saw-log or lumbering industry. General reference was made to the many activities of this branch of the forest products industry, and to its diversified products. To mention one or two, it may be pointed out that log timber is being cut for heavy structural purposes, and to meet general building needs. Representatives of the tie-cutting branch gave evidence as to the nature and extent of their business, which is of great importance, and they also pointed out certain disabilities and difficulties under which they have laboured, and to which reference will be made hereinafter. Another aspect of the lumbering industry which has become quite prominent with the development of mining has been the supplying of timber for use in the mines and to meet the general requirements of mining camps. Another problem to which reference is already made was brought out in the evidence of the lumber operators, and that is the absolute necessity of providing adequate timber in watersheds which are in close proximity to established mills so that their continued existence may be ensured.

A reference to exhibits submitted discloses that there are existent in the Province of Ontario at the present time, actually held under license from the Department of Lands and Forests, over 1,200 saw-mills. From this it can be readily seen that the saw-mill branch of the great forest products industry is of a very extensive character and makes an important contribution to the industrial and commercial wealth of the Province and of the nation.

THE PULPWOOD INDUSTRY

In classifying the forest products industry the Committee for the sake of convenience has made a separate category out of the cutting of pulpwood. This was done in order to differentiate between the pulp and paper companies which usually have long-term concessions of pulpwood on Crown Lands from the pulpwood jobbers whose activities were most marked during the period of the depression from 1935 onwards when unemployment conditions amongst bush workers caused the Government to lift the ban upon the exportation of pulpwood. Pulpwood cut by jobbers could be either supplied to domestic mills or under the supervision and control of the Department could be exported to the United States for use by American mills whose products were not competing with the products of Canadian mills.

EXPORTATION OF PULPWOOD

The exportation of pulpwood cut from Crown lands was studied at some length. The practice of permitting such exportation has existed for many years, during part of which period it was permitted under a system of substitutional clearances.

In the year 1935 the unemployment situation amongst bush workers had attained such proportions that the Government undertook an expansion of the export privileges which resulted in giving gainful employment to large numbers hitherto on relief and in providing a substantial increase in foreign exchange. This expansion, with its beneficial results, proceeded without any loss to or interference with established industries of the Province. The Committee has considered with the utmost care the problem of exportation of pulpwood, and it is fully mindful of all phases of the matter. The Committee expresses itself of the opinion that it would indeed be more beneficial to the Province, having regard to all the circumstances, if all of the native pulpwood could be converted into pulp, paper and other forest products prior to exportation, and it therefore recommends that as and when local pulp, paper and other forest industries are created to take advantage of the use of pulpwood, the exportation of the raw pulpwood should be proportionately diminished. Certain observations with respect to the problem of exportation are necessary. From the statistics brought forward in evidence, it appears that the natural yield of the commercially accessible forest areas of the Province is not yet being utilized completely; in other words, the forest is still producing, each year, more than is being consumed. Furthermore, the Committee considers that in a national emergency such as the present, when a balanced trade and foreign exchange are vital, the export of pulpwood to the United States, subject to the foregoing recommendation, should be continued. It is to be noted that there are in existence in the Thunder Bay District alone, according to estimates, about 40,000,000 cords of mature spruce and balsam. In order to make room for new growth, it is preferable that this wood should be harvested. The export of pulpwood has in fact given employment to men who would otherwise have been idle and would have been in need of maintenance by Government assistance. The Committee desires to call attention to evidence which was given to the effect that the American markets across the waters of the Great Lakes, to which

Ontario pulpwood could be shipped, have within their vicinity mills which utilize approximately 3,000,000 cords of pulpwood per annum, and hence it can be seen that the amount of pulpwood cut from Crown lands which has been exported in the various years would not supply more than one-tenth of the requirements of these mills on the average.

Considerable evidence was given in respect of the District of Thunder Bay, which, it is generally conceded, contains one of the finest stands of pulpwood to be found in Canada. Over and above the mature timber, which can be harvested immediately, it is estimated that the annual increment or growth is sufficient to enable the harvesting in each year from lands controlled by the Crown of 742,000 cords of spruce and balsam pulpwood. The first call on this crop is to supply domestic industries. Thereafter out of the surplus such quantities of pulpwood as are contracted for, and for which permits have been granted under the Crown Timber Act and regulations, can be exported. The following comparison of figures for 1937 which were given in evidence, may assist to exemplify the situation in respect of export in the Thunder Bay District:

1937	Cords	Cords
Permissible cut of spruce and balsam.....	742,000	
Spruce and balsam used by domestic mills.....		425,715
Spruce and balsam exported from Crown lands...		218,067
Nett excess over exports and consumption.....		98,218
	742,000	742,000

It can be seen, therefore, that if the entire requirements of the local mills had been filled with pulpwood cut from Crown lands during 1937, there would still be approximately 100,000 cords which could have been harvested and used without impairing or depleting the forest. In point of fact, however, about 23 per cent of the requirements of the local mills was supplied from private lands or lands not controlled by the Crown, and therefore it can be readily seen that there was an additional surplus of 110,000 cords of the annual permissible cut over and above the amount consumed at home and that exported.

A passing reference may be made to the inferior types of pulpwood, such as jackpine, poplar, balm of gilead and hemlock, of which there are vast stores in the Province of Ontario, much of which is mature and should be harvested. With the development of the kraft pulp and paper industries, the harvesting of these inferior species has become a profitable enterprise. Such pulpwood is not used in the production of newsprint, which demands the superior woods, spruce and balsam. There are very few kraft industries in Ontario, and the evidence has tended to show that their markets are not affected by the exportation of pulpwood, since the American mills themselves are supplying American markets with their requirements. In other words, Ontario kraft mills are producing for home or overseas consumption, and have not as yet found a place in the American market to any great extent.

The Committee freely avows that it is difficult, if not impossible to formulate any hard and fast rule to govern the exportation of pulpwood. But it finds as a fact that the exportation of spruce and balsam pulpwood from Crown lands which has been carried on into the year 1940 has not been prejudicial

to the Canadian mills. Evidence was given as to an embargo, apart from certain rights, placed on the exportation of pulpwood cut from Crown lands from 1929 to 1935, which it was expected would force American interests to establish new industries in this Province, and it should be noted that during the period mentioned not one mill was erected as a result of this embargo.

The Committee is fully alive to the fact that the ideal condition in reference to pulpwood would be to have the annual permissible cut from Crown lands in the Province utilized in domestic mills. However, this has not been possible up to the present time, since after the requirements of the various industries have been met there is still a great amount of pulpwood available which should be harvested like any other crop rather than permit it to remain uncut and become over-mature and lose its commercial value.

If, therefore, there is no market at home for this pulpwood, it is logical to seek markets abroad, always looking to the day when, by the initiative of the men who guide the forest products industries in this country, the requirements of domestic users will be increased to the point where it will be possible to completely utilize Ontario wood at home.

Certain evidence was presented, with reference to southern pine, which during the past few years have been brought to commercial value in the southern United States. The comparative quality of southern pine is inferior to that produced from Ontario pulp, but the Committee is of the opinion that the prohibition of pulpwood exportation would lend encouragement to the use of southern pine, of which there appears to be an abundance to provide a great part of the needs of the United States mills, due to its quantity and to its rapid rate of regrowth, as compared with the forests of Ontario. The evidence in this respect ended toward individual opinion on the possibility of southern pine coming into active and serious competition with Ontario spruce and balsam. The Committee considers, on evidence adduced, that the product of southern pine does not possess the quality of that produced from Ontario spruce and balsam, but the Committee is also aware of the possibility of further perfection of the southern pine product. A tree of southern pine variety will grow large enough for pulpwood use in approximately seventeen years, whereas it requires many years longer for Northern Ontario spruce to do so, although this difference is somewhat reduced by the fact that the yield texture content of the Northern Ontario spruce is higher than the faster growing southern pine. With this in mind, the Committee considers that any move or any policy having as its principle the determination of exportation out of the Province, should be shaped and created with full and absolute regard for the competition which has existed, and which, by reason of war, may be said to be temporarily removed, and with further regard for competition which, while not yet a full factor, may become a great consideration in the eventual disposition of Ontario's forest produce. The Committee believes that any policy which fails to give full effect to these considerations and which views only the opportunity of the moment, might, in time, act as a serious and an unfortunate consequence to the interests of a great industry. The chief market for Ontario pulpwood products is decidedly in the United States, and it is the opinion of the Committee that the whole future of the industry is predicated upon sane and logical business principles and the preservation of good-will in its dealings with its principal consumer. It is realized that the establishment and the maintenance of good-will lies, in

the main, with the industry itself, and it is therefore to the industry that the Committee directs its remarks in this regard. In so far as it is within the scope of the Committee's power to recommend, it does in fact believe and does recommend that a certain amount of pulpwood should be allowed to be exported. The Committee recommends that such exportation should at no time prejudice the demands of Ontario mills, nor should it be such as to create economic disturbance and unemployment. In offering this recommendation, the Committee bears in mind that the ideal situation would be the processing of all Canadian woods in Canada and the exportation of a finished product in place of pulpwood and that it would be preferable, either through existing Canadian mills, or newly established ones, to effect in Canada the full process of manufacture; but the Committee has been permitted to consider evidence which shows that a prior prohibition upon general exportation did not result in any new mills being established in Ontario by United States interests, and, further, to consider that the desire for the ideal situation, so referred to, must be tempered with the logic of existing situations and good business principles. The Committee was unable to find such a logical answer to the question of the eventual benefit to this Province by the prohibition of the export of pulpwood; its conclusion is that harm may certainly lie in such prohibition, and that it is preferable to recommend that the future of pulpwood resources be guided away from a possible danger. Upon the subject of exportation of pulpwood, the Committee concludes its findings by recommending that the policy of the Department of Lands and Forests in permitting the export of pulpwood should be subject to review at least every year, such review to be made with due regard for domestic and foreign conditions in the pulpwood markets.

The Committee desires to draw attention to certain statistical records which were quoted in dealing with the quantities of pulpwood exported from Crown lands in Ontario. These were taken both from the records of the Department of Lands and Forests and the publications of the Dominion Bureau of Statistics, and while the figures compiled and regularly maintained by Ontario clearly indicate the quantities exported from Ontario to the United States cut from both Crown lands and those privately owned, the Dominion's figures are bulked and include quantities from provinces and other sources other than Ontario cleared through Ontario Ports of Exit. The Dominion Bureau of Statistics does not disclose the source of such quantities cut outside the Province of Ontario and exported to the United States through Ontario ports. The Committee fully recognizes the position of pulpwood which originates in one of the Provinces of Ontario and Quebec, and which is shipped from either province to the other and then exported; while shipments of this type are shown in the figures of the Dominion Bureau of Statistics as "exports", the Committee considers that these inter-provincial shipments are not to be deemed "exports" in the true sense of the word, except in the last analysis when they are actually leaving the Dominion.

The Committee realizing the full value of data compiled in respect of pulpwood exported both from privately owned and Crown lands, recommends that the Department of Lands and Forests continue to maintain the records in this regard and at the same time collaborate periodically with the Dominion Bureau of Statistics with a view to approaching a system of tabulating figures that may uniformly serve the needs of the Provincial as well as the Dominion Government.

PULP AND PAPER INDUSTRY

During the course of its sittings, the Committee devoted several days to the hearing of evidence relative to the pulp and paper industry. Representations were made on behalf of the various pulp and paper companies in the Provinces of Ontario and Quebec. By reason of such evidence, the Committee was furnished with surveys, statistics and publications which indicated the tremendous investment represented by the industry. During the years from 1929 to 1933 when the full effect of the depression was felt throughout the world, the price of newsprint dropped to such a low level that the whole industry was on the verge of collapse. Naturally pulp and paper companies were anxious to keep operating since the closing down of their mills would undoubtedly have involved a large loss and resulted in a serious social and economic problem in communities dependent upon the industry. In order to continue operating, the newsprint companies embarked on a course of price cutting until finally their product was being sold actually below cost. At this point the newsprint industry was indeed passing through distressed conditions; approximately fifty percent were operating in receivership or default, and a number of prominent companies were on the verge of this same condition. After a prolonged period of price reduction and disastrous competition at "below-cost" prices, the industry found itself burdened with an oppressive interlocking contract system by which a single seller, through a single contract, could fix the market price arbitrarily for the whole pulp and paper industry for one year or perhaps longer. The interlocking contract system was the outcome of excessive expansion of capacity, and an attempt upon the part of the manufacturers to hold their respective contracts or obtain new ones. In order to do so the various manufacturers qualified their contracts by a guarantee that their price would not be any higher than the price of certain other companies. The extreme in this regard was reached when a blanket guarantee was given that the price on a specific contract would not be greater than the price quoted by mills with a production of 100,000 tons per annum, no matter where those mills might be on the continent. The fact became obvious that the persuading of one mill to set up a new price satisfactory to the buyer, or to continue the old price for another year, necessarily set the price for the whole industry. The destructive quality of such a vicious system is seen, when one appreciates that a certain mill, engaged in the filling of a contract which permits it a bare operating profit, suddenly finds its price altered overnight by the signing of a contract between other parties who are completely foreign to the contract on which the particular mill is now engaged. That new price might spell disaster for the mill whose calculations had already been based on a narrow margin of profit. The system permitted an unscrupulous company to enter into a contract containing an unsound price, and thereby to drive down the price of all other companies and contracts containing this interlocking feature; the obligation to meet such price might well serve to send the other company or companies into bankruptcy. As stated before, this appeared to be the sad plight of the pulp and paper industry in 1935. Some effort had been made by the Provinces of Ontario and Quebec as far back as 1927 and 1928 to improve the situation but with little success. However, by 1935 it became abundantly evident that some remedy must be found; and companies, having become more amenable and more responsive to suggestions of the Governments of Ontario and Quebec, co-operated in 1935 in appointing a Committee to lay down an adequate plan of detailed distribution.

The Committee, from the evidence presented, realizes that the pulp and

paper industry has reached a turn in the road along which conditions have been in direct contrast with the unfortunate situation existing from 1929 to 1935. But the Committee is further mindful, and greatly so, that these new and better conditions which now exist, have afforded the pulp and paper industry an exceptional opportunity to guard against the possibility of those deplorable years being repeated. The Committee, in strongest language, recommends that everything be done at the earliest moment which tends toward an established, harmonized and equitable policy among the members of the pulp and paper industry. The Committee further recommends that this Province continue to offer every assistance, as it has ably done during the course of the past five years, to the industry. In as much as this matter is of interprovincial importance the Committee adds to its recommendation concerning Government assistance, the opinion that this Province should continue its co-operation with the Province of Quebec and to open negotiations with the Governments of such other Provinces as may be necessary with a view to ensuring stability of the industry in general.

PRORATION

The evidence heard by the Committee dealt in detail with the causes surrounding the difficulties through which the newsprint industry has passed; and too it brought forth the submission of various interests with respect to the remedy which lessened the ills of the industry. In the same manner, the Committee was privileged to hear representations having to do with the future, as well as the present, and the possibility of a remedy which has assisted, and will continue to assist, in the solution of the industry's problems. Proration was the remedy which was suggested by which the industry could be stabilized. Evidence tendered to the Committee bore upon the advantages and disadvantages of this system. It was not intended to be a cure-all but a preventative rather than a stimulant. The great disadvantage in the case of proration, as perhaps in the case of any other interference with competition in industry is that there is not the same incentive on the part of the company to obtain markets. The industry might well move along a course of complacency unless this situation is guarded against. But, having in mind the advantages and the disadvantages of proration, the Committee is of the opinion that proration gave to the industry stability with which to cope with its problems in an orderly and normal way. It did in fact eliminate the disastrous fratricide which broke forth between 1928 and 1935; it did serve to eliminate the treacherous interlocking contract system, and it is the belief of the Committee that proration did further prevent a serious and formidable state in the industry. The Committee has fully appreciated the fact that conditions altered to the benefit of the industry generally after the year 1936, but the chaos, the suspicion and the mistrust which existed prior to 1936 during the depressed times, could and quite probably might have reared themselves once more in a market which had become a highly competitive one, if the industry had not had the support of proration, whose effectiveness is concretely evidenced in the stability of newsprint prices obtaining in the present war crisis as against those prevailing in the open market of the Great War era.

MEANING AND APPLICATION OF PRORATION

To administer the plan of proration a Committee was appointed by the industry in the year 1935, and it began reporting to the Governments of Ontario

and Quebec in June of that year, the plan having been adopted the following year. Two methods were suggested:

(*a*) Provincial quotas.

(*b*) Equitable shares for each producer.

After full consideration the second method, equitable shares for each producer, was favoured; out of this arose the need of analyzing the capacity of the various mills, in order to arrive at a fair and proper distribution of tonnage. From the evidence adduced before the Committee, it appears that these ratings were reached to the satisfaction of the parties concerned, since none of the witnesses who testified advanced any complaint against the method employed in arriving at the capacity rating or the result. This seemed in itself a more than favourable commendation of the method, owing to the fact that this was the basis of the distribution of orders and that the ratings of the mills might well have created a contentious subject. Two mills in the Province of Ontario were given what is known as "zero" ratings, those mills being Sturgeon Falls and Espanola. The very plan of pro-ration consists of a determination of each manufacturer's equitable share of tonnage by his percentage of total effective capacity; in other words, if the total shipments by all mills amounted to 60% of the total efficient capacity of the industry, then each manufacturer's shipments should amount to 60% of his individual capacity.

With regard to those mills rated at "zero," it is to be pointed out that they were not in operation at the time when they were so rated. So long as these ratings continue to have effect upon these two mills so named, they cannot operate. However, according to the terms of the plan of proration, it is not the existing rating alone which bears upon the probable future of a mill or mills. It may well be that absolescence, or high production costs might serve to keep a particular mill at a "zero" rating. The capacity of a mill or plant is the ability of the mill or plant to produce newsprint, and new equipment installed, would of itself result in new capacity and the right to be removed from a rating of "zero." Because of this, and the many situations which arise from year to year in the matter of proration, it would seem to the Committee that the capacity ratings determined by the industry through its committee, should be reviewed from time to time in the light of changing and increasing demands on the newsprint industry to supply the market. By reference to a comparison of the years 1934-1935 with the years 1938-1939 it is logical to conclude that pro-ration has undoubtedly been of benefit to the industry. Evidence showed that the same volume of shipments brought into Ontario and Quebec approximately forty million dollars of additional income. While proration in itself may not have produced this direct result of increased income, it was in fact produced by the abolition of the interlocking contract plan which acted so detrimentally upon the price of newsprint; and the interlocking contract system was destroyed, both by the energetic efforts of the Governments of Ontario and Quebec and by the harmonizing of the industry itself through more stabilized means of selling, one of which means was proration.

It is true that the investors received little, but thousands of families have benefited; mills have been improved and substantial sums have been paid to the Crown for dues. In general, the Committee realizes that private initiative is and should be paramount in the operation of any and all industry; the Com-

mittee under circumstances other than those in which the newsprint industry found itself from 1929 to 1935 would prefer that industry should operate in every way according to its individual standards of merchandising. But the Committee cannot overlook the danger and the misfortune, both to the industry and to the forest resources of the Province, which have arisen and which could arise once more, from conditions such as those which prevailed in Ontario and Quebec in those years from 1929 to 1935. Proration, from the standpoint of Government intervention, cannot be heartily endorsed, but the Committee is of the opinion that proration is not a plan which is administered by Governments, but rather a plan which is administered by the industry as a whole, through its independent committee. It is the industry and it alone, upon which the plan of proration depends for success. In the light, therefore, of the improved marketing conditions which have followed the industry's adoption of proration, the Committee recommends to the industry that proration be continued; it is the view of the Committee that it has proven to be the only and proper solution to terminate the unfair trade practices which were existing, and to protect our timber resources. The industry needs proration as a social measure and a stabilizer, but it also needs energetic, competitive measures designed to prevent any trend toward complacency. The Committee considers that this might be achieved by a vigorous sales organization or by some subsidy or special inducement offered by the industry to the company obtaining the orders.

With an effective operation of the plan of proration, the Governments of both Ontario and Quebec should find therein a major portion of the protection to the forest resources of both provinces, which, in 1935 and 1936, impelled the two governments to come to the fore of a critical situation. Successfully conducted, proration should in itself obviate the necessity of either government being obliged to take steps along any lines which might possibly be construed as government intervention. If, however, the advice or the assistance of the Governments of Ontario and Quebec should at any time be required by the industry, acting through its self-established committee, then the Committee considers that a Joint-Board, representative of the two governments and operating with legislative sanction of the respective governments, could be empowered to conduct discussions with the industry's committee, and to report upon the same to their governments; further to act as a liaison board between the industry and the governments which it represents, and to offer from time to time, recommendations to the two governments if and when it considers that implementation of legislation could be made with benefit concerning the matter of stamping out at the inception any possible conditions now or hereafter arising, which might have a tendency to reproduce the unbalanced competition of former years, resulting, as it did, in the bankruptcy of half the newsprint industry.

EXEMPTIONS FROM PRO-RATION

During the period of its later sittings, the Committee heard evidence from witnesses who protested the privilege given to some companies under the form of proration which had been placed in operation and which exempted these companies from having to observe the "distribution of tonnage" principle contained in the rule of proration. At the beginning of January, 1938, the committee set up by the industry decided to give exemption to several mills owned or partially owned by United States and by English publishers. Exemptions so

granted to Ontario Paper Company, Spruce Falls Pulp and Paper Company and Anglo-Canadian Company have continued to this date. The practice has been to continue these exemptions from year to year. The evidence placed before the Committee was indicative of the situation as it existed in the year 1939, and while conditions have perhaps altered materially since that year, the exemptions at that time amounted to approximately 400,000 tons for the Provinces of Ontario and Quebec combined; this represents one-sixth of the business of the provinces, and of this business 28% of the Ontario shipments were exempted and 10% of the Quebec shipments. It is interesting, however, to note that in 1939 the prorated mills worked to 58 per cent of their capacity, whereas with no exemptions being present in the industry the prorated mills would have worked to 63% of their capacity. For purposes of comparison, the margin of 5% so represented amounted to the industrial progress of the whole industry in the year 1939 as compared with the year 1938. The subject of granting exemptions produced a variance of opinion, particularly with respect to the Province of Quebec; suggestions were advanced as to the possible question of bitterness which resulted in a deterioration of proration through the use of exemptions. Some of the witnesses who appeared before the Committee advocated the abolition of all exemptions. The Committee, however, considers that every case having to do with exemptions must stand for judgment on its own merits, and that an unbiased study should be made of every case of exemption. The Committee realizes that by exempting a company one may do a great deal of good and very small harm; on the other hand, the converse situation may be created. The Committee does not intend or propose to deal with each individual case of exemption. Generally speaking, these exemptions were granted to companies which were not competing in the commercial market or to companies which were producing exclusively for their own consumption. In these instances, fluctuation of prices or other trade considerations do not concern them directly. Such companies were induced to invest capital here in the Province, and they are in turn consuming their own product. If these companies are placed under an obligation to prorate, they will be compelled to limit production in their own mills and go into the open market and purchase for their own use a product at a higher price than that for which they themselves are producing it. Such statement is based on the natural assumption that the product sold on the open market is not being sold at the cost of production. Such a condition would not, in the opinion of the Committee, be conducive to healthy business practice, since some of the companies presently enjoying exemptions do not produce enough for their own requirements and as a result purchase their shortages from prorating companies. The Committee, therefore, does not intend to make a definite recommendation with respect to the subject of exemptions, but does consider that this is a subject which should be reviewed by the industry and by the representatives of the Provinces of Ontario and Quebec.

RESEARCH AND SALES PROMOTION

Evidence was presented in detail to the Committee with respect to the matter of better efforts on behalf of the pulp and paper industry both in the field of research and merchandising. In pursuance of the evidence, the Committee considers that the stimulation of the forest industries, by the means of research and sales promotion, is of vital importance. Such research agencies and sales promotion organizations should be encouraged, especially agencies which have as their purpose the development of methods ensuring the better

growth and harvesting of the forests. The advocacy of research is essentially a matter for the industry, and it is again to the industry that the Committee directs its suggestion dealing with promotional efforts in this field. The Committee would suggest at the same time that every possible assistance and the fullest co-operation be offered by the Government and by the Department of Lands and Forests in furthering any plan initiated in this direction. Such suggestion is made since the interests of the Government and of the pulp and paper industry, while dissociated in the commercialization of the product, are both traceable in a primary sense to the same fundamental—that is, the forest resources of the Province. The promotion of new uses for forest products, and the preservation of present uses, is extremely vital, and the importance of such promotion must be paramount in the minds of those so greatly concerned in order that the industry may never find itself mired by the lack of progress and the decay arising out of a failure to keep pace with new methods and new uses. Timber products have, in instances, been supplanted by substitutes, and metal substitutes have made inroads on the lumber market. The Committee is of the firm opinion that energetic and consistent research can prevent further inroads on the use of lumber and can overcome many of the advantages now enjoyed by the manufacturer of substitutes. The Committee therefore recommends that an immediate survey be made by the Department of Lands and Forests of the existing situation in the matter of research endeavours, and that the Department of Lands and Forests in the Province of Ontario approach the Department of Lands and Forests in the Province of Quebec in order to arrive at a combined effort to harmonize the work of the Provinces and of the industry itself in the furtherance of research work.

CENTRAL SELLING AGENCY

The Committee has previously expressed itself in connection with the matter of sales promotion for newsprint, and repeats that it favours the organization of a sales group. This, of course, falls also within the scope of those matters which are to be dealt with by the industry itself. The Committee would qualify its view with respect to sales promotion to this extent, that it does not desire, now or in the future, to see created any of the disastrous and deadly competitive conditions which existed in the years from 1929 to 1935 and which brought about, to a great extent, the chaos into which the newsprint industry had fallen in 1935. If such a condition should arise by virtue of the creation of a sales promotional plan, then the Committee would necessarily find its view directed toward the general evil of dangerous competitive conditions, and would prefer in every way that unreasonable and inequitable competition be avoided.

In the opinion of those witnesses who gave evidence before the Committee, the establishment of a central selling agency inclines towards the idealistic. There may be some merit in such a recommendation for overseas marketing, but to extend it beyond this would appear to have for result the deterioration of present sales organizations, and to take upon itself the appearance of a monopoly. It may be that, as time goes on, a unified sales organization may gain the confidence of the buyers by its performance. There seems to be no question of doubt that such an agency would enable the Canadian pulp and paper industry to maintain a lower price for its products than is now possible by individual effort. However, the Committee is of the opinion that the time is not opportune for the establishment of such an agency.

COST OF ELECTRIC POWER

Evidence was brought before the Committee on several occasions dealing with those costs in the processing of forest products which are to be deemed basic costs. One of these is the cost of electric power. The rate at which such power can be obtained has necessarily a direct bearing on the cost of newsprint. The Committee was advised that newsprint mills use from 40% to 45% of the total power consumption of the Provinces of Ontario and Quebec combined. In some mills the cost of power has become a greater factor than the cost of labour. Speaking generally and taking the industry as a whole, the price of power is between $5 and $6 per ton of newsprint at 60% capacity of operation. The Committee is appreciative of the fact that, according to a general average power constitutes approximately 12% to 15% of the cost of newsprint, and that even if 50% of this were to be saved there would be no exceptional difference in the ultimate cost of the finished product, since the cost factor of power would still range in the neighbourhood of $3 to $5 per ton at the above-mentioned 60% of capacity production. Its saving per ton would not be so great, having regard to the full cost of production, and conversely it would indeed mean that the power company would suffer, since such a price for power would range below the actual cost of power production. With these facts in mind, the Committee does not consider itself in a position to make a recommendation in this regard except that the Government investigate the possibility of the adoption of methods that may reduce the price of power.

COST OF TRANSPORTATION

The cost of transportation of the harvested product of the forest areas was presented to the Committee by way of evidence and briefs. The subject assumes importance when it is remembered that transportation forms one of the basic costs in the industry. It is the opinion of the Committee that the complicated system of railway rates which is in existence creates a condition of unfair competition. For example, it would appear that there are special rates for square timber from British Columbia; these rates were, it would seem, established in order to meet Panama competition from the West Coast. The rates for transportation are established from the coast to certain points only, in the Province of Ontario or Quebec, as the case may be. This, in effect, works a hardship to those parts of the industry which do not operate at or near those favoured points. To cite a practical instance, the rate is much higher from Vancouver to Port Arthur than from Vancouver to Montreal, owing to the fact that Montreal is covered by the special rate and Port Arthur is not so favoured. There is every logical reason why the Committee should express a desire that a remedy be found to cure this unsatisfactory condition, and therefore the Committee recommends that the Province of Ontario exert its influence as and when opportunity affords towards effecting readjustment of rates that will be equitable to all interests representing the forest products industry.

FOREST RESOURCES REGULATIONS ACT, 1936

The Forest Resources Regulations Act, passed by the Legislature of the Province in 1936, was discussed in detail before the Committee. This Act gives extremely wide power to the Lieutenant-Governor in Council over timber

holdings of any company operating within the Province. It would appear that there were two definite purposes sought in the enactment of The Forest Resources Regulations Act, namely, to assist in the effecting of the policy of proration, and to enable the Crown to deal with timber limits which were held by companies in receivership, or subject to a disability under which they had no power to come to an agreement with the Crown in respect of areas which were not required for their corporate purposes. Further, it might also be said that the Statute enabled the Crown to deal with other companies which held areas far in excess of their needs, and which areas were not being utilized. The Committee has perceived that, from evidence adduced, the opinion of witnesses varied with respect to the propriety of the wide powers given to the Lieutenant-Governor in Council under the Act, but has also perceived that no criticism was offered to the Committee as to the manner in which the powers so given have been exercised in specific cases as they arose. The Committee, in formulating a recommendation having to do with Forest Resources Regulations Act, 1936, chose to look directly at the condition of the industry at that time, the state of disorganized financial distress which existed, and the vital and urgent need for some drastic and effective remedy. In brief, the Committee takes the view that the Act passed in 1936 is to be weighed in the light of its value or lack of value, having regard to the purposes to be accomplished, and with this fact in mind it is the opinion of the Committee that the Forest Resources Regulations Act, 1936, gave to the Lieutenant-Governor in Council powers which were indeed necessary, and which may be deemed necessary to-day. It is true that an indiscreet use of such powers could work an extreme hardship on the company concerned, but this would apply to any power improperly used by those in authority. With the responsibility for the administration of the Statute resting in the Lieutenant-Governor in Council the Committee considers that no objection is to be raised, either with respect to the enactment of The Forest Resources Regulations Act, 1936, or to the administration of such Statute since its enactment; further, the Committee considers that the Statute should be left undisturbed and the powers contained therein should be available to the Lieutenant-Governor in Council in whose hands the powers set out in the Statute are capably administered.

AGREEMENTS OF 1937

Evidence was also heard with respect to the procedure followed in the granting of the new concession agreements set forth in detail in the Report of the Minister of Lands and Forests, dated March 31st, 1938; after consideration of the evidence and of the facts and circumstances presented therein, the Committee finds that the Government was justified in its belief that the unproductive forest areas should be utilized in order to take advantage of the increased world demand and in order to meet the threat of competition which was presented by the advent of southern pine. The Committee considers that the Government was justified not only in view of the possible threat of southern pine competition but in view of the existing competition of European producers.

The Committee examined with care the terms of each of the nine agreements, to which reference was made. While some or all of these companies are in default in respect of some of the terms of the agreement, no benefit would or could accrue from a cancellation or forfeiture of the agreements to which the respective companies are parties unless other parties are prepared to meet obligations of

development. On the other hand, the Government would undergo the loss of the large sum now being collected from these companies for fire protection and ground rent. It is the practice for the timber licensee to pay ground rent and fire protection while the pulp concessionaire pays for fire protection, and in exceptional circumstances, for ground rent also. In this respect, it is to be realized that the concessionaire has undertaken an obligation in the matter of employment, erection of work and the harvesting of a certain crop over a period of years. Should markets improve so that it is practical to erect the mills which were included as part of the obligation in the agreements, then it is the opinion of the Committee that the companies concerned should be compelled to implement their undertaking; and in default, the agreements should be cancelled.

LAKE SULPHITE PULP COMPANY

The affairs of Lake Sulphite Pulp Company Limited and the receivership of that company elicited considerable evidence. At the same time the procedure of the Government from the date of the inception of the company to the present time was carefully examined. From the evidence adduced, the Committee has concluded that the concession agreement given to the company was fair, reasonable and proper, that the Government was justified in granting the concession agreement, and that the Government was in no way responsible for, nor could it have avoided the collapse of the company. The Committee considers that existing factors, embraced by favourable conditions and the strength of the world sulphite market, appeared to justify the belief of the Government and of the public in the future of the Company.

ABITIBI POWER AND PAPER COMPANY LIMITED

Subsequent to the sittings of the Committee on the 1st day of November, 1940, a Royal Commission, composed of the Honourable Charles Patrick McTague as Chairman and Albert Edward Dyment and Sir James Dunn as members, was appointed to enquire into and report upon the affairs of the Abitibi Power and Paper Company, Limited. The report of the Royal Commission was tabled in this House on the first day of April last, and it would therefore be an unnecessary repetition for the Committee to comment on the evidence submitted concerning the affairs of this company. Where the findings of the Abitibi Commission do come within the scope of the duties of this Committee as outlined in the Resolution of the House on April 18th, 1939, this Committee observes that those findings are in agreement with its own recommendations in such instances.

ADMINISTRATION BY COMMISSION

Questions were asked by the members of the Committee of witnesses as to the advisability of administering the forest resources of Ontario under a Commission management rather than under a minister of the Crown who is responsible to the people, the latter being the existing practice. In this respect, reference was made to the practice which prevails in certain Scandinavian countries. The Committee is, however, unable to justify a recommendation which advocates the appointment of such a commission in Ontario. The condi-

tions in Finland, Sweden and Norway are such that there is little in common with conditions in this Province. The large percentage of privately-owned forests, the comparatively small forest areas of the countries involved, and the active participation of government in operation and ownership of many of the pulp and paper companies in these countries, present an entirely different set of conditions to those applicable in the Province of Ontario. It is perhaps questionable whether the ideas of regimentation, government control, ownership and interference associated with commission control in Scandinavian countries would be acceptable in this Province; the Committee would qualify such assertion only to the point of deeming it perhaps advisable for the Government to give consideration to the question of exercising some more efficient control over the cutting of timber on privately-owned lands. This is in accordance with the Committee's previously expressed statement having to do with a more closely aligned policy in the matter of cutting of timber on all lands in the Province.

The Committee has, at an earlier stage of this Report, expressed itself with respect to the varied private ownership of lands in the Province, which ownership makes it impossible for the Government, in the absence of legislative authority, to exercise any control over or supervision in the cutting of privately-owned timber. At such earlier stage the Committee was dealing with the acreage which remains now beyond the control of the Government. Hence, in order to achieve a common policy of timber conservation and supervision over the greatest possible forest area, the suggestion previously made in this Report should be given consideration; that is, that the Government, where practicable, should take steps to reacquire timber resources, particularly in the case of railway grants. It is perhaps unnecessary to state that the Government cannot regulate cutting or impose reforestation on lands which have been alienated.

REFORESTATION

Reforestation has long been the policy of the Government in Southern Ontario. Evidence was heard to the effect that millions of dollars have been spent in creating forest plantations and nurseries, that millions of trees are distributed each year to farmers and owners of land who are desirous of creating woodlots on their properties. In addition, the practice of entering into agreements with various counties of Southern Ontario has been adopted and county forests have been fostered. Demonstration woodlots have been established throughout the Province in co-operation with private owners. All these projects have had as their basic principle the re-establishment of the forests of Southern Ontario.

With respect to Northern Ontario, it would appear to the Committee that so long as proper conservation methods are employed, such as the regulation of cutting, fire protection and combatting insect destruction, there is no need for large scale reforestation in that part of the Province.

As previously stated, one of the difficulties of the Government, charged as it is with the care of the forest resources of the Province, has been the lack of control over cutting on privately owned lands. The indiscriminate clearing by private owners of timber from their lands has, in some sections, caused a serious flood hazard which has resulted in serious damage to property of the

residents of the sections affected. To counteract this, the Government has fostered the development of woodlots, in order to recreate the natural means of flood control. In an outline of the history of Southern Ontario, it was pointed out to the Committee that the settlers were primarily interested in clearing their land for cultivation; timber was not a dominant factor or a prime consideration to the first occupants of the land during the initial development of the Province. It is true that many serious conditions arose as the result of indiscriminate clearing of timber lands and as a consequence the Government and the municipalities of the Province have been compelled to carry out costly conservation schemes in order to restore, or control the waterways in Southern Ontario. In this regard, the Committee desires to point out the great value of whole-hearted co-operation on the part of private land owners in the matter of reforestation. The ultimate success of the work of reforestation will re-establish the forests in many areas of Southern Ontario with consequent benefit to the citizens of the Province.

FIRE PROTECTION

From evidence given before the Committee, it is learned that the greatest menace to the forests in the Province is fire and the opinion was expressed that the Department should continue at all times to maintain an adequate system of protection against forest fires. It was stated that in the year 1939 no less than 102,500,000 acres of woodland was under the protection scheme established by the Crown. The current practice is to charge licensees a fire protection charge of $6.40 per square mile of area held under license.

DISPOSAL OF CROWN LANDS

The likely influx of settlers from the British Isles and elsewhere at the close of the present war is a matter which calls for careful study in order to ensure that settlers will be located upon the unoccupied fertile lands of the Province with the greatest expediency. Since such a wave of immigration would be the problem originally of the Department of Immigration, the Committee recommends that the Department of Lands and Forests lay plans to co-operate with the Department of Immigration as to the settlement of immigrants. Out of such an arrangement would arise an orderly scheme of permitting occupation of lands in this Province. Such co-operation between the Department of Lands and Forests and the Department of Immigration would appear to promise the best possible method of dealing with such a situation and would react to the benefit of the settler.

With respect to summer resort areas, the Committee suggests that further study be made in order to keep pace with steadily increasing tourist demands. The Minister of Lands and Forests recognized that every means should be taken to promote the disposition of lands for such purposes and that in each district office the Department should keep available complete and accurate general information for the tourists or summer vacationers. Tourist locations in the same district should, it is felt, be held for disposition at uniform prices. Information as to this should be available in the district offices for the convenience of the public since it is at all times desirable that demands of this character be quickly met.

Considerable discussion took place on the policy of the Department of Lands and Forests in disposing of summer resort locations by way of leases and

of Licenses of Occupation, under which a yearly rental is exacted. Evidence was presented to the effect that those types of tenure were not sufficient security to the holder to warrant any large expenditure on the land. The Committee considers that in some instances this view may be well advanced and therefore recommends that unless special circumstances prevail to justify the same, the disposal of summer resort locations should be by sale rather than by lease. The Committee in making this recommendation considers that this policy would create an incentive for purchasers to commit themselves with more confidence to a larger investment. In connection with this and the previous recommendations concerning summer resort locations, the Committee is of the opinion that the Department of Lands and Forests should offer every encouragement to tourists and others to purchase such locations throughout the Province except in the Provincial Parks and Special Reserves. In Parks and Special Reserves. leases on a long term tenure basis under reasonable conditions should only be granted.

COLLECTION AND CONSOLIDATION OF ACTS RELATING TO DEPARTMENT OF LANDS AND FORESTS

Questions were placed to various witnesses who appeared before the Committee as to the practicability of collecting the many existing acts regulating the administration and the administrative duties of the officials of the Department of Lands and Forests and binding them into one volume so that they would be readily available. In the opinion of the Committee this would not entail a great deal of work and on the other hand would simplify the work of those whose duties require a reference to this legislation from time to time.

CONCLUSION

The Committee during the several days of its sittings considers that there has been recorded in evidence much valuable information which will furnish a permanent source of future reference, the value of which more than justifies the expenditure involved. Many prominent witnesses from outside the jurisdiction of the Committee's authority on invitation attended to testify and to assist the Committee by giving it the benefit of their views.

The Committee expresses the sincere hope that the information contained in the 2,500 pages, approximately, of evidence and in the exhibits and briefs submitted to the Committee and in this Report, may be of assistance and may result in benefit to the administration of the forest resources of the Province, to the industry whose vitalizing asset is the same forest resources, and to those interested in the affairs of the Department of Lands and Forests of the Province of Ontario.

All of which is respectfully submitted.

J. M. COOPER,
Chairman.
H. C. NIXON,
A. L. ELLIOTT,
F. R. OLIVER,
W. G. NIXON,
PETER HEENAN.

Report of the Select Committee appointed to investigate, inquire into and report upon all matters pertaining to the administration, licensing, sale, supervision and conservation of natural resources by the Department of Lands and Forests.

MINORITY REPORT

Signed by:

GEORGE DREW,
FRANK SPENCE
HAROLD WELSH

REPORT OF THE SELECT COMMITTEE APPOINTED TO INVESTIGATE, INQUIRE INTO AND REPORT UPON ALL MATTERS PERTAINING TO THE ADMINISTRATION, LICENSING, SALE, SUPERVISION AND CONSERVATION OF NATURAL RESOURCES BY THE DEPARTMENT OF LANDS AND FORESTS

By a Resolution of the Ontario Legislature dated April 18th, 1939, it was "ordered, that a Select Committee of this House be appointed to investigate, inquire into and report upon all matters pertaining to the administration, licensing, sale, supervision and conservation of natural resources by the Department of Lands and Forests."

Pursuant to that Resolution the Committee held many meetings and heard considerable evidence. The witnesses included the Minister of Lands and Forests, the Deputy Minister of Lands and Forests, several of the experts attached to the Department, heads of our largest pulp and paper companies, timber operators, power experts, representatives of associations connected with forestry and the pulp and paper industry, and many others whose evidence covered most of the field of activities connected with our forest products.

Not one witness went so far as to say that the present method of administration, licensing, sale, supervision and conservation of our forest resources by the Department of Lands and Forests is all that could be desired. The Minister himself made it clear that he thought there were many things that could be done. Most of the witnesses thought that much could be done to improve the situation. But on reviewing the great mass of evidence which was given it is surprising to find how few had specific recommendations as to what should be done. Most of the witnesses preferred to deal with some special aspect of the problem. One thing which emerged clearly from all the evidence was the fact that at present there is no machinery for effectively co-ordinating all the mass information which is available from the highly qualified experts in the many specialized activities based upon the use of our forest resources. It is clear that some system of digesting the experience and opinions of all the leading experts connected with every type of activity connected with our forests should be devised as soon as possible.

In preparing the final draft of this Report we have had the advantage of reading the Report of the Royal Commission appointed by the Ontario Government to inquire into the affairs of the Abitibi Power and Paper Company Limited. The three members of this very able Commission were the Hon. Mr. Justice C. P. McTague, of the Supreme Court of Ontario, Mr. Albert E. Dyment, and Sir James Dunn. While the evidence they heard was directed particularly to the affairs of the Abitibi Power and Paper Company, Limited, much of the evidence and many of the findings in the Report are of the utmost value in considering the general problems of all industries using raw material from our forests. For that reason the findings of the Report of that impartial Commission will be referred to several times throughout this Report and for convenience the Report of this Royal Commission will be referred to as the Abitibi Report.

It is necessary at the outset to mention one important statement in the Abitibi Report because it refers to a very real difficulty we encountered at all stages of this inquiry. The Commissioners state in the Abitibi Report that "a general feeling of insecurity can be detected which can be rectified only by the removal of any suspicion that political considerations and not plain ordinary justice prevails in the relationship between the Government and the industry." That general feeling of insecurity was all too obvious and one of the reasons that it was impossible to get specific recommendations from many extremely capable witnesses was the obvious fact that they were fearful of prejudicing the companies with which they were connected if they gave evidence which appeared to reflect upon the administration of the Department. While this was very apparent in the evidence of the witnesses themselves, it was even more apparent in discussion with some of those who would have made good witnesses but frankly stated that it would be putting them in a serious position if they were called, because if they told the facts the companies with which they were connected would be penalized. This difficulty was particularly noticeable in connection with many of the officials and experts of the pulp and paper companies, which are so dependent upon the good-will of the Department for their very existence. The most serious contributing factor to this feeling of insecurity and freely expressed fear of reprisal, is The Forest Resources Regulation Act passed in 1936, which confers upon the Minister absolute power over all the pulp and paper companies in the Province. The sweeping powers under this Act are exercised without regulation and without right of appeal. It is doubtful if any less democratic piece of legislation has ever been put upon the Statute Books anywhere within the British Empire! The purpose and scope of this Act will be discussed in more detail later in the Report. It is mentioned now because it is apparent that no matter what the original purpose may have been, the unrestrained powers under this vicious piece of legislation contribute more than anything else to the "general feeling of insecurity" referred to in the Abitibi Report.

The greatest difficulty encountered however arose from the incredibly unbusinesslike methods of the Minister in dealing with the most important affairs of his department. The evidence makes it clear that he takes full responsibility for all major decisions with little or no information before him from the well-trained experts in the department. There is every reason to believe that the civil servants attached to this Department are well qualified for their positions, are conscientious and hard working public servants, but it is clear that they have little or nothing to do with the decisions upon which the success or failure of the administration of the Department depends.

These difficulties are mentioned at the outset because they did limit the possibility of really conclusive evidence in regard to some phases of the operations carried on under the direction of this Department. The recommendations which will be made at the end of this Report will in our opinion deal with the subject on a sufficiently broad basis so that the failure to obtain conclusive evidence, particularly in regard to supervision of cutting and forestry practices generally, should not limit the usefulness of this Report.

The inquiry originally arose out of discussions in the Legislature regarding the course to be followed by the Government in connection with the affairs of the Abitibi Power and Paper Company, Limited. It was for that reason that it was deemed advisable to defer the completion of the Report of this Committee until

the Royal Commission appointed to deal particularly with the affairs of the Abitibi Power and Paper Company, Limited had delivered its Report to the Government.

The purpose of those who initiated this inquiry was outlined at the beginning of the first meeting of the Committee in these words:

G. A. DREW:

"As it was on my original motion and at my written request to you as Chairman of the Committee that this inquiry has been called, perhaps I had better outline exactly my own views of the course which should be followed.

"In the first place, the motion makes it clear that a Select Committee of this House was authorized by the House on the 18th instant to investigate, inquire into and report on all matters pertaining to the administration, licensing, sale, supervision and conservation of natural resources by the Department of Lands and Forests, to be constituted as follows and be authorized to sit during the recess of the House. That necessarily ties in with the Forest Resources Regulation Act passed in 1936, which gives the wide powers to the Department under which most of the contracts have been made which will come before this Committee for inquiry. I want to make it clear that the inquiry is based on the necessity for some defined policy on the part of the Department of Lands and Forests of this Province. It will be remembered that the motion was prompted by the situation arising from the attempts which came to a head last spring to reorganize the Abitibi Paper and Pulp Company. It was then that the powers conferred on the Minister of Lands and Forests by the Forest Resources Regulation Act of 1936 became apparent for the first time. So that the course I propose to follow in the examination may be understood, I want to make it quite clear that my general purpose in this inquiry is to attempt to find some clearly defined long range policy which can be of use to this Government and subsequent Governments in dealing with resources which may easily, over a period of time, become the greatest of all our natural resources. Under this Act, the decision of the Minister of Lands and Forests is subject to review by the Cabinet, as it is only by an order-in-council passed by the Government that action can be taken. The Minister must have the necessary information before him, and, on his recommendation, the decision is usually reached. A wink of the Lands and Forests' Minister, however, is as good as a nod of the Cabinet. Very often the Cabinet will accept his recommendation as to the subject matter before them and under an Act so powerful as this, the Minister acquires authority to deal with all the forest resources of this Province. Consequently, the way in which the contracts are let and the actual manner of procedure in dealing with them becomes of considerable importance. I said at the outset that I will try to make the course clear that I am to follow. My position in this regard is that the Government which has these wide powers cannot then wash its hands of the sale. In this particular case there was a suggestion that the mortgage must be exercised and that the Government was not responsible for what happened. Whether that is the right course to follow in relation to all these companies, we should ascertain. I would hope that out of this inquiry might come a clear policy for the future that would to some extent govern the powers for the present and succeeding Governments.

"Having regard to these wide powers, on the recommendation of the Minister, areas that have been allotted to companies may be taken away at his discretion, subject, of course, to the approval of the Cabinet. It does seem to me that it is of great importance that we understand how those powers have been exercised in the past and how they should be exercised in the future.

"Another company that was under discussion at the time when this resolution was presented and adopted was the Lake Sulphite Company. I would think that it would be our duty to go to the fullest extent in examining the method by which the Lake Sulphite Company came into existence. It was stated at that time to the Cabinet that the Company was adequately financed to go into operation. The bankruptcy of that company before organization was complete was a very severe shock to this Province and outside the Province where our pulp and paper is necessary and where they must go for sale. It must not be forgotten that the starting point was the recommendation by the Minister to the Cabinet that they should approve of what he had done, because this company was adequately financed. The company failed. No satisfactory explanation was given for that. This is not a question of trying to attach blame but a question of trying to find out what did happen and of trying to find some formula in order to prevent a recurrence.

"This extremely wide Act in my opinion gives powers not given by any other Act in this Province. It seems to me that it leads to the necessity for a very careful understanding of how far this or any other Government should go in exercising these wide powers.

"The value of our timber is enormous at the present time and it seems to me perfectly clear that we have only started to realize the value of those resources. We are no longer cutting timber for logs and boards alone, but are using it to produce clothes and chemicals, especially in war time, and in Germany even food has been made from it. What uses will be made in the future of these recurring crops can only be imagined, and our young people should have a right to look to the development of that resource and it should be protected for proper future development. All contracts which have been let under The Forest Resources Regulation Act of 1936 should be closely examined to see exactly what method was employed in entering into those contracts on the part of the Government. We should ascertain exactly what the result has been from the point of view of the Province. It is particularly important that we should understand clearly what can be done to preserve these resources during war, because in war time our timber acquires an importance out of all proportion to peace time use. We are not only looking at the present but to the future. But because we are at war is all the more reason that we should find out what the situation is and what can be done to improve it. In my opinion, we are at present completely denuding some of the valuable forestry areas in this Province without any attempt at reforestation. Reforestation of these valuable areas is one of the first considerations.

"The war raises many questions in that respect which we should consider while this Committee is sitting.

"When the war is over, I don't know when, I think there is bound to be very heavy colonization in this country. We have for years been talking about the possible value of the clay belt in Northern Ontario and in other areas which are, at the moment, too heavily timbered for colonization. There are differing opinions. There are those who say that if some effective programme were adopted we would open up a new area for colonization as great as the whole farming area in Southern Ontario. Whether that is wrong or whether it is right, it seems to me that this Committee should consider whether it is possible to colonize the clay belt under some timber cutting plan, and if there is some real prospect of success. While we still have time to do it, we should make a recommendation that should be followed up after this war is over. In that respect, let us recall that in early times, timber cutting in the older part of the Province opened up farms. It was sound then and may be sound now."

Following these remarks Mr. J. M. Cooper, who succeeded the Hon. Paul Leduc as Chairman upon the latter's retirement, made this statement which clearly indicated the common ground upon which the inquiry was conducted:

J. M. COOPER:

"Mr. Chairman, in view of what Col. Drew has said, I for one think that this Committee will concur entirely with what Col. Drew has said. If this Committee is to serve a good purpose, it will be by following the suggestions that have been made by Col. Drew, that is, to discuss this problem on a high plane with one thing in view. That is to try and see if we cannot agree on some permanent timber policy for the Department and also as the Colonel says, for the Department of the future."

Subject to the difficulties in obtaining some evidence, the inquiry proceeded upon that basis and there was agreement at all times that the purpose of the Committee should be to seek some long-term policy which would improve the present situations.

The point upon which there was the most complete agreement from the very beginning was that the trees of our forests should be looked upon as a continuing crop and that every effort should be made to preserve that crop so that future generations will have at their disposal the same sources of forest resources as we have.

But while the Minister of Lands and Forests was as much in agreement with this principle as the other members of the Committee, it was apparent that he looks upon silviculture and conservation as very minor considerations in relation to the possibility of making contracts dealing with our timber areas.

Even those closely associated with the various forest products industries hardly seemed to visualize the vital part that our forests are likely to play in Canada's future economic structure. Those connected with the pulp and paper industry are naturally so concerned about the uncertain state of that industry, that their attention is mainly devoted to the preservation of their own companies. Timber operators seemed mainly concerned with the uncertainty of obtaining timber for their own operations. But this is not surprising. The whole forest

product industry has been in such an unsatisfactory state of uncertainty for many years that those whose livelihood depends upon the activities of the Department of Lands and Forests, and of the markets for wood products, are necessarily thinking first of the stability of their own business and the possibility of continued employment.

One vital fact should be borne in mind in making any recommendations connected with this Department. Almost unbelievable advances have been made in the utilization of various kinds of wood for commercial production in the past few years. The difference between the period when our forests were looked upon only as sources of firewood and lumber to the stage when they were the source of a large percentage of the world's newsprint supply, is no greater than the difference between that second stage and the stage we are about to enter when our forests will become the source of a wide variety of products previously made from other substances more difficult to obtain. Science has opened an almost limitless horizon for the commercial exploitation of our forest resources, and impose upon the people of Ontario and Canadians generally, the duty of protecting the source and developing the product to the limit of their ability. A brief history of the changes which have taken place in the relationship of our forests to our provincial and national economy will illustrate why some drastic change in the method of administration is so urgently required.

HISTORY

The first control of the forests of this country dates back to 1763 when instructions were prepared by the Colonial Office in London for the control of the forest areas following the British occupation.

At that time the forests were something to be overcome. In the opening up of the country they presented an obstacle which was only removed by great effort. And first the control was merely for the purpose of assuring the identity of those occupying forest territory and also of assuring the preservation of one of the most valuable trees at that time. It is interesting to recall that in the early grants oak was held in reserve as it was needed for the Navy. That reservation continued until England substituted Canadian pine for oak and many of the grants of forest areas in Old Ontario then began to contain a reservation in regard to pine timber which may still be found in some of these old grants.

The control of our forest resources continued by regulation from the Colonial Office until 1827 when The Public Lands Act was first passed. This Act was substantially the same as The Public Lands Act we have to-day. The present Department of Lands and Forests was originally constituted under that Act. The control of game and fisheries came under that Department for reasons so obvious that they may suggest that there should again be a close association between the control of game and fisheries and the control of our forests.

In 1905 the increasing importance of mineral development led to the setting up of this Department as the Department of Lands and Mines. The following year it became the Department of Lands, Forests and Mines. Then in 1920 separate departments were organized and the present Department of Lands and Forests took control of our forest resources.

Year by year new problems have arisen in connection with the administration and utilization of our forest resources. This has produced a complex accumulation of legislation which in itself is the best possible evidence that there should be a complete overhauling of the system of controlling our forests. A brief review of these Acts is necessary to impress the need for a Codification of all laws relating to forest products and their use. As has already been pointed out, the first Act was The Public Lands Act which is still in force in very much the same general form as it was originally passed in 1827. There are twenty separate Acts bearing directly upon some phase of forest control.

1. The Public Lands Act—R.S.O. 1937, Chapter 33.
   This is the basic Act in relation to the disposal of Crown lands for settlement either by sale or grant, summer resorts, etc. It also deals with timber on settlers' land.

2. The Crown Timber Act—R.S.O. 1937, Chapter 36.
   This Act controls the licensing of Crown Timber.

3. The Forestry Act—R.S.O. 1937, Chapter 39.
   Gives power to the Minister of Lands and Forests to acquire lands for the establishment of Provincial forests and to encourage municipal co-operation in that effort.

4. Counties Reforestation Act—R.S.O. 1937, Chapter 323.
   Permits Counties to acquire lands and to borrow money for forest propagation.

5. The Private Forests Reserves Act—R.S.O. 1937, Chapter 324.
   Permits the designation of private properties to be private forest reserves in which no cutting shall be allowed and no cattle allowed to run, etc.

6. The Provincial Forests Act—R.S.O. 1937, Chapter 38.
   Provides for the setting aside of areas as Provincial forests by Order-in-Council.

7. The Pulpwood Conservation Act—R.S.O. 1937, Chapter 41.
   Requires detailed returns covering the operations of pulp and paper manufacturers. Its purpose is to provide for departmental control of cutting and was passed as a means of assuring a sustained crop yield upon pulp concessions.

8. The Settlers' Pulpwood Protection Act—R.S.O. 1937, Chapter 42.
   Gives the Minister of Lands and Forests power to investigate dealings between settlers and pulp companies regarding timber cut from settlers' lands. Also gives power to regulate sale of settlers' pulpwood.

9. The Nursery Stock Act—R.S.O. 1937, Chapter 43.
   Prohibits the sale of nursery stock supplied free by the Department of Lands and Forests.

10. The Provincial Parks Act—R.S.O. 1937, Chapter 94.
    This is a basic Act providing for our large Provincial Parks.

11. The Bed of Navigable Waters Act—R.S.O. 1937, Chapter 44.
Reserves generally to the Crown the beds of navigable streams when lands adjacent to those streams are granted.

12. The Lakes and Rivers Improvement Act—R.S.O. 1937, Chapter 45.
An important Act in regard to the rights of lumbermen to improve lakes and streams to facilitate the driving of timber. This is a very important Act.

13. The Forest Fires Prevention Act—R.S.O. 1937, Chapter 325.
Establishes the law in relation to fire prevention in forests.

14. The Mills Licensing Act—R.S.O. 1937, Chapter 37.
Gives power to regulate the licensing of all sawmills and pulp mills with penalties for the operation of unlicensed mills.

15. The Cullers Act—R.S.O. 1937, Chapter 240.
Providing for the examination and licensing of Cullers and imposes various duties upon them.

16. The Woodmen's Employment Act—R.S.O. 1937, Chapter 202.
Provides for the appointment of a departmental official to investigate and report upon wages, working and living conditions, food, camps, etc., for the purpose of maintaining proper living standards for bush workers.

17. The Woodmen's Lien Act—R.S.O. 1937, Chapter 201.
Provides for the protection of bush workers and others in the matter of wage claims.

18. The Mining Act—R.S.O. 1937, Chapter 47.
Section 102 of The Mining Act has an important bearing on the control of forest resources as it provides that all timber on mining claims is reserved to the Crown. Up till March 26th, 1918, only pine on mining claims was reserved, perhaps for the historical reason already referred to. The main purpose of this section was to prevent the staking of mining claims merely for the purpose of securing timber rights.

19. The Surveys Act—R.S.O. 1937, Chapter 232.
This Act providing generally for surveying methods is of great importance in controlling the allocation of lands surveyed for those acquiring timber rights.

20. The Forest Resources Regulation Act—R.S.O. 1937, Chapter 40.
This Act gives the Minister wide power to deal with forest property by Order-in-Council without regard to the rights established under many of the other Acts. This Act has the effect of undermining the stability of other legislation and destroying the value of many provisions of existing contracts.

In addition to these Acts there are a number of other Acts dealing with forest property in one way or another but having only a limited application. Even this very brief review of the complex legislation affecting activities con-

nected with our lands and forests makes it clear that all legislation dealing with our forest resources should be codified in one comprehensive Act.

The amount of legislation now on the Statute Books emphasizes in itself the very great importance of this Department. It began in a small way at a time when no one dreamed that the day would ever come when we would be concerned about cutting too many of our trees. On the contrary, the main job was to cut as many and as fast as possible. When Southern Ontario was denuded of many of its finest forests the cutting was still done largely for the purpose of obtaining timber and lumber. Although pulpwood was being used on a large scale for the large newsprint mills in the United States, it was not until comparatively recent years that the demand for Canadian pulpwood grew to its present proportions. There were very large timber stands in the United States and it was not until they had destroyed many of their own forests that the producers of newsprint in the United States looked to Canada as the main source of their supply. Then many of the producers of newsprint from the United States started cutting in Ontario and adopted the same destructive methods which had ruined some of the best forests in the United States.

Public opinion became aroused on the subject and restriction upon export was imposed mainly by what were known as the "Manufacturing Clauses" in contracts with the Government. Almost without exception witnesses who discussed this subject were agreed that it was the restriction of export which began the great pulp and paper industry of this country.

But now a new stage has been reached in which science has opened vast new fields for industrial utilization of our forest resources. When international trade again approaches normal after this war is over, fabricated forest products of various kinds may mean a great deal more to us than even the pulp and paper industry. In any event there is no doubt that we have passed into another advanced stage in the employment of forest resources.

Already we have large plants producing rayon goods and cellophane. That is only the beginning, however, of the new industrial expansion. In this new industrial development Canada has great advantages in the world markets if they are properly exploited because the sources of power and raw materials are close together throughout the Provinces of Ontario and Quebec. Transportation has presented some difficulties, but this is largely because of the lack of sufficient effort to co-ordinate our transportation problems.

To fully appreciate the importance of this new stage in the employment of forest products, and to understand why it is so necessary to look upon this whole subject in a new light and with fresh vision, it is necessary to have some knowledge of the wide field which science has now opened up for the employment of forest resources. There are all too many who still seem to think that the temporary success or failure of the pulp and paper industry is the only yardstick by which to measure the usefulness of our forests.

For the sake of convenience, the chief chemical products other than paper which are now being produced from wood and its by-products may be classified as follows:

1. Purified Wood Cellulose:
   - (*a*) Regenerated Cellulose—
     - (i) Viscose rayon
     - (ii) Viscose staple fibre
     - (iii) Cellophane
     - (iv) Sausage casings
     - (v) Cellulose sponges.
   - (*b*) Cellulose Esters—
     Cellulose nitrate which includes celluloid, pyroxylin paint and lacquers, explosives, and transparent sheeting, films, etc.
   - (*c*) Cellulose Ethers—
     - (i) Ethyl cellulose
     - (ii) Benzyl cellulose
   - (*d*) Plastics
   - (*e*) Moulded articles
   - (*f*) Cellulose wadding

2. Crude wood cellulose:
   - (*a*) Plastics
   - (*b*) Explosives
   - (*c*) Moulded articles

3. Wood Flour:
   - (*a*) Plastics
   - (*b*) Explosives

4. Degraded Cellulose:
   - (*a*) Sugars for fodder and food
   - (*b*) Ethyl alcohol

5. Waste Sulphite Liquor:
   - (*a*) Ethyl alcohol
   - (*b*) Binders for roads, linoleum, etc.
   - (*c*) Sulphite cellulose panning extracts
   - (*d*) Baker's yeast
   - (*e*) Vanillin

6. Wood-Distillation Products

7. Wood as Fuel

In Canada we have hardly yet begun to explore the widefields of new industrial possibilities which have been opened to us in the past few years. As the largest exporter of wood products in the world we should be pioneers in the scientific discovery of still further uses for wood. But even now it is a stimulating prospect for young Canadians.

Viscose rayon, for instance, is used in making clothing, house furnishings, curtains, draperies, bedspreads, etc., and is to-day one of the most important textiles in use throughout the world. For several years the demand for rayon has been far ahead of production. Although Canada is making a large quantity of rayon, the figure of production is relatively small compared with that produced in some other countries. A few figures prepared by the Bureau of Statistics at

Ottawa in 1939 will show the rapid growth of production of rayon in some countries. In 1930, for instance, Canada produced 5,390,000 pounds of rayon. In 1936 Canada produced 12,000,000 pounds. In 1930 the United States produced 115,000,000 pounds and in 1936, 278,000,000 pounds. In 1930 Japan produced 33,330,000 pounds, but by 1936 was the world's largest producer turning out 285,000,000 pounds. Having regard to our enormous resources of wood suitable for this purpose as compared with Japan, these figures in themselves indicate the possibilities of expanding this business. In the case of viscose rayon the results were very much the same. In 1930 Canada produced 3,960,000 pounds, and in 1936, 7,750,000 pounds. On the other hand in 1930 Japan produced a little more than 30,000,000 pounds and in 1936, 272,000,000 pounds, again having the world's largest production of this type of rayon by a very considerable margin.

Figures for the consumption of wood pulp for viscose rayon alone indicate the important bearing this development may have on the problems connected with the export of wood pulp. For instance, in Canada in 1932 the consumption of wood pulp for the manufacture of viscose rayon was 2,380 short tons. This has risen in 1936 to 3,150 tons. The consumption of wood pulp by Japan, however, had risen from 26,510 tons in 1932 up to 114,000 tons in 1936. In the case of the United States consumption had risen from 43,770 tons in 1932 up to 87,500 tons in 1936.

These figures should be borne in mind because it is clear that it is necessary to have very much more accurate information than is now apparently available anywhere in Canada in regard to the relationship between export of wood pulp from Canada and the manufacture of these new chemical by-products of wood in the United States and elsewhere. Just as the beginning of the pulp and paper industry depended upon the limitation of export of pulpwood at that time, it is quite possible that the development of new industries based upon the chemical utilization of wood products may depend upon similar manufacturing restrictions to those imposed a few years ago. In any event, it is clear that Canada's industrial production of those manufactured products which can now be fabricated as a result of recently discovered chemical processes is far below what it should be having regard to our dominant position so far as raw material is concerned.

Again in the case of cellophane the consumption of wood pulp for this chemical wood product has been jumping at the rate of five thousand tons a year. In 1937 the consumption of United States factories was 35,000 tons and it is estimated that it has progressed by at least five thousand tons a year since then.

The interesting thing about most of the other by-products is that there are apparently no available records of the amount of wood pulp consumed in each particular case. For instance in the manufacture of sausage casings Canada was the pioneer in the field. Now other nations greatly exceed our production. But so far as could be ascertained there is no accurate record of the amount of wood pulp consumed for the manufacture of this product.

Merely to show the extent to which some of these by-products are being used, it may be pointed out that in the past two or three years the manufacture of an extremely wide variety of commercial products made from plastics has imposed new demands upon the forest areas available for wood of a suitable type. Only

recently we read of the production by the Ford Motor Company in the United States of a plastic automobile body which is tougher than steel. What will happen to the demand for wood if this process should be generally adopted can well be imagined. Just last week an aeroplane made of moulded wood was passed by the United States Government for military training purposes. There seems to be scarcely any limit to the possible expansion of the use of wood.

The I. G. Farbenindustrie, of Germany, has been responsible for more scientific advances in the use of wood than any other similar organization throughout the world. In their case necessity has been the mother of invention. The need to find substitutes for raw materials and finished products which they could no longer afford to import lead to exhaustive scientific experiments which produced astonishing results. In Germany to-day it is possible for a man to be clothed fully from head to foot in things made from wood. There has been a tendency to look upon these substitutes as inferior products. The fact is that tests have proved that some of these wood products are stronger than those made from the material originally employed. This should have an important bearing upon our attitude toward the future use of wood products and the steps we take to preserve our timber resources. It is quite possible that we may find it desirable to turn to wood products in many lines of industrial production because a better product may be the result or because we can help our exchange position by avoiding the necessity of importing some raw materials or finished products.

The amazing discoveries of the past twenty years during which more new uses for wood have been found than in all the time which went before, give us good reason to believe that we have scarcely yet scratched the surface of the possible utilization of our forest resources, and that with adequate scientific research there are almost limitless possibilities of increasing employment if we take the maximum advantage of our vast reserves of raw material.

It is not beyond the realm of possibility, for instance, that research will prove that we can produce all the fuel we require for internal combustion engines from wood and coal. In Europe before the war began a large number of automobiles, buses and trucks were using gas produced from wood, charcoal and coal. A few years ago the Forest Products Laboratories at Vancouver carried out tests with gas produced from charcoal which had been made from Red Alder and Douglas Fir. The gas produced in this way was used experimentally as fuel for trucks and showed a cost saving in fuel of fifty per cent as compared with gasoline. It is possible that this may not yet have reached a practical stage of development, but it is certain that we are on the verge of many new and extremely valuable discoveries in the use of wood products. The possibilities offer a challenge to the energy and vision of our youth.

In any event, it seems likely from what has already taken place, that the demand for wood pulp from industries other than those which make paper will increase in the next few years by leaps and bounds. This presents an extremely serious problem of control for Ontario and other Canadian provinces which produce pulpwood. The evidence before the Committee makes it clear that at the moment the information available is not nearly sufficient to arrive at well-informed decisions as to the full details of the practice which should be adopted. But it is clear that in discussing the very important questions regarding the wisdom or otherwise of permitting the export of pulpwood, the subject should not

be considered only from the point of view of determining whether or not the pulpwood exported competes in its manufactured form with Canadian paper products. From what has been said of new developments it would seem that there may be good reasons for limiting the export of pulpwood which have nothing whatever to do with the future of the newsprint industry.

During the course of the inquiry no witness questioned the fact that by effective research Canada can increase employment in her forests and forest industries to a very considerable extent. Canada has, in fact, lagged far behind many other nations in the scientific use of her forest products. Next to Canada, Sweden is the largest exporter of wood products in the world. But Sweden offers an extremely interesting comparison with Canada in the number of men employed in this industry. The whole area of Sweden could be tucked away in a part of Northern Ontario. The total area of all Swedish forests is 89,000 square miles, whereas in Ontario alone the area actually under fire protection amounts to 164,000 square miles. And yet we find that before this war began the total forest employment for the whole of Canada was about 200,000 in a year of average activity, whereas Sweden, operating a relatively small area, employed as many as 400,000 forest workers. This is something to bear in mind at a time when we must seek every possible way to assure the opportunity for new employment when our troops are demobilized and munition workers find it necessary to change to peace time work.

Russia and Brazil possess larger forest areas than Canada, but Russia has never been a serious competitor in world markets, and the Brazilian timber is not of a kind which has yet proved suitable for the ordinary chemical processes which have been developed. Having regard to the extremely high figures of Japanese production in many lines of wood products, it is worthy of note that Japan's forest area is little more than a tenth the size of ours. We have by far the finest timber stands in the whole world readily available for the industrial processes which have so far been discovered. The quality, variety, and character of our trees is similar to that found in Sweden, Norway and Finland, but their combined supply of raw material is an extremely small fraction of ours. Sweden, which is second to Canada in international trade in wood products, has a total forest area of only 55,550,000 acres as compared with 596,746,000 acres in Canada. What Sweden, Norway and Finland have been able to do with their limited forest areas, at the same time carefully assuring the maintenance of their crop continuity, should give us every reason for confidence that we can employ many times the number of men now employed in the forest industries of Canada without diminishing the forest resources available for the future. If we can develop the use of our forest products on the same proportionate basis that Sweden has achieved we can employ four million men in the woods and in the forest industries of Canada. This seems like an extremely optimistic figure but it is the simple arithmetic of our comparative advantages. That figure should give some idea of the distance we must still go before we can say that we are really making full use of what may well become our most valuable national asset.

Having discussed in general terms the important place of the forests in our national economy, we will proceed to consider the subjects about which there was controversial evidence.

ADMINISTRATION

One thing which emerged from the evidence was the extreme difficulty of obtaining any clear picture of what is being done to protect our forests and assure reforestation. On the one hand are statements that our forests are threatened with immediate devastation by wasteful cutting methods, on the other are assurances that our forests are in no danger. It would appear that the truth lies half way between these two extremes.

It can be definitely stated that there should be sweeping and drastic changes in the policy of controlling our forest resources. No matter what form of control is established it cannot be stated too emphatically that the administration of our forest resources should be under some one who recognizes the vital importance of efficient business methods in handling the most complex and possibly most important of our provincial assets.

The importance of our forest resources is emphasized in the last edition of the Canada Year Book in these words:

> "It is evident that, in this war, material resources will play an even more vital part than in previous wars. It is fortunate therefore that Canada possesses such vast supplies of accessible timber and industries that are capable of expanding their production to meet a very considerable increase in the demand for forest products. It is fortunate, too, that Canadian seaports on both the Atlantic and the Pacific are open throughout the year and, with the convoy system in operation, overseas shipments can be made with comparative safety.
>
> "It is of vital importance to Canada that trade in forest products be maintained since it provides a greater favourable balance than the trade in any other class of products. In order that this may be accomplished, total depletion must be kept within the productive capacity of the forests. There is no reason why this cannot be done if the forests are managed on a rational basis.
>
> "The abnormal demands of the present conflict should not cause serious inroads on forest capital. The necessity for economy in use, the limitation of shipping space, and rigid control of prices should prevent anything in the nature of a boom developing."

The value of the industries based on forest resources in itself emphasizes the need for the most efficient form of administration. In 1938 the total capital invested in Canada in the forest industries amounted to $951,092,969. The gross value of all forest products was $533,210,257, and the net value $277,002,267. While the separate figures for Ontario are not available, this province has a very large share of that enormous investment and annual revenue. In the same year export of all forest products amounted to $214,488,484 which was 23.1 per cent of the total value of all Canadian exports. This business produced $158,873,650 in wages to Canadian workmen.

The point which these facts make clear is the vital importance of selling. Suggestions were made that some central selling organization should be recom-

mended to co-ordinate selling activities, particularly in the United States. We do not propose to make a specific recommendation in this respect because we will recommend a method of control which in itself will provide the opportunity to find the best solution of this question with all the facts available.

Having regard to the size and importance of Ontario's share of this enormously valuable business, it is obvious that the permanent staff engaged in this work must be the most competent men available and they must be assured of permanent employment and freedom from political interference.

District Foresters should have increased powers and they should be men of the highest possible qualifications whose advancement will be assured upon merit qualifications alone. They must be free to make decisions without regard to the relationship of any individual or company to the Minister.

There should be a clear policy of administration. The first step toward the establishment of such a policy is the accumulation of facts which are not now available. Facts should be collected and digested under the following heads:

A. The collection of the facts of the Forests; Soil classification, inventory, growth, loss ratio, net yield, degree of protection and allowable annual cut.
B. The collection and analysis of the facts of the markets for Forest products.
   (*a*) Locally,
   (*b*) In Canada,
   (*c*) In world markets.
C. The collection of the facts respecting watershed protection.
D. The collection of the facts concerning Forests from the point of view of recreation for citizens and attraction to vacationists from outside.
E. The collection of the facts of the Forests in relation to game and fish.

When these facts are available, a policy should be established which is consistent with the assurance of perpetuation of the forest yield or true forest soil and consistent with the needs of our people. The policy should be flexible and should develop as new or additional facts are discovered by investigation and research.

In establishing a policy it would appear to be necessary to draw a clear distinction between the problems of old and new Ontario. While there are localities in Northern Ontario where reforestation is needed the problem is mainly one of effective conservation and selective cutting. In Southern Ontario there is a great need for active reforestation, in co-operation with municipal councils, to improve soil conditions and revive the beauty of non-arable areas which have been completely denuded of their timber. Policies to meet these situations would be based upon the analysis of facts outlined above.

The most important detail of administration, so far as the present Minister is concerned, has been the arranging of contracts involving properties with a total potential value of hundreds of millions of dollars. These contracts were arranged in the most casual manner without any competition and with little or no evidence on file to show why the particular companies which got these contracts merited the confidence of the Minister. In the vain attempt to find any evidence which

would explain why the representatives of these particular companies were so fortunate we are impressed with the force of the pungent comment of the Commissioners in the Abitibi Report, that the day of dispensing favours in the form of timber concessions to new political friends has long gone by. Recrimination will not undo what has been done. But it is necessary to examine the course followed by the present Minister in disposing of forest concessions, to appreciate the urgent need for immediate reforms in administrative policy and the adoption of entirely different procedure in dealing with our vast forest resources.

Since the present Minister took office eight contracts have been signed under which eight different companies each undertook to build pulp and paper mills within a fixed period of time which has long since expired. All of these contracts were signed in the year 1937. They were with the following companies: Lake Sulphite, General Timber Company, Pulpwood Supply Company, Huron Forest Products, Sault Pulp Products, English River Pulp and Paper Company, Vermilion River Pulp Company, and the Western Pulp and Paper Company. Each of these companies undertook to build a mill. All are in default. The only company which attempted to build a mill was the Lake Sulphite Company and it went into bankruptcy before the mill was completed. In spite of the fact that they are in default, and have shown no indication of any intention to carry out their obligation under the contract, none of the concessions had been cancelled up to the time that the evidence before the inquiry closed. Some of them are making use of extremely valuable rights to export pulp wood which were conditioned upon the construction of a mill. It is true that each was required to deposit $50,000 but that is the uniform amount required in every case whether there is to be a mill or not, by way of guarantee for the payment of dues, etc. It constitutes no consideration for the contract itself.

The total area involved in these eight contracts amounted to 23,798 square miles, or to use the measurement of area employed in other countries where such vast territories are not available, the total areas granted to these eight companies amounted to 15,230,720 acres. To appreciate what this means in proportionate terms it is worthy of note that this is only slightly less than the total forest area of the whole of Norway which is normally one of the great forest producers of the world.

All of these contracts were signed privately without competition by tender or otherwise, and without any publicity being given to the fact that the areas were available for development.

In this respect it is interesting to recall one of the findings of the Royal Commission which reported in 1922 on the administration of this Department. This finding in that Report indicates that the method employed by the present Minister has been considered objectionable for a long time. These are the words of the Royal Commission Report of Mr. Justice Riddell and Mr. Justice Latchford:

> "We are of opinion that no officer, Minister, or otherwise, should have the power to grant rights over large areas of the public domain at will without regard to Regulation; that power was never contemplated by the Statute; it does not at present exist, and should not be given to any individual. Such an arbitrary power subject to no control is obviously open to abuse."

Another finding of the Royal Commission Report of 1922 has a very direct bearing on the present circumstances, particularly in view of the fact that the present Minister had these findings before him at the time he took office. This was another of their findings:

> "We found that in many cases there is no departmental record of applications that were afterwards granted; in some cases, there was conflicting evidence as to these. We think this an improper practice. All applications to the Department or any officer thereof for a concession of or right or privilege in any part of the property of the Province should be in writing, should be entered as received, and should be placed on the public files. If at any time an oral application be made, a full memorandum of the application should be prepared forthwith and duly filed. It is unwise to leave matters of importance to fallible recollection, particularly matters in respect of which there is a trust for the people."

We are in entire accordance with that recommendation and we believe that it should be strictly observed. It was followed by the present Minister in scarcely any single instance although properties worth scores of millions of dollars were being dealt with. The evidence is clear that matters of the utmost importance were left to extremely fallible recollection, and in most cases there were no memoranda, no surveys upon which to base values, and it was utterly impossible to ascertain from the Minister upon what grounds he had reached his decision to grant very large and extremely valuable areas to companies which had no apparent assets except the property thus acquired.

The Lake Sulphite transaction combined many extremely objectionable features. The Minister's evidence in regard to some phases of this transaction was so vague that it is almost impossible to know what actually did happen. It was a simple transaction in one respect. There were only two people who had anything to do with the preliminary details of the contract. One was the Minister and the other was Mr. R. O. Sweezey.

The evidence shows that Mr. Sweezey had been engaged by the Great Lakes Paper Company during the winter of 1936-1937 to examine some of their property for the purpose of ascertaining its value and suitability for further development.

Mr. Sweezey evidently decided that part of the property had considerable value and later he approached the Minister to obtain concessions for a new company which he organized under the name of Lake Sulphite Pulp Company, Limited.

Mr. Sweezey succeeded in convincing the Minister very quickly and under a contract with the Government, signed March 3rd, 1937, and amended by a further contract dated July 24th, 1937, the Lake Sulphite Pulp Company, Limited gained the control of 2,346 square miles of very valuable timber limits. No survey of the area was made and there is no evidence on file to show why it was decided that this was the correct area or, more important still, to show why this area was placed under the control of a company which had just been incorporated.

One extremely important aspect of this transaction is the fact that the timber limits which were transferred to the Lake Sulphite Pulp Company, Limited had

been under the control of other companies. They were taken away from those companies under the extremely arbitrary powers conferred upon the Minister by The Forest Resources Regulation Act of 1936.

The contract was approved by an Order-in-Council dated February 27th, 1937. This was passed as a result of a formal recommendation to the Lieutenant-Governor in Council by the Minister dated February 26th, 1937. Two quotations from this recommendation will illustrate the way in which the Minister has conducted the affairs of his department. It begins with the following statement:

> "The undersigned has had under consideration the application of Lake Sulphite Pulp Company Limited for the acquisition of certain cutting areas in the Province of Ontario. The aforesaid company, which has been newly incorporated, is desirous of entering the bleached sulphite pulp market, and brings with it a sufficiency of capital to ensure the full realization of its project."

Facts subsequently proved only too clearly that the company did not bring with it sufficiency of capital to ensure the full realization of its project. The company went into bankruptcy while the plant was still far short of completion. It did not have "sufficiency of capital" to the extent of at least two million dollars even at that later date. The evidence showed clearly that the Minister had no knowledge of the financial affairs of the company and that he had no justification whatever for giving this extremely important assurance as one of the reasons for passing this Order-in-Council. When pressed to explain what information he had to justify this statement all he could suggest was that Mr. Sweezey had told him the names of some men of substance who were to take part in the original financing. Even this vague information given informally in conversation proved to be inaccurate. At the time the Minister made this recommendation it was a promotional enterprise and the attempt to raise "a sufficiency of capital" came afterwards.

Another quotation from this recommendation shows the way in which The Forest Resources Regulation Act operates and also the Minister's disregard for accuracy.

> "Having regard to the fact that the consummation of the draft agreement attached hereto means the acquisition by Ontario of a new, large and profitable enterprise, the undersigned respectfully recommends as follows:
>
> (1) That the areas mentioned as comprising portions of certain Pulp Concessions hitherto granted, and which under agreement with the holders thereof have now been abandoned, be withdrawn from such Pulp Concessions under and by virtue of The Forest Resources Regulation Act of 1936."

The fact was that there were no agreements with the companies concerned abandoning any part of their concessions. The evidence made it clear that the Minister had decided that the Lake Sulphite Pulp Company Limited was going to get this area and nothing was going to stand in the way.

This whole transaction should be the subject of a separate judicial inquiry. All the circumstances surrounding it demand explanation which has not yet been

given. When an attempt was made before the Committee to inquire into the financial transactions preceding the disastrous bankruptcy of this Company while it was still far short of reaching the production stage, the Chairman of the Committee ruled that no questions could be asked in regard to the financial affairs of this Company. The position taken was that the inquiry was limited to the activities of the Department and that the Committee had no authority to inquire into the financial affairs of this Company.

The conduct of the Minister in this transaction was most reprehensible. His recommendation for the Order-in-Council misrepresented the true financial position of this Company and also misrepresented the position in regard to the limits then held by other companies. Having regard to the powers assumed under The Forest Resources Regulation Act in this particular case, where existing contractual rights were varied without right of appeal by the companies affected, it was little wonder that the Commissioners inquiring into the Abitibi affairs found a general feeling of insecurity on the part of the industry. This one transaction alone would justify the repeal of this arbitrary Act whereby the Minister can vary existing contracts without offering the companies adversely affected any opportunity to state their case.

Other enterprises, based upon the use of our forest resources, will find it necessary to do public financing in the future and it is in the interest of public confidence in financing of this kind that there should be an exhaustive judicial inquiry into the circumstances leading up to the granting of the timber limits to this Company and the financial affairs of the Company itself.

PULPWOOD SUPPLY COMPANY LIMITED

This is another astonishing transaction. The Pulpwood Supply Company received valuable concessions in the Long Lac area. This is an Ontario company formed for this particular purpose. The Pulpwood Supply Company is owned outright by another company known as the Pulpwood Company, which in turn is owned outright by five large American companies using pulpwood. These companies are:—Kimberley Clarke Corporation; Meade Corporation of Ohio; Hammermill Paper Company; Wisconsin River Pulp and Paper Company; and Nakoosa-Edwards Paper Company.

The most surprising feature of this contract was the arrangement by the Department of Lands and Forests that a waterway, known as the Long Lac Diversion, would be opened up for the floating of pulpwood. The agreement provided that the Company was responsible for the cost of this diversion only up to the sum of $300,000. Up to the time the evidence closed the Government and the Hydro-Electric Power Commission had expended $1,281,522.23 on this diversion. It was claimed by the Minister that this was primarily a Hydro-Electric development but the evidence is in no way conclusive that this was the primary purpose of the diversion. There is no satisfactory explanation for the Government undertaking to build a waterway to permit the export of pulpwood.

This raises a question regarding transportation which demonstrates the need for greater co-ordination of our national efforts. There is a Canadian National Railway line through this property and it is hard to believe that some arrangements for the handling of pulpwood by rail to the mutual benefit of the

pulp company and the railway company could not have been arranged. Unless it is possible to arrive at satisfactory freight rates for the handling of wood it will be difficult to develop many rich areas through which there are no navigable watercourses. Unless this can be done many valuable areas will to all intents and purposes remain inaccessible.

In consideration of this undertaking by the Government, the Company agreed that not later than September 1st, 1939, it would commence the construction of a pulp plant in Ontario having a capacity of at least 100 tons of pulp per day and that the mill would be completed and ready for operation not later than October 1st, 1940.

It was further provided that if the supply of timber for the mill was fully taken care of in the operations of the Company, the Company might then export up to a maximum of 100,000 cords of pulpwood per annum, unless the Minister consented to the exportation of a larger amount.

The Company has not done anything to indicate any intention of building a pulp mill. The Government on the other hand has completed its obligation to construct the waterway. And although the Company has completely failed in its undertaking to build a mill the Government has permitted the Company to export large quantities of pulpwood. It is perfectly clear from the Order-in-Council of September 14th, 1937, approving this agreement, and the agreement itself, that the pulpwood which this Company was to be permitted to export was only to be an amount in excess of that required for the mill which they were to build. This contract is in default and should be cancelled.

OTHER 1937 CONTRACTS

Other companies signing contracts in 1937 under which they were granted control of large timber areas were the following:—

1. The General Timber Company, Limited, under a contract dated March 31st, 1937, and amended July 24th, 1937, obtained rights on an area of 2,509 square miles. It undertook to spend a minimum of $2,500,000 on a mill which was to be completed and in operation by November 1st, 1939. By the terms of the contract the right to export was clearly conditioned on the construction of the mill. This Company is exporting large quantities of pulpwood. It has made no attempt to build a mill and is in default in that respect.

2. Huron Forest Products, Limited acquired control of 2,475 square miles under an agreement dated April 19th, 1937. It was to spend $2,500,000 on a mill which was to be completed and in operation by November 1st, 1939. No start has been made upon this mill and the agreement therefore is in default.

3. Soo Pulp Products, Limited acquired control of 2,300 square miles of timber land under an agreement dated August 11th, 1937. It undertook to build a mill costing $5,000,000 which was to be completed by November 1st, 1939. Nothing has been done on the construction of this mill. The agreement is in default.

4. English River Pulp and Paper Company, Limited. This Company acquired control of 4,815 square miles of timber lands under an agreement dated August 23rd, 1937. It agreed to build a mill costing $5,000,000 to be constructed by May 1st, 1940. Nothing has been done to start construction of the mill. The agreement is in default.

5. Vermillion Lake Pulp Company, Limited acquired control of 1,906 square miles of timber limits under an agreement dated August 23rd, 1937. It undertook to build a mill costing $2,500,000. No start has been made on the construction of the mill. The contract is in default.

6. Western Pulp and Paper Company, Limited. This company acquired control of 4,131 square miles of timber limits under an agreement dated August 23rd, 1937. It undertook to construct a mill costing $4,500,000. The status of this contract is not clear. An agreement was approved and executed but the Company did not pay its $50,000 deposit. In his evidence on this point the Minister indicated his rather informal way of dealing with such matters. He said in evidence, "I didn't get the $50,000 deposit, so I didn't deliver the agreement. The agreement is in my office yet and I don't consider it an agreement." There is no evidence however that the agreement was cancelled.

Except for the statement that in the case of the Western Pulp and Paper Company, Limited he did not consider that an agreement existed, the Minister made it clear that the other agreements are being treated as valid and continuing agreements. His explanation for permitting these agreements to continue in force was that there is already over-production from Canadian mills of this kind. That condition did not happen over night. The evidence is clear that Canadian mills have not been operating at full capacity for years. They were not producing at capacity when these contracts were signed. Either it was intended that this should be a condition upon which the grants were made, or the provision for building a mill was only a pretence in the first place. The situation arising from these contracts should not be confused with the general problem of export of pulpwood by well established and highly reputable operators who have been doing that work for years. These contracts were drawn as long term contracts upon the assumption that mills were to be built. If it was not intended that mills were to be built, there is no possible justification for continuing long term contracts only for the purpose of assuring export rights. The contracts themselves should be cancelled, and if it is deemed wise as a matter of policy to permit export, then export rights can be given to these companies in the usual way if the facts justify that course.

There is no occasion to go any further into the details of the administration of the Department. There is every reason to believe that the permanent staff of the Department of Lands and Forests is made up of competent and reliable civil servants. The evidence makes it clear however that the Minister exercises full authority in regard to the most important aspects of the administration of his Department. The question of whether or not the ordinary routine details of supervision are properly performed is a matter of relatively little importance when the Minister juggles with millions of acres of forest land in such an informal manner. By his own admission in evidence he has not even a scratch of a pen on record to show the reasons why it was considered advisable to grant such large

and valuable areas to these particular companies without competition or public notice of any kind. No attempt was made to obtain financial reports of the standing of the companies and in at least one case the Minister admitted that he did not know who the directors of the company were. It is not possible to imagine a more unbusinesslike method of handling the public domain than that which was disclosed by the Minister's own evidence. The casual manner in which the Minister dealt with these contracts obviously opens the door to serious abuse.

EXPORT OF PULPWOOD

This subject was the basis of a great deal of conflicting evidence. Mr. Charles Vining, President of the Newsprint Association of Canada, expressed his opinion that the argument offered that pulpwood exported to the United States would not compete with Canadian newsprint is a delusion. In his opinion it simply releases other supplies of pulpwood, which are then used for newsprint, which would not otherwise have been available for that purpose.

Mr. S. L. deCarteret, Vice-President and General Manager of the Canadian International Paper Company Limited, one of our largest producing companies, gave it as his emphatic opinion that it was only because of the manufacturing clauses in earlier contracts that newsprint mills came to Canada. He was sure that if export is allowed the products manufactured from that export will compete with Canadian products.

The Minister and some others were strongly in favour of permitting export. The main argument was that it created employment at a time when employment was greatly needed. But export has been growing year by year and has now reached the highest point in our history. One of the difficulties in reaching any satisfactory conclusion on this subject, is the absence of sufficiently complete evidence as to what the situation really is. It appears that there has been no real attempt to make an accurate survey of the use of Canadian pulpwood which is exported and what the possible effect of that export really is upon our own industry. It would seem that this requires early and complete investigation.

One of the reasons offered by the Minister for permitting extensive cuttings by companies which have no other present purpose than export, was that the over-matured timber must be harvested in the interest of the forests themselves.

Mr. Herman G. Schance, Chief Forester of the Abitibi Company, had this to say in evidence:—"I think this constant reference to the terrific importance of harvesting this over-matured timber, if I might say so, has been very greatly overdone; I don't think it assumes nearly the importance that has been laid to it."

Mr. E. Zavitz, for thirty-five years in the forestry service and very highly regarded throughout the whole of Canada as an expert forester, scouts the theory that overripe timber must be harvested.

Mr. L. J. Belknap, President of the Consolidated Paper Company Limited, was of the same opinion. There seems to be little support for this attempted justification of export no matter what other arguments there may be. If the

harvesting of overripe timber were so vitally important for the health of the forest one cannot help wondering how virgin forests have remained strong and healthy for thousands of years without anybody to harvest the trees which became ripe.

There may be perfectly good reasons why export should be permitted on a reasonable basis. Having regard to the precarious position of the pulp and paper industry for the past few years and the conflicting opinions regarding the effect of export, it does seem that there should be a careful and comprehensive investigation of the effect of export upon our own business. Such an investigation should be conducted as soon and as quickly as possible by competent experts, and action should be taken in accordance with that investigation.

PRORATION

This is the most controversial subject which came under the review of the Committee. Several briefs were filed and a great deal of evidence was heard in regard to various aspects of this question. Most of the manufacturers of pulp and paper want the proration of newsprint production.

When an attempt was made to work out the details of proration in the first place the difficulty was faced that no system of proration could be effective unless it embraced the whole of the Provinces of Ontario and Quebec. A very comprehensive survey of the steps leading up to proration and the advantages of proration was filed with the Committee by Mr. Charles Vining, the President of the Newsprint Association of Canada. It appears in the records as Exhibit 42.

The Newsprint Association of Canada, representing the newsprint manufacturers, persuaded the Government of Ontario and Quebec to work out a joint policy of enforcement whereby the Department in each Province would enforce a fixed basis of proration upon the companies in the two provinces. One of the difficulties which arose at the outset and which has continued to cause many vigorous complaints is the fact that in Ontario and Quebec certain mills are owned and operated by newspapers in the United States which take their entire output. Very strong arguments were submitted to the committee against the exemption of these mills from the general proration and strong arguments were also made by the companies concerned against their inclusion in the plan for proration.

Most of the producing companies approve of the system which has been put into effect. They argue strongly that it should be continued. The Abitibi Report itself makes a very strong finding in this respect. The Commissioners say: "From the point of view of the national interest in acquiring valuable United States exchange and from the point of view of labour, proration would seem to be highly desirable and we think that the Government should do all it legitimately can to keep it in force." The desirability of proration however does not overcome very serious objections to the method of enforcement employed by the Ontario Government. When the governments of Ontario and Quebec agreed that they would help to enforce the method of proration advocated by the Newsprint Association of Canada, they then passed somewhat similar Acts in each province for the specific purpose of enforcing proration. The Quebec Legislature passed The Forest Resources Protection Act in 1935 and the Ontario Government passed The Forest Resources Regulation Act in 1936. Neither

of these Acts refers in any way to proration. They purport to provide for various details of forest regulation. Each has a punitive section which was the real purpose of the Act. Both provide that the Lieutenant-Governor in Council may at any time increase the stumpage charges. No evidence was offered as to whether or not action has at any time been taken by the Government of the Province of Quebec under that section, but in the Province of Ontario two Orders-in-Council were passed affecting two different companies.

These Orders-in-Council purported to impose an obligation of $500,000 on the companies concerned. The Minister frankly admitted that the purpose of these Orders-in-Council was to force the companies to observe the plan of proration administered by the Newsprint Association of Canada. When the Companies agreed to observe the scale of proration laid down, the Orders-in-Council were rescinded.

No matter how worthy the objective may be, this is an extremely dangerous practice which should not be permitted to continue. If the Government intends to enforce proration by law, then the legislation passed for that purpose should refer to proration. It is an extremely dangerous principle to pass any law which purports to do one thing and is intended to do something else. The method followed in Ontario for enforcing proration under The Forest Resources Regulation Act can only be described as legalized blackmail. A large sum is demanded by the Government under an Order-in-Council which in no way refers to proration but the company is given to understand that if it will undertake to abide by the proration provisions, the Order-in-Council will be cancelled. Such a practice cannot be excused by the desirability of what it seeks to do. If the method adopted in this case were accepted as a precedent, any pretence of democratic government would soon come to an end.

On this one ground The Forest Resources Regulation Act should never have been passed. There is another reason, however, why it should be repealed immediately. According to the Minister this Act was passed for the purpose of assisting in enforcing the proration plan. But section 3, subsection (*b*) provides that upon the recommendation of the Minister, the Lieutenant-Governor in Council may "increase or reduce the size of the area or areas included in any license, lease, concession, agreement or arrangement, having regard at all times to the maintenance of a sufficient supply of timber for the purpose of the business of the company holding such license, lease, concession, agreement or arrangement."

It would appear that this provision was originally passed merely as one of the punitive provisions by which companies could be forced to abide by the proration agreement. But the Minister has on more than one occasion used this provision to transfer areas from one company to another without consulting the wishes of the company which originally held the area. Under this sweeping power every contract is subject at all times to the whims of the Minister. It is no wonder that the Commissioners in the Abitibi Inquiry found a general feeling of insecurity. This provision undermines the foundation of any contract and gives the Minister arbitrary powers wholly inconsistent with our established principles of government.

This Act should be repealed immediately. Fortunately there is a way of enforcing proration far more effectively than under any indirect method devised

by the governments of Ontario and Quebec. Under The War Measures Act, there is no question about the right of the Dominion Government to control the output of newsprint or any other commodity.

During the last war the Dominion Government controlled the price of newsprint under the War Measures Act and the Privy Council subsequently upheld the validity of this course, and made it clear that the powers of the Dominion Government under the War Measures Act are sufficiently wide to deal with proration as well.

Representatives of the newsprint industry made it clear that they thought proration would be very much more effective if it could be carried out as a national measure but while we were still at peace there was no way in which that could be done. Now that we are at war it can be done. Since it would obviously be so much more satisfactory to do it in that way the members of the newsprint industry should make the necessary representations to the Dominion Government. The Provincial Government should not be asked to do something which it can only do by a subterfuge of this kind.

As questions of exchange are involved in the export of newsprint and other forest products, it would seem desirable that the government which is directly concerned with those matters and is dealing constantly with the Government of the United States, should exercise whatever control is to be exercised for the duration of the war, particularly in the case of an industry which is so completely dependent upon the export market in the United States.

The industry could then work out some comprehensive plan for the future. The history of proration in other industries does not suggest the wisdom of holding this umbrella indefinitely over this particular industry. It is obvious that proration is only necessary while an industry is not producing up to capacity and while that condition persists it is equally obvious that they are not producing at the lowest possible cost. When the war is over and world trade is resumed, the Canadian product will necessarily be forced to compete in a price basis with the products of other countries. They will not be able to do this unless the price of the product is based upon the maximum efficiency of production. For that reason the control which can be exercised by the Dominion Government for the duration of the war is adequate for the purpose of protecting the newsprint industry as a whole until it can work out some long term plan. This is something which should be undertaken by the members of the industry themselves. They should make direct representations to the Dominion Government.

SALE OF SUMMER RESORT AREAS

The evidence before the Committee was conclusive that almost incredible difficulties are placed in the way of those seeking to purchase summer resort sites on our smaller lakes. This may not be so serious for people living in Ontario who can take the necessary time to arrange for the details of purchase under the cumbersome system now in force.

But the war provides many added reasons why we should encourage visitors from the United States to buy summer resort sites and build their summer homes in Ontario. Quite apart from the fact that we should welcome them in any

event as friendly visitors to our country, there is the important fact that if they actually stay here for the summer months they spend a substantial sum which will greatly help in the maintenance of Canadian exchange in the United States.

Some simple plan should be worked out for the accurate survey of all areas surrounding our attractive summer resort lakes and it should be possible for an applicant to obtain title to available property without delay. This presents no practical difficulty. Lots of appropriate sizes can be surveyed and marked in some way on the ground and these plans can be kept at some point near the area in question and placed under the control of someone who should be vested with the authority of a Registrar under this particular act. The prices of all lots should be fixed in advance and clearly marked so that there will be no haggling or doubt either as to price or location. The fact that summer resort lots are to be obtained in this way should be fully advertised in the United States.

METHOD OF CONTROL

The organization of companies, their financial structure, and their ability to carry out their undertakings are all matters over which some measure of control should be exercised, having regard to the fact that the Government, as the representative of the people, never completely parts with the title to the forest domain. The Abitibi Report makes this important finding: "It must be fairly obvious that the Government and the public have a huge stake in the pulp and paper industry. The Government is perhaps the senior partner and as such through the course of years has imposed upon itself contractual obligations looking towards the development of important areas in the Province. Nevertheless it is also a trustee of the public domain. Neither can it be overlooked that the contractual relation created carries with it equitable obligations to the investing public, not only bondholders but shareholders as well, which provided this money for the desired development on the strength of the Government's given word."

The Abitibi Report also points out the extent to which every company depends upon the continuing good-will of the Government. The Abitibi Report finds that in the case of the Abitibi Company there are 37 different requirements which the Government must fulfill to assure the successful operation of the company. In varying degrees this is true of every company.

There is another reason why the Government, or such body as exercises control over the affairs of these companies, must maintain an extremely close association with their activity. Towns are built up around the large industries created for the utilization of forest resources. There are cases in Ontario to-day where whole communities have been placed in dire want because of the closing down of mills. There may be various reasons for this happening. The explanation given usually is that the mills are inefficient. But certainly there have been cases where the only reason that the mills are inefficient is because the cutting methods have placed the mills out of contact with immediate sources of supply. In other words bad cutting has denuded the immediate area around the mill and increased cost by making it necessary to go too far away for wood. Evidence was given of this happening both in Ontario and in Quebec.

This makes it clear that there are very powerful humanitarian reasons calling

for the strict enforcement of proper cutting methods so that communities will not be left without their main source of employment simply because of failure to enforce proper requirements.

Having regard to the fact that the Government is really a partner in the business, as has been pointed out in the Abitibi Report, steps should be taken to assure sound methods of financing so that the confidence of investors in this industry will be restored. It is doubtful if any other industry in Canada has been so bedevilled by unsound financing methods in the past. While there is no way of assuring the success of any industrial enterprise, much can be done to restore confidence by insisting upon some assurance of adequate financing before granting valuable areas to new companies and permitting the establishment of new communities which will be dependent for their security and welfare upon the continued existence of the company.

There are many reasons why it seems that the time has come for a radical change in the system of controlling and developing our forest resources. As has been pointed out, we are just at the beginning of a new period of expansion which will call for the most scientific methods of supervision and control. Every expert witness who appeared before the Committee was emphatic on the point that scientific research is the most vital need of the forest products industry in so far as future development is concerned. They were also agreed that conservation and reforestation are essential to assure a preservation of the forest crop. For reasons which have already been explained, it was extremely difficult to get accurate evidence in regard to the effectiveness of the present system of control over cutting methods. Sufficient evidence was given, however, to show that even with our vast resources there have been serious inroads upon many valuable timber stands without any regard to the future. In any event it is a matter of observation to anyone who travels through our timber areas that many magnificent timber stands have been mercilessly destroyed without any pretence of conservation or reforestation.

It was also agreed by most of the expert witnesses that there is urgent need for a complete survey of the forest industry as a whole and much more effective co-ordination of available information.

The need for research was instantly stressed. It was particularly in this respect that the suggestion arose regarding the desirability of placing our forest resources under a Commission.

There are many similarities between the control of our forest resources and the control of electric energy. Both of these public assets are of continuing value and remain the property of the state. Each demands constant scientific supervision, constant research, and a continuity of administration which is difficult to maintain under cabinet ministers who change from time to time and who may have little or no knowledge of this extremely complex subject.

Although possessing relatively small forest areas compared with ours, Sweden is the second exporter of forest products in normal times. This is achieved by efficient methods and without any reduction of the forest crop. It is generally recognized that Sweden, Finland and Norway have established the most efficient forestry systems in the world. Of these Sweden is the most important and for

that reason the method they have adopted is worthy of examination. It should be remembered that while our experience in production of newsprint is comparatively recent, Sweden began the production of newsprint as far back as the 16th Century. They have found that the best method of controlling their forest resources is to place them under Commissions. There is a Forest Commission in each province and all these commissions in turn are under the central control of the Forest Commission Board in Stockholm.

This system has proved entirely satisfactory and similar systems have worked out satisfactorily in the other Scandinavian and Baltic countries.

We believe this practice should be followed in Ontario and that an Ontario Forest Resources Commission should be set up to exercise full control over the administration, conservation, reforestation, and industrial utilization of our forest resources. We believe this should be organized along similar lines to the Ontario Hydro-Electric Power Commission. It should be the only body having authority to make contracts for timber concessions. Having regard to the fact that public assets worth hundreds of millions of dollars are involved the Commission should be completely divorced from politics and placed under the direction of men of the highest type of business ability.

It should be the duty of this commission not only to administer and protect the present forest resources, but it should also be their duty to lay plans for the future so that the greatest possible amount of employment may be assured for the critical days following the war.

We believe that by turning over the control of our forest resources to such a commission, many of the questions upon which it is now difficult to reach a decision, will be easily solved. Such a commission would be at all times a fact finding body and its co-ordination of information would make it possible to reach decisions with a full understanding of vital facts which are not now available.

We believe that many questions which now are in dispute would be solved without difficulty by such a commission. We do not intend therefore to refer to a number of other points raised before the Committee.

RECOMMENDATIONS

Upon the basis of the above review of the situation we make the following recommendations:—

1. The administration, conservation, and utilization of the forest resources of the Province of Ontario should be placed under the control of a commission to be known as the Ontario Forest Resources Commission, which commission should have similar powers to those conferred upon the Ontario Hydro-Electric Power Commission.

2. All legislation relating to forest resources should be codified in one Statute.

3. The Forest Resources Regulation Act should be repealed.

4. A system should be devised immediately under which it will be possible to give title without delay to those wishing to buy summer resort sites.

5. Facilities should be assured for continuous, vigorous and comprehensive research no matter what system of administrative control is adopted.

6. There should be a judicial inquiry into every detail of the promotion, organization, financing and collapse of the Lake Sulphite Company Limited. The Chairman of the Committee ruled that the internal affairs of the Lake Sulphite Company did not come within the scope of the inquiry and consequently it is impossible to make any conclusive report on this important subject. Public confidence in the method of financing our forest industries is essential to future development. In view of the extremely informal basis upon which the Minister dealt with the man who organized this company, accurate information should be available as to what actually did happen so that everything possible may be done to prevent similar financial disasters involving the public domain.

7. Some clearly defined long term plan for conservation, reforestation and silviculture should be established as soon as possible, and full details should be given to all officials, companies and public bodies concerned.

8. Forest areas should not be granted to any company or individual without some form of public notice. Throughout the long history of forest administration, secret negotiations, such as those which preceded the conpletion of all contracts entered into by the present Minister, have been condemned as being contrary to the public interest.

9. An impartial committee of highly qualified experts should be appointed immediately to conduct an investigation into the effect upon the Canadian forest industry, present and potential, of the export of pulpwood under the policy now in force. In this respect a clear distinction should be drawn between established Canadian timber operators and dummy companies which have obtained their right to export upon unfulfilled undertakings to construct mills.

10. An impartial committee should be appointed to explore the possibilities of finding special war work for the mills at Espanola and Sturgeon Falls. The fact that these idle mills are at present the property of an operating pulp and paper company should not be permitted to stand in the way of any satisfactory plan for opening these mills. Special attention should be devoted to the possibility of making use of these mills for the production of some of the new chemical by-products of wood.

11. Some effective method should be devised immediately for the purpose of co-ordinating all available forestry information, and machinery should be set up for the continuous digesting and co-ordination of information in regard to all phases of forestry and the utilization of forest resources.

12. Comprehensive plans should be prepared for the purpose of creating every possible type of special employment in our forests and forest industries, which plans would be put into effect when the war ends to provide the maximum employment opportunities for demobilized veterans and munition workers requiring some new form of employment.

April 8th, 1941.

GEORGE DREW,
FRANK SPENCE,
HAROLD WELSH.

Proceedings

TWENTY-FIRST SITTING

SELECT COMMITTEE OF THE HOUSE TO INVESTIGATE, INQUIRE INTO AND REPORT UPON ALL MATTERS PERTAINING TO THE ADMINISTRATION, LICENSING, SALE, SUPERVISION AND CONSERVATION OF NATURAL RESOURCES BY THE DEPARTMENT OF LANDS AND FORESTS.

Parliament Buildings,
Monday, April 22nd, 1940.

Present: Honourable Paul Leduc, K.C., Chairman; J. M. Cooper, K.C., M.P.P., Colonel George A. Drew, K.C., M.P.P., A. L. Elliott, K.C., M.P.P., Honourable Peter Heenan, Honourable H. C. Nixon, W. G. Nixon, M.P.P., F. Spence, M.P.P., F. R. Oliver, M.P.P.

THE CHAIRMAN: The Committee will please come to order. Mr. Flahiff, have you that resolution?

MR. FLAHIFF: Yes.

THE CHAIRMAN: Will you please hand it to me?

MR. FLAHIFF: Yes.

THE CHAIRMAN: Since the last sittings of this Committee, on the 24th of February, the House passed the following motion:

"Ordered, that the Select-Committee of this House appointed by the House on Tuesday, April 18th, 1939, to investigate, inquire into and report upon all matters pertaining to the administration, licensing, sale, supervision and conservation of natural resources by the Department of Lands and Forests, is hereby authorized to sit during the recess following the present Session of this Assembly.

"And that the said Select Committee shall have full power and authority to call for persons, papers, and things, and to examine witnesses under oath, and the Assembly both hereby command and compel the attendance before the said Select Committee of such persons and the production of such papers and things as the said Committee may deem necessary for any of its proceedings or deliberations, for which purpose the Honourable the Speaker may issue his warrant or warrants."

And, since the Committee last sat, Mr. M. McIntyre Hood, who was secretary, has been called to active service and is now in England. I have before me a motion made by Mr. Nixon, seconded by Mr. Drew, that Mr. Terrance Flahiff be appointed to act as secretary of this Committee in the place and stead of Mr. M. McIntyre Hood. Should this motion be carried?

CARRIED.

I have also a few letters and telegrams which I would like to call to the attention of the Committee:

I have a telegram from the Port Arthur Industrial Commission, per C. E. King, Secretary. It is dated:

Port Arthur, Ontario.
February 22nd.

"Owing to Press reports of statements made at the Timber Inquiry to-day, the Port Arthur Industrial Commission hereby request that they be permitted to have a representative appear before the Inquiry Commission in order to present facts which they believe should be brought to the attention of the members of the Committee of Inquiry.

"Please wire reply to the undersigned."

The Committee was adjourned a couple of days afterwards and no reply has been sent as yet.

Is it the wish of the Committee that this gentleman be notified?

Then, the secretary will communicate with Mr. King.

I have also a letter received since the Committee last sat from Mr. Charles W. Cox, dated:

"Port Arthur, Ontario,
February 29th, 1940.

"Honourable Paul Leduc,
Chairman Select Legislative
Committee on Timber,
Parliament Buildings,
Toronto, Ontario.

Dear Mr. Leduc:

"Although I have had no intimation of any kind from your Committee since I voluntarily appeared before you to testify on the 22nd inst., press reports indicate that attacks were permitted to be made in my absence, which involved the accuracy and character of evidence submitted.

"This would seem to me most unfair. In like circumstances in future, I think such statements should not be heard by the Committee without opportunity being given to both sides to be present and heard on any question raised.

"Should your Committee desire any further information establishing the correctness of the statements to which I testified, I will be very glad to furnish further substantiation at the convenience of your Committee."

I answered this letter as follows:

"Toronto, March 4, 1940.

"Dear Mr. Cox:

"I have your letter of February 29th and note what you say concerning the evidence given before the timber inquiry.

"You will remember that after giving your evidence, the Committee agreed to hear Mr. Johnson the next day. It was your privilege to attend the sittings of the Committee on that day.

"In any event, I shall be glad to bring your letter to the attention of the members of the Committee at its next sittings."

Which I have done.

Then, I also received a long letter from a gentleman in Winnipeg raising some question about the forfeiture of some land which he owned and on which he had to pay the Provincial Land Tax. I do not think it is a matter which we should investigate without calling Mr. Brown,—and I do not believe he is anxious to come here,—but if any member of the Committee wishes to know anything about it, I will explain the matter to him. It is purely a matter of administration.

Mr. Johnson is here at this time. I believe that when this Committee adjourned Mr. Johnson had not completed his evidence.

Is it the pleasure of the Committee that he be recalled and be permitted to complete his evidence?

EDWARD E. JOHNSON, Recalled,

THE CHAIRMAN: Q. Mr. Johnson, I believe when you stepped out of the box at the last sittings you had mentioned competitive bidding and you stated that it is a very difficult thing, because whatever one government does,—speaking entirely away from political affiliations,—whatever one government does, there are always two very strong positions. The pros and cons are somewhat balanced, perhaps. But, whatever one government does, it is so easy to throw this problem into the political arena, and throw the forest wealth into a political football. And you went on discussing the matter with Mr. Nixon.

Have you anything to say on that point? Perhaps it is the natural thing to take up first?

A. Yes. The one difficulty, from a practical point of view involved in that question is that we have so many upswings and downswings in business, when timber values are reflected in markets,—and timber values, of course, include the pulps and papers,—in the time of acuteness, when competitive bids are asked for, those bids may represent the then existing values of that stumpage.

On the other side of that observation, when business conditions are abnormally low and timber is put up for sale, those values may be considerably less than normal, say. Where cash is deposited at the time of the bid, bonds are given in performance and plans are constructed. There is then a firm contract between the bidder and the Government.

You are met immediately, where there is a downswing after a high bid or an upswing after a low bid, as a practical workable problem, how are those timber dues going to be sufficiently flexible to permit that person who is a successful bidder to continue on a downswing when he has a firm commitment made at the time of an upswing.

Q. You might have the same difficulty if the price was arrived at by agreement between the Minister and the operator?

A. Yes.

Q. It might be made at a period when prices are very high and it would not be workable a year or two years afterwards, or else it could be made at a time when prices are very low and it would not be fair a year or two afterwards. You find the same difficulty in both cases?

A. You do, in one case the man cannot pay high enough and in the other case the Government cannot receive enough for its timber. The second observation is perhaps this: Ordinarily where our timber perspective in Ontario has not been established on a complete diversification in various kinds of fabricating industries, predicated on timber,—and I maintain the diversifications are the biggest problem, perhaps, that where you have seven different species of timber,—for instance, one who is building a pulpwood mill will be interested only in pulpwood, which is only one part of the species. Then, take spruce, and you have in that spruce tree a sawlog, but if you are going to lumber you could have trench timber, mining timber and small timber. The man who asks that that area be put up for sale is interested perhaps only in spruce pulpwood and when it is put up for competitive bidding he can afford to bid high on railway ties, sawlogs or mining timber in spruce, and very high on all the other six species, because he intends only to take off the pulpwood.

That is a situation which can so easily be abused, not to hurt anyone, but merely for the protection of the man who wants to get raw material as cheaply as he can. Of course, that is quite a difficulty.

MR. COOPER: Q. Is it practical for the one operator to utilize all the different species of timber?

A. Yes, decidedly so.

Q. Well, would that not mean that he would have to go into different products?

A. Yes, sir.

Q. How could that be done?

A. That, I maintain, should be done as a practical proposition in all timber resources, but may I continue on with this observation: Where you are thinking of the Booths or the Gillies, or any other timber operators, where they have been operating in one water shed for a number of years and they have a desire to add another ten square miles onto their cutting, where they put in the roads, the dams, the river improvements and they cut that timber to perpetuate the industry, as soon as it is put up for competitive bidding it gives an opportunity for a competitor to establish himself in that watershed on a basis of a nuisance value.

THE CHAIRMAN: Q. Or to another man, such as a speculator, to hold up the man who has been operating for a number of years?

A. Yes, and not only in the question of the holding up of price but in the question of control of the rivers and control of the watershed.

I think I have answered the three questions, that it is objectionable to competitive bidding.

There are advantages, of course. First, deal with public competition. You even see it in the many markets to-day; in New York and Chicago. Some industrialists think that on a floatation of securities it should be public bidding. Others believe it should be private sale. There is, of course, this in favour of competitive bidding, that the best way to establish a price is by competition, but many times where areas are put up in competition there is still an opportunity for collusion between bidders. I think I have answered whatever might be involved in that question.

HON. MR. NIXON: You have raised the question, but what have you to advise?

THE CHAIRMAN: Yes, what suggestion have you to make?

A. I did not want to be that presumptuous, but however, my opinion is, a committee, a commission, or the Minister of Lands and Forests with whomever he brings in in consultation. In the matter of fixing stumpage dues, how are you to determine what is going to be fair, under all conditions, to the bidder, to the Government, to the public and particularly to labour? The ultimate factor which should be all-controlling is the ability to sell your product. The market establishes the value of your raw material. So, my belief is that granting that the public servants are honest,—and there has never been any question of that in my mind,—there may be a little variation as to what one person may think, as against another, as to what those values should be, but I am firmly of the opinion, sirs, that private sale should prevail with whatever checks and balances as are necessary.

Just what those checks and balances should be is more a political than a industrial question, perhaps.

MR. COOPER: Q. Would you suggest an adjustment of dues over a certain period; say a year?

A. I would, yes, sir, and I believe that of your 1700,—or, I am not sure about the number. How many timber licenses or timber concessions are there in the province, Mr. Heenan?

HON. MR. HEENAN: About twelve hundred.

THE WITNESS: Well, of the twelve hundred licenses, I presume a very substantial part of a number of those licenses are throttled and paralyzed because of some of the difficulties of the past in the last fifty years in the alienation of those areas, and those areas should be unshackled in some way and put into production of all the species.

MR. DREW: Q. What example have you of what you mean by that?

A. That is covered by my first remarks, Colonel Drew, in that where a pulp mill just interested in pulpwood has bid so high on other species, where there has been spite bidding, where there have been the upswings and downswings in business, that all those areas which have been alienated from the Crown during all the many years are to a large extent hamstrung by just those conditions, which is really no fault of anyone.

THE CHAIRMAN: Q. What remedy would you suggest in that regard; because that point has been mentioned here, and it was also mentioned on Friday at the Conference and I have heard complaints about it in addition. Suppose a man who is interested in pulp only bids a very high price for other species of timber and does not do a thing to operate or to cut the other timber for years, do you believe the minister should have the right in some way to compel him to cut the other timber or else cancel his privileges?

A. I say "Yes and No." Cancelling privileges where he needs pulp ——

Q. Not as far as the pulp is concerned, but as far as the other species are concerned?

A. Yes, I would. I cannot see why he should be permitted to take the position of the dog in the manger. He is not interested in it himself: he is not cutting it, nor is he permitting others to do so. I think one of the principal difficulties in all that virgin country from the Sault to the Manitoba border is that difficulty.

MR. SPENCE: The more pronounced it is, the larger it is.

THE WITNESS: It is apt to be, because where tremendous areas are tied up in pulp concessions, and only the pulpwood is the basis of how much should be tied up to work that particular mill; all the other species are not taken into consideration at all.

MR. COOPER: Q. Do you not recognize this difficulty? For instance, up in my riding there is one operator who practically exclusively buys timber. You would not want to drive him into the pulp and paper business?

A. No, sir. Shall I answer your first question as to diversification and this question next? Which do you want me to answer first?

Q. Answer my last question first and go back to the first one.

A. No, decidedly not. There is one unfortunate situation here. The sawmill man or the railway-tie man is not paper conscious, nor is the pulp man timber and sawmill conscious.

Nature has thrown together our interspersed species, of various densities, of various sizes and of various uses. To unscramble those interspersed species is a challenge to the industry, which includes not only the sawmill man, the pulpman, the paper man and the railway tie man, but several kinds of products involved in those basic raw materials. So, answering your question more indirectly than directly, perhaps, Mr. Cooper, I have always felt it would be comparatively easy for those institutions who want only pulpwood, where there are a certain number of railway ties and sawlogs within that pulpwood area to deliver the sawlogs or the railway ties on those areas on which they are operating to the sawmill man or the railway tie man. Likewise, too, a man who is running a sawmill or is interested in mining timber or railway ties, that pulpwood which he experiences in his operation, he should turn over to the papermills, so there should be, I say, a mutuality of interest between the two. As a matter of practical application, it is comparatively simple to do so because then you have to decide only upon a uniform measurement of exchange; sawlog for pulpwood; pulpwood for sawlogs, that each experience in their respective operations.

Q. Do you not run into that very difficult problem? Who is going to make the improvements?

A. I have always felt that. For instance, in Sweden and Finland, the governments feel that their waterways are highways and the public has merely an easement of ingress and egress.

Involved in the question of watershed is the question of erosion, fishing, keeping bark out of the streams which interferes with fish life, the driving of various species of timber and in that respect might I respectfully suggest to this committee that trunk highways are of extreme importance running east and west across the Dominion, but lateral highways penetrating the wilderness,—if you might call it such,—would give breadth to wealth. They would fan out the depth of wealth across Canada for bidders of waterways as well as railways and highways. I have in mind perhaps a dozen watersheds in the Province of Ontario which I feel the Government might be well advised, if I may say it that way without trying to be presumptuous and say otherwise than that you have done everything that you should do, to perhaps look into those principles, perhaps not as it has been so much necessary in the past, but surely in the future, because I believe we now have a chance to have our day in court in rehabilitating our somewhat lost diversified timber businesses.

Now, may I answer your first question, Mr. Cooper?

Q. Yes.

A. On the question of diversification of industries: I will try to not make this too long, but your question is very extensive in its ramifications and possibilities. There are, say, seven different species of timber in our country,—in the north Lake Superior country of which I speak.

In some areas you will have 75 per cent. poplar and birch. In other areas you will have 90 per cent. spruce and 10 per cent. jack pine. In other areas you will have 90 per cent. jack pine and 10 per cent. spruce. You have every type of species, all the species being so interspersed in various percentages that to unscramble them is quite an undertaking.

That unscrambling required from a practical viewpoint gives rise to, what is one to do with the different species, and, what can they be made into, and how can the fabrication and utilization in each be synchronized into the other? Poplar, for instance: poplar can be peeled. Peeled poplar pulpwood, which goes into soda pulp and poplar sawlogs can be sawed into lumber which goes into the cheese and butter boxes. It is useful for that purpose because it carries with it no taste. By that I mean there are no chemicals which make your butter taste like the chemical in the wood.

Take jack pine: Jack pine pulpwood peeled and unpeeled: jack pine railway ties; jack pine lumber and jack pine poles. For instance, in spruce, you have spruce lumber, spruce pulpwood, spruce mining timber and spruce ties.

Then, you have the same question in birch; a matter of veneer. That is a tremendous industry in the Nordic countries. Veneer has great possibilities and I expect to go into this question later. I expect to go into the question of birch and poplar, of which we have made a very comprehensive study for the last three years, so on the question of diversification, rather than go into a long discussion of it, I feel that the diversification problem is a challenge to the Government, the sawlogger, the paper mill man and the railway tie man. We have developed various businesses along separate lines, and I believe, with the co-operation of the Government, which we have always had, that there is a tremendous possibility in effecting economies in our costs. That is mighty important.

I hope I have not taken too much time on this. You must understand, you cannot just answer these questions by "Yes" and "No".

MR. DREW: Q. On that point: Of course these explanations you have given arose from the question of competitive bidding, as I understand it?

A. Not Mr. Cooper's.

Q. I realize that, but this general discussion started with the advantages or disadvantages of competitive bidding, and I think we have gone a little away from that, without an attempt to find the answer. You have given some explanations as to objections as well as advantages of competitive bidding and one of the explanations for possible objections to competitive bidding which you raised is that for instance at a time when prices were high a man might make a bid which would be based on a valuation of the resources, which would perhaps at a later date prove to be much too high.

Then, in addition to that he might deliberately overbid on the types of wood which he was not going to actually use, for the purpose of keeping others off who might desire them.

For instance, if he only wanted pulpwood, he might bid high on all the others

in order to keep others off and get his pulpwood at the price he wanted. I cannot just see why private sale does not raise exactly the same possibility?

A. Well, in private sale, it would seem to me,—in partially answering your question,—that the Government should more or less insist that whoever took an area should present to it that diversified group of industries which would use all the timber on the area, except just merely the industry which uses only a part of it.

Q. Would that not be possible on a competitive basis as well? Let me tie in something with that point. After all, you speak of having some checks and balances on the private sale. There should certainly also be some checks and balances on the use under a competitive award?

A. That is right.

Q. Because it is perfectly obvious, it seems to me, that the opportunity to bid on an area and on certain types of wood which are not going to be used should not permit the man to continue to occupy that territory as against others unless he actually carries out the intended use of the wood on that area?

A. That is correct.

Q. Then, does that not get back to the question more of the administrative control than of the desirability of one type of bidding against the other?

A. As a matter of future policy, yes, and likewise too, that question comes into prominence. How are you going to rearrange that which has happened in the past because of the system of public bidding which has been taken advantage of, perhaps, to have those areas put into production?

THE CHAIRMAN: There is another objection which I believe you submitted to us a few moments ago, that operators such as the Booths or the Gillies may have worked in a certain watershed for a certain number of years, but when requiring some additional acreage in order to continue operations, if this particular area wanted is put up for sale by competitive bidding, someone else may come in and out of spite overbid. That is the point you mention, I believe?

THE WITNESS: Yes, sir.

MR. DREW: Q. Of course, that is perfectly obvious. At any time a man can bid more than he intends to actually pay, because he can avoid paying for it if he does not use it, but it again gets back, it seems to me, to a question of administrative control. Does that not seem to be so?

A. Yes, sir, but there is this much more important observation, in following up your question. Where practically all of the accessible desirable timber in the Province of Ontario has been alienated through these various methods, are you not met more with the problem of the solution as to that which has happened in comparative improvements, and of course to determine the future policy of alienation of timber areas? Do I make myself clear?

Q. I think you do. I think you make yourself perfectly clear in that respect. Your point is that at the moment practically all of the available areas have been alienated from the Crown, subject of course to recall under the conditions pertaining to the contracts, and consequently if we are going to consider a way of awarding these territories and even consider the question of competitive bidding, it involves a readjustment of the whole situation?

A. Yes and 90 per cent of your problem, I presume, is how are you going to arrange to put all these areas, where only part of the species are required now, into production, to recapture our lost markets.

Q. I do not know whether or not this comes in at this point, because I understand from what you say that you will cover this more fully later on, but you have spoken about the desirability and a challenge this presents to the Government and to the industry, to work out some system of diversification which will utilize all these resources. Were you here Friday?

A. No, sir. Unfortunately I was out of town. I was here neither of the days nor did I hear any of the discussion. I just returned to the city.

Q. On Friday there was a representation of different interests and while there were a lot of very interesting suggestions, or useful suggestions, there was nothing which suggested how these were to be brought together. Each group was dealing with its particular problem and what I would like to have most is some suggestion as to how they are going to be brought together.

A. Well, I look at this quite differently than do any ideas that I have heard heretofore expressed or read.

Q. Do not let me interrupt your train of thought, because unless you do we are not going to get very far as we have not yet had any ideas which would lead to a practical solution of this problem?

A. I believe, Colonel, that the sawmill is the major pivotal industry to develop any area.

Q. When you say that, how does the value of sawmill product or products compare with the value of the pulp mill product or products?

A. Well, it is in addition to the value produced by the pulp and paper mill, not that much less. In other words, I feel in the Province of Ontario, for instance, that the present alienated areas in the pulp concessions will support an annual production in sawlogs of 300,000,000 feet.

Q. And what is the production now?

A. Nothing to speak of.

Q. There is some?

A. No, I think not; not in the areas I mean.

HON. MR. NIXON: Q. Those areas for pulpwood operations?

A. Yes. I feel that the centre of all your diversified industries should be the sawmill altogether. The sawmills take care of the mature timber. They use that which should be cut.

MR. DREW: Q. And is there an available market for that?

A. Yes, sir. The available tributary markets to the Great Lakes system, in normal times figuring 200 lumber feet per capita per year, is about 10,000,000,000 feet in the United States annually. And, in England, I feel now, with the blacking out of these Nordic countries, England requires 4,000,000,000 feet per year in only the Liverpool and London markets. For this reason the sawmills should cut all the matured lumber of all these species. Dealing with the refuse from the sawmills, for every thousand lumber feet which you cut you have 600 cubic feet which is now wasted; burned up.

I was going to develop on that matter in my regular agenda.

Q. I do not want to suggest that you depart from your prepared agenda, but I must confess that at the moment,—and when I say this I do not want to suggest that it practically closes the argument,—that the reasons you give for indicating your preference for private sale as opposed to public competitive bidding, do not seem to me to depend upon the desirability of competitive bidding as against private sale, but rather depend upon what you call the checks and balances under the control of the Department.

A. That is right, but you have brought up another question, however, what would you suggest as against the present policy of alienation, as I take it, for only pulp and paper purposes. I feel that an alienation should be made first for sawmill purposes, because around it I have built all the other diversified industries. I suggest your slabs would go into chips, your chips into sulphites and sulphate and your sawdust would go in as a basis for linoleum and wrapping for gum. I brought gum along to-day and am going to give one to each of you, if you do not mind.

Q. Is this made from our forest products (indicating package of gum)?

A. Yes, sir, it is.

MR. COOPER: The wrapper?

A. No, sir, that little bit of white coating on the gum which looks like sugar is birch sawdust. I know of one company in Wisconsin which ships three cars of birch sawdust a month to Wrigley's in North Tonawanda and they get for it delivered $27 a ton. Now, why is that not a problem of this Commission?

MR. DREW: Of course we are getting back to the suggestion that has already been made of the necessity of some form of research tied in with the co-ordination of the industry. Is that not so?

THE WITNESS: Yes. I thought you would like to chew a little sawdust when thinking about these problems.

MR. DREW: I do not know, but perhaps the reporters have trouble enough with us already.

MR. ELLIOTT: Q. Do you suggest that there is a lot of timber now used as pulpwood, which should be sawed up?

A. Yes. You are using the highest grades only for newsprint. The highest grades of timber in the world are being used for newsprint, which means that the highest grade of timber in the world is going into the lowest grade of paper.

MR. SPENCE: Q. There is no demand on the Government at the present time for sawmills, is there?

A. Well, I am building one.

MR. COOPER: Q. If a log goes into a sawmill and is cut into lumber, how does the price compare supposing the log went into the pulp industry?

A. Your sawmill industry employs more labour than does the pulpmill. A pulp mill may cost $4,000,000 to build, whereas a sawmill may cost only $1,000,000, but after it is built it will employ many more men than will a pulpmill, because in a pulpmill you use very few men whereas in the sawmill you use a lot of men.

MR. COOPER: Q. The return in pulp is far greater than it is in the log?

A. Is it?

Q. I am asking you.

A. I thought you made a statement.

Q. I did, in the form of a question.

A. Oh. I would like to say this, then: A thousand feet of spruce shiplap will equal 2,000 pounds. That spruce shiplap, delivered at Detroit to-day at an 82 cent rate, will bring you $31.50 a thousand. Your newsprint, delivered in Detroit will bring you $50 per ton. Do you see?

Q. Yes.

A. Now, here is my position. You have so much timber wealth and you must have several industries in production in order to produce that timber wealth. The mere fact that you saw a certain amount of spruce into lumber does not take away from your production of pulps. It is an addition to, not a subtraction from and a sustained yield of the territory of which I speak will support at least three hundred million feet of lumber and perhaps three or four times your present,—oh yes, including Kenora, which is away back in the backwoods,—demand; maybe 1,500,000 tons of additional chemical pulp a year, besides railway ties and whatnot.

MR. ELLIOTT: Q. Would the pulpwood operators agree to use the Limbwood which is now discarded?

A. Would not use the limbs.

Q. Well then, the parts you say which are now wasted and not salvaged?

A. That is a big question covered by these articles in regard to the Quebec situation, which I was going to cover later.

Q. Would that not increase the costs of the operator?

A. No, sir. If you have developed an area with highways, dams, river improvements and everything that goes into the development of an area, you can see that if you are to take out seven different species as against only part of one specie, your logging costs will be decidedly less. So, on the question of diversification of your industries, your logging advantage would be tremendous as against the present system of just going in and cutting out the value of the spruce.

MR. ELLIOTT: Q. Why don't the pulpwood operators take the salvage now and use it for pulpwood purposes?

A. Because they more or less control the sawlogs and they cut out what they want and even put sawlogs into pulp and they do not take the other six species at all.

MR. DREW: Q. Isn't the answer, Mr. Johnson, that the system which has been permitted for some years is a system which actually encourages high-grading in timber?

A. I think so. But you see, Col. Drew, right now with the European markets cut off we have an economic necessity which is moving in our favour which has heretofore not been true. Heretofore about the only kind of development that you could try to get in here were the pulps, the railway ties and lumber, which has not been true so much during the exigencies of war if we may speak of it as that, which have given us an opportunity that we haven't had before, and I think it is not unpatriotic to make that observation.

Q. I think we must recognize it, but I am inclined to think, although there is a tremendous amount from the Scandinavian countries, we may be inclined to be too much impressed with the part they have played in the world markets, because I understand the production of the Scandinavian countries has been, out of the total world market, 1,300,000 tons?

A. Only 1,300,000 tons that went into the United States, but of course they take care of the English market, South America, Africa, Australia and New Zealand. Are you interested in the pulp production of the Nordic countries?

Q. I have hesitated to ask these questions because you have apparently a clear line of procedure to follow and I don't want to interrupt it but I do want to clear up this point that has been raised, and since that point has come up

have you the figures as to the actual tonnage production not only for the United States but for the world?

A. I am not sure that I have them here; I have them in the hotel. That information may be in this magazine, the Pulp & Paper Magazine of Canada—I am leaving one of these as an Exhibit and I am pointing out several articles that would be material in that—the actual information is in the Pacific Pulp & Paper Trade Journal, the annual number will give you all of that.

I have compiled a chart (producing); I have only a limited number of copies and have to ask you to split them up a bit.

THE CHAIRMAN: Q. We may just as well file this as an exhibit, Mr. Johnson?

A. Yes, sir.

Q. What do you call this?

MR. DREW: Q. I suppose you would call this a chart to illustrate the background of the submission you are going to make in regard to this?

A. That is right.

THE CHAIRMAN: What Exhibit will it be?

MR. FLAHIFF: 35.

THE CHAIRMAN: Chart published by the Fort William Industrial Commission, Exhibit 35, I think that is the best way to describe it.

EXHIBIT No. 35: Filed by Mr. Johnson: Chart published by Fort William Industrial Commission.

WITNESS: On the question of low taxes and high taxes, No. 1, I think you could add on there under "D", "Increased Taxes to the Province" and on the left, high taxes, "Decreased Taxes to the Province."

I should like to answer any questions involved in this chart if you have had a chance to glance it over.

MR. DREW: Q. Mightn't it possibly be simpler, Mr. Johnson, if you would explain it briefly and then the questions could follow that?

A. This chart is an attempt to graphically present in a most skeleton form the two basic economic conceptions or philosophies which I spoke about at the opening of my testimony when we last sat. May I state first that inasmuch as we, with some companies in which I am in a small way connected,—and that includes the Great Lakes Paper Company and a few boats, and sawmill and railway ties and pulpwood—I have taken it upon myself to talk quite extensively with various leaders of labour thought and industrial thought and my feeling is that to-day in the matter of labour, labour questions and labour

principles, labour policies, is the place that we are going to get our strength in the democracies. That brings up the question of the standard of living and the social security of labour. If it is possible, and I believe it is, to accomplish the giving to labour in the timber industry a continuity of employment I feel we will be able to increase their actual income twenty-five percent, and at the same time decrease our unit cost of production. Appropriate to this I should like to quote from an address given by the President of the American Pulp & Paper Association, Mr. D. C. Everist, and his speech to the last convention of the Canadian Pulp & Paper Association recently held in Montreal I would particularly like to call your attention to. His address is included in the Convention Issue of the Pulp & Paper Magazine of Canada 1940; I am reading only a few sentences from that speech. I know of no one on this continent who has a greater conception of basic timber problems, of chemical pulps, bleached and unbleached sulphate and sulphite, lumber chemicals and the like, than Mr. Everist has.

Quoting Mr. Everist:

"Consumption is the product of our price policies, competitive costs we must nourish, not only managers of plants but labour as well; in the long run higher wages to workers and profits to stockholders must come out of greater efficiency. The new construction in the south within the last half of a decade" (I think it is half a decade or a full decade) "the capacity of the pulps has more than doubled. More consumption, new processes, severe competition, more intense integration of production and market forces and numerous other refinements all in line with our experience of the past but running more swiftly, possessing greater momentum and therefore more difficult to handle and more dependent upon co-ordinated action than ever before. If the war appears to be of long duration considerable expansion of pulp production in this country can be expected. Beware of new excess capacity which may have no guarantee when the war is over. Responsibility is not wholly upon management for a large part rests upon labour. Any broad effort by labour to hurry wage increases to obtain a larger share of income before conditions of trade and volume justify is bound to increase costs. Relations between labour and capital must be more flexible than ever before; they are both in the same boat; whatever goes up must come down, and promptly, if we are to save our economic position and thereby maintain jobs for those dependent upon this industry."

On the matter of labour it is such a big, comprehensive problem that I am rather timid in stepping into it particularly when we have Mr. Heenan here who has followed labour all his life, but nevertheless I do feel that a frank discussion of the labour problem is quite necessary in this problem because that is the foundation upon which we must build. If we have a contented labour population and we hedge in the future with its stability after the coming of peace, those other factors in the way of capital and land and everything else we cherish in the way of ownership may go by the board. However, before discussing the matter of labour the question of taxes is of itself quite evident.

THE CHAIRMAN: Q. I was going to ask two or three questions on that—go ahead, Mr. Johnson?

A. All right, I wish you would.

Q. I won't interrupt you but I would like to have your theory of what would appear as high taxes and what taxes those are. I see the first item of the cost on the left-hand side of this chart is "High taxes"?

A. Yes.

Q. What are those high taxes?

A. There are so many of them, and I will admit that they are quite necessary at this time to carry on the war.

Q. No, but which taxes are referred to here?

A. I am referring to all taxes as a matter of class.

Q. Well you can divide taxes I suppose broadly into two categories, those which increase the cost of production and those which affect profits?

A. Yes.

Q. What type is that here? I mean give us some specific instances?

A. First you mention taxes affecting profits.

Q. No, but that is after the cost of production?

A. Yes. Well, associated with that I would think, Mr. Leduc, would be the matter of a balanced corporation or income tax.

Q. No, no, these affect profits after they are made; they don't add anything to your cost of production; in other words, if you don't make a cent you don't pay a cent of tax?

A. No, that is not my point. I am thinking of profits.

Q. Yes?

A. After they have gone into the costs they are in your costs and part of them, but on the question of income tax, whether it is an individual or particularly a company, if taxes become too high then their current position is to take money from that company that it would otherwise use for expansion purposes.

Q. That is, the money that goes for the payment of taxes could otherwise be used for reinvestment?

A. For expansion and refinements within the industries. That is all I refer to in that problem. There is a breaking point beyond which taxes from income cannot go because it has the effect of freezing the current position of a company and preventing them from expanding.

Q. But you realize as far as the companies themselves are concerned they pay the corporation income tax only when they make profits?

A. That is right. And to that extent of course that is—

Q. It is not so bad?

A. No. I am in favour of that.

Q. So that doesn't increase the cost of production?

A. No, it doesn't, although it is in the cost involved in this way, supposing you are selling a concession of pulp and your taxes amount to $1.50 a ton or more, that is added onto your sale price. Is that right?

Q. Well, I don't know what taxes you refer to. If you refer to the income tax I say no. You sell a ton of pulpwood say for $50, it has cost you for wages and power and all other expenses and interest on your loans and depreciation—well all the expenses you have—it costs you a certain number of dollars?

A. Yes.

Q. Which will leave you a profit of fifty cents or $5 or $10; your corporation income tax would apply only on that fifty cents, $5 or $10?

A. That is right.

Q. So that would not affect your cost of production?

A. No, not in itself, but it would affect your cost to your ultimate consumer because it would have to be added onto your other basic costs.

Q. That is if you want to get the same income after taxes?

A. Yes. It is only your point of returns.

Q. But it doesn't affect your cost of production?

A. That is right. It affects your sale price of course which may be reflected back onto your volume.

Q. That is to say if you make a net profit of $5 per ton after paying all expenses and a new tax comes up that takes fifty cents off that $5, if you want to still make $5 you have got to increase your cost by fifty cents?

A Yes

Q. But you don't have to?

A. No.

Q. You could take a smaller profit?

A. Yes.

Q. What I am after is taxes that affect the cost of production?

A. You have for instance your ground rent and fire protection charges.

Q. And that is timber dues really?

A. No, those are not timber dues. There is ground rent and fire protection.

Q. Doesn't that take the place of a purchase price on these areas?

A. It all depends how you set it up in bookkeeping I presume.

Q. Yes. Because in the Province of Quebec they used to sell them; I don't know whether they do yet; and they used to bring a thousand dollars?

A. I have known them go as high as $2,000.

Q. And here you have a ground rent which takes the place of that capital payment?

A. Yes. In the Province of Quebec one has the ground rent and fire protection charge in addition to this.

Q. And here in this province you have a ground rent, it is a rent you really pay to the Government for that timber—it is rental actually?

A. Well, it is a cost.

Q. Oh yes, but it is the same thing as the rent of a farm, isn't it?

A. I don't know.

Q. I mean, surely you don't contend that you should have the right to that area without paying any ground rent for it?

A. No. I am not taking any of those positions.

Q. Do you claim the ground rent is too high then?

A. No, I don't say that.

Q. Oh?

A. This is only for the purpose of bringing forward the two different philosophies of costs of production because the lower the cost the more you can fan out your markets; that is the only purpose of this chart. It is not for the purpose of criticizing the figures or analyzing them, it is only as they are added on here, a few cents here and there, that they are sufficient to defeat your market.

Q. I quite understand that, and that is why I want to know what these charges are. You have mentioned ground rental there; have they anything equivalent to that in the Scandinavian countries?

A. That I can't tell you.

Q. What about the United States then?

A. In the United States they are tremendously high in a different way: There the lands are owned in fee simple and they have real estate taxes, except in some parts it is less, but on the west coast it is more.

Q. It is a case then where our cost is lower in Canada than it is in certain sections of the United States?

A. I would say it is lower in all sections. Take the cost of power, I don't know any area, with the possible exception of the south—out on the west coast it is much higher than it is here, and in the northern states, Minnesota, Wisconsin and Michigan, it is higher than it is here.

Q. As I say, that is one place our costs are lower?

A. I named here taxes, power, timber area—except the south.

Q. Yes?

A. Now the south is where you will notice up above here "Low costs and abundancy in southern states, U.S. Pacific Coast and Scandinavian countries."

Q. Yes?

A. In the southern states those are figures prepared now because as I remember it you have come into production capacity in the chemical pulps, in the south about $100,000,000 of added chemical plants for bleached and unbleached sulphate, and they are even making bleached sulphite in the south now at Rainier, Louisiana, which has a tremendous production and out of which they are making explosives and silk stockings and all sorts of silks, so they are even able to make sulphite out of southern pine.

Q. As far as that ground rent is concerned is it fair to put it this way, that it is lower in Ontario than it is in the northern American states and on the Pacific coast but that it is much higher than it is in the southern states?

A. Yes sir. And it is much lower than it is in Quebec.

MR. ELLIOTT: Q. Along that line, my understanding is that the ground rent and fire dues are less than two cents an acre per year and are of no consequence?

A. That is all, two cents an acre a year.

THE CHAIRMAN: Q. What are the other high taxes that affect the production?

A. Well, you know that just as well or better than I do.

Q. No, no, I am asking you because you bring this chart?

A. I am not saying, Mr. Leduc, that our taxes are out of line; that is not my point; I am merely saying that taxes where very high affect your cost price and inasmuch as it affects your cost price as they pyramid for one reason or another, that is those reasons, and one more, financial structure, you are building up a free market for your products.

Q. You have "High costs and scarcity in Canada" and "Low costs and abundancy in southern states, U.S. Pacific coast and Scandinavian countries" and the first item of cost is "Low taxes" so I take it that this is what you claim, that our taxes are too high in Canada, and I would like to find out which are those taxes?

A. The southern states, for instance, their taxes are much lower; in the Pacific Coast they are higher; in the Scandinavian countries it is difficult to know their complete system of taxation, I haven't gone into that as a study, but wherever we do have high taxes in Canada competitively with the south it is so much to our prejudice. Is that not true?

Q.—No, but I am asking you these questions, Mr. Johnson, for this reason: I was present at part of the conference held on Friday and there were several memoranda prepared and I forget whether they mentioned taxes or not, although they asked a reduction in stumpage dues and an abolition of the export taxes on pulpwood, and so on and so forth, but if there are any taxes that are unduly high and that retard the progress of the industry we would like to hear about them?

A. Well, I haven't gone into that as a complete study as I would like to. I will. I will say this much, in the total amount of sales of our timber products the total amount which goes into the Government for Workmen's Compensation, that is a charge, isn't it?

Q. I wouldn't call that a tax?

A. No, it is a charge. The ground rent, fire protection, corporation tax, income tax, surtaxes, I have it all worked out as far as our own company is concerned here, I think it runs to something like twenty percent of our total volume as represented by these charges, stumpage dues and various kinds of taxes, carrying charges and all, which is quite a major burden.

MR. ELLIOTT: Shouldn't those be analyzed, Mr. Chairman, so that we would know just what they were?

WITNESS: I beg your pardon?

MR. ELLIOTT: Q. Could you analyze those and tell us what the taxes are?

A. Well I would have to go down and break it down. They are charges.

HON. MR. NIXON: Q. You said you had it broken down for your own company?

A. Yes, I have. I don't know whether I have that here. I think it is something like twenty percent. I haven't the material here but it would be comparatively easy to get for you, I suppose.

MR. ELLIOTT. Q. What do those charges include? You can give us an idea what they include and the proportion they are of the whole?

A. Yes. They include stumpage charges, carrying charges on your timber, like fire protection and ground rent, corporation taxes, income taxes, Workmen's Compensation.

MR. COOPER: Q. Would the Workmen's Compensation be a big percentage of the whole thing?

A. No, it is not so bad. Our experience in Workmen's Compensation in Ontario has become progressively much better in the last two or three years; where at one time we were paying eight percent, now we have it worked down to five percent, which is quite an accomplishment, and Mr. Heenan has been quite a material help on the matter of the Workmen's Compensation problem.

MR. ELLIOTT: Q. What else is there, Mr. Johnson?

A. Well, I would say those were the major ones.

Q. Approximately what is your stumpage charge?

A. I feel, sir, in Ontario they are high—

Q. What are they?

A. On pulpwood you mean?

Q. Yes?

A. They run all the way from $1.10 a cord up to I suppose $2.25, $2.50.

HON. MR. HEENAN: Q. $2.10?

A. $2.10.

MR. ELLIOTT: Q. That is a purchase price?

A. Yes. In your sawlogs those are in many instances put very high. I have never been able to understand, Mr. Chairman, this discrepancy in the stumpage charges: We have found in jackpine pulpwood standing there your charge on jackpine pulpwood is say fifty to sixty cents per cord and your jackpine sawlogs will run from—Mr. Draper gives me some stumpage rates—I am not familiar with these charts, but your stumpage rates in jackpine will run all the way from say $2.50 up to $8.50.

HON. MR. NIXON: Q. A thousand feet?

A. A thousand feet. It takes two cords to make a thousand feet. Why should your rate on jackpine for young timber be only a half or a third or a fifth of your sawlog timber where that is matured?

Q. Are those rates set by the Department, or are they bids?

A. Well, some are bids and some are set. The same in spruce.

MR. COOPER: Q. Did I understand you to say you were up to $8.50?

A. On jackpine, yes.

Q. I have known people up around Sudbury paying as high as $11?

A. Yes. For instance, Mr. Merwyn of the Sudbury Lumber Company and Mr. Poupore of Gogama, they are paying nine, ten and eleven dollars, but you see they are comparatively close to the International Nickel Company, with mining timber and sawn timber.

HON. MR. NIXON: Q. But they actually bid that to get the timber?

A. Yes, Mr. Nixon. They might be in a position to pay that for a small localized market. For instance in mining timber there is good money, and then too if you have a market within ten cent freight rate of your sawmill your stumpage is worth a whole lot more than if it is more remotely situated from the market where you have to rely on the general market to sell your lumber.

MR. ELLIOTT: Q. Of course, Mr. Johnson, the stumpage charges are timber dues, they are not a matter of tax at all?

A. No.

Q. So that in that list you gave us the only item that might be regarded as a tax is the ground rent and the fire protection charge?

A. Yes.

Q. So that in the estimate you gave of twenty percent there is only a very negligible proportion of that—?

A. And carrying charges.

Q. —of charges by the Department?

A. Yes.

Q. That is two cents an acre?

A. Yes.

THE CHAIRMAN: Q. You don't quarrel with the fire protection tax or charge—that is for services rendered?

A. $11.40 is what the timber licenses carry, but the pulp concessions carry $6.40, which is one cent per acre.

Q. How much?

A. $11.40 as a timber operator we pay per square mile and the pulpwood concession at $6.40.

Q. Of that group of charges you gave us, ground rent and stumpage dues are really what you pay the Government for the timber that you take out?

A. Yes.

Q. That is the purchase price of your timber, and the fire prevention charges are for services rendered; the Workmen's Compensation payments are part of your labour costs; the only things that you could qualify as taxes would be the corporation tax and the income tax?

A. Yes.

Q. You mean I suppose the corporation taxes which are payable to the Province, and the income taxes are the taxes payable by the company to the Federal Government?

A. Well, all the payments are paid directly to Ottawa and then do you not get your money back from Ottawa?

Q. No, no, that is the personal income tax. Of course if the operator is an individual then he pays the income tax, but if the operator is a company it doesn't pay the income tax to the province?

A. No, it pays it all to the Dominion, that is right.

Q. So in the case of a company those are the two taxes, the tax payable to the Province under the Corporations Tax Act, and the tax payable to the Federal Government under the Corporations Income Tax Act?

A. Yes, I guess that is correct.

Q. And those two taxes are paid only when there are profits to be taxed?

A. That is what I understand.

Q. What about the sales tax or customs duties on machinery?

A. Well, they vary a great deal. We had to pay in bringing in this machinery from Sweden—I think our tax on that machinery was, I am not sure, about thirty percent—we had to pay $15,000 of tax on $30,000 worth of machinery, or something like that, but that is more or less of a capital charge, that would repay itself to you in added efficiency, otherwise you wouldn't buy it, so I don't believe a person could very well criticize that, you wouldn't be warranted in criticizing that amount of customs tax because I think it is good business to buy it.

MR. DREW: I think that we should pass from the subject to taxes to something else.

THE CHAIRMAN: Yes.

MR. DREW: I mean, after all, I think we want an explanation of the charges headed by the question, "Shall we continue our present economic policy while losing our markets to southern states and Scandinavian countries"; then we come down to the first point, high taxes as against low taxes, and while in the principle I would agree on the basis that this is obviously an operating factor if one can show that that is the case, on the general discussion we have had I must admit there is nothing before us to indicate by way of exact evidence that the taxes are higher in the competing countries.

WITNESS: This is not for the purpose of making a definite statement that all of these things are out of line in Ontario, it is merely for the purpose of presenting the different factors involved, merely as a basis of investigation, that is all.

MR. DREW: Q. May I put it this way, if you had your headings "Results of high costs and scarcity" without the words "in Canada" on the one side and "Results of low costs and abundancy" without the following words on the other side we would agree with you?

A. Very well, that is better then, we will strike out "in Canada".

THE CHAIRMAN: Q. But you were discussing the labour aspect, Mr. Johnson, when we came to taxes?

A. Yes.

Q. So you might perhaps go on with that labour aspect.

MR. DREW: Q. I don't want to interrupt, but let us get quite clear what this is: What do you say this is, a chart supported by the Fort William Industrial Commission? If it is merely a theoretical analysis of the operating factors which would increase or decrease production that is one thing, but certainly as I read it it would appear to be an article in graphic form that all these are contributing factors to our scarcity as opposed to higher production in the other countries due to the factors which are shown in the opposite column?

A. Yes, but it is not for the purpose of representing—Mr. Leduc's criticism is exactly right—"in Canada" there, that was put in there only for the purpose of applying all these basic costs, those too in Canada, competitively against the others and it should not be construed as a declaration of criticism of these factors that are here as far as Canada is concerned. I was wondering if I got that clear?

Q. Yes. I think that we could carry courtesy too far in the analysis of this; either they are high or they are not high; either there is ground for criticism or there is not. As I read this I don't see how it can be interpreted in any other way except as a suggestion that the industry in Canada is suffering from a situation from the increases put in the left-hand column. If that is not intended

then I submit the whole chart is merely a theoretical skeleton around which we can argue as to what we are to do?

A. That is exactly put, a theoretical skeleton for the purpose of further investigation, that is all.

HON. MR. NIXON: The chart is in the form of such a definite statement.

THE CHAIRMAN: I might say we could take No. 1 as not proven and go on to No. 2.

HON. MR. NIXON: Q. My information is that Workmen's Compensation charges are much higher in the Pacific coast in the United States than they are here in Ontario?

A. That is right. I made that statement.

THE CHAIRMAN: Would you rather go on with these other items in the way they are set out?

MR. ELLIOTT: And explain them.

THE CHAIRMAN: Q. Consider transportation costs or labour, whichever you wish to take first?

A. Well on the question of high transportation costs—don't misjudge the reason for this, I don't set myself up as either a tax or transportation expert, far from it—but I can say for instance in the matter of high transportation costs that we do have for instance in one part of Canada, and I presented these charts to you before, I believe—(produces a chart.) That speaks for itself, I think.

Q. Unfortunately, while it does, it doesn't speak loudly enough for the stenographer to hear it. If you don't mind explaining it?

A. All right. I guess I haven't one part of it here. I guess my complete one was filed before. Oh yes, I have it now. For instance, pulpwood from the Timmins district, the freight per cord to New York-Pennsylvania is $10.50 a cord which at the time this chart was made about two months ago before the war was 78 percent of the price of that commodity. Lumber from Timmins, Ontario, and into the northern New York territory is $5.58 a thousand, which is sixteen percent of its value. Lumber from British Columbia into northern New York territory based on $35 is $14.76 which is forty-two percent of its sales value.

MR. DREW: Q. Is that over American or Canadian lines?

A. That is partly over both.

Q. Is the difference due to carriage on American lines as opposed to Canadian lines or due to different charges within Canada?

A. I am not just sure how they divide up their traffic revenues.

Q. The reason I ask that question is, one of the points that has already come up in regard to some of these discussions, there are charges within certain zones which don't work at all equitably in different parts of Canada. Is that what you are suggesting there?

A. That is right.

MR. W. G. NIXON: Q. That is the over all cost from shipping points to destination?

A. That is their over all rate, yes.

For instance, from the head of the lakes on lumber—I have all that worked out somewhere—to Detroit via rail—I am sorry I have not some of these figures—it runs about $8.00 a thousand feet. Now, to move that lumber about 800 miles for $8.00 a thousand, as against the Pacific Coast rate of 82 cents for 3500 miles, you see, that is quite a big difference there.

THE CHAIRMAN: You have the rate from the Pacific Coast to Port Arthur?

A. No, to the eastern ports, like Buffalo and New York. It is comparatively high. I had hoped, on these high transportation costs, if the Government were interested in it, to have real freight experts go into this question. I have been in touch with the Canadian Pacific representative and Canadian National representative to see if they could work out with us some freight rates that would permit more advantageous rates for Ontario timber products to the American ports.

Q. Did I get this correctly, Mr. Johnson; that the freight from the head of the lakes to Detroit by rail is $8.00 per thousand feet?

A. About $8.00.

Q. And that the freight from the Pacific Coast to the eastern ports—

A. Like Detroit, is 82 cents.

MR. DREW: That is by water?

A. No, that is by rail.

THE CHAIRMAN: That is one-tenth?

A. Oh, no. Forty two cents as against 82 cents is not one-tenth; it is one-half.

Q. You said the freight from Fort William to Detroit by rail is $8.00 per thousand?

A. About.

Q. In the other case it is 82 cents a thousand?

A. No, it is 82 cents a hundred. That will be $16.42.

Q. Oh.

A. Yes. Now, on the question of the high and low transportation costs, that problem, if I may suggest it, is really one for the railroads to go into to see how we are prejudiced on our rates. I can say this too, that the freight rates, for instance, from Ashton, Wisconsin, on pulpwood down to the Wisconsin consuming points vary all the way from 5½ cents to 6 cents a hundred pounds. I think even from 5½ to 6½ cents. That is for 300 miles or thereabouts.

These are more or less rough figures, Mr. Chairman. Now, there are similar rates in Canada, as for instance from Kenora down to the head of the lakes. For that same distance it goes nearly as high as 12 cents, does it not, Mr. Heenan, for export?

Hon. Mr. Heenan: I do not think for export. No export comes out of there. I think it is 9½ cents.

A. And that is for 200 miles, is it?

Q. Less than 300 miles; about 275 miles.

A. You can see how the rate for 300 miles compares with the 9½ cents for 200 miles. I believe that that whole freight structure for local consumption as well as export, and particularly around Timmins and in that country—those freight rates are so high that I do not see how it is going to be possible to put this area into production no matter what your timber dues are or your labor schedules.

Mr. Drew: You see, Mr. Johnson, it would be very helpful if we had some sort of comparative figures to show exactly what these figures are and how high they are in relation to other forms of transportation.

A. That is true.

Q. Because on Friday, for instance, we had a representative from both the Canadian Pacific and Canadian National Railways here, and both of them simply said that they were prepared to co-operate, but it seemed to me they could not see how the rates could be lowered. About the only way we can start discussing with them ways of lowering charges, or the reasons for lowering charges, is to have some exact figures which indicate a good, sound argument in support of that contention.

A. Yes. I should think that that question of transportation costs would be of sufficient importance to the Province of Ontario to really go into that with some kind of a fact finding commission to find out what benefits or what detriments we have in the free carrying of our products due to freight rates, if they are excessive. I am not a fact finding commission of the Government, I am just throwing out these lists of voluntary information on the problem for whatever help it might be.

MR. COOPER: I understand the railways are going to turn in a brief which is going to be submitted to us.

THE CHAIRMAN: I did not understand that. They offered their co-operation.

MR. COOPER: I think representatives were appointed at a conference to turn in briefs. Is that your understanding, Mr. Heenan?

HON. MR. HEENAN: They took the position that inasmuch as the freight situation is such a large question that they could not very well come to the conference to make a proposition that they would do this, that and the other thing; but that when the conference got together and it was pointed out in the lowering of costs what the railroads might contribute, they were then prepared to sit down and talk to them to see how far they could go.

MR. COOPER: If we are going to get anywhere here we should have figures on the basis of so much per mile. Mr. Johnson says it costs so much from Timmins to Detroit, and so much from the head of the lakes to Detroit. But we do not know the mileage. It should be reduced to so much per mile, and then we would have some comparative figures.

MR. SPENCE: I think we should let him proceed, Mr. Chairman.

THE CHAIRMAN: Yes.

MR. JOHNSON: This question of intricate freight schedules is so enormous that it really takes a traffic expert to go into it and properly analyze it.

MR. DREW: Yes, but you see, Mr. Johnson, after all, there is a difference between an attempt to convince the railways that they should lower their rates, and a statement that the rates are too high or too low.

A. Quite right.

Q. In other words, it is for the operator, in whatever branch of the operation it might be, to show that the rates are too high compared with some competitor. And until it can be shown that that is the case, it is not giving the railways a very strong argument in favour of a change in rates.

A. Quite right.

Q. It seems to me that that is essentially a matter for those who are using the railways to demonstrate by practical evidence what they are paying in comparison with some other competitor. Let me put it this way: We can get a statement from the railway companies indicating the freight charges within certain zones, from certain points to other points. But the important thing, as I see it, is to find out, for instance, what a man who is trying to sell a product from Fort William has to pay in comparison with a man, for instance, who may be trying to sell the same product from some place in Minnesota or any other place along the lake. Is that not the real test?

A. Quite right.

Q. It seems to me that that being the test is something that the man who is directly interested in getting a change in the freight rate would be best able to give us.

A. We have tried that so often as one individual approaching these railroads for betterments in rates. It seems to be practically impossible to get any adjustment, even if you can show, for the same unit of haul elsewhere, that the rate is about one-half or one-third. I think Mr. Heenan has been through some of that in his conference with the various railroad representatives.

HON. MR. HEENAN: My understanding of it, of course, is not conclusive, but it is that the freight rate on lumber for British Columbia is less than it is from Ontario to any other point in Ontario.

A. That is true in some instances, I have been told; I have not the positive proof of it. That is one of the reasons they tell me they can sell British Columbia lumber in the Ontario market.

THE CHAIRMAN: Could we not have some of those operators come here and give us the figures, and then we would have something to start with?

HON. MR. HEENAN: Somebody suggested that we should have the freight rate men of the two railroads. I think that would be a good idea.

MR. DREW: Let me just make this comment here. I was greatly disappointed when I read over the briefs that we got on Friday. I was greatly disappointed in what they actually contained. In the first place, we got no brief from the industry itself, that is, the newsprint industry. We got no brief from the railway companies, and no brief from the power companies; yet these are three of the most important co-ordinating factors in this whole problem. We did get briefs from exporters and from those interested in the cutting of sawlogs, and others, and each very properly setting forth a particular approach to the problem having regard to their own special interests. It seems to me that what we need in this whole discussion are exact figures which are not in any way open to dispute upon which we can base our argument. We have come to a point now where it seems to me that what we need to recognize is that we are not going to get anywhere with a solution of this particular problem unless we get down to exact dollars and cents in relation to every one of these different things.

Without in any way reflecting on the importance of Mr. Johnson's evidence I can only say this, that this chart and the comments you have made are, frankly, generalizations which seem to me must be obvious in regard to this problem; that is, if our taxes are higher than taxes in competing countries, if our transportation costs are higher than are paid by competitors, if our wages are excessive in comparison with the wages of competitors, and so on down the line, then there is no argument about the fact that our basic producers are up against an almost insuperable obstacle in meeting foreign competition.

It seems to me that in trying to co-ordinate these different factors in our own particular problem we must have exact figures.

A. Whose responsibility is that, Colonel?

Q. Oh, well, in this case, Mr. Johnson, you have come here suggesting things, and I for one welcome the fact that you are here to do that, but you have given us a chart and you say that these are things which should be taken into consideration, but at the moment you are not giving us any exact figures which lead us to a conclusion.

A. No, and that is why I maintain that some outstanding British or American economist like Sanford Evans or Mr. X. or Y. or who not be heard; that it requires the combination of experts in these fields to give us the enlightening information we need to go into the question of our competitive position.

Now, it is perfectly evident to me, as a matter of general observation, that where you have the entire Province of Ontario from the Soo west to the Manitoba boundary, and there is nothing new in the way of pulpmills or sawmills or paper mills when there are enormous expansions on the west coast as well as in the southern part of United States, that that fact of itself should warrant investigation as to why we do have this stagnation. In some of these matters I have only very little information; in some I have more information. One thing is sure that there is no person whom I know who can give you all the material you want right off the bat. It is an enormous problem, in the matter of international trade, and that is why I am giving you all this information for the purpose, I hope, of stimulating interest among you or in this body of men as to what any of us or all of us or a combination of other people whom we have not yet heard, can do to help us in trying to get the solution. That is all. Anything more than that on my part would be presumptive, because there is no man that can get the whole problem.

THE CHAIRMAN: I understand that you cannot add very much to Item No. 2 on this chart?

A. Only the few isolated instances on which I have had experience in my own business, that is all.

Q. What about Item No. 3?

A. There, I can give you some information as far as labour is concerned. I wish I could qualify, Mr. Chairman, as an expert in all these problems. Maybe I would be able to hire out to somebody for $25.00 a month. But as it is, I cannot.

MR. SPENCE: What about excessive railway wage rates and part time employment?

A. Yes, I have a little information on this that may be helpful merely for the purpose of illustration.

THE CHAIRMAN: What are these?

A. These are tables.

Q. These are schedules, Mr. Johnson, fixed under the authority of the Industrial Standard Wages Act?

A. Some of them are and some of them are not.

Q. I am taking the first page, "Comparative minimum wage schedule, bush work." Who fixed those schedules?

A. At the head of the lakes they are fixed under the Industrial Standard Wages Act, and some places in the east, and some places they are not fixed at all.

Q. You have several columns here. You have eastern Ontario, Pembroke area; eastern Ontario, Latchford; eastern Ontario, Ottawa. Then you have the Quebec area, Manitoba and the Maritimes. As far as the four last territories are concerned they are outside of the province and it is quite evident that the wages were not fixed under our Act?

A. Quite.

Q. But what about the three eastern Ontario areas, are these rates fixed under the Industrial Standards Act or by common agreement between the operators and the workers?

A. Common agreement.

HON. MR. HEENAN: They do not come under the Act?

A. No. I have letters supporting, if you want to see the originals, from the Pembroke area, Latchford, Ottawa, and some from Quebec and Manitoba. I only bring in Manitoba, for instance, as I thought it would be material to this Commission.

THE CHAIRMAN: Pardon me, Mr. Johnson; go ahead.

MR. E. E. JOHNSON: I merely mentioned Manitoba because I feel that these wages are ridiculously low. This schedule is not for the purpose of giving the impression to anyone that labour is overpaid too much. It is merely for the object of bringing out into discussion what if anything there is that might be done towards giving workmen more continuity of work so that their annual income can become greater.

The one difficulty we have in bush work, as you know, is that it is seasonal. We have only been employing them about six months in the year. I believe that by a policy of sap peeling pulpwood starting, say, on the 15th of May up to the 15th of August, and then from the 15th of August cutting rough wood and railway ties and sawlogs until the 15th of January, maybe longer, and then starting the haul sometime say in November, whenever the weather permits, straight through to April, and then running your sawmills or pulp mills and your rafting, driving and loading; that instead of having spotty employment for six months, there may be a chance, if you could put these areas into production, of giving a bush worker eleven months' work.

If that can be accomplished it is going to be beneficial in two ways: First, there is going to be more timber products produced and, secondly, there is going to be more continuity of employment for the bushmen.

THE CHAIRMAN: Is that not a matter for the industry to solve?

A. Yes, but how can that be—

Q. This would call for greater efficiency and better planning by the industry.

A. Yes, not only that but more. If these areas are put into production on species, diversified industries, then labour and capital is going to have an opportunity to go to work on that part of these areas which is not now in production.

Q. Well, Mr. Johnson, I may be wrong but I believe the only thing the Government could do would be to see that these areas are made available to the industry and then it would be up to the industry itself so to plan things as to be able to have continuous operation.

A. Well, would it be possible to go a little further than that perhaps, Mr. Leduc? There is an article here in the Pulp and Paper magazine which I would like to bring to your attention, on the matter of the Government perhaps helping us to work out some practical solutions to some of the problems of the industry which we as individuals can hardly afford to undertake ourselves. I did not know whether the Government would be prepared to perhaps go that far.

Q. Well, what exactly do you mean, Mr. Johnson?

A. Well, an experiment, in the first place, as to the floatability of the hardwoods. There is an article here in this magazine which states that the hardwoods cannot be floated successfully. I have the research results of the Nordic countries where they float hardwoods up to 300 miles successfully.

Q. But do you not think that the industry is in a much better position to proceed with that rather than the Government?

A. It is a pretty expensive proposition.

Q. Yes, exactly, but why load it on us?

A. I say this; that there may be a sufficient public interest for the Government to work with industry in a co-operative way to see what practical things we can work out, because after all, isn't the Government interested in selling its standing timber, and isn't it interested in putting more men at work, and isn't it interested, too, in handling some way these diversified species? Perhaps I am a little bit socialistic in my suggestions; I do not know.

HON. MR. NIXON: Do you mean to say that the operators who have worked with hardwoods for years do not know whether they can float them or not, or whether they have to drag them out?

A. That is a question if I say Yes, I am wrong; if I say No, I am wrong. You know, Mr. Nixon, how that question goes.

THE CHAIRMAN: It seems to me that that is a practical problem which the operators can solve without the Government stepping in.

A. Well, maybe. But I don't know who is going to start it. Quebec has gone into it carefully and they say it cannot be done, and nearly every timber operator I have spoken to says it cannot be done. Here is a book which cost me a couple of hundred dollars to have interpreted from Finnish into English. It is the foundation for various products, research in Finland, published in 1926, dealing with veneer birch, Helsinki, 1938. And they have done this thing; they have floated birch and poplar successfully for five years, and they have stepped up their timber production in veneer birch over 500 percent in four years.

Q. I am not an operator and I know very little about the business, but if they can float birch in Finland is there any reason why it cannot be floated here?

A. Well, I do not know any reason why it could not be.

MR. W. G. NIXON: Do they tell you how they do it?

A. Yes, they do. It is a most interesting thing.

THE CHAIRMAN: Are conditions here so different that what is done in Finland cannot be done here?

A. It is my opinion it can, but I do not know that I want to spend thousands of dollars to find out.

Q. You would rather the Government spend it?

A. No, I wouldn't say it that way. I would say that the Government has a fine group of practical foresters, like Zavitz, Mr. Sharp, and the rest of them, and I would like to work along with them on it as a mutual problem, if that is possible. I suppose I should rather take this up with Mr. Heenan than with the Commission; I do not know.

MR. ELLIOTT: It has been tried out in Canada already.

A. It has been tried out in Canada unsuccessfully so far. Quebec has done a great deal of work on that.

Q. Do you not think the fast water, probably the difference in the speed of the water, has something to do with it?

A. No.

Q. Or the temperature of the water?

A. Not at all. That has nothing to do with it. It is not salt water either, because it floats in their streams and their streams are fresh water. It is only when you get into the Baltic that you get salt water. It gives it a little more buoyancy.

THE CHAIRMAN: Before we adjourn, Mr. Johnson, I might perhaps leave this thought with you. You represent an industry which has a very large amount of capital invested in it?

A. Yes.

Q. It seems to me the industry might protect its investment, or even increase the return on the investment if it were to spend a few dollars making these investigations and experiments with all these new problems instead of asking us to do it.

A. I am not asking you to do anything except perhaps to work with the men who have, and I am not making it as a request.

THE CHAIRMAN: I think I can speak for Mr. Heenan and tell you that as far as seeking the co-operation of his employees is concerned and getting it, you already have it. Is that not a fact, Mr. Heenan?

MR. HEENAN: Yes.

—At 12.45 p.m., the Committee adjourned until 2.30 p.m.

AFTERNOON SESSION

APRIL 22nd, 1940

THE CHAIRMAN: The meeting will please come to order.

Mr Johnson, will you resume the box?

EDWARD E. JOHNSON, recalled:

THE CHAIRMAN: Q. I would suggest, Mr. Johnson, that we leave aside the chart with which you dealt this morning and consider it as a sort of guide in securing further evidence from perhaps railway employees and Hydro-Electric engineers. In fact, you might proceed with the balance of your evidence.

A. Thank you. I have only a couple of more observations to make in the matter of labour.

Q. In what matter?

A. That of labour.

Q. Very well.

A. Namely, that if something could be done in the way of giving steady continuous employment rather than spotty spasmodic employment, as we now have it, it would give labour better security and, too, would result in higher annual pay. That is directly connected, of course, with the establishment of diversified industries in order that the forest crop can be more fully harvested. Then, too, by selling areas on a perpetual or sustained yield basis so that an entire watershed can be cut selectively and particularly in the matter of harvesting the more mature timber to support perhaps sawmills, rather than to cut so much of the smaller timber for pulp purposes. It might be well also for the Government to consider keeping the dues down on those inferior species, which would warrant the independent operator paying the extra cost of logging for summer operations.

I think that is all I have to say on that point, Mr. Chairman.

HON. MR. HEENAN: Before you depart from the labour question, Mr. Johnson, is it not really involved in the whole economic structure of our timber forest products in this way: Labour has to demand what they can get out of it, having regard to the fact that they are only employed a few months of the year and the more they can get out of it the better satisfied they are. There has never been, that I know of, a real effort made by the investors or the manufacturers to get together with labour and suggest, now look here, boys, we want to revolutionize the whole business, so as to give you eight, nine or ten months' work during the year, and if you take so much less we can sell our products and that will enable us to give you eight, nine or ten months' work out of the year instead of three, four or five.

There has never been any connected effort on the part of the industry in forest products. It has been more individual effort rather than collective.

THE WITNESS: Yes, sir.

HONOURABLE MR. HEENAN: So, it has never been tried out; that is, to sit down, consult with the men and suggest, Now, we are going to do this collectively and if you will do this, we can bring about that, and so and so. Is that not the real crux of the entire situation as far as labour is concerned?

THE WITNESS: Yes, sir, and I really feel that it is most important that an attempt be made to bring it about as soon as practicable, because there is a crying need of that policy being instituted. Then, too, the labour are engaged in bush work and are most interested in bringing about that situation.

HON. MR. HEENAN: To-day,—and it has been for a long time,—it is everybody, or everyone for himself, to see how much they can get out of the situation, the Crown as well as the rest. I am not suggesting the Crown has not been involved in it as well.

THE WITNESS: Yes. We have a similar situation with the boats as with the lumberjacks. I feel there is no industry which can compete with international products where the industry must maintain and support labour for a

year where they only have an opportunity of working for six months. For instance, take the captains on boats. A sailor is a sailor; he cannot do much else, nor is he interested in much else. The same applies to the lumberjacks. They are only qualified for that kind of work. It is skilled work, so when a man has only six or seven months' work and where a man in the bush has five or six months in the bush, an unemployed man is of course a man who is dissatisfied, but if he has continuous work and has a chance of having continuous work,—he probably has children coming along,—I think there is something really constructive in the kind of approach suggested. That is why I feel quite strongly on the matter of sap-peeling wood and harvesting the entire crop, in order to give a full year's work instead of being spasmodic.

I think, Mr. Minister, you have hit right at the foundation of this problem.

HON. MR. HEENAN: Mr. Chairman, in this business, the whole atmosphere of the forest products in this matter is that of individualism, each one trying to get as much as they can out of it. A workman is working three, four, five or six months of the year and he wants to get all he can out of it in order to sustain himself and his family for the balance of the year. He figures he has so many months in which to make profits and he wants as much out of it as he can get during the year. The planing companies are just the same, so you can see that the question I ask Mr. Johnson has a direct bearing on the matter. I asked him if he did not think the whole thing should now resolve itself around collectivism rather than capitalism, so that labour could be approached with this thought in mind. We are all trying to make the best of a bad bargain and we are going to revolutionize all the circumstances in order to compete with other countries where they have a kind of co-operative plan of working, and if we do this, will you do that. I think you will find Canadian labour, with the exception of the few,—there are always the few, of course to kick,—will respond to treatment of that character.

That is why I asked that question.

THE WITNESS: May I ask you a question, sir?

HON. MR. HEENAN: Yes.

THE WITNESS: As a matter of practice in the practical problem confronting us in labour, it is difficult for employer companies to approach the labourers' problem and I presume it is somewhat difficult for the Government,—a government of this kind,—to give continuity of work, which might perhaps result in a little bit less per hour or per piece but over the year will give the labourer much more. If that kind of movement could come within labour itself, it would be more easy of solution, perhaps.

HON. MR. HEENAN: Do not forget that labour is very helpless in that respect. They see a certain amount of work before them and they want to know how much wages it will stand, and that is about all the interest they have.

The industry of which we speak now has never taken into consideration the position of their employees and sat down and tried to work out anything with them. Consequently labour has to follow the thought behind the investors

and the management. Something is going to produce so much work and they wish to know how much they can get out of it. There has never been any collectivism or unionism in forest products that I know of. Labour has never been consulted in the matter.

THE WITNESS: In that regard, I doubt if I filed a brief which carries a number, "Exhibit 4" which I hold in my hand, called "Text of Report by Roosevelt Commission on Labour Relations in Sweden". There was another report which paralleled this, in President Roosevelt's statement. It reads in part as follows:

> "A factual report of industrial relations in Sweden has been given me by the Secretary of Labour. It parallels the statement on industrial relations in Great Britain prepared and submitted by the same nine eminent representatives of the different points of view and interests within our country."

I would like to file this for whatever it may be worth, at this point.

THE CHAIRMAN: Q. Do you say we already have it as Exhibit 4?

A. I do not know. I find it in my file and I do not know whether it has been already filed by myself or not.

THE CHAIRMAN: That must have been filed as some other record.

THE WITNESS: When I went through I made out my agenda of approach and marked my exhibits. I now find it, so I take it for granted it has not been filed.

THE CHAIRMAN: It will be Exhibit No. 36.

EXHIBIT No. 36. Filed by Mr. Johnson: Text of Report of President Roosevelt's Commission on Labour Relations in Sweden.

THE WITNESS: I do not have the parallel report made by the same committee investigating British Labour conditions, but the method of collective bargaining and the co-operative method of approach between capital, labour and government, which has been studied so carefully in Great Britain as well as in Sweden, is very constructive information, I feel.

MR. COOPER: Q. Our big pulpwood export market in the United States in Wisconsin, is it not?

A. Yes.

Q. And is it true, as so often said, that the Western provinces,—Manitoba and Saskatchewan,—export to Wisconsin also?

A. Yes, sir. That is particularly true now, Mr. Cooper, because the last rise in bush labour of 10 percent and also some of our higher costs of stumpage, has permitted the provinces of Manitoba and Saskatchewan to compete.

Q. Have they any advantage over the Province of Ontario?

A. Yes. For instance, in Manitoba,—and I am not familiar with Saskatchewan,—their rate of stumpage is one dollar per thousand feet board measure.

Q. Have you any figures which would show that they are actually taking our market?

A. I have them only as a result of my last trip in Wisconsin, from which I just returned after a week's absence. There are now between 75,000 and 100,000 cords of pulpwood coming in from Manitoba and Saskatchewan, taking our tributary markets in Wisconsin.

Q. What advantage or advantages have they over Ontario?

A. Two. First, their rate on timber is one dollar per thousand lumber scale. That must not be confused with our rate per thousand Doyle scale, because our Doyle scale on sawlogs gives 85 to 100 per cent. over the line. Even at that, though, our stumpage price is about three times more than that of Manitoba and labour there is $16 to $22 a month. Labour in Ontario is from $47.50 to $75 a month, so our stumpage is about three times as high and our labour is about three times as high. That permits them to sell pulpwood in Wisconsin and it permits them also to sell lumber in Toronto, even with the freight rate against them, at a lower cost of production than we are able to do so from the head of the lakes even using water transportation.

Q. And is Manitoba lumber coming into Toronto?

A. Oh, yes. A large amount of Manitoba lumber comes into Ontario, as well as from the West Coast. I should judge over one hundred million feet.

Q. The same type of lumber as we have here?

A. Yes, sir, except the lumber from the West Coast is mainly fir. Our spruce and pine is used in mines and they are able to undersell us, except for instance at Nakina or Geraldton, there are some local mills, just like at Gogama and Sudbury, there are local mills and because of their nearness to mining centres they can pay high stumpage and high wages and still compete, but on the main in a general lumber world, where you are selling in a territory such as Kansas City in the west and Pittsburg in the east for a big lumber market, it is not possible to pay these timber dues and the short hourly wages which we pay now in the lumber industry as against a year's employment.

We have another proposition which I think is really beyond the ability of an independent operator to correct. In Manitoba and Saskatchewan, for instance,—and why it is I cannot tell you, but it is being taken up in the United States now,—their spruce lumber going into the United States is Excise Tax free. They pay a duty of 50 cents a thousand, but Ontario-produced spruce carries an Excise Tax of $1.50 a thousand. That $1.50 a thousand on spruce is a tremendous charge and there is no rhyme or reason to it.

HON. MR. NIXON: Q. You are sure of your facts?

A. Yes, I am sure of my facts. The reason I know it is so powerful is this. The B.C. Spruce Mills Lumber Company, operating in British Columbia, has now before the Excise Commission in Washington a hearing to be held in Chicago next month, I understand. That is a mill in which a partner of mine, Ben Alexander, has been interested for a long time and has been trying to overcome that $1.50 excise duty on their British Columbia products as against no excise duty on The Pas Lumber Company, which pays no excise tax, and the Arrow Land and Logging Company and other companies do pay that $1.50 on spruce, but only pay 50 cents a thousand on pine.

MR. COOPER: Q. It is a Federal tax?

A. A Federal excise tax in the United States. That is a terrible barrier to overcome. A mill of 50,000 foot board-measure capacity per year has to pay $75,000 in excise tax.

HON. MR. NIXON: Q. You are speaking of the lumber which comes into Toronto from the western provinces and there is also considerable from the eastern provinces?

A. There is a large intervention of New Brunswick and Nova Scotia and Quebec lumber into Ontario.

MR. OLIVER: Q. Is that more pronounced each year?

A. I would not say that. This is but an off-hand opinion, but it seems to be more or less constant. The reason I spoke about hard woods this morning was that we have birch and poplar in our country. The birch is maybe 30 percent. defective. What we can do with it, I do not know. We consider it more or less a weed. I believe it has great opportunities, as far as eastern Ontario is concerned, if the floatability of birch and maple can be established. I am convinced it can be.

MR. SPENCE: You are speaking of that yellow birch up our way?

A. No, sir, the white birch. In the Gatineau watershed and the St. Lawrence watershed, there is a big percentage of birch and upper and lower Ottawa has never been harvested because it is not floatable.

Q. Would not the manufacturer of chemical pulp in Ontario use inferior wood such as jack pine, birch, balsam and poplar?

A. Yes. You have asked a question here which is covered—

Q. Why do not our newsprint mills put in or install equipment which can use other species off these limits and use this wood. Can they install equipment, or is it much of a cost?

A. There is a very comprehensible article here in the Pulp and Paper Magazine of Canada, written by R. D. Running of the Canadian Pulp and Paper Mills Limited, entitled "Pulp and Paper Mill Utilization of Hard Woods and other Little Used Species." It is very well done.

You have asked a very interesting question, Mr. Spence. I was in Chicago on Thursday, with Bill Mason, who worked with Thomas Edison for a number of years before he died. Mr. Mason developed two things. He first developed a resinous material out of the southern pine and then he developed Masonite, which is a hard board and pressed board and insulation board. It is a company of which Mr. Ben Alexander is president, and who is known to some of you people.

He made the observation with the hard woods of Texas, Kentucky, Arkansaw Louisianna and Mississippi, that they will be able to do with the hard woods, soon, what they have been able to do with the pines in the south,—which is the sulphates, bleached and unbleached and even bleached sulphite. He now feels that they will be able to make newsprint out of the hard woods.

I never thought that would be possible and I would accept it very reluctantly except when it came from a man of Mr. Mason's type. So, this question you ask about hardwoods is covered here.

MR. DREW: Q. What issue is that?

A. That is the Pulp and Paper Magazine of Canada, Convention Issue, 1940. I will file one of them as an exhibit, if you care to have it, Mr. Chairman.

THE CHAIRMAN: I suppose it might go in, but I do not think it is necessary to mark it. It will be available for the purpose of perusal by the Committee if you care to leave it.

THE WITNESS: I called attention this morning to the last three numbers of the Pacific Pulp and Paper Magazine, which carries an enormous amount of very valuable information on the problem. This is the Canadian, but there is one issued on the Pacific Coast.

It has been demonstrated absolutely, in laboratories, that the spruce coming from British Columbia and Ontario is identical to the spruce coming from Manitoba and Saskatchewan, which goes in excise duty free.

MR. COOPER: Q. Before you pass along, in connection with the export market of the United States, how does the exchange affect us now that our money is at a discount?

A. You have reference to the Exchange Control Board?

Q. Yes?

A. I have been in the United States continuously now for two weeks and I feel that in some way or another there has arisen a wrong conception of the Federal Exchange Control Board. It is felt there that should American capital come into Canada and that money which comes in now, that even the dividends from it,—if there are dividends made,—under Foreign Exchange Regulations, cannot be withdrawn. Whether or not that is right, I do not know, but if it is true, it is difficult to get American capital into Canada in the development of pulp, paper and sawmills.

I feel very strongly that Ontario, with the 1,300,000 tons of chemical pulps cut off, especially the spruce pulps, the unbleached and bleached sulphites, has a wonderful opportunity to recapture that market as well as to get 2,500,000 tons of pulp, especially spruce, as a basis, which has been going into England.

HON. MR. NIXON: Q. But, for the actual selling or exportable product, you ought to encourage that market in order to have the money at a discount?

A. Yes. The exchange is up.

Q. In the export of peeled pulp, do you sell that peeled pulp for so many American dollars a cord?

A. Yes; I do.

Q. Is it the same in American dollars per cord now as it was before the exchange?

A. No, sir. Some operators have sold on the basis of Canadian dollars, to be paid in Canadian dollars, but it requires American money to pay it in the equivalent of what the Canadian dollar would amount to; 90 cents. But any wood I have sold has been sold on the basis of American exchange, not Canadian exchange, so our company has been able to get the 10 per cent. to which I think it is entitled. Do you not?

Q. Certainly, and I think there should be supervision to see it is made on the same basis.

A. Yes, and I would like to see all the operators take the same basis. You have to pay your maturities in American exchange, getting Canadian exchange in return, why not get American exchange?

MR. COOPER: Q. I do not know what the exchange is between the United States and Finland, but if the American dollar is worth one dollar and eleven cents here, you would think that would assist our market?

A. It does very materially, except, of course, as some of our costs have gone up. It is going to be beneficial to that extent. Our commodities, for instance, have gone up about 22 per cent. Butter went up in two days after Germany took Denmark six cents a pound wholesale.

MR. OLIVER: Butter?

A. Yes.

Q. And it went down again?

A. Yes, didn't it? But, do you know how much it went down after that?

Q. To the same level.

A. I did not follow that.

May I call attention to another article in this book, of the Pulp and Paper Magazine of Canada at page 185. The heading of it is as follows:

> "Some Economic Aspects of the use of Sawmill Waste for Chemical Pulp in Quebec and the Maritime Provinces,"

written by J. B. Prince and E. S. Fellows, Forest Products Laboratories of Canada, presented under the auspices of the Joint Committee of Woodlands and the Technical Section of the Canadian Pulp and Paper Association, at the annual meeting, Montreal, Quebec, January 24th to 26th, 1940.

This is given only for the purpose of perhaps an admission on behalf of some of us operators in the timber industry that we are not doing what is possible within our own field to cut down our costs. Reading from this article:

> "The amount of refuse available for pulp chips was found to vary from 25.9 cubic feet per thousand board feet in some of the more efficient stationary mills to 80.7 cubic feet in the case of portable mills of a very wasteful type."

And here is a second statement:

> "We have estimated from the four eastern provinces of Quebec, Nova Scotia, New Brunswick and Prince Edward Island a total of at least 39,000-000 cubic feet, or about 389,000 cords of spruce refuse would be available for conversion into pulp chips."

Now, reading further up on the next column:

> "Finally it should be found more economical to convert slabs and edgings that are utilized for other minor products such as lath, fuel wood and so forth, into pulp chips. The amount available for this purpose would be raised by 160,000 cords to a total of approximately 600,000 cords."

I do not like to bother you with so many different articles, but I think they are very interesting.

MR. SPENCE: That is for sawmill?

A. Yes, sir.

MR. OLIVER: Q. Is that being utilized to any extent by Canadian mills?

A. No, sir. This was thrown into the burners and a little taken out for lath.

MR. SPENCE: Q. How about this fuel; how do you propose to utilize it? Why would you say you built the mill there? Do you propose to make it larger?

A. I built it for two purposes, first to make some money out of it, if I could, and secondly, I am hopeful of making a contribution to the pulp and paper and timber industry of the Province of Ontario as an intricate experiment to take

the squeak, if possible, out of the trees, the same as they take the squeal out of the hog in the meat business.

If it is possible to sell birch sawdust for $15 a ton, if it is possible to get out of the chips of your slabs otherwise burned the equivalent of $5 a ton, if it is possible to take the log refuse and edgings and sell it to paper mills for fuel purposes and if it is possible to make plastics and alcohol out of your refuse, those economies are going to be substantial.

Sawmills, I feel, should be the pivotal institution around which chemical pulps and papers should be built, because sawmills give you the opportunity of cutting mature timber and it is a liquidating medium for all the different species, because you can put poplar, birch or jack pine and everything into lumber, but thus far we have not advanced enough to put it into the pulps. That is going to be the next step.

MR. COOPER: Q. You mean chemical mills?

A. Yes, and on the west coast, really the basis of the west coast of the United States being able to take our pulp markets is because to a large extent they have been able to use the refuse.

When you figure that 45 per cent. of the cubical content of your log is wasted,—55 per cent. goes into lumber and 45 per cent goes down the sewer· burned,—it is a terrible waste.

The Nordic countries have been able to develop that. They have done it on the west coast, but we have not yet in Ontario.

I am hoping to make success of the sawmill business in Ontario west of the Sault. There are none in existence except three or four mills which are having a hard time to get along in that territory. Most of those mills are mills which have only a local market to support themselves, as against a broad fanning-out of the market in England and the United States.

HON. MR. NIXON: Q. Do you expect to get your sawlogs from these pulp operators when they are operating over a territory not taking out the pulp?

A. Well, that is a thing that is bothering me, Mr. Nixon; I don't know what a person could do about it until a definite policy is settled. I have made arrangements with the Great Lakes Paper Company for 10,000,000 feet a year; we are going to purchase 35,000,000; I don't know just what to do about the balance of our requirements of 25,000,000. On that point I feel this, that a sawmill could be built at the Soo of 35,000,000 feet; one on the Pic River, the Black River and the White River, that is two; one at the outlet of the Long Lac development, that is three; three sawmills at Red Rock, six; one at Fort William is seven; and one at Kenora is eight—or maybe two at Kenora. That is 3,000,000 feet that I feel has accumulated with all these years of standing timber as well as on a sustained basis of yield, that that territory will support not only its present institutions but eight more sawmills and a million of chemical pulp a year—eight more of the size we are building.

MR. SPENCE: Q. What is the capacity?

A. 35,000,000 feet a year; we still require another 25,000,000 feet to keep that sawmill going.

MR. COOPER: Q. Did you say three at Nipigon?

A. Yes. That is one mill or three at 35,000,000. That is No. 1. No. 2 is, I believe industries should be built in already established communities even though it may cost you a little more to do so; first, because it is already developed; and secondly, because you have a larger labour supply; and thirdly, you can dispose of some of your refuse in the bush; but one of the principal reasons we built at Fort William was, there are 169 boats get into Fort William that we hoped possibly to be able to put on deck loads of lumber for some of the eastern markets of supply. Unfortunately in the retail lumber business they have been educated away from cargo shipments into carload shipments because the retail lumber yard man now takes forty different things in his car, window stop, door stop, everything that you can think of.

Q. But you have no limits of your own from which you could get this quantity of sawlogs?

A. No. I wish I had limits. I have got to have limits to cut from. I would like to have an opportunity to cut on some of these areas of mature timber within these areas and deliver the pulpwood to them that comes off those areas without prejudicing their vested right, but I think it would be a terrible mistake for any operators to try to hop the other fellow's rights; it is not constructive and I don't think it should be done; but I do feel there is a very practical way of working out the whole problem so that all the industries that can be predicated upon our forest wealth can be built.

MR. COOPER: Q. You say eight mills?

A. Yes.

Q. Do you arrive at that from the amount of business or from the forest products?

A. From the forest products first, and I think I speak knowingly.

MR. W. G. NIXON: Q. Do you think there would be any difficulty in selling the processed product?

A. There will be—it is a sales promotional challenge.

Q. Where do you propose to sell your lumber?

A. Fortunately I have this: These B.C. Spruce Mills Limited, of which I have a blotter here, are out of the way, their capacity was 40,000,000 a year, I have hired their manager and their salesman, and some of the same stockholders are interested with me in Fort William, that is the Alexander interests, so we are going to step into more or less of a ready-made market, but I feel the tributary

American market and the English market of 200,000,000 feet out of maybe fifteen billion feet is not very much, particularly if you can work into water rates.

HON. MR. NIXON: Q. There have been tremendous quantities of sawmill products that they couldn't absorb—weren't they piled up in Fort Frances?

A. Yes. We have had a very bad time since 1929 in all the timber industries but you see a lot of these mills have been cut out: The Pembroke Lumber Company, the Crane Lumber Company. Now down in Wisconsin we have a company which is cut out; some of the northern Michigan mills are cut out. It is not an easy job but I feel here with the Scandinavian countries cut off there is really a chance to progressively build ourselves into these markets.

Q. Of course you committed yourself on the sawmilling long before the Scandinavian situation developed?

A. Yes. In solving your pulpwood your sawlogs should go with it. That country of ours is not a sawlogging country, our timber is too small, but maybe twenty-five percent of the stuff that grows on the areas is of a sawlog type and should be put into sawlogs. You cannot afford to build a sawmill unless you take the pulpwood out and I don't feel you can afford to build a pulp mill unless you take the sawlogs; that is a reciprocal arrangement which should be worked out between various interests.

Q. There is one other reference you made, Mr. Johnson, in the paper of Prince & Fellows Forest Products Laboratory of Canada—is that a Federal research laboratory?

A. Yes.

THE CHAIRMAN: Q. Was it situated at Ottawa?

A. I understand. I have had some very fine experience with these people down there on the question of paper and American markets; Mr. Euler's attitude towards this trip that I took to Europe was most helpful, in sending recommendations and getting us in touch with all the Trade Commissioners through all the countries we travelled. They have a very wide-awake international trade commission department there that is mighty helpful.

HON. MR. NIXON: Q. Do you think these research laboratories already established at Ottawa are coping with the requirements of the industry adequately?

A. Well, I would say yes, but perhaps the difficulty of it is so much of it is so technical that I have always felt a little more practical application to it would be helpful perhaps.

THE CHAIRMAN: Q. They don't look after marketing?

A. No, they don't look after marketing.

Q. All right. What next have you?

A. I presume you people would not be interested in listening to this very long report on dried hardwoods. There is a conclusion here, but I guess we will let that go, it would take too much time, but I have read and re-read it and I am convinced that the matter of birch and poplar could be practically and successfully handled.

I think that is all that I have unless there are some questions.

MR. COOPER: Q. There was just one question I had: I have been told that the Americans always use as a kind of threat over the Canadian industry that they have unlimited resources in Alaska which can be utilized. Is that economically sound?

A. Yes and no. "No" if industry had to go there unassisted, but "Yes" if the Government at Washington through the Reconstruction Finance Corporation were to develop power in Alaskan rivers and make that timber available inasmuch as there are dense stands on the Pacific coast influenced by the Gulf Stream.

Q. What kind of timber is it, Mr. Johnson?

A. Principally spruce. Alaska has tremendous possibilities and the more embargoes that are put upon the Canadian timber resources, or restrictions or high costs, the more industry will be driven to the southern, or the west coast and to Alaska. It always has seemed to me a little fallacious perhaps to put in embargoes, whether it is on pulpwood or what-not, against capital when if capital were compelled to go into Ontario for instance their resulting costs in producing that product would not be absorbed into international trade.

Q. Wouldn't their transportation difficulty be a bar to that of serious calibre?

A. No. At this time, yes, because of the scarceness of bottoms, but in normal times I think not because these boats that would come down from there into the States would be likely ten or twelve thousand ton boats and when you get into that size volume by water you can move shipments by water probably two or three thousand miles at very little cost, and with the Panama Canal these tide water ports would absorb a tremendous lot of that production; so that I feel that the south is the real threat, and the Pacific coast of the United States not so much, because of the threat from high embargoes. Western Canada yes, and Alaska yes; the Nordic countries are more or less out of the picture for the present but they will be back pretty fast when the war is over because of the goods they will have to sell.

MR. SPENCE: Q. This is the time to establish a market?

A. This is the time to establish a market.

Q. This southern pine we hear so much about, you have been down there and are familiar with the costs, is that much cheaper to produce newsprint from?

A. Yes. I have here the comparative costs of the southern mills with the present estimated costs of Canadian mills. They have a cost advantage of

between ten and eleven dollars a ton, and that is made up in several factors: First, their low cost of wood, because like the Crossett Lumber Company of Arkansas they have natural gas, and then too the labour in the south is cheaper, their building is cheaper, they have not any heating problem, although they have a freight disadvantage. But the reason that all this development is going to the south to the extent of $100,000,000 in the last five years it is a competitive place to build.

MR. COOPER: Q. Did you read this article in Saturday Night, February 24th, about newsprint from southern pine?

A. I haven't read it but I have heard of it.

Q. Do you agree with it?

A. No, I do not. I think it is a real serious thing to the pulps and the papers.

MR. SPENCE: Q. That is chemical pulp?

A. Yes.

Q. We don't manufacture chemical pulp in Ontario yet to any extent, do we?

A. Oh yes. You have Smooth Rock Falls producing 60,000 tons, Great Lakes Paper Company now will produce 24,000 tons, Provincial Paper Mills has about 5,000 extra tons, Howard Smith a few thousand tons, and then Kapuskasing a few thousand tons; that is about all we have in Ontario which is merely a flea bite as to what really could be developed you know.

Q. Does spruce enter as a ground pulp?

A. No.

Q. If our newsprint mills installed the equipment to manufacture the chemical pulp wouldn't that help out our newsprint situation? I understand you can export this pulp duty free as long as you manufacture. Of course I understand the higher grade paper there is a very high duty on that into the States, they use mostly that chemical pulp over there?

A. I believe—inasmuch as the policy of this Government is proration, which is seventy percent, whatever it is,—by putting in a few digesters and putting in a separate circular system to permit different cooks as they say I should think that the majority of the newsprint mills particularly in Ontario should immediately get into the possibilities of getting into the unbleached sulphite market because the prices of that commodity have been going up, I think $15 within the last six months. I think there is a tremendous opportunity for the newsprint companies to get more volume of unbleached sulphite by putting in just a few more digesters. But I am not here to tell the newsprint people what to do; you merely asked a question.

MR. SPENCE: It looks that way to me.

MR. DREW: Q. Well, Mr. Johnson, are you a director of Great Lakes Paper Company?

A. No sir. I have no contacts with them except they own thirty-eight percent of the Pigeon Timber Company.

Q. You, I understand, have spent some time in the Scandinavian countries examining what they had there?

A. Yes, sir.

Q. I understand in Sweden as well as in Finland?

A. Yes, sir.

Q. Have you studied their selling methods?

A. More or less in an indirect way but not as detailed as I should like to have done.

As you know, Colonel, they pool their products, not only lumber but in the pulps both. By that I mean they have a central selling and control organization, they watch the international markets very closely, and it seems to have worked out most successfully. Not only has Sweden a co-operative sales policy within that country, but Finland has likewise, but they corelate their activities very closely so that one country doesn't undercut the other country's market. But that is entirely within the industry itself. The Government doesn't take part in that. If it were not for that Sweden would come off second best all the way through because the Finnish costs are not much greater than half of the Swedish costs, and the Swedish costs are about a third less than the Canadian and American costs. It is a fortunate thing for Sweden they have that kind of situation.

MR. W. G. NIXON: Q. Their overseas market is on a co-operative basis in these several countries?

A. Yes.

HON. MR. HEENAN: And the higher we sell, in Canada, to the United States, helps them to that extent.

MR. DREW: Q. I don't want to pursue the question beyond the point that you have actually studied the subject but as I understand it, in Finland for instance, everything in the way of newsprint and pulpwood except from one company is sold through a unified selling organization which is in a position to go into any market in the world and quote prices and deal with the material and in that way effect really internal prorating without calling it that. Have you actually studied that system in Finland?

A. Well they do no prorating there because they have adopted a policy in lumber and the pulps that they always sell no matter what the market is except when we were there they were piling up a considerable amount of inventories

but the mills continued to run full which kept piling up their inventories because the Government there gives them all the money they need. That is a queer thing. It is not exactly in the way of a subsidy, but, for instance, in the leading Finnish Company—I can't speak Finnish—the Government there has a ninety percent interest, private capital ten percent interest; in the second largest Finnish cellulose industry as they call it the Government has sixty percent and private capital forty percent; in the development of their power, which they are doing to a big extent at Ensco, which you have read about the Russians wanting to get, the Government was developing 300,000 horse power which they did as a relief project because for a while they had some unemployment. Well, now the Government absorbs a certain amount of that relief expenditure as a relief cost, the balance of it they put in in cost of the power. I can't say that this is correct, but in eating with a director of this Swedish company at one time I asked him what he figured the cost of power would be in American or Canadian money and he said between five and six dollars a horse power. I asked how could they get money so cheap, two and a half to three and a half percent? Well that is not the price of commercial money, it is because they have this big interest in the pulp companies there, which of course means in a question of competition it amounts to a subsidy, doesn't it?

Q. That is the effect of it, yes?

A. Yes.

Q. Just to sum it up—the reason I asked the question was, I thought probably out of that you might have some suggestion as to what you think the actual solution of the problem is here?

A. It is too big a question for me to answer, Colonel; it requires the getting together of power experts, rail experts, financial men, Government men, labour, industrialists, to see where they can cut.

THE CHAIRMAN: Q. Which is Mr. Heenan's job at the present time?

A. Yes. And may I say this much more: These facts I have given here are just merely my own opinion, they are given to you for what they are worth, but I hope that something will come out of my attempt to present this material to you—that is my only object—and I have tried to do it as I see it, but there is so much to be added that it is beyond me. But I may say this, that anything the Government wants to do in the way of utilization of inferior species, the development of hardwoods, the efficiencies in industry, whether in the pulps or papers or sawlogs or railway ties or lumber, I will be very glad to do. I know that many others in this province will be able to make like contributions, and likely greater, but whoever it is I would like to work on the problem. So I want to thank you very much gentlemen, for the time you have given me on this problem, because it is my life.

MR DREW: Q. There was one point you raised there interested me very much—I noticed it in the chart there—you spoke of the power costs. I recognize we are not following that chart through because you said you merely threw that out as a suggestion of the basis on which it was to be considered. Have you

actually made a study of the power situation at the head of the lakes as to the ways and means by which the power costs could be reduced?

A Yes, sir. You remember, Colonel, I had four black books here at one time?

Q. Yes?

A. That information was put together in 1929 by some of the best engineers and scientists and technical men, practical operators, that there are on this continent, and in that material there is a tremendous amount of power costs, analyses, not only on the Saguenay but the St. Maurice, Gatineau, all the Hydro systems. That material if you want it is available to you. It is put together at the expense of hundreds of thousands of dollars. Commencing with your question on the Hydro development at the head of the lakes I say this, but I would prefer that it be not put in the record:

—Witness' further remarks upon this subject taken off the record.

MR. DREW: I do not want to ask you to guess, or anything of that kind, and as you say you have this material; but you see one of the difficulties that I find in connection with this is the problem of getting the very people you mention to suggest any definite solution. We had here on Friday representatives of those various interests, other than labour, and in a case, for instance, of the Hydro-Electric, the representative of the Hydro-Electric quite properly pointed out that the law does not permit them to fix prices below cost. It seems to me that about as far as it went was to assure us that they would be prepared to take part in any negotiations which took place. There was no practical suggestion at all; and I do not know where it is going to come from unless it is going to come from those in the interests who have studied ways and means of solving this problem. I am perfectly free to admit my own disappointment at the lack of information on Friday along some of the lines upon which we hoped to hear some suggestions.

A. Well, Colonel, I would like to approach it from the other point of view. You may have certain basic costs that you must make, perhaps in Detroit. You feel that you cannot do very much with dues or labour or with freight rates. It seems to me that some kind of drastic policy might be necessary to follow, because your true point of reference is whether you are going to sell products, whether you are going to sell your commodities, and if just arbitrarily, all these basic factors have to come down 25 percent or 10 percent or 2 percent or 50 percent; that to recapture your market and put people at work and harvest your forest crop and sell your sulphates and sulphites and your paper and railway ties and mining timber and your pulpwood, the controlling factor is your markets. Are you going to be able to sell? The controlling factor is not your power or dues. It seems to me you are driven to do something drastic, whatever this reduction requires, to get your markets. I cannot help thinking of it that way; otherwise, I think you are looking at the reverse English.

I do not know that I carry the judgment of other people on it, but in selling products as we try to do competitively, we, for instance, in Wisconsin, we are met in Northern Michigan, Northern Wisconsin, Northern Minnesota with the

pulps from the Nordic countries, the south, the east and the west. We are also met with the pulps that have come in from Manitoba and Saskatchewan. There we are, inside of those grindstones, and we have to get, from the purchaser's viewpoint, similar quality at the lowest price.

MR. COOPER: To successfully obtain a market for timber you might have to run the Hydro into financial difficulties?

A. Perhaps; I do not know. But it is the same thing with railroads. If you follow the passenger traffic in United States, the moment they put the passenger rates from 2½ cents to 1½ cents a mile the railroads' net income was up 100 or 200 percent, whatever it was, on the basis of lower costs more volume, more abundancy. This schedule was compiled for nothing else than a guide, if it is a guide. It is just thrown into the discussion.

MR. DREW: Just before we leave that point I should like to mention this. Each one who has given evidence has said that there must be some drastic rearrangement if we are to meet the competition that is going to follow this war, whenever that may come. It would appear that it is in everybody's mind that some method be found for increasing the efficiency of the industry as a whole and finding some more effective method of selling the products of the industry outside of Canada, which, after all, is our main market. That being the case it seems to me that one of the things this Committee would be most anxious to hear would be the suggestions of one kind or another as to the method of handling this extremely involved problem.

A. Will you permit me, then, to venture some suggestions?

Q. That is what I am suggesting.

A. Well, all right. Without any reflections on labour, because I feel that they are not getting enough as it is—and please keep this off the record.

Power takes 80 horse power to make a ton of paper, as I remember it. I have not my books here. But if you reduce your power 25 percent I think you will save in the cost of paper—don't hold me to these figures because they are rough—I think it will amount to about $1.20. 25 percent less in labour per hourly wage but 50 percent more in annual income. Now, it will work out that way. You would save on your pulpwood about $2.00 a ton. You would save in labour inside the mill likely 80 cents a ton. The financial structure, and we will take the Great Lakes, for instance—$6,000,000.00 at 5½ percent. That is $330,000.00. 70,000 tons would make it about $4.70 a ton. Now, if the Great Lakes were financed on a common stock basis instead of on the senior security basis, or if their money was given to them for 3 percent instead of 5½ percent, or something could be done in the financial structure, it likely would be possible to save $2.40 a ton or maybe $4.70 a ton.

Now, the freight rates, for instance, to Chicago and Detroit and the like. Your freight rate from the Great Lakes to Chicago is $6.80 a ton. To Detroit the rate is $8.40 a ton. As the railroads get about 25 percent, giving them more volume, that is another $2.00 a ton.

MR. SPENCE: Do you not ship by water?

A. Only part, but their storage is on both sides. There would be some more costs, and then running at 100 percent as against 70 percent, well, you divide your depreciation and your maintenance and upkeep, and there would be another $1.75. This is merely illustrative in the newsprint field. It can parallel down through the chemical pulp field to the lumber field. That is $10.15.

If you could reduce your costs of newsprint from $50.00 to $39.85, you would likely keep out all southern competition, your Nordic competition and all west coast competition. I merely mention these factors not only in print but in the chemical pulps and lumber.

I feel it is principally a two-point problem; first, a sales promotional research undertaking between capital, the government to some extent, and, secondly, to get your costs down to control your contributary market or quality and price—along the basis of that chart, which is wrongly worded, merely for the purpose of trying to see what can be done to fan out our markets and get down our costs. Then, too, the timber operator or the financial people, the stock holder, such as myself and others; that if our costs are made less and it is the attitude of any operator that he is going to benefit by this lower cost, to get more profit or to take anything away from labour or any other people who are contributing to the costs betterment, that there should be some kind of control so that that would not be permitted.

Maybe that is going too far to suggest, that the Government should go further into the industry. But where the Government has the power and the timber and wants to put men at work and they want to sell their products, I am at a loss to know what factors could be brought together that can do this kind of a job, drastic as the problem appears, other than a co-operative attitude between labour, capital, government. I do not see it.

HON. MR. NIXON: The principle, as you suggest it, is surely not sound, in so far as the reduction of power by 25 percent goes. You get your power from a publicly owned utility and you have the assurance and we have the assurance that you get it at cost. If you are going to arbitrarily reduce that by 25 percent the difference will have to raised out of the ordinary taxpayer. There is no other place for it to come from.

A. Would that be true, Mr. Nixon? I am not sure, but I was told that there was about 30,000 increase in primary power by the Hydro? Is that correct?

Q. Well, I know they are very greatly worried about power.

A. This year?

Q. For the future. They are looking now for more developments. We have the great development in the mining areas as well as increased activity in pulp.

A. Divert the Ogoki and put in one more power development in the Nipigon and you step up your power nearly 100 percent.

Q. If you have a 25 percent reduction in freight rates the railroads are not going to make any more profits out of the existing business?

A. I can only say in answer to your question that I feel the added volume you get will more than compensate in net returns, that is in any reduction that is inaugurated, because you are going to get a much greater volume. For instance, in my business, if I sell 10,000 cords of pulpwood, I have got to sell, with my overhead and organization, 40,000 cords or I would go out of business. It is predicated on volume. If you can show the railroad companies and the power companies and labour, and everybody else involved, that you are going to get more gross and net returns because of added volume, you are reducing your costs as well as increasing your income. I know it is a terribly drastic thing to try to carry through, but I cannot see any other way out of it. If others can, I would be glad to hear it. I am going to ask the Colonel, have you got it in your mind clearly yet?

MR. DREW: I have some ideas but I am not giving evidence at the moment.

THE CHAIRMAN: Well, if there are no more questions, I extend to you the thanks of the Committee for the evidence you have given, Mr. Johnson.

MR. E. E. JOHNSON: Thank you.

(AT 4.05 p.m., Monday, April 22nd, 1940, the Committee adjourned until Tuesday, April 23rd, 1940, at 10.30 a.m.)

TWENTY-SECOND SITTING

Parliament Buildings,
Tuesday, April 23rd, 1940.

Present: Honourable Paul Leduc, K.C., Chairman; J. M. Cooper, K.C., M.P.P., Colonel George A. Drew, K.C., M.P.P., A. L. Elliott, K.C., M.P.P., Honourable Peter Heenan, Honourable H. C. Nixon, W. G. Nixon, M.P.P., F. Spence, M.P.P., F. R. Oliver, M.P.P.

THE CHAIRMAN: Gentlemen, the meeting will please come to order.

MR. DREW: Just before we proceed. You had asked me as to the possible witnesses following Mr. Heenan and I have indicated my desire to place on record the evidence of certain members of the Department so we will have the complete set-up, but in view of some of the discussion which has taken place and in view of the fact that the newsprint production is such a very substantial part of the industry which we have under consideration and necessarily is per-

haps the major concern, in some ways, of the ultimate use of the forest, I would like to have called as a witness here Mr. Charles Vining, president of the Newsprint Association of Canada. Mr. Vining is from Montreal.

HON. MR. HEENAN: He is in town right now, Colonel.

MR. DREW: He is?

HON. MR. HEENAN: Yes.

MR. DREW: And would be available?

HON. MR. HEENAN: I think he is going to be here to-day and to-morrow.

MR. DREW: If that is so, it might help us a great deal.

HON. MR. HEENAN: I know he has an appointment to-day with the Chief sometime.

MR. DREW: He has an appointment?

HON. MR. HEENAN: With the Chief at 3 o'clock to-day.

THE CHAIRMAN: With Mr. Hepburn?

HON. MR. HEENAN: Yes.

MR. DREW: If that is the case, I would suggest with respect to the possibility of making arrangements with him,—after all, he is a man whose time may not be available, but I would suggest, even if we are going to finish with Honourable Mr. Heenan to-day, and perhaps we will,—that we fix a time.

I would suggest that we make an arrangement with him to have him here to-morrow.

HON. MR. HEENAN: I think he would be a good witness. What I mean is I do not know what kind of a witness he would be, but I know he can give you a lot of information.

MR. DREW: Mr. Vining, after all, is president of the Newsprint Association of Canada and I would imagine he is the man who can perhaps give us more of the actual interlocking activities of these companies in the matter, outside of the officials of the Department.

HON. MR. HEENAN: Quite so.

HON. MR. NIXON: Do you desire to call anyone, Colonel Drew?

MR. DREW: Yes. At the appropriate time I want to call Mr. Sensenbrenner and ask him to come here at his convenience also. I know nothing of his whereabouts at the moment, but I imagine he would be glad to come.

HON. MR. HEENAN: I know he wants to come.

MR. DREW: That is what I understood.

THE CHAIRMAN: I will give instructions that he be wired and asked to come at once.

MR. DREW: Very well. I also want Mr. Sweezey. If you desire any oher names at the moment, I can give you them, but I think perhaps out of Mr. Vining's evidence, perhaps we can form an opinion as to the best sequence of calling witnesses.

THE CHAIRMAN: You want to hear Mr. Heenan to-day and we will try to arrange to get Mr. Vining here. I understand you also want to hear the Forester of the Department and perhaps some other officials.

MR. DREW: Yes. I want to examine Mr. Zavitz and Mr. Sharpe.

THE CHAIRMAN: That will take a few days,—at least to-morrow,—and it would be well to find out when we can ask these gentlemen to be here.

MR. DREW: Yes.

THE CHAIRMAN: We are trying to get in touch with Mr. Vining. We might at adjournment this afternoon see how far we have progressed with Mr. Heenan and when these gentlemen can be called.

MR. DREW: Yes.

THE CHAIRMAN: And if you have any other names, then you might arrange to submit them to the Committee and in turn it can be arranged to have them here.

MR. DREW: Yes. While it is desirable that we shall not break into the evidence any more than necessary, always have in mind the fact that either Mr. Heenan or the members of the Department are always here and I would be inclined to think that we could break in at any time convenient to any of these gentlemen if they want to fix a date.

HON. MR. HEENAN: Any time.

MR. DREW: For myself I would think rather than bring Mr. Vining here this afternoon, it would be well to definitely decide if it is convenient to the Committee to have him here to-morrow, because I feel sure we can at least devote a whole day to his evidence.

HON. MR. HEENAN: I think you should make up your mind as to what witnesses you would like to call here and use the Department and myself to fill in any time.

THE CHAIRMAN: I do not know if Mr. Sensenbrenner is available for Thursday, or whether Mr. Sweezey can be here on a certain date.

MR. DREW: Quite so. It is recognized that you cannot fix dates as yet.

I will give you another name of a gentleman I would like called.

I have no idea whether he is at home at the mement. His name is Mr. F. G. Robinson, president of the Canadian Pulp and Paper Association.

THE CHAIRMAN: Where is he from?

MR. DREW: Montreal; the Sun Life Building, Montreal. I do not want to anticipate unnecessarily in regard to the discussions which will be coming up, but I believe this Committee has certain services to perform and perhaps one of the most important services that this inquiry can perform is to act as a medium of informing the public in regard to certain things which have taken place and certain things which are desirable. I would like to see the presidents of some of the largest paper companies brought here to explain the problems of the industry and the way in which their activities can be co-ordinated with those of the Government, because whether or not we like that principle, the fact remains that this government and the government of the Province of Quebec are so closely associated with the actual administration of the industry at the moment that it is of the utmost importance not only that we know how the thing is being done, but how it should be done in the future.

For that reason I have in mind the desirability of calling here witnesses to explain the situation. Of course Mr. Clarkson represents the largest industry and I would like Mr. Clarkson to appear as a witness before this Committee. I realize that he has already appeared before the Conference, but I would like to see him appear before this Committee in order that he may be questioned as to the various aspects of the problem.

Then, I would like Mr. Arthur F. White, the managing director of the St. Lawrence Paper Mills called.

THE CHAIRMAN: Of Montreal.

MR. DREW: No, of Toronto. And Colonel C. H. L. Jones, Montreal, president of the Mercier Paper Company, and Mr. L. J. Belknap, president of the Consolidated Paper Company.

THE CHAIRMAN: Of Montreal?

MR. DREW: They have an office in Montreal. And Mr. John H. Hinman, president of the Canadian International Paper Company, New York. They have an office in Montreal with direct communication to New York.

I might explain in regard to all these latter names I have mentioned that their appearance, of course, would be as a matter of courtesy, because we are merely asking them to come here and inform us in regard to certain matters in connection with certain problems of this industry.

THE CHAIRMAN: That applies to men and districts outside of our jurisdiction.

MR. DREW: Yes, but I mention these names because they are the men

who are presidents of the largest industries now affected by the interprovincial arrangement which exists and which it seems to me should be perhaps the most important subject of our inquiry. I would be inclined to think that all would appear personally gladly, or if not they might possibly suggest some alternative if they felt someone else was in a better position to give the technical information.

THE CHAIRMAN: Colonel Drew suggests that Mr. Sensenbrenner, Mr. Sweezey, Mr. Robinson, Mr. Clarkson, Mr. White, Colonel Jones, Mr. Belknap, Mr. Hinman be asked to come and give evidence before this committee. Is that agreeable to the committee? (Carried.)

THE CHAIRMAN: I will give the necessary instructions to the secretary.

I have a note from the Secretary stating that Mr. Vining will appear before this Committee to-morrow at 10.30 a.m.

HONOURABLE PETER HEENAN, recalled:

MR. DREW: Now, Mr. Heenan, we were proceeding at the time you were last giving evidence to this Committee with the discussion of these companies with which agreements were signed in 1937. The next company to which we would refer in the order in which they appear in the report is the Huron Forest Products Limited. Now, the contract was signed between the Department and Huron Forest Products Limited on April 19th, 1937, and that, of course, would be approved by Order-in-Council. I would think, perhaps, to keep the record in order as we have before that it would be well to have filed a copy of the Order-in-Council approving that.

THE WITNESS: I actually thought we had passed that one, or finished it, Colonel. When Mr. Johnson was on the stand at the preliminary hearing he explained pretty well the Huron Forest Products and we have kind of left aside our file in connection with that and came prepared to start at the Soo Pulp Products Limited agreement at page 123 of the report.

Q. I will check back so we will not duplicate. I will check back on the record and if there is anything further needed in connection with it, we will deal with it.

MR. COOPER: We covered that agreement at pages 750 and 751.

MR. DREW: I will check back and see if it was completed, and if there is anything further, as I say, we can come back to it.

Q. I refer to the contract of the Soo Pulp Products Limited, which was entered into between the Department and the Soo Pulp Products Limited on August 11th, 1937 Have you the original, or a copy, of the Order-in-Council, recommending the approval of that contract?

A. Yes, we have it here.

Q. Is there a copy which can be filed as an exhibit? In any event, if a number is left as indicated for an exhibit, the copy can be put in.

THE CHAIRMAN: Exhibit No. 37 will be the copy of an Order-in-Council approving agreement in connection with the Soo Pulp Products Limited.

EXHIBIT 37: Filed by Mr. Heenan; Copy of Order-in-Council, dated August 23rd, 1937, approving agreement with Soo Pulp Products Limited.

THE CHAIRMAN: What is the date of the Order-in-Council?

HON. MR. HEENAN: August 23rd, 1937.

MR. DREW: Q. May I see the Order-in-Council?

A. Yes.

Q. I would read from the recommendation for the Order-in-Council upon which the Order-in-Council was actually based. I see the recommendation is dated August 23rd, 1937, the memorandum of agreement apparently having been approved on August 11th, and that was the date it was given, although the Order-in-Council was not actually passed until August 23rd.

In the recommendation of the Minister dated August 23rd, to the Cabinet-in-Council, it recites the various details, first of all the fact that the Transcontinental Development Company Limited had certain rights on the Nagagami Pulp Concession in the District of Algoma, reciting certain charges which were in arrears and also reciting certain other details. The recommendation contains these words:

"A draft agreement has been prepared and is attached hereto. The more important features of the agreement are as follows:

(a) The company on or before the first of June, 1938, shall commence the construction of a pulp plant on the shores of Lake Superior having a capacity of two hundred tons per day and the said mill will be completed on or before November 1st, 1939, at a minimum cost of $5,000,000.

(b) The company, in the mill, will employ at least 350 men, and in the bush operations shall employ for not less than six months of each year an average of 500 men.

(c) The Company shall deposit $50,000 cash as a guarantee of performance under the contract and when the mill is erected the said $50,000 may be applied on account of Crown bonus charges.

(d) For domestic supply the Company shall pay for spruce Crown dues plus a bonus of 15 cents for balsam and jack pine Crown dues plus a bonus of 10 cents and for other pulpwood a bonus of 5 cents. For log timber, railway ties and other classes of timber not otherwise provided for in the agreement, the company shall pay such prices as may be fixed by the Minister.

(e) The Company is entitled to export one-third as many cords of spruce as it utilizes in its mill and for this export spruce it shall pay Crown dues plus a bonus of 40 cents, balsam Crown dues plus a bonus of 15 cents and for jack pine and other pulpwood Crown dues plus a bonus of 10 cents."

On that recommendation the Order-in-Council was passed the same date and the agreement was signed which bears date of August 11th, 1937.

In the first place, if I ask any questions which call for an obvious answer, Mr. Heenan, it is only for the purpose of completing the record which others may have to read.

As I understand it, in the recital of the most important features of the agreement in the order in which they are given in the recommendation, the company on or before the first day of June, 1938, was to commence the construction of a pulp plant—

THE CHAIRMAN: 1939.

MR. DREW: —to be completed before November 1st, 1939. That is rather interesting. As a matter of fact, the typed copy of the contract says "on or before the first day of June, 1939," but the Order-in-Council clearly says, "The first day of June, 1938."

I do not know whether it affects it, but I imagine that is an error in the copying of the agreements.

Q. As I say, the first in importance was that the mill was to be commenced on or before the first day of June, 1938, and to be completed on or before the first day of November, 1939, at a cost of $5,000,000. That mill has not been completed; has it?

A. Pardon? Will you just repeat that again, Colonel.

Q. I say the first of the recommendations contained in the Order-in-Council taken from the agreement was that the mill was to be commenced on or before the first day of June, 1938, and was to be completed on or before the first day of November, 1939. That has not been done; has it?

A. No.

Q. Has anything at all been done in connection with the erection of that mill?

A. No, they have not done anything except to keep their overhead in good standing.

Q. When you say "overhead", what do you include in it?

A. Fire protection; ground rent and fire protection.

Q. Fire protection and ground rent?

A. Yes.

MR. COOPER: Q. Did they put up the $50,000?

A. Yes. They are in default. Just so we will have it clear, they are in default this season now.

MR. DREW: They are in default?

A. In payment, I mean.

Q. Of what?

A. Of the fire protection and ground rent.

Q. Oh, they are in default. To what extent?

A. $29,440.

Q. To the extent of $29,000 and what?

A. $29,440.

MR. COOPER: Q. Covering what period, Mr. Heenan?

A. That is 1939, 1940 and 1941.

HON. MR. NIXON: Q. The dues of ground rent have to be paid that far in advance?

A. Well, they are back one year and this particular year.

Q. 1940 and 1941?

A. Yes.

Q. When was that due?

A. The first of April.

Mr. DREW: Q. When you say 1940 and 1941? You mean for the coming year?

A. Yes. Last year,—I call it last year, because we are never very particular about a little while in the ensuing year, because they pay interest on it.

MR. COOPER: Q. And last year was just due the first of this month?

A. Yes.

MR. DREW: Then, Mr. Heenan, they are in default in regard to not only the completion of the mill, but they have done nothing to commence a mill

and they are in default to the extent of $29,440 for fire protection and ground rent?

A. Yes.

Q. What is the present position as far as the contract is concerned?

A. Well, it is like the rest of them. We have the $50,000 and we have not been taking any action except prodding them along to pay their ground rent and fire protection charges and asking them when they are prepared to complete the mill in accordance with the agreement.

Q. Have you the last letter which sets out the present position in regard to that contract?

A. There has been no extension of time, or anything like that.

Q. I think perhaps the last letter will indicate what the present position is in regard to this company.

A. We have a lot of correspondence here, but I think, to shorten it up, this is the last one:

"Toronto, July 28th, 1939.

"Attention Mr. Strachan Johnson.

"Re Soo Pulp Products Limited.

"Please be advised that the Soo Pulp Products Limited is indebted for overhead charges for fire protection to the extent of $15,005.14 as shown in the enclosed statement.

"Provision is made in the agreement for the rights of the Minister to waive the right of forfeiture arising out of the agreement by reason of your failure to meet your building obligations, but you can readily understand, I am sure, that while no steps have been taken to formally declare the agreement forfeited, the minister's right to waive forfeiture might very well be exercised when the overhead charges are in arrears.

"Consequently I would request payment of the same to avoid demand of forfeiture.

"Signed, Mr. Cane, Deputy Minister."

And they paid up, so that is about the standing of it.

Q. Did they pay up in full at that time?

A. They paid up in full at that time.

Q. So the $29,440 is since that?

A. Since that. That is where they stand now and I am advised that they are going to pay.

Q. May I just see that file for a moment in order to get a general idea of the sequence of events in connection with this company?

A. Yes.

Q. What is the condition of that pulp mill which was commenced by the Transcontinental Company? Has any substantial amount of work been done?

A. They did not commence it, Colonel.

Q. The memorandum recites:

> "And whereas before the said Transcontinental Company had commenced the construction of the said pulp mill, or the said paper mill and before the said company had commenced the harvesting of the timber upon the said area, the ground dues chargeable within the province of Ontario—"

and so on.

A. Yes, but it had not commenced.

A. But it recites that the Transcontinental Company who held this area before it was granted to the Soo Pulp Products had commenced the construction.

THE CHAIRMAN: No, before it had.

THE WITNESS: What really happened is that there was a transfer of those limits into the hands of the Great Lakes Paper Company, and that is one of the limits that was given up by Mr. Carlisle, as president of the Great Lakes Paper Company.

MR. DREW: Q. Had this come under the control of the Great Lakes Paper Company?

A. It did, yes, and that was one of the limits Mr. Carlisle gave up to the Government in the reallocation of the limits.

Q. That is, the whole of this 2,300 square miles?

A. Yes. He gave the Long Lac, the Pic River and the Nagagami Limits.

THE CHAIRMAN: Where is that? Is that the blue patch on the map?

MR. DRAPER: Yes.

MR. DREW: Q. Is this a completely new company; that is, the Soo Pulp Products Limited?

A. Yes.

Q. And Mr. George C. Schneider is the president of that Company?

A. Yes.

Q. Who were his associates in this company, as far as you know?

A. Well, in the formation of the company, I think Mr. Greer and Watson.

Q. Mr. whom?

A. Messrs Greer and Watson.

Q. You mean they were solicitors?

A. Yes.

Q. Who were the associates in the Company?

A. The financial associates?

Q. Yes?

A. Oh, I do not know.

Q. What I have in mind is that in looking through the file it begins with the memorandum of the agreement and the recommendation to Council and the approval of that agreement. Is that the beginning of the file?

A. That is all that I know of. That is all in connection with this new company. Of course there are the old files in connection with the old companies.

Q. What I have in mind is that here is 2,300 square miles of forest territory which is granted by Order-in-Council to a company known as the Soo Pulp Products Limited, and perhaps you can tell me if this is the complete file or if there is another file on Soo Pulp Products Limited?

A. No, sir, not now. That is the complete file of that company, but there are the old files relating to the old companies which had that area before. There are the Great Lakes and the Transcontinental.

Q. But Schneider was not the president of the old company?

A. No, sir. That is the beginning of this new company which you have on page 123 of the Report, which you are now discussing.

Q. The thing which strikes me about this file,—and perhaps I may have overlooked it,—is that I can find nothing here as to the set-up of this company or the financial set-up of it, or any information as to the men who formed the company.

A. No, sir; we did not ask them.

This man Schneider came over here and he is a man we know in Canada, because he has been interested in pulp and paper and logging for a good many years. He said he could get United States men to put money in and build a mill. So, we made the agreement. We had the timber there and we gave him the old timber limits which had not been put into active use under the conditions that he would put down his $50,000 and pay the ground rent and fire protection charges on it as provided by the agreement.

Q. I am again getting back to the point which we discussed before and about which we may have had different ideas. But, I am getting back to the question of how the Department decides who will and who will not be granted these areas, and quite apart from any information which may have been in the possession of the Department by way of personal knowledge, I can find nothing on this file of any kind to indicate who the people were, what their financial standing was or what their past experience was, who were granted this tract of land. There is nothing here at all, as I say, so far as I can find out, in that regard.

A. You are right. So, we will have to go back over it again. As you have heard different people talking and evidence given here that there was quite a campaign on to invest money in southern pine and other places. It was reported in the Press and elsewhere that there was going to be investment of over $100,000,000 in plants down in the Southern part and we tried our best to forestall that, or at least get a share of it and a man of Mr. Schneider's standing came over here and he said, "If you will give me an area I will get financiers in the United States to build a mill in Canada." And we made the agreement with him.

Q. Well then at the time these arrangements were made did Mr. Schneider give no indication of who the men would be who would be associated with him in this venture?

A. Well, Colonel, I forget who they were. In the discussions in the office he mentioned men of great wealth in the United States but that was not a part of the agreement whatever, just by way of discussion, that he could get so many men to put up so many million dollars and who were interested in the project themselves, and so on.

Q. This as I understand it is a choice piece of property, this 2,300 square miles, isn't it?

A. Well, it is not as choice as it sounds, "2,300 square miles," Colonel, for the reason that the company held it from 1921 and they couldn't see any profit in it and didn't even pay their overhead charges, so that it couldn't be called a choice piece, and for the reason that it is practically all railroad down there, the Algoma Central, to either Sault Ste. Marie or Michipicoten. So it is far from being a choice piece.

Q. Have they done any cutting on there?

A. Not a thing.

Q. None at all?

A. For the reason that it is not choice. I think they would have come and asked us to export pulpwood from it if it had been economically sound.

Q. Well now, Mr. Heenan, just looking at this as a question of method of handling the forest areas, and that after all is what we are concerned with more than what has happened in the past, it does seem to me that it is highly desirable that there should be on record some indication of who the people are who really constitute this company, because, while it is a limited company, it is perfectly true the strength of any limited company depends upon the individuals who make up the directorate, and I can find nothing on this file which would indicate any information in the possession of the Department that anyone other than George C. Schneider is interested in this company. That is right, isn't it?

A. You are right.

Q. Quite apart from the question of his standing or anything of that kind, it does seem to me that it is an unsatisfactory situation in an industry, particularly with the industry as unsettled as it is, that an area of 2,300 square miles should be alienated to a company which is really so far as the development is concerned merely the corporate representative of Mr. Schneider himself, and that the matter should be allowed to continue merely on the payment of the dues to where it is at the present time, because it would seem to me that this company or any other company in a similar position is being given an opportunity to benefit largely by improved conditions if that time should come without making any corresponding contribution for it. Isn't that so?

A. Oh, there is a lot in what you say, Colonel. I don't think that you will find in one of the agreements or files of the Department where the person who got a concession disclosed or was asked to disclose who his financial associates were—they have been nearly all what you might call promotional schemes. A man gets an agreement, he goes out and then he solicits financial men to go into this deal and develop with him. I think probably there is a lot in what you say, that you might in the future make these men disclose who is behind them, and if they won't don't make an agreement with them, for more reasons than one: Not because of the fact that you want to see that these things are not carried around in somebody's pocket for a year or two, but for another reason, that sometimes these companies overlap. They overlap, and if you want to keep away from one company getting two or three concessions it might be as well that you take more care and see that these people, whoever they may be, disclose all their financial backing. I don't disagree with that for a minute. In fact, as I said here at one time when I was on the stand before, there was a company came in later to develop up around Mr. Cooper's line, after the Lake Sulphite went into receivership. We had the area all blocked out, spent a lot of money on engineering, at least the company did, found where they could get water powers, or sites to develop water powers, and then when they came to make the agreement I said that this was going to require a six million dollar development and I would not recommend to the cabinet that they give them this agreement unless they have it so that the money would be spent on the development of this property, and so we didn't get them. But I would rather be—answering your question—without an agreement than have them in this haphazard style.

Q. We are in entire agreement on that because it does seem to me now, looking to the future, it is an unsatisfactory basis on which to be dealing with this when the holdings are so unsettled?

A. That is right.

Q. Perhaps it might help to give us some information as to who Mr. Schneider is?

A. He is President, or he was associated with George Wisconsin Meade. There are two Meades, we call one George Dayton Meade and the other George Wisconsin Meade. He was operating with him, doing business with him at the head of the lakes for many years, I don't know how many.

Q. You say operating for them?

A. Managing for them.

Q. So that we may take it then that Schneider is—

A. No, he was; he is not now.

Q. Was he at the time this agreement was signed?

A. No.

Q. So that in this case he is not representing the Meade Corporation?

A. No.

Q. But himself?

A. He is representing himself.

Q. As far as you know?

A. Yes.

Q. Do you know where his home is?

A. If you will hand me that file we might be able to get it in there. We can get it.

THE CHAIRMAN: There is a telegram here from Mrs. Schneider, from Evanston.

WITNESS: We can get it from Mr. Strachan Johnston.

At any rate, I figure a man who can rake up $50,000 must have somebody behind him, Colonel.

Q. Yes. But I am just outlining this, Mr. Heenan, because it does seem

to me that in our consideration of this problem we must try to form some conclusion as to the best method of dealing with territory of this kind. $50,000 is undoubtedly to any individual a large amount of money but the fact remains that it is a relatively small sum when you consider the ultimate amounts that are involved in any of these enterprises if they go ahead. I have in mind that, while the amounts vary, in the case for instance of the Abitibi there has been over a hundred million dollars of actual public money go into that company and in their case the only real asset behind that, a very real asset, but the asset behind it is the timber area that they control; of course they have their mills and that sort of thing, but the substantial asset is the timber area; and I have in mind when I am trying to find out just what the situation is the fact that there is a tremendous potential value behind any one of these areas that is allocated in this way. The reason I want to get the picture clearly on record is, that I for one would like to see what way can best be devised to assure the most effective development for the province on the one hand and the protection of the province on the other in relation to these territories, and while $50,000 is a large amount of money it is a small in relation to the value of the areas involved and of course would be extremely small in relation to the loss that might accrue if through improper methods there were a fire or anything of that kind. So that I get back to the starting point, that it does seem to me the Government in any of these should have some record on the departmental file or files which would show the people who are going to deal with these. While I can quite recognize that many of these matters start in the promotional stages, it would seem to me that as a matter of departmental routine there should be an effort made at the earliest possible date to ascertain who the responsible people are who will be responsible for the directing of the affairs of the company. Don't you think that would be a good thing as a matter of practice?

A. Yes. It is one of these things, Colonel, that we could argue either way. In the first place, we want business. You take this very same area, it was disposed of in 1921 for the purpose of building a mill; no doubt there was a deposit required at that particular time, and so on.

HON. MR. NIXON: Q. That was the first time it was out of the hands of the Crown?

A. Yes.

Well now then it changed hands and neither of the two companies which have had it previously saw fit to invest in a mill. Then there came a rush for pulpmills and naturally I was desirous of getting some of that development. Somebody had to go and get in touch with American investors—I didn't know them, I know a few of them now, but these fellows are in touch with them all the time,—and he said, "If I can get an area I can get men to put money in." He couldn't get people to put money in unless he had an area, so you can argue either way. He has got to have an agreement with the Crown first that he can get a mill, he has got to show the investor the cost of taking it to a certain point and developing it and so on before he can get these men to put their money in. So that all our paper mills practically have been built on that method. If we sit still and say, "Well anybody who wants timber area to build a pulpmill will come down to the Province of Ontario and see us," we might never get anybody to come in. We are not losing anything by it, Colonel, for this reason: There is an area

there of 2,300 square miles and you are at least paying for the fire protection charges, and we would have to protect it anyway, and we have got the $50,000.

There may be other methods. For instance, we could advertise to the world that we had an area of so many million cords of spruce and other species of timber in it that the Government of Ontario would be glad to negotiate to sell to any responsible body of men and let them come to us, but that has not been our policy.

Just to conclude that, Colonel, no matter what we may do for the future, as I say that has been the policy in the past and up to now, and, as I recited here on other occasions, nearly all our developments in our pulpmills have been after agreement has been signed to build these a year or two—it has been many, many years after before finances and everything got in shape to build the mill. In fact every one of the mills that I know of in the Province of Ontario, at least I should say not one of the mills in the Province of Ontario has hit the ball according to the agreement.

MR. DREW: Q. I am not suggesting that the past has been too satisfactory in regard to the whole industry; what I am interested in is what should be done.

To return to the question of the granting of this territory to this company, when was this area taken over from the Great Lakes Paper Company?

A. I wish you wouldn't say "taken over" from it, "taken from them"—"when did the Great Lakes give it up?"

Q. It is a question whether a man puts his hands up or puts them down, I suppose.

A. January 25, 1937.

Q. Then under what arrangement were these taken over or under what what arrangement did the Great Lakes Paper give them up?

A. I am not so sure but this letter to the Hon. Mr. Nixon might clear it up—I think we have this on record already: "We give up the Long Lac 3,400 square miles, the Pic River . . ." and then they go on and tell us the cordage that was on that, the Pic 1,400 square miles, ". . . the Nagogami 2,300 square miles. We retain" (that is the Great Lakes retain) "the Black Sturgeon 940 square miles. The Government has further allotted to us 910,000 cords in the townships of Savanne and Fallis, a small limit west of the Nipigon and northeast of the Black Sturgeon with an estimated cordage of 350,000 and the limits known as the Central Paper Company, estimated cordage of 500,000 cords." In other words we would take what was agreed was the Nagogami development of timber away from the mills and east to the mills and we were giving them smaller lots of timber west and they retained the more economical to the Great Lakes which was west of that.

Q. Was that based on some recommendation to the Department?

A. Oh, no; conferences between Mr. Carisle and his foresters and the Minister and his foresters.

Q. But what I am interested in, Mr. Heenan, is just actually how a thing of

this kind comes about, and it seems to me that it is a very important point in considering the general question of administration policy because it ties in with any solution of this whole question. You say that it was decided that it was uneconomical for this company to hold these areas. Well, now, the fact that it was uneconomical would necessarily be based on some information of some kind?

A. Not to hold the areas, but to operate the areas, because the timber was too far from the mill.

HON. MR. NIXON: Q. Of course it cost them money to hold the areas too?

A. Yes. Maybe I had better go over this again, Colonel, so that you will understand; it has probably gone out of your memory: Here was a company, the Great Lakes Company, that had areas, one to build 150 tons on the Black Sturgeon, then later the Pic River to build another 150 tons, then the Long Lac to build—I may be just out in this, but a 100-ton mill I am pretty sure—and the Nagogami; all these limits obligated to build mills. Well, they had to pay the overhead on these but still not develop them and all these mills were not under construction because they told me they were not going to develop them. So then what started all that discussion, as you will notice there were some of the overhead charges on the Nagogami limit that were not paid by the company. Those are things that are in general discussion all the time in the Department, "Why aren't you paying your bill on this?" and the companies are always arguing why they shouldn't pay this and do that, and so on, so these negotiations arise out of this kind of conglomeration of situations. And so instead of just saying, "Now, we are going to take that off you, we are going to take this off you, we are going to take the other off you," we reason the matter out: "What are you holding that for? What do you want that for? You are paying so many thousand dollars a year for what? We can do this with that area and we can do the other with the other area, and why don't you give them up?" "Well, we will give them up provided you give us timber over here which is more economical to our mill." That is how these things arise. Don't forget that this is one of the—I am not, now, saying this in a derogatory way about any other Minister or Government—this is one of the things that was left on our doorstep.

Q. Which do you mean, the Great Lakes Paper?

A. The Great Lakes Paper and all these areas disposed of by the Crown and nothing done, no development of them.

Q. Isn't the same situation being repeated to-day?

A. Pretty well.

Q. I must confess I don't see any difference, except for a change in name of the company, between the situation before and to-day in relation to these areas we are now discussing?

A. Well, yes, we have the Long Lac area disposed of to another company and the Pic River disposed of to the Lake Sulphite, we have the Nagogami that you have there now disposed of to another company, we are at least putting men to work and getting revenue from them.

Q. Yes, but I am not arguing the point one way or the other but I would point out that a lot of these companies might have been working before, not on building mills, but they have been cutting?

A. No. Nobody cut on the Long Lac area.

Q. Not on the Long Lac, but of course a million and a half dollars has been spent by the Hydro-Electric or by the province to make it possible for them to be operated?

A. No, a million and a quarter of dollars was not spent to make it possible; there was about $300,000 attributable to that; the Hydro wanted to build the biggest part of that; there is no use in trying to misinterpret the figures.

Q. That money has been spent and we quite understand the major part of it is a power project, not water for the carrying of logs; all I am getting at, on the Long Lac something has been done there that makes it possible for them to get the logs out; but you spoke of the fact that you find areas on which people have rights and they don't fulfil their contracts and, as I see it in the case of this company we are examining, the situation is precisely the same as it was when you took hold of it, because the Transcontinental had rights, they had undertaken to build a mill, they had done cutting, they owed some money; the present company has promised to build a mill, has not built a mill, has apparently done no cutting and owes money for dues; so that the position is the same?

A. The only difference there, Colonel, is—I am not going to split hairs with you—this, that the other company said they were not going to build mills; this company says they will build a mill.

Q. And you don't think they should?

A. This company?

Q. Yes.

A. Who said that?

Q. I understand that your position is that they shouldn't proceed with the building of these mills at the moment?

A. Oh, no, that was Mr. Clarkson made that announcement; you are referring to what happened—

Q. No, I understood your feeling was that?

A. No, no, don't let us get mixed up again. Newsprint mills, no. I don't agree with what Mr. Clarkson said here the other day, that we shouldn't go on with the development of our pulpmills, because there is a market for that. There is not a market for newsprint and we are likely to get our wires crossed. I think a good many people get their wires crossed as between newsprint mills and pulpmills and rayon mills. There is the market in the United States, one and a half million tons going over from Scandinavian countries within the

last few years and so on. I understood Mr. Clarkson's position had been to not force those companies to build them a little while until you get all the facts. Well, they are still building mills in the southern states to compete with us, and yet his idea is—I don't think he intended it that way—that we should sit still and see that there is nobody else wants to build a mill or can build a mill anywhere else in the world till we do that. I would rather build mills if we can co-operate and get the markets and that is what we have been trying to do, trying to get these people into a position they will be able to lower their costs so that they will be able to compete with anybody else; I don't believe in just sitting still and waiting to see if we can do what somebody else can do or that we cannot do something because somebody else is doing it.

Q. Well then, having regard to that, Mr. Heenan, if the desire is to have this mill proceeded with it does seem to me as it is nearly three years since this agreement was signed with the Soo Pulp Products Limited, that the time would have arrived at least by now to find out what they intended to do about the building of this mill and what effective steps they have taken to prepare for construction. Wouldn't that seem reasonable?

A. We can do that or we can forfeit their limits and try to sell again to somebody else and might have the same effect, Colonel. In other words, I don't think that the Government or a Minister should force people to build a mill if the financial interests that are behind it believe that it cannot pay. The only thing I think that we should do is to take into consideration whether or not we should forfeit that $50,000 and take all the rights they have got back into the Crown and leave it there and run short of our fire protection and ground rent. It is there for us any time we want to take it.

Q. Just as a matter of actual procedure, on January 25th, 1937, the Great Lakes Paper Company gave up this area. Does any notification then go to the public of the fact that this area is open for exploitation—and when I use the word "exploitation" I mean in a perfectly proper way?

A. No.

Q. Then just as a matter of seeing how the wheels go around, how does Mr. Schneider come into the picture?

A. Oh, some of these men, Colonel, are in touch with Canadian affairs all the time and know everything that is going on.

Q. But what I am thinking of is this, the Great Lakes Paper Company had the rights over a very large territory and then it is decided following mutual discussion that certain of these territories will be withdrawn from their holdings and that others will be retained and that is done on the 25th January, 1937. Having regard to the desire to have these territories developed it would seem to me that it should not be left to the inquisitive nature of somebody to find out that that had happened but that there should be some way in which it would be indicated to possible developers or promoters, call them what you will, and that there should be some opportunity for competition. Wouldn't that seem reasonable?

A. Well, again from past experience, you get the same results: You advertise, say, taking that same area, advertise it for sale, the pulpwood, and some promoter comes there and bids the highest, through some legal firm probably, or himself, his cheque is there and his bid is there, you enter into an agreement with him and then he starts out again to get financial men behind him because he is then able to show financial men what he has, and so there is the same thing in another way.

Q. Was there any Order-in-Council passed covering the reallocation of the areas of the Great Lakes Paper on the 25th January?

A. Well, I don't think it was done on the 25th January. We gave him the undertaking that we would pass the Order-in-Council. Under arrangements in accordance with that.

Q. Was there an Order-in-Council passed?

A. Yes. I think we just cleaned that thing up the other day. I gave them a letter saying that we would agree to this and that we would pass the Order-in-Council.

Q. I think just so that we have the picture complete it would be well that we have those two letters as Exhibits, that is the letter in which they set out the details, and the letter in which you say that—?

A. I think it is on file, Colonel.

THE CHAIRMAN: I think it is right in the record. That may not be correct, but—

MR. DREW: I will check that.

Q. This is included in the larger area, is it?

A. Yes. There was an Order-in-Council passed.

Q. What date was that?

A. 14th September, 1937.

Q. Might I see that Order-in-Council?

A. (Produced.)

MR. DREW: I think a copy of this should be an exhibit. It is an Order-in-Council passed on the 14th of September, 1937.

THE CHAIRMAN: That will be Exhibit 38. Is it an Order-in-Council?

MR. DREW: Yes. It is an Order-in-Council—

THE CHAIRMAN: Dated the 14th day of September, 1937, concerning limits held by the Great Lakes Paper Company Limited.

EXHIBIT No. 38:—Filed by Order-in-Council dated 14th, September, 1937 re limits held by Great Lakes Paper Co., Ltd.

MR. DREW: This Order-in-Council, Mr. Heenan, states:

"With a view to the utilization to the fullest extent comparable to forestry methods of the matured timber and to the employment of labour hitherto within the relief ranks, the Government, in pursuance of the Forest Resources Regulation Act, effected an agreement with the Company after it went out of receivership whereby the Company relinquished to the Crown the following of the above mentioned limits:

The Pic
Long Lac
Nagagami"

They speak there of the utilization of this comparable to forestry methods. Have you some recommendation from the foresters that this should be done?

A. There are memorandums, Colonel, with respect to this. They are mixed up in the Great Lakes files and the Nagagami files. Let me read that again and I will tell you what it means because, after all, this is all done after discussions with the foresters. Yes, "with a view to the utilization to the fullest extent comparable to forestry methods of the matured timber and to the employment of labour hitherto within the relief ranks." That means that in a great many of these areas the pulp company practically had all the timber and there was no way of getting the log timber out because it was under lease. Any agreement that we make of later years we are reserving the right to put other loggers in to cut either sawmill pulps or any other pulps, other than the species that they require in their mill. That is what we have in mind with regard to the improved forestry methods, and in order to enable us to cut for export; at the same time, to take men off relief.

Q. I am not now speaking of all the discussions that took place, but who would be consulted in the Department in regard to a decision of this kind?

A. Well, when we are preparing an Order-in-Council like this, or contemplating an agreement, we have the deputy and we have Mr. Sharp and generally the lawyer. We have to bring the lawyer in there, you know, Colonel.

Q. They are usually somewhere—

THE CHAIRMAN: In the offing.

WITNESS: And that is about all we have in. And we have the files, the old files and estimates of the timber and the various species. We have all these on file in the department.

MR. DREW: Q. What I am trying to get clearly in my mind is this, just how you can deal with areas of this kind without some concrete recommendation from some experts in the Department. The Great Lakes Paper Company Limited had a large area. This Order-in-Council recites that "with a view to the utilization

to the fullest extent comparable to forestry methods of the matured timber and to the employment of labour hitherto within the relief ranks, the Government, in pursuance of the Forest Resources Regulation Act, effected an agreement with the company . . ." Now, it would seem to me that the first step would be to have some concrete recommendation from the experts of the Department; that having regard, as you say here, to forestry methods certain areas now under of the Great Lakes Paper Company Limited should be alienated and be made available to other companies. Now, is there anything of that kind on file?

A. No, I do not think we have those discussions on file, Colonel, or memoranda to that effect. We know what is on the areas. We discuss it with the company. They have their own foresters. They discuss it with them and they bring them with them when they are talking it over with us and we arrive at this conclusion. And we are not far out. Never make a mistake, Colonel.

Q. It seems to me as though a ouija board would be just about as effective in arriving at the result. I am not talking about what the actual results are, but what there is on file. I do not see how anybody could examine that file now and find out just why anything had been done and why it was deemed advisable to withdraw these areas. In that, mark you, I am not saying that the withdrawal of those particular areas may have been wrong or may have been right; I am only saying that as we now examine this file it is apparently almost impossible for someone from outside to come and find out why that was done. Is that not so?

A. Well, you have to go through more than one file to get it. You again have to go back to the history of the whole story. Here was an area that was disposed of by the Crown for a specific purpose or purposes. Those purposes were not carried out. We know what was on each area. You draw the attention of the holders to the fact that they are not carrying out their agreement with the Crown. You sit down to see what can be done. We don't have a memorandum of all those discussions of why it was done. They have their own foresters and their own legal lights; we have ours, and we arrive at a conclusion. And there you have a conclusion where Mr. Carlisle signed a letter to the acting Premier and one to myself that he gave up these areas. Good business.

Q. I do not know, Mr. Heenan. Nothing has resulted from it yet. That is, we have got, it is perfectly true, the Lake Sulphite as one result of it, but in this particular case which we are discussing they have done no cutting. They have paid some dues, that is perfectly true. And also—I do not say this with any unkindness—it did make very good election campaign material as well.

A. Well, you notice in this last election, Colonel, we didn't have any pulpmills to distribute and we had the same result.

Q. I am afraid that even important though the pulpmills are they were fairly small compared with some of the inducements this time.

Now I would refer to the agreement of the English River Pulp and Paper Company, which arrears on page 132 of the report.

A. Didn't we handle that one time?

THE CHAIRMAN: I didn't hear you.

A. I said didn't we hear that one time, Colonel?

MR. DREW: Q. That came up incidentally in connection with the Lake Sulphite. I can dispose of it in just a few questions. In this case there was an undertaking to build a mill, and, referring to section 1, the company undertook to commence the construction of a logging railroad from the town of Kenora to a point on the English river, on or before the 1st day of January, 1938. Has that been done?

A. No.

Q. Has anything been done?

A. There has been nothing done.

Q. What is that?

A. The only thing the company has done, that I know of, is to spend considerable money in cruising, flying and estimating, but there has been nothing done in connection with this agreement.

Q. They were also to build a mill costing $5,000,000.00 and they were to build a railroad costing $2,000,000.00. They have done nothing in connection with the mill costing $5,000,000.00, so that they are actually in default both in regard to the mill costing $5,000,000.00 and the railroad costing $2,000,000.00. They have done no exporting?

A. No.

Q. None at all?

A. You see that blue there, Colonel?

Q. Yes.

A. Away up to the top. You recall when Mr. Cain was giving his evidence he pointed out that there was an area in the Patricia district that had—what do you call it?—been unexplored. I think that is what he called it, the unexplored region. It is away north. The railroad will have to be built up to about 50 miles over rivers and rocks. It is very rough country, a very rocky and out-cropping country, where various species of timber are in clusters, but a very expensive proposition to log. And Mr. Donaldson, who was head of the Gair Company at that time, was looking for timber. We showed him what we had and he said he would undertake to do it. And so we made an agreement. We would give that timber to somebody if we could get somebody to build a railway.

Q. That, of course, was the purpose of the $2,000,000.00 railway?

A. It will cost more than $2,000,000.00.

Q. That was a minimum figure. But the railway provided in the agreement is the railway you refer to?

A. Yes. You have to build a railroad. The water is running north, you see, chiefly.

Q. Who was the person with whom you dealt in that case?

A. Mr. Donaldson, the head of the Gair Company.

Q. That is, of New York?

A. Yes.

Q. Had that area been granted to anyone else before?

A. No, you couldn't get anybody in there. The brown one below that one, Colonel, is the English River limit. That was put up for sale in 1915, and there were no bidders on it. It was put up again in 1920 or 1921. Mr. Backus has got that and he has not cut a stick of timber off it. He built his mill. It is a railroad proposition, a very expensive proposition. And so, when we got somebody to offer to go away north of that again, we were very glad to get it. So that we can refresh our minds on that and at least put Mr. Donaldson in the right light, he came to the Prime Minister and myself. Most of the discussions were with me. And he undertook to get certain financial interests to refinance the Lake Sulphite. The Lake Sulphite had gone bad by that time, and he asked us if in the event of him doing that would we forgive him, as it were, for not holding to the development of that Kenora proposition. I willingly said yes.

Q. To release him from that contract?

A. At least release him from building or carrying out the provisions of it. And that is the way the matter stands yet.

Q. The next agreement was an agreement between the Department and the Western Pulp and Paper Company Limited.

A. That one, Colonel, was the same gentleman. That was an area that was disposed of during Mr. Ferguson's days to General McDougal for the purpose of building a pulp and paper mill. It is away up east of Sioux Lookout. And they had not carried out their agreement with the Crown, nor had they paid their fire protection charges to the Government.

Q. The Western Pulp and Paper Company?

A. No.

Q. The other one?

A. The old one. And so McDougal got in touch with Donaldson somehow. I don't know how their interests might have been interlocked, or what the consideration was, but they agreed to build a mill and we made an agreement

with that old concession, except there is this difference; we put an Order-in-Council through to authorize the Minister to sign the agreement. And he signed it. Shortly after that I left for the West on that election tour that you often refer to. And I didn't get the $50,000.00 deposit, so I didn't deliver the agreement. The agreement is in my office yet, so I don't consider it an agreement.

Q. So in the case of the Western Pulp and Paper Company they have never even paid their deposit?

A. No. Shortly after that, you remember, the bottom dropped out of the pulp and paper business altogether, prices and everything else.

Q. You say Mr. Donaldson was the man in that. In that case, have they paid anything? Have they paid dues?

A. No, they have not paid anything. I don't regard it as an agreement.

Q. Have they been notified of that? Is there any letter? What is the position the Government has taken in writing in connection with that?

A. I don't think I informed him except through his lawyer. I called his lawyer up and told him I wasn't going to give it up and I wouldn't regard it as an agreement. Willoughby is his lawyer.

Q. G. M. Willoughby?

A. But there is an area now, or part of the area left, to cut, and get some investors in, and we will be glad to turn over that agreement.

MR. SPENCE: Has General McDougal got any rights in that area?

A. Yes; some rights but not with the Crown. He has some investments there. That, again, Colonel, I should mention, is one of the problems in connection with that area. The place for that development is really at the head of the lakes because of power and lake transportation. You have to railroad that timber from 100 to 150 miles, and the railroad companies will not come down on their tariffs in order to enable that to be an economic proposition.

MR. DREW: Q. On that point, what study, if any, has been made by the Department of the possibility of using those territories merely by rail transportation?

A. Colonel, I have had them in my office I don't know how many times discussing this matter, both with the Canadian National and the Canadian Pacific. While re regard them as scientific men in figures, I do not regard them as using what we regard as economic sense. Their policy is that if there is some transportation by highway or water that is competing with the railroads they will drop their tariff in order to meet that. If, however, there is no highway or no water transportation in any particular locality, there is their rate and it stays there. In other words, the province or the government or the country has to spend some more money on highways or the creation of waterways by dove-tailing one lake into the other. Is that a good word?

HON. MR. NIXON: Diversion.

WITNESS: Yes, diversion. Put one lake into the other in order to have a chain of lakes or a waterway before the railroad companies will say, "Now, then, we can compete with them." But in my opinion it is absolutely silly. But what are you going to do about it?

MR. DREW: There is one point I have in mind, and of course it is getting into the larger picture. It is that Russia, for instance, has almost limitless forest areas which have never been a serious factor in world competition because there are no rivers by which they can carry logs out; and even under the methods that they employ in building railways they have apparently never been able to make it an economic possibility to bring this out even with slave labour. So that there is evidently a real problem involved in bringing wood out where water is not available. That appears to be so?

A. Oh, well, take all these areas, and I am glad you brought the question up because it is something that somebody will have to deal with sometime. There are large areas of timber in what we call the Hinterland. There is no possibility at all of bringing it out economically, yet we have to protect it from fires. It is unthinkable that we would say, "Well let it go to the dickens, we will never be able to harvest it, let it burn." We have to protect it. And yet when you consult with railroad companies you don't get any encouragement whatever.

I always thought, and I do yet, that a railroad company which gets certain grants from the Crown, by way of land grants and otherwise, should be interested in the development of the country; that they should consider themselves as citizens of this country; that the timber areas belong to the citizens, and therefore to them; that they should be interested in seeing how we could conserve and utilize that timber. But they don't give us a hand at all. And if this Committee can do anything to help out in the situation and bring it to them much more forcibly than I have been able to do, they will do a good job.

Q. Have you any suggestion as to any course that should be followed in that regard?

A. I think a recommendation from this Committee, Colonel, would help. It would start something anyway. It brings it before the public, at least, and I have only been able to discuss it with the freight agents of the companies.

Q. Well, I do not want to labour this point too long, but it does seem to me that in considering this general problem there is a danger that we may look at the map and say that our forest resources are absolutely limitless because we see a huge area covered with forests. I am inclined to think that we must recognize that if rail transportation cannot be made an economic competitive possibility, our forest resources, in so far as world competition is concerned, are for the present fairly well limited to those served by river transportation? At the moment would that not seem to be the case?

A. Yes.

Q. And if that is the case then it would seem that in considering the area

within which any plan must be developed we are to some extent limited for the moment unless there can be a change in rail costs, that we are limited to the areas where the logs can be run out by river. Is that not so?

A. Yes; practically what we call accessible timber.

Q. From the point of view of considering this problem as far as this Committee is concerned, unless the railways can see some way of offering lower rates, we evidently must consider this problem from the point of view of a much smaller area than we have sometimes been inclined to regard as the available forest area in this province. Does that not seem so?

A. Yes. Of course, practically all of our discussions up to date, Colonel, have been on the accessible timber. For instance, that blue which you see on the map, there is probably five times as much of that up there. While we have it called an asset, we never regard it as an asset in our discussion. It is inaccessible timber. But, as you say, unless the railroad comes to reason that that is their timber and that they are going to make some contribution toward the development of that timber, we might just as well forget it. I mean, we might as well forget that we have that.

Q. There is one of these contracts which I have not yet touched. We have not discussed the Vermilion Company.

A. No.

Q. That is on page 140.

A. Probably I had better tell you the story, Colonel. Would that be just as well?

Q. In regard to which?

A. The Vermilion.

Q. Yes.

A. The Vermilion Company, or the Detroit Sulphite Company, which has been purchasing from jobbers and settlers upwards of thirty years and have their mill built in Detroit for the purpose of utilizing Canadian timber, was getting short of timber because the area had been fairly well cut out, and they asked for an area from which to cut for export. I didn't feel that I could give a company an area, especially where they wanted it on the lake front, accessible timber, to cut for export alone. So I suggested to them that they should look for an area from which they would be prepared to build a mill of a small capacity and we would give them the right to export one cord for every three that they used in their mill. By looking over the horizon the only thing that we could see was that timber up around Sioux Lookout. We were just discussing it, and that, again, is west of that.

THE CHAIRMAN: That is the orange coloured part?

A. Yes, and we selected them an area there and they agreed to build a

mill and to pay $25,000.00 deposit because it is one of those uneconomic things. After they made the agreement they started in to discuss with the railroad companies the freight rates, and they couldn't get anywhere. Then there was the question of power. There was no power. And so they have been talking back and forth as to whether or not they should take that timber down to the head of the lakes, what the cost would be, and so on. The power, as you know, has just been turned into Sioux Lookout less than a year ago. And there is only 2,000 horse power brought down there from a distance of 75 miles. So there is not sufficient power; the freight rates are too high, and they gave it up, as it were. They sold out their entire company to the Great Lakes and a lumberman called Mr. Falinger.

MR. DREW: What is his name?

A. Falinger—he has a big mill at Sioux Lookout. He took an obligation under the agreement to build a mill. The Great Lakes took the southern portion of it in case anything goes wrong with their water works, such as fire or strikes or anything of that character, so they can run out by rail and bring in by rail quickly. So that is the way that stands. No timber has been cut off it. Their overhead has been paid up to date.

There the matter stands. Short of power and too high freight rates.

Q. They, too, are in the same position; It is inaccessible at the moment, is it not?

A. Yes, except that Mr. Falinger is now contemplating building a smaller mill, a ground-wood mill instead of a chemical mill, and using steam from his sawdust.

Q. We then come to the position that, in so far as these various companies are concerned which made contracts in 1937 to build mills, other than the Lake Sulphite, none have built mills?

A. That is right.

Q. In fact, none have taken any steps to build?

A. Well, I would not say that, Colonel. On the face of it, you are right.

Q. I do not mean that they may not have discussed it themselves; I mean as far as the visible evidence is concerned they have taken no steps on the ground to build any mills.

A. Some of them spent considerable money in tests of the various species of timber. For instance, the Marathon Paper Company spent a lot of money on tests of different timbers and the water surrounding there owing to that high grade class in which they are doing a big business in United States. As you know, the Long Lac have spent a lot of money on permanent buildings and boats and things of that description. But visibly you could say, yes, they have done nothing towards the building of a mill. But it takes a lot of preparation.

Q. Yes, but they of course anticipated that in the first place. All of them

had undertaken to build mills within the time limit. I am not questioning the fact that that has been a recurring situation from time to time, but I do not think we can ignore this. You see, there is the General Timber Company, the Pulpwood Supply Company, the Huron Forest Products Company, the Vermilion Lake, the Sioux Pulp Products, the English River Pulp and Paper Company and the Western Pulp and Paper Company. Those companies and the Lake Sulphite all undertook to build mills and to carry out certain work. The only one which did was the Lake Sulphite, with rather disastrous results so far, no matter what may come of it—although we all hope that something will develop out of it. Now, having regard to that experience, and having regard to that situation, and looking to the very disturbed condition of the industry as a whole, have you any suggestion as to any methods which you could recommend that might place this on a more definite basis?

A. You mean this particular one or in the future?

Q. The whole question?

A. Well, as I said, Colonel, it is an easy matter for a man to make suggestions. The gentleman made suggestions here yesterday, if you recall, how everybody else should give their money away. It would be an easy suggestion for me to tell these fellows, at least, to give you evidence how somebody else could spend their money and take risks with it. I am sure you do not want me to theorize, and all that kind of thing. The only thing I can tell you is the position of the Crown and of the Department, and that is, they have made agreements, they made them in good faith, otherwise they would have not put their deposits down. We can cancel those agreements because they have not lived up to them. When we consider the time is ripe that these mills should be built and if they won't do it, to get out of the way and let somebody else in, we can cancel them. The Crown will have lost nothing. I think we have gathered in upwards of $1,000,000.00 from these various companies in their deposits, their ground rent and fire protection charges. We will be just that much ahead, and we still have the timber.

Now, I have thought and talked it over many times with my deputy as to the advisability of doing something else, to cancel these areas and advertise to the world that we have large areas in Ontario for lease or rent or sale, along the lines on which they have been doing business, to see if we could get anybody else to come in. I do not know whether that is a good thing to do or not, Colonel, but we can do that.

Q. I have in mind that we have had more than one operator say here that he was anxious to get some area on which he could cut logs, not build a mill but just to cut logs, and that he has been confronted with difficulties in doing it. We have had the statement made that all the available areas are alienated one way or another to various companies or individuals.

A. That does not hold him back.

Q. Well, we have had a statement to that effect.

A. They have come before you as they come before me almost weekly,

and they say the same thing, but when you ask them where they want to go, they all want to go in one place, always want to go to the most accessible wood which is conceded to a company. And we are trying to hold that down. While we are trying to provide some employment, we do not want them to go in and massacre a whole concession that should be left there for the industry. I have said to them time and time again, Colonel,—and I didn't interrupt them the other day when they were speaking here, because I didn't think I should—"Why don't you go out a little further and pick yourself a piece of timber out there, no matter whose concession it is, and we will give you the right to cut there for export." But they do not want to do that; it costs them too much to rail.

We have said to sawmills—for instance, I have said to Mr. Johnson on more than one occasion, who put up a very good argument, that we are not bound to hold that timber out of operation, the logged timber, but if we can save the logged timber in quantities in any one of these areas we are prepared to make a deal with somebody to start a sawmill. We are in that position to-day. We are continually, Colonel, adding species of timber to the concession areas or to those who have licenses. It is almost a weekly occurrence, or a monthly occurrence, at any rate. A man has the right to cut a certain species of timber according to his concession, and he finds he has a market for something else—poplar or ties—or he finds he can cut some log timber in addition to what he had the right to cut. We invariably add that to him as he finds in his cutting operations it is there, and we give him the right to cut it; add it to his concession.

We are not so far behind, you know, in our forestry methods as some people would have you believe. You will read in the newspapers every once in a while that unless Ontario, Quebec or Canada wakes up something disastrous is going to happen. Anybody could say that over the radio or write it in the newspapers. But why don't they tell us what to do with it? What we want, and I come back to the same statement I made to you once before, is markets. We can find all these species of timber and we can sell them. We are in a position to sell them. It is markets that we want. If some of these people would go out and get markets in which to sell our products we will supply the timber.

MR. SPENCE: Just recently, within the last few days, the Province of Quebec sold 65,000,000 feet of lumber to France. There seems to be a demand.

A. They have the advantage of being on the seaboard. They can cut their logs and the rail haul is a very short distance to the seaboard to be able to put it on the ocean.

Q. For the information of the Committee, I was trying to find out if the Province of Quebec was doing anything that we were not doing, or are they in a better position to sell this lumber?

A. You have to recognize that we are in this position in Ontario—I don't like to say it, but we are between the devil and the deep blue sea. Both ends of this country get consideration more than we do. There the Maritimes Freight Rates Act, the subvention on coal to bring it into central Canada; there is a special freight rate on timber from the Pacific Coast, and we are left here squeezed in between both.

Q. The point struck me when I heard this just the other night that some of our mills might find an opportunity to sell their timber, like the one Mr. Johnson was speaking of in Fort William. There is an urgent need of timber now by the British Empire and by France due to the situation in the Scandinavian countries. That timber now cannot be obtained by France or Great Britain Could we not in the Province of Ontario also help to serve that need if our mills are in a position to supply it?

A. Well, all we can do as a government is to supply the timber.

Q. Yes?

A. We cannot cut the timber and we cannot sell it, as a government. It requires the operator to cut the timber and according to the specifications required in the old countries, which are very minute. I have heard it said, in fact I heard Mr. George Nicholson say it on the floor of the House of Commons one time, that it was out of the question. He was speaking on the 1932 agreements, the Empire agreements. He was speaking on those agreements and I heard it said—it is on record to-day—that it is out of the question for those operators in Ontario to meet that situation. And he was an operator, you know. He was in Chapleau for a long time. He said we had not the machinery to cut to the proper precision that was required by the English market. If we had then we would have the disadvantage because of the freight rates to the sea coast.

MR. SPENCE: But the Department is ready at any time to assist any operator who can find a market?

A. We are prepared to sit down and negotiate an agreement with anybody that can find a market for whatever species of timber he requires.

Q. There is a considerable demand, not only a demand but an urgent need. I do not know whether Mr. Johnson has had an opportunity to sel large quantities of timber over there, lumber particularly.

A. The more he sells the more we will give him to cut.

MR. E. E. JOHNSON: May I make a statement?

THE CHAIRMAN: Certainly.

MR. E. E. JOHNSON: It is my opinion that in connection with timber, railway ties, and lumber the present markets of the world in lumber will very easily absorb the 300,000,000 feet which the Province of Ontario has. I think if there were some waterway improvements and some major developments put in we could get the kind of contract required.

MR. SPENCE: That is the point.

THE CHAIRMAN: I think this would be a good time to adjourn. The Secretary advises me that Mr. Vining will be here to-morrow to give evidence; also Mr. DeWolfe, and on Thursday Mr. Clarkson will appear before the Committee. We will go on this afternoon at 2.30.

At 12.50 p.m., the Committee adjourned until 2.30 p.m.

AFTERNOON SESSION

TORONTO, ONTARIO, APRIL 23, 1940

THE CHAIRMAN: The Committee will please come to order.

HONOURABLE PETER HEENAN, recalled.

MR. DREW: Mr. Heenan, I want to follow, for a while, something which we perhaps have not discussed as much as we might have in some ways, but which seems to me is tremendously important, and that is the question of prorating, which has been mentioned briefly, because any solution of the immediate problem would appear to depend on a real understanding of what is actually going on. While I recognize that there may be some aspects of it which have necessarily in the past been considered as better discussed behind closed doors, I am inclined to think that the time has come when public confidence here and outside will be best served by a real knowledge of what has actually been taking place. As a matter of record I would like to have your story of the steps which have led up to the present situation. What I have in mind is this: I have indicated that I desire to call as witnesses the presidents of some of the five largest companies who will be able to speak about the general situation and in asking for an explanation of what has taken place I do so with the thought that it will not only assist this Committee, perhaps, in reaching some conclusions, but would undoubtedly assist the Government in letting the public understand what has been taking place.

Now, I think there has been a great deal of mystery about it and I believe it will help very much if, instead of just mentioning prorating as a general thing which has been done, you could outline in definite form the steps of what led up to this prorating and what has actually been accomplished and what the present situation is.

THE WITNESS: Well, Colonel, I think that probably there was never a more prudent time to disclose the whole situation so that the public might know what we are aiming at or what we are trying to do.

I agree with you to this extent, that it may have been that we have been doing too much negotiating without taking the public into our confidence. There were many reasons for that, but I think the time has gone by and this is the time, now, to tell the public what we are doing, why we are doing it and, of course, what steps we have taken.

It is a long story and I do not want you to hold me to dates. During the last war the price of newsprint went up to around $110 or $120 a ton; over $100 a ton. Apparently there was so much profit in it that there were a lot of companies went in to build more mills and they were encouraged by the provinces as well, naturally, thinking there was no end to the market.

So, there were areas set aside in Quebec, Ontario, Newfoundland, on the Pacific Coast, Nova Scotia and other places for the purpose of building mills to supply the markets and get those large profits.

That went on for a considerable time after the war, and in fact I think it was after the last war that the prices went higher because of the demand for newsprint. Then all at once the demand for newsprint ceased,—that is to say, lessened. The advertising in the United States, which is our chief market, fell off and less demand for newsprint existed. Of course, together with the fact that the American publisher had it in mind that the Canadian manufacturers took advantage of him when they caught him short, they then set about figuring out how they could get back at the Canadian manufacturer. They had a scheme of contracts which were what were regarded as interlocking contracts, which automatically cut down the price of newsprint from the price of around about $75 a ton, when that started, to less than $40 a ton.

The contracts were of this character. The publisher in any given territory would make a contract, say, with a Canadian mill to furnish so many tons a year for so many years at whatever price prevailed at that time, whether it be $60, $50 or $75, but there was a clause in it to the effect that if anyone else in that particular territory got their newsprint at less than that price, then theirs automatically came down. So, with that kind of a set-up, the mills which were running short went out to cut prices, and that automatically cut the other man's price down and so it just spiralled right down from 1926 at $75 a ton to less than $40 a ton; less than it had been for thirty years. That resulted in our mills going into receivership, bankruptcy, many of them could not pay their timber dues and none of them paying dividends, of course. There were discussions amongst them about reducing the wages of the men in the bush and so on.

Around about 1928 it was brought to Mr. Ferguson's and Mr. Taschereau's attention as to what these mills were doing. It was represented to them that inasmuch as they were using the natural resources of the province, they ought to take a hand in it. So they met and arrived at a gentleman's agreement together with the industries themselves, that they would cease this price-cutting and that they would put some business ethics into the newsprint business. Of course they all promised that they were going to be good boys and not steal any more contracts from any other companies and so on and so forth, but price-cutting still persisted.

Then it was brought out in a conference in Chambers after we came into office that one accused the other of doing all kinds of unethical things: instead of giving remissions or rebates, or instead of making the rebates at a less price than the other manufacturers, they had other means of giving rebates in a different way. But they accused each other in the chamber and it was not brought out an investigation. This went on and we called them in and asked them to be good boys and do business in a businesslike way so they could pay their workmen proper wages, pay their dues and get out of receivership.

No matter what they promised they still violated all the gentlemen's agreements that ever existed,—and persisted in it.

It was then about 1935 or 1936 that Ontario started to suffer more than it had before, for the reason that there were mills in Quebec which went out, cut the rates again and it was at that stage that the National Trust Company which was then operating the Great Lakes Mill in receivership came to me and pointed out that it had to close the doors and shutters on its mill.

They pointed out that a Quebec mill,—you do not want me to mention the names of the companies, I do not think,—had actually gone over to Detroit and cut prices still lower and stole the contract from the Great Lakes Mill and did not leave them sufficient tonnage in order to keep their mill going.

So I met with Mr. Taschereau in regard to the matter. He agreed that this was unethical, that it was not according to agreement and that he was going to make this company come to time and give back this tonnage. But, he later had to communicate with me to tell me that his wish was to do the right thing but that he had no power to make this company to do other than what it was doing. They had promised him they would do it, but they had reconsidered their position.

The result of that was that the industry met in Montreal and in order to keep this Ontario company alive they actually passed the hat. "We will give up 3,000 tons and this other company 5,000 tons and so forth and so forth and get sufficient to keep the Great Lakes Mill open." It is strange to say that the company which actually stole the tonnage did not throw a ton into the hat.

It was then decided that if the government,—and they were not talking about prorating then, but it was the question of the division of tonnage and that sort of thing,—were going to have any interest in this, in order to spread labour and in order to keep them from further cutting and further cutting and getting themselves into a mire from which they would never get out, that we had to take legislation sufficiently to compel them to prorate, and they began to call it prorating.

The Quebec Government passed legislation. It may not be as drastic as ours,—but I think it is,—and I told Mr. Taschereau that I did not think we needed it in Ontario at that time for the reason that the Quebec companies seemed to be the greatest sinners. I thought all I had to do was discuss the matter with the heads of our industries in Ontario and they would do the right thing.

So I tried that and it went on just as bad as ever. Then we took that legislation which you do not like, Colonel, or at least you did not like it, although I think you are beginning to like it better now.

MR. DREW: No, I am afraid not.

THE WITNESS: Well, you will like it before the reply is finished. I want to tell you that my colleagues and myself hated to put that legislation into effect because it was drastic. It seemed to interfere with vested rights and to interfere in business, but we could not see any other way out of it.

I might tell you that the industry was consulted. I got my department to draft a bill much more drastic than this one. I consulted them and they took it away to their lawyers. That bill,—that Act,—as you have it now, is drafted in accordance with the industries themselves and their lawyers. They said they could not behave towards one or the other nor trust one another and that the Government would have to take means to penalize the company which would not do business.

It is a long story and I hope you will bear with me because there are so many different angles to it. Two companies in Ontario have not been behaving themselves. They have not been prorating. Whether or not prorating is right or wrong is a different question. We have two companies, the M. & O. and the Great Lakes,—there is the Beaver Company as well, but it is a small company and for this purpose could hardly be considered. It is only a 25,000 mill. They realize we are prorating now and as a result of that prorating I think that it is fair. They have had an advancement in prices because no one was going out and underselling the other fellow. They are taking advantage of the increased prices but they are not contributing any tonnage. In other words, they belong to a union without paying their dues. They are taking all the cream and benefits, but not contributing anything towards it, and it is because of that which is now making the Quebec companies say, "Well, Ontario will not make its mills live up to the law and why should we?" So we find the Quebec company going off the deep end once in a while and when it is brought to task by the Provincial government it is said, "Well, look what they are allowing them to do in Ontario." So just at this moment the situation is reversed and those in Ontario are the bad boys now.

Then, you meet with this situation: We call the Great Lakes Paper Company to the office and talk the matter over with them. We ask them why they are not living up to the proposition of prorating and they have an argument which is pretty hard to overcome: We came out of receivership under a special scheme of things with certain contracts,—and I am not quite sure, but say thirty contracts. Thirty publishers did not put any money into the Great Lakes, but they guaranteed their tonnage for ten years. That tonnage amounted to a certain amount but it was never disclosed before the Court.

In connection with those contracts there was what you call a dividend of $2.00 a ton. When the Company was able to pay dividends they got this free stuff and got $2.00 a ton without investing any money, so it was $2.00 rebate. Instead of giving secret rebates they were doing it in a more scientific way; above the table.

We opposed that. The Government opposed that in the courts. Notwithstanding that, the first court allowed them to come out of receivership with that. It was appealed and the appellate judge,—I do not know whether that is the correct name, but at least the second court it went to,—did not want to upset the ruling of the first court, but referred it back to the first court to give further consideration to other angles which apparently had not been considered.

I took it for granted that they made up their minds that they were not going to get it through, so they came to the Government,—something which I thought they should have done in the first instance,—to see if they could not compromise in some way. They had an arrangement made. The price of newsprint at that time was $40.00 a ton. They had an arrangement made with these publishers that if they did not get the endorsation of the court by a certain date that they would supply them with newsprint, notwithstanding that, at $39.00 a ton for ten years. So, instead of us going up in price we were going to revert back to a lower price which would affect it in this way, that a one-hundred thousand mill was going to affect three million tons in Canada.

They agreed they would not pay dividends until the market price of newsprint reached $45.30 a ton and not until then if the effect of the paying of this dividend would reduce the market price. There were other agreements also, but that was the chief one.

Mr. Thompson, representing the companies, gave us a letter supplementing that which agreed to work in harmony with the industry and the government. There was no question about what was intended at that time. With that we withdrew our opposition and the court let it go through without an amendment. Those contracts were never placed on the table before the courts. The lawyers representing the company said it was not fair to ask that their contracts be put on the table and made public so that all their competitors could see what they were doing. The judge agreed with that. Everything seemed to be fair and above board and we allowed it to go through.

Then the company came out of receivership, as stated, and there was a president appointed. He then started to interpret his rights, naturally, in the interests of his own company. He did not know anything about this letter undertaking to work hand-in-hand with the rest of the industry and the government. It had never been disclosed to him. He was not obligated to it and all he knew was that these contracts were endorsed by the court.

Then when we started to examine the contracts we got a little hotter under the collar and we found that there was the right to extend not only the tonnage that they obligated themselves to take at that time, but any expansion of tonnage. Fifty-one per cent. of those publishers could take another one in under this dividend-sharing basis. So we were met with this argument. "These things went through the courts. We paid about $10,000,000 because we cut our bonded indebtedness down $10,000,000; we paid for these arrangements and you are going to ask us, Mr. Minister, to share this tonnage with somebody else." So, it is a pretty hard argument to overcome.

Great Lakes are not in it. The M. & O., as you know, has a mill in Kenora.

MR. DREW: Is Great Lakes observing the proration limitation to-day?

THE WITNESS: No, sir, and I will come to that in my explanation.

The M. & O. has a mill at Kenora and another one one hundred miles across at Fort Francis and just across the bridge at International Falls it has a mill on the American side.

They have taken the position right along that they come under the American laws, that they are an American company in receivership operating under the courts of the United States. They are operating lately at a higher tonnage than they should and this is their argument: "You can tell us how much tonnage we should manufacture in Canada, or in Ontario, but you cannot tell us what to do with that tonnage. This is a contract which we hold with the publishers and if you will not allow us to manufacture it in Ontario, we will take it across and manufacture it on our machines in the United States. We prefer to operate in Ontario, and give you that much work, however." Frankly they admit they can operate cheaper in Canada but rather than give up their tonnage, they say,

"We will go over, across the bridge and run at full, if you insist that we can only run the Ontario mill at so full." So they have apparently got us at a disadvantage there. The industry, with the sanction of the Quebec government, agreed with respect to machines which they left idle over here,—say of 50,000 tons a year, for instance,—that they would allow that on the proration on top of their allotment for proration in Ontario. A similar situation exists in Quebec.

Even at that, with added tonnage in Ontario running over and above their proration arrangement, I think since 1928 when we really put this into effect, telling them that we meant it and that we were going to apply the penalties, from 1928 to date, they have about 25,000 tons over and above their average. Great Lakes has about the same. There is a difference of a few thousand tons; twenty-five thousand tons apiece; somewhere about that.

HON. MR. NIXON: Per year?

THE WITNESS: No, since 1928.

THE CHAIRMAN: Altogether.

THE WITNESS: Altogether. Then, the M. & O. says, "We are an American company and we have agreements with publishers. We are not taking any extra publishers or making any new contracts. This increased business is with our own publishers; no new ones; and so we are entitled to that business," and in a veiled way try to tell us what might happen in the United States if we go into it any further than what we are doing. They give us 3,000 tons to-morrow, 4,000 tons to-day,—or vice versa,—and so on and so forth. In the last few months they have been keeping fairly even with the average of the industry, but since 1928 they have gotten away with about 25,000 tons.

Reverting back, again, to the question of the Great Lakes: The president at one time, notwithstanding all the discussions we have had and all the promises made, went out and took extra tonnage away from another company at a cut-rate price; $2 a ton less and $2 a ton dividend, which was $4 a ton less to that particular company. I think they would have been going on with it yet had it not been for the fact that I was sick one week and I took these contracts to bed with me. I ran up against something there and I asked a question,—the same as yourself, Colonel,—and the question brought out the fact of this contract being made. None of the industry knew anything about it. The publisher who made the contract was actually sitting on the Board of Directors of the Great Lakes and neither the directors nor the publishers in the whole scheme of things knew anything about it.

There happened to be a provision in that contract where it ran from year to year; like, say, a five or a ten-year contract was subject to cancellation at the end of each year. Why they put it in, I do not know unless it was for fear that it would be discovered. So, at the end of the year, after Mr. Rowe came in I got him to cancel the contracts and get them renewed under the proper conditions.

That is a long way around the story, but because of these things going on it encourages others to say, "Well, look what Great Lakes are allowed to do;

look what the M. & O. are allowed to do; we will take a chance." So, proration is either right or wrong to-day; it is in the balance as to whether or not it is going to be maintained.

There are many purposes of it, but I think there is a significant aspect to the whole situation in connection with proration. We establish these towns and the mills in these towns. The people live there and they are depending on it. If they are closed up, why, the Government has to keep them on relief. We figured that by prorating the tonnage available amongst the mills, it would serve two purposes: It would stop this cut-throat price-cutting and would distribute the labour amongst the labour employed in that kind of industry.

As Mr. Clarkson said the other day, that is the question and as I have said here before, sometimes a fellow gets kind of hot under the collar,—as you have witnessed, sometimes,—and it actually gives you a headache, because when you find men agreeing together to do certain things and they go out and take the opposite course time after time and the Prime Minister, the Minister or the Government has to draw them into line and coax them and threaten them, and all that sort of thing, it gives you a headache, because they themselves say it is to their benefit. I think the industries will say it is to the benefit of the whole and yet you will find some of them trying to upset the scheme of things which they say are of benefit to them. Time after time I have thought of going before my colleagues and asking that the Quebec government abolish the whole thing, that we keep our hands off and let them go at it again in any way they think best. But in my sober moments I reflect what would happen and as Mr. Clarkson said on Friday, the whole bottom would shoot out of the works in the newsprint industry in Canada if they were allowed to go free.

While we have not one hundred per cent co-operation and effectiveness in the proration of tonnage, I think we have made pretty good strides up to the present moment.

We were talking here the other day, I think it was yesterday that you asked a question about why wouldn't a general sales organization the same as they have in the Scandinavian countries be a good thing? That is to the same effect. They have a general organization goes out and looks for business in every quarter of the world; they won't quote prices, they just say "We want your business," and they will get that business no matter what the price. They have for instance a standing offer for delivery in New York at $7.50 a ton less than the Canadian price; no matter what price we have they are $7.50 less. So they get those orders and go back, and they don't watch areas, they go back and divide that up amongst their mills in the Scandinavian countries. I was thinking, if you ask my opinion, I don't know whether you want that at all or not, that we will have to go a step further with regard to that, to have some kind of organization of a central character that will go out and secure the business and let us then devise some scheme or method where we can meet the price in order to compete in world markets.

Maybe I had now better say something about our own particular affairs in connection with that: I have tried in every way conceivable to do Ontario's share so there will be no complaint from the sister province. I have got the mills to agree that they will do certain things. For instance, I had a letter from

Mr. Rowe, President of the Great Lakes undertaking, that he will do certain things and he won't do certain things, he won't take any more contracts. I have got the M. & O. to give up tonnage now and again but not sufficient. I went as far as to have my colleagues pass an Order-in-Council fining those two companies a large amount of money because they were not living up to proration; they promised that they would do it, and then I introduced another Order-in-Council and my colleagues passed it, to repeal it because it had served its purpose.

MR. DREW: Q. Had served its purpose in what way?

A. I got these people to agree that they were going to do the right thing. Then after this was repealed they went out and again got off the deep end. So that I am in this position now that I don't propose without further consultation with the two premiers and a fair understanding with the two governments how far they propose to go, I don't propose to make a fool of myself and ask my colleagues to make fools of themselves by passing Orders-in-Council every week or so and then repealing them without them having some effect. So that I am waiting now for the opportunity to get the two governments together.

I think I have told you the whole story now.

Q. Well, then the Forest Resources Regulation Act of 1936 was in fact intended merely as a means of enforcing the terms of the verbal agreement which had been reached between the Province of Quebec and the Province of Ontario?

A. Yes.

Q. The Province of Quebec having passed an Act the year before. In the Forest Resources Regulation Act though there is a provision that is different than any regulation in the Quebec Act and that is the provision which empowers the Department to take away any areas and if necessary transfer them to someone else or hold them under the Crown?

A. Yes. That is an additional feature.

Q. That feature doesn't appear in the Quebec Act. Was there any special reason for the introduction of that feature in the Ontario Act of 1936?

A. Yes. Let us not confuse the two questions, Colonel: Part of the 1936 Forest Resources Regulation Act was for the purpose of enforcing the public interests in the proration of tonnage and so on. There was no necessity for that in Quebec, at least they didn't think there was. I wanted that for the purpose of reallocating the timber areas. Again we have got to go back to the point where there were some companies had far more areas than they required and they were not in proper watersheds. Some of those companies were in receivership and they claimed that they couldn't agree with anything. They agreed that the area should be reallocated, that they would be better this way and that way and the other way than the way they were. So in order to do it according to law we took power to reallocate these areas, take this one and leave it in its proper watershed and cut off another piece in their own watershed if required or if necessary. That is the other feature of that Act.

As I said before, Colonel, we might have done it another way: We might have said, "You have made an agreement with the Crown and we are just going to cancel." But I thought it was better to do it this way, and it has worked out, shall I say eminently satisfactorily, a very good word? Because it is being done by sitting down and discussing the matters with the companies and at the present time there are no complaints from it.

Q. Well, at the moment then the whole situation is one that there is this rather loose arrangement by which there is supposed to be a general averaging of production based on an effective capacity and these are merely levers to put that into effect. How is that actually worked out? How is the production and the checking of that handled?

A. Well, the industries themselves, and you mustn't forget that the industry is the spearhead of all this, the Government has just kind of gone along with them, that they have agreed with what the majority of the industry thought was best for the industry, they engaged a firm of engineers which seemed to be satisfactory to the industry at large to make an examination of all the plants and to report as to the effective production capacity of each particular plant of each particular company. For instance we will take the Great Lakes Paper Company, 115,000 tons; well if the market will provide say fifty percent of 115,000 tons they get that. Of course the larger companies they have more mills and each company is allowed to operate at whatever might be fifty percent of their productive capacity. That is how that was arrived at. The engineers' report was sent out to each company and there was no complaint about capacity allowance, neither is there any to-day in regard to the engineers' report; the only thing to-day, that one company thinks they shouldn't be put down the same as the other companies for some special reason.

Q. Well, then where do you get that report from—just as a matter of the practical method of working it out? Who handles the actual detail of that?

A. Well, there is an organization with headquarters in Montreal; that is the one that Mr. Farlinger is the head of now. There was at one time a Mr. Howard and Mr. Kellog and the present Minister of Finance, Mr. Ralston, and Charlie Vining—Mr. Ralston of course is not associated with him now—they gather the statistics from all these companies, they have the entree into all these companies' books, and report to him regularly as to their production and shipments, and they report to the Provincial Governments in Ontario and Quebec and send out these reports to the industry at large and then to the Provincial Governments, drawing our attention to the fact that this company is low and the other one high, and what are we going to do about it?

HON. MR. NIXON: Q. New Brunswick is not in on this at all?

A. No.

I don't think it would do any harm to say this, Colonel, what I really thought, that if the two major provinces got this scheme working out properly where they would be enabled to sell and produce at a reasonable price, that once we got the two major provinces working that all the other provinces, such as British Columbia and Nova Scotia, would fall in line and it would be a Canadian enter-

prise working in the interests of Canada, and with an organization such as that I don't think it is very hard to visualize but what the future would be bright enough that we could compete with any place else in the world. But when we speak, as I often do when I get a chance to meet somebody from the other provinces who is connected with the Government, they generally give you the horse laugh and say, "Why, Peter, you can't agree even between yourselves," and so a mill here and a mill there going off the deep end and not playing ball is keeping back that greater aspect of the situation, the whole scheme of national effect rather than just the two provinces.

MR. DREW: Q. Isn't it so that an application was made to the Dominion Government some years ago with the idea of having this whole subject controlled by the Dominion Government?

A. My understanding was that the industries from Quebec and Ontario, at least some of them, approached Mr. Bennett and asked him, if they made a request—they hadn't made the request—if they made a request could he put it under—I believe it was the Marketing law? And he said if he got a request—this is all hearsay, you know, I don't think it ever appeared in the newspapers, this is what they told me—if you get your Provincial Governments to make that request I will consider it very favourably, but not otherwise. I don't think there was ever any direct application made, I think it was more of a round table conference as to what he might do if they made such a request.

Q. Well, does it seem at all possible that any system of prorating can be worked out if there are special considerations given to one company as against another?

A. Well, if there is any one or two companies that have got a special situation that has to be given consideration, when all the other corporations agree that this is fair and reasonable and it is known and let it go at that there is no harm in that, for the reason that the proration tonnage that is exempt is not so very great that it would hurt the whole; but it hurts the whole in this way, that each one of the other fellows takes that as an excuse, "If that fellow is going to get away with it why I will take a chance and I will get away with it—might get away with it anyway." So if there was some special consideration given—and I have to admit, you know, that there is some special consideration coming to a company like the Great Lakes; no matter what position we did take they did come out of receivership with those contracts endorsed by the court; those contracts give them more than proration at that time—so they have a valid argument legally and they did get their bondholders to give I think about ten million dollars in value of bonds, reduce their capitalization, so there is something to be said for them. But, Colonel, the tonnage that is involved for instance in that one particular plant is so small that it didn't need to affect the whole, but, as I say, it aggravates, it gives the other fellow a chance to say, "Look what those fellows are getting away with" without delving into the facts to see why they are getting away with it. I have suggested this many times to the industry and to Mr. Rowe, "Why don't we sit down and get these contracts that you say were endorsed by the courts, and you agree that you can fill those contracts at all times, and that you won't take any more tonnage until such time as you have an average with the industry?" Well, I think that is probably what we will have to do, something along those lines.

MR. DREW: Q. Well, in the case, for instance, of proration in the United States in oil, they have a system there that would seem to have some similarity to this situation; they have created a board which actually operates proration, and then the States in which the oil is produced have this method, they have passed enabling legislation which gives power to that board to enforce its orders on the people producing oil. Do you see any practical reason why something of the same kind cannot be done there?

A. No. I think that something like that should be done, except that some of those proration policies in the United States go a little further than we do, they even set prices, have a price set-up. We have never set a price and said, "This is the price of the product and you may not sell below it," as a Government we have never run into that yet. Mind you, a proration policy might have the same effect, if it will stop a man cutting prices it may have the same effect. In my opinion there should be some board apart from the Minister or the Government to handle this proration with some kind of penalty, that it would not be left to a political organization such as a Government or a Minister to say whether they would or would not inflict that penalty.

MR. OLIVER: Q. Has there ever been a penalty imposed and collected?

A. Well, we have never collected it. We have put on an Order-in-Council to penalize but after they promised to do the right thing why we withdrew that.

HON. MR. NIXON: Q. Did Quebec ever collect any penalties or impose penalties?

A. No. Just the same as we have. They just did tell the other fellow what they could to.

MR. OLIVER: Q. Does British Columbia have proration?

A. British Columbia has come into this proration policy voluntarily. The interests tell me they live up to it very strictly because they realize it is for the benefit of the whole. They are not in it in the way that Ontario and Quebec are, they have come into it in a voluntary way.

MR. OLIVER: Themselves.

MR. DREW: Q. Well then, you do agree that it would be desirable to have some organization set up with independent powers?

A. Yes.

Q. Something in the nature either of a commission or a board with power to operate?

A. I do.

Q. And control the industry?

A. That is if we are going to keep on prorating, and in my opinion you have proration with you as long as we are alive.

Q. Yes. Now, Mr. Heenan, getting back to a suggestion that I put in the form of a question earlier in the inquiry, if it would be desirable that some such board or commission should operate to control the output of mills wouldn't it be desirable if some such board of commission were created with power to control the use of the forests themselves?

A. Well, now, that is a different thing altogether, Colonel.

Q. I don't see how. I mean I am only trying to get this clear. You agree that it is wise to have this control exercised over the output of the mills and yet that output of the mills is necessarily tied to the output or the use of the forests?

A. Well you see you can take say two or three or five men that you would appoint to a board to administer the output.

Q. Yes?

A. Men of course with knowledge of the newsprint business. Let us suppose there are three. Well they would have a general knowledge of business the world over and what the output should be and what the price probably should be. They wouldn't have a system of forestry and forest protection on their side as we have in the government circles. You see they are two different things altogether, regarding the cutting of the forests and the different species of timber, the areas of land that are required to supply a mill and that description, it is just as different as night and day.

Q. Well, in this particular situation that has arisen now you are finding difficulty in prorating because some of the companies are companies incorporated in the United States or directed from the United States and others are Canadian companies. It seems to me that that gets back beyond the actual operation of the mill and gets down to the very way in which the forest resources are going to be handled, because if the fact that a mill has been put up by a company from outside of Canada, if that is going to change the relationship of the company to any prorating policy of this kind, then you are going to defeat the purpose of setting a prorating method unless you control the original system of permitting the use of the forests, aren't you?

A. Well, I would imagine, again, that the penalties would be different, Colonel. I haven't given that very much consideration, but I would imagine that if there was a commission appointed to regulate proration they would have power, some kind of financial penalty, a fine of some description different from the foresting altogether.

Hon. Mr. Nixon: Q. And it would have to be interprovincial in its work?

A. Oh yes, it would have to be interprovincial; there would have to be an agreement between the two provinces with legislation in each province.

Q. Or several provinces?

A. Yes. I can't see it at all, Colonel, how you can get away from government responsibility in connection with the forest wealth.

HON. MR. NIXON: It is a direct asset of the Crown in one province.

MR. DREW: Q. I can see it governed perhaps by an interprovincial commission but I am getting along to a thing that it seems to me the two are tied together very closely and I want to see if we can separate them in some way?

A. Of course, don't gather from what I said in connection with the M. & O. that it is impossible,—it is possible, notwithstanding the fact that they are an Ontario Company and operating under receivership of American courts—that we cannot make them live up to the law, but by doing so if they want to fight back they can take the tonnage from Ontario across the bridge into an American mill and of course we have nothing to say in regard to that.

THE CHAIRMAN: Q. And the situation would be the same as if it were an American company owning a mill in the United States?

A. Yes. We have been doing it by trying to coax them, rather than otherwise.

MR. DREW: Q. In view of the fact that there is to be a conference shortly, as you have explained, possibly that angle of it could be left, because I understand from what you say that you are actually going to discuss some way of trying to work this out as between the two provinces?

A. Yes. And of course, Colonel, you weren't present on the 12th March when we had the larger conference where we separated as it were the newsprint from the loggers and the sawmill men and so on; I asked the newsprint men to consider if they wanted the Government to still keep on the proration and to what extent, I wanted them to tell us—after all it is their money, it is their business—and they have not reported yet except what you heard Mr. Clarkson say here the other day, he said it would be suicide, I think he said, if we took our hands off proration now, and I think that will be the voice of ninety-five percent of the industry both in Quebec and in Ontario, but they will say "Enforce it!"; that is to say, "Whip these companies into line."

Q. Yes. Mr. Clarkson also said it would have a very serious effect if you permitted any of these other companies to go ahead building mills for which there are existing contracts?

A. Oh, yes.

Q. I am getting back to the point that there seems to be a pretty close tie-up between the two things, because whether Mr. Clarkson's argument was right or whether it was wrong the fact remains that he in his mind tied the two things together, the right of these companies to proceed to build mills, and he was quite obviously tying that in with the situation regarding the problem of the other mills. That was obviously so, was it not?

A. No, I didn't get him that way. I think he was offering a little advice,

in this way: Mr. Clarkson is a very well informed man and I don't think he was linking up the pulpmills with the newsprint mills. There is no question about newsprint mills, that I would say it would be foolish for either Quebec or Ontario or any other province to build an additional newsprint mill with the conditions as they are now, I believe that is accepted all over, but he said, in relation to these mills that we have in agreements, that we have been discussing this morning, that his advice to the Government would be to withhold our hands and not force those companies to build these mills until we saw what effect this world catastrophe we have would have on the whole situation. So he wasn't linking them both together. In that way I disagree with him because of the fact that he was sitting here and there was a market for that product undoubtedly and southern pine and other places are going into its production, and I don't see why any person should say we should stop here and wait to see what they are going to do about it.

Q. Then that is something that he can express an opinion on himself as he is coming back here. I will pass from that now unless there is something further you want to say on that subject of proration, because I have no doubt the representatives of the companies themselves will discuss that. I may say in asking these questions about it I am putting it on record that I look upon this whole question of proration and the control of the companies in that way as the most important single consideration that we have ——?

A. It is.

Q. —— in regard to the province, because it is vital to perhaps survival of the industry as to how their production is controlled, whether by proration or otherwise?

A. Yes. And there is so much money invested in it. It is the biggest question we have.

Q. Of course there is one thing to be borne in mind, that is that the history of proration in most other products has not been uniformly successful; in the case of rubber and coffee and other commodities such as that it turned out to be a complete failure and there are certainly two points of view as to the wisdom of this and that is one reason I would like to get any information I can as to what the course is. We will pass from that particular point in view of the fact that that is coming up for discussion, but there is another point I would like to have your opinion on because it is something I think should be considered by this committee:

At the present time there are seven Acts which affect the forest resources in one way or another. In addition to the Forest Resources Regulation Act that we have been discussing so much, there is the Crown Timber Act and the Cullers Act, the Forestry Act, the Provincial Foresters Act, the Pulpwood Conservation Act, the Pulpwood Protection Act, the Forest Fires Prevention Act, the Lakes and Rivers Improvement Act. Those Acts all relate to the control of our forest resources and the use of those forest resources in one way and another. Would it not be of great assistance to have those Acts all consolidated?

A. Well, of course there would have to be the same reading, Colonel, no matter how many books they would be in.

Q. Oh yes, that is so, but it always simplifies things to have them together?

A. Yes, quite so.

Q. I am merely asking for your opinion as to whether it would be a satisfactory thing?

A. I think it would be a great assistance to the public. I never thought about it until you asked me this question, having the whole thing in one volume rather than a number of volumes. I think so, yes.

Q. That point of course is merely a question of simplification, but in looking at these and reading the different Acts it did occur to me that I could see no particular reason why all of these Acts could not be brought into one Act and simply different sections dealing with the different problems?

A. It would simplify it for the people who are doing business with the province if it were all in one volume that they could find them easily.

THE CHAIRMAN: This aspect may not be very important—I don't know how many people secure copies of these Acts from the Department, but I know that in the Department of Mines we have had part of the Mining Act reprinted several times as we found it cheaper when asked for a copy to give a booklet containing that particular part rather than to give the whole Mining Act, and I suppose if you put all these in one Act then every time anybody wants information as to the law respecting Cullers you would have to give them the whole Act. It would cost the province so much more than just the Cullers Act. I don't know that that is of much importance, but I just mention it.

MR. DREW: Well then subject to what may arise in connection with these different features I have no further questions.

THE CHAIRMAN: It is five minutes to four; unless you want to proceed with one of the officials of the Department we have no further witnesses available. Mr. Vining will be here to-morrow, he has been advised by Mr. Draper, Mr. DeWolfe will give his evidence on Thursday and we will have Mr. Clarkson on Thursday. I have heard that Mr. Sensenbrenner cannot be here until some time next week, probably Wednesday, but he is going to let me know the dates he will be here. Outside of that we have nobody available, unless you want to start with one of the officials of the Department. If not we will adjourn until to-morrow morning.

MR. DREW: Is Mr. Cain available yet?

HON. MR. HEENAN: He is under the doctor just now and not available.

MR. DREW: Following what has been said this afternoon, it will fit into the record better I think if Mr. Vining's evidence comes next and you can follow after that with the officials of the Department.

HON. MR. HEENAN: Pardon me, Colonel, just a minute: The officials of the Department are all very timid chaps, they are very nice fellows and I think

they will give you good evidence, but in all fairness to them they have never been interrogated very much and if you could give them a kind of idea as to the line that you want to question them on they will be prepared.

MR. DREW: Yes, I will do that afterwards if you like.

MR. COOPER: I understood Mr. Johnson requested to make a statement to-day as to something that happened last night.

Did you want to make a statement, as you intimated to me this morning?

Mr. E. JOHNSON: Yes, I did. I have found out through the Swedish Consul, Mr. Ender, that all forest and paper and timber products to England were cut off, there is nothing coming from those Nordic countries at all, also special machinery that has been on order, no cables or letters going through, and I was merely wanting to bring up to this Commission that I thought there was a big opportunity to realize in the market on pulps, lumber, railway ties, and papers from Canada. It might be well or quite advisable to see if there was much more information that could be procured in that way than I have been able to give you so far.

THE CHAIRMAN: To-morrow morning at ten-thirty.

—At 4 p.m., the Committee adjourned until 10.30 a.m., Wednesday, April 24th, 1940.

TWENTY-THIRD SITTING

Parliament Buildings,
Wednesday, April 24th, 1940.

Present: Honourable Paul Leduc, K.C., Chairman, J. M. Cooper, K.C., M.P.P., Colonel George A. Drew, K.C., M.P.P., A. L. Elliott, K.C., M.P.P., Honourable Peter Heenan, Honourable H. C. Nixon, W. G. Nixon, M.P.P., F. R. Oliver, M.P.P., F. Spence, M.P.P., Dr. H. E. Welsh, M.P.P.

THE CHAIRMAN: The Committee will come to order.

Mr. Vining is here and before we proceed with his evidence I might say that the Secretary of this Committee informs me Mr. Clarkson will appear before the Committee to-morrow morning at 10.30. Mr. Arthur F. White will give evidence on Friday at 10.30. Mr. Belknap will be available and in Toronto on Wednesday, May 1st, at 10.30 A.M. Mr. Hinman will try to be in Toronto on Monday, April 29th, or Tuesday, April 30th. He will telegraph the Chairman as to the definite date. Mr. Sensenbrenner will write me notifying me as to the exact date he will be available.

CHARLES VINING, Called:

MR. DREW: Mr. Vining, just as a matter of record, you are the President of the Newsprint Association of Canada?

THE WITNESS: Yes.

MR. DREW: I think for the purpose of the record it would be well if you explained briefly the exact function of that association and its general purpose.

THE WITNESS: Well, the Newsprint Association is in general the usual trade association of the newsprint industry. Its main functions are to provide statistical information and to act as a clearing house in general for information and opinion among the manufacturers.

Its object is a simple one: To promote the welfare of the industry.

I think I should explain that I am not giving evidence here really as president of the Association, which includes all manufacturers throughout the country, not just Quebec and Ontario. I am here really as a member of an independent committee which has worked with the Quebec and Ontario Governments during the last five years in connection with prorating matters, because I understood it was chiefly with regard to prorating matters that you wanted to hear me. I will explain in a few minutes, if it is prorating you wish me to talk about, just how this committee came into being, but it is as a member of that committee that I should like to give evidence with respect to prorating at least.

THE CHAIRMAN: That is, the committee of the Newsprint Association?

THE WITNESS: No, sir; it is an independent committee. As I give my evidence the creation of that committee will become quite clear.

I might explain at this time that the committee originally consisted of Mr. W. H. Howard, Montreal; Honourable Mr. Ralson; Mr. Kellogg, an engineer, and myself. Mr. Ralston has since become Minister of Finance. That committee was nominated by the manufacturers and approved by the two governments as an independent committee which has acted more or less as liaison between the manufacturers and the two governments in matters connected with prorating.

MR. DREW: Just before actually proceeding to deal with the question of prorating, I would like to preface my own remarks, so that you will understand the course at least that my questioning is intended to follow in relation to your remarks.

This inquiry grew out of the situation arising in connection with the reorganization of the Abitibi. I mention that merely because it shows the direct association between the problem of proration and the general discussion of this Committee and it may possibly be of assistance in suggesting the nature of the evidence which would perhaps be relevant. That is, I am only speaking in regard to the questions which I will personally ask.

THE WITNESS: Yes.

MR. DREW: That point came up in this way: An Order-in-Council had been passed affecting the Abitibi and it was quite frankly disclosed that its purpose was to play some part in the general problem of reorganization of that large company. Out of that, discussions arose which led to the appointment of this Committee. The functions of the company and the reorganization of the company would necessarily be tied in with the problem of proration and other problems as well and for that reason it would appear to me, at any rate, that this Committee will be greatly concerned with the relationship of the government, and of the government department,—more particularly the department handling this,—and any arrangement worked out in relation to the subject of proration, because as I understand it, proration has really been something that the governments have imposed,—and I do not mean improperly,—by certain legislative pressure on the industry as a whole.

Having regard to that situation and having regard to the fact that in preparing any report which will be of use now or in the future,—and this record will be some value,—I believe it would be desirable that you go back to some extent into the history of the newsprint situation in Canada prior to the beginning of this arrangement in regard to proration. I say that because it does not seem to me that there can be a clear understanding of why proration is necessary or why it is not necessary, because there are two widely divergent opinions unless the background is explained.

I do not think that you as the president of the Newsprint Association will question the facts that this industry has been perhaps more unfortunate than any other in regard to a series of succeeding business crises. I should think that one of the hopes of this Committee would be to suggest some ways in which the long-term operation of the industry as a whole which is so closely tied to government as representative of the people who own the property and there should be some long-term suggestion for a method that will command those succeeding in office in business and also succeeding financial crises.

I have merely outlined my impression so that in the questions which I will ask you will have my general viewpoint on the matter, because I would like that you in your own words simply go ahead and explain it than that it should be in the form of constant question and answer.

THE WITNESS: Right.

MR. DREW: I have no hesitation in saying that I have indicated here that from the beginning of the inquiry that I believe some form of independent control is necessary if this industry is to be free from the constant difficulties which it has faced and the nature of that control, of course, will depend upon the experience of the industry itself and some way of working it out in relation to the foreign markets.

May I also say this, that no matter what the views of the rest of the Committee may be, I believe that your views should be expressed at some length because I think it may be safely said that no one has had a more direct contact with prorating than you, necessarily, in view of your position.

I think also I should make it perfectly clear that I approach the whole sub-

ject of prorating with very grave doubts because of the history of prorating in relation to other industries and I may say with some personal experience of prorating in regard to one industry with which I have had some connection and for that reason I do not think it can be assumed before this Committee that prorating is sound policy and if it is sound policy we should know on the basis of evidence. If it is not sound policy then we should also know similarly on the basis of evidence of those connected with it.

With those remarks I would like you to give the background in some exact detail of the situation in the industry which led to what we now know of as proration and then in your own way describe from that point on the way in which it is worked out.

THE WITNESS: Yes.

MR. DREW: The reason I mention that is that the word proration has been given a very definite meaning through use in some other industries.

For instance, there is an elaborate system of proration worked out in connection with the oil production of the United States and the term proration has been attached to a certain type of operation and it does not seem to me that the present operation here can be said to be practically on the same basis. That may be a question of difference in technical operation and method, but the word is one which has come to have a general meaning and nevertheless I do not think that the public has had any clear definition of exactly what proration does mean in relation to this industry in Canada.

With that preliminary of what has gone on here before, so that you may understand the nature of my questions no matter what other questions may be asked on any other viewpoint, I would like to have some detail of the history of the crisis which led to the beginning of this matter.

THE WITNESS: I will be very glad to do that.

It so happens that I have had occasion within the last few weeks to prepare a report on this subject for another use. In fact, I completed the report only a few days ago. I am not at liberty to file this report with the Committee as an exhibit, but if you will allow me I will refer to the report and make use of the material here as evidence. I should think that would be a perfectly proper thing to do.

It contains a history of the chronology of the background which led to prorating and some of the results as I have seen them.

Before I start on that, it might interest you if I gave you one or two examples as to the relation of newsprint with forest industries and its significance in public economy. Would you like to have something of that sort? I was here yesterday and therefore am not armed to the teeth with statistics, as it were, but I have only the figures which I happen to have with me. The last complete year I have of Dominion Bureau Statistical Returns happen to be the year of 1937.

THE CHAIRMAN: Is it the Calendar year?

THE WITNESS: I believe it is the Calendar year of 1937. I will not raise that point because I am not absolutely certain of it, but I believe it is the year 1937, Dominion Bureau of Statistical Returns, which show that newsprint had an export value of $126,466,000. Other grades of paper amounted to $9,688,000. Exports of pulp totalled $41,816,000. That is the total export value of pulp and paper and all the manufactured products amounted to $177,980,000. We add pulpwood to that; that is the raw wood unmanufactured. Export values of pulpwood were $12,088,000. So that of the total forest industries you had an export value of that particular year of $190,068,000.

Now, to show the relation of newsprint in that, newsprint represented 93 percent of the paper exported, 72 percent of pulp and paper, — that is, the manufactured products,—67 percent of paper, pulp and pulpwood combined. To break that down: Newsprint, 67 percent; other papers, 5 percent; pulp, 22 percent and pulpwood, 6 percent.

I think I am right in saying in 1937 newsprint was the most important single export commodity Canada had; that is, in its export value and the cash it brought into the country from foreign sources.

I have not complete figures here, but I have this figure that in 1938 and 1939 the value of newsprint exports exceeded the value of wheat exports by an average of a little over $10,000,000 a year. I just mention this because I find most people have little conception of newsprint in national economy and wheat seems to be something people are familiar with for purposes of comparison.

MR. DREW: Is that from the Dominion Bureau of Statistics?

THE WITNESS: Yes. All these figures so far are from the Dominion Bureau of Statistics.

MR. DREW: You mention the fact that the newsprint export is $10,000,000 in excess of wheat export.

THE WITNESS: It averaged that in 1938 and 1939.

MR. DREW: A year?

THE WITNESS: Yes. Gold was the only commodity exported from Canada in 1938 and 1939 which exceeded newsprint in export value.

I thought these figures might be of particular interest to this Committee, Mr. Chairman, because ninety percent of the Canadian Newsprint Industry is located in Ontario and Quebec and of course in these two provinces you have a little further significance in newsprint in that it, to quite an important degree, is the basis of the great power developments in these two provinces. The newsprint mills alone, according to estimates I have obtained from power company officials, use about forty to forty-five percent of the total power consumption of the two provinces combined. There are actually single newsprint mills which use more electric power than is required to light the cities of Toronto and Montreal together. The bearing of the industry on power development and power consumption has special significance in these two provinces, I think.

I do not want to worry you with too many statistics, but taking Dominion Bureau statistical figures again for the year 1937,—the figures I have given you have been export values in dollars. I have these figures as to volume of production: newsprint in 1937 amounted to 3,647,000 tons; other papers amounted to 698,000 tons. That is newsprint was about 85 percent of total paper production. That is without pulp. That is paper only. That is a little higher than normal, because 1937 was a rather abnormal year. I should say the average would be that newsprint would represent about 80 percent of paper production. I have not figures on pulp production. Pulp production figures are a little bit difficult in this way, that the great bulk of pulp production in Canada is of course used for manufacturing newsprint. I should say about three-quarters of it. I have no Dominion Bureau statistical figures on pulp production here.

I have these figures which I happened to have with me yesterday; an estimate by the Pulp and Paper Association, which I noticed recently for 1939 production.

1939, I may add, was a poor newsprint year and of course was a fairly poor year in the whole industry. The Pulp and Paper Association estimate is as follows: Newsprint production 2,900,000 tons, which is correct; other grades of paper and paper products 700,000 tons. Pulp production net,—that is, the pulp production other than the pulp used in the manufacture of newsprint, which of course would be duplicated,—also 700,000 tons. In other words, according to the estimate of the Pulp and Paper Association, last year newsprint was 67 percent; other grades of paper and paper products, 16 percent; and pulp production net 16 percent; in tons.

There is this to remember about newsprint, as far as its significance in our public economy is concerned, that 95 percent of the newsprint we produce in this country is for export, so that it represents for us of this country a cash crop, as it were. Ninety-five percent of the production means bringing money into this country from abroad and the money brought in by newsprint is substantially all spent in this country, because with the exception of sulphur and minor items, very little raw material is purchased from abroad for the manufacture of newsprint.

I think those are about all the statistics I will bother you with. They are all I happen to have with me.

MR. OLIVER: Where are the chief markets?

THE WITNESS: The chief market for Canadian newsprint is decidedly the United States. Within the last ten years, or less, however, there has been a considerable development of overseas markets. I might touch on that for a moment, if you wish.

One of the very interesting developments of the newsprint industry in general has been the development of markets other than the United States. I have not recent years' figures here, but taking a period from 1929 to 1936, for example, the United States consumed in 1929, 273,000 tons more than all the rest of the world put together.

In 1936,—seven years later,—the condition had been reversed. Other

markets consumed 900,000 tons more than the United States. In other words, to put it more simply, the United States has been more or less a static market in recent years. It appears to have reached its peak of consumption and been more or less on a level, with minor fluctuations, whereas other countries, particularly the Oriental markets and South American markets, have been developing very substantially. That is why these overseas markets have become of great importance to us.

MR. DREW: I understand that Germany has been a fairly heavy consumer.

THE WITNESS: Yes.

MR. DREW: Have you any figures on that?

THE WITNESS: German apparent consumption,—and when I say "apparent consumption", I mean shipments taken. That includes whatever stock it may have from year to year. I have only figures with me up to the end of 1936. German consumption in 1929 to 1936 year by year was: 451,000 tons; 337,000 tons; 321,000 tons; 391,000 tons; 349,000 tons; and 376,000 tons.

MR. DREW: How much of that was going from Canada?

THE WITNESS: None.

MR. DREW: None from Canada?

THE WITNESS: No. Germany, in fact, in recent years became an exporter to some extent.

MR. DREW: Of chemical pulp?

WITNESS: No, of newsprint.

THE CHAIRMAN: Outside of the United States which are our principal markets?

WITNESS: England,—and I am not giving them, necessarily, in order of importance.

THE CHAIRMAN: Very well.

WITNESS: The British Isles, Australia,—Australia and New Zealand combined,—the Latin American countries, South America, and the Orient,—China.

If you wish, Mr. Chairman, without taking too much of your time, if you would care to give me a list of the statistical information of that kind which you would like to have, I will endeavour to have a statement prepared for you and submit it to you by mail, or come back, if you so desire.

THE CHAIRMAN: We might deal with that at the end of your evidence.

THE WITNESS: Yes. I am afraid I am not equipped this morning to go very far into statistics.

THE CHAIRMAN: I do not suppose you came to Toronto expecting to give evidence before this Committee.

THE WITNESS: No, I did not. If you wish, I will proceed with some of the things Colonel Drew indicated, namely, the background of prorating. At the end of Colonel Drew's remarks he mentioned something about the definition of prorating, and perhaps it would be well to clear that up before we start talking about it.

Prorating, I find, has certain differences in meaning in different industries; different methods. In some cases,—and in particular I am thinking of one or two United States industries,—prorating has meant a curtailment of production. Where you have had an over-production of a commodity, prorating has meant applying a uniform curtailment of production on all producers in order to avoid a glut on the market. That is not true, in any sense, of prorating as it has been applied to newsprint. It has been applied to newsprint and the policy has been a very simple procedure. It has been simply a distribution of production. Production or shipments have been divided. That has been the policy. Divided among all the effective mills according to the efficient capacity rated by engineers of those mills, but it has been a distribution and not in any sense a curtailment of total production.

Approaching the background of prorating: Prorating, of course, arose as a governmental policy from the disrupted state of this industry and the effect of the condition of the industry upon the public interest. The newsprint industry, as Colonel Drew intimated a few moments ago, has had several periods of business misfortunes. Its own private depression really began before the general depression in 1929. I would say that newsprint troubles in this country began to develop about 1927 and 1928 and they began to develop through the very rapid expansion of the industry's capacity.

MR. DREW: Overbuilding and over-expansion?

THE WITNESS: Yes. There is a rather interesting point on the question of expansion which may be worth mentioning. We,—and those concerned with the industry and observers of the industry,—have inclined to be quite critical of the industry because of its over-expansion. Probably that criticism has been well justified. No one has been more emphatic in it than myself. It has not been only Canadian expansion which has caused the difficulty, but there has been considerable expansion of capacity in other countries.

One of the very curious things about this industry is that as far as I know it is almost the only industry in which expansion takes place in a time of depression. It takes place in this way,—and this has been the notable feature of expansion since, say, 1933,—you have the building of conversion mills, or converting mills. In countries like England and France,—those are two outstanding examples,—they have no forest resources of their own; they obtain their raw material either in the form of pulpwood or pulp from other countries,—principally from Scandinavia; they develop in the period of depression, because in the period of depression prices of these raw materials are very low. Therefore a converting mill can buy its raw material perhaps more cheaply than producers who have their own natural resources. For that reason we have this rather

curious situation of a considerable development of world capacity, and expansion of world capacity during depression years.

For example, outside of Canada in the five years of 1933 to 1937 we had new capacity as follows: British Isles, 150,000 tons; France, 210,000 tons; Japan, 125,000 tons and Scandinavia, 220,000 tons. That is a total of slightly over 700,000 tons of new capacity during those five years, while in Canada the expansion was 290,000 tons.

In Canada, since 1932 or so, I think there has been only one new newsprint mill built. That is just a minor point, perhaps.

MR. DREW: You are not referring to the one which has been built but which is not operating?

A. No, sir. The only new mill since 1932,—and I think I am right,—is the mill at Baie Comeau, Quebec.

THE CHAIRMAN: That is a large mill.

THE WITNESS: It is of about 115,000 tons capacity. That is perhaps not a particularly important point about expansion, but it is rather interesting to keep in mind the effect of these conversion mills which have their heyday in a period of depression, when they can get their raw material more cheaply.

I started to say that the troubles of the newsprint industry in this country began about 1927 and 1928 and there were efforts made at that time to deal with them. The two provincial governments of Ontario and Quebec made certain efforts, which I think it is unnecessary to go into detail in respect of here. The three largest banks in the country also made efforts through a bankers' committee under the chairmanship of Sir Edward Beatty. These various attempts unfortunately failed for a variety of reasons, which again I think it is not necessary to go into here. And for a period of a year or two it looked as though hope had been abandoned and there were no efforts of any kind apart from the efforts of the manufacturers themselves.

That brings us to the year 1934. I would like to take that as a starting point because it is a natural starting point and because it marks the beginning of my connection with the industry and from here on I can speak more or less at first hand. I will take as a starting point, as I say, the start of the industry in 1934. I will start by referring to the report I mentioned, if I may:

The industry had come to an almost complete collapse; approximately 50 percent of it was operating in receivership or default and a number of the prominent companies were on the verge of this condition. In wages, the workers of Quebec, we found, were worse off than coloured labour in the Southern States. Some mills by no reason of merit were running full, while equally efficient mills were shut down, with their employees on relief. Stumpage dues and other public revenues had been terribly reduced.

THE CHAIRMAN: If you are reading from that report the reporters may consult it when transcribing their notes.

THE WITNESS: I would have no objection to that for my part.

Producers by necessity were mining out their best wood resources and thereby creating future trouble. There was virtually no return on several hundred million dollars which had been put into the industry.

Internally the industry was a mass of suspicion, ill-will and discouragement. Secret price concessions and other sharp practices were common-place and a prolonged period of cut-throat selling had shackled the industry with a fantastic interlocking contract system by which a single seller through a single contract could and did arbitrarily fix the market price for the whole industry for a year or longer.

The general business trend was upward and tonnage volume was improving substantially, but newsprint prices remained at their lowest level in thirty years or so. The industry appeared to be without power of normal recovery. The detrimental effects of these conditions upon the public interest and the responsibility thus imposed upon the Quebec and Ontario governments were brought to a head by a number of incidents in 1934 and 1935. These are of present importance not only because they illustrate the development of governmental policy but also because they illustrate in a specific way conditions which may return.

Now, I do not know whether you wish me to go into these various incidents in detail. There you have the background and the state of the industry in 1934, the failure of attempts which had been made in 1930, 1931 and 1932. The state of the industry in 1934 was that it was virtually in a state of complete collapse. Following that condition in 1934 and 1935 there were a series of incidents in Ontario and Quebec which brought the two provincial governments unavoidably into direct contact with manufacturers. I will describe these incidents, if you wish. I think it is not really necessary in this, except you may want me to.

MR. DREW: Unless there is some reason why it is particularly undesirable having regard to the welfare of the industry. Personally I would like to see them in the record for this reason. Of course I have no way of knowing how far the other members of the Committee are prepared to consider it an important point, but I consider it is the real reason this inquiry was introduced, because so far as I can see it is the only way in which we can form some sensible judgment as to how necessary this is in view of the present situation.

THE WITNESS: I have not the slightest objection. In fact I will be glad to give you these incidents; it is just that I do not wish to impose further on your time than you want me to. If you find me going too much into detail, say so and I will generalize.

There are five incidents which I have in mind which can be taken of importance and each one led or had a part in the development of governmental policy.

The first incident occurred in October of 1934 and if you do not mind I will follow the report because I desire to be as accurate as I can.

THE CHAIRMAN: Go ahead.

THE WITNESS: The first incident occurred in October of 1934 when one of the Quebec companies which had lost tonnage and was approaching bankruptcy accepted an offer of some 30,000 tons from two United States buyers on the basis of continuing the 1934 price through 1935. By reason of the interlocking contract system this action automatically fixed the market price of the whole industry for the coming year.

MR. COOPER: What do you mean by that?

THE WITNESS: I will explain: The interlocking contract system was a product of the several years of depression in the industry. In order to obtain tonnage and to please buyers, if you like, as a form of selling argument or concession, a company would say to a buyer, "I will supply you with your requirements for a year and I will guarantee that my price to you will not be any higher than the price of X-company or Y-company." That reached the extreme form where companies would actually make contracts guaranteeing that their price would be no higher than the price of mills of 100,000 anywhere on the continent.

Now you can quickly see from that that one mill of 100,000 tons thereby could set the price for the whole industry, because these interlocking contracts became general with all companies, and this is actually what happened, as you will see, in this incident. It left a very pleasant strategical position open for buyers, because all they had to do was to persuade by one means or another one mill to make a satisfactory price or a continuance of the old price and they thereby had the whole market price fixed.

The interlocking contract system really cannot be over-emphasized. We are free of it now partly as a result of the policy which has been adopted, but it cannot be over-emphasized, as I said. It was a key to a great deal of the instability and trouble of the industry. Obviously you could not have stability where it would be possible for one company, for one man whose judgment might be faulty, or who might be subjected to curious or various forms of persuasion to set price for the whole industry.

MR. COOPER: Was this an idea on the part of the industry to protect itself?

THE WITNESS: It just occurred because of the competitive pressure and the pressure of buyers and mills. A buyer would say to a mill, "Unless you give me a contract of that kind, I will not give you my business."

THE CHAIRMAN: Will a new price set in the contract affect prices which may be made? Supposing that the X-Company made a contract with a newsprint manufacturer for newsprint at say $45.00 a ton on the first of January for a year and on the first of April another firm got a price of $42.50, would that second contract have the effect of reducing the price of the first contract?

A. Decidedly.

HON. MR. HEENAN: Q. On account of that clause?

A. On account of the interlocking clause. As a matter of fact without that I should say a public action of that kind by any major producer in reducing the

price would probably reduce the whole market price by competitive judgment; other mills would not be wanting to charge their customers more than a major producer was charging his customers. There are a number of curious features about this industry and you have hit on one or two of them there, Mr. Chairman. One is that contracts are made for annual periods, as a rule prices are named for annual periods; it happens at the present time that prices are being named only by quarters because of the abnormal war conditions which prevail; the manufacturers don't feel secure to judge further ahead than three months; but that condition of annual contracts and annual prices I think is rather unique in this industry, I don't know of other commodities that are sold that way.

Q. Mr. Vining, to emphasize that point that the Chairman asked: A publisher makes a contract with a manufacturer say for $45.00 a ton for a year and then another manufacturer makes a contract with another publisher during that period that the contract as written may be, say at $42.50, that automatically as I understood it came before the manufacturer at $45.00 a ton and he reduced the price to $42.50 during the period of the contract?

A. Correct. I think I can put that this way more clearly: Under the interlocking system that would be automatic, the man would have no choice, his contract would require him to meet the $42.50 price. Generally speaking even without interlocking contracts a manufacturer might want to meet that by commercial judgment, competitive judgment, but he wouldn't be compelled to.

MR. COOPER: Q. When would he meet the price, immediately that the other company entered into that?

A. Yes.

Q. And he couldn't look ahead with any security on his contract as to what his price was going to be at the end of the contract?

A. No.

THE CHAIRMAN: Q. And a manufacturer having established his price to provide for a reasonable margin of profit might be forced to fill his contract after a couple of months at a price below cost?

A. Oh, decidedly yes. I am glad that you have asked me to give you those incidents because I think they will elicit these points that we regard as important. I had just read this first study of the first incident, that by reason of the interlocking contract system this action of the one company automatically fixed the practice of the whole industry for the coming year, that is, continued the 1934 price for the whole year 1935.

On learning of this Premier Taschereau interviewed them—this was a Quebec Company—he did not attempt to say what the market price should be but he objected to the action of one company in blocking the normal improvement which had been expected by producers and consumers alike. By a threat of penalties in stumpage dues and cutting privileges he forced the other Quebec mills to provide the company in question with the tonnage it needed and he told

this company it must extricate itself from the situation it had created. The price in 1934 was $40.00 a ton; that was the lowest price in some thirty years. This action of the one company meant that the $40.00 price would continue through 1935 although volume of business was improving very substantially at that time. All other commodity prices were going steadily upward. As a matter of fact in 1935 the tonnage produced in Canada exceeded the previous peak of 1929 but as you see the price remained at $40.00 by reason of this incident.

The company, however, did not succeed in persuading the two buyers to revise the contract terms and in consequence the newsprint price remained at the 1934 level throughout 1935 although tonnage volume in 1935 proved to be higher than the previous peak in 1929. I had forgotten that that was here.

Premier Taschereau proceeded to impose the penalties he had threatened and the company in question suffered materially but he discovered that his authority in this respect was limited. This discovery and his disgust with the industry in general led Premier Taschereau to bring in legislation giving the Government much wider powers.

Then the second incident occurred in December, 1934, and gave the new Hepburn administration in Ontario its first direct experience of newsprint trouble. You could probably have more eloquent testimony of this from the Minister than from me because this was his first happy experience of newsprint I think.

HON. MR. HEENAN: "Eloquent" is the proper word.

WITNESS: One of the Quebec companies took from the Great Lakes in Ontario an important tonnage contract. Officials of the Great Lakes reported this to the Ontario Government and explained that the loss of the contract left the mill with so little business for 1935 that it would be speedily shut down unless other tonnage could be found. Such a shut-down would have meant an unemployment crisis at the head of the lakes where one of the Abitibi mills was already closed. The Ontario Government appealed to Premier Taschereau and the two governments by joint pressure succeeded in obtaining from other mills sufficient tonnage to enable Great Lakes to continue operations. This incident contained the rudiments of the prorating policy, it brought the two governments into joint action for the first time and emphasized in their minds the social significance of such behaviour.

I interject here between these two incidents and the next one the special legislation in both provinces. The above two incidents gave Premier Taschereau a very unfavourable opinion of the industry as a whole and he decided to obtain adequate legal power to deal with future troubles.

I needn't follow this in detail further except that it was these two incidents which led Premier Taschereau to bring in in Quebec the Forest Resources Protection Act; that was in the session of the Quebec Legislature of 1935. I presume that most of you are familiar with the Act. The Ontario Government at this time considered the advisability of introducing legislation paralleling the Act in Quebec—that was in 1935—it was dissuaded from such a course by several

Ontario manufacturers who pointed out that the Ontario companies all being in default under the terms of their timber limit leases were already at the Government's mercy. At any rate the Ontario Government concluded at that time that legislation was not necessary and it was not until a year later that they brought in the Forest Resources Regulation Act as in the meantime they had discovered that they did need some powers paralleling the powers in Quebec.

The Quebec and Ontario Acts are similar. They provide that in cases of conduct detrimental to the public interest the Provincial Government may impose penalties so severe as virtually to prevent the companies from continuing operations. The Ontario Act has in it provisions regarding the allocation of timber limits.

These first two incidents, that is the Quebec company continuing the 1934 price through 1935 and the near shut-down of the Great Lakes Company, convinced the governments that uneven distribution of tonnage among mills was a basic cause of the industry's instability. The second incident also made the Ontario Government begin to question whether Ontario was obtaining its proper share of tonnage and employment. At the beginning of 1935 therefore the two governments began to interest themselves in the question of tonnage distribution; prorating as such had not yet been conceived; but both companies began to press for tonnage to assist certain short mills and the industry was warned that it must work out some method of stability along these lines if it wished to avoid outright governmental control.

THE CHAIRMAN: Q. Pardon me. You said "both companies"; I think you meant "both governments?"

A. I beg your pardon. "Both governments" is what I should have said: "Both governments began to press for tonnage to assist certain short mills."

Now here you come to the beginnings of the committee that I promised to explain: With the introduction of the Forest Resources Protection Act the manufacturers realized that governmental control was no idle threat and a number of discussions took place early in 1935. This, keep in mind, was chiefly at this time in the Province of Quebec, because the early troubles of the industry seemed to concentrate in Quebec; later troubles followed in Ontario. One of these was the attempt of an independent committee to try to work out an adequate plan of detailed distribution which Premier Taschereau had said the industry must work out, and secondly, to satisfy the governments of the industry's good intentions in this respect. An independent committee was appointed because the manufacturers having a long history of some animosities and troubles behind them did not care to select manufacturers themselves for such a committee for dealing with the governments so they decided to select a small committee of persons not connected with any company.

The committee at that time consisted of Wilbur H. Howard, of the legal firm of Brown, Montgomery & McMichael, of Montreal, the Hon. J. L. Ralston, K.C., and myself. This committee later contributed to the development of the prorating policy and became a part of its operation. It began to report to the two governments in June, 1935, and had hardly started its work when the third incident occurred.

I must interject again there, so there may be no misunderstanding, that Hon. Mr. Ralston severed his connection with this committee in September, 1939, upon becoming the Minister of Finance and of course has had no further connection with industry affairs.

The third incident occurred in July and August, 1935. It arose from an attempt by United States buyers to repeat the procedure by which they had succeeded in the first incident the previous October, that is the interlocking fixing of the price. This time they approached Price Brothers & Company which was then operating in bankruptcy with one of its two mills almost shut down. They offered the company some sixty thousand tons or more that was to be taken away from other companies on condition that the price in 1936 be fixed at the 1934-35 level of $40 a ton. Acceptance would mean by interlocking contracts they fixed the market price for the whole industry and blocked any possibility of any improvement for another year.

We are clear now how that interlocking thing was worked?

THE CHAIRMAN: Yes.

WITNESS: When Premier Taschereau learned of this he took steps similar to his action in the first incident. He didn't suggest what the 1936 price should be but he objected to acceptance of inducement to block the normal recovery, he told Price Brothers & Company that it must not accept; at the same time he assured the company that the Government would compel other manufacturers to provide the company with its fair share of tonnage so that both of its mills could be operated. He informed the Ontario Government of the action he was taking and the company by letter and to other manufacturers through the committee Premier Taschereau stated that the new Forest Resources Protection Act would if necessary be invoked to its full extent, and he warned the industry again that it must work out some method of stability without delay. This was in the summer of 1935. The committee conferred with Price Brothers and the other companies, the Government's authority under the new Act was realized and the outcome was completion of a method for distributing tonnage to Price Brothers and certain other short companies for 1936 which although somewhat haphazard was accepted by Premier Taschereau in a letter to Price Brothers, as appeared fairly reasonable under the circumstances. The company, that is Price Brothers, thereupon complied with the Premier's demand and declined the terms proposed by the buyers.

This incident was an important development of governmental policy in the direction of prorating, first because it centred on the question of what constituted fair shares of tonnage, and secondly it thereby introduced disputes which showed the need for accurate capacity ratings. In that letter to Price Brothers, Premier Taschereau made first use of the expression proration of tonnage in the industry.

The matter of capacity ratings is quite important. The committee in its struggles to find tonnage for the company, which Premier Taschereau was insisting upon, ran into a series of disputes with the company itself and with other manufacturers as to what ought to be a fair share to Price Brothers, and unfortunately they had no accurate basis for determining that because at that time

there were no capacity ratings in the industry which the manufacturers regarded as being accurate. I will come to this later on, I think I may as well cover it now: The capacity ratings in the industry at that time had not been made by engineers, they were estimates based on shipments. Included in the capacity ratings were certain mills which the industry in general regarded as old—obsolete, if you wish—and there were a number of new mills that hadn't had an apportunity to run at full rate and which therefore were under-rated in the capacity ratings. So this incident brought out very clearly the need for some accurate rating of capacity of the mills as a basis for determining what constituted fair shares.

The next incident which occured again involved Great Lakes Paper Company, Aldridge and Gefaell's plan for reorganization of the company. I was just wondering if I could condense it at all because it is a little bit long.

MR. DREW: I don't know what the feeling of the other members of the committee is but I think for my own part that this is so fundamental to the whole future of the industry, which as you pointed out from the export point of view is second only to gold in value to Canada, that I think we should have as complete information as you can give us.

WITNESS: I would be very glad to.

THE CHAIRMAN: I think we can leave it to Mr. Vining's discretion to take as much time as he wants and tell his whole story.

WITNESS: Very well. I think it would be well then to give you certain aspects of this incident.

This incident again involved the Great Lakes Paper Company. It began in September, 1935, on the heels of the Price Brothers incident which I have just described and it presented the Ontario Government with a problem not unlike that which had just been faced by Premier Taschereau. Great Lakes was then being operated in receivership by National Trust Company. The problem arose with the introduction of the Aldridge & Gefaell plan to reorganize the company, Mr. Aldridge being an official of the Chicago *Daily News* and Mr. Gefaell a paper salesman who had solicited the United States publishers involved in the plan. The aspect of the plan was that a number of United States publishers, most of whom were customers of other Canadian mills, would place ten-year tonnage contracts with Great Lakes; by that I mean contracts for their whole requirements from Great Lakes for a period of ten years; and in return these publishers would receive free shares of B stock, one share per ton, bearing dividends concurrently with a dividend paid on the A stock which was held by genuine investors. Great Lakes, which had been without tonnage, as we saw in the second incident I described, the near shut-down, would thus take from other producers sufficient business for approximately full operation and this in turn might make possible the free stock dividend. That is, these publishers by putting their tonnage in might make possible full operation and that might make possible the payment of the B stock dividend. Other manufacturers were greatly disturbed by this plan; they regarded the free stock arrangement as merely a disguised price rebate. They also believed that the tonnage to be taken from other producers by this method would create new short situations and that in general the plan would work against the stability for which the two governments were pressing and most of the manufacturers wished to achieve.

An alternative plan of reorganization was submitted to the Great Lakes bondholders and when this was rejected the Ontario Government was advised. Premier Hepburn, Hon. Mr. Heenan and other Ontario Ministers examined this situation at a meeting on November 2nd, 1935, attended by representatives of the industry, the bondholders' committee, National Trust Company and counsel for Messrs. Aldridge and Gefaell. On November 6th the Government issued a statement that it would oppose the plan. Premier Hepburn informed Premier Taschereau of this position and invited the co-operation of Quebec to make sure that Ontario companies received fair treatment in tonnage distribution. The bondholders' committee obtained a court approval of the plan on December 20th but on appeal the approval was rescinded and the Government apparently was in a position to dictate terms. In the meantime National Trust Company in its capacity as Great Lakes Receiver had given the Aldridge-Gefaell group of publishers an undertaking that if the plan didn't materialize by April 1, 1936, the Great Lakes would supply them with tonnage at a price reduction of $2.00 a ton effective from January 1, 1936, that would have been a price of $38.00 a ton instead of $40.00, with some probability that other companies would have felt it necessary or expedient by competitive pressure to meet that price.

MR. COOPER: Q. Was this interlocking clause in the other companies' contracts at that time?

A. I should explain that manufacturers got rid of the interlocking feature by waiting until their contracts containing such clauses expired and then declining to renew them. By this time some of the interlocking clauses of contracts had been eliminated but it was a question which really nobody could answer without trying out as to whether enough had been eliminated to make it unnecessary to follow those prices.

During March, 1936, an agreement was reached between the governments, representatives of National Trust and counsel for Messrs. Aldridge and Gefaell. The agreement as accepted by the governments and the industry consisted of two things: First, amendments to the plan regarding the basis of dividend payments, and secondly, an undertaking to the Government that the new Great Lakes Company would participate equitably with other mills in such distribution of tonnage as the Government might require. It later developed that Mr. Aldridge and other directors of the new company obtained a different impression of the agreement, which I will come to later. On the strength of this agreementl as the Government understood it, the Government withdrew its opposition and the amended plan received court approval.

Now this incident is of importance in the developments I am trying to trace for three reasons: First, because it led to the Forest Resources Regulation Act at the 1936 session of the Ontario Legislature; second, dispute as to the terms of the above agreement, that is the agreement by which the Government withdrew opposition to the plan, dispute as to the terms of this agreement has been a source of constant difficulties between the Government and the companies during the past three years; and third, these difficulties have constituted and still constitute a major difficulty in the application and result of governmental policy, as I shall come to when we discuss the results of prorating.

During the course of this incident, that is this Great Lakes reorganization

matter, another important development was taking place. This was a growing belief on the part of the Ontario Government that Ontario as a province was not obtaining its fair share of tonnage. The question first arose in connection with the threatened Great Lakes shut-down, the second incident I told you about, at the beginning of 1935. The Hon. Mr. Heenan raised the question of that himself and later with the committee at intervals during 1935 and at his request several statistical reports were prepared comparing production by provinces. These reports brought out two important points: In the first place they showed the need for accurate capacity ratings because no reliable figures were available and I have mentioned that this unfortunate committee had already experienced the need for accurate capacity ratings in the Price Brothers incident. Now we found that it was impossible to answer Hon. Mr. Heenan's questions as to whether or not Ontario was getting its fair share because there was no basis for accurate comparison. Capacity is the only basis and we did not have accurate capacity figures. The committee pointed this out to the manufacturers at various times but no action was taken until 1936 when governmental pressure began to increase.

In the second place, the growing doubts on the part of the Ontario Government brought up the question of finding some form of tonnage distribution which would not merely obtain tonnage to relieve acute short situations, such as had satisfied the governments in these two cases, that is the Great Lakes shut-down and Price Brothers, but would assure each province of its pro rata share of employment and public revenues.

The whole question of interprovincial newsprint relations, including these aspects of it, came suddenly to a head at the end of 1935 when the Ontario Paper Company announced its intention of building a mill in Quebec. That is the new Comeau Bay mill, which I will come to in just a minute.

Just to go back for a moment, I think you can see from these incidents how the question of interprovincial shares of tonnage began to develop. At the time these incidents occurred the Government's great concern was naturally to find some way of dealing with that particular crisis, the near Great Lakes shut-down for example in the beginning of 1935 the Ontario Government's main concern was to find enough tonnage to keep that mill going. Naturally when the members of the Government began to think over situations like that they began to wonder whether the province as a whole was getting its fair share of tonnage and they began to realize that tons meant livelihood or unemployment meant so much more than breakdown of production or so many dollars. So that question developed to a major issue out of these incidents and as I have intimated that issue of interprovincial shares was finally brought to a head by this last incident, the fifth.

On December 7, 1935, Ontario Paper Company announced that it intended to build a one hundred thousand ton newsprint mill in Quebec, at Baie Comeau, construction to start early in 1936 and to be completed by 1938.

To the Ontario Government this seemed the last straw in the unfair treatment which it believed the province was receiving. Members of the Ontario Government, who had already believed that an adjustment was owing to the province, saw the new mill in Quebec as an addition to the disparity and their

indignation was emphasized by the fact that they were in the throes of the Great Lakes reorganization difficulties, in which they felt they were fighting a battle for the benefit of both provinces.

For a while, there appeared to be a possibility that co-operative relations between the two governments might be terminated but eventually an opposite course was followed. I mean by that that the committee detected in the temper of members of the Ontario Government after a while a disposition to have Ontario go its own way and seek volume of tonnage by whatever reprisal methods it might find necessary, and there was a risk, it seemed to members of the committee for a while, that co-operative relations between the two governments would be broken off.

Eventually an opposite course was followed, the two governments engaged in discussions in an effort to find a solution of their difficulties, and it was these discussions that resulted in an agreement between the two governments establishing a joint policy in newsprint affairs.

Each of the five incidents which I have reviewed was a phase in the development of the prorating policy. It was the cumulative experience of these troubles which led each of the provincial governments to adopt special legislation and finally brought them to an agreement on joint policy. Probably the main factor was the Ontario Government's feeling that Ontario was not obtaining its fair share of tonnage and this was the primary question in the conference which took place between Premier Taschereau and Hon. Mr. Heenan in Montreal at the beginning of 1936.

We are coming now to the real beginning of the prorating policy:

Both the Hon. Mr. Heenan and Premier Taschereau had discussions with members of the committee at this time, particularly with Hon. Mr. Ralston and myself, and we endeavoured to submit material and opinion which would assist a solution. The principal question in the Hon. Mr. Heenan's mind was to find the best method by which Ontario might be assured of its proper tonnage position.

There appeared to be two possible methods of establishing proper provincial division of tonnage. One was for the governments to agree upon provincial quotas, along the lines of other commodity quotas between countries, with each government then attending to the distribution of its quota amongst producers in its own province. The other method was for the governments jointly to see that each producer in the two provinces obtained his equitable share, from which an equitable share between the provinces would be bound to follow.

The committee favoured the second method. The Hon. Mr. Ralston and myself recommended it in discussions with Hon. Mr. Heenan as being the more practical of the two, and, as we believed, less likely to lead to interprovincial friction.

That is, if I may enlarge on that for a moment, we thought it would be very undesirable for everybody concerned to see a provincial boundary line drawn, to see each province set a certain quota for itself and then attend to its distribution

within its own province. We feared—when I say "we" I mean the members of the committee—we feared that might lead to interprovincial competition which would simply be an enlargement of the intercompany competition which had already brought the industry into an unfortunate state. So we recommended to both the governments that in order to arrive at a fair share of tonnage for each province they should assure or find a method of assuring that each company would have its fair share and it would automatically follow that each province would have its fair share.

Either of the above methods, or, in fact, any workable method of determining proper provincial shares, obviously required accurate figures of mill capacity ratings.

I think I needn't emphasize that further, I have already dealt with it. It was, however, the development of these discussions between the governments which finally led the manufacturers to take the action that we on the committee had been pressing them, to establish accurate capacity ratings, and at the be-beginning of 1936 we—whenever I say "we" I mean the committee—finally persuaded the manufacturers to take some action, and they began to arrange to engage a firm of engineers for purposes of these ratings, and were just in the middle of those arrangements when the two governments had this conference and they had their discussions in February 1936 and began to press the industry for action. That is how the rating of capacities came about.

A number of discussions, by telephone and in person, took place between representatives of the governments of Ontario and Quebec at the end of 1935 and early in 1936. I have no records of these discussions but the record is not important because all of it led to this final conference between Premier Taschereau and the Hon. Mr. Heenan in Montreal on February 25, 1936 when an agreement between the two governments was reached.

The agreement was that the two governments would follow a joint policy in regard to newsprint affairs and the main features of the policy were established as follows:

First, there must be an equitable distribution of tonnage between all producers in Quebec and in Ontario, and hence between the provinces. Second, the industry itself must proceed to work out a method of distribution and submit proposals to the governments. Third, that a reasonable method, representing the judgment of the majority of the manufacturers, would be adopted and enforced by the governments under their respective legislative powers.

One thing I wish to make clear, these three points I am reading out are not points from any document, because so far as I know there was no written agreement between the provinces, there was a gentleman's agreement only. These three points which I have read out are the three points which were explained to the committee and to the industry through the committee as being the basis of the agreement.

This joint policy was defined in letters from Premier Taschereau and Hon. Mr. Heenan addressed to myself for presentation to the industry, and the committee called a meeting of the manufacturers for this purpose on March 6th,

1936. At this meeting we explained the three points of governmental agreement which I have just outlined and we pointed out to the manufacturers that the governments expected and were insistent upon prompt action. We made that as emphatic as we could because in our belief both governments were in a temper that delay might effect unfortunate results for the manufacturers.

The result of this was that on March 6th the manufacturers decided to proceed at once with the survey of capacity ratings which I have mentioned and they asked the members of the committee to assure both governments at once that they were taking immediate action and that this survey of effective capacities was necessary as a preliminary to developing any plan of tonnage distribution, it had to be the basis of determining what a fair share should be. We reported this to both governments and assured both governments that in our judgment the manufacturers were perfectly sincere in their good intentions. We found that both governments at that time were inclined to be a little skeptical—I think we could hardly blame them for it, they had had a number of unfortunate experiences with the manufacturers and I think both governments were inclined to feel that this survey of capacities was being used as an excuse for delay, and we endeavoured to persuade them that this was not the case, but I remember the Hon. Mr. Heenan particularly was inclined to be a little skeptical and he told us to tell the manufacturers that he would not tolerate any excuse of this kind or any use of such a survey as a means for unnecessary delay.

While the survey of capacity ratings was in progress, members of the committee had a number of discussions—now this, to keep chronologically straight, was in March, April, May, 1936—members of the committee had a number of discussions with the two governments with a view of finding a formula for the required method of distributing tonnage. The outcome was a simple form of prorating which seemed satisfactory to the governments and which the committee was prepared to recommend to the manufacturers.

The method was to determine—this is the method of prorating—each manufacturer's equitable share of tonnage by his percentage of total effective capacity.

If a company's capacity were 10 percent of the total industry capacity, its share of the total tonnage would also be 10 percent. To put it another way, if the total shipments by all mills amounted to, say, 60 percent of the total efficient capacity, then each manufacturer's shipments should also be 60 percent of his individual capacity. Is that quite clear?

There was nothing unique about such a method, nor does the committee lay any claim to originating it. It was borrowed from prorating procedures, which methods have applied to various other industries in Canada and the United States, the oil industry, which Colonel Drew mentioned, being a familiar example.

It also paralleled the prorating of tonnage which has been practiced effectively for some years past by the newsprint industry in Finland. Before I finish, if you wish to keep me that long, I will enlarge a little bit on the state of affairs in Finland, that is, excluding war conditions.

But I will just mention now that in the Finnish industry the question of

prorating is very greatly simplified by the fact that all the Finnish producers, with one exception, sell their product through a single sales company. It is called the Finnish Paper Mills Association. It is not at all an association in the sense that we understand it in this country; that is, it is not a trade association, it is an outright incorporated selling company.

This company, selling for all the Finnish mills, then divides the volume of sales among its various member mills in relation to their capacity, or on some formula which they have established. So prorating is greatly simplified there.

The survey of capacity was completed about the end of May, and on its completion we reported the fact to the two provincial governments, and we advised the two governments—that is, the committee—advised the two governments that we intended to call meetings of the manufacturers on the 9th and 10th of June, 1936, at which they would have an opportunity of carrying out their promise of working out a method of tonnage distribution to submit to the governments. Bear in mind that the working out of that method had been postponed in March until the survey of capacity ratings could be completed. We advised the two governments of this, and each government gave the committee a message to submit to the manufacturers at these meetings enlarging somewhat on their insistence that a method of tonnage distribution be worked out and that it be worked out without delay, on the general principle that it must be based on an equitable share of shipments for each company in the two provinces.

At the meeting of the manufacturers we as a committee outlined the very simple method of prorating which I described a minute ago.

We told the manufacturers that we had had discussions of this with both governments; that it appeared satisfactory to them, and that we recommended it as a workable method. The manufacturers had no other method, no alternative method to propose, and that therefore was the method which was adopted and which we accordingly reported to the two governments.

Now we come to a point which unfortunately did not seem particularly important, or not sufficiently important, in June, 1936, but which is now, after the last two years' experience, of very pressing importance; that is, the method of applying or administering the policy.

When this agreement was made between the two governments very little thought, looking back at it, was given to the question of applying the policy. When I say "very little thought", I mean very little thought by the committee as well as by the two governments. The main thought was what the policy should be. And I think it was just generally assumed, it was known, in fact, that each government had adequate authority, and the committee was quite confident that the governments concerned could deal with any recalcitrant manufacturer.

The result was that although it was a joint policy of the two governments there was no machinery set up for joint administration. In fact, the whole question of administering the joint policy was left in an inadequate condition. We will come to that later when we see the results of prorating during the last two years.

It was necessary to provide some organization for carrying out details for which the governments intended to hold the manufacturers responsible, including the revision of the mill capacity ratings from time to time.

I want to touch on this because here is the second stage of the committee, how it happened to continue as an instrument of prorating. The governments had stated that the industry itself must attend to the procedure involved in distributing tonnage. That is, the actual mechanics. But they wished to receive reports from which they could ascertain whether their policy was being properly carried out so that measures of enforcement could be applied if necessary. In order to provide for revision of capacity ratings from time to time, revision was necessary because new equipment was put in and the conditions of mills changed. The manufacturers decided to retain the services of Mr. Paul Kellogg, the engineer who had been in charge of the original capacity survey.

To provide the necessary supervision of these details and contacts with the governments, the committee, consisting of Mr. Howard, Honourable M. Ralston, and myself, was asked to continue.

HON. MR. NIXON: Who replaced Mr. Ralston on the Committee?

A. Nobody. We dropped from four to three. Nobody as yet has replaced him. The committee consented to do that provided both governments found it acceptable, but stipulated that we should have the assistance of Mr. Kellogg, the engineer, as a fourth member. That was discussed with the governments and they expressed themselves as satisfied with the personnel of the committee, and that is the manner in which the original committee of 1935 happened to continue through the subject of griefs of prorating.

MR. COOPER: There is no Ontario man on that committee now, is there, Mr. Vining?

A. They are not regarded as being either Ontario or Quebec men.

Q. No; I mean the three members of the committee actually came from the Province of Quebec?

A. I happen to live in Montreal, but I am no more a Quebec representative than I am a representative of British Columbia.

Q. Let me put it this way: They are all residents of Quebec?

A. That is correct.

HON. MR. NIXON: The membership of the committee was not prorated?

A. That is correct. For practical purpose. I do not recall that the question of finding a resident in Ontario came up, as a matter of fact.

MR. COOPER: I am not saying that in a critical way.

A. I realize that. But it is a point. I suppose had the members of the

committee been selected from the manufacturers that point would have come up, about having an Ontario manufacturer and a Quebec manufacturer, and so on. I think the general feeling of the governments and the industry was that these people were acting for the industry at large and the two governments jointly.

I think I will interject a word here on the position of this independent committee. The relations between the governments and the manufacturers with regard to the prorating policy have remained in the hands of this committee. The committee has to a considerable degree acted as a liaison officer between the two governments, has provided each government with monthly statistical reports and has also by request of the governments submitted advice regarding situations arising from non-compliance with requirements.

Within its limitations the committee has endeavoured to make the methods followed effective. It must be made clear that authority and means of enforcement have rested only with the governments. Each government has dealt with cases of non-compliance in the manner it has deemed expedient. There has been no provision for joint or uniform enforcement.

This is perhaps an appropriate place to report that the position of the committee has not been an enviable one. If I may interject again, all this has a bearing on the major point I mentioned a minute ago; that at this time in 1936 a great deal of thought was given to policy by all concerned, but none concerned, as far as I can recall, gave a great deal of thought to the administration of it.

MR. DREW: You echo the sentiment of Gilbert and Sullivan that a policeman's lot is not a happy one?

A. Exactly. The manufacturers have looked upon the committee as representing the governments, and the governments have regarded it as representing the industry—thereby a personification of trouble and dispute. The committee has been blamed on one hand for harshness or laxity of governmental action, depending on the point of view, and, on the other hand, has been held at least partly responsible for deficiencies in breaches of policy over which it has had no semblance of control. We perhaps will come again a little later on to the position of the committee when we see the results of the policy.

There are a few things here which I think I can summarize very quickly. At this stage in 1936 there was a change of government in the Province of Quebec, or, rather, a change of administration. Honourable Mr. Godbout took Honourable Mr. Taschereau's place as Prime Minister, in June, 1936, and he had a brief term of office until August, 1936, when the Honourable Mr. Duplessis became Prime Minister.

Mr. Godbout, in that short term in office, examined the agreement which had just been made a month or so previously between the two governments, and advised us that he endorsed the agreement and intended to carry out the policy which Mr. Taschereau had inaugurated. Mr. Duplessis, when he came into power in August, 1936, took the same position. He made known to the committee and those of the industry that he intended to carry out the interprovincial agreement and the prorating policy which it embodied. When the

Honourable Mr. Godbout again became Prime Minister in the fall of 1939, he again endorsed the policy, and that is the position in which it stands at the moment as far as the attitude of the government is concerned.

HON. MR. NIXON: Have the publishers any preference as to the mill from which they receive their product, or is there any difference in the quality of the products from different mills?

A. Generally speaking, Mr. Nixon, there is no difference in the quality of newsprint. That is a generalization; it must not be taken too literally. Publishers do have a preference for the product of certain mills, that is, some publishers; not all. You are thinking perhaps of whether publishers are obliged to take tonnage they do not want?

Q. Yes.

A. No, that has not arisen.

Q. How can you avoid it?

A. It is avoided in these ways: That there are very few publishers who have such a particular preference for the product of a certain mill that they want to insist on it. There are a great many publishers who find the standard quality of the mills in Ontario and Quebec quite satisfactory. Moreover, a great deal of the allocation of tonnage took place through shipments to overseas markets where practically all sales are on the basis of standard Canadian quality, where that point does not arise at all.

Every effort, I know, is made by manufacturers to avoid any irritation of customers in that way; and where customers have any legitimate objection to quality, of course, they could not be compelled to take a certain product, and no manufacturer would try to force it.

Q. Does not this prorating scheme rather kill initiative on the part of a manufacturer of newsprint to find a market?

A. I am coming to that a little later.

Q. Pardon me.

A. That is quite an important point and I would like to cover it.

I think that is about all I need to say as to the background and the history of the development of the policy, I think we can go now to how the policy has been applied and what its results have been. Just at this stage, as a fresh base for considering the results of prorating, I might summarize the objectives of the two governments in their joint policy as we in the committee and as the industry in general have always understood the objectives to be. These were:

(1) To obtain a fair division of tonnage, employment and revenue between the two provinces.

(2) To spread employment and wages among mill towns and communities in order to ease the problem of social relief.

(3) To promote normal recovery and stability by which working conditions, Crown revenues and public income might improve.

Those are the three objectives as we have understood them.

It had been intended that the prorating policy would apply at once at the end of 1936 for the calendar year 1937. But in 1937 a temporary business boom developed and before the year was very far advanced there was such a demand for tonnage, which had come so quickly, that all the idle mills and machines were not immediately available to meet it. Before 1937 was very far advanced the problem was finally one of supply rather than the distribution of tonnage. Consequently the actual application of the prorating policy was deferred until the beginning of 1938. By that time conditions were very sharply reversed.

MR. DREW: What was the technical position which created that very sudden demand?

A. There were a number of things, Colonel Drew. There was an actual boom in business. Then there was throughout the world—I was going to say particularly in United States but I do not know that it was particularly so there—a stocking up of newsprint by buyers expecting and anticipating rising prices. In the United States the Canadian manufacturers had made a very early announcement of price increases to apply for the year 1938, and buyers, in consequence, proceeded to buy for inventory to quite a substantial degree. You had, shall we say, a natural business boom, which was very short lived, accentuated by the tendency of buyers throughout the world to stock up. The two things combined made a very sharp demand for newsprint. And again the supply and demand situation was affected by the fact that some of the idle capacity in Canada, although efficient capacity, was not immediately available; that is, not available within two or three or four weeks, because you cannot make newsprint by just turning on a tap—you have to get your wood ready, machine crews ready, apart from mechanical matters. Those were the different elements which went into the situation in 1937.

MR. COOPER: What was the price in 1937?

A. $42.50.

Q. Supposing somebody was venturesome enough to start a mill could he be sure of coming under this prorating scheme?

A. That would be for the Government to say.

MR. DREW: Just on that point, because it has some bearing on the desirability of this method, as I understand it the temporary shortage in mill capacity in 1937 was really created to some extent by an impression created by the Canadian industry itself that there was going to be a uniform increase in price; that the increase in demand here was not due to a corresponding increase in the use of paper?

A. No, that is quite right. That is the second thing I mentioned. There was an increase in the use of paper by the natural business boom which occurred. It was not merely that, but was the buying in advance by American buyers and by buyers in fact throughout the world.

Q. I think perhaps it is important at this point to clearly understand the situation because it might easily lead to false conclusions. There is already a tendency apparent in the statements that one reads in the press to imagine that such prosperity as may be created by war demands in industry will in itself solve some of the problems of the newsprint industry. My own impression happens to be that that is a very unsafe assumption.

A. I would thoroughly agree with that.

Q. You agree with that?

A. Yes.

Q. One reason why I think the point just raised is important for us to consider is that there might be a tendency, if one came to the conclusion that the shortage of mill capacity in 1937 was due to a sudden business boom—there might be a tendency to come to the conclusion that a shortage in mill capacity would result from any corresponding business boom in the United States, which is our main market, in the near future.

A. Yes.

Q. And from what you say I think we would be very wrong to draw that conclusion; that a mere business boom will not of necessity create a shortage of mill capacity in this country that would justify any feeling that we could be safe without some control over the industry. Is that it?

A. What you say is, in my opinion, quite sound. I was going to come to that point, but I think it might be well to clear it up now. There are some prospects, now uncertain because all war factors are uncertain, that before the end of the year there will be a fairly sharp rise in demand for Canadian paper due very largely to the curtailment of other sources of supply; that is, the fortunes of war happen to leave Canada now the main source of supply for the world. What the effects of the war are going to be remain to be seen. But it is quite possible that there will be a very sharp rise in demand for Canadian paper, and I know that that has made some people feel very optimistic, and has made them, in fact, feel as you have intimated, Colonel Drew, that the troubles of the industry are over; and, therefore, the matters that we are talking about here to-day are perhaps no longer of great importance. In my judgment no one could make a greater mistake than that with regard to newsprint. If the fortunes of war do happen to favour us, I should say the greatest favour they confer is that they give us in Canada a period of grace in which to consider these matters and find effective methods of stability for a period of far greater difficulty that is going to follow immediately upon the end of the war. I think we will enter a competitive period at the end of the war more difficult than any we have had.

THE CHAIRMAN: Might I ask this question, Mr. Vining: What is the total capacity of the Canadian mills?

A. I think I had better make sure. I am giving you accurate figures. I happen to have them here. I have them broken down in this way, Mr. Chairman.

The total Canadian capacity as rated for 1940 is 4,367,690 tons.

Q. What is the actual production?

A. May I add to that, that 1940 is a little abnormal. It has 310 working days, whereas the average working year has 309. So there is a little extra capacity, one day.

Q. But these mills are not producing to capacity at the present time?

A. No.

Q. What is the rate of their production at the present time?

A. The mills in Canada in the month of March produced 68.6 percent of their rated capacity.

Q. 68.6 percent?

A. Yes. And that is a considerable improvement over a year ago. A year ago it was 58.6.

Q. So that they could increase their production by 100,000 tons per month before they reached capacity, approximately?

A. Oh, I think it would be more than that.

MR. DREW: It would be more than that, yes.

MR. COOPER: What was March, 1937, Mr. Vining?

A. Our capacity was considerably lower because there have been a great many mechanical improvements since 1937. 89 percent.

Q. That was practically the peak, was it not?

A. Yes. Well, the average for the year 1937 was 93 percent odd of a lower capacity.

MR. DREW: Mr. Vining, I have been struck very forcibly with the impression that is undoubtedly getting abroad, as one reads the newspapers, that these troubles of ours in this industry are going to be solved by war demands. Now, there is a constant suggestion that because of the shutting off of Scandinavian products we are going to have a sudden increase. In the first place, I believe I am right in saying that there is a very general tendency to exaggerate the relation of Scandinavian production in proportion to our own, but, in the second place, the consumers of newsprint I imagine have been buying in advance and these March figures that you have given already anticipate to some extent the elimination of the Scandinavian market.

A. They do not anticipate it. To some extent they are the result of the Scandinavian supply already having been eliminated. There has as yet, so far as we can judge from the statistical reports, been no substantial stocking up. In fact, in the month of March the publishers' stocks in United States diminished by quite a substantial figure, which I do not happen to have in mind. This has been due partly to the stable price policy which the Canadian manufacturers have followed. They have now announced a price good until the end of September.

THE CHAIRMAN: The mills are producing at about 68.6 percent of their capacity?

A. Yes.

Q. If they were working at full capacity they could produce—I figured it up roughly—about 1,358 thousand tons more per year?

A. I have not worked it out but it would be something like that.

Q. These are rough figures?

A. Yes.

Q. So we could increase our exports by well over 1,000,000 tons a year without increasing the capacity of our mills?

A. About 1,000,000, I should say.

Q. Yes.

A. It is always wise to keep this practical point in mind; that no industry as a whole industry could operate at 100 percent of its rated capacity.

HON. MR. NIXON: That is rated capacity, that is not its actual capacity?

A. Yes.

Q. Do not some of the mills exceed that rated capacity?

A. They may exceed it for short periods but not over a yearly period, except by reasons of improvements they may make during that year. Then when their rating is revised for the coming year those improvements are reflected in a higher rating. There might be isolated cases of mills being able to speed up and exceed their rated capacity.

Q. Was there not an eastern mill which over a year far exceeded its rated capacity?

A. I have not any such case in mind at the moment.

THE CHAIRMAN: In any event, we could increase our exports considerably without increasing our mill capacity?

A. Our present rate of exports, yes. Here is a simpler way of finding that out. Last year our total exports were 2,861,000 tons, and our rated capacity last year was 4,293,361.

Q. What was the domestic consumption?

A. Canadian consumption is roughly 200,000 tons; approximately 5 percent.

Q. Would this be a convenient time to adjourn?

A. Yes, certainly.

At 12.35 p.m., the Committee adjourned until 2.30 p.m.

AFTERNOON SESSION

WEDNESDAY, APRIL 24, 1940

THE CHAIRMAN: The Committee will please come to order.

Mr. Vining, will you proceed?

THE WITNESS: When we adjourned, Mr. Chairman, we have reached the point of the actual application of the policy. I had explained that the application of the policy had been deferred in 1937 by more or less a temporary and a more or less artificial boom and the actual application of the policy began in January, 1938.

The conditions in 1938 were exactly the reverse; a very swift depression had come at the end of 1937. There was a drop in the consumption of newsprint and there was a still greater drop in demand for Canadian paper because of the stocking up by buyers during 1937. They had accumulated in some cases as much as six months' supply for use in 1938.

The result was that in the first few months of 1938 the mills in Quebec and Ontario operated as low as forty-five percent in capacity and for the whole year of 1938 operated very little above fifty percent. I think the figure is about fifty-three percent.

So, coming into the year 1938 at its very inception the prorating policy made a very critical test of its effectiveness as an instrument of stability. Its inception was during a period of abnormal difficulty. The general procedure in the method of the prorating policy, I think I covered completely enough this morning and that it centred on this independent committee which I have mentioned and it has been the only approach to a connecting link between the two governments and the industry.

The procedure was that the governments required and the committee supplied monthly statistical reports on each company's individual shipments and their relation to the average of all the mills in Quebec and Ontario.

I should add that these reports which manufacturers also receive, the Committees supplied on this an estimate of the future month's business, necessarily an approximation, and the governments required that each manufacturer would keep his shipments to the average of the industry as a whole. If a manufacturer found himself getting above average, he was required to arrange with other manufacturers to make tonnage and fill his orders for him. The Committee as far as possible warned manufacturers when it could see that a manufacturer was getting dangerously over position, over average, and would endeavour to assist manufacturers to arrange for distributing their tonnage and their orders and having their tonnage made by other mills.

MR. COOPER: Before you leave that subject, who gets the orders? Who goes out and actually gets these orders?

THE WITNESS: Again you need to keep in mind the peculiarity of the newsprint business. As I mentioned this morning practically everything connected with it is on an annual contract basis and under annual contracts. Customers specify each month as to how much they may require for the next month's requirements. A typical or average contract would be between a publisher and a mill for the publisher's full requirements for the year 1940 and the buyer would specify each month, say, about the 15th or 20th of the month, what his requirements would be for the next month. They are not always even monthly amounts; there are seasonal peaks as there are seasonal peaks in advertising. It is not a business of spot orders and of going out day by day soliciting spot business.

MR. COOPER: There must be some way of taking up the slack in the shipping costs of one company and another; that is of what one mill will pay from one place to another and of what another mill will pay from one place to another in order to deliver those orders depending on what mill they come from.

THE WITNESS: Yes. Paper is delivered at a uniform delivery price at the destination. There is room and has been room for economies in just the point you have mentioned, on the shipping from a mill that has the lowest possible freight rates. That was one of the uneconomical sides to this industry which developed during the depression period: You had a crossing of deliveries. You had mills in Quebec delivering to the mid-west while you would have mills in Ontario delivering to New York.

To some degree, I should say, the prorating has worked out an economy in that direction, because naturally effort is made in allocating orders and distributing tonnage to find mills where the freight rate would be lowest. There is room for more improvement in that respect.

In theory, if all mills of the province were under one central control, which is an impossibility, of course, but if that were so, however, there would be room for greater economy in arriving at minimum freight rates. Naturally, competition leads you to some criss-crossing of deliveries.

MR. COOPER: Is there anything goes back to the original mills?

THE WITNESS: They have given some subsidy.

MR. COOPER: On account of loss of business in some way?

A. No, sir. The basis of distributing orders is "No profit" and "No loss". That is, the mill which is over average and which is required to distribute its orders, distributes on the basis by which the short mill,—if you understand what "short mill" is,—obtains a price by which the "long mill" neither loses nor makes any extra money.

MR. COOPER: There is no adjustment of the overhead of the big mill which gets its orders on the portion of the other one.

THE WITNESS: No.

I was starting to say that there have been two major aspects of difficulty in the application of this policy during the last two years. One of them can come under the heading of exempted mills and the other comes under the heading of non-complying mills.

On the question of exemptions, I think I would like to refer to the report I mentioned this morning. The governments have not applied prorating to all mills in Quebec and Ontario. At the beginning of January, 1938, they decided to give exemption to several mills owned or partially owned by United States and English publishers.

Exemption was first given to two mills of Ontario Paper Company, owned by the Chicago Tribune and its associates, including the new Baie Comeau mill already mentioned. The exemption was granted on the strength of a memorandum from the company to the two provincial premiers and based on this case of exemption, certain exemptions were claimed and granted to the Spruce Falls Mill, in which the New York Times is a part owner.

The Donohue Brothers' mill in Quebec, which was then under lease to Hearst, and the Anglo-Canadian mill in Quebec, which is owned by the English publishers.

The committee was informed by the two governments of this decision in January, 1938, and the committee was informed that the exemptions would apply for the year 1938 and that the position beyond 1938 would be determined later.

There has been no further statement with regard to exemption policy and the exemptions therefore have continued to date with the exception of the exemption given Donohue Brothers in Quebec, which Premier Duplessis cancelled when the Hearst lease came to an end towards the end of 1938.

MR. COOPER: That only applied to the mills where the financial publisher made the financial investment himself.

THE WITNESS: Yes. It applied to the mills I have mentioned which were either wholly owned or partly owned by United States and English publishers.

I would like to say this: This question of exemptions might well take up a whole report in itself. It is a long involved and controversial question. I think it would help you very little if I were to go into the pros and cons of it here this afternoon. It is an important aspect of the prorating policy, has had quite an effect and has a present effect upon its effectiveness and continuance and must be kept in mind in that light, but I think you gain nothing by having me go into all details of the argument at the present time.

However, I think I should in a general way give you an idea of the extent of the exemptions and what the committee believes to be their present effect. If I may refer now to the report which I mentioned this morning, I will give you the view of the committee and I would like to remind you that what I am saying represents the experience of this independent committee as a whole and is not merely my personal view except where I say so.

When these exemptions were granted in 1938 it is improbable that either of the premiers or the governments could visualize their extent or the effect they would have on equitable division of tonnage between the provinces and certainly no person two years ago could foresee the bearing which these exemptions have to-day on the effectiveness of the joint policy.

In extent the exemptions now amount to over 400,000 tons a year. Last year they applied to one-sixth of the total business of the two provinces. In Ontario the exempted tonnage was 28 percent of provincial shipments; in Quebec it was ten percent.

MR. DREW: 28 percent?

THE WITNESS: Yes. Expressed in operating rates, the exemptions last year, in 1939, made a difference of about five points in the industry average. Last year the prorating mills in Quebec and Ontario averaged 50 percent of capacity. With no exemption they would have averaged about 63 percent. Is that quite clear? The exempted mills are one hundred, naturally, and the prorating mills are 58 and had there been no exemption the general average would have been 63. The difference is equivalent to the total business improvement of 1939 over 1938. That is, in 1938 the prorated average was 53 percent; in 1939 it was 58 percent; a difference of five points.

The exempted capacity ran full in both years.

With respect to the effectiveness of prorating, the committee finds that the deterioration of policy in recent months,—which I will come to in a few minutes,—has been considerably due to this exemption and the inconclusive state in which the question of exemptions has been left. It is for this reason that exemptions have been used by other manufacturers as a reason for declining to comply with the prorating policy and the exemptions have created widespread bitterness among mills and workers particularly in Quebec who feel that they are being discriminated against.

In these respects and in the effect on interprovincial division of tonnage, the practice of exemptions during the past two years must be reported as operating to defeat the main objectives of the agreement between the governments and

for these reasons in the committee's opinion it seems obvious that the subject requires a new and thorough consideration. They do not suggest what that consideration should be nor what the conclusion should be.

MR. COOPER: I have no brief for any company, in particular,—in fact I do not even know who they are,—but would you not say on the face of it that there would be some international complication if these exemptions were disallowed?

THE WITNESS: No, I would not say international complications.

MR. COOPER: Here is a publisher who has capital in a mill and it would certainly interfere with vested interests; would it not?

THE WITNESS: If you do not mind, Mr. Chairman, I would prefer to not get into the pros and cons of exemptions. It is a subject on which there is room for a considerable difference of opinion.

MR. COOPER: Then I will withdraw the question. I do not want you to get into a long discussion on the question.

THE WITNESS: No, but I think that is what we would get into. I, at the moment, am in a perfectly detached position in regard to the question. If it were handed to me this afternoon for decision, I do not know what my conclusion would be.

All I should like to report to this Committee is the belief of the independent committee that the subject requires new consideration.

I should add that whatever the settlement of it is, it should be a settlement which will satisfy the Canadian companies as to its fairness.

MR. DREW: In that respect, without in any way questioning the motives of your desire to not discuss the matter, I might point out that we come again to the very difficulty which we have faced at so many points in this discussion.

THE WITNESS: Yes?

MR. DREW: The patient is very sick, there is no question about that, and the disease has been diagnosed to some extent but then when the consultation gets to the point where it is a question of deciding how deep or where to cut, then at every point we find the suggestion that it is not wise to go too far in discussing the method of cutting, because we may possibly injure someone's feelings in connection with it.

Now, I am not saying this in any critical way, but it is a very striking matter, because I would suggest that the patient is sick and as the patient is obviously very sick in this case, there has to be some fairly deep cutting if the ill is to be remedied. I am wondering where this Committee of inquiry has to go in order to find out the answer, because it seems to me that that is the answer.

MR. COOPER: Mr. Chairman, I think probably it should be from another witness. This man is apparently in a dual position.

HON. MR.HEENAN: I can see the position Mr. Vining is in. This is a matter which has been decided by the two governments,—whether rightly or wrongly,—and he does not want to be put in the position of saying that they decided either rightly or wrongly.

THE WITNESS: I think I implied that it may not have been decided rightly when I suggest very emphatically that it needs reconsideration.

MR. DREW: The point I am making is not in any way by way of criticism of your suggestion that you would prefer to not discuss it further, but I am merely indicating one of the difficulties we are confronted with in trying to find some solution. It appears to be quite obvious that this whole question of proration is one which cannot be separated from a consideration of the administration of the Department, because the two matters are now tied together, and the history of proration, I am prepared to say emphatically, in most other similar arrangements has not proved too satisfactory and as I understand it, one of the major reasons for the breakdown in the proration system elsewhere has been in exemptions which would, as you have pointed out, lead to friction or misunderstanding which in turn would lead to unwillingness to comply with the strict rules.

Without asking you to go further than you have, I would ask you if you have any suggestion as to where we can go to get more complete evidence on the better way of working this out.

THE WITNESS: On the one question of exemptions?

MR. DREW: Exemption in relation to proration, because this is not a new problem at all. I think practically in every case where large scale proration has taken place the problem of exemption has come up and certainly in the case of some industries right in this country the exemptions have defeated the original plan of what you might call proration in any one given industry.

MR. COOPER: I do not think we have any other industry which has proration of this particular kind which we are discussing here.

THE WITNESS: There is no other industry that I know of which has interprovincial proration.

MR. COOPER: I mean these American companies; it is a different thing entirely; it is a matter of production or distribution.

THE WITNESS: Well, there are various degrees of prorating in American industries. There are some examples which I will give you, if you wish, before I finish.

MR. DREW: I do not want to elaborate the point, but I have been impressed with our difficulties in getting down to fundamentals in so many cases. I can quite understand the difficulty, but this, it seems to me, is once we must try to break through in some way. While we have been discussing this question I have been looking for light as to where we can break through the whole problem.

When you say there has been no similar proration, there has been proration. There is a trial going on in the City of Toronto at the present time in regard to what is in effect proration in a particular industry. I am referring to the trial of those who had organized a method of proration within the paper box industry,—an industry strange to say, closely tied up with our forest products. That type of proration has gone on in many kinds of industries and we know perfectly well that while there may be one trial going on at the present time it has been a general practice in a great many industries. I can say from a personal knowledge of at least two industries, that exemption was the thing which broke down any attempt at enforcing the general plan of proration within a particular industry.

MR. COOPER: Colonel, is that not true in the case of combines in the curtailment of general production; I refer to the proration of which you speak.

MR. DREW: I am only pointing out that those methods are really in effect proration, no matter what the purpose may be.

THE CHAIRMAN: Mr. Vining, I believe, does not care to give his opinion on that point and I do not think it would be fair to question him further. I suggest that he go on with the next point.

THE WITNESS: I would like to try to make it a little clearer as to what my attitude is on this point. What I am trying to give you is a comprehensive view of the whole policy, how it has been applied and where it stands to-day. In that general view the question of exemptions is one major factor.

Now, if we stop to debate the question of exemptions, that can be a subject of inquiry in itself. I think I have indicated enough for you as to a conclusion of that question when the committee reports that it finds the deterioration of policy during recent months considerable due to the above exemptions and to the inconclusive state in which the question has been left, because exemptions have been used by other manufacturers as reason for non-compliance and I refer to the widespread bitterness they have caused among mills and workers. For these reasons it is obvious that the question of exemption requires a new and thorough consideration. That is as far as the independent committee thinks it should go.

If we are questioned by governments as to our view, that is another matter, but I do not think this is the place to enter into the debate of that particular phase of the general policy. I do not think it would be becoming of me, for one thing, and I do not think it would be helpful in any sense.

THE CHAIRMAN: You just pointed out you are an independent committee and you do not want to go any further, so proceed with the rest of your remarks.

THE WITNESS: The other general aspect of the difficulty in the past two years, as I mention, has been the matter of non-compliance on the part of certain companies and here we come to a place where the Province of Ontario has had the major share of difficulty.

I think it was quite clear this morning in the various incidents I reviewed that in 1934 and 1935 the major part of the difficulty seemed to rise in the

Province of Quebec. Within the last two years that has been reversed and I should say the Government of Ontario has had the greater part of the difficulty. There have been four definite cases of non-compliance in the last two years and in each case there has been a degree of governmental action to correct them.

In Quebec there were a number of incipient cases of non-compliance at the beginning of 1938.

To meet them Premier Duplessis called a meeting of Quebec manufacturers in his office on April 4th and made his intentions so plain that the companies in question were conforming to requirements before the middle of the year. Some of them had already piled up excess over average and in order to conform to the requirement of meeting the industry average, were obliged to distribute orders and operate themselves at about thirty percent of capacity for a three months' period.

One case in Quebec involving Donohue Brothers developed in the year 1939 and has been partially but not yet fully settled.

Within recent months there have been new cases of this kind developing in Quebec and we believe them to be due to the continuance of exemptions and to the continued inconclusive state of affairs of non-compliance in Ontario.

In Ontario there have been three cases. Two of them began immediately in 1938 at the start of prorating and involved the Beaverwood Fibre Company and the Great Lakes Paper Company. The third case developed in 1939 and concerned the two Canadian subsidiaries of Minnesota and Ontario Paper Company at Kenora and Fort Francis. For the sake of brevity I refer to these two subsidiaries as the "M. & O."

In each of these three cases the Ontario Government has taken action to require compliance. The action taken by the Government has been very prolonged, troublesome and difficult, but as yet the three cases have not been brought to conclusion.

I think I should point out to the Committee that in the Province of Ontario you have a peculiar situation in the newsprint industry which may partly explain the added difficulties of the Ontario Government. In Ontario there are seven newsprint companies. Only one of these seven is a small company which has its woods operations in Quebec and is the only one which can be described as being in a more or less normal condition. The other six are abnormal in the following way: Two of the six companies are Ontario Paper and Spruce Falls. They have been exempted or partly exempted to the extent of 28 percent of the province's total tonnage, the exempted capacities running full. The three other companies of the six are Beaver, Great Lakes and M. & O., which are cases of non-compliance and at the moment are over average by a very substantial amount. The sixth company is Abitibi, which as you know is in receivership and is now substantially short of average because of the non-compliance of these other companies.

But when you picture that line-up of six companies I think anyone can see that the Ontario Government has not found it easy to handle newsprint difficulties with the method of procedure which has been the only method available to-day.

MR. DREW: Have we any completely exempted companies in Ontario?

THE WITNESS: Yes; the Ontario Paper Company is completely exempted and Spruce Falls is partially exempted. So, you keep in mind those two major aspects and if you wish I will come back again and go into details on them.

The one major aspect is the kind of exempted mills and the situation created by these exemptions. The other major aspect, taken as a group, are these cases of non-compliance, of which the major cases are in the Province of Ontario. You have four cases of non-compliance; one in Quebec, Donohue Brothers, which has mills in a state of suspension; three in Ontario, one of which is more or less in a state of suspension and two of which might be regarded as the focal point of all the present difficulties in the application of this policy, these two being the Great Lakes and M. & O. cases. As I say, I will come back to the details of these cases if you wish, but I would like to first give you a general view of what the results of prorating have been and where things stand at the moment.

I think I would like to briefly review the present position of tonnage distribution, because the present state of tonnage distribution is a means of judging how effective the prorating policy has been with regard to its objectives of getting equitable distribution of tonnage.

We have these four cases of non-compliance and the continuance of these cases affects the position of other companies in two ways and this is where you get, as these cases of non-compliance continue, a deterioration of policy and stability. They affect the position of other companies in two ways. First, manufacturers begin to think it is safe for them to ignore governmental authority and they refrain from distributing their tonnage and begin to pile up over positions of their own. One case proceeds and another and secondly, other manufacturers eventually acquire such shortages that they too begin to think they had better risk governmental displeasure and seek tonnage by any means they can devise. That is how you gradually come to a deterioration of stability and begin to get a return to cut price tactics and the sort of thing this policy is intended to correct.

At December 31st, 1938, after the first year of governmental prorating, the variation from the industry average among all the Quebec and Ontario prorated companies was only 29,000 tons, which was an extraordinarily good result. The two cases of Beaver and Great Lakes alone accounted for 24,700 tons, or 85 percent of the total deficiency. That is, among all the other companies of the two provinces who were being prorated, there was an average of only 4,300 tons.

At the end of 1938 despite the great difficulties of the year the application of governmental policy had been remarkable effective. The incipient cases in Quebec, as mentioned, had been firmly checked and action in Ontario was being taken.

I am sorry to have to report that in the past fifteen months,—that is between the date of December, 31st, 1938, and the end of March, 1940,—there has been a deterioration. Two more cases of non-compliance developed during that period and two other situations have become doubtful.

The total variation has increased rom 29,000 to 80,000 tons. The average represented by Beaver and Great Lakes was up substantially from 24,700 to 37,000 tons, but it now represented only 46 percent of the total, because other companies had followed their example and the average of the other companies was up from 4,300 to 43,000 tons, and of course that means that the shortages of companies under average had grown accordingly.

So, you can sum up the position at the end of March in this way: Companies over-average included four cases of non-compliance, which I have mentioned, totalling 60,000 tons, three in Ontario being 57,000 tons and one in Quebec being 3,000 tons.

Two new doubtful cases developing in Quebec amounting to 13,500 tons and six casual situations, month to month variations of 6,500. There is your 80,000 tons over-average. All that has fallen,—or the greater part of it,—on two companies, which between them are 60,000 tons under position.

There are two other companies in Quebec which between them are 17,000 tons under. There is your 80,000 tons under-average.

I must make it clear that the figures I have mentioned represent only the companies which the Ontario and Quebec Governments had included in pro-rating. They do not include the mills which the governments so far have exempted, although I mentioned them.

The exempted tonnage now amounts to something over 400,000 tons a year. I have already pointed out that the exempted capacity has run full during the last two years as compared with the prorated industry average of 53 percent in 1938 and 58 percent in 1939. Complete prorating last year would have raised the industry average to about 63 percent. That is the general position of the companies.

Now, you have to take into consideration the position of the two provinces with regard to distribution of tonnage. We must keep in mind that the first objective of the prorating policy had been to secure an equitable division of tonnage between the two provinces. In the actual application of the policy that objective has been obstructed by two factors which I have already mentioned, —two unforeseen factors, we might call them—the first being the fact that the major cases of non-compliance so far have all developed in Ontario, the second being the fact that the greater part of the exempted capacity in relation to Quebec has been in Ontario, the ratio being about three to one.

Because of these unforeseen factors you have a division of tonnage between the two provinces thrown out of balance, naturally. Instead of having what was intended to be an equitable or even division between the two provinces, you have had in Ontario in 1938 shipments representing 63 percent of total Ontario capacity, against 55 percent in Quebec. In 1939 the provincial averages were 67.7 for Ontario and 60.1 for Quebec.

MR. DREW: What average for Quebec?

THE WITNESS: 60.1 That is, total shipments of the two provinces, both exempted and prorated companies.

MR. DREW: It is not yet on the record but it may be interesting to have the absolute figures on the basis of comparison; that is, I mean the exact tonnage that represents.

THE WITNESS: That represents a difference, approximately, of 70,000 tons a year.

Q. I do not mean the difference, I mean the basic figures. During 1939, what was the total tonnage?

A. The actual shipments? I haven't those figures here, Colonel Drew; I can easily send them to you afterwards.

Q. That, of course, can be put on the record, but at the moment can you give a general approximation of the relative position of the two provinces in that respect?

A. I can give you a general figure of their capacities and the percentages. That would serve the same purpose?

Q. Yes.

A. I will give you an approximation.

THE CHAIRMAN: Perhaps you have not the figures here. In that event you might send us a letter or a statement showing the rated capacity of the Ontario mills and of the Quebec mills and the production in tons for each province in 1938 and 1939.

A. Yes. I have given you the percentages. What you want are the actual figures of tons shipped?

THE CHAIRMAN: Yes.

MR. DREW: Is Ontario higher or Quebec?

A. In tons?

Q. Yes.

A. Oh, Quebec is much higher. Quebec has a much greater capacity than Ontario.

Q. I would not want you to guess. It would be better to wait.

A. I think I had better send you the exact figures. They are not included in what I have here, which is not intended to be a statistical report.

Q. No.

A. The total capacity of Quebec and Ontario combined, in general figures, is about 4,000,000 tons.

THE CHAIRMAN: You gave those figures, I believe.

A. I gave you the Canadian total. I am speaking now of Quebec and Ontario. I should say approximately 2,500,000 in Quebec and 1,500,000 in Ontario, but please don't hold me to those figures.

HON. MR. NIXON: Does that take cognizance of the mills in Ontario that are closed entirely?

A. No. You mean the mills that are rated as closed?

Q. Yes.

A. No. This is effective capacity.

MR. DREW: I do not want to interrupt the order in which you are going to introduce it, but were you going to deal later on with that question of effective capacity in the closed mills?

A. Yes.

Q. That is the point I have in mind. I understand that at the time this arrangement was made there were certain mills that were closed in Ontario, and they are treated as zero?

A. No, I would not put it that way. A closed mill is not necessarily an ineffective mill. Actually, in 1935 and 1936 when this was developed, there were quite a number of closed mills in both provinces. The ratings of capacity by the engineers was on a standardized formula or a form of a certain standard of efficiency. Any mill falling below that standard of efficiency was rated as zero. The other mills were rated in accordance with their actual performance above that standard. Is that the point you mean?

Q. Yes.

A. There have been, I think, all told two or three or possibly four cases of mills which have fallen below the standard and which have been throughout this period rated as zero. In the case of a mill which is shut down, but which is regarded as effective capacity, the engineers ascertain how quickly that mill could be made available for actual production. I am not certain at the moment what the time limit is, but, if it cannot be made available within a certain fairly short period of time, it is rated as not available, which is zero.

MR. COOPER: Are all the companies satisfied with the engineers' ratings?

A. Yes.

Q. There is no argument about them?

A. No. I perhaps should have touched on that before. When the original survey of capacities was made it was the first time in the industry's history, I believe, that effective capacity ratings had been established, which the mills

regarded as being competent and satisfactory. Before that time the question of capacity ratings had been a matter of constant controversy.

THE CHAIRMAN: You mentioned the fact that certain mills were obsolete, and for that reason they were counted as zero?

A. Yes.

Q. If there was an extremely large demand for Canadian newsprint, could these obsolete mills be put back into production?

A. It would depend on what the price was. I should think it would depend on that. Or let me take an extreme example: If the price went to $100.00 a ton, yes, they could operate.

Q. It is a matter of the cost of production?

A. Quite, yes.

MR. DREW: It is somewhat similar to the increase in price of gold, where low grade mines have been able to produce?

A. Exactly that. I must say this, that I have kept rigidly out of the question of capacity ratings. That is a problem for the engineers, and I do not pretend to understand their formula nor do I engage in it in any way. As a general principle, I should say the formula of efficiency, which of course does involve production costs and price levels,—the test would be as to whether a company loses less by having the mills shut down or by operating. I won't say "makes more," but loses less. It would not necessarily follow that the mill to be effective would make money, but it would lose less operating than it would shut down.

Now, at a price of $75.00, let us say, mills which could not operate at $50.00 might lose less operating at $75.00 than being shut down, and could then go into production. It is a purely commercial test.

HON. MR. HEENAN: I do not know which of these gentlemen asked you the question, and I do not know whether or not it was made clear, but I think you were reading from your report that Ontario had sold so many tons which represented a certain percentage ahead of what they were entitled to?

A. Yes.

Q. I forget the figures. I do not know whether you gave the figures.

A. I gave it in this way: In 1939 the Ontario shipment average was 67.7. Quebec was 60.1. Is that what you mean?

Q. That is it.

THE CHAIRMAN: Mr. Vining is going to send us the figures in tonnage.

THE WITNESS: Now I should like to come to what is really the subject in

which I imagine you would be most interested, and that is an appraisal of the results of this policy during the last two years, its good points and its deficiencies, as we see them.

The Quebec and Ontario governments have now practised prorating of newsprint for the last two years, a period long enough to provide experience in place of theory and to permit an appraisal of the policy in the light of actual results. As is to be expected in the first stage of any new policy, these two years have uncovered some considerable deficiencies. Some of the deficiencies are inherent in the policy. Most of them belong to the methods by which it has been applied.

It becomes clear now after two years of practice that sufficient thought was not given to details of application and enforcement when the governments made their agreements and decided to embark on this policy together.

Most of these deficiencies appear to be capable of correction. We report them with no desire to be critical of governments, or of manufacturers, and still less with a desire to disparage the improvement which has been achieved, but in order to throw light on changes which seem essential if the governments intend the policy to be effective.

In appraising these results I wish to remind you again briefly of what the objectives of the policy were:

(1) To obtain a fair division of tonnage between the two provinces.
(2) To spread employment among mill towns.
(3) To assist recovery and stability of the industry from which improvement of wages, working conditions and Crown revenues would be expected to follow.

With regard to the first two objectives, that is, the division of tonnage between the provinces and the spread of employment, the results may be summed up very briefly by saying that they have been only partially achieved.

It must be obvious from the figures I gave a few moments ago of the distribution of tonnage between companies and between provinces that these two objectives have not been fully attained. They have been partially attained. They have been only partially attained because of certain deficiencies in the procedure and method for administering this policy. To be more specific, in our opinion because of the lack of provision for joint application and joint administration.

We come now to the third objective which was to promote recovery and stability. And with regard to this objective very much more complete results have been accomplished. And they are results which have been in our opinion—and obviously on the facts—extremely worth while for this country as a whole, and certainly for these two provinces.

I should like to enlarge a little bit on the degree to which the third objective has been accomplished, and immediately following that the degree to which its continuance is now in danger.

To measure results with regard to this third objective of recovery and stability, we need to keep in mind the condition of this industry in 1934, which I described briefly this morning. I am just going to remind you of the conditions which prevailed in 1934. Half the industry in receivership, or its equivalent; the disgraceful wages to Canadian workers, particularly in the Quebec woods; the number of shut down mills; the dwindled public revenues; the interlocking contract vice that I described this morning; sharp practices and distrusts and ill will that prevailed in industry, and the artificial depression of prices which persisted in the face of rising business.

Or to sum it all up, as I described it this morning, in 1934 you had this great Canadian industry in a state of collapse and seemingly without any power of self recovery.

When I speak of the artificial depression of prices which continued, I should like to mention that prices in 1934, 1935 and 1936 remained at the lowest level in some thirty years, although volume of tonnage, volume of business was rapidly improving and all other commodity prices were tending quite sharply upward. There was an artificial depression of prices due very largely to the interlocking contract system which I mentioned this morning.

Now, compared with that I should like you to consider the state of the industry as it stands to-day, and I should like to describe that state in these words: The state of the industry to-day is still far from what it should be in relation to its national worth, and in relation to the competitive forces it must be equipped to meet. But in comparison with its past, the recovery has been worth while.

It is true that newsprint prices have continued to drag below the level of other commodity prices, but they have at least pulled out of the bog they were in to reasonably solid ground, and there has been marked stability for both buyers and sellers.

It is also true that investors are still getting no return on a great part of the money they put in to build up this industry. Those who feel impatient with the industry's position must keep in mind that this industry is in fact engaged in the newspaper publishing business, and the long term trends of this publishing business do not show great strength.

Even with these limitations the recovery has been very much worth while for Quebec and Ontario, and for the country as a whole.

Comparing 1938 and 1939—two years—with the two years, 1934 and 1935, one finds that with approximately the same volume of shipments the industry brought into this country some 40 to 50 million dollars of additional cash income. Investors received little of this, it is true, but many thousands of families have been better off. In the Quebec woods, wages have doubled since 1934. There has been a substantial improvement in mill wages. The industry has carried a much greater load of unemployment relief, more money has been spent to conserve timber resources, Crown revenues have come up substantially, and, in general, the public forests have begun to pay something to their owners, their owners being the public, of course.

I do not wish to suggest, nor does any member of the Committee wish to suggest, that all these results which I have just described should be attributed to the policy of the two governments. I am firmly convinced that it is true that without the action of the Ontario and Quebec governments in establishing prorating and in declaring themselves against unfair trade practices there would have been no such recovery as the industry has had, nor would this recovery have been sustained throughout 1938 and 1939.

To put it a little more simply perhaps, I would not attempt to say that the recovery of the industry has been all due to the prorating policy. I would, however, say that without the prorating policy the recovery would not have occurred, nor would it have been sustained in these last two years.

The prorating policy of the two governments brought heart to an industry that was thoroughly disrupted. I beg your pardon, Mr. Heenan; did you say something?

Hon Mr. Heenan: That was a half-hearted compliment.

Witness: The policy of the two governments has brought heart to an industry that was thoroughly disrupted. It relieved the manufacturers of their obsessions about tonnage. It gave them hope that they would receive a fair deal, and it allowed them the chance to seek a normal recovery approaching that of other industries.

If you wish me to, I will explain one or two points there of what I mean. I emphasized this morning, and I emphasize again, that one of the great obstacles this industry had in 1934, 1935 and 1936, to reaching, a normal recovery such as other industries were reaching, was this interlocking contract business. The only way manufacturers could escape from that was, as their contracts expired, to decline to renew contracts on that clause in them. The prorating policy gave them the courage to do that, because with prorating the manufacturer felt that if his customer took his business from him because he refused to renew the interlocking clause, under prorating he would eventually get his fair share and would not be ruined. In our opinion it was only with that foundation under the industry that manufacturers were able to escape from that interlocking feature, and, in my opinion and the committee's opinion, that has been the key to the industry's recovery.

It cannot be said that the prorating policy has been popular among the manufacturers, many of whom found it irksome and are resentful of the way it has been handled. But most of them, at least, recognize the above effects of it, that is, the effects of recovery and maintenance of the recovery. And most of them also realize their responsibilities to the governments and the public and have genuinely endeavored to carry out what was required of them.

To sum it all up, I would say that the part which governmental policy has thus played in the industry's improvement and in the social benefits derived from this improvement has more than justified the policy from the standpoint of public interest.

The results in our opinion far outweigh certain deficiencies of the policy which I shall come to in a minute.

On these results alone there should now be every effort made to correct the deficiencies and application and method which to date have prevented the policy from exerting its full effectiveness with regard to the equitable distribution of tonnage.

We believe, should ineffectiveness in this respect continue, it will not be long before the policy ceases to be an instrument of stability.

I was about to proceed, Mr. Chairman, with some points, if you wish me to, on the deficiencies in the policy itself, and there are some of them, and then the deficiencies in the method of administration to date. Before I proceed, if there are any questions on what I have just said, perhaps we could dispose of them. All right?

Any form of prorating or of quotas has certain inherent weaknesses, and usually it is accused of other weaknesses by people who have various reasons for wishing to upset it.

The above has been found true in the case of newsprint prorating in Ontario and Quebec. It has certain fundamental deficiencies, and a number of others have been attributed to it, either through honest misconception or through a desire to defeat it regardless of public consequences. So I want to deal with the deficiencies of the policy under two headings: first, what we believe are actual deficiencies, and, second, what we might describe in our opinion as erroneous criticisms of it. But let me make this clear, I am speaking now of the actual policy itself and not of its method of distribution.

The actual deficiencies of prorating may be described briefly by saying that it is a negative rather than a positive policy. It is a preventative rather than a stimulant. A prorated industry is in danger of becoming complacent and unaggressive. They are the same deficiencies one finds in a dole system. This is the point, Mr. Nixon, about which you asked me this morning and I said I was coming to it.

Prorating does give an industry security and stability in which to cope with its problems in an orderly and normal way. It does eliminate fratricide, but it would be a mistake to be carried away by these merits into supposing that it is a cure-all. It definitely is not. As a cure-all, prorating is no more effective than sedatives which are used to compose the patient and relieve his worst pains. A great deal more is needed to make the patient healthy and active. The danger of complacence is not to be ignored. It lies in the risk that individual manufacturers may come to rely on prorating as their means of obtaining business, and either to minimize their expenses or, from lack of enterprise, they may not maintain an adequately aggressive sales effort. This does not appear to have developed among the Ontario-Quebec newsprint manufacturers to any degree which might be called disturbing, but the committee believes that there are some symptoms of it.

Governments, manufacturers and all those concerned in this industry need to keep constantly in mind that prorating can never secure a ton of business.

It may in fact be used by competitors to make business more difficult to

obtain. Prorating is merely a method of distributing and stabilizing the business which is brought in. It will help to secure recovery from collapse, as it has done, and to prevent recurrence of collapse, as it has also done; but no matter how well handled it will never of itself bring volume of tonnage. The getting of business and the terms upon which it can be got, that is, the price, will always be governed by world competition, requiring positive, aggressive and enterprising effort.

The Ontario-Quebec mills in normal times must contend with competitors who have these qualities and who also have certain well-known advantages of one kind or another and whose combined capacity is considerably superior.

The moral of all this is very plain indeed. Prorating needs to be supplemented by more positive and active measures. Patients must not be just soothed but must be made vigorous. In other words, for the public interest of Ontario and Quebec and of the country as a whole, this industry does need prorating or its equivalent as a social measure and stabilizer. But it also needs energetic, competitive measures, and it needs to be encouraged, or, if necessary, prodded into these measures.

In this respect I should like to draw attention to a statement made last year by the Honourable Mr. Beckett, who is Chairman of the Westminster Bank of England. He made a number of brief statements which sum up very much the thoughts on this point. Speaking about the position of English industries he said:

> "Our industries cannot hope to compete successfully in foreign markets unless each is organized, so to speak, to negotiate and bargain as a unit. Such a course would afford more scope for economy through the elimination of redundant sales machinery, and, at the same time, the pooling of resources, information and market knowledge, would enable a more efficient and progressive service to be established."

I would sum this thing up in another way by saying: The deficiency of prorating as a policy is that people are liable to look upon prorating as the whole cure. It is when prorating is relied upon by an industry or a group as the whole cure that it soon becomes deficient as a cure. Prorating is only half of the story. It is a stabilizer, a preventative. It does need to be supplemented by the positive half; that is, the aggressive, competitive effort, to get volume of business. I think that is an extremely important point, and I should like to emphasize it. I hope I have made it clear, but perhaps I have used more words than I needed to use.

HON. MR. NIXON: Where is that effort going to come from, from your committee?

A. No, that can only come from the industry.

THE CHAIRMAN: From the industry itself?

A. Quite right. But if necessary the manufacturers may need to be prodded into such an effort. The risk, Mr. Nixon, is what I mentioned before; that

you may find with prorating certain companies believing that they can reduce their sales costs; that they will let other companies go out and get the business and believing that they will share in it. In other words, that all companies will not pull their own weight in the boat in getting volume of business for the whole industry.

This may be a good point to go back to the example I mentioned this morning, Finland. In Finland you have all producers in the country, with one exception, combining those two requirements; in other words, the requirement of a stablizer, and the requirement of getting business through one central sales organization. That central sales organization goes out and sells and gets business for Finland as a whole. Then the business it obtains is prorated among the producers. So through the one system you have the two things accomplished. It is the second half, not at the moment, but eventually, we shall need to give attention to.

THE CHAIRMAN: Who supports that sales organization in Finland, is it the different manufacturers?

A. Yes, it is an incorporation in which the different producers are . . .

Q. Shareholders?

A. Virtually. I mean, the equivalent of that.

MR. COOPER: You said this morning that they all belonged to that organization except one company?

A. Yes.

Q. How does that come about? I am interested to know why this company is out of the organization?

A. I cannot tell you the history of that; I do not know. But the one company which is not in this particular organization works very closely with it. In some of our markets, in fact some of our overseas markets, this one company and the other group use a common agent, so that in a good deal of the selling even those two are together.

MR. DREW: Isn't it a fact that that one company is supported by foreign capital?

A. The one company that is outside?

Q. In Finland, yes.

A. I cannot answer that; I do not know.

Q. I was led to understand that that was the situation.

A. There is no secret about it. The company outside is the Kymmene Company. I do not think that is a foreign company, but I do not know about that.

I have here a breakdown of world newsprint capacity, if you would be interested in having it. It comes in on this point. I mentioned that the Ontario-Quebec mills in normal times, that is, putting war conditions aside, must contend with competitors who have certain advantages and whose combined capacity is considerably superior, and I have here a table of these capacities.

Q. Just before you go into that, would you disagree with this proposition, that in the case of prorating such as you have here covering the whole industry, which must depend almost entirely on foreign markets, that there is a very serious danger of the companies losing in sales effectiveness under that system when they come to compete at some later time with an increased selling activity on the part of other competitive nations? Is not that a serious danger?

A. I would not say that is a danger for all companies. The danger is that some companies in the industry, to use a slang expression, may want to let George do it for them. They may want to save their own sales expenses, or they may naturally become indolent and hope that other members of the industry will attend to getting volume of business in which they will share.

Q. It seems to me that this is a logical result; if there is a certain total volume of business for Canada, 95 percent of which is export, and the companies are compelled by this arrangement to adhere to a certain fixed division of that foreign market, then the natural function of the selling organization of any one of these companies is to some extent defeated, because the selling organization of any company must ordinarily be finding ways and means of increasing its sales?

A. Yes.

Q. Under this system there cannot be any great possibility of increasing sales, so that I would imagine there is a complete lack of activity in the department.

A. No; there is something there I am afraid I must have failed to make clear. This method of prorating has nothing to do with limiting the amount of sales. On the other hand, there is every incentive to every manufacturer to get every ton of business he can, because that improves the industry's average.

HON. MR. NIXON: Yes, but his share of it is infinitely small, compared to what he would get by his own initiative.

A. It is all relative, Mr. Nixon. The difference of two or three points in the industry's average means as much relatively to the small company as to the big company.

THE CHAIRMAN: If you had a central organization for the whole industry, would not that remedy the deficiencies you have mentioned?

A. That would be the ideal, I should say, Mr. Chairman, yes. But that is what they have in Finland, as I have described.

Q. Yes?

A. Giving you now my own opinion I would be afraid that an attempt to set up one single sales organization for the whole Canadian industry might defeat the very purpose we have in mind, the purpose being to get volume of business. I would be afraid it would defeat that, because it would be misinterpreted by the buyers. I am afraid buyers would not believe that that company had been created for competitive purposes.

MR. COOPER: As long as they got the price, that is all the buyers would care.

A. Yes. Over a period they might come to have confidence in it provided wise price policies were followed. I would be afraid, however, that at the start they would not believe it was set up to compete with foreign countries, but, as would be natural with any buyer, they would be afraid it was set up as a monopoly and going to boost prices.

MR. DREW: Of course, they would have reason to believe that a possibility for the time being, in view of the fact that practically every similar arrangement that has been made has attempted that at one time or another. We have had experience of that ourselves.

A. Yes. I would like to make a few more comments on your point, Mr. Chairman. There is no doubt in my mind, putting aside the fear I have mentioned, one single sales organization in this country would be the ideal competitive weapon. It could eliminate duplication of sales costs to some extent; it could accomplish the combined economy which somebody mentioned this morning in arranging deliveries from the most suitably located mills to certain destinations; it could act much more quickly and alertly in dealing with unified competition of foreign producers. But I have that reservation in my mind as to its effect on the market.

HON. MR. HEENAN: Would it not also eliminate the thing that brought the industry to the position in which it was in 1934, where so many salesmen, or, as we used to call them, commission men, were going out and attempting to get business by hook or by crook?

A. Quite. It would, and it would permit you to have probably a higher grade of sales personnel.

What is going through my mind is what I have often thought of, perhaps not that extreme form of one huge sales organization for all Canada, but a greater concentration of sales effort than we have at the present time, perhaps in the form of two or three or four sales groups established geographically or by some other division, which I think could accomplish the same purposes without unduly disturbing the market.

THE CHAIRMAN: It would give the appearance of competition between several groups.

A. It would maintain competition, too, and perhaps be a little easier to handle. It is quite possible with an industry of this size that one central organization would become a pretty unwieldy thing to handle. True, you have it in Finland, but in Finland you have—I am sorry I forget their figures on capacity—something like 600,000 tons.

HON. MR. HEENAN: With regard to the fear you expressed that buyers might have that this unified sales organization might be set up with an ulterior motive, every move that has been made in Canada has been regarded by the public of the United States as a move to their detriment.

A. Yes.

Q. So that if this is the proper move to make one more fear will not hurt them, will it? Besides, they are now doing business with a unified sales organization in the Scandinavian countries?

A. Quite right. I do not know whether they realize it or not.

Q. And we have to compete with these countries. So I do not see, if it is the proper thing to do, why we should worry about a fear, because we must consider the present state of the industry, also the improvement in business and the fact that the Canadian public have shown their good faith by not taking advantage of the price.

A. That is quite true.

Q. Therefore, I do not know what you could do or what we should refrain from doing in order to tell the buyers that we are acting in good faith in Canada. My impression is, and I do not know whether you want to express it or not, that we should go ahead and do the economic thing, no matter who it pleases or displeases.

A. As somebody over here suggested, it is quite possible as time went on that if there were such a unified sales organization the buyers would learn to have confidence in it by its performance. There is no doubt in my mind that a unified sales organization of that kind would enable the Canadian industry to maintain a lower price than it can by individual effort because it would eliminate some of the sale expenses and some of the delivery expenses.

MR. W. G. NIXON: Has there been any move on the part of the industry itself towards that end?

A. No, sir.

Q. None at all.

A. Not as yet. Different people have cherished such an idea as an objective but I would say no to your question; there has been nothing concrete, perhaps not as much positive discussion as there has been here this afternoon.

We must remember—you speak of the attitude of the United States buyer, Mr. Heenan, and we feel, of course, that some of their suspicions of the industry, some of their ill will against the industry, if you like, are not deserved,—but we must remember that this industry has, going back a number of years, a rather bad history to overcome; and it takes time to eliminate the results of that bad history. I would think that the industry as a whole is gaining in the confidence and goodwill of the market, and I do feel that to-day it deserves the confidence

and goodwill of the market. But we must be patient and atone for our sins of the past.

HON. MR. HEENAN: It has been a long time now.

A. Yes, you are right. I would think the account is about square now.

I have not a great deal more, Mr. Chairman, as far as my story is concerned. I have these further points, however. I have told you our belief as to the deficiency in the policy itself; that is, the policy does need to be supplemented by this other effort. The material that remains is this: the points of criticism of the policy which we think are erroneous, and then the points of deficiency in the application of the policy. Do you wish me to go into these points of criticism and give you what we believe to be the answers to them?

THE CHAIRMAN: Go ahead.

WITNESS: I think these are points of criticism which are capable of answering, and I think it is just as well to have the points brought out.

This is still the policy itself and not the application of it.

In our observations during the last couple of years, there are four common points of criticism. These are as follows:

(1) That prorating supports inefficient mills.

(2) That prorating is uneconomic and production should be concentrated, not spread over all the industry.

(3) That prorating results in high prices.

(4) That prorating penalizes enterprise.

These are the four common points. These criticisms have sometimes been made with ulterior motives, but they also have been made honestly and with constructive intentions. In either case it seemed unwise for the Government to ignore them, and we believe it unfortunate that neither of the two governments as yet has chosen to inform the public on these and other points of policy.

The first point of criticism—prorating supports inefficient mills. We believe that the facts give no support to this. In the first place, each mill's capacity is determined from time to time on an engineer's formula of standardized operating efficiency. This is the point which I think you, Colonel Drew, asked about a minute ago.

MR. DREW: Yes.

WITNESS: A machine or mill below this standard is rated as zero. The others are rated by their performance record over a specified period. In the case of shut-down machines, the engineers ascertain whether they could be effectively operated within a fixed time. If not, they are closed as not available. The

ratings thus made have been recognized as competent by manufacturers who are highly sensitive to the ratings of their competitors.

In the second place, and this I think is perhaps a little more important, there is a great deal of loose talk and misconception about so-called efficient and inefficient mills. The facts are that machine performances are only part of the cost of producing and delivering newsprint, and they are not the major part. The big items are wood, power, and delivery. It is quite possible that a new mill may have lower machine costs than an older mill, but the older mill may have a more fortunate power contract or it may be better located for delivery or it may have some particular advantage in its wood supply. Consequently, the expression "efficient" and "inefficient mills" means very little. What is really meant is efficient and inefficient suppliers. That is taking into account not only machine performances, but the equally or more important factors of wood, power and delivery. Taking these into account, there is a surprisingly even level of costs and mill nets among the newsprint manufacturers in these two provinces. The advantages which do exist do not always belong to the newer mills. Have I made that quite clear, Mr. Chairman?

MR. CHAIRMAN: Yes.

WITNESS: The second point of criticism is this: that prorating is uneconomic. The argument on this point is that even if all suppliers were exactly equal in their efficiency, it would be much more economic to operate, say, ten mills full instead of twenty mills half full. This, by the way, I think, is probably the most common criticism; at least, the most common criticism that I have run into. It is one, I may say, that I have often had in my mind and had serious doubts about. To prorate tonnage among all mills at 50 to 60 percent of capacity, therefore, the critics say, is uneconomic. It adds to costs and puts the Canadian industry at a disadvantage in relation to foreign producers.

There is a good deal of reasonableness in this argument, but it is theoretical rather than realistic. It overlooks two main practical necessities: one with regard to supplying market demand, and the other with regard to social problems.

With regard to supplying the market, two things must be appreciated. One is that a mill once shut down cannot be made ready to operate again over night. You cannot make newsprint by turning a tap. Apart from mechanical matters, there is the need of getting trained machine crews together and the greater problem of wood supply; wood cutting operatings are planned as long as two years in advance of actual use.

The second point is that market demand does not stay on an even keel. There are seasonal peaks within a year, and there are sharp variations between years. As recently as 1937, there was a bulge in demand which came so quickly that shut-down capacity could not be made ready in time to supply it and during that year there were intervals of actual shortage. Had the above theory been in operation at that time, with half the mills running full and the other half shut down, there would have been a spot market panic with a wild bidding up of prices which, in the long run, is good for neither buyers nor sellers.

Even if all mills were in a giant merger, operated by one central management

which could open and close mills at will, it would always be desirable to have a considerable margin of idle available capacity, in order to maintain flexibility of supply and to give stability to the market. This is particularly true from a buyer's point of view, because this is something that buyers overlook, or I should more correctly say, have not been informed about as to the prorating policy and its effect. Although some buyers have attacked prorating by this "uneconomic" argument, the fact that prorating, by the margin of available capacity which it usually involves, is the best protection buyers can have against violent price fluctuations as well as being an assurance of ready supply.

At the present time, for example, North American buyers are in the fortunate position of feeling that Canadian capacity is available to meet requirements arising from loss of European supply. There could be no such feeling if the Canadian industry were being operated on the theory of having mills either running full or completely shut down.

It is not intended here to dismiss the argument as having no merit. It has some merit, but not in the extreme form in which it is usually presented. There is undoubtedly some balance point at which maximum economy would be found by keeping only a certain studied margin of open capacity, but this is still in the realm of theory for it would require centralized control of all production and it would ignore the second necessity mentioned above, namely, the necessity of meeting social problems.

No industry as big as the newsprint industry can ignore, or would be allowed to ignore, the social consequences of its operations to the extent implied in the "full-or-shutdown" theory. To operate an industry only on the basis of its maximum production economy would cause social repercussions which could not be tolerated. In Ontario and Quebec there are too many communities in which a newsprint mill is the source of livelihood.

The newsprint industry must carry the responsibility thus involved, and it is to the credit of the manufacturers that many of them have met these responsibilities by maintaining employment at costs which might be eliminated. There is no denying the fact that prorating does impose this cost burden on manufacturers or, strictly speaking, on their investors who obtain no return on their money, and to that extent prorating may be described as uneconomic.

On the other hand, if newsprint companies were not bearing the costs of social relief in this form they would probably be required to do so in the form of relief taxation, for the costs must be met in some way and direct employment is probably the most desirable method from a social aspect. As an American publisher said of prorating not long ago: "We don't like this prorating business, but I guess it's better than our own WPA anyway."

On that point I would like to add this, that recently I have had a number of discussions with American publishers about prorating, they are publishers who two years ago were very critical, bitterly against it. I find a very considerable change in their attitude. I find although they have not been informed as fully as I think they should have been they are beginning to realize that prorating has a very important social side to it and to a very important extent is a matter of a social relief policy—to sum it up in what this one says, that he guesses it is better than their own WPA anyway.

The third point of criticism is this, that prorating results in high prices. The argument here is that with costs increased by prorating in the sense I have just described, manufacturers pass their costs along to the buyers in the form of higher prices and the buyers pay the shot for social relief.

Newsprint manufacturing would be a pleasant business if it were as simple as that. The truth is that newsprint prices have not been based on Canadian costs for many years. The world capacity figures which I mentioned but I didn't give you in detail, show what determines market prices and he would be a foolish man who supposed that any policy which might be devised by a provincial government in Canada could set such forces aside.

Prorating has a negative influence on prices in that it works to prevent collapse and to preserve stability but it has no other bearing. The person who pays the shot for the social costs involved in prorating is not the buyer but the Canadian investor who receives no return on his money.

And the last point of criticism is this, that prorating penalizes enterprise. This argument is almost always advanced by a manufacturer who has an over-average tonnage position and does not want to share it. He contends that he has obtained his tonnage by superior skill and enterprise in selling and that he should, therefore, be allowed to keep it.

It is true that all companies are not alike in the effort they devote to sales and it is also true that prorating contains a risk of creating complacency in this respect, as I have mentioned a few minutes ago. As a general rule, however, tonnage contracts do not change from one Canadian mill to another because of skillful selling arguments but because of price considerations. It is significant that the company which has been the most vociferous in the use of this argument is a company which obtained most of its present tonnage on a price rebate basis.

Now that is the end, Mr. Chairman, of the points of criticism and our comments on them. What I have just dealt with in a certain phase have been the points of deficiency or of criticism with regard to the policy itself.

What I am now going to deal with very briefly—and I am almost at the end of what I have to say, unless you have some questions—is with regard to deficiencies in the application of the policy, and this is I believe the most important point for present consideration and the point in which in our belief action is needed without delay.

The deficiencies in applying the policy may all be traced to one initial mistake, which was easy enough to make at the time but which is very apparent to-day. The mistake was that, when the two Governments made their agreement on joint policy, joint enforcement was not provided for.

The arrangement which grew out of this original mistake has already been described, but briefly, again, it consists of each individual government receiving reports from a committee which has no definite status, the members not being sure whether they are acting for the governments, the manufacturers, or both. Each government then deals with situations in its own province as and when it sees fit. Sometimes matters are handled by the Minister of Lands and Forests,

sometimes by the Prime Minister, sometimes by both, sometimes with other members of the Cabinet intervening, and almost always under pressure and interference from people who may know little or nothing about newsprint issues but who interest themselves because of local politics, friendship, business connections, or other reasons which have no proper place in questions affecting public interest in two provinces.

Under such conditions, and with the daily pressure of many different duties, no Minister can reasonably be expected to administer the enforcement of this policy as he would like to, and as it needs to be administered if it is to be effective. Still less can it be expected that the joint policy will yield uniform and equitable results for the two provinces, or will long continue to yield good results for either of them.

With all there is at stake in this situation, for both provinces, the question of application and enforcement needs as careful study as the policy itself. For the policy itself may be a sound policy and necessary to protect the public interest, but it is no good, and will not last, unless it is enforced impartially, continuously and conclusively.

There has been another important deficiency, namely, the mystery which has been allowed to shroud the prorating policy. Neither government has yet chosen to explain to the public, whose interest it is protecting, what the governments are striving to accomplish, or why, or how. And manufacturers and others wishing to obstruct the policy have thus been given a clear field for spreading derogatory impressions and interpretations of the policy and its results. Such public information as has appeared has come almost entirely from these adverse sources; the results have been detrimental both to the governments and to the industry, erroneous impressions have been created not only in Canada but among customers of the industry, many of whom, with help from the industry's competitors, have come to believe that the provincial governments are fixing prices or are engaged in some kind of backstage improprieties which they are evidently ashamed to talk about.

That is our opinion of the deficiency of that policy and to give the positive side of it we have summed up here the changes which we believe are needed or at least need consideration:

The deficiencies of policy and of its application have then indicated the changes which seemed to be needed. This is assuming that the two governments wish to make their joint policy effective, and we put these changes together in a very brief list as follows:

The first is this, the policy itself has obtained worthwhile results in the public interest but it is negative. It needs to be supplemented by positive methods of getting business; Canadian companies need to be prepared to contend effectively against aggressive and well-organized competitors.

If I may just add a comment there, that is a general need which is not at the moment pressing because we have the fortunes of war in our favour; it is a need which it would be madness to ignore and which would be a sudden and drastic need the minute this war comes to an end.

HON. MR. NIXON: Q. There is no newsprint from the southern mills in competition yet?

A. Not to any appreciable extent, Mr. Nixon; the southern mill is now operating with a capacity of some 50,000 tons; it remains to be seen how large a factor that will become. That certainly should not be put to one side or treated lightly.

Q. Have you any personal knowledge of the quality of the product?

A. Yes. But it would be very unwise to judge the quality of the product by its results to date. This mill has been in operation only two or three months. Any new mill has difficulties. Even if the quality is poor for a year it doesn't follow that these defects couldn't be overcome. I think you just have to put that question in the wait and see class, but certainly not put it to one side.

MR. COOPER: Q. Is that the southern pine you are speaking of?

A. Yes, sir.

The seond change that is needed is this, in our opinion:

The present methods of applying and enforcing the policy need a thorough revision after two years of trial. The present arrangement of separate groups of Ministers and an anomalous committee needs to be replaced by provision for joint, uniform administration, including provision for impartial and automatic application of penalties under certain sets of facts.

And the third change we would submit is this: The policy needs to be explained to the public and brought out into open view where it can be freed from misconceptions and obtain the public support it deserves and requires for its fullest effectiveness.

As part of the changes that are the most use in our opinion is greater attention to the positive aggressive side of sales effort, perhaps by the method which you, Mr. Chairman, and Mr. Heenan, were discussing a minute ago, or by alternative methods.

Secondly, and much more pressing than that, and really pressing in our judgment, the need for a provision for joint uniform administration of what is a joint policy based on the experience of the last two years.

And the third need, the need to bring this policy into the open where the public can be given understanding of it and where the policy can obtain the public appreciation that we think it deserves, which I believe it would receive.

With those changes there are several cases of unconcluded difficulties which I have referred to heretofore and that we list here as matters needing attention. These items constitute the immediate causes of current deterioration; they need prompt action if the policy is to have any effectiveness.

First, the question of exempted mills needs the reconsideration which was

expected last year. It needs a careful and just examination on its merits in relation to the objectives of the two provinces. Whatever the settlement of it may be, it needs to be a settlement which will satisfy the Canadian companies, their workers and investors as to its fairness and propriety.

Secondly, the four unconcluded cases of non-compliance need to be brought to decision. These cases really depend on settlement of the Great Lakes and M. & O. situations, which in turn are related to the above question of exempted mills. These cases should be examined, if further examination is necessary, and a definite conclusion of them reached and carried out.

Now I have mentioned this morning the point with regard to the effect of the war on this industry and what a tragic mistake we believe it would be if a temporary boom, which may develop or may not, that we will say may develop, if that were allowed to divert people's attention from the real need of providing for these matters that we have been discussing here. No greater mistake could be made by anybody in connection with newsprint than to think that because there is some appreciable amount of good business, which may become very good business, that the troubles of the industry are over and we need pay no further attention to these things. It is our belief that an abandonment of these measures of stability would certainly bring, perhaps soon, certainly at the end of the war, a new period of disruption which would be worse than anything we have experienced.

I have only one other thing that I think might interest you among this material, the point I have tried to stress here in point of urgency as being the most important is that point of making provision for joint and uniform administration. In that connection I would like to mention one or two examples which may interest you. There is a very close parallel to this situation,—I may have mentioned this this morning but I would like to mention it again even if I did—a very close parallel to this situation in a group of American States which made an agreement among themselves for the prorating of oil. The parallel is quite obvious.

In 1936 we had two provincial governments making a gentleman's agreement for the prorating of newsprint. The year before that, 1935, we had this group of midwestern and western States across the border making agreement between the governors of these States for the prorating of oil. In their cases, however, they did not make this a gentleman's agreement, they drew up what they called an inter-State compact, and the general details of their policy which they signed and the compact provided for the setting up of an inter-State oil commission to administer generally the policy and the compacts which they had made. The difference between that and our situation is that the two provincial governments didn't make a formal agreement but merely a gentleman's agreement, which was clear enough, but when no provision was made, nor did it seem necessary at that time, for joint administration. But that example of the handling of a very similar situation in the United States seems to me to be rather relevant to this and an interesting and helpful example. I have some details of it here if you would like to have it, but I think these are the essential features of it.

MR. COOPER: Q. Do they go as far as price fixing?

A. No.

There is quite an interesting point there—I am glad you mentioned it:

Article V of the Compact specifically provides that: "It is not the purpose of the Compact to authorize the States joining herein to limit the production of oil or gas for the purpose of stabilizing the price thereof, or to create or perpetuate monopoly, or to promote regimentation . . . " However, a reduction of prices to uneconomically low levels, appears to be acceptable evidence of excessive production detrimental to the interests of conservation. This was demonstrated in August, 1939, when a reduction posted by the major purchasing companies was followed immediately by an order virtually suspending production of properties in the leading contracting States. . . .

MR. DREW: Q. It is a little ambiguous, isn't it?

Q. It points out that the necessity was a low price and then goes on to say that the purpose is to increase the price?

A. Yes.

MR. COOPER: Q. That virtually amounts to price fixing when it goes below a certain level?

A. Doesn't it really mean preserving a minimum price?

MR. COOPER: Yes.

WITNESS: There are a number of examples of prorating and quota systems that would take some time to go into here and I have already, of course, given two examples of prorating and joint sales effort as they are conducted in Finland through one organization, and of course, you know you have oil prorating in the Province of Alberta; that is not an interprovincial matter, but under provincial legislation and under a conservation board.

HON. MR. HEENAN: Q. There is one aspect of this whole scheme, Mr. Vining, that I think should be cleared up:

A. Yes, sir?

Q. As you have well said, that this system grew, like Topsy?

A. Right.

Q. And we found the weaknesses in it as we went along, and it has grown and grown, until now you are referring to it yourself as a government policy, and I notice in Colonel Drew's remarks—he may not have meant it the way it sounded to me—that the Government imposed this on the industry, there is a request for these things because of the fact the public generally has accepted them, that this is government policy imposed on the industry. I regard it just the opposite, that it was the industrial difficulties, that we tried to assist them;

when they decided on a certain line of action, we took powers in order to see that two individual companies would not disrupt that policy. Consequently it is difficult to say, and I am not saying that it shouldn't be a government policy; in fact, the very moment that we suggest, as you have now, and as I said yesterday in answer to Colonel Drew, there should be some drastic method of dealing with a situation by separate board, it then becomes a government policy. So that I don't think it should go out to the public that this is some government policy that has fallen down; rather that it is the industry itself, because of the weaknesses that you have described has fallen by the wayside and we have not been able, with our machinery, to correct it. You see the whole thing, as was said to-day and yesterday, is full of weaknesses and the public has not been taken into confidence. We have left it wide open to anyone who is disturbed, for one reason or the other, to put his own interpretation upon it. I think you are aware of the fact, that even these salesmen of the various companies have gone forth to the United States publishers, and therefore the public, and they have said: "We could sell you more tonnage and we could sell it to you at a lower price, but the Ontario Government, the Provincial Government of Quebec, will not permit us to sell it at less price", and that went forth through the United States that we were a price-setting organization. As you know, the governments have never taken any steps to set prices, we have taken steps, however, after the price is set, that if we can hinder it we will not permit our salesmen or manufacturers to go and undercut that price, which may have the same effect. I think that should be made clear. In connection with that, I just want to have that little joke back again that I said to Paul Leduc was a kind of haphazard compliment: The progress that has been made in the industry or the success up to now he wouldn't attribute it wholly to the assistance of the Government, or the Government's assistance, the gentleman said, and then he says: "Of course, the progress couldn't have been made unless it had been by the assistance of the Government." So that is why I said it was a haphazard compliment.

A. I don't think anybody would regard prorating as a great magic cure-all; without it the present recovery and stability would certainly not exist.

HON. MR. NIXON: Q. Mr. Vining, I am not just sure how your committee was first set up and who financed it. You must have very considerable expenses if you have had the services or have as a member a lot of consulting engineers?

A. The expenses are not particularly considerable. They are paid through the Association. That is, I am not paid as a member of the committee—ex officio—and the other members are paid, Mr. Howard and Mr. Ralston were paid, of course, on the basis of counsel fees as and when they were needed. The beginnings of the committee, to go back to some of the history of this morning: The committee started in 1935, during the Price Brothers episode that I mentioned when Premier Taschereau insisted that the industry must find some way of stabilizing itself and specifically and immediately finding tonnage for Price Brothers, and the manufacturers didn't choose to form a committee among themselves, they wished an independent committee and these three persons were selected. Then in 1936, when the two governments had their conferences and decided on further agreement, some method of supervision and of liaison with the governments had to be found, this committee was asked to carry on.

Q. Then if under permission your committee has appointed to it someone

to replace Col. Ralston, they will be appointed at the annual meeting of the Association?

A. No, it has nothing to do with the Association at all. If the governments thought they wished another member of the committee, I presume they would say so and we would report that to the manufacturers, or vice versa if the manufacturers thought they wanted a larger committee, we would report that to the governments and if a mutually satisfactory person could be found, why that is all there is to it.

MR. DREW: Q. Well now, Mr. Vining, that concluded what you specifically recommend there?

A. Yes, that concluded it.

Q. There are a couple of points—it is rather late, if you are leaving to-night I will cover them as quickly as I can, but you have a very extensive contact with this industry?

A. May I say, Col. Drew, I don't want my plans to interfere with this Committee, if you think I can be of further use I am willing, a little reluctantly, it is true, but I am willing to stay over until to-morrow or to come back another day.

Q. Would you have any occasion to be coming back here again within the next—I take it before the end of next week?

A. Yes, I think I probably would have; it wouldn't be difficult at any rate.

Q. Growing out of your remarks, I have a number of questions which are not in direct line with what you have said and which I think are important to this inquiry. I, quite frankly, don't think there is any use of asking you them with any expectation of closing off in a few minutes and it is just a question of whether it would be more convenient to come back another day or to spend to-morrow. If it is just as convenient for you to come back another day, some time at the end of next week, I should think it could be easily worked in that way?

A. That would be just as convenient; I will do whichever you prefer, I will stay late now or I will come back.

THE CHAIRMAN: What about the 2nd of May—Thursday?

WITNESS: Yes.

THE CHAIRMAN: Well then, thank you very much for your evidence, Mr. Vining.

The Committee stands adjourned until to-morrow morning at 10.30.

At 4.50 p.m. the Committee adjourned until Thursday, April 25th, at 10.30 a.m.

TWENTY-FOURTH SITTING

Parliament Buildings,
Thursday, April 25th, 1940.

Present: Honourable Paul Leduc, K.C., Chairman; J. M. Cooper, K.C., M.P.P.; Colonel George A. Drew, K.C., M.P.P.; A. L. Elliott, K.C., M.P.P.; Honourable Peter Heenan, Honourable H. C. Nixon, W. G. Nixon, M.P.P.; F. R. Oliver, M.P.P.; F. Spence, M.P.P.; Dr. H. E. Welsh, M.P.P.

HON. MR. NIXON: Gentlemen, our Chairman, Mr. Leduc, is unfortunately absent and I move that Mr. Elliott be requested to take the Chair.

MR. W. G. NIXON: I second the motion.

HON. MR. NIXON: All in favour? Carried.

—Mr. Elliott then took the Chair.

MR. ELLIOTT: Mr. Clarkson is the witness this morning.

GEOFFREY T. CLARKSON Called:

MR. ELLIOTT: Q. Mr. Clarkson, I believe you are the liquidator of Abitibi Pulp & Paper Company, Limited?

A. No, I am the receiver and manager; the liquidator is Mr. MacPherson. Do you understand the difference?

HON. MR. NIXON: Q. What do you receive, chiefly?

A. As receiver I am an officer of the court in charge of all the assets of the company under the bond mortgage, which in this case comprises all the assets of the company and my duty is to administer those assets as an officer of the court for the benefit of all interested in them.

The liquidator's rights are confined to any equity in the assets over and above the charge of the bond, you see. So I have control of the assets of the company and its operations.

MR. ELLIOTT: Q. You are called in the interest of the Committee, Mr. Clarkson; we have been discussing proration and export and embargoes and the paper industry generally.

A. Yes.

Q. And we would like to have your story?

A. Do you want me to tell you the story of what has happened, what conditions Abitibi has had to meet? Is that it?

MR. DREW: I would suggest, Mr. Clarkson, that it might be wise, as an indication for the general discussion, to give briefly for the purpose of the record the history of the Abitibi up to the present time. I don't mean by that an exhaustive history but so that on the record it is possible by the discussion just to understand what it is we are actually discussing?

A. Well, I will tell you the story of the industry up to a point and then what happened to Abitibi: Statistics indicate that between about 1923 and 1929 the consumption of newsprint in the United States where the product of the Canadian mills is very largely sold began to increase in leaps and bounds. Had I known just exactly what you wanted I could have given you the exact figures, but I think between about 1923 and 1929 the increase in sales over there was from a million and a half to a million six hundred thousand tons a year. Well, coincident with that increase in consumption the capacity of Canadian mills began to expand, there were a number of new machines put in existing mills and a number of new mills erected, and year by year from 1923 to 1929 the Canadian mills operated between eighty and ninety percent of their capacity each year of increased capacity and then when it was installed it operated the whole of it about eighty or ninety percent.

When they came to 1929 a change took place, the consumption began to drop, while at the same time mills in course of construction went on towards completion. The result is that when they came to 1932 demand had dropped until the Canadian mills were operating about fifty percent of their capacity only. The capacity at that time was about 3,800,000 tons and their production about 1,900,000 tons. At the same time coincident with those conditions the price dropped and when September 1932 came Abitibi had defaulted in its bond interest and the price had dropped from about $62 I think it was in 1929 to about $46 in September 1932. Then the next three months it went down to $40. Well that condition continued. In the meantime, in the struggle for business after 1929 a lot of so-called interlocking contracts had been made under which a mill would sell paper to a customer and agree to charge no more than any other mill charged their customers. As a consequence the making of a price by one price cutting mill fixed the price for the industry; as I say, it got down to $40 by the end of 1932. At that time the operations of the industry were about fifty percent of capacity and Abitibi operations were thirty-seven percent.

About the middle of or towards the end of 1933 the report was that some Canadian mill had offered to sell paper at $35, and that resulted in the NRA authorities in Washington calling all the United States and all the Canadian mills together and indicating that unless they would agree to sell at not less than $40 in the future they would take steps to protect the American industry which they said would be ruined. Well then, the NRA continued for about a year, that is 1934, and then the Government refused to make a code for the newsprint industry there and it blew up.

In the meantime so far as Abitibi was concerned two things happened: We had a mill down in Quebec and Mr. Taschereau called me there and told me that unless we operated that mill, which was closed down, he would take steps to penalize Abitibi.

MR. ELLIOTT: Q. That was in 1933, did you say?

A. That was in 1934.

At the same time, after the Hepburn Government came in Mr. Heenan came to me and told me that the Government—and I think very properly—felt that the industry was in a chaotic condition and that unless those in charge of it did take steps to stabilize it and put it on a proper basis the Government might feel compelled to do so. There came 1935 and throughout that year it continued the same way, a little bit more emphatically. I couldn't object to it, but there was nothing we could do to try and increase the business of the company. There was only one way in which it could be done, and that was to further increase prices. Well, up to the end or middle of 1936 we were not earning enough money to pay our depreciation, let alone return anything on interest on the bonds or anything on the capital that was put into it—we just didn't meet our depreciation.

In the beginning of 1936 Mr. Taschereau had been pressing Abitibi and Ontario had been pressing Abitibi and finally I was told that the Government had come to the conclusion that the only way in which the industry could be stabilized was by proration of tonnage between companies. We were told that the governments of Quebec and Ontario had agreed that they were going to adopt that policy and the companies would be made to conform to it. Well, it wouldn't have done any good if I had objected, but so far as I was concerned I felt that there was no means under which it could be done except by proration.

About that time an offer was made to Abitibi of a large amount of tonnage at slightly reduced rate. Some of the bondholders were very strongly in favour of taking it. But with the arrangement between the two provinces I was told that we couldn't take it and as a consequence we gave it up.

Well then, at the time proration was put in force Abitibi complied with it and has always complied with it and as a result of complying with it and with the requirement that it should not undercut or undersell the industry generally we lost a lot of our best business in 1938 in competition from the United States and Scandinavian mills and some Ontario mills. Since then we have got part of it back, not in the form of contracts, on proration, but since that time we have been consistently year by year short of the tonnage which we should have received under proration and other companies in Ontario and some companies in Quebec have consistently overshipped, till to-day I think we are short nearly 40,000 tons of what I think we should have.

HON. MR. HEENAN: Q. 40,000 tons in two years?

A. No, about 28,000 in 1938 and '39, and at the end of April I think we will be behind for 1940 about 15,000 tons, which makes 43,000 tons up to that point.

Q. Yes, I mean in the two years.

A. In the two years about 28,000 tons and this year so far in the three months or at the end of April I think we will be behind about 15,000 tons, in the four months, to what we should have had.

The effect of that has been this, that it has not only deprived labour of

work in our mills which we have been compelled to keep open in order to spread labour in accordance with the policy of the province—to which I do not object—but also it has reduced our earnings and my feeling about the situation is, as the governments have adopted this policy I think it should be enforced. My feeling also is, if they withdraw from the policy it is only a matter of a very short time before prices are again very much below what they are to-day—our position will be such that it will be almost inevitable that we would have to move immediately in that direction. Does that cover that point?

MR. DREW: Q. I gather from that that subject to the actual working out of the details you believe that some such system is necessary?

A. I can only say this, we tried and tried and tried, and failed in every way—the newsprint industry and Institute and other things—and the only way in which any headway has been made was in that action determined upon by the two governments which we were told to conform to, and my view is that if they intend to carry out that policy and will enforce it, as far as I can see that is the only way in which we will bring this industry out of chaos. If they make up their minds to let it go I think you will be back in the same position that you were in 1929, 1930 to '32.

MR. ELLIOTT: Q. You think that the proration has helped some then, Mr. Clarkson?

A. Oh, very much. There is no doubt about it, it has been very constructive.

MR. DREW: Q. Well then, you have had a great deal of experience now, Mr. Clarkson, with the largest of the operating organizations and, without bringing that down to specific instances for the moment, what suggestions have you as to the best practical way of working this out?

Before I leave that question with you, let me put it this way: At the moment there is what appears to be a fairly loose method—I am not suggesting necessarily a criticism of the method, but there is a method by which the two provinces have set up an independent committee for the purpose of acting as an intermediary between the industry and the government and then each government has a slightly different Act, which is intended for something else than on the face appears; that is, both the Forest Resources Regulation Act of Ontario and the corresponding Act of Quebec are, quite frankly, for a purpose other than would appear on a first reading of the Act?

A. Well, I didn't understand that. I thought that their deliberate purpose was to enforce this policy, but that there were other things brought into it which gave power in other directions.

Q. There is no question about that, but the evidence so far would indicate that the introduction of both these Acts was for the purpose of carrying out this necessary idea of proration?

A. That is my understanding.

Q. You have had a good deal of contact with it and a good deal of experience

with it. Have you any suggestions as to methods which would best work out, and in asking that question, I do it, Mr. Clarkson, knowing that you have had a great deal of experience in connection with matters of that kind?

A. Well, I think, frankly, Colonel, that if Ontario will enforce the Act which it has got now, that it can make these non-complying companies conform, but it hasn't been enforced. But I think that there is a better means of dealing with the situation: I think it would be better, if this policy is to be proceeded with, to establish a commission, or committee or whatever you call it, appointed by the province for the same purpose and let them enforce the Act.

HON. MR. NIXON: Q. Police the industry?

A. Police the industry. I can quite see, however, the great difficulties which Mr. Heenan has had, for instance, in dealing with the situation he has in Ontario, and perhaps in Quebec they were taking a little different attitude towards similar difficulties there. I think it would be far better to have the control under one head and to give that committee ample power to enforce it, and then you would have a unified control of the situation.

MR. ELLIOTT: Q. What about the provinces other than Ontario and Quebec?

A. Well, I don't know what you are going to do there. So far as Manitoba is concerned, we have the only mill there. I have been impressing it upon Manitoba, and at some times they say they have no interest in this proration, "Go ahead and operate the mill," but the fact that the company hasn't got any contracts of its own, why we have given it business just sufficient to keep it on the line.

So far as New Brunswick is concerned, I think the only mill there of importance is the one at Dalhousie owned by another large company, and a somewhat similar course must have been followed, because when you get down to Nova Scotia, you have got an entirely different situation: You have got a mill there under contract to buy power from the Provincial Government. Whether it would agree to go into anything of that kind or not, I don't know. It hasn't so far.

Newfoundland, where you have got about 400,000 tons, of course is not in Canada, but their mills are directly competitive with Canadian mills. Hitherto their tonnage has gone largely to England. Now, I would say with the falling off of the English demand, they compete with Canadian mills on the seaboard and right to the Great Lakes, where they can get water transportation. And you have got your Pacific Coast mills, which meet different conditions, and I don't know what they will do. But by far, eighty or ninety percent, I would say, of the exports from Canada come from Quebec and Ontario, and the mills affiliated or controlled by Quebec and Ontario companies.

MR. W. G. NIXON: Q. Mr. Clarkson, do you regard it as impossible for the industry to correct this situation?

A. The only answer I can give to you is that it hasn't done so over twenty

years, over the last ten years, particularly—it is cutting its own throat. You can see the reason for it: When you talk about the sales of newsprint, you talk about pulpwood and you talk about power and you talk about labour, but the most important way in which costs are increased or reduced, is the rate of operation of the mill. If you get a mill operating eighty percent, and of course, it differs in each case, it would cost maybe five or six dollars a ton less than if the same mill were to operate forty or fifty percent. So that the ratio of capacity of a mill is the greatest factor in the cost of production. Well then, when you get capacity of 4,000,000 tons say as it is to-day, 4,400,000 tons in Canada, you get shipments or production of two and a half million tons, sixty percent, as it was, you can see the incentive on the part of the companies to try to get eighty percent and leave some other fellow in the position of forty or thirty percent; if he can get up to eighty percent, he can reduce his cost ratio very much.

Q. I was wondering, could we get more business under proration than if the bars were let down?

A. I think the amount of business you get is determined by price. The price situation which the Ontario and Canadian mills have got to meet is this: Over in the Scandinavian countries they have got a capacity of about a million tons of newsprint a year; they have got very much lower living costs over there; as a consequence their labour is less, their power is less and nearly everything is less. Then their water transportation has been favourable heretofore, and as a consequence, they are able to come over here and have been selling consistently, five to seven dollars a ton less than Canadian mills; they don't name a price, they just say five to seven dollars a ton less, and they are able to take that and I am told, make money. Well, we just can't do that. But their exports into the United States last year were about 275,000 tons, about eight percent of the consumption, so that in that way it is not so serious, and in another way it is.

The next thing you have to face is this southern pine situation. They have only got one mill down there and whether it will be successful or not I don't know but it looks as though it may, and their costs of wood are four to five dollars a cord and ours at the head of the Great Lakes are nine to ten dollars a cord. And there is a question of operation—they are operating full. The United States mills have made it a policy for years to sell at a certain ratio under the Canadian mills and the business goes to them from patriotic reasons because years ago the Canadian industry very foolishly took advantage of a shortage of paper and raised the price to $110 a ton—a very foolish thing to do—and it brought on resentment and it has never been forgotten and they have been apprehensive that if a shortage came the same thing would happen.

HON. MR. NIXON: Q. What did the mills in the States charge at the same time, Mr. Clarkson?

A. Some of them charged substantially less—I don't know what the price was—the Northern in particular charged substantially less. I am satisfied the Canadian mills will never do that again, but it is a different thing to feel that way and another thing to convince a customer who has been bitten once.

So now you say, if you have proration will it increase your business? Increase or reduction of business will come according to whether consumption

goes up or down, and price. I don't know whether it will increase your business; you get the marginal business over what U. S. mills supply and the Scandinavian mills supply; but so far as Ontario is concerned it means a difference of whether those mills are all going into bankruptcy again or whether they are able to stand on their feet, that is where it is.

MR. W. G. NIXON: Q. But don't business conditions follow the law of supply and demand?

A. Well, the law of supply and demand, if you leave it to the law of supply and demand and say that because of that you don't approve of proration and it should be done away with then, as I say to you I am satisfied that a lot more Ontario and Canadian mills will head back into bankruptcy pretty quickly.

HON. MR. NIXON: Q. There is new business offering. You don't have to get business but just simply hang on to it?

A. The business offering at the present time is overseas business and a certain amount of American business that the Scandinavian mills are not able to supply. That comes temporarily, but after the war is over and if these countries get back you will have the same condition.

Q. What effort is being made by Abitibi to get their share of the business? Have you salesmen?

A. Oh yes, we have a sales agency. We have only one small mill available—we have been supplying overseas business, we have only one small mill in Quebec, which is on the St. Lawrence but not well located there for water transportation, all our other mills are Ontario mills and they are at a very great disadvantage to supply overseas business, the rail freights against them are very heavy. At the same time we have taken some of that business and we have manufactured it even as far north as Iroquois Falls. But the experience of the past has been, as between Canadian companies there has never been any very large shift of business except for the price cut.

Q. What is your rate of production this year as compared to last year?

A. Our rate of production was a little higher. I haven't got the figures in front of me but I would say it is five or six percent higher. The industry is a little more than that, because as I say, we have been made subject to proration and it has not been enforced against some companies which have been overshipping and the result is we haven't got our share.

DR. WELSH: Q. The stock of the International Pulp & Paper in the States has gone up from about forty-eight to seventy-two, and the Canadian Price Brothers and Consolidated and so on have only increased about a dollar or two dollars?

A. Well, it is very difficult to compare any companies in that way. You take Abitibi, we have so many newsprint mills and we have a sulphite mill, we have I believe the largest sulphite mill in Canada; you take Consolidated, it has got newsprint mills, no sulphite mill but a kraft mill. Now you may have a

heavy demand for sulphite as there is just at present, at the time we are operating full in our sulphite mill in Ontario, but there is not the same demand on the kraft mills in Canada. Now International Paper Company has got an enormous investment in southern kraft the use of which has been increased in the United States just in leaps and bounds in the last five years; I think there have been two million tons additional capacity put in there in the conversion of southern pine into kraft pulp and products, so that International Paper Company is partly newsprint and partly sulphite kraft. I can't tell you what views these people dealing in the stock market take but I would say that that kraft situation has had a very important influence on the way their stocks are looked at.

MR. SPENCE: Q. There are not many of these newsprint mills that have installed machinery for that sulphite pulp?

A. Pardon me. Newsprint is made out of ground wood pulp plus news grade sulphite or slush sulphite pulp. Now there is very little demand for news grade sulphite pulp except in a pinch when they can't get other kinds of pulp and then they may have to take some of it; there is one company in Ontario ships quite a lot of news grade sulphite pulp in the dry form to affiliated companies in the United States but other than that the demand on Ontario companies and Canadian companies in general for ground wood, which is very speculative, or for bleached sulphite pulp, hasn't amounted to very much—it has been very little.

Now if this condition in Norway and Sweden continues there may very likely be a shortage of pulp and it may be that some of these United States converting mills will have to buy news grade sulphite pulp and in that event Ontario mills are equipped to furnish some of it. We have a capacity at the Soo and Iroquois and I believe St. Anne of a certain amount but you have got to have facilities to dry it.

MR. DREW: Q. I suppose one of the answers also is that where there is an increased internal demand for newsprint in the United States the first mills to benefit will be their own up to their capacity, isn't that so?

A. Well, they are selling at a lower price and they will get the preference.

Q. I am referring back to the question that Dr. Welsh asked. I would think that that would be a fairly logical result, because as the increased artificial demand from the war brings its effect on the purchasing, I would imagine that the first mills that would get it would be the American mills themselves?

A. Yes, but they were operating last year, I think, somewhere up towards ninety percent of capacity. Their capacity is about a million tons.

Q. They were operating that close to capacity?

A. Yes, close to ninety percent. You see, you have got 4,400,000 tons in Canada, you have got about a million tons in Scandinavia and about a million tons in the United States. That is your picture.

Q. Now, Mr. Clarkson, you said that the actual ratio of production to capacity is the most important factor in the cost?

A. One of the most important factors. Of course, if you have very high costs in pulpwood, it might offset that, but generally speaking, your ratio of capacity is one of the most important elements in cost of production.

Q. Well now, I am merely asking this question for information, but you have been talking of the problem involved by this proration. One of the criticisms that one always reads of the effect of proration, whether it be in the newsprint industry or any other industy, is that by placing an umbrella over the industry it stifles initiative, and the other, an extremely important argument that is made against it very strongly is, that by proration you force an uneconomic method of production, by distributing over a great number of mills, the production instead of concentrating it in certain mills so as to keep the costs down so that you can compete?

A. Do you know any industry where they concentrate? It is just not feasible.

Q. Of course, there are a lot of industries have done it through a very drastic method, and I am not suggesting that is the right method, and there are a great number of industries where this has been forced upon them by economic pressure?

A. By economic pressure. Well, just finish what would happen: Suppose this Iroquois Falls mill can function, we will say, at five or seven dollars a ton less than the Soo. If that is the case we will shut down the Soo, turn the business all over to Iroquois Falls. That would be fine from the profit standpoint, but what would happen to your labour at the Soo? You would disturb the whole social structure. I think that it would be very inadvisable to attempt to do a thing like that. Suppose we shut down the Soo mill, which is one of our highest cost mills, and threw all these people out of employment, stopped taking power, stopped cutting wood, and just turned that all over to Iroquois Falls? Well, you would just put the burden on the province of supporting so many men in relief.

Q. I am not suggesting that that be done, Mr. Clarkson, I am merely saying that is one of the important criticisms of proration in any industry, whether it be the pulp and paper or any other?

A. Mark you, Colonel Drew, I don't like proration from the standpoint of the companies or the intervention of Government in business at all, and I don't like doing anything that is against economic laws, but you have got a situation to face here. Now, keep one thing from the other; you can let these companies with a capacity of nearly double the demand upon them, cut their throats if you want to, and when that happens, you will drive a lot of them back into bankruptcy, you will have a lot of mills closed down and you will certainly undermine their ability to meet the conditions which they will have to meet after the war. So I, disliking the situation as I do, still don't see any other alternative but proration, if you want to spread your labour and spread the use of forest products, and if you want to leave the companies in a position to meet what they will have to meet when this war ends, which will be probably the worst competition that they have ever had.

MR. DREW: Q. That is exactly the reason that I am trying to penetrate

any suggestion made, because it seems to me that one of the most important things, if not the most important thing which this Committee should consider, is some recommendation as to a long-range policy in connection with the general market of our pulp and paper products. We cannot ignore the fact that the governments of Ontario and Quebec are inseparably associated with this industry, and quite apart from the wisdom of the course which has been followed to date, there seems to me to be the necessity for creating some long-range plan?

A. What I have in mind is this, so far as overseas business is concerned, there should be one corporation to represent the Canadian mills in the whole of business overseas.

Q. When you say "overseas", you exclude the United States?

A. I exclude the United States. So far as the United States is concerned, the hope I have had is, that if the governments pursue proration that eventually, within a few years,—two or three, or you may find three or four,—the best selling effort can be obtained if you had three or four selling companies representing the Canadian mills, and I do not approve of one sales company to represent Canada in the sale of newsprint in the United States. It looks too much like a monopoly. I think the situation is such that the sale of Canadian paper would be very much advanced, if you had about three or four large sales companies representing all the mills and your expenses could be cut, too, and probably other economies would be effected at the same time. I do not approve of one company for that purpose. It is too much like a monopoly, as I said.

DR. WELSH: Q. What position would the other provinces be in? Would Quebec and Ontario be in a more favourable or unfavourable position?

A. Oh, I think they would be in a more favourable position. I do not know the exact output of the British Columbia mills, but I think the output of Nova Scotia is only about 100,000 tons. You will never get perfection, but I do not think it would create such serious trouble if they just stood off to themselves and did not come in.

MR. W. G. NIXON: Q. Do you know of the percentage of Canadian raw material, taking Quebec and Ontario, as compared with the other provinces of the Dominion?

A. No, I do not.

That is also very deceptive. You come along and say you have so much pulpwood in Ontario; but how much of it is available for use and how much is not? You have a large amount of pulpwood away north of the transcontinental railway, but I do not know when it will ever come out and I have no record of what you might call available pulpwood at this time. I do not know whether or not the province has.

MR. DREW: Q. In regard to the remarks you are making about the social aspects of attempting to concentrate production for the purpose of lowering cost, I heartily agree with the fact that a pointed consideration of the whole discussion is the social consequence of any action which might be taken in its

effect on communities which are almost wholly dependent upon this, but there is of course the short-range and the long-range viewpoint in relation to the social aspects as well. So that I may make it clear as to why I am looking for some suggestion in this direction, it seems to me to be the fact of the situation that we must face possibly even before the end of this war, but certainly when this war is over if there is still the present system of monetary exchange between nations, there is going to be a tremendous amount of money seeking some sort of development and assuming that the situation has not changed and that it will be possible for American and British capital to go into Scandinavia and into China, our most serious competition might come from mills operated by British and American capital in those two areas?

A. Well, my understanding is that it is largely British capital in Finland now.

Q. That is what I understand; and also in Norway?

A. In Norway and my information also is that they have about reached the peak of their productive capacity under the restrictions imposed on the cutting of wood. It may be that there is 100,000 tons more in Finland,—I am not quite certain as to that,—but other than that my understanding is that they have reached their capacity. The policy is to spread so much in the United States, so much in South America and so much in the Orient.

Q. Your feeling is that the actual physical limitations reduce the seriousness of the threat from Finland and Norway?

A. I think so. I think your most important threat at the present time is that if this newsprint mill in Texas proves to be a success you are going to have some more mills down there and they are going to take away business which the Canadian mills have had in the Southern Central States. As a matter of fact, we are already affected in one direction by it to a small extent.

Q. I come back to this point that one may protect the social consequences of certain attempts to get economy by a method of proration and yet in the end that may be most unsatisfactory if by doing so it created an uneconomic production which ultimately would throw the business into other channels.

A. I do not exactly think that, Colonel. They sell on the basis of price and spreading this business merely means that the mills get so much less profit than they otherwise would, you see.

As a matter of fact, I asked the Minister a couple of years ago for permission to shut down mills at the head of the lakes and transfer my business to the Soo and Iroquois Falls. I did not think he would comply and I received the answer that he would not permit it. The result of that situation is that Abitibi loses a certain amount of business which it otherwise would have. If it had been permitted, why, they would have had a certain number of men thrown on their shoulders for relief.

But, this concentration of business is something which you cannot just make a general answer about. You have to study it and see what the effects

of it are, what you can do by it and what it should result in. So, I cannot give you a general answer about that.

Q. If the question is too general, do not answer it, but I wish to ask this question. Is it not so that in other industries where attempts have been made to prorate,—whether we call it proration or whether we do not,—that ultimately competition from outside sources in the end has forced the closing down of certain mills simply because of the fact that the price was kept up to a point where they could not compete.

A. Well, I can visualize this, that if the Canadian mills lifted their price that way and the southern pine mills are a success, it would result in probably the construction of a lot more mills in the south. All I can say to you is that I do not think that the Canadian industry would be so foolish as to try and put a price on newsprint which will encourage the construction of mills in other countries.

I think they are just as much alive to that as anyone. You have an indication of their viewpoint. Here we are in war. During the last war the price of newsprint went soaring and now, you see, even still at the third quarter this year, it is the same as it was at the time the war started. I think they realize it is not to their interests to unduly raise prices on newsprint. As far as I am concerned, I do not want to do it unless costs move up with it.

HON. MR. HEENAN: Q. Have we in Canada under proration,—I am speaking about the whole of Canada and not any particular area,—decreased or increased our tonnage?

A. Well, Mr. Heenan, that is a little bit difficult to answer. I figured out at one time that Canadians lost some business when the price went from $42.50 to $50.00 and I figured that if we had maintained that low and satisfactory price of $42.50 we might have had 200,000 tons more business spread over Canada. I am not sure of it,—we might only have had 150,000 tons,—but in my opinion if there is any difference it would not be any more than that; infinitesimal.

MR. ELLIOTT: Q. Of course costs were pretty high then, were they not?

A. No; I am referring to the last couple of years.

Q. I thought you were going back to 1929?

A. No, no. You see you have only 1,000,000 tons in the United States and you have 1,000,000 tons in Scandinavia. I have not the exact figures in front of me, but I figure 200,000 tons was the maximum loss that we have sustained in the whole of Canada. I do not know for sure; it may have been less than that, but anyway that is the maximum.

HON. MR. HEENAN: Q. You are not certain of course, that if we had still retained the price of $42.50, that the Scandinavian countries would not have sold that 150,000 or 200,000 tons anyway at a lower price and secured that sale?

A. It would have taken part of it, because it would have lost the market. They might have taken part of it, anyway, because as I say they would have lost their market over in New York.

MR. DREW: Well, Mr. Clarkson, simply looking to the future I am in the hope of finding some answer to this. Have you considered the possibility of some international commission ultimately being set up on somewhat similar basis on somewhat similar lines,—naturally different, having regard to the different character of duties,—to the joint Waterways Commission?

A. No, I have not, Colonel, and I would be somewhat doubtful of the feasibility of it if this newsprint can be made out of southern pine. The United States government would undoubtedly want to encourage that as much as it could in itself.

Q. Then, do we not find this situation, that if the southern pine experiment is successful, some drastic change in our method both of production and competition must be devised, if we are to survive at all, that is, I do not say if we are to survive, but if some of the industries are to survive?

A. Conditions change you know, Colonel, and I would not like to say that. The position is simply, that at the present time, our costs are higher than Scandinavian costs; there is no question about that; their output is limited and last year it was 275,000 tons, which is the highest it has ever been, so compared with 3,500,000 tons a year consumption in the United States, it is not too serious.

So far as the southern pine is concerned, it is a question of whether or not they will be able to turn out paper equivalent in quality to Canadian paper. So far it is not, and it does not compare with it. I was told the other day that they were importing wood from Newfoundland. I do not know whether or not that is true, but if it is true, it means that they do not think they can produce a paper of the quality they would like to have. These are all conditions in the future.

MR. OLIVER: Q. You mean importing wood?

A. Yes.

MR. DREW: You mean those southern mills are importing wood?

A. Yes. I do not know whether or not that is true, but I am told it is, so that at the present time I have never considered the question of an international commission to control the situation. It is something one would have to think of and I believe it should be a little bit difficult.

Q. The reason I ask is, that it has been discussed before, and it happens that it was discussed at some length about two weeks ago in the Quebec Legislature, and there is just one point of which I would like to make sure. When I asked what you thought of the possibility of some such commission, you said there would not be any chance of creating a commission of that kind, if southern pine proves to be a successful development in newsprint. While I can quite see that if the southern pine experiment proves unsuccessful, then, with a tree which

I believe matures in about twenty years, it can be seen that they would very quickly attempt to meet their own needs from that source. But also, if that is so, it makes the situation the more serious from our point of view, as to our ordinary method of production and sale?

A. Of course, Colonel, it is not so very long ago,—and I remember very well,—that I was extremely glad to get pulpwood up at Smooth Rock Falls I had wood there to sell and I could not get more than $5.00 a cord. Now, there is a very great difference. I do not know what the price of wood in the Southern States will be ten years from now. One of the arguments I have heard used against the possible success of those mills is, that with the demands from pulp mills down there, the cost to their stumpage will go away up. There are some differences in the character of their wood according to age, which puts them to expenses in selection which we have not got.

The only feeling I have about an international commission is, that I would rather think that the United States would go on to feel out this situation a bit before they would go into such a thing. It may be feasible, but I have never considered it.

Q. I think we can safely say this, that one of the most important factors to the stability of this industry in Canada, is the goodwill of the purchasers in the United States. Is that not so?

A. Yes, it is.

Q. I think we start from that point; that in this industry we are peculiarly susceptible to their goodwill?

A. If you can get it.

Q. Yes, I know.

A. There are some people who believe that goodwill is based upon price.

I think a great many American publishers feel that the $50.00 price is a perfectly reasonable price for them to pay for newsprint, but how much of their goodwill you would have if someone went and offered it to them for $49.00, I do not know. Very little, I would think.

Q. Perhaps I was not using the term goodwill quite in that sense. What I mean is their confidence in our good faith and in our business methods.

A. I must agree with you. If they obtain the confidence that we are not going to take advantage of them in any opportunities we have, then I think the basis would be much different than it was a few years ago, when they were caught in a pinch and the Canadian mills simply charged them an abnormal price. They did that to Canadian publishers, too. I happened to be a publisher at that time.

Q. Then you have had the experience from both sides?

A. I had the *Toronto World*, and handled it on a profitable basis. The price

of paper was put up and it wrecked the institution. I lost a lot of my own money before I got out of it.

Q. The suggestion was that it might be desirable to have some such international commission or association which, by acting as a clearing house for information as between the consumers and the producers, would eliminate some of the misunderstanding which undoubtedly has caused trouble on both sides. Would you think there would be any inherent difficulty in that?

A. I have a recollection of attending a meeting in New York where we offered to deliver whatever information required, do anything within reason, just to show them what the situation was. We did not get anywhere at all. They did not react to it. It was just coldly received and ignored. That attempt,—a bona fide attempt—was made. I do not say it might not happen, but I just have not very much confidence in it at the present time.

Perhaps a little later, if they feel they are treated differently and properly, there may be an opportunity, but off-hand I do not see it just now.

Q. In any event, I assume that the most effective body for the insuring of any proceedings of that kind, would be to set up some of organization independent of the government here in Canada?

A. Yes, absolutely. I would not think it could be a government organization.

Q. There was a question asked as to one of the subjects which came under discussion here a good deal, and on which there seems to be some division of opinion, namely, in regard to the question of the export of pulp logs.

Would you care to express an opinion as to the wisdom of that course?

A. I can only give you my opinion. Let me say there are a great variety of opinions on the subject. I do not think there is any question of doubt at the time when those Canadian newsprint mills were constructed, but that it was understood that wood from Crown lands would not be exported to the United States, but would have to be manufactured in Canada. You can see the reason for it, because if the United States imposed duties on newsprint or wood pulps, they could put a sufficient duty on it and the American mills could come over to Canada, buy their wood and under cover of that duty undersell the Canadian mills. So there is no doubt but that at the time it was understood that there should be no export.

At the head of the Great Lakes, first of all, there is settlers' wood and some privately owned wood which has been exported, and the Government has no control over it at all. It gets no income from it except for a very minor export tax. So far as settlers' wood is concerned, every government in Ontario has said to the mills, "We want you to buy wood from settlers which is located adjacent to your mills," and that has been done in some cases over long periods of years, until the settlers' wood, which can be laid down at a mill at a reasonable price, has been very largely cut off.

Up at the head of the lakes, not only have the Canadian mills taken that

settlers' wood in compliance with the request of the Government, but also you will find somewhere within the last ten or twelve years, between 2,500,000 to 3,000,000 cords has been exported from there to the United States, and the position which now exists is, that there is a shortage of wood up there available for export, or the costs of the wood they can get are so high that they are now looking around and trying to get Crown lands wood for export to the United States.

What I say is this: First of all, there was never an undertaking when these mills went up or an understanding that it would not be exported, so that they would be protected. You first have to contravene that understanding, and it may be argued that conditions have changed. So far as I am concerned, I think it would be inadvisable at the present time for the Government to prohibit the export of wood, because if you did so, you would cut off the business of $2,000,000 or $3,000,000 a year up at the head of the lakes and deprive that locality of that amount of income. I do not think this is the time to do it.

At the same time, looking at the picture in the long run, I think if Ontario permits the export of wood, particularly if it comes from the best areas up in those districts, you will delay the time when American mills have to come to Canada for pulps and other things of that kind which are made out of Ontario wood.

So my view of the situation is this: I do not think you can afford at the present minute and during a time of war, in our time of need for exchange, to cut off the export of wood, but I do not see any reason why wood should be exported up there just to take the place of revenues which dealers lose now, because they have cut off all the settlers' wood and so forth.

What I think should be done is, that a certain amount of wood should be allowed to be exported annually, depending upon the demands of the Canadian mills, the condition of employment and any other matters of importance which may come up from time to time.

I think it is a very curious situation to see that wood which can be exported to the United States bears no charges and wood which is manufactured by Ontario mills to pay up to $2.24 a cord. That is not at all a reasonable situation.

Hon. Mr. Nixon: Q. Are you referring to settlers' wood?

A. Yes.

Q. No charge?

A. No charge except 25 cents excise.

There were some areas granted in 1937, in connection with the construction of pulpmills. In 1937, so far as pulp was concerned, it was in just the same position as in 1923, 1924 and 1925, in the newsprint game. There was a very heavy demand and mills were operating pretty well towards capacity. It was, undoubtedly, felt that that demand was going to continue and that there was room for these mills.

The experience of the Ontario mills for ten years prior to that was that they made no money. Sometimes they operated as low as 40 percent and 50 percent, and six or seven new pulpmills would put the pulp business in just the same position as your newsprint business, so I do not think the mills should be constructed. While the war is on there will undoubtedly be a demand for all the production they can handle, but after the war is over you have just another mess on your hands, like the newsprint mill.

My feelings are of two kinds. First of all, I do not believe that it is a feasible or proper procedure at this juncture, to cut off export of pulpwood. I would leave it in a flexible position so that depending on labour, demand of Canadian mills and other conditions which arise, the Government could determine each year the proper thing to do, but I think they should discuss the matter each year with the members of the industry.

It has been said that if you export pulpwood to book and fine paper mills in the United States, it will not affect the Ontario mills, because they do not compete with such mills. I think anyone can see that if you supply pulpwood to the border states you just increase the aggregate quantity, where you just reduce the demand of all the mills there for wood, and you reduce the demand for United States wood. Therefore, there is not the same use and the prices do not go up as they otherwise would. So it is entirely nonsense to say that because you are not selling to newsprint mills that it does not affect Ontario mills. It does, because it keeps the cost of pulpwood down to the mills in the United States which compete with Ontario mills in the production of newsprint and pulp.

The other matter is that wood which goes over to the United States is made into pulp and all classes of paper are made from pulp. There are mills producing pulp, so in sending it over you reduce the market for Ontario pulp. For all that, I think it is a very broad question. At the present time I do not think you can afford to cut off the export, as much as I dislike to. If you were to do so the immediate effect would be to lessen the income of those districts, and in the long view if you do it it will delay the time and the shortage of wood in those northern states will compel the mills there to come to Ontario.

MR. ELLIOTT: Q. How would you limit the export of pulpwood? Would you suggest that there be a quota or that it be regulated by terms?

A. The Government has control over Crown lands, and according to the concessions and the statutes by which Abitibi got it, they cannot export it; it has to be manufactured.

These Ontario mills rely on the Crown lands and the woods they take has to be manufactured in Ontario. If Ontario grants any further Crown lands it can impose a condition that wood from them shall not be exported except under conditions approved from time to time by the Government. I cannot define it but I think it should be easy enough to do.

Another matter: The feeling I have is that if it is unwise,—as I believe it is,—to construct these mills and you do not want to cut off the export of pulpwood completely, I would put a premium on it payable to the Ontario Government.

Q. On pulpwood exported?

A. Yes.

Q. What I have in mind is that if you were to regulate the areas from which pulpwood might be exported the Government would have to regulate it by granting permits to certain companies?

A. Well, you see there are two sides to the question. The United States mills say "We cannot afford to buy wood unless we can get it at a price." To get it at a price it has to come along on these areas on the lakefront close to transportation and the best wood up in those districts. If that wood there is given to them for export and if it later on is required in Ontario, it is not available.

Q. You can see the difficulties which may arise if the governments are compelled to issue permits?

A. No. What I had in mind was in regard to these concessions which have already been granted. The mills have not been constructed. I do not want you to cut off the export of that wood for the time being until conditions clear themselves and until this war is over. I would defer that situation and in the meantime charge them a premium on that wood and if the Government fixed each year the quantity of wood which could be exported, taking into account as I said, the labour, demands of the Canadian mills and the general condition of the industry, it would leave it in a flexible condition.

I might say I think there are a good many people who will entirely disagree with me. They do not think it should be exported at all. But, as I said, those are my own opinions.

HON. MR. NIXON: Q. Does the Abitibi export wood at all?

A. No, never. The only lands which we have and from which we can export are some veteran lands up at Smooth Rock Falls and it was on railway lands. Of course we own a lot of railway lands north of the Soo and near Fort William, but we have not considered the export of wood; we have not been able to.

Q. Have you investigated it at all as to the possibility of profitable operations?

A. No, we have not investigated it, Mr. Nixon, but my present view is that we need that wood ourselves and I would not export it. No, we are not oversupplied with timber, you know. You see, there is a great misconception in this regard. People think that if a company has a big area of lands that it has an enormous quantity of pulpwood. Well, in some areas which we have it is nearly 40 percent cut over, there are a lot of rocks and things of that kind. Anyone who thinks that the area represents the quantity of wood which the company holds, is entirely wrong.

In some districts there are two cords to the acre and in some districts at the head of the lakes there are ten cords to the acre, but the only way you can determine is to cruise. We are fairly well informed as to our limits, but we are not over supplied with wood. In fact, we are under supplied in some directions.

MR. OLIVER: Q. How many mills has Abitibi?

A. One in Manitoba; one in Fort William; one in Port Arthur; one in the Soo; one in Iroquois Falls and a pulpmill in Smooth Rock Falls. It has two closed mills, one at Sturgeon Falls and one at Espanola; another newsprint mill at Ste Anne de Beaupre, Quebec.

HON. MR.NIXON: Is that operating?

A. Yes, on the same ratio as the other mills.

Q. And you use some Quebec wood in your Ontario mills?

A. Very little now. I would like to clear that situation up with you. When the Abitibi went into receivership—let me put it this way: Abitibi, and for that matter, the Canyon Development owned by the Government, obtains its power from Lake Abitibi, which is the storage basin for all those developments. The right to dam the Abitibi river was secured under an agreement with the Quebec government under which the company was permitted to raise the water up to a certain level. When the water is raised to that level, sometimes a wind comes up and floods some lands in Quebec at the east end, and at times the situation became a little acrimonious. As a means of soothing it, Abitibi purchases wood over in that district.

In 1932, when I went into receivership, Abitibi not only had not one dollar in its till but it was $1,000,000.00 short. So that it was a question of trying to get some money to run, and we bought in that area.

MR. DREW: That was one use to which you couldn't put your paper!

A. Not a bit. We bought 100,000 cords in Quebec, and by buying it I think it probably cost us a couple of dollars a cord less than if we had bought it in Ontario, and it helped us. From that time it went down until this year I think we are only buying about 10,000 cords over there.

As far as I am concerned, I think it is in the interests of Ontario, just as much as in the interests of the Abitibi Company, to buy a certain amount of wood from that district, if we can get it.

Then there is another thing: The amount of low cost wood up in that district is very rapidly reducing. That which remains is high cost wood. That is another additional reason why the low cost wood reserve should be conserved.

Q. In what area is that, Mr. Clarkson?

A. Up in Iroquois Falls.

HON. MR. HEENAN: Have you built a railroad in there?

A. We would have to build. You see, this is the situation: the rivers up in that country run north. As a consequence, you cannot drive wood by water from the large Abitibi extension limits. You would have to build a railroad in

there. The price of wood over that railroad, its operation, its amortization, would be three to four dollars a cord more than the other wood; and they should never have taken that concession on that basis; they should never have agreed to pay anything like it, and it is against the interests, I think, of the province to impose that penalty on them.

Q. How many miles of line have you in there now?

A. I forget, Mr. Heenan. I think it is between 25 and 30 miles, that is, main line. I am not sure. But you take the mill next to it, all its wood goes down by water, and it had to move its power site away north of the mill on a river, or you would have to construct a railroad. But its wood just comes down to that point where it had a railroad. It is put to no extra cost. Our position is entirely different, much worse.

MR. ELLIOTT: You mentioned that you favoured the export of pulpwood at the present time because of the need for exchange. That might become a very important matter in the next two or three years.

A. What I said was this. I don't like the export of pulpwood, but I recognize that you have to face realities, if I may put it that way, and at the present time, when Ontario and Canada needs exchange, that is one reason why I think you should not prohibit it now. The other reason is, that I don't think it is wise to take away two or three million dollars of income from that district at this time. But, on the long view, I do not favour export of pulpwood.

Q. Looking back to 1930, 1934, I believe the export of pulp and paper products to the United States was the greatest single factor in maintaining the value of the Canadian dollar in the United States; is that not so?

A. I am unable to speak about that. I do not know the figures.

MR. W. G. NIXON: We have tremendous quantities of poplar. Years ago, we used to ship an awful lot of poplar out of that country, but it seems to have dwindled very very much.

A. I am not able to speak about poplar. You can use it to a very minor extent as a filler in newsprint, but, so far as we are concerned . . .

Q. You do not use it?

A. We do not use it. But I think they use it in some other kinds of pulp, soda pulp.

Q. The only market is the export market for it, I believe.

A. I do not know about that. I cannot speak about it.

HON. MR. HEENAN: Mr. Clarkson, you said a moment ago that you thought it was in the interests of the Province of Ontario, as well as in the interests of the Abitibi, to buy your purchases of pulpwood in Quebec?

A. Yes.

Q. You might explain what you mean by that.

A. Well, to purchase a certain amount of pulpwood in Quebec.

Q. Yes, but how does it affect the province?

A. The purchase of a certain amount of pulpwood in Quebec enables us to maintain that water situation up at the head of the lakes on an amicable basis. So long as we continue to buy some pulpwood there, I think that will continue. If we were to be prevented from buying pulpwood, and mind you we are buying very little now, because we cannot get it, it would result in a certain amount of bad temper up there, and the first thing you know you would have another situation on your hands, a water situation. So I think it is in the interests of Ontario as well as Abitibi, having regard to the big power situation up in that country, to continue to buy a certain amount of pulpwood there, if you can get it. But we can't get very much of it.

Q. I thought you were thinking about it from another angle.

A. The other angle is this: you have up there low cost pulpwood. You have, I think, about three million cords of it. And that mill, when it is operating full, uses 200,000 cords a year. If you take that off the low cost limit, the first thing you know you will find yourself up against the situation where the only wood available to you is very high cost. As I said, to go over that railroad, it may cost three or four dollars a cord more, which would prejudice the ability of that mill to compete. I think it is far more in the interests of Ontario to extend the time of taking the wood off that low cost limit by bringing in some from Quebec.

Q. In the interests of conservation?

A. In the interests of conservation. That is what I mean.

HON. MR. NIXON: You operate on Crown lands in Quebec there, do you not?

A. We have one license there. Our lands are largely seigneury lands.

Q. How do your dues to the government compare in the two provinces?

A. I cannot tell you that. Mr. Schanche can tell you that.

MR. SCHANCHE: You cannot make any direct comparison, because the stumpage rates in Ontario vary widely. Generally speaking, the rate for spruce on Crown lands in Quebec, I believe, is $1.25 per hundred cubic feet. I have not the exact figure in mind.

MR. DREW: Mr. Clarkson, a few moments ago you were speaking about the fact that low cost wood is greatly reduced, and you were speaking particularly in relation to the Iroquois Falls area?

A. Yes.

Q. And you said you had now to deal with high cost wood. How general is that situation in the timber limits which you control?

A. Abitibi has a number of limits. You see, Colonel, here is what happened: in 1923, between 1923 and 1929, when the paper business was booming, there was a great demand for pulpwood limits. Most of the limits up at the head of the lakes were held by existing companies, and when they went to put up new mills, some of those mills had to go quite a distance away to get their wood. Abitibi had to go to the head of Lake Nipigon. But with the competition for these limits and the profitable nature of the business, they agreed to pay just exactly the same stumpage dues, and very heavy bonuses for wood cut from these far distant areas as were being paid for areas right close in. Of course, since that time, the business has just gone to pieces. The consequence is that you may have a limit paying certain stumpage dues and bonuses and another limit away off in the far distance paying the same dues and bonuses.

My view is that the stumpage dues and bonuses should be fixed on the basis of the accessibility of the limits and their physical and geographical conditions. I rather had the feeling that the Department of Lands and Forests feel somewhat the same way, Mr. Heenan; am I right?

HON. MR. HEENAN: Yes.

WITNESS: At the head of Lake Nipigon we had a limit on which we paid the same stumpage dues, and on which I think we paid the same bonuses, as another company paid on wood coming from a limit within 50 miles of its mill. There was absolutely no relation between the cost of the wood.

So what I say is, that where instances of that kind occur, if the Government wants to support or help this industry, what it ought to do is adjust these things according to the accessibility of the timber. That should be the measure of the charges upon it.

MR. DREW: There is another angle to it, Mr. Clarkson. Is it not correct that cutting has been done close in to the mills, and that to some extent, those stands have been exhausted, and consequently, they are now forced to go further away. In other words, selective cutting may have been on a mathematical basis, but not actually spread over the whole area?

A. Well, there is not any question of doubt, Colonel, that when the companies were in the gutter from 1929 to 1932, a number of them had, in self protection, to get their wood as cheaply as they possibly could, in order to minimize their loss or to get a dollar back for a dollar they put up. But with the larger companies, take Abitibi, that is not our policy at all. We do not high-grade our limits at all. Our idea is to spread the cutting in such a way that we will average our costs so far as we can over a period of years. That is the policy of the Abitibi Company.

Now, when wood is cut for export or for immediate sale, there is no incentive. You have to get the wood as cheaply as possible, in order to make as large a profit as possible. There is not any doubt, although it has been completely against the regulations of the Department, that some places in isolated districts

have been high-graded. But that is not the policy of the larger companies. Our policy is one of conservation.

Q. Would the policy you are now adopting assure perpetuity of stands?

A. So far as we can.

HON. MR. NIXON: What is the condition of the area that you cut over 30 years ago?

A. In the case of the Soo, which is the most prominent area of that kind, it was cut over 30 years ago. Mr. Schanche can tell you better, because we investigated that a couple of years ago, as I thought we ought to be able to go back and get wood there.

MR. SCHANCHE: In the Sault Ste. Marie area they started there, I suppose, back about 40 years ago. In some instances, the stuff on the areas that had been cut over 30 years ago, is coming along in good shape. But, of course, it takes at least 60 years in the Soo country for timber to become merchantable. Up in the northeastern part of the province it runs 85 to 90 years, so that some years yet will have to elapse before we can go back to that area in the Soo.

MR. DREW: We will not be watching the actual cutting, anyway.

MR. COOPER: What is the rate of regrowth in that area?

MR. SCHANCHE: In the Soo country there is a good quantity of spruce and balsam.

MR. COOPER: Balsam is growing up where the spruce was formerly?

MR. SCHANCHE: In many instances, yes. But it is not so pronounced there as it is up in the north country. There is a greater tendency for the balsam to come back than there is in the Soo.

MR. DREW: Just to get back to the other point, Mr. Clarkson, you do know, as a matter of experience, that during that very severe period there was a lot of high-grading of wood?

A. That is what I call it. I know that in some instances we had to take some of our close-in wood. It was a case of defence. As soon as we could get away from it, we went back to our old policy. When I say I know there is high-grading, I do not know of personal knowledge, but I have been told repeatedly that there was to a minor extent, to a certain extent. I have no doubt the Department knows about it. Is that right, Mr. Heenan?

HON. MR. HEENAN: I wouldn't know about it.

WITNESS: He doesn't know about it.

HON. MR. NIXON: The Department does not tell you where you have to cut?

A. Oh, yes. It has the right to do it. Under the concession we have to

go to the Department and ask them for permission to cut in certain areas. We select the areas and go and ask for their approval. That is what happens. The only time we are forced to do anything else is if there is a fire or something else of that kind, and it is in the interests of both the company and the Department to cut the timber before it goes to waste. But under the concession we have to get approval each year.

Q. But as a practical working proposition you decide where you are going to cut?

A. We decide where we are going to cut and we ask for the approval of the Department.

Q. Which is always given?

A. Always given, yes.

MR. DREW: Has your company gone in at all for any diversified lines other than the actual paper products?

A. No.

Q. To what extent are the other types of wood, other than the pulpwoods, being used?

A. You know Abitibi controls the Provincial Paper Company, and the Provincial Paper Company makes all kinds of books and fine papers and things of that kind. So we have newsprint, sulphite pulp and we have these books and papers through the Provincial. So that it is rather diversified.

Q. But on the limits that Abitibi controls you would, of course, have timber suitable for other purposes than paper of any kind?

A. The answer to that, Colonel, is this—the lumber industry, is that what you mean?

Q. To explain what I mean I will refer back to the discussions which I believe you have heard here. Some emphasis has been laid in the evidence to the desirability of utilizing all types of wood on any given area, and I am referring to that argument.

A. Well, first of all, my answer to it would be this, that the lumber industry in Canada and in Ontario in the last ten years has been in a very bad condition and has not made any money. If the pulp and paper companies on top of that were to go in and cut jack pine and make lumber, or things of that kind, it would just be making conditions so much more acute with probably pretty serious losses to them. I do not think it is in the interests of this province to have the paper companies embark on that business and bedevil the lumber companies' business.

Beyond that, too, I distinctly disapprove of the sale of other kinds of wood within a pulpwood concession unless it can be very clearly shown that they will

not endanger the pulpwood there. I do not think that spruce and jack pine, reserved to the Crown, should be sold to outside people, until the company that owns the concession has been consulted. And if they can show that the cutting of that wood would endanger their limit then it should not be sold. If it can be shown that their limits would not be endangered by it, then I think before it is sold the people who buy it should refund to the pulp and paper company all the charges that they have paid over a long period of years on the lands on which that wood is located. I do not think it is fair to make a pulp and paper company pay fire taxes on land for fifteen or twenty years and then have somebody walk in and take the wood off and not reimburse them for it.

MR. OLIVER: Would not some of that wood become over mature?

A. Oh, yes, there is no doubt wood becomes over mature.

MR. ELLIOTT: And you can be required to cut it if it is over mature.

A. Yes.

MR. DREW: But you never have been?

A. No, no.

Q. Mr. Clarkson, just at that point, here is one thing that I find it difficult to get clearly in mind. We have heard so much, and I am not suggesting that it is not correct, about the desirability of getting people on certain areas so that mature wood may be cut, mature pulpwood may be cut. But now, is there any difference in the necessity for cutting mature pulpwood and cutting mature wood of any other kind?

A. I would prefer Mr. Schanche to speak about that.

Q. He is your forestry man?

A. Yes. It is entirely a forestry matter. Would you like him here now?

Q. I think possibly I would like to ask him a few questions afterwards.

A. I would prefer that he answer that question. There are just two points which I should like to mention here. A company comes in here and it pays very large taxes year in and year out to protect its limits. Then somebody goes in there and may buy wood and endanger those limits. At the same time, I think that the pulp companies are entitled to protection. The next thing that happens is that this person gets this wood off lands, the very lands on which the pulp company has paid taxes to protect it for years and years and years. In that case I think they are entitled to some recompense for what they have paid for the wood that is taken off and sold elsewhere.

But so far as this over-ripe wood is concerned, Mr. Schanche is Abitibi's chief forester and I would rather he discussed those things with you. I am not competent to discuss them.

Q. There is another angle which I should like to discuss with you for just

a moment, Mr. Clarkson, and it is this: after all, there are two distinct phases of this problem. One is the combined industrial and social problem of the maintenance of the mill, and the other is the problem with which the investor is concerned. We are dependent under our system upon confidence in the minds of the investing public for money that we need from time to time for developments of this kind. It seems to me that the way in which confidence is to be maintained is something that we should consider in relation to the general method of control of this industry. Now, having regard to the future, and to the fact that we will assume the necessity will arise for extensive financing as other developments occur, and possibly for refinancing in the case of existing organizations, is it not so that the extremely wide powers under the Forest Resources Regulation Act are likely to create uncertainty in the minds of investors which may greatly interfere with investments in the future?

A. I will answer this way: There is not any question of doubt that the Forest Resources Regulation Act has undermined the security, to a certain extent, of pulp and paper bonds. At the same time, I have a very great sympathy for the position in which the province found itself when it found all pulp lands had been alienated or granted for the purpose of the construction of mills which were not proceeded with and which there was no intention to proceed with. It left those areas sterile, and there they were. So I sympathize with the province in the objects which it had in view in that Act.

But my opinion now is that in order to protect the industry there ought to be some means evolved whereby any mill or company could go to the province and say to them, "There is a limit to the pulpwood which I have on my concession; I need that amount for my mill. Unless you can confirm it, if you are willing to accept this, then you give me a clearance from that Act and exempt our limits from the operations of the Act hereafter." In other words, the company should have the right to go to the province and present evidence that the wood which they have on their limits is no more than is required for their mill, and with that done then their limits should be exempt from future impairment.

If that were to be done I think it would settle that question to a large degree. It is a comparatively simple matter. You cruise a limit and you find out how much you have on it. If the mill needs that amount of timber, all right. Then the company should have that for all time without any risk of its being taken from it. On the other hand, other people may disagree with me. I have a certain sympathy with the position in which the Government found itself in connection with certain difficulties up there.

Q. We will not disgree on that. Mr. Clarkson; I have too, and I am not raising this point for the purpose in any way of questioning the intentions behind that Act. What I am concerned with, looking to such recommendations as this Committee might make, is that it is not merely a question of industrial efficiency within the structure of each company itself; it is not merely a question of finding markets; it is a question so far as the future is concerned, of establishing some basis upon which those who wish to finance new industries can go to the investors and say, "We believe this is a good investment." As I see it now, I do not know how anyone could give satisfactory assurances in a prospective under this Act.

A. You were asking the committee, or the pulp and paper industry of

which I was chairman, to present a report. One of the points we were making in that situation was that, while we recognized reasons for the passage of this Act, we thought that a plan should be evolved whereby, when the company could assure us—they could cruise that limit and find out—and then be satisfied that the mill required that timber, they should clear it from the Act, so that once done there was a basis established which could not be undermined for the construction of a new industry. I think that that would cure the difficulty that you have in mind very largely.

Q. Yes, that is what I have in mind, something that would give some assurance of permanence, subject always of course, to the normal conditions being fulfilled.

A. Of course, conditions are so different now from what they were 15 or 20 years ago. I think that when concessions are granted, the quantity of timber upon them should be ascertained. The dues and bonuses should be established according, as I say, to their accessibility and their physical conditions. Then they should get a clearance from this Act, so that once given under those conditions, they are there for all time. Then you have a reasonably sane foundation. Hitherto, it has been too much haphazard. They have been put up for sale, and at times Abitibi has bid so much money without any regard to operating conditions. That time is past.

Q. You will be dealing with that question in the report?

A. Not that way, but I distinctly think that should be done.

Q. I know that that has been seriously considered in some of the problems of refinancing, the fact that no assurance can properly be given of protection under this Act.

A. Take the position so far as Abitibi is concerned. I do not think it is fair that we should be left in the position where, although the Act says that sufficient timber should be left for our requirements, somebody can come along and say, "You may think this is yours, but we are going to slice off so much from the limits." I think there should be a basis established where you could get a clearance from the Act.

Q. You made a point the other day which tied in with a statement Mr. Vining made yesterday. It struck me as being particularly important. Mr. Vining, without giving the exact figures, said that,—my impression is—something like 40 percent of the cost was power in this industry.

A. I wouldn't like to say that. I will tell you why. You see, they get power on two bases. Abitibi is the Iroquois Falls mill. We have a 30,000 horse power electrical development in one spot. Then we have a hydraulic and electrical development in the next spot. Then we have another electrical development on the next spot on the Abitibi River. And then we buy surplus power from the canyon. Sometimes in large quantities. That is one position.

Another position is at the Soo. We buy hydraulic power and we buy electric power. Then, up at the head of the great lakes in one mill, we buy all

our power from the Nipigon System. In the other mill next to that, we own our own power. In Manitoba, we buy power under entirely different contractual conditions at a lesser price than we pay in Ontario. So that when anybody says it costs 40 to 50 percent, he may be right, but the conditions at every point vary. I do not know; it may be 50 percent in one place and 30 in another, but I cannot say.

Q. What I was really mentioning the figure for, was not so much to tie it down to an exact figure for the whole industry, but it did indicate that a very much larger percentage of the cost is power than would ordinarily be understood by the public. What I have in mind is this: with that background I then recalled your statement the other day that you were able to get power at a very low cost in Fort William, because of some variable factors in the distribution of power there. I will explain what is in my mind, so that you can make afterwards, any comments which you think may be necessary. It was the fact that through the employment of certain variable factors in the distribution of power you were able to get a lower cost at that point. That struck me as suggesting that there may be something which can be worked out in regard to this whole question of power that would greatly assist the industry.

A. I think so. I have always thought so. You take this situation up at the head of the lakes. The Nipigon System up there probably would never have been constructed, had there not been a number of paper mills there to take a large quantity of the power which it produced. I am not certain about this, but I think the Great Lakes buys its power direct from the system. Mr. Rowe can tell you that, probably. On the other hand, the Abitibi mills buy their power from a local system. Here is what happens . . .

HON. MR. HEENAN: From the city?

A. From the city system. Here is what happens. They take the expense of the system and they deduct from it the income from these special contracts, if I may call them that, and the balance left is the cost. Then they apportion that cost amongst Port Arthur and Fort William municipal systems and they make them pay that price for power. Then, say Port Arthur gets a certain amount of power for which it pays $20.00. It may be $20.00 or $21.00, I do not know the exact figure, but I would think somewhere around there. First of all, it sells power to the paper mills, then sells it to commercial customers. Then it sells it to the municipalities and then the householders; the result is a very wide diversity. That being the case, they sell power to the paper mills at, I think, either $16.00 and $17.00 a horse power, or $17.00 and $18.00. That rate is approved by the Hydro Commission. Then, if they sell on a fixed basis to the municipalities and they sell on agreed rates to different commercial undertakings, and on fixed rates to the householders, they land up at the end of the time with quite a large profit.

Now, when the Abitibi mill buys power from the local system up there, it buys 20,000 horse power. That is the maximum which it requires. But it is compelled at all times to pay for 75 percent of that power, whether it uses it or not. The consequence is that when the demand for its products is down and it is only operating 50 percent, it has got to pay for 75 percent of the power at a time when its costs should be down to help out. Under distressed conditions, its costs go up.

So my feeling is that that situation should be cleared up in such a way that the municipality, having a large amount of labour that is unemployed, and which gets a large amount of business, there should be something done to reduce the cost of power, or at least not to increase it during the time when the mill is in difficulty.

I am going to another province where we have another mill. In the first place, we buy our power at a lesser price than we pay in Port Arthur. We pay for the maximum amount of power when we use it, but when we only use 50 percent, that is all we pay for. We do not pay for 75 percent, we pay for 50 percent, and if our mill is closed down we pay a stand-by charge. To Port Arthur, instead of paying a stand-by charge, we pay for 75 percent of that power.

I think there is a situation there whereby the Hydro and the municipalities might do something for these paper mills, particularly in preventing them from being penalized at the very time when they need help. By penalizing them, you reduce their ability to get added business and help the municipality.

HON, MR. NIXON: Of course, somebody has got to hold the bag in this picture.

A. I agree, Mr. Nixon. But the point about it is this; there is something to be said on both sides. The municipality is benefited by the sale of this power to the paper mills.

Q. Where you own your own power development, that is, if you are not in receivership, and if you are actually paying interest on the money you borrowed for that development, you have to carry the whole thing whether you are operating or not?

A. Yes, that is right.

Q. And the Government and the Hydro have to pay interest on the money they borrowed to make that development?

A. Yes, but you see . . .

Q. And you are supposed to be getting power at cost?

A. No, no, no, you are not giving it to the paper mills at cost at all. The system sells to Port Arthur and Fort William at cost; then when they get that power, they sell it to four classes of customers and the prices they fix are arbitrary prices. They could afford to charge the paper mills, if they wanted to, $15.00 a horse power, if they charged the municipalities a little more; or they could charge the municipalities less for power if they charged the paper mills more.

HON. MR. HEENAN: Do the profits from that power go to the local Hydro?

A. Yes.

Q. Or to the Hydro Commission?

A. No; the local Hydro.

HON. MR. NIXON: And they actually built up large profits?

A. They built up large surpluses, yes. I have not the exact figures, but my understanding is that the Port Arthur System was extended largely out of profits they made out of the paper mills. As I say, there is a situation which is worth considering.

HON. MR. HEENAN: How does it come about that the Great Lakes buy their power direct from the Hydro?

A. It may be the location of the mills. They may be just outside of Fort William, and we are right within Port Arthur.

HON. MR. NIXON: You have your own development, too, on the Comeau River?

A. We have our own.

HON. MR. HEENAN: Do you know if there is any difference in the price of the power to the Great Lakes and to yourselves?

A. I do not know that. But the point I make is that it is an abritrary price so far as Thunder Bay or Port Arthur is concerned.

Q. When your mill is closed down at Port Arthur, you have to pay the 75 percent?

A. I think that is the minimum.

Q. And you think the local Hydro uses that power for some other purposes at that time?

A. Oh, if they have a demand for it, certainly they do. It just depends upon the demand. If they draw so much less from the main system then the main system has surplus power and it may sell it as surplus power for steam purposes.

It is an intricate picture, but the point I want to make is that the mills pay an arbitrary price for their power; and with the contract situation as it is, when they are in their worst extremities their costs are increased. That is the only point I want to make.

MR. DREW: Really what I had in mind even more than that was this; that you spoke of these diversified uses of power and the effect it had on the lowering of prices in a certain way, and then suggested to me one can't simply say that there is an arbitrary price for hydro power at any given point. I am referring back to the conference that was held here last February at which the representatives of the Hydro said, "Well, the law tells us we cannot sell below cost, and that is all there is to it."

A. I think that in certain systems, Colonel, there are some contracts at special rates, whether they were inherited or not. But generally speaking, the

requirement is that they must pay costs. Now I say to you, that if the paper mills bought their power direct from the system they might have to pay it. But they don't; they buy it through another funnel which uses it for diversified purposes. And when that is done it is an arbitrary price that is fixed, it is not cost.

Q. Then, just to sum it up, in your opinion something could be done by conference between the Hydro-Electric System and the municipalities in relation to the companies.

A. I think there is a situation there where there is an opportunity to help the industry, if it is desired to do so.

Q. I just have one other question. Have you any figures yourself that will give some idea of the comparative values of our wood products in Canada employed in the pulp and paper industry and employed in other industries?

A. No, I have not.

HON. MR. HEENAN: Mr. Clarkson, with respect to the use of other species of timber in an area, we will say that you have an area of 2,000 square miles and that there is sawlog timber in that area. You say it would not be profitable or wise for your company to go into the sawmill business. Yet you say that although that timber might be mature you do not think the Government should sell it to another operator?

A. What I say is this, Mr. Heenan: you get an area of 2,000 square miles in there and you have some sawlog timber in there. Abitibi has for ten years been paying fire taxes and other things to conserve that area for the use of its mill. Let us assume there is some jack pine and spruce there, say it is over-ripe, if you like. I say that that should not be sold if it endangers the safety of that limit which Abitibi has carried and paid for over a number of years.

Q. I was coming to that.

A. And if there is such timber and the sale of it is contemplated or desired there should first be discussions with the company which holds the concession. Then if it can show you that these interests will be endangered, it should not be sold.

Q. You are speaking of it being endangered by fire?

A. By fire. On the other hand, if it can be shown that the timber can be cut, and precautions can be taken which will relieve this limit from danger, then go ahead and sell it. But if you do, I think the company should be compensated for those taxes which it has paid over a long period of years on the land on which that particular over-ripe timber is situated. Further, that when it is hauling and driving, the company owning the pulp limits should have priority rights in the hauling. The other companies should not get in the way of it and mess up their operations and put them to higher costs. That is my own idea.

Q. I was not going to go into the over-ripe or ripe wood, I was going on the principle.

A. That is the principle. I am looking purely for protection.

HON. MR. HEENAN: But the position Mr. Clarkson takes, Mr. Chairman, would be handicapping, in my opinion, the development of other species of timber. Without regard to what the reimbursement or compensation should be I am of the opinion—I am not giving evidence and perhaps I should not put it this way; I am not a lawyer and I just use common, ordinary words—there is a cluster of trees that is suitable for sawlog timber and not suitable for pulpwood. If we are to take what I think you have suggested we would not be permitted to utilize that timber.

A. If it endangered our limit.

Q. That is because of fire. Now, then, the discussions with your foresters as to whether or not it would be endangered inevitably would be that it would be endangered. That would be the position which I think your foresters would take, having regard to experience in the past. Consequently you have an area of timber, a pulpwood area on which there is timber that you are not going to use yourselves and which we will be prevented from using for any other purpose.

As to the compensation end of it, on these 2,000 square miles we will suppose there is estimated to be so many thousand or million cords of spruce and balsam and that you are paying the fire protection charges on the whole in order to protect that spruce and balsam. I do not know whether I could be mathematician enough to say to you that the man who buys that logging timber now should go back and compensate your company, say, for ten, fifteen or twenty years for that area. Rather do I think he should take the area and pay these fire protection charges at the time he secures it.

A. Well, I think he is entitled to some royalty or something to protect him. I quite agree with you. I am not getting down to the mathematical formulas. I think there is a principle there.

Q. If that man had to pay the stumpage dues to the Crown and then compensate the company for what the company had paid then the price on those logs would be so high that he could not cut or sell them.

A. Oh, I do not know that.

Q. That is about the only thing that I disagree with you on.

A. That would not be so, Mr. Heenan, because the indications are, the way things have gone in the past few years, you know you have come to us and said, "We want to buy some spruce or jack pine in this area." We have allowed them to do it and they have paid 50 cents of $1.00 premium. That goes to offset what we have paid on the protection of that timber for ten or fifteen years. I am not getting down to a mathematical proposition, but I think there is a principle.

HON. MR. HEENAN: When we adjourn to-day I should like if we could adjourn until three o'clock instead of 2.30. Mr. Nixon and I have a very important meeting to attend.

MR. DREW: Very well.

MR. ELLIOTT: We have concluded the evidence of Mr. Clarkson, and I presume you do not wish him back this afternoon.

MR. DREW: What is the name of your forester?

A. Mr. Schanche.

Q. Will he be here this afternoon?

A. Yes.

MR. SCHANCHE: If you want me, yes. But please understand that I cannot claim to being right up to the minute on all the theories of forestry. I am essentially an operator.

MR. DREW: I think, as a matter of fact, the questions which Mr. Clarkson preferred that you should answer really have more to do with operation than with theory.

MR. ELLIOTT: Gentleman, there does not appear to be any other witnesses available, other than departmental officials.

MR. COOPER: Oh, yes, Mr. DeWolfe is here.

MR. ELLIOTT: Oh, yes. Then we shall adjourn until 3.00 o'clock.

At 12.55 a.m., the Committee adjourned until 3.00 p.m.

AFTERNOON SESSION

APRIL 25, 1940

MR. ELLIOTT: We will call Mr. Schanche.

HERMAN G. SCHANCHE Called:

MR. ELLIOTT: Q. What is your position with the Abitibi Pulp and Paper?

A. General Manager of Woods Operations.

Q. And forester?

A. Yes.

MR. ELLIOTT: Colonel Drew, you intimated you wanted to ask Mr. Schanche some questions?

MR. DREW: Yes.

Q. Mr. Schanche, this morning we were discussing the question of cutting methods and so on and Mr. Clarkson said that he would prefer to have you answer anything of that kind. First of all from a general point of view rather than the point of your own particular company exclusively, I would like to have any comment you care to make as to the general forestry situation from the point of view of assuring perpetuity of our timber stands. Am I clear in that?

A. Yes, I think so, Colonel Drew.

To put it in very general terms and as briefly as possible, it seems to me to be absolutely imperative that these, may I say major forest using industries, namely the pulp and paper companies, be placed in a position where they cannot rate very nearly if not altogether on a sustained yield basis. Only through doing that can they hope to get a balanced cost of their chief raw material. Some of the mills have adequate timber behind them and some do not have adequate timber behind them. By behind them I mean under their control or for that matter even in sight. I think what Mr. Clarkson said this morning was very much to the point, if the various industries will again as they have done before consult with the Department with a view toward furnishing information such as may be available or where it is not available amplify it and show exactly what their position is from the standpoint of raw material. In many instances the information is made available in the first place by the Government and that has been supplemented by a very very large degree of work carried out by the companies themselves. By that I mean taking inventory so to speak of their stock. There seems to have gotten abroad an impression that certain of these companies have much more territory than they actually require. As a matter of fact that is not the case, speaking broadly, there may be isolated instances where that is so; certainly I know that it is not so in the case of our company.

Although this is perhaps a digression in a sense it is tied up with this question of how these smaller but nevertheless very important industries, or independent operators if we may call them that, how they are to continue to carry on their business. The statement is made that practically speaking the really accessible timber has all been alienated and that as this is now some of them with large sawmills on their hands or about to come on their hands say they must have timber and so they look to the concessions and say they must get the timber from the concessions. Where the stock on hand will permit of that then it should be made available but made available in a practical way I think if there is such a method that can be carried out. You understand it does not work very well to have operators come in on your limit and hack out here and hack there and hack the other place with possibly no relation to the shift where we happen to be operating, where the major operation is taking place.

It might be solved, this problem, by a concessionaire agreeing to bring out a quantity of sawlogs, let us say, or jack pine, materials suitable for manufacturing ties, and to make them available to this independent operator for sale direct or for manufacture rather than to admit him in on our limits in other words and cut right there with possible great detriment to our operation both in costs and otherwise. Possibly this concessionaire could take out that stuff while he is taking out the pulpwood and sell it, I don't know, to this so-called independent operator, but of course the joker there comes and it will easily be foreseen: We will say that such an operator comes to our company in a given area and it

so happens he wants us to make available a small quantity of such materials and we say, "All right, you want so many hundred thousand logs or feet, we will take it out for you in conjunction with our own operation and make it available to you at such and such a delivery point and our price will be thus and so." No matter what price we quote and even though we make it available at cost on the theory that we will benefit to a slight degree because our volume will be greater and our overhead come down a bit his contention will be, "Oh, that is too high, I am not going to take it, I can get it cheaper," and he goes to the Government and puts up the complaint, "These people are holding me up, I went to a couple of the loggers and they say they will give it to me, I can take it out for twenty percent less," and that is where you would run into a stalemate possibly on such an argument, but it is very dangerous and can work very greatly to the detriment of the concessionaires if they are permitted without first consulting with the concessionaire to go in and cut here and there and the other place, and then they say to us, "Well, we can't use these tops so you use them." Well, as you no doubt know in the newsprint and paper business if you increase beyond a certain point the percentage of tops you immediately run into difficulties of quality and also wood preparing difficulties.

MR. COOPER: Q. Were you here yesterday, Mr. Schanche, when Mr. Johnson testified, or the day before?

A. No.

Q. I understood that he made a statement that the basic industry should be the sawlog industry and that everything should be built around that. Do you agree with that?

A. Of course Mr. Johnson and I are very good friends, but we seldom agree.

Q. That is all right; I want an honest opinion?

A. I don't think I can agree with that. I think that certainly the two industries are inter-related but I don't think that we should say that the pulp and paper industry should be incidental to the sawmills of this province.

Q. You don't think you should take what is left over after the logger gets through?

A. Exactly.

There is one other point I would like to mention just now if I am not rambling too much in answer to your initial question: There seems to have been an impression got abroad, perhaps more recently than was heretofore the case, that it is next to a criminal offence to convert a spruce tree of sawlog size into newsprint rather than into lumber, but that is not the case; there is no product into which a spruce could be converted that will create as much value as through the manufacture of paper or pulp or newsprint. I just thought I would take this occasion to make that point clear. I haven't any figures with me by way of evidence but they are easily available through neutral and independent sources and I know that what I have just said will be borne out.

MR. DREW: Q. From what independent sources, because that is, quite frankly, one of the biggest problems I have faced since I have started this, to find an independent and neutral source of information?

A. There are numerous agencies; among others the Department of Lands and Forests of this province; there is the Dominion Forest Service, and a quite neutral agency would be the Wooden section of the Canadian Pulp & Paper Association.

HON. MR. NIXON: Q. Have you ever actually taken out sawlogs in connection with your pulp-cutting operations?

A. Yes.

Q. For an outside company?

A. Yes. And we have taken out ties.

Q. And it worked out quite satisfactorily?

A. Under certain circumstances, yes, Mr. Nixon.

MR. ELLIOTT: Q. Mr. Johnson, I think, pointed out too, that there are greater labour costs in producing sawlogs and lumber than there are with pulp?

A. I think in the final product there is a greater proportion of labour in lumber than there is in pulp and paper, the finished product.

HON. MR. NIXON: Q. If you were carrying out an operation of that kind, you would much rather take out the sawlogs for the other concern than have them in their operating alongside of you?

A. Yes, provided equitable price arrangements could be made. As I say, that is where the joker comes in, whether that can be done or not is subject to question. I think in most instances it could be arranged on a mutually satisfactory basis.

MR. DREW: Q. I think perhaps you will agree, Mr. Schanche, that no matter what else can be said for it, the pulp and paper industry and woods industry, generally, is not one in which the most complete harmony reigns as between different competing interests?

A. Well, I think, Colonel Drew, that that condition is very much localized and confined to relatively few. I have reference to the head of the lakes, that is the difficult place.

HON. MR. HEENAN: Q. Where is that?

A. The head of the lakes.

MR. DREW: Q. That remark was not made without some reason, because, actually, one of the greatest difficulties we have in this whole problem, as I see it,

is the difficulty of harmonizing interests and the number of people who seem to have very divergent viewpoints, not only as to the general proposition, but as to what their own particular rights may be, and the two do seem to blend extraordinarily in the evidence that is given?

A. Yes, I appreciate that fact.

Q. But, coming back to the point that was raised this morning, I think also Mr. Clarkson said he would prefer to have you answer: One of the main arguments, if it is not perhaps the main argument in favour of encouraging industries to go in and open up new areas, even at considerable expense to the province in some cases is that it is desirable to cut mature timber, and the point that I was making this morning, when you were here was that if that argument is sound in relation to those species which produce pulpwood, then why is that argument not equally sound in regard to every other kind of wood?

A. I think it is sound, but I would like to qualify that in this way, that I think that this constant reference to the terrific importance of harvesting this over-mature timber, if I might say so, has been very greatly overdone; I don't think it assumes nearly the importance that has been laid to it.

By way of illustration: Through the Soo country, and again out through a good portion of the head of the lakes country, the stand of timber that we have out there now is timber that has come in subsequent to huge fires, most of which occurred from ninety to, we will say, often may be a hundred to one hundred and fifteen years ago, along there. Now those fires have more or less laid the country waste but in due course the new stand came in. That new stand, then, on the average, let us say, is not much more than one hundred years old. Well, if it takes seventy years for it to grow to merchantability, that far from over-maturity just to reach merchantability, it follows that the proportion of timber that is becoming over-mature annually as yet is relatively small. I don't know whether I make that point clear.

Q. Yes, I think that is perfectly clear?

A. However, on a question of that sort, to be perfectly frank, I am kept rather busy on the operating end and I know that there are foresters right in the government service to-day, not only the provincial, but in the Dominion, who are equipped and qualified in every way, to give the actual facts with respect to this question of over-maturity, for example, and the part that it really does play and the degree of stress, if any, that should be laid upon it. And I think, if I might make a suggestion, that some of these men might furnish worth-while evidence to the committee. It sounds fine, you know, to talk about what a shame it is, here is this stuff all maturing and blowing over and rotting on the stump, and so on, we have got to get in and cut it. There is not very much of that, I think.

MR. SPENCE: Q. You refer to the spruce species?

A. Spruce, jack pine, balsam. Of course, there is, in certain areas, a considerable degree of stain and rot, but that has been going on in the forests all over the world since they were put there in the first place, and goes on every day all through all timber stands.

MR. W. G. NIXON: Q. What about the natural increment we have heard about?

A. I would much rather talk about logging. However, there again certain of the Government staff right here in this Department, the foresters, are most thoroughly qualified to give evidence on that score. I think that the increment in a natural set of conditions is sufficient to keep our stock intact, provided we can keep fires out to a reasonable degree. In other words, put it in another way, I don't see any need, except in southern Ontario, for any vast reforestation schemes; I think nature will take care of it quite well if we can just control fire.

MR. DREW: Q. And control cutting I suppose?

A. Oh, yes.

Q. Well now, I quite recognize the fact that it is not fair to ask you to go beyond possibly the workings of your own company, except for the fact that you have been in this for quite a long time and have been in contact with the conditions. One of the most popular complaints of those who are critical of the general situation in Canada is that there is not a sufficient control being exercised over cutting. I only refer to the fact because just recently I have had several pamphlets of different kinds on that particular subject?

A. Yes.

MR. DREW: Q. How far would you say we have gone in the direction of destroying our accessible timber by improper cutting methods?

A. First, as regards the cutting practice, that is to say what species are to be logged and what diameter are to be left and so on, it is necessary in order to have an intelligent basis on which to work that a great deal of research work be done, such as, for example, has been done in the Scandinavian countries and practically all European countries. Until you know the life history, so to speak, and the life habits of the forest you have, you cannot hope to lay down what is really an intelligent cutting practice.

In this province,—and for that matter in all this country,—there is still, in my opinion, a terrific need for further research work.

Looking at it from the other point of view, as to the locations in which the cutting has been carried out, broadly speaking, they have been doing it as economics demand it.

On the other hand, of course, there have been instances, as we all know, where a certain amount of high-grading has taken place. That is more often found in the case of the operators in one area, one year in and out again and into some other area and so on, if they have a holding of their own, however,—not necessarily a concession, but a sizeable area,—they can be and should be made to properly cut it. In other words to not strip the banks and move on to some other place.

Q. You have seen that done?

A. I have seen instances of it not only in Ontario but in Quebec and in in Manitoba; most of the places I have been.

Q. How could it more effectively be controlled? Have you any suggestion in that respect?

A. Well, that aspect can only be further controlled by more intensive governmental control, which costs money.

MR. SPENCE: Q. Or by sales or marketing of the product?

A. Yes, when we are speaking of high-grading, it would help to a degree.

Q. The operator cannot take anything out but the spruce?

A. Yes.

MR. COOPER: Q. It would almost involve having a government official on the ground all the time?

A. No, sir; they can lay down certain practices.

HON. MR. NIXON: Q. And follow up with an inspection and see that they are followed?

A. Yes, and if they are going to do that all through the province on a materially more intensive basis, it is going to cost money.

MR. DREW: Q. I do not want to put you in an embarrassing position, but personally have seen cutting done which was obviously against directions and it would seem to be a case which needed enforcement. I think you have seen the same thing. It was contrary to the directions given and would it not seem to you that it gets back to the basis of more rigid enforcement of the regulations?

A. To a degree. I suppose sometimes that carries with it certain difficulties. There have been instances, and many of them as the departmental records will show, I am sure, were such infractions that the operators responsible have been penalized. Sometimes they get away with it, so to speak.

MR. ELLIOTT: Q. Do the operators generally practice what they call select tree-cutting, or do they go in and desolate everything?

A. No, they do not do that. For example, in north-eastern Ontario in the Black Spruce swamp country it is conceded by all, I believe, that there is only one proper way of cutting over that type of country and that is what we call "clean-cut". If we do not, whatever is left blows over anyway, and is lost. That is in the clay belt of the Black Spruce swamp country.

MR. DREW: Q. In the clay belt?

A. Yes, and therefore in the Blue Clay swamp, when you cut through, you take everything; that is, merchantable timber. There is ample stuff left in the area so that it will come back in due course.

MR. COOPER: Q. Is it not true that where all the good spruce is taken away that there is an inferior growth of balsam and other trees?

A. In some cases, yes, but to come back again to the Black Spruce swamp country, suppose you have some of the spruce there, it would not stay there anyhow; it would blow over.

HON. MR. NIXON: Q. Suppose you left a lot of it there?

A. Then the cost of pulpwood would go so high that we would not be able to carry on.

Q. Is that not the practice of Scandinavian countries to a great extent?

A. Yes, but in many instances of course their conditions are totally different than ours and their timber values are much greater than ours. For instance, their timber is worth more to them now than at the stage which we have not reached yet. It is only when timber becomes of more and more value on the stump that people as a whole begin to take better care of that stand of timber. In other words, if our stuff here is worth $1.50 on the stump and it is worth $6.50 in Sweden, it follows that that concession is going to be more carefully handled where the values are that much higher.

MR. COOPER: How could that be? Why is it worth that when they can deliver it in the United States cheaper than we can deliver it in some instances? How can it be worth five something over there and only a dollar here and they can easily market it in the United States cheaper than we?

A. Their labour is less than one-half of ours in the bush.

MR. SPENCE: Q. Is power not a factor also?

A. Pardon?

Q. Is power not a factor also?

A. Yes, sir.

MR. DREW: Q. When you speak of it being of more value, do you mean only that it is of more value in dollars and cents to them than to us, or do they find it necessary to be more careful of it?

A. Well, they have husbanded their stocks on hand very carefully. They have built up this practice or practices over generations. I happen to be a Norwegian, so I think I know a little about it. Timber values for standing timber are far greater there than they have as yet become on this continent,—perhaps I should say "In Canada", as this continent is a pretty big territory. But to continue, their standing timber values increase, so the natural tendency is to take measures to be more careful and see that it should be perpetuated.

Q. There is one point on which I am not quite clear. When you tell me of the value increasing, do you mean its economic value,—that is, to the nation itself,—or its actual value in dollars and cents?

A. Its marketable value, let us say. That is what decides it, after all. I can remember not so many years ago when stumpage was worth $5.00 in the State of Maine.

Q. Do you mean by that, then, that in Norway those who own the trees actually get more for those trees than we here?

A. Oh yes, but I have to explain it. The condition is reversed in Scandinavia. There the stumpage values are high and labour is low; here our stumpage values are relatively low, although not low enough, and our labour is high.

Q. Low, but not too low?

A. No.

HON. MR. HEENAN: Q. A moment ago you referred to the species of timber and the method of cutting, and then dealt with more research. Do you mean by that, an estimate or survey? A survey and research are two different things?

A. When I say "research", I mean this: The first step is land classification; the segregation of forest lands from agricultural lands and the stock-taking of what timber lands we have. A great deal of work has been done by this province, and they have a vast amount of information, but I believe there is still more information required to be secured.

Q. And you were talking about estimating or surveying of timber?

A. Yes, but in addition to that, Mr. Minister, we must learn more about the life of these various species. How they grow, where they grow to best advantage, on what soils they grow best and how long it takes them to grow to maturity or merchantability, I should say. Incidentally, getting the true facts about this question of over-mature timber, is something in my humble opinion which is very largely overdone. That is what I mean by research, Mr. Minister.

Q. Then you pointed out to the Committee that in the matter of cutting sawlogs, in your opinion, the operator who has the concession would be in a better position to cut the logs and deliver to the sawmill, providing the merchant can reach an agreement on price. Would there be another practical difficulty there in this way: Assuming we have a sawmill located in the vicinity of the area in which you are operating, then you would be only disposed,—and I am now speaking generally,—to cut whatever logs you would come across in your operations of the cutting of pulpwood?

A. Yes, that is quite so.

Q. Suppose the sawmill has a large order and are short of timber, would not the difficulty arise that you would only cut for him when you were cutting for yourself?

A. That could arise; there is no question about that; that difficulty could arise.

Q. That is the difficulty we run up against in the Department. Some company wants a species of timber and we try to work it out in this way, that this company would cut for them what they want and do not cut until such times as they are able to cut for their own use. There is our difficulty. I agree that one operation is better than two,—far better in every way,—but if their different interests clash, then what?

A. That problem will inevitably arise, but possibly in most instances, I believe it can be overcome.

There is the other factor also; the concessionaire goes in and spends literally hundreds of thousands and sometimes millions in opening his limits. Now, an independent operator is allowed to go in, in order that he may secure the raw material for the product he manufactures, or for the product for which he has a sale, and if that is not very carefully considered first,—that is, all the aspects of the situation,—that man can very easily create himself into a nuisance value of the first class and he can hold up operations.

In other words, if he produces timber somewhere between you and the destination of your logs, or even back of you, and you start coming down the stream,—let us change it around and let us be ahead of him,—and the other operator comes down behind you, and maybe the market has fallen for ties or for lumber and he figures, "Well, this is a case of spruce, I guess I would be better off if I sold this spruce for pulpwood," and he comes to us and we say' "Well, we have all the pulpwood we need; we do not need any more pulpwood, but what do you want for it?" He will say, "I want those and this and so-and-so" and we say, "Oh, we cannot pay that price." He then says, "Oh, that is too bad."

Then, one good day his bow boom breaks and his wood comes down into our wood and mixes with it, he says, "Gentlemen, I am sorry; we will have to sort; our boom broke by an act of God and our wood is now mixed." When you have to sort on the river, you bear costs on the proportion of the volume of timber involved. Suppose you had a volume of 10,000 cords and we have 100,000 cords, that is the portion we would have to stand. We say, "We cannot sort; it is going to cost us thousands and thousands of dollars," and he will say, "Well, you may not want to, but you will have to pay my price," and so we buy him off.

That is the sort of thing we have to stop from happening, because it is bad business.

MR. DREW: Q. You illustrate it so clearly, that I gather you have had some personal experience in it?

A. I have; it was not my boom that broke, though.

Q. No, I imagine it was the other way round. Do not think I am treating it lightly, because I realize the seriousness of what you say. You were illustrating it very clearly.

HON. MR. HEENAN: Q. In respect of the large areas it is generally thought

by the public, when you speak about 2,000 or 3,000 square miles, that you have too much territory. You have intimated here already that while you can have a large area you may not have a large enough area having regard to the sustained yield?

A. That is so.

Q. In other words, what I understand you mean by "sustained yield" is that when you start to cut on an area, you cut over that and get to the place from where you started and it comes up again and consequently you have it in perpetuity. I wanted to bring that out because it is a misconception of the public that timber companies have areas which are too large?

A. A very good illustration of that is in our Sault Ste Marie Holdings. In mileage they appear to the ordinary layman perhaps vast, great and far beyond what we require. That is absolutely not the case.

Q. 7,000 square miles?

A. Or more. The fact of the matter is that the way the timber grows in that particular belt and the quantities which occur per acre or per square mile are such as to mean that in order to get the total quantity required you have to have that much area. It is like growing wheat; you can only grow so much on an acre and that is that. On one kind of soil you can grow so much and on another kind you can grow much more.

In other words it would be better if you had the same quantity of timber on half the area. The different costs and what it costs you to open up the country, and the carrying charges would be that much less. Our operations would be that much more concentrated. A smaller area is better from every point of view.

MR. DREW: Q. To get back to the point which you have made in regard to cutting: I think it is an extremely important point and I am wondering how far it is going to be possible to utilize all the different kinds of wood on any or in any given area. If your point is correct,—and I am conceding that in certain cases it is obviously correct,—that instead of having too much actual timber area for a perpetual operation, there may be in some cases the areas which are too small, even though the areas are so great. As I say, conceding that, it nevertheless would seem to be an uneconomic operation on those huge areas necessary to maintain a plant of a particular kind, utilizing a particular species, you make no use at all of all the other species growing on the same area. Now, you have given one illustration of the kind of thing which can happen where two different operators, one an industrial operator and another a purely cutting operator are on the same areas,—and those, of course, are practical problems which must be faced,—but I think you will agree with me that in Norway and in Finland,—and also in Sweden, where the value of the trees to the country is greater, relatively, than here,—that they do not permit that to happen.

Now, have you had the opportunity of studying at first hand the methods in Scandinavia?

A. To a degree, yes. The last time I travelled in Sweden and Norway was quite a while ago, thirteen years ago, in 1926.

Q. It was after you were connected with this business?

A. Yes.

Q. You were at that time a forester?

A. Yes.

Q. Can you tell us exactly how they enforce the utilization of the various species in the Scandinavian countries?

A. Well, if I recollect correctly, although it has been some time since I have given any thought to it, it is largely governed by government control. In other words, if a given area cannot be properly exploited, it is not permitted that it be exploited; they must go to some area where the industry can be properly located.

If I may, there is one point I would like to mention; there is absolutely no question in my mind but that in due course when and as circumstances permit that the paper industry in this country is certainly going to use jack pine as well as spruce and balsam. It is all a question of the equipment and research—mostly chemical research and equipment and process. Right now it is not practical; the costs would be relatively very high to include a large proportion of jack pine, but the time will come, without any doubt, when that will be done.

Here we find them, in the United States, for example, having difficulty with southern pine, but they are at least making progress. I believe they have very recently completed a study in the Forest Products Laboratory in Madison on the use of a gum, which has more or less been considered as a weed tree in the south heretofore. It opens a vast reserve. This idea that jack pine is going to be considered a weed tree by the paper industry for ever and a day, I would suggest, is absolutely wrong.

MR. SPENCE: Q. They use birch too?

A. To a small degree, yes.

MR. DREW: Well, how far is research going in Canada at the present time?

A. To the best of my knowledge at the moment I do not know of any specific research going on either industrially or through government agencies on the possible utilization of greater quantities of jack pine in the manufacture of various pulp and paper products.

Q. Do you know whether any research is being conducted under the Dominion Research Council in connection with this?

A. I do not know off hand. I cannot answer that question.

HON. MR. HEENAN: Q. What about at McGill?

A. I do not think at the moment; they have from time to time.

MR. DREW: Q. The reason I ask that is because after all it is perhaps a bromide to say it but it is nevertheless true that at present we are facing an era where research is perhaps vital to the continued existence of many industries?

A. Yes, but the general tendency, as you know,—and I believe this is a fact—is entirely too much in the reverse. When times are bad the first fellows who get fired are the research. It is said, "We can get along without them; we can make our production, wherever it may be—lumber or paper; we will have to let them go."

There are very few industrial concerns which have a different policy than that. I think the Bell Telephone Company is one; big electrical companies are another—like General Electric and Westinghouse—the harder times get the more they spend on research in order to bring down costs. The industry as a whole generally goes in reverse. I think that is general proof.

HON. MR. NIXON: Q. I think when times were toughest for the nickel people they spent the most in research?

A. And I think that is typical of the right way in which to do it.

MR. DREW: What I have in mind is that we are confronted at the moment with two extremely important threats to the continued prosperity of the newsprint and general forest industry. One is from the southern pine and the other is from lower wages and possibly greater experience in Scandinavia. It would seem to me it is obvious that one of our greatest needs in this country is research which will keep our mills and the industry generally in line with those two important threats. Would you not agree with that?

A. Absolutely.

Q. Then will you agree with me that one of the most important single things which can be done in this country at the moment in regard to the Forest Industry generally is the establishment of some effective co-ordinated system of research?

A. Yes.

Q. Have you any suggestion as to how that can best be set up?

A. I can only speak in that regard really for the pulp and paper industry. The set-up in that case already exists and has existed for quite a number of years past through the Research Institute as it is called—that is not the Research Foundation, but it is the Research Institute, which is a co-operative arrangement between the Canadian Pulp and Paper Association, McGill University and the Forest Products Laboratory of the Dominion Forest Service.

That outfit is perfectly capable of doing a vast amount of research—and has done a great deal—but it is the old story of where to find more money with which to do more research. That is what it all comes down to in the end. Machinery, as far as pulp and paper is concerned, is already in existence and has been for

many years past. Such staffs as they have been able to maintain with the money available, are composed of excellent men. I have in mind Professor Hibbard, who is a cellulose research expert, formerly of Yale University, now with McGill University. He is considered the outstanding authority in the world on cellulose, and he is identified with this machinery which I have just mentioned as already existing.

As I say, it all reverts back to the question of finding more money, in order to employ more men and get more equipment, in order to broaden the research field and collect the findings or results.

Q. You have heard the suggestion here, that the control of the industry and its output should be under some form of board or commission operating first of all in the provinces of Ontario and Quebec. Would you go so far as to suggest that the activities of this Research Council might be tied in with the activities of that board or commission?

A. I would think there should be a definite relationship between the two; just how intimate that contact could be from a practical point of view, I am not prepared to say, but certainly research is tied up with sales. I mean the more economic your operation, the greater the possibilities of sales and therefore the two are related, but I think that contact would automatically come about through the Paper Association, Colonel Drew. Any such commission unquestionably would be very closely tied in with the Canadian Pulp and Paper Association. That being the case, they are automatically tied in with the research work of the Association.

Q. I have this in mind, and I would like to have your comments as to its practical nature. It seems to me it goes further than merely having the two related, because as I see it, research does not confine itself to the attempt of finding new ways of utilizing wood products—either by chemical or mechanical means—it seems to me that research, in regard to this industry, starts first with the attempt to improve existing conditions and then either from a mechanical or chemical point of view; and secondly, to find new mechanical and chemical means of utilizing all our forest products. And then research goes beyond that, to the point of considering questions and industrial efficiency having regard to the fact that our market is almost entirely an external market—meaning world competition—and on top of that research, a scientific research into sales method, based on these fundamental starting points. If those are tied together, it seems to me that you cannot separate the purely scientific and industrial, that they are all part of a composite picture, and you might very well have some over-riding body which would have one division devoted to chemical and mechanical research, another to industrial research and another to sales research. Would that seem to be a practical outline?

A. Yes, to a degree. Of course, that is a very wide territory for, let us say, one commission composed of three men to handle.

Q. I am not suggesting that we simply say to the Newsprint Committee, "You take over these jobs." I do not mean a three-man commission at all. What I am talking about, is some organization which would be adequately staffed, in order to deal with these various problems?

A. Well, I think there has been thought for some time past along lines somewhat as you have cited, namely, a reorganization of the Canadian Pulp and Paper Association, and the bringing under jurisdiction of that Association of the activities of a number of other associations, all with a view towards avoiding underlapping and overlapping of effort and co-ordinating effort and a very exhaustive survey has been made by an outside firm, incidentally, looking into that possibility, and report has been made on it. For the moment, I am told it has been considered, probably more for financial reasons than any other, but there has been very considerable thought and work done along those lines.

HON. MR. NIXON: Q. The operators in pine have done a good deal of research towards finding new uses and popularization of the product?

A. Yes.

MR. DREW: With the companies?

A. With the association which is composed of the principal companies.

Q. You mean with the Newsprint Association?

A. No, the Canadian Pulp and Paper Association, not the Newsprint Association.

Q. Oh, yes; that is the older association?

A. Yes.

Q. You see, Mr. Schanche, I am trying to find or get some suggestion as to a future policy, because I for one, do not see that there is any use in becoming fatalistic about it and simply accepting a sort of economic stagnation which is going to come if we do not move, if there is something along that line which can be worked out. I think we should come out into the open and discuss it. I think any suggestion that can be made should come out into the open?

A. Frankly, I did not, until you mentioned the point, give any thought to the possibility of the use of a commission other than in connection with the controlling of the output of the industry and the controlling of the sales. In other words, as has been remarked upon by Mr. Clarkson and the other witnesses, as to whether the field of such a commission could be broadened so as to be all inclusive of all matters having to do with the industry—and if I understand you correctly, that is your point—I do not know. I would rather question that. Contact would automatically exist between the sales and research, and the sales would have to conduct its own research into sales methods, but off-hand I have not given enough thought to it, and I do not know whether such a thing would be practical.

Q. In any event, to close my questions on that point, you feel that there is great need of much more active research in regard to the utilization of our forest resources?

A. Yes, and for methods of exploring them. By that I mean right in the

bush. There is still vast room for different means and methods of logging and greater degrees of mechanization and new methods of carrying out steps of the operation. Of course money is being spent constantly on that and very considerable progress has been made in the last ten years particularly; it may even go up to 10 to 15 years.

Q. I suppose one obvious point is that if the companies once reach a satisfactory financial position where they are not simply living from hand to mouth that they would be able to go much further into the utilization of these various types of wood.

MR. CLARKSON: There has been a great deal of money spent in regard to equipment for our mills.

THE WITNESS: Yes, but I am speaking for the industry as a whole.

MR. DREW: I was not suggesting that it went that far, but he was pointing out that there is a great deal to be done in that direction in regard to research.

Q. As you will agree, subject to whatever methods of detail which may be worked out, there is great need for some active form of research organization in this industry?

A. Yes, and I of course speak primarily about the technical end rather than the mill.

MR. COOPER: Q. When you were in Sweden did you learn how they sort their logs on the stream?

A. What is that?

Q. As to how they sort their logs and get around the difficulty of one operator with the other?

A. Well, there is a great deal of use of what are known as what might be termed "Driving associations" which are mutual driving companies and they simply sort in the usual way. That is an expense, of course.

Q. I am told there would be maybe 60 operators on one stream and that the logs all go together and are sorted?

A. They have some very comprehensive sorting systems over there, but of course it costs money.

MR. DREW: Q. But the logs all go together and are branded at the end?

A. Yes.

Q. They are all stamped and branded and go through the stream together?

A. For instance on the St. Lawrence River in Quebec it is handled by the St. Maurice Driving Association. They have quite an elaborate association.

MR. COOPER: Q. That would get around the difficulty of which you speak at the beginning of your evidence, about booms breaking away and one thing and another?

A. Yes, but you would still have the added expense of sorting. If you can avoid the sorting expense you are ahead of the game.

MR. ELLIOTT: If there are no further questions of Mr. Schanche, we will call on Mr. DeWolfe, who, I understand, wants to get away to-day.

A. H. DEWOLFE, Called:

MR. ELLIOTT: What is your full name?

A. Allan H. DeWolfe.

Q. With what firm are you associated?

A. I am with a company named The Arrow Land & Logging Company Limited.

Q. I understand you want to get away to-night. Are you catching a train?

A. I am not going to be able to make it so it won't make any difference. I wanted to get out to-night but I cannot.

MR. COOPER: Mr. Chairman, I have here a summary of questions along the lines of the information which Mr DeWolfe wants to present to the Committee. I think if I asked him these questions, and then you could probably question him afterwards, it might save a certain amount of time.

MR. ELLIOTT: All right.

MR. COOPER: Where is your company operating, Mr. DeWolfe?

A. At the present time we are operating at a place called Aroland, which is just west of Nakina. We are located in what was formerly called the Long Lac limits of the Great Lakes, but we are now in the Pulpwood Supply Limited.

Q. You are a pulpwood operator?

A. No; we are operating in ties and lumber.

Q. What other interests has your company in Ontario?

A. We have a couple of timber licenses at Hearst, two townships, that we have been clearing for a good many years, since 1926 or 1927, I believe. But we have not been able to operate. Then we have patented lands in the vicinity of Timmins which contain predominantly spruce pulpwood.

Q. You have had some difficulty with your Timmins operation?

A. Well, we lost some money there. We tried to operate for mine timbers,

but the market for mine timbers calls for specified sizes, and it meant that we would have to go out and high-grade our timber in order to get those sizes, and we discovered or at least we realized that the only way to operate the limit economically would be to operate it as a pulpwood operation.

Q. Why can you not do that?

A. Well, in the first place, market prices are not high enough so we could market it locally. We were unable to find a local market for it. This wood was export wood. Since it was purchased the price of pulpwood in the export market has dropped down against a constant freight rate. It has got down to the point where the freight rate absorbed about 78 percent of the delivered price of the wood in each particular case; that is, in the market I explored.

Q. What is it in dollars and cents, Mr. DeWolfe?

A. Well, last year, I canvassed several mills in northern New York, and the price at that time was from $13.50 to $14.00 a cord.

Q. What was the freight?

A. The freight in that same zone was $10.50.

MR. OLIVER: A cord?

A. A cord.

MR. W. G. NIXON: For peeled wood?

A. That was peeled wood, yes. On rough wood it would be a good deal more than that because it would be heavier.

HON. MR. NIXON: $13.50 a cord in American money?

A. Yes, that was American funds. That was last year, but they were practically the same as Canadian funds.

MR. COOPER: What attempt did you make to get the freight rates adjusted?

A. After canvassing the field and getting potential orders which amounted in the aggregate to over 100,000 cords, I prepared a brief and submitted it to the T. & N. O. Railroad Company pointing out that if they would cut the rate back to $5.50 a cord there would be a market which would yield them half a million dollars of freight. The railroad representatives told me they were very much in need of southbound tonnage; that they were coming back from the northern mine fields with a lot of empty cars, about 50 percent of them empty, as far as Toronto, which is about two-thirds of the way to the pulp market.

Q. Have you a copy of the brief which you prepared at that time?

A. I have not got it with me. I have one which I can supply you with later. We were unable to accomplish anything thus far with the thing. I have brought it up again, and I don't know whether we will get anywhere or not.

HON. MR. HEENAN: You took it up with the T. & N.O.?

A. Yes; took it up with the T. & N.O.

MR. COOPER: If the company met your request, what would be the movement on the railway, how many cars?

A. From the government reports, I see where the rail wood shipments back in 1928 amounted to 600,000 cars. That has dwindled down to somewhere less than 100,000 cars. I do not know just what portion of that came from that area, but I understand a very large portion of it came from there.

I believe that a very substantial market could be built up again, and that would not interfere with the present market for export pulpwood from the Great Lakes, because the wood that goes from the lakes goes into the Wisconsin and Michigan mills, whereas the New York mills have not been reached by that wood from the lakes.

Q. Is there any wood going down from the T. & N.O. region to the New York area?

A. There has been some, but it is mostly from the shorter end of the haul. I mean to say, as your price goes down, the distance which you can haul it is lessened and, consequently, they are able to move some of it down this way, down near North Bay, whereas, they could not move it from the upper end, say from Cochrane and so on.

Q. So your Timmins operation is entirely at a standstill?

A. Entirely at a standstill at the present time. We had to close it up and take quite a loss.

Q. What about Hearst?

A. Well, it was obvious that if we could not market our stuff from Timmins, where we had freehold timber and no Crown dues to pay, and where it was tributary to a river or to Iroquois Falls with a three-cent freight rate, there was no chance to go into Crown timber on a timber license where we had to pay Crown dues and pay much greater freight rates to get it to the mills.

The freight rate to Kapuskasing, for instance, from Hearst, is five and a half cents; and from our limit just west of there, 25 miles, it is seven cents. They informed me the other day that there would be a ten-cent increase in that, taking effect in June.

So those rates, coupled with the stumpage, made it obviously useless to try to market our stuff from there. Our best chance was at Timmins, as far as pulpwood is concerned.

Q. Do you know the amount of cordage of spruce and balsam on your Hearst limit?

A. The records we have show about 1,000,000 cords of pulpwood. I do not

remember whether that is all spruce and balsam or not. It might take in jack pine.

Q. How long is it since you have operated?

A. We never operated at Hearst. But we carried the license, I think, since 1927. The only operation we have now is at Aroland, which is a tie and lumber operation.

MR. OLIVER: In your conversations with the railway officials, did they offer you any redress at all in connection with the freight rates?

A. No; they said, to make a drastic cut like that would upset the freight rates in other districts, and they couldn't see their way clear to do it. I think we might have gotten a cent, may be a cent or a cent and a half, off, but that would not have been of any help to us on a thirty-three-cent rate.

In 1915 the rate, I believe from Englehart down to Johnstonburg, which is about equivalent in distance from Timmins into the market I was going to, was fifteen cents a hundred. It is now twenty-five cents. So you see the amount of increase there has been since 1915.

Those rates advanced gradually. In fact, they advanced more slowly than commodity prices and costs. The railroads were away behind the other services and commodities, as far as the rise in price was concerned, until 1918. Then, under the McAdoo award they got a 100 percent increase overnight, and the Canadian railroads followed them. I think that only brought them into line with other things. Wheat had gone up to $2.00 a bushel. Lumber was selling at $60.00 to $70.00 at the mill, and all that sort of thing. Lead and zinc and commodities were high. The railroads got that final increased rate which they needed.

It is a hard thing for a railroad to get its rates up. They being a public utility and their rate structure governed more or less by the Board, it is harder to get action on it than it is for a company which produces some product and sees their costs are going up, they automatically raise their price. They had one or two small increases, I believe, after 1918, but there has been very little drop. Meanwhile, commodities have come away down. Wheat has come away down from $2.00 a bushel, and pulpwood has come down from $24.00 a cord on the same New York market down to $13.00 or $14.00. But your freight rate is still $10.50. Now, $10.50 taken out of $24.00 wood was all right. They could live. But you can't take $10.50 out of $13.50 wood because it only leaves $3.00, and it costs more than that to cut it and peel it under our Industrial Standard Wages Act.

MR. ELLIOTT: Is it open to the railroads to give you a reduction without going before the Board?

A. We have not got that far yet.

Q. But it is open to a railway . . .

A. I hope to be able to present this case before the Board of Railway Commissioners.

Q. Is it your understanding that a railway cannot give you a special rate on a branch line, without consulting the Railway Board or a committee of the branch railway?

A. I do not know whether they can or not. They were going to take this up. Most of the cases where you apply for freight rates, you apply to the road on which the tonnage originates, and they apply to take it up with the Board and the other roads.

MR. ELLIOTT: Have you anything further to submit, Mr. DeWolfe?

A. Another point in regard to that freight rate . . .

HON. MR. HEENAN: Before you leave that, are you now operating on the north end of Long Lac?

A. Yes. Another point in regard to freight rates on pulpwood ——

Q. How does it affect you from that point?

A. From that point, we could not move wood out of there at all. As a matter of fact, we do not own the pulpwood on the limit. We do not have any cutting rights on it. I offered the Pulpwood Supply Limited to take the tops of the small species interspersed with the big sawlog timber and put it into pulpwood and deliver it to them on cars at Aroland, which would mean they would have to haul it about 40 miles down to the Long Lac, and at that time they were not interested because it would mean more expensive wood than we could get on other parts of the limit.

Q. That is not what I mean. How do the freight rates now affect your business at Long Lac?

A. Our freight rates at Aroland are one of our worst handicaps in trying to live up there and one of the important factors in our cost. But there is just one point I want to take up about this New York thing. In relation to the freight rates into New York state or from the Timmins area, the rate is governed to some extent, as I understand it, by the value of the product. It seems to be out of line with lumber from the same areas. Lumber shipped down into New York state will sell at an average of $35.00 a thousand, weighing roughly twenty hundred. In other words, the value delivered is about $1.75 per hundredweight. Peeled wood, estimated at 3,400 pounds and selling at $14.00 down there is only 42 cents per hundredweight of value delivered. And yet we are paying about the same freight rate on the product that is valued at 42 cents a hundred as we are paying on a product that is valued at $1.75 per hundredweight. I just wanted to say that I think pulpwood should be classified different from lumber.

When you ship lumber into the New York state it is regarded as a pretty perishable product. It has to be well dressed and slipped back in the cars so that it does not shuffle around in the cars and you have to put paper around the

doors to keep the coal dust out. You can put pulpwood into a car and it is not going to be damaged any.

MR. SPENCE: Is there not enough shipments from up around Timmins to warrant the T. & N. O. putting on a solid pulp train as they do a paper train? What do your shipments amount to?

A. That would not be necessary. They are coming back southbound now with empty cars. About 50 percent of them are empty. The wood business died out due to a receding delivery price against a fixed freight rate. That is one of the main causes, I think.

Speaking of the situation at Aroland, we had a fairly good experience the first couple of years in there because we had a local market for our lumber. The Long Lac mining field was growing like a mushroom, and we sold our lumber direct and had no selling commissions; and our freight rates, while they were relatively high, were for a short haul and we were able to realize a good net mill price.

We made a little profit the first year, and then that market died out. For 1938 it was lost entirely. We had to go out and find a new market. When we began to ship into southern Ontario and into the border states we discovered that the freight absorbed 25 percent of the sales price of the lumber. That is one factor.

Situated in the interior of the country on a non-competitive point where you have no water competition and no competing road, you are in a disadvantageous place. For instance, to ship supplies into our camps, into Aroland—for instance, on the railroad it is about the same distance from Port Arthur to Aroland as it is from Port Arthur to Heron Bay down along the lakeshore. The railroads in the summer time will give a summer rate for moving supplies; this rate is about 22 cents. In the winter it jumps to about 80 cents, after the fall.

MR. DREW: You mean for the same type of supplies?

A. The same type of supplies, yes. As long as navigation is open you will get this competitive rate; but if you are living in the interior, or operating there, you are paying the winter rate the year around. It costs about 85 cents a hundred to take all our supplies up.

An operator at Port Arthur or around Nipigon or any of those places where you can have truck roads can buy hay at $10.00 a ton at Port Arthur, and $1.00 or $1.50 will put it in the camps. We have to pay $5.00 freight on it and then probably $4.00 to take over the lakes and portages, and that costs us about $19.00 as against $12.00 delivered in the camps along the lakeshore. Consequently your hay and oats represent part of your power, if you are using horses. The same thing happens if you are using motor power.

Q. Would there be a similar difference right along there? I am very much struck by the difference between 22 and 80 cents a hundred. Would it be similar at other points along——

A. Along the lakeshore?

Q. Yes?

A. Yes.

MR. SPENCE: When it can be done by boat it is very cheap and the railroad competes with that rate?

A. Yes. I am repeating Mr. A. L. Johnson on that because I heard Mr. McGraw read that in a brief here the other day at the lumber conference. I asked him about it and he referred me to Johnson. Johnson told me that the rate is 22 cents in the summer and 80 cents as soon as navigation closes. That was the only difference. It is 85 cents the year around. There is no summer rate, and that is the condition that anybody has to meet in the interior on a non-competitive point.

If we ship lumber in to Port Arthur we have a 17½ cent rate. That is approximately $3.50. And that is a distance of 240 miles. If we ship it to Beardmore, which is almost exactly half way, 120 miles, the rate is 16½ cents as against 17½ cents for twice the distance, or a difference of 20 cents a thousand. In other words, it is $3.30 a thousand to Beardmore, half way, and $3.50 a thousand to Port Arthur, twice the distance. The answer is that Beardmore is not a competitive point and we are not situated on a competitive point.

The same thing is true in shipping from Aroland into southern Ontario—we are not on a competitive point.

There is another argument, that we are not in a zone where there is sufficient density of traffic to give us a competitive rate. The density zone, I believe, ends at Capreol, where the density of traffic is what they call competitive territory. We pay from Capreol into the market plus an arbitrary rate, and only this last year we paid the rate from Sioux Lookout, which is 200 miles west of us, when we shipped lumber to Toronto or Buffalo. We were intermediate, as they called it, to Sioux Lookout. It is only within the last few months that we got that adjusted.

MR. SPENCE: How do your dues range? Is there any difference, based on the accessibility to your market? Are they less, or what is the position with respect to dues?

A. Up where we are we pay $6.50 for jack pine and $5.50 for spruce. Now, that timber produces low-grade lumber, comparatively low-grade lumber. I mean to say, your percentage is less in your No. 3, 4 and 5 boards. You will get very little No. 2, less than one percent of No. 2. We have had years when we got a little larger than that. But with the low-grade lumber and all the other handicaps, such as freight rates and high-wage schedules, we think that $6.50 is too much for timber situated back in that territory.

HON. MR. NIXON: That is the price you bid for it some years ago?

A. That is the price that was arranged. That price is quite a reduction from the original price on sawlog timber, I believe. I think the jack pine price, when the Great Lakes Paper Company held that limit, was about $12.50. I remember we got a bill for $12.50 a thousand.

MR. ELLIOTT: When was that? When did they get their license?

A. That was under the concession that they held a number of years ago. We went in there in 1935.

HON. MR. NIXON: But they were not operating?

A. They were not operating.

Q. They were not sawing lumber anyway?

A. No, they were not sawing lumber.

MR. SPENCE: They never operated in that area at all.

A. Not in that area at all. I do not think so. But in that same limit, or located at the back end in the interior, I think that stumpage prices should be lower to help compensate for some of the disdavantages you have.

I do not know whether I am right or not, but there seems to be a discrepancy in the price of sawlogs as against pulpwood sticks of the same size. I understand that jack pine in lots of cases is sold as pulpwood. The Crown dues amount to 50 cents a cord. Well, now, our logs average a little better than 9-inch top. According to the Doyle rule, that would take 40 logs to make a thousand. At $6.50, divided by 40 logs, that would be 16¼ cents per log. That is what it costs us. If you take the same size log, pulp stick, 9 inches, and jack pine, and it contains, say, 9-inch top, 16 feet long, and contains 8.7 cubic feet, or about 11½ logs to the cord, you would be paying 4.4 cents for the same log buying it as pulpwood.

Now, there is some apparent discrepancy in spruce in the same limit, although not as much. That would be 13.8 cents as against 9½ cents. 13.8 cents, if you buy a spruce sawlog 9 inches thick, and if you buy a spruce pulp stick 9 inches thick, you would be paying 9½ cents for it.

HON. MR. NIXON: The Doyle rule is a very heavy ——

A. I am talking about how much you pay for the logs, the cubic capacity of the log. The Government asks us to cut down. A 6-inch top will produce 18 board feet of lumber with the kind of a mill we have. It is not the most efficient mill, a circular saw. But it measures out about 18 board feet. It only scales board feet. Therefore, in the eyes of the Department there is a big over-run, and it is advisable for us to cut it. That is the only thing about it that is cheap, because your Industrial Standard Wages Act at the head of the lakes called last winter for cutting tie logs, that is, 8-inch top, 14 cents for cutting and 5 cents for skidding. That is 19 cents. The best we could do, was to get these 6-inch logs cut for 15 cents, on account of that scale.

If you pay 15 cents to cut and skid a log that only yields you 18 board feet, you are paying pretty near $10.00 a thousand just to cut it and skid it. You have not got it out of the woods, you have not got started with it yet. Then when you do get it into the mill, you have a 2 by 4 and 2 pieces of 1 by 4 out of

that 6-inch log. The 1 by 4 has a centre heart, and about 90 percent of them will twist and bow, and some companies refuse to accept delivery of them.

MR. DREW: What did you say about 90 percent of them?

A. About 90 percent of them will bow, they will twist and corkscrew, and they are awfully hard to hold straight in the pile. Some of the lumber companies will not take a spruce 2 by 4 with a centre heart. Your 1 by 4 is more or less of a drug on the market. You get so many 1 by 4's in an operation where you are cutting fairly small logs, that they are hard to dispose of. So, when you put it on to the carriage, a 6-inch log, you are spending all your time putting it on and taking it off. Your sawing costs are higher. Then you get such a large percentage of 1 by 4's, which cost three times as much to dress as a 1 by 12, because it doesn't go through the planer any faster. It is only 4 inches wide going through there, while a 1 by 12 will go as fast, and a 1 by 8 would cost half as much.

I quite appreciate the fact that the Department wants to see the timber utilized. And where you are down near the lake shore, where transportation costs are less, you might be able to use them or you might put them into pulpwood and have a closer utilization of the logs. But you cannot go back in the upper country and handle these six and seven-inch logs. Eight inches is as low as we can go economically.

On the other hand, I know there are large areas in the interior of the country where the timber is mature and where it is predominantly sawlog. That not only exists all over the interior but it exists in some of the big pulp concessions where there are ridges of timber containing a stand that is more nearly mature, or there is a larger percentage of it mature and over-mature, and where the species are probably quite a mixture, where the spruce and balsam might be a smaller factor than the pine. I think those ridges in those areas that are predominantly sawlog timber should be harvested. I do not believe that the pulp companies, the paper companies, will go to those parts of their area where the timber contains a large percentage of species that they do not want in order to ferret out the small percentage that they do want. I think that the small operator, providing that he will work in co-operation with the paper companies—I quite agree with the paper companies, pulp companies, that there should be close co-operation in these operations, otherwise there will be a lot of friction. But I do not think that the timber that is mature should be allowed to rot and go to waste whether it is inside of a concession or not, if there is somebody that is willing to take it up and willing to co-operate with the paper company and to pay their share of whatever facilities they are using.

MR. SPENCE: Are you operating at a loss

A. Yes. We have operated at a very serious loss, this last year, particularly, and we are at the crossroads. We are waiting for a miracle.

MR. COOPER: What is your investment, Mr. DeWolfe?

A. In timber and plant and equipment we have somewhere around $700,000.00. Our timber holdings are scattered, so they are not in a very convenient or

economical position to operate. For instance, it is like a farmer who has his farm divided into three pieces scattered out. To go to Timmins it takes me two days and a night. If I go around by North Bay it is pretty nearly a thousand miles. I do not know the history of the acquisition of their timber entirely, or how they come to choose this. They are a group of lumber men who, if they were going to operate there, would certainly not have chosen blocks of timber that were scattered out that way, because they are mature men of experience.

Q. If you do not get some relief, do you mean to say you cannot carry on?

A. Absolutely.

HON. MR. NIXON: Is there not a distinct improvement in the market?

A. Not in the low grade lumbers, no. It averages about $2.00 a thousand. We are hoping that there will be a much stronger improvement, but we do not know.

MR. DREW: What are the factors, Mr. DeWolfe, that have created this adverse situation?

A. One thing is our costs. Our labour costs have gone up enormously since we started in. In 1935 we could get ties hewn for 10 cents. Now it costs us 14 to 19 cents. We could hire horses for $26.00 a month. Now it costs $35.00 a month per team. I have a comparison of the increases in our commodities, labour and our horse hire, also the increase in lumber. As a matter of fact, there has been no increase in lumber since we started in because while the general price structure might have raised, our prices were better in 1935 and 1936 than they are to-day because we had a local mining market and a short haul.

MR. ELLIOTT: You have increased labour costs?

A. Increased labour costs.

Q. Is the transportation cost increased because your areas are not accessible now and you have to go to remoter fields?

A. No; our logging costs are probably a little more than they were.

Q. Having cut your accessible areas you are looking for a new area?

A. As a matter of fact, we are only in there on the sufferance of the Pulpwood Supply Company. We do not know just where we stand. Furthermore, we have so much money tied up in timber in two places that the principals feel that if it could be consolidated and located in a more advantageous position they would be willing and glad to put in a much larger investment, a more modern plant and provide for a much larger turnover.

Q. In the same territory?

A. The same crowd.

Q. In the same territory, the same concession?

A. No.

Q. You haven't answered my question, you know: Have you cut your accessible areas?

A. Personally I wouldn't want to operate in the interior of the province under present freight rates and conditions.

MR. DREW: Q. Have freight rates gone up since you went in there?

A. No, they have not, but they have not gone down. Here is what happened: When we went in there we went in just to get out ties, we were going to hew ties. I wasn't in there at the time but my predecessor got his camps in and then he got word that his ties would have to be sawn, so he put in a sawmill to cut ties. Then later on it was found there was a lot of spruce intermixed with the pine and it would be advisable to cut that, so I took over the mill at that time and revamped it a certain amount to cut ties and lumber. There was a local mining market I was in, lumber prices were good on the whole and they would take any kind of lumber. That dried up and we found ourselves having to go out into a distant market. Then is when you encounter the freight rates and the high selling cost. It costs eight percent to sell lumber plus two percent discount after deducting the freight, all wholesalers charge that, and everybody that has tried to sell their lumber themselves generally get sick of it in a little while because they get so many bad accounts and their costs were just as high.

Q. Then, Mr. DeWolfe, you have had increased embargoes and you have lost one market you had when you went in there; will you tell us, did you cut your good timber in the more accessible areas so that your cost is not going to be greatly increased or are you going to cut an inferior grade of timber?

A. Our costs will not increase, they will decrease as we go in there.

Q. You are cutting good timber in accessible limits?

A. Yes.

Q. You have exhausted the one limit?

A. For the present market.

Q. You are after new limits?

A. We would like to have limits which would support a decent sized operation. I mean to say that I don't believe anybody could go in the interior of the country and produce a small turnover of lumber and live, because your overhead costs are bound to be too high. As Mr. Clarkson said this morning, one of the principal factors in cost is the rate of production. Well, a lumber company is in more or less the same boat, you have got to have all the facilities for logging, for sawing, for drying and fire protection and for dressing, and it has got to be done right up to the standard that the trade wants. While we are

going into that, if your turnover is not big enough, your overhead is going to be too heavy, and with a company like ours that has $600,000 tied up in timber and has started out, we can't have an operating unit for each one, whereas, if it was consolidated we could go ahead on a larger scale.

MR. DREW: Q. When you say you have $600,000 tied up in timber, just what do you mean by that? Do you mean you have paid that for it?

A. That we paid out that money for it, yes, with purchase of patented lots, and the licenses we purchased from a lumber company are being paid, I understand.

MR. OLIVER: Q. Is your equipment included in that?

A. No; we have got $150,000.

Q. Besides?

A. Well, we had about that—there is about $700,000 altogether—about $150,000.

MR. COOPER: Q. How long ago is it since you purchased those licenses?

A. Back I think, in 1927. There is probably $50,000 of interest charged up against them as long as they were non-operative.

MR. DREW: Q. The thing I am not quite clear on, and it is very interesting, because it involves the general principle applicable to this branch of the industry, you—and I don't mean you personally, but your company—bought these areas, patented lands, from other timber and lumber companies and so on; at that time it was bought with a perfectly open knowledge of the general conditions——

A. Yes, at that time.

Q. I just want to finish my question:

Then it would seem that the factors that you must be concerned with are your labour costs or operating costs,—I mean your mill costs and so on, apart from labour, when I say "operating"—transportation and price from the purchaser. Just take those in the reverse order: How does the price paid by the purchaser compare to what it did at the time that you started this?

A. Paid by the purchaser—by ourselves—the price that we paid for it before?

Q. No, your sale to others?

A. Well, at the time we purchased the Veteran lots for instance, that was the only timber we had under Veteran patented freehold, was the only timber that was export timber, and back in 1927 and 1928 there were very good prices for that sort of thing.

Q. You have explained about operating in ties and lumber?

A. The reason we went into operating ties and lumber was because they had been holding this stuff a long while, and they thought by holding it a tie operation of some kind might be handled and we might be able to at least carry the overhead, carry the carrying charges to take care of it, because the boys have been digging up for years since 1927 it cost money for ground rental and taxes and bond premiums and so on, they were getting tired of it. Conditions changed, the gold boom looked like, well we might be able to operated there and hang on until such time as we could operate our pulpwood limits. The situation at Hearst, for instance, likewise, I don't know how they came to buy those, that was long before my time.

Q. Well, to get back to this, are you getting less for the ties and lumber that you sell now than at the time you started in there?

A. Oh! The price for ties for instance, we received sixty-seven cents for a number 1 tie, sixty-two cents for a number 1 flat; that is the number 1 square tie was sixty-seven cents, we got five cents more for that. To-day they pay seventy cents for the square and flat, there is no difference in the price.

Q. Well then, you are paid more for both of them, paid three cents more for one and eight cents more for the other. Then transportation: Is the transportation cost any higher than when you went in?

A. The transportation costs on the railroad are not any higher, no.

Q. And your operating mill cost would not be any higher?

A. Oh, yes.

Q. I mean apart from labour?

A. No, not apart from labour. Nor the difference in the supply of wood probably wouldn't be an awful lot.

Q. Then we come back that the only thing that is higher is labour as between now and when you went in there?

A. That is one of our principal costs.

Q. I am not questioning your proposition, I am only trying to clarify it. It seems to me I have gone over the four factors which must enter into your costs?

A. The transportation was not any higher, as I say, but when we started operating there we had a local market and our net transportation costs were lower. I was thinking of rates when you asked if transportation costs were higher. Therefore, our transportation costs are much higher now, because we used to ship into Geraldton for $2.50 per thousand. Last year all our lumber went out into a distant market and averaged pretty near $7.00 a thousand.

MR. COOPER: Q. Your big trouble is you lost your local market?

A. We lost our local market.

MR. SPENCE: Q. You never operated in Hearst area nor the Veteran lots?

A. No.

Q. How did you come to get this area?

A. Which is that, the Hearst?

Q. Where your mill is now, not the Hearst area, the Nakina, you moved there off your area that you owned? Did you move or just suspend operations?

A. No, we didn't move; we never had operated on these; I don't know just how we did get into the Nakina area, except that the Great Lakes Paper Company has quite a substantial interest in the Pigeon Timber Company and the Pigeon Timber Company has some interest in our Company, and when the Great Lakes Paper Company, we leased their limit, they suggested that we might be able to acquire a concession up there and arrangements were made; we went in there on the more or less permission of the Great Lakes Paper, and the Government too, at that time; we went in under an Order-in-Council, and we operated there for two years. Then the area was allocated to the Pulpwood Supply and we operate under their concession.

MR. ELLIOTT: Gentleman, we usually adjourn at 4.30; it is five o'clock now. I think we understand Mr. DeWolfe's problems.

WITNESS: I don't think there is any more I can say.

There is just one point I noticed this morning about going into concessions to cut lumber, Mr. Clarkson's point there of having paid the ground rent and fire protection for all these years, that he figured that anyone who went in there they should pay up all that back ground rent. I understand that the ground rent on some of these concessions was $3.20 until recent years and then it got up to $6.40 whereas a licensee pays $11.40, and always has.

MR. ELLIOTT: Of course they pay $11.40 to the Government for the fire dues and ground rent, the licensee?

A. The concession.

Q. Oh, they don't pay the fire protection?

A. No. That was just the point.

MR. ELLIOTT: Well, thank you, Mr. DeWolfe.

So far as I know there are no witnesses to-morrow from the industry and Mr. R. O. Sweezy has indicated that he will give evidence on Monday.

Mr. Arthur White is on to-morrow.

Well, we will adjourn till 10.30 to-morrow morning.

At 5 p.m. the Committee adjourned until Friday, April 26th, 1940, at 10.30 a.m.

TWENTY-FIFTH SITTING

Parliament Buildings,
Friday, April 26th, 1940.

Present: Honourable Paul Leduc, K.C., Chairman, J. M. Cooper, K.C., M.P.P., Colonel George A. Drew, K.C., M.P.P., A. L. Elliott, K.C.. M.P.P., Honourable Peter Heenan, Honourable H. C. Nixon, W. G. Nixon, M.P.P., F. R. Oliver, M.P.P., F. Spence, M.P.P., Dr. H. E. Welsh, M.P.P.

MR. ARTHUR F. WHITE, Called:

THE CHAIRMAN: Mr. White, what is your full name?

A. Arthur Frank White.

Q. And with what firm are you associated?

A. The Brompton Pulp & Paper Company, the St. Lawrence Paper Mills Limited,—the St. Lawrence Corporation, as it is called,—the Lake St. John part, and the American Company called the Claremont Paper Co., of Vermont.

The three mills in Canada have an annual productive capacity of about 350,000 tons. The three companies which comprise the St. Lawrence Corporation are the Brompton Company, the St. John and the Lake St. John; they have their paper mills at Dalhousie and East Angus, Quebec and Bromptonville, Quebec; and the Lake St. John Power and Paper at Dolbeau.

MR. DREW: Are all these companies operating under the prorating arrangement which exists between the two governments?

A. Yes, sir.

Q. I do not think you have actually had the opportunity of following any of the evidence which has been given here?

A. No, I have heard none of it, sir.

Q. We heard evidence, the day before yesterday, from Mr. Vining, who acts, I understand, as the key-man in that committee which has been working

on the details of proration under the two governments; and, following that evidence, it seemed desirable to have evidence from the various companies operating under that arrangement and to obtain any suggestions which could be given. Now, might I ask you that you would give your own explanations upon the desirability and the effectiveness of the proration agreement on these companies?

A. I have been closely in touch with the industry since its difficulties became evident in 1928, and actively engaged with the management since 1933, and in that period I have seen us run the whole gamut from rugged individualism to, I should think, almost unanimous acceptance of the principle of a reasonable, fair distribution of the available business.

I think I can say, from my own experience, that I am entirely in favour of the principle of what we call prorating.

Now, in what direction would you like me to try to amplify this? I can get along much better if you will ask me questions, because I have nothing prepared.

Q. In the evidence which was given the day before yesterday by Mr. Vining, he explained the history of the crisis that developed in the industry, which led to the proration arrangements under the pressure of the two governments, by the Acts which were passed, and he indicated that there were various problems connected with that prorating which would require to be solved at the present time, if it is to work out satisfactorily. I do not think there is any occasion to actually repeat the history of it?

A. No.

Q. It would appear that his contact with the history in the organization would be sufficient in itself; but one of the points which he raised in connection with the history end of the development of this prorating arrangement was that there was a short position, so far as the supply of pulp was concerned, in the case of one or two companies, particularly of the Abitibi, and that there was a long position in connection with one or two of the others,—using the words "long" and "short" not in the brokerage sense,—in connection with the supply of newsprint. Then he explained that there were two large companies which were exempt from the prorating agreements, because those companies were owned and operated by two large newspapers in the United States; and he explained that it was the opinion of at least some of those connected with the industry, that the exemption of any mills raised problems in connection with prorating which might lead to a break-down of proration. Would you give us your view upon that?

A. I think all the companies for some time have been searching for co-operation in some measure. My own private view is that that condition of affairs has been aggravated over the past five or ten years by international conditions, exchange problems and quotations, and all those things which were unknown to us five or ten years ago. And in the opportunity that I have had, at very close range, in connection with quite a large number of companies, I think I am safe in saying that almost all those units have endeavoured, with some measure of success, to have co-operation with the object of stabilizing the business.

Co-operation is a reasonably fair way in connection with the business; and it would be a fine thing for me if I could run my mills full blast and have my competitors keep up the price.

In connection with some of the efforts that I know about, which all depend upon the willingness of all the members to co-operate, I think that they all accept the principle; but I think in one or two cases they feel it is a good principle for everybody but themselves.

Now, in the twelve years that I have been observing this industry, they have made several attempts to stabilize the situation; and I think that in the last two or three years we have reason to feel fairly proud of what has been accomplished. It is a process of rather slow development,—something which you cannot bring about overnight. I think the majority of the firms have worked together pretty well, in seeing that all the firms get a reasonable share of the business. There are always defects in all these measures.

I think the whole thing is discussed in Mr. Vining's brief, so that there is no reason for me to go over it again.

There are one or two companies that are out of line. Of course, the inevitable effect of that, if it goes on long enough, is that the whole structure crumbles, and in the end of it the whole thing breaks down.

In connection with the exemption of mills, I realize that there are many considerations, but if you strip it of all the considerations but those which affect me, I would tell you how I feel about it.

I have a very keen sense of my responsibility toward the people who have put up over forty-three millions of dollars cash for the three properties which I represent. Most of the money was put up a long time ago,—long before there was any thought of prorationing or of the Acts which are now in existence. I feel, from the shareholders' standpoint, and that is the only one I want to stress now, that their money is as good as that of anybody else, and if because of the existence of a condition the two governments introduced legislation, it seems to me that it should apply to all of us equally.

I would content myself with stressing that angle of it, because I think it is the only angle which I ought to introduce. The more we can even up the tonnage, the better the situation would be for everyone involved.

If I might interject one other thing. Trying to hold this thing together, from the proportion of the amount of tonnage, involves a tremendous amount of time; and if we could get it tightened up, so that each executive feels he is reasonably secure in the volume of the business, he could direct his attention to other angles of the business.

I think the whole thing works reasonably well, and that it only needs a little tightening up, and then we could move on in this industry in a way which, I think, would be for the benefit of everyone concerned.

The thing which appeals to me as the first step to be taken, once we have

tightened up this end of it, is the co-ordination along some lines, probably the formation of an Export Sales Company for the furthering of export sales from the mills having such trade. We have sold, I think, our fair share, perhaps, in the foreign markets, which is a highly competitive market and the one which first receives the lowest prices available in a world situation; nevertheless, it is highly important to us, as an industry, to take the fullest advantage of it, and with a general agreement amongst those of us who are in the export end of it, we would do a good deal better if we could co-ordinate our efforts. The thing is that to-day an opportunity occurs overnight in connection with the Argentine and Chili, and by the time the executives have heard about it and have talked it over, the opportunity may have disappeared.

We feel we should form an organization, headed by a very able man who specializes on this, because it is a highly specialized end of the business, and turn the whole thing over to this special unit or group or individual. There are so many items entering into it, freight rates, tariffs, changing almost overnight. I myself urge very strongly getting along with a thing of that kind, because I think that in the long run it should substantially increase our tonnage position.

You understand that in the American market, they run from 3,400,000 to 3,700,000 tons,—a very narrow range. They make about 1,000,000 tons of their own, and they have been buying up to 300,000 tons from Scandinavia. And that has more or less limited the situation there. But when we get into world wide opportunities——

MR. COOPER: Q. Are you suggesting a sales branch for the whole industry?

A. No, that is too much to take in. We have made an advance in that direction now. Five companies control about two and a half million tons. After all, there are only about 15 or 20, at best, of separate institutions.

My own view in connection with a sales organization is that we should go very slowly in that direction; but I am addressing myself in connection with the eastern mills, of which there are only four or five who do an export trade and, we think, should specialize on sales for export overseas.

MR. DREW: Q. When you say that, you refer to what?

A. The tidewater mills in Canada.

Q. What companies are there?

A. Mersey, Bathurst, which has a very small tonnage, International, Price Brothers, St. Lawrence.

Q. Where are they located, the Mersey, first?

A. Liverpool, Nova Scotia; the Bathurst is at Bathurst, New Brunswick; they have a capacity of about 25,000 tons; then the International has a mill at Bathurst, New Brunswick, and they have one at Three Rivers. The St. Lawrence is at Three Rivers. Both the Price mills are on the Saguenay.

Q. So that when you refer to co-ordinating sales organization for overseas sales, you are only referring to those five companies?

A. Yes, but it would be for the benefit of the whole industry. If we were still prorating, then the more we can get for export, of course it increases the whole tonnage for the group.

HON. MR. NIXON: Q. Have you any idea how those mills in Nova Scotia and New Brunswick are co-operating?

A. The Mersey has always refused to prorate, although they have been willing to make some adjustments which were in the direction of prorating. They have a power arrangement,—I am talking now of things of which I have not first-hand knowledge,—but they have a power arrangement with the Province of Nova Scotia. It is a very important industry in a province which has very few industries, and I think there has been a lot of pressure brought to bear upon them not to enter into this proration arrangement. But they have made some efforts.

Q. They run 100 percent?

A. They run a hundred percent. And the New Brunswick ones are willing to co-operate.

MR. ELLIOTT: Q. Do you think it would be necessary to have the consent of the mills in Nova Scotia and New Brunswick to have prorationing?

A. I have been brought up in a school which believes in going slowly. My own view is that we should have this situation straightened out first. If we are going along, to bring in all mills, one mill in Nova Scotia, and two in New Brunswick with whom we work along very well.

It seems to me that the main problem is to clear up the situation in those two provinces. We have the legislation, and we have the willingness of everybody. I think that the whole matter would be a little tightening up. Just how you would improve upon the tightening up of the matter is beyond my power to suggest.

MR. COOPER: Q. We have been told that the tightening up would only increase the proportion that the orders get, the five.

A. If we ran 58 percent last year, we would have run about 63 percent. It does not sound like very much; I am not sure that the psychological side does not loom as large as any other part of it. In newsprint, the investment is so heavy for the turnover. In our own case, our investment is about ten times as great as our turnover,—we turn over our investment only once in ten years.

When you have a contract with power companies by which you pay for the power whether you use it or not,—our mill pays about $2,100,000.00 a year. If we operate at, say, 50 percent, we are having a very hard time of it, maybe just getting by and that is all, with nothing for depreciation. But you would be astounded at the improvement as we go up past 55 percent. To you gentle-

men sitting here 5 percent does not sound very much; but from an operating standpoint it is a tremendous improvement.

MR. DREW: Q. On that point about the $40,000,000.00, I think there is an important angle which sometimes is not understood. As I understand it, in the case of the three companies which you direct, that $40,000,000.00 refers to and represents an actual cash outlay entirely?

A. Yes.

Q. That does not represent any expansion of stock?

A. No.

Q. Can you tell me whether that is Canadian capital or foreign capital?

A. At least 90 percent of it is Canadian capital.

Q. As high as that?

A Yes.

Q. Would that represent a large distribution of investment, or would it represent a small number of investors?

A. I think we have from five to ten thousand shareholders,—a wide distribution.

HON. MR. NIXON: No particular newspaper has an interest?

A. No, there is no proprietary interest on the part of anybody.

MR. DREW: Q. I ask that for a very definite reason, Mr. White, because after all in the discussion which has been taking place some emphasis has been laid on the social aspect of the problem, in regard to the stability of operation in these mill towns, where, in many cases, continuity of operation is the only difference between disorganization and security.

A. Yes, sir.

Q. And there is another aspect of the social problem, and that is the effect upon a wide spread group of investors in a community, there is something about this industry which, I think, would be well to have cleared up on the record. From the figures which you have given me now, the 90 percent, approximately, of this capital is Canadian, and the other is a very wide spread distribution of shareholders, from five to ten thousand, possibly, it would appear that there is also the social problem of the investment by a large number of small shareholders in a Canadian industry involved in any solution of this problem. Would you say that, outside of the mills owned outright by the newspapers in the United States, that that in any way is representative of the general situation of the industry in Canada?

A. I do not quite follow you, Colonel.

Q. There are, of course, at least two mills that are owned outright by newspapers, the mill owned by the Chicago Tribune, and the mill owned by the New York Times. Outside of those, it is largely Canadian capital that is invested in the other mills?

A. It will take me but a moment to run over that with you. The Abitibi group, I think everyone is familiar with that situation. There is a substantial portion of the bonds of that company held in United States, but I would hesitate to venture a guess as to how much is held here. But after all, the securities were originally sold in both markets. I think I would be safe in saying that at least a majority of the securities of the Abitibi are held in Canada.

Now, the Anglo-Canadian is almost entirely English, which is held by the large English newspaper groups, the Rothermere groups.

The Bathurst is Canadian.

The Thorold is owned by certain companies in New York.

Booth is Canadian.

Brompton is Canadian.

When you come to the Canadian International Paper group I should think the majority of their bonds—there are at least $25,000,000.00 held in Canada.

The Consolidated, there is probably a majority of those securities held here, although there would be important holdings held here and in United States.

Donnaconna is privately held.

Eddy's, the same.

Lake St. John, McLaren, Mersey, the same. The Minnesota and Ontario, I would not like to say.

Pacific and Powell River: Pacific is American owned; Powell River is Canadian owned, although there are some Minnesota family interests in that.

Price Brothers is owned here, although some of it is owned in England.

St. Lawrence I have mentioned.

Spruce Falls, you know.

From that, I would think it would be safe in saying that by far the majority of the security holdings are held in this country.

Q. In that respect, Mr. White, the present situation, so far as the security holders are concerned in the industry as a whole, can hardly be regarded as satisfactory, can it?

A. Oh, far from it.

Q. And, looking to the future, I would assume that one of the very important things is to restore public confidence in investments in this industry, to a very considerable extent, is that not so?

A. That is my opinion.

Q. The reason I raise that point is because, after all, unless we have reached the peak of our development, we are going to need further capital in this industry?

A. Yes.

Q. And at the moment I think there are some things which might be done to restore public confidence in this type of investment?

A. Yes.

Q. I am not asking you to express any critical opinion upon legislation which this Committee should recommend. Would you care to express any opinion as to any Act, such as the Forest Resources Regulation Act, upon the mind of the investor? Am I clear?

A. Yes. I cannot feel that it would be otherwise than constructive. Bear in mind the great basic trouble of this industry, we all know is the tremendous addition to plant and equipment which took place from the years 1925 to 1930 inclusive and while all sorts of people,—and may I say bankers principally have been blamed for it—if you will study the groups which contributed to that, there must have been twenty of them scattered almost all over the globe. There were the English newspaper groups; there were Pacific Coast groups; and American groups; groups which had been in the paper business and groups which had not been in the paper business and we went up in 1930 with this tremendous over-capacity from which the industry has never recovered.

Now it seems to me the large first problem is to try to meet that as best we can—and slowly we are overtaking our troubles—and I still look upon the reasonably fair distribution of tonnage or the actual distribution of tonnage, if you want to put it that way, as the biggest single factor towards improving the situation. The most important one—the feeling I outlined a few minutes ago—is very heavy fixed and operating charges which we have to meet principally due to our power and the very unusual nature of our raw materials which means that we are planning to-day for wood which we will use almost two years from now. To every operator the very life blood of his institution is tonnage and there is no such thing as being able to say, "the next two or three months look like poor months; we will turn the key in the door, close up and start up again three months from now." Power tolls are going on and the labour situation is disrupted so that every man's struggles are to get tonnage for his mill.

We have all reached the point where we realize fully that we cannot hope to have 90 percent if the industry can only evenly distribute 60 percent. We realize we are all better off to run at that 60 percent. For one man to improve his position at the expense of the other will inevitably result in the decline of prices and you will get right back to where we were in 1932. I give that as my considered opinion after having seen these things attempted in one way and another and after watching the struggles of this industry since 1928.

Q. Another point which has been discussed here by different individuals has been the desirability of taking the whole problem out of the sphere of politics. When I say that, now, do not misunderstand me.

A. I understand.

Q. In so far as this Committee is concerned we are seeking to find some constructive solution of this problem and no matter what our particular political persuasion may be, we recognize that there are conflicting interests involved and a certain law of continuity which suggests possibly the wisdom of setting up a non-political board or commission or committee—call it what you like. That suggestion has been made by Mr. Vining and by Mr. Clarkson yesterday. Do you concur in that suggestion?

A. I am really not equipped to venture an opinion on that. The legislation is there; it is clear enough. The great majority of the companies are receiving the spirit of it. When it comes to the question of how you would enforce it I must confess I am at a loss to make any suggestion.

There are possibly some legal ramifications, although I cannot see the possibility of anyone questioning the power of a sovereign body to enforce its will unless you get down to the ulta vires question and you are much more familiar with that end of it than I. That seems to be the only way in which the will of the province might be questioned in the least way to the least degree. It may be that it is distasteful for a government or one of its departments to have to choose some degree of penalization and to that extent it may be desirable to have it in the hands of some independent body.

I have not given this any thought at all, but it seems to me you are getting just a bit far away in transferring or vesting a small independent body with very wide powers along the line of punishment or fines or whatever you like, but it may be that it is a better way in which to do it.

I would not attempt to venture an opinion on the actual procedure. Here you are asking me a broad question as to if it is better in one department or another —one department non-political and another so-called political—to me there should be no difference.

Q. The reason I raised the question was that Mr. Vining as president of the Newsprint Association of Canada had suggested something of that kind and Mr. Clarkson who has had occasion to be very actively connected with the industry made a similar suggestion yesterday. It occurred to me that possibly within the industry as a whole there had been some discussion which led you to some conclusion on it?

A. No. Mr. Vining mentioned that briefly. As I understand it he has been acting in a capacity here somewhat apart from his position as president of the Newsprint Association. He made it quite clear that he appeared as a member of the committee which had been studying some phases of this question. Outside of a very brief discussion which he had with me a few days ago—when I learned for the first time that you had invited me to be here—and I had said nothing to him about it and really had not had an opportunity to give it much

thought, but my experience has been that on two or three occasions we have been compelled to appear before the Prime Minister of the Province of Quebec and he had asked us one by one if we adopted the use of the principle of pro-rating would we adhere to it. We said, yes, we would and he told us if we did not there would be dire consequences. It seems, when it comes to the question of dire consequences, they do not always function in their direst form.

Q. When you say that you have not come to a conclusion possibly there is no occasion to press it further, but I only have in mind that there of course have been other attempts at proration in other industries operating possibly under somewhat similar conditions and it would appear to me that perhaps out of that experience some general conclusions might have been drawn. I have in mind particularly the prorating of oil in the United States where the system they follow is to place the ultimate control in the hands of an interstate commission. Power is conferred on that commission to enforce its regulations by state enactment which gives full power to the commission to impose terms and penalties. Would you care to express any opinion as to the desirability of attempting to adopt some such system here?

A. I think I may say that I would certainly not view with disfavour a small so-called non-political body. There would not be very much to it, as I view its duties. The duty is largely one of administration. Reports are available each month as to where each company stands. There should always be some little flexibility because of overseas shipments, storage and boats. We all come out every quarter at about the same level and it has boiled itself right down to a question of method of enforcement. To me the question of enforcement is of much more interest than who does it.

Q. That, of course, is a matter of working out practical details. One of the advantages argued in favour of some such independent body is its continuity and while the present Minister might feel that there is any danger in lack of continuity in the administration, others might not think that is so serious?

A. Well, Colonel, I think that is important, because composed of the right men and after viewing the application of these efforts and the results over a period—true, governments do change—it seems to me that the opinions and advice of these men would become increasingly useful. That is an angle which had not occurred to me before. I suppose from time to time the whole broad question would be reviewed. Something which may be a useful and proper thing to-day may not be nearly as useful and proper ten years from now and you have a continuing body in full touch with the whole situation which could report very usefully on that very question.

Q. Yesterday, Mr. White, we had evidence which perhaps was the most vigorous expression of opinion on that subject—although we have heard it from others. Mr. Schanche, who is the forester of Abitibi, is the person of whom I speak—in what struck me as an extremely clear analysis of the situation He said that in his opinion from the practical point of view perhaps the most vital thing of importance for the future is research in this industry. What would you say to that statement?

A. Research?

Q. Research?

A. You mean forest reserves?

Q. No, research.

A. Oh, I agree.

Q. He pointed out that at the present time there is really relatively little effort to attempt continuing research into the possibilities of expansion of the use of forest products and also research into sales methods and other problems which would not only increase the use of wood but would increase the distribution. Would you agree with that statement?

A. I would. I think a very great future in that respect has been ignored. Not ignored altogether, mind you, but ignored from the point of view of the extent I would like to have seen it reach, largely by reason of the fact that most of these companies have been very hard up for the last seven or eight years, and when one is driven pretty hard to even meet payroll cheques, you do not feel like embarking on a very ambitious research expedition. But, it is highly important.

In one of our own cases, the Brompton Company makes various grades of paper in addition to newsprint, and research forms a very increasing part of that. Our firm depends on improvement and new use of paper and we are going to have quite a problem to meet the menace of southern pine, which is actually at the moment a research and chemists' problem, but once met, and once all those difficulties are met from the chemical standpoint, then it seems to me we are going to be very busy meeting our end of it.

It has been stated here, for instance, that it is altogether likely that through some methods discovered by research, jack pine could be incorporated in the production of newsprint and that by doing that through a more intensive utilization of all standing timber, the cost could be reduced.

A. In the Brompton Company we are using wood to-day which ten years ago we would never have attempted to use.

Q. That being the case it would seem that the threat which undoubtedly exists in the southern pine experiment can best be met by some extensive research in this country in order to find greater use and possible different uses of our present timber resources. Is that not correct?

A. Yes, quite.

Q. Would you care to express an opinion as to whether that could best be done by individual companies conducting research or by some co-ordinated effort on behalf of all the industries?

A. I do not think I am qualified to answer that usefully. It is attempted in a fairly ambitious way now, you know. The Pulp and Paper Association has quite a research building on the McGill grounds in Montreal.

HON. MR. NIXON: Q. Assisted by the Federal Government?

A. I am not sure as to governmental assistance, but I know we all have securities in it and we are all assessed so much for its upkeep and so on. I am rather inclined to individual effort because their necessity is broader, supplemented by governmental research along more general lines.

You must appreciate that each one of us is approaching the problem from some particular angle and I think the combination of all those results would be useful, whereas with a general body, it seems to me their efforts are more devious. If we can conduct our own research, I do not think there is any question about it, we will all be conducting our research much more vigorously than we have in the past, if we have some central—as we have now—body to appeal to for co-operation. That would work out very well.

Q. To which central body do you refer?

A. We have one now. I am not actually connected with the operating end of the matter in order to know whether the combination is satisfactory, but nevertheless they have a lot of equipment and quite a large building in Montreal.

Q. The information we have is that it is not in a position to operate to capacity at the moment?

A. That may be.

MR. DREW: Q. There is another subject which has received a great deal of attention here on which you might care to express opinion, possibly, and help us. I refer to the subject of export of pulp logs and the effect of that export on the Canadian industry?

A. Colonel, from the narrow viewpoint of the newsprint manufacturer, I think the reply is obvious. Why sell our competitor our raw material. It seems to me, while I have not given it any thought, there are a great many considerations of which my opinion or the opinion of the newsprint manufacturer perhaps does not meet all the angles which are very important from the standpoint of public interest.

MR. ELLIOTT: Q. You do not use Ontario pulp?

A. No, not at all, and I know a bit about the export situation, because the inevitable happens. In the St. Francis River situation, for instance. In the bad years, when pulpwood is almost given away and we have great difficulty in using it, no one wants it, but as soon as it becomes very useful to us, then they come as far as from West Virginia to bid in the market for pulpwood. The answer is quite obvious, from my own standpoint as a manufacturer, but I do not profess to be equipped so as to be able to give you an opinion when you consider the question of the reserves, of the maturity of the timber and the settlers' problems. It seems to me all those things must be considered in this very broad question.

HON. MR. NIXON: Q. Have you any idea or any knowledge as to the amount of export actually in the Province of Quebec?

A. No, sir.

Q. Does your company export timber?

A. No.

MR. DREW: Q. Your company exports none at all?

A. Our company exports no pulpwood.

Q. There is one further point which we have discussed on which again you may or may not care to express an opinion. At the present moment there are six contracts authorizing the construction of pulp mills in Ontario. At least you have seen it discussed in the Press. Would you care to express an opinion as to the desirability of permitting these mills to be contracted?

A. I should say, sir, it would be highly undesirable. I do not know any angle of the forest industries—if you want to call it that—which has had a more disastrous record than the pulp—particularly sulphite pulp—over 25 years. I will give you two instances which I think illustrate what I have said. The Brompton Company has a small newsprint mill. It is small so far as the machines are concerned and it is located at Bromptonville. We buy sulphite from it.

In the ten years that I have been watching it, until the outbreak of war there was no time at which we were not buying sulphite at distress prices. We were quite an important buyer and therefore we were in a position and were always in touch with the sulphite market. Many times we considered the advisability of opening up a small sulphite unit of our own but we always reached the conclusion that we were better off buying rather than making it. Do not misunderstand me there. We would have had a small use of it, but not large enough use in order to be economical. That does not mean that the large mills—like St. Lawrence—should not have their own sulphite units, but when it comes to mills making sulphite alone, their record has been disastrous. We are making in Brompton sulphate pulp. We control a high-grade converting mill in New Hampshire which was originally bought years ago to take up the then surplus sulphite pulp from Brompton and balance the Brompton operation. In the last eight or ten years we have sold no sulphate to New Hampshire for the simple reason that they could buy better sulphate cheaper than we could sell it to them; buy it from Scandinavia.

I will make one exception, that if as a result of very intelligent research some new use could be developed and you could demonstrate that you were building a mill to meet a new and widening market, there might be some justification for it, but otherwise I should think it would be a hopeless investment to build more pulp mills.

Q. Some of this discussion may seem to be fairly general, but I might explain I believe it is the uniform hope of all the members of this Committee to make some suggestion which will help in fixing a long-range policy in regard to this matter and for that reason having regard to your personal knowledge, both of the industry as a particular industry and also of the general financial situation in the country, have you any suggestions as to anything which should be done

to place this industry in a better position generally not only from the point of view of operation, which has been discussed very fully here, but also from a point of view of a greater sense of security in the mind of the prospective investor in this industry?

A. It sums up in one thing, sir, and that is the enforcement of what for lack of a better term we will call proration. I think it is essential that that be the first step. If I am correct in understanding what you are asking me—I do not want to presume to advance any opinions—you are asking me as an individual to give you my opinion for what it is worth and I would say that is your first step; go slowly, consolidate the position of these two provinces, particularly if it is entrusted to an independent board. Having accomplished that, see where we go from there and in the meantime encourage the manufacturers to concentrate on the export sales efforts.

Personally I would much rather see a limited programme of that type embarked upon as a start rather than an attempt at a very wide all-embracing programme, which would seem to me to be perhaps going too far in the first instance. The whole machinery is a delicate one and I think the approach is much better if we go at it slowly rather than to try some great omnibus measure which might be very difficult to enforce.

MR. ELLIOTT: Q. Do you think the paper industry could adjust itself to the immediate rigid enforcement of prorating?

A. Well, sir, we are within an ace of it now, with the single exception of the exempted exports. I have given you my view from the one angle; presumably there are many angles; but with that single exception, the rest of the defections are not great. They could easily be pulled into line. It is not as if there are three, four, six or eight mills out of twenty refusing to have anything to do with it at all. You have probably seen all the figures. The principle of the thing creates a fear of the situation. I do not think it is the actual tonnage figures at the moment, but if you introduce fear into the situation, you have every operator commencing to run for cover. He wants to get enough tonnage to ensure his position. He does not want to wake up some morning and find that a lot of his tonnage has disappeared overnight through improper practices and therefore he begins to run out and try to ensure his position. The first thing you know the whole structure begins to crumble. That is why these defections are important. It is the psychological side, actually, more than the physical. That is why I say we are there now, with just the slightest bit of tightening up.

MR. COOPER: Q. Do you not think it breaks down the sales initiative of the different companies?

A. We have canvassed that. I think in our own organization we have as active and energetic crowd as you could possibly find. Bear in mind this does not meet the American situation. We are competing every day of our lives in a three and one-half million-ton mill, one million tons selling to-day a dollar a ton under our price and before only the outbreak of the war we had nearly 300,000 tons coming in from Scandinavia where the every-day quotation was $7 under anything the Canadians charged. That in itself means we cannot go too far. That is over one-third of their requirements coming in from those

two sources; their own mills and Scandinavia. So, we are busy every day of our lives making contacts. It may have the result in odd instances of slowing up people, but I can hardly imagine an executive saying to himself, "Well, we have prorating; I am going to dismiss my sales department."

MR. W. G. NIXON: Q. Mr. White, from your experience in the industry down through the years would you say that it has suffered in any way because of lack of administration on the part of governments or departments or over-administration, or was it rather due to internal difficulties in the industry itself?

A. I will put it this way, sir, we attempted in the early stages with practically no success and then later on with some degree of success to work out our own problems, and that, mark you, is the way we should do this, we shouldn't have to go running to the government for help, but this situation through defections here and there had created a state of affairs where the governments felt they had to take action because we were dealing with national resources and assets of the two provinces and the greatest single step that was made in the improvement of these industries was the enactment of these two Acts of legislation.

Q. These two Acts were inevitable apparently?

A. Yes.

Q. Inevitable that that should be done?

A. Yes.

Now since they have been enforced, and partly due to an improved appreciation of the whole situation by the executives themselves and perhaps also some changes in the personnel, there has been a vast improvement in the approach to the whole problem by the mills themselves. We have always felt that we had these two Acts behind us as insurance or as a back log, and what I understand we are discussing at the moment is some way of just tightening them up, and it needs very little as I view it; it is not a big problem at all.

HON. MR. HEENAN: Q. It is an aggravation?

A. No, but I mean I don't think the enforcement is a very big problem.

Q. It is more or less one or two mills getting away with something aggravates the rest?

A. Yes, and aggravation is a mean thing in any effort of life.

MR. DREW: Q. Mr. White, you spoke for instance of the amount that your companies pay for electric power. Have you yourself had occasion to deal with the power problem and purchase of power?

A. Oh, yes, quite actively.

Q. One of the arguments that has been made here on a number of occasions is that it would be of great assistance to the industry if any method could be

found which would result in any substantial reduction in the cost of power. I assume you would agree with that propositon?

A. Of course you cannot overlook the power companies themselves; they must finance; with them it is a marginal business, there is no trade in power except through the few companies which have a distribution system; most of them are what we call in the first instance wholesalers of power. They know the cost of the installation and they make long term contracts and the margin is very small. I notice that various power companies' profits run maybe three or four cents per share per year. Well, without a long term contract in the first place they could never have financed, and secondly they couldn't exist. What we would like is not to pay for power when we are not using it, but that is too much to hope for. The alternative to buying power on that basis is to build power plants ourselves and we couldn't reasonably hope to sell it because we have to get power contracts to take that power. I am not in a position to speak on the actual rates for power. In my own experience in Quebec we feel reasonably satisfied with the rates we pay for power and we have found the power companies very very co-operative in trying to help up over these lean periods, and they have given us much better contracts in connection with the amount we are obliged to take always, it is much smaller than it used to be and they charge us a little more for it when we have to take more power over certain periods. Power of course is a very big item in our cases; the biggest item is wood, the next is power and the next is labour.

HON. MR. NIXON: Q. You don't develop any of your own power?

A. No.

MR. DREW: Q. Have you any comparative figures as to the cost of power in Ontario and Quebec?

A. No. sir.

MR. DREW: I have no further questions.

HON. MR. HEENAN: Q. Mr. White, with respect to the possibility of building new mills in Canada, new pulp mills, not new newsprint mills?

A. Not new newsprint mills.

Q. If due to the increased consumption and demand for the various forest products other than newsprint, like sulphite, sulphate and so on, much of which has come from Scandinavian mills, and in which there is a new industry now commenced in the southern pine, if we in the country can manufacture what these people manufacture so that we can sell it at prices as low or below those companies' why should we sit still and say, "We will wait to see what they do in the United States, see what they do in the Scandinavian countries or somewhere else?" Why should we always be sitting waiting because they might do something down there or in some other part of the United States?

A. Well, sir, as I understand it the hesitation to date has not been waiting to see what they may do elsewhere; the hesitation to date has been our well demonstrated so far inability to meet these competitions.

Q. But if we could meet that competition you wouldn't still hesitate to build?

A. Oh, no. If you can meet any competition you go ahead, particularly this foreign competition, but I think that that "if" is such a big one.

Q. We generally get this situation I think, "Don't build here, because they are investing $100,000,000 down in the United States in southern pine and you will never compete;" we get that kind of talk constantly?

A. Yes.

Q. I appreciate your viewpoint exactly, you have had your experience in the newsprint development and I agree with you that we shouldn't run into a similar situation in connection with any of our other forest products, but when there is such a large increasing demand for forest products I can't see why we should sit idly by and say, "Well, we wouldn't be able to compete with what they are doing down in the southern States or what they do in Scandinavia," so my point is I am right in line with you except this, I don't agree that we should sit by saying that we cannot do something. We have got the foresters, we have got the power, we have got the transportation of all kinds, we have got reasonable labour and why should we take that repeated attitude that we shouldn't build here because we can't meet the prices of some of the other companies?

A. Well, Mr. Heenan, you must after all face the facts, even in the newsprint business. Now the saving grace of the situation has been that both of those prices if limited so far, fortunately, to three hundred thousand tons a year or three hundred and twenty-five thousand tons a year—I am talking of the situation before the war—it is the same in pulp. If I may just read you one or two items from Newsprint Service Reports:

Q. Let me answer that and probably that will give you my viewpoint: If the newsprint mills should operate to greater capacities than they do at the present time, say if they were eighty or ninety percent, I think you will agree they could produce their product at a less cost and therefore sell it at a less price. If the proration was carried out in its entirety, nation wide as you say—the other provinces don't amount to very much in the aggregate, but say that it was nation wide, couldn't we afford by some agency to go out into the world and compete with anybody at their own game? What I mean to say is this, if the Scandinavian countries can get together and send someone over to the United States to say, "No matter what price the Canadians will quote for their newsprint we will beat it by $7," why couldn't we have a similar organization going to their organization and saying, "If you are going to come over to the United States and undercut us we will undercut you?"

A. We have often canvassed that, sir. We are very badly handicapped here, there is no use denying, due to the fact that I don't think our conditions of work would result in costs that we could compete with the Scandinavians.

Q. If you can get together labour, capital, management, Government, power and the transportation companies? We can beat the world in my opinion?

A. Well, I must say I cannot subscribe to that. And bear in mind the

intense desire, if you want to put it, of the Scandinavian countries including Finland to get exchange will always make them a factor in the American market, for that reason alone, whereby they will sell at almost any price to get exchange and they will be compensated in some way or another by their governments because exchange to them is one of the very important things that they share, and exchange with them and America to service their debt and take care of their purchases is evidenced from a national standpoint.

Q. Let me put it in another way, taking the practical method: We have over a million tons idle capacity tonnage in Canada now. Supposing we made up our minds in a co-operative way to fight for our lives, our existence, and put that million tons to work, do you mean to tell me we couldn't get new markets under similar principles to those by which they obtain our markets in the United States?

A. I think you would have to lower your whole standard of living to do it.

Hon. Mr. Nixon: Q. Of course Scandinavia is going to be entirely out of the picture for the immediate future anyway?

A. It would seem so, sir. They are still shipping a bit. We have the figures for the first two months, but I think you are right.

Q. There is practically nothing coming now, is there, from Scandinavia?

A. A little dribble, that is all. Bear in mind there are some rather heavy accumulated stocks to come out if and when the bars are let down.

Q. We can look to the immediate future, unfortunate as the reason is, to help business in Canada?

A. Yes. I would like to point out this one thing—these are figures prepared by the United States Pulp Manufacturers Association dealing with sulphite pulp: The consumption in 1939 was five percent more than capacity—only five percent, in 1839—but fifty-two percent more than the actual production. In other words there are mills in existence in the United States to-day to take care of all but five percent of the sulphite requirements in 1939 but fifty-two percent of them didn't work because they couldn't meet Scandinavian prices, and the same situation exists in sulphate. The biggest single opportunity at the moment appears to be in unbleached sulphite which again is rather a God-send to the newsprint companies because we all have a little excess sulphite capacity even if we are not in the sulphite business.

Mr. Drew: Q. I think that is a very important point you have made. If it is correct that the most important opportunity at the moment is in unbleached sulphite and the mills that we have in existence have some potential capacity in that respect then that should be understood in considering the possibility of developing new mills for the production of that particular product. Would you say that the mills now in existence can extend their production of that product very extensively?

A. The sales of unbleached sulphite: Europe supplied forty percent, Canada

eight percent, last year. Now bear in mind that the American mills can supply up to within five percent of the 1939 requirements in the States but they have been importing this very large percentage from abroad for two reasons, one, price, the other, quality. What will happen, if sulphite pulp becomes very high in price all these older mills in the States will start up again and it might be we will have a chance in Canada to supply considerably more of it than we did last year but I still claim we don't need to start off to-day building pulpmills in Canada to meet that situation. I might say, if you can by clever research find some new method and obtain a wider market it might be desirable.

Q. Do I understand your reason for that is that the mills already in existence can meet demands for the unbleached sulphite?

A. Yes, within a very small margin. Undoubtedly if the Scandinavian situation should tighten up completely and nothing leak through we would have some big lumps, but I think we would be very foolish to embark upon a great programme of expansion, and where you would get the money I don't know.

MR. W. G. NIXON: Q. It will undoubtedly be years before the Scandinavian mills come back to the point where their governments can subsidize their industries to the extent they have in the past?

A. Sir, that is almost idle speculation, what would happen after the war, but my guess would be in the scramble for existence the goods will go to the United States, it will be one of the few items of exchange really worth while, and almost anything in that nature can find itself provided for; I think we will have to discount the generally accepted experience in this case, we will be in an entirely new world and it will be a pretty desperate struggle I think.

Q. In recent years has there been any great improvement in the machinery for the processing of wood for pulp and paper and so on?

A. Bear in mind, sir, I am not what we call a paper-maker.

Q. I know, but from your knowledge?

A. From my knowledge. Of course it is the kind of business where you are refurbishing as you go along. Maintenance is a big item. One of the most successful mills I know of in our little group is a small mill we have got down in New Hampshire which has made money steadily for us and I think the paper machine is forty years old. It perhaps doesn't look a bit like the machines they started off with except for the great big framework. In answer to your question, there have certainly been no revolutionary changes and I wouldn't say that the mill erected to-day could make paper much more cheaply than one erected twenty years ago unless you placed it bang up against its wood supply in which case you have built it out in the wilderness and you have got to build a town and waterworks and all that sort of thing which probably offsets this other advantage.

Q. The thought I had in mind, if the mill erected to-day would have any decided advantage because of improved equipment?

A. No. That is a broad statement, there are some refinements, but not

in the way we would understand a lot of other operations. For instance in steel, their methods change so rapidly that a mill which is twenty-five years old and hasn't been touched is out of the running competitively.

MR. ELLIOTT: Q. Mr. White, how do the plant and equipment of the mills in Canada compare with the American and Scandinavian competitors?

A. Of course we know the American situation, but I can't answer as to the Scandinavian. I believe the processes are very much the same and the types of machines are very much the same.

HON. MR. NIXON: Q. And the operating mills have been kept fairly up to date?

A. Yes.

Q. In accord with the best practice?

A. Yes. You see the Finns have increased their productive capacity some 300,000 tons in the last few years, and in the ten years in which we were suffering most Great Britain increased its capacity by 300,000 tons.

MR. COOPER: Q. Mr. White, it is generally thought that a lot of our mills and machinery are obsolete in the sense that they are small machines which require the same amount of labour as the big machines require which would increase production?

A. You ask the average operator and he will tell you now that he would prefer six seventy-five ton machines against two very big ones. If there was a standard form of newsprint and size and weight and trim and all of these items that would be a great thing for it, and the big machines suffer from a lack of ability to run constantly over these small machines; the smaller ones we can change the type of run so much more easily; but I think you will find the average operator will tell you that in the type of business he has to-day where he is running sixty or sixty-five percent he would rather have a small machine mill than a big one. But I don't subscribe to this argument about so many obsolete mills in Canada. I know the mill situation pretty well and there is only one of them that is closed down completely, every one of them has run and apparently run successfully, certainly some of them were a little bit better than others, but an advantage here is offset by a disadvantage there and any one of them having a run of eighty or eighty-five percent can make money out of it. The backbone of the whole bundle of them is wood and the further they get from wood the more their trouble, but it is not a question of the efficiency of the mill itself.

Q. We were told I think that four of them were given zero ratings?

A. Well perhaps you mean Spanish River, Espanola.

Q. Yes?

A. In all these figures that I have been discussing this morning they are considered by all of us as non-existent, they are not in these tonnage figures

and not in the capacity figures, they are accepted by the operators as not likely to come back.

Q. They are still up there anyway, you can see the mill?

A. Yes.

MR. ELLIOTT: Q. Do you say that they are not likely to come back?

A. Well now, perhaps I am speaking out of turn but my general understanding is that the Abitibi Company have dismissed those as at all likely to and they certainly leave them out of all their tonnage calculations.

Q. Is there anything further you wish to submit, Mr. White?

A. No. sir.

MR. ELLIOTT: If there are no further questions we will call Mr. Zavitz. Thank you, Mr. White.

HON. MR. HEENAN: Thank you, Mr. White.

EDMUND JOHN ZAVITZ Called:

MR. ELLIOTT: Q. What is your position with the Department of Lands and Forests?

A. I am Provincial Forester.

Q. How long have you been with the Department?

A. I have been with the Department thirty-four years, thirty-five this spring.

Q. Were you all that time in the Forestry Branch?

A. I was seven years at the Agricultural College, came to the Parliament Buildings in 1912.

Q. Have you been all the time with the Forestry Branch of the Department?

A. Yes, I have.

Q. You have listened to the evidence, Mr. Zavitz, of the various witnesses in this inquiry?

A. Well, I have heard most of the evidence; there have been a few times when I wasn't here.

Q. Have you anything particularly that you wish to submit to the Committee?

A. Well, I have been principally interested and in charge of reforestation and I think that I can give some information on that line. Whether you want to ask questions, or—

Q. Have you any résumé of it?

A. Not in a brief. I think on the various phases I might make a general statement in regard to reforestation as we face it in Ontario and might say that there are two general problems: There is the problem of reforestation on the Crown lands of northern Ontario, the problem of regeneration and reforestation in that area, and the question of reforestation in southern Ontario in the settled counties; quite two distinct problems I think.

Reforestation in northern Ontario: At the present time the Department is simply carrying out some demonstration plantings and in my opinion that is about as far as we should go.

Q. That is in northern Ontario?

A. In northern Ontario; I am speaking now of the Crown lands of northern Ontario. We have carried on what we term demonstration or experimental plantations at a number of points. The general question of reforestation or regeneration on the Crown lands is rather a large question and we feel that it is rather a local question. I mean there are certain regions,—the regions vary in regard to types of timber and types of soils—and we feel that we should carry out considerable study and investigation as to what has happened in the past on cut-over lands and burnt-over lands and also the type of regeneration that we would have to give to artificial regeneration, the types that will be necessary before any larger programme should be entered into. That in a general way is the situation so far as northern Ontario is concerned.

Q. Can you tell us anything about the practice of private reforestation in northern Ontario by any of the timber operators or otherwise?

A. Well, there has been practically no effort by the individual operators. There was at one time the Abitibi carried on some small plantings and carried a small nursery but that was abandoned.

Q. Did the Abitibi do any extensive planting?

A. Not very extensive; they had a small nursery at Sault Ste. Marie, that was during the Spanish River regime, before the amalgamation, and I would say their output wouldn't be for two or three years more than a couple of hundred thousand trees; it was simply experimental.

MR. ELLIOTT: Do you think artificial reforestation is practicable in northern Ontario, say, in some of the areas in Algoma which have been more or less abandoned since the timber has been cut?

A. I think it is practicable.

The whole question is a problem of finance and necessity. As I say, a study

should be made as to the necessity, and as to where we stand in regard to the condition on cut-over land, to really learn what is happening so we can predict the future of those areas.

We have an area in the Soo district known as the Kirkwood Desert where we have already planted some 3,000 acres, an area in there of sand plains which adapts itself to planting; and I might say here that in any planting up to date, we have selected areas that we thought were well enough organized to ensure fire protection. I mean, we felt that that area could be well protected.

In speaking of these plantations that we have made in Northern Ontario, the main idea was not to ensure the future supply of timber, the main idea in these plantations was more demonstration and experiment.

Q. Educational, too?

A. Educationa'. And to show what could be produced, the rate of growth, and so forth on these areas.

Q. Do you supervise the conditions under which operators cut in northern Ontario?

A. No, I have no jurisdiction over timber operations.

Q. Do you think it advisable that forestry officers should make a survey of properties where it is proposed to cut in order that they might determine where operations in certain areas might be carried on?

A. I think that policy has been carried on to a certain extent.

HON. MR. NIXON: You do not want to give the impression to the Committee that the Department does not supervise?

A. No, there is supervision.

Q. You are referring to your own responsibilities?

A. Yes.

MR. ELLIOTT: I just have in mind what Mr. Schanche said yesterday, that he thought forestery officers with technical knowledge should study the habits and history of areas where it is proposed to cut timber?

A. That would be the ideal condition, and we are approaching that with the organization in the northern district forest offices with trained men in charge.

Q. Do the timber operators practice selective tree-cutting in cutting pulpwood limits or soft timber?

A. I would not care to answer that; I am not familiar enough with that.

HON. MR. HEENAN: He has been chiefly in the reforestation branch.

WITNESS: Mr. Sharp would probably have more information on that than I would have.

MR. ELLIOTT: You agree they should, do you not?

A. Yes, within feasible limits.

Q. Does fire protection come under your supervision?

A. No, it does not.

HON. MR. NIXON: Your main activities are in connection with reforestation in old Ontario?

A. Yes.

Q. You do not look to artificial replanting to solve our problems in the North for the future?

A. No.

Q. For the pulpmills or sawmills?

A. No, I do not.

Q. You have pretty nearly got to depend on nature to do that?

A. That is going to be a long story in the gradual development of these forest areas. There will probably be, as we get working, areas that it may pay to reforest. But that is a thing in the future.

MR. ELLIOTT: Is it not the idea, in order to assure continuity of growth of timber, that they should practice selective tree-cutting in carrying on their timber operations?

A. Yes.

Q. Which would make artificial reforestation unnecessary?

A. As a theory, that is correct.

Q. That has been practised by some of the operators?

A. I think so, yes.

Q. For instance, is that not the case in Algonquin Park where timber has been cut?

A. I believe so.

MR. OLIVER: Do you not think it works out in practice?

A. It is all a question of cost of administration and operation. I mean, we have a theory of going in and marking trees that the operator can cut, but we have not reached that only in some small cases. But the practical operation has been carried on of taking the merchantable timber.

MR. ELLIOTT: Is there not enough faulty timber that they could leave behind to provide for natural regeneration?

A. There should be, if we attend to fires.

MR. COOPER: Why is it that with a natural growth inferior trees are growing up, mostly balsam, in some of these places where before it was spruce?

A. There are several reasons for that. In the first place, balsam, if you leave a large percentage of balsam as seed trees, you are going to get the regeneration of balsam in a large percentage, and balsam reproduces more freely than spruce.

Q. Has that not been the history, to your knowledge, that good spruce concessions have been cut out and now balsam is replacing it?

A. That has actually happened on a good many areas. The balsam has taken the place of spruce to a certain extent.

Q. What would you suggest to get away from that in the future?

A. Of course, of late years, they have been taking more balsam. Cutting the balsam would eliminate that problem.

MR. OLIVER: What is your experience in black spruce areas, in clay belts, where it is cut over. What comes up there? The black spruce, which is largely a swamp condition or lowland condition, it has been largely clear cutting, necessarily so because of windfall dangers.

Q. Yes, that is the evidence.

A. And from what little studies have been made there is black spruce reproduction now. There is not as big a problem with those areas as with white spruce.

MR. ELLIOTT: Can you not control the trees that will regenerate? For instance, in a pine area, if you leave enough faulty pine to provide natural regeneration, the pine will be the predominant tree in the second growth, is that not so?

A. Well, it should be, but in many areas, of course, the factor of fire has been a big influence in the past, and many other trees reproduce much more easily than white pine—if that is the point you are referring to. White pine does not reproduce as freely or as easily as, for instance, poplar, birch and jack pine. There are a number of reasons for that. I mean, the white pine, even

in our artificial work of reforesting, is one of the most difficult trees we have to reproduce. It has a number of very difficult enemies.

HON. MR. NIXON: And conditions have to be perfect in its early stages, you cannot plant a lot of white pine up there, in a bare open space and expect much success, can you?

A. No.

Q. Is it not Nature's way to have these other species come on, like poplar, then your pine gets established in the shade. I have seen some of your plantings up north years ago, where the samples of trees were very poor.

A. We had a very good demonstration of that. We found that the white pine does best where it comes up in a mixture with nursed trees, as we call them. In connection with our poplar, birch and pure white pine plantations, up to date, we have had very poor results with them.

Q. You have seen the plantings in Algonquin Park?

A. Yes. The Algonquin Park region is very seriously infested with one insect known as the pine shoot borer; and the open plantations of white pine are pretty badly riddled with them. At the present time, as a matter of fact, we do not use pure white pine plantings any more.

MR. ELLIOTT: Aside from the question of plantations, if we are to look for a continuity to our timber, the means is by leaving enough seedlings to provide natural regeneration in the areas which are being cut from year to year?

A. Well, that would have to be given a good deal of study. There are a lot of areas where we feel quite certain that we will not have a satisfactory crop of white pine.

Q. You would have some, in any event?

A. Yes, but you wouldn't have a stand comparable with an artificial, planted area.

Q. Of course, as you said before, you only plant for the purpose of demonstration and education?

A. Yes, up to date in northern Ontario.

Q. But to look to the future to secure continuity of timber, we have got to insure the timber by selective cutting.

A. Selective cutting. But we have areas—I think the Department is at the present time considering artificial regeneration in parts of Algonquin Park where we have no pine left as seed trees, owing to fires and other conditions, but largely fire situations of years past.

HON. MR. NIXON: Mr. Chairman, before we start in with Mr. Zavitz's

testimony for southern Ontario, where very constructive work is done, perhaps we might adjourn until this afternoon.

MR. ELLIOTT: Yes. We will adjourn until 2.30.

WITNESS: I will have a map for southern Ontario.

At 12.30 a.m., the Committee adjourned until 2.30 p.m.

AFTERNOON SESSION

April 26th, 1940—2.30 p.m.

MR. ELLIOTT: Will you proceed, Mr. Zavitz, please. You have covered northern Ontario pretty well. Can you go ahead now and tell us of the developments in reforestation under your supervision in southern Ontario?

A. Mr. Chairman, the reforestation work in southern Ontario dates back to 1905. There had been considerable agitation in the agricultural Press and throughout the country, in regard to the over-cutting and depletion of woods on ordinary farms, and on the agricultural part of the province.

Forestry is not thought of, sometimes, as an important factor. But I might say that the forest products from the farms amounts annually to some $14,000,000.00, according to the last census.

Q. In Ontario?

A. In Ontario. So that it is, from the standpoint of fuel woods and small materials in pulpwood, very important.

HON. MR. NIXON: Q. That does not include export of pulpwood from local farmers at all?

A. No.

MR. OLIVER: Logs?

A. You mean the total figure of $14,000,000.00?

Q. Yes.

A. I have left some bulletins on my desk. But The Farm Woodlot bulletin, page 10, gives an analysis of the figures making up the $14,000,000.00. It is a little under that census of 1931. It has been as high as $18,000,000.00. But the main effort and the main influence behind the development of this work has come from the agricultural community in the past, largely.

In 1905, a small forest station in the Department was started at the Agricultural College to provide planting material for private land owners, and to give what you call extension work to the farmers in the care of their woodlot and the planting of waste land, also lectures at the College at Guelph.

That developed, and in 1908 a report was made on the larger problem of the idle and waste lands of southern Ontario, which amounted, in the estimate at that time, to some 8,500 square miles. That problem was attacked at that time. It was initiated by the province starting a forest station in the County of Norfolk where there was considerable waste land; that is, a station to provide nursery stock, as the grounds at the College had become too limited for supplying this material, and also to carry on reforestation as a State project of an experimental nature. To make it brief, that station to-day has some 3,500 acres.

To follow the idea of provincial stations, it was felt that strategically located in the province, we should have forest stations supplying planting material and the nucleus or centre of demonstration and experimental planting.

That map over there shows a station which was created in 1922. The golden star indicates a station in Simcoe County. Many of you know that station. At that station we have some 2,000 acres, comprised of 200 acres of nurseries and the balance in experimental plantations and some natural woodlots.

Then a station was placed in Durham County about a year later.

We have also a small station in Prince Edward County, which was Crown land. That Prince Edward County Crown land was largely a sand dune, commonly known as the sand banks of Prince Edward County. We have carried on experimental plantings there to hold the sand.

HON. MR. NIXON: Has that been pretty successful?

A. That is fairly successful. We have had to devise the method of planting with poplar and nursed crops before we cut out the evergreens.

Then, I might say that in 1911, or going back to the problem of these larger areas, it was realized that the province as a province could not undertake the financial responsibility of trying to reforest many of these larger areas. And the County Reforestation Act, which really had been initiated in 1911 in Hastings County, I think was passed in 1911. That Act had lain dormant until 1922, when the County of Simcoe undertook to enter into an agreement with the province to carry out the work on a thousand acres. That was the initiation of the county reforestation work. To make it brief, Simcoe County to-day has 5,000 acres reforested under that scheme, of idle lands in the county.

The red circular stickers show the present counties having forests under agreement with the Government. These forests in total amount to about 18,000 acres at the present time.

Then you have the red stickers cut in half. Those counties have entered into reforestation schemes under this Act, but not in direct agreement with—that is, not with an agreement. In other words, to give you a concrete example,

the County of Norfolk has up to date purchased about 1,500 acres of land and reforested it at their own expense.

I may say that the county reforestation agreement, of which I have the form here, and which I will not read nor will I go into the details of it—but in the case of the counties entering into an agreement with the province, the province takes over the care of the property, pays the cost of planting, and, over a period of 30 years, the county pays the initial price of the land, purchases the land and turns it over under this agreement.

There are three options which may be taken between the province and the county. As I started to say, Norfolk County entered into this scheme by purchasing land, providing the labour themselves, planting it and simply receiving from the province the supervision and the supply of trees.

As I say, Norfolk has some 1,500 acres at the present time, and have the policy definitely laid out of purchasing any idle lands that come into the tax sales, or lands of that character, marginal lands. But there are a number of other counties in this scheme having smaller areas.

I think that covers the county reforestation work. I might say that a new phase of the work was initiated about 1936, when an organization started throughout the province known as The Conservation and Forestry Association, composed of officials of the various counties. And this is a rather interesting phase in the development of reforestation, because this organization is composed largely of municipal officers, practically every county having a forestry committee within its county organization. The province is divided into five zones under that association and a definite organization has been built up.

The reason I say this is an important development is, that I think it looks forward to the time when we will have in southern Ontario, co-operative or local forestry boards looking after forestry matters. And that organization, as I say, is largely composed of municipal officers.

In the earlier years, about 1906, most people thought of the depletion of wood in southern Ontario, the lack of fuel wood and the question of supplies. In 1936, there developed a bad drought in western Ontario, and serious droughts in many parts of the province. Then the question of water conservation became a very prominent question. It was one of the important features in developing this new organization throughout the province, known as The Conservation and Forestry Association. And the question of reforestation in regard to water conservation is worth mentioning.

There are a great number of areas with watersheds in southern Ontario which are marginal lands and which are the sources of a lot of our important streams. We have been making surveys of some of those areas, and there is an effort being made to interest the municipalities in securing these lands and putting them back under forest. I do not think I need go into the theory of water conservation, but we all, I think, accept the theory that a watershed covered with forest is going to protect the spring flow-off, and that important feature is of great interest.

Then one of the more important features is the fact that if these water-

sheds are protected with forests it is going to influence greatly the ground water level which supplies farms and springs, and which we know in a great deal of old Ontario has been greatly lowered in the last few years. I regret that we have not got scientific data as to the actual lowering, such as they have in some of the American watersheds. But it is quite evident from local inquiry in regard to wells and springs that this ground water level has been greatly depleted and, we feel, largely owing to the gradual denuding of forests.

The work has been carried on for the last few years with the distribution of trees to private owners. With the distribution of trees to municipal and civic bodies, we have a few places where cities have bought land and reforested it to protect their water supply.

One of the interesting examples of this is the town of Beeton which a few years ago found its springs being depleted and carried on quite a large scheme of reforesting, and they feel that they have actually got results in a better flow and a more reliable flow. There are a number of cases which I could cite to show that this is really practicable. I mean, you get practical results, but I will not go into the details of that.

Another feature at the present time is that there has been a great deal of interest in the taking up of this work by the schools from an educational standpoint. I may say that a number of counties have undertaken to purchase land and have the school children reforest it. In other words, we call them school forests. The County of Norfolk has a number of those, as well as the County of Simcoe. It has been taken over pretty well by the municipalities through these organization meetings we have had, the idea of school forests.

Then the Department carries on what we might term extension work.

HON. MR. NIXON: Before you leave that question of the school children planting trees, the European countries have given a lot of encouragement to that idea, have they not?

A. Yes.

Q. Asked them to plant a number of trees each year?

A. Yes.

Q. The same number as they have years in their age, and so on.

A. Yes, they have all sorts of schemes tied up with their schools.

I might interject that another interesting feature is the movement in the Boy Scouts. We have one outstanding case in Simcoe County lying right alongside of Camp Borden where during the past few years the Boy Scout Organization has been planting trees. The Boy Scouts at that forest near Camp Borden have planted in the last few years over a million trees, and we feel that that is a type of educational work that is very valuable. They are starting this year Boy Scout planting work in Norfolk on some of the Norfolk County land.

This extension work that I mentioned is the same idea as in agriculture. I mean, we feel that in southern Ontario the province cannot undertake expenditures on all of these small areas that we meet, and that local education and local influence must be developed to secure a proper percentage of wood land on these areas.

The Department has several men who go out through the province on extension work, and one man at the present time devotes his time largely to the protection and development of woodlot work. I know the question arose earlier in the Committee as to what these woodlots meant. I might explain briefly that these men visit the farmer and discuss the management and care of woodlots, and it is largely a question of protecting the woodlot from cattle, giving him advice as to what further planting he might do, or what thinning or cutting it might be advisable to make, and, in general, advice on woodlot work.

MR. OLIVER: How does he get in contact with the farmer, through the agricultural representative?

A. In a great many cases, yes, but very often men reading the agriculture journals see this work and write in. I may say that our staff is entirely inadequate to carry out this work on the scale on which we hoped to be able to carry it out. That is a question of money and a question of policy. But we do feel that an organized system of extension work throughout southern Ontario is absolutely vital to the proper development of a reforestation policy in the southern part of the province.

Now, I do not know that I can enlarge on that, unless there are any details you would like. I might mention that we have started near Camp Borden, at Angus, a seed extracting plant. We found in the early stages of this work that we could not depend on buying seed on account of the unorganized way of collecting it. So that to-day we have a central plant that is being carried on where the cones from the evergreens and the other seeds are brought in. We have the proper conditions for storage, and in the case of coniferous trees, such as pine and spruce, they require special attention; so we have an extracting plant at this point, and we carry anywhere from 10,000 to 60,000 bushels of cones every year. This is our central seed supply.

MR. COOPER: Where do you get those cones, Mr. Zavitz?

A. They are collected in various ways. The tree with which we are doing the most work is the red or Norway pine, which is the most satisfactory tree on our marginal and poorer soils. The red pine cones are collected all over the northern Ontario and the red pine region. It varies a great deal owing to the different areas. The red pine only seeds occasionally, sometimes only once in seven years. Occasionally we find a complete failure. This year I think the bulk of our red pine cones were collected in the Massey district. As a matter of fact, we have a number of districts where the local people have now become educated to the method of collecting them, and they take them into the little central place and our men collect and buy them in that way.

Q. Do they bring in any from Norway or any of these places?

A. No. So far as the use of exotics or foreign trees is concerned, we are

doing very little with them, outside of Scotch pine, or very little planting, because the introduction of foreign species is a very uncertain problem.

MR. OLIVER: Do you import Scotch pine?

A. We import the seed, although at the present time we are collecting some seeds from our earlier plantations.

Q. What about that section in southwestern Ontario?

A. Southwestern Ontario?

Q. Down in Kent and Essex?

A. Of course, we have a provincial park at Rondeau, right at Kent County. But we have been unable to get these counties interested.

Q. Is that on account of the valuable land?

A. It is the type of soil, yes. There are very few large areas. There are no large areas and marginal lands in those counties.

MR. ELLIOTT: Some of those counties have even purchased large tracts of woodlands and are starting their reserve on that basis.

A. The County of Peterborough has entered into this scheme, under the County Reforestation Act. I think they have nearly 3,000 acres, but a large portion of that is second growth, and it is a question of the county organizing it with perhaps a small percentage of planting. We feel that where a county has land of that kind it is a very valuable asset to secure these second growth areas and keep them as a county proposition. I have not gone into the financial end of it, as I said earlier. The main pressure behind this whole work, and interest, was largely a question of allied interests, such as water conservation, protection from erosion and winds. But we have enough data now to know what is likely to happen in the way of financial returns. And we have one plantation in the Ottawa Valley of which a close study has been made. That plantation, which is Norway or red pine, is producing a little over a cord per year per acre, on land which was originally waste land. We have records of a number of others where we are getting production of that kind, and I am often asked the question as to the financial status of this whole problem. I have not the slightest hesitancy in saying, with the knowledge of the growth and what has happened in Europe—at least from these studies of our earlier plantations—that land anywhere around $10.00 an acre or under is a perfectly safe financial investment for a county. And eventually we feel that many of these municipalities—take Simcoe County which has at the present time 5,000 acres with a definite policy of increasing it as fast as they can buy up other areas—eventually that county will have a body of timber in which they will have not only a net revenue from the timber, but they will have an outlet for labour. It will supply a labour market at certain times of the year.

We feel that from the knowledge of what has happened in municipalities in Europe, and especially Scandinavia, these municipalities are carrying out a

wise policy in securing these marginal lands which in the past were a burden and in many cases paid no taxes. We feel that that policy is sound.

MR. COOPER: What do you mean by "marginal lands"?

A. We have absolute waste lands; then we have lands that are in between, not fitted for agriculture at the present time under present crop requirements.

MR. OLIVER: Those half red circles represent areas in which the work has been carried on by the county independent of the province?

A. Yes, the half red circles. For instance, Huron County has purchased under The Reforestation Act one hundred acre blocks in different townships. In some cases—I have not been over them all—they have bought some fairly good land; but they bought it at points where they desire to carry on a demonstration, and they have bought in each township, I think it is, 100 acres.

Q. And in which case they have no agreement with the Crown?

A. No agreement with the Crown, except the Minister under the Act; the county will not enter into the scheme without the authority of the Minister; a by-law is passed which the Minister authorizes.

MR. ELLIOTT: Q. Who supervises the cutting of these county Crown Provincial Reserves?

A. We are just reaching the stage where that is beginning to be a problem; we haven't done any real cutting.

Q. That is done under the supervision of the Department?

A. That would be done at the present time under the Department's local superintendent on the property.

Q. In lots of cases there are no local superintendents, no departmental representatives on the property?

A. In the county forests there are. There is a county forest caretaker in each.

I might say on the Provincial sites the local superintendents are graduate foresters and in the case of Norfolk, which is the oldest, we are already making thinnings, and there is part of the property which had natural wood and in the natural cuttings have been made and we have a local market in Norfolk for practically everything that is taken out.

MR. COOPER: Q. What is a thinning?

A. A thinning in a plantation—originally your trees are planted anywhere from 3 to 6 feet apart and in twenty years they are beginning to crowd—in red pine longer than that—but the day comes when you find a lot of suppressed trees and a lot of dominant trees; you know in twenty or twenty-five years the

trees that are really going to be the best trees and, as we call them, dominant trees. In about twenty-five years you begin to pick out the suppressed trees, to make more root space and more crown space to the others.

MR. ELLIOTT: Q. Going back to a point you mentioned, you said you were carrying on this extensive work through your representatives, don't you think if it were impressed on the farmers with reference to waste lands it would be promoted a little more? In places like Central Ontario in certain localities there is probably as much waste land as there is land for agricultural purposes, and the farmers there are not interested in reforestation, they don't seem to know anything about it. If there were local representatives, not very many but a few of them throughout the province, it might grow?

A. Mr. Chairman, I got pretty close to that a few minutes ago: I felt we should have an organization, not on a detailed scale that agriculture has, but that we should have perhaps five or a certain number of districts in the older part of the province with a forester who would work along with the agricultural representative, because the agricultural representatives have taken a great interest in this work and I feel there are a lot of problems we have that cannot be solved by the men working at the head office, there is too much traffic.

Q. You can hardly find a municipal council to-day that is not interested in reforestation and a representative might meet with them once a year and follow it up and I am sure there would be a lot of reforestation and tree planting promoted?

A. Yes, I am sure of it.

MR. COOPER: Q. I don't know whether this comes under your particular department or not, but about two or three years ago there was an invasion of what they call army worm, I think, through the north?

A. Yes.

Q. Which practically destroyed all the poplar growth in that particular section. Did that come under you?

A. Well, the insect control and tree disease work is under my office.

Q. You are familiar with that?

A. Yes, I certainly am. We get a flood of material every year from some section reporting on an insect outbreak, but I wish to point out that in insect outbreaks of that character they reach a stage before even the local officers know it, a stage whereby we don't know of any practical control, their only final control is by parasites or by running out of plant food.

Q. I think they tried some system of spraying from airplanes up there in the West Tree district?

A. We have had one experience of dusting from airplanes with the hemlock loafer; it is a very difficult and very expensive equipment, it is not feasible, and with the outbreaks of that caterpillar that you refer to they cover enormous areas.

MR. OLIVER: Q. Did it kill the trees right out?

A. It worked largely on poplar and a certain amount of birch; one attack doesn't seem to kill them if you get favourable weather during an attack—I mean, if you get plenty of moisture, but if a continuous attack over two or three years takes place, it usually kills them out. It is largely a matter of weather conditions and soil conditions.

I might say that entymological control work in Canada is controlled under the Federal Department, where I think it should be, but I think we should give them every assistance; I mean insect control outbreaks don't know provincial boundaries; and they have a very efficient staff which perhaps might be enlarged at certain places, but the control measures are a very difficult problem.

HON. MR. NIXON: Q. Does the province assist in the work of the Federal Government?

A. Yes—well they did give a grant assisting in the distribution of parasites in connection with the spruce outbreak.

Q. That was my recollection?

A. Yes.

MR. W. G. NIXON: Q. We have a lot of natural tamarack growth coming back in the north, you see it over a wide area; they have liberated attacks every year, and it seems to be having a very worthwhile effect?

A. I might say that that outbreak occurred previous to 1900. The larch and our native tamarack belong to the same group, and the large sawfly came into North America perhaps long before 1900, but it practically wiped out the hemlock right through to James Bay. In 1908, they brought over the parasite that existed in Europe and started introducing it into Ontario as far south as Norfolk County, and we feel that the balance is going to be right in time—there will be local outbreaks.

Q. There seems to be a very favourable balance now?

A. Yes.

Q. Because we have got over a period of years that there doesn't seem to be any recurring damage to the tamarack?

A. Well, we think that it has obtained very good results.

MR. W. G. NIXON: Yes, it looks like it.

MR. ELLIOTT: Have you anything further to submit, Mr. Zavitz?

A. I might say that I left and each member will have some bulletins sent out in connection with our extension work, the tree planting bulletin and the bulletin on care of wood lots and things of that kind.

Q. Is there anything further?

A. No, I think not.

MR. DREW: Now, Mr. Zavitz, is there any actual plan of operation outlining the duties of your Department?

A. Well, the appointment is simply under direction of the Minister.

Q. But is there any set plan of operations?

A. There is no legislative ——

Q. I don't mean legislative—is there anything in writing that outlines the exact duties of your branch of the Department?

A. Not that I know of.

Q. Is there any general written direction which defines the duties of the different branches of the Department as between forestry and operation and so on?

A. I think that has largely been at the direction of the Minister; I have no memory of getting letters covering it.

Q. You spoke a short time ago about the fact that a study should be made of our forest resources. Would you please explain that a little more definitely, as to just what study you think should be carried out?

A. That was before lunch, Colonel?

Q. Yes?

A. I had in mind then when I made that remark, the study of research work, if you wish to give it that term, the study of our cut-over and burnt-over lands to acquire definite information as to what is happening, what has happened, which is really research work in silvicultural lines.

Q. Tied in with that I imagine would be some inventory of our forest resources in the various areas, that the two would go together, wouldn't they?

A. Yes.

MR. ELLIOTT: I might point out, Col. Drew, Mr. Zavitz is in charge of the artificial reforestation and Mr. Sharpe is in charge of the Forestry Department timber operations.

MR. DREW: Yes.

Q. But, as I understand, Mr. Zavitz, that was exactly the reason that I asked if there were any written instructions defining the scope of your activities. As I understand it you are in charge of forestry as distinguished from the actual business end of the Department?

A. Yes.

Q. And your activities from the forestry point of view are not confined to southern Ontario, are they?

A. Not altogether, no; I am frequently sent out to other quarters.

Q. Let me take this as an example: Suppose an application is made for an area such as the area which originally went to the Lake Sulphite—I want to get the picture of what the practice actually is—that involves not only the question of acreage and the question of the business methods but it also involves the question of forestry practice. Who would be asked to express an opinion as to the desirability of granting that particular area from the point of view of good forestry practice?

A. Well, I think in the case you mention that area had been surveyed and Mr. Sharpe and Mr. Brodie had made a report on that area; I think Mr. Sharpe would be the official who would have the best knowledge of it both from a forestry and operation standpoint.

Q. What I really want to get is the practice. I notice in some of the memoranda for instance accompanying recommendations for Orders-in-Council the words are used that it is consistent with good forestry practice, and merely from the point of view of examining the present set-up of the Department, I am asking when an application is made for the allocation of a particular area what procedure is followed to determine whether that is in accordance with good forestry practice or not?

A. I think the procedure is, that goes to Mr. Sharpe's office and he with the local officers makes a report on that area. I think that is the procedure.

Q. You cannot speak on that yourself?

A. No. I have got nothing to do with that part of the administration.

Q. Then Mr. Sharpe can speak on that?

A. I would think so.

Q. You were just asked a few minutes ago by Mr. Cooper about a certain particular aspect of insect problems. What is the general situation in regard to insect control or the study of the effect of insect life on the trees?

A. Well, you mean the actual situation in the field—in the woods.

Q. Yes?

A. There are a number of areas in Ontario where we have had very serious outbreaks in the timber and the consensus of opinion—I am speaking now as a member of a committee under the National Research Council—the general consensus of opinion is that outbreaks of that kind will probably only be controlled by the development of parasites.

I can give one concrete example, the spruce bud worm, which is a very serious insect pest and it has done some very great damage in Canada. So far they have evolved no practical way of attacks by dusting. I mean to say not knowing of that insect's work and the way it works makes it impossible to kill it.

HON. MR. NIXON: Q. Has Ontario suffered from that?

A. Yes. We have a good deal of that outbreak in spots and it is felt that it will only be overcome in a natural way with the development of parasites. That is the reason we have this Federal station at Belleville in which we are all interested in the distribution and dissemination of parasites, but the actual control is a problem.

MR. DREW: Q. The reason I asked the question is that I understand that it is generally agreed now that there is very heavy loss from controllable insect damage?

A. Yes.

Q. And you say that the Belleville station is devoting its activities particularly to that?

A. Yes. That is the studies under the Federal Entymological Branch.

Q. And is the province co-operating in that?

A. The province is not participating in the station itself but we have got a grant to assist in the dissemination, I don't know just how it has checked but I know that there was a grant each year for that the last two or three years.

Q. You speak of that work being done by this Research Committee. Have you yourself any active contact with that Research Committee?

A. Well, I have attended the meetings and listened to the reports of the entymologists who are working at that work under the Federal Department.

Q. Are you now referring to that Research Committee to which the Dominion Government Council ——

A. No. That is the technical branch.

Q. That is what I was asking; I don't want the two confused?

A. No, that is a separate thing entirely.

Q. Is there any report from that committee.

A. Yes, there are reports on various phases. I can easily—

Q. Can you produce some for us?

A. I can secure those.

Q. They can simply be put in and filed so that we can examine them because it seems to me that that is one thing we should be clear on just how it is being done. Is the present arrangement that the province will benefit then by any results obtained at Belleville?

A. Oh, yes. We have the actual dissemination of parasites in some of our territory.

Q. To what extent has that dissemination of parasites been carried out?

A. I can't give you the number in millions—they send them out by millions —but I would have to get that for you.

Q. I want the picture from a practical point of view; I don't want to be misled or to have a wrong opinion of this, but we have been given to believe that the effective control of insect pests is one very important branch of the protection of our forests to-day. That is so, isn't it?

A. Yes. I would say insect pests and fungus or plant diseases as we separate them would probably be more serious in the future than fire—I mean it will be a bigger problem.

Q. That was the point I was getting at?

A. Yes.

Q. That diseases, whether they be spread by insects or by fungus growths, really are of sufficient consequence that in time they might be even more serious than fire itself?

A. Absolutely.

Q. So that having regard to the amount of money we spend on fire protection, certainly there should be a good deal of attention paid to the preventing of these forms of disease?

A. Yes, I think so.

Q. And of course, naturally I am not advocating the expenditure of any more money than necessary, but I am trying to get this in its proper light. Would you just, in your own words, explain from the practical point of view, the general way in which this war against disease by parasites is carried on?

A. Well, take the spruce bud worm and a number of others: As a rule the insect, which develops into a serious outbreak in many cases, is an insect that has been introduced from Europe or from some other source, and in the infection, the parasite or the enemies that have kept it in balance in those countries are missing, they are not here. In this case, the Entymological Department of the Federal Government have had agents in various parts of Europe collecting and sending over material, which is developed and studied at Belleville and then introduced into certain areas, and as fast as they can get, you might say, growing stock, it is disseminated into the areas where infection takes place, where there is

affected timber. That organization is a separate organization in the Entymological Branch which carries on that work.

Q. Who is in charge of that?

A. The man at Belleville is; Dr.—I can't think of his name for the moment, but Dr. DeGrace in Ottawa has charge of that branch of the work, forest insect control work.

Q. Have you any suggestion to make as to steps which could or should be taken, in regard to the control of insect pests by parasites?

A. Well, it is largely the question of spending money on equipment and laboratories and the development of those. I hesitate to recommend anything in the way of actual field control by dusting or methods of that kind that are frequently referred to, because they have their limits and have not been altogether satisfactory.

Q. No attempt, at any rate, has been made to have the companies that control the areas deal with that at all?

A. Well, the companies have co-operated with the Federal men in their field work. Of course, there has been an effort made, at one time there were experimental efforts made with dusting up in some of the Sudbury regions in which the companies helped.

Q. You will let us have any reports you have from that station at Belleville?

A. Yes. The Association Committee.

Q. How serious is the extent of the white pine blister rust that there has been a good deal written about?

A. Well, I think it is a fairly serious problem. We have reports on certain areas checking up to see the rapidity with which it has developed, and we have been carrying on the checking up of currants and gooseberries within our plantations and areas of that kind, and have some cost figures, but I think it will become rather a grave problem. It has practically disseminated all over the white pine region to-day in Ontario; that is, we find it on the ribes, that is currants and gooseberries, from which it comes to the pine; in some areas there has been found a considerable amount of white pine affected, but it doesn't affect the mature or older timber; it may affect that, provided it works in the younger tissue of a tree, but affects more largely the reproduction of the young growth.

Q. Will the control of that rust be under the same general direction as in the case of insect pests and so on?

A. No. I might say that the set-up there, the Federal Government have a Forest Pathology Department in the Department, Colonel, and they have made field studies, but their contention is that this timber is Crown timber or owned in the province and that eradication measures and work of that kind should be undertaken by the province; that has been the contention in the past.

Q. Do you mean by that, that it is more or less at a standstill?

A. Well, the study this last three years has been made in certain localities, such as Algonquin Park, of just how rapidly and what the possibilities of the eradication, but at the present moment we hope to carry out eradication on some local areas.

We made studies many years ago of the number of—if you understand me, we made a survey across the Ottawa-Huron region, from Georgian Bay to the Ottawa River, to find out how much ribes in that region and in check plots and so on, and it is an enormous problem. We have already attacked it in our local nurseries and plantations, but eradication, to carry that out over a large area, would require a considerable sum of money, and we will be able to give some estimate of that in the near future. I think there should be a start made on eradication in the actual white pine areas.

Q. How could they start it best?

A. Well, you would have to have additional field offices and field parties to carry it out, you would have to have a certain organization if you did carry that out at a minimum cost, and be efficient.

Q. How much opportunity have you had, personally, of studying the situation in the clay belt, from a forestry point of view?

A. Well, I haven't been up there the last several years, but I have been up a great deal in the past twenty-five years.

Q. There, of course, is a good deal of divergence of opinion as to the possibility of developing the clay belt; some people think that there is a tremendous opportunity for the development of a new area there. How much can you say about the extent to which the cutting requirements in the clay belt are adjusted to that possibility? Do you follow me?

A. I understand you mean is there sufficient agricultural land or soil up there available for settlement at the present time?

Q. Yes?

A. Well, it is my impression there is, but I think that should have a more detailed survey.

Q. A more detailed survey than there has been yet?

A. Than we have had at the present time.

Q. The reason I ask the question, Mr. Zavitz, is this, that after all, for some years there have been conflicting arguments about the importance of the clay belt, and on the one hand you have people who claim some expert knowledge, who will go as far as to say that the opening up of that territory would create an enormous agricultural area comparable to what we have down here; then there are others who question that; but is it not so, that if the clay belt does provide

great possibilities from the agricultural point of view, that the cutting in that area would be on a different basis to what it would be in rocky soil where agriculture would not enter into the problem?

A. Well, I would imagine that, but I really don't feel competent to answer that question, because the extension of agricultural development, there is a problem tied up with markets, and I wouldn't care to give an opinion to any extent on that problem, Colonel Drew.

Q. Do you know, either in your department or elsewhere, any place where there is accurate information available in regard to the clay belt from the point of view of its potentialities and desirability of following certain practices in cutting wood there?

HON. MR. NIXON: Q. Billy Nixon knows more about that than anybody else.

MR. DREW: Perhaps we will get him to tell us the story.

A. Well, I don't know of any report of late that would be up to date at all that would cover that whole question; I don't know of any report.

Q. Without tieing you down too much, don't you think it would be desirable that there should be a fairly comprehensive survey of the area made?

A. Yes. I think the policy of segregating and surveying forest lands is a very important one. The whole history of the present conditions in many parts of northern Ontario would prove that.

Q. In what way?

A. Well, many lands that have been opened up that are unfit for settlement. I mean it has been going on for a generation. A survey, I don't mean a forest survey, but a survey of both foresters and agriculturalists, soil experts, is what is really necessary, is what I had in mind.

Q. I just want to follow this for a few minutes because it seems to me that some of the arguments in regard to the clay belt have been partly true, that there is a tremendously important potential opportunity up there if it can be followed through but, as you say, it involves not only the forestry end but also the agricultural end and of course the question of transportation and otherwise. It has already been suggested here on more than one occasion that in countries where the timber grows on agricultural soil a definite practice is adopted there on a somewhat different basis to the practices where the soil is only suitable for timber growing. For instance, they have a system of clearing so much of that out and out agricultural land from the other and then retaining wood lots adjacent to that as a continuing source of wood. I imagine that you would agree that it would be desirable to have a survey made from the different points of view that would be affected in this clay belt area if it has not already been done?

A. Yes, I think it is very important that a study of that sort be made.

MR. W. G. NIXON: Have you any knowledge of the areas which have been timbered off and abandoned through the clay belt section?

THE WITNESS: No, I have no details as to that problem.

MR. DREW: I think it would be desirable, Mr. Nixon, if we could get something on the record in regard to the situation in the clay belt, because undoubtedly there is very great misunderstanding as to that situation.

MR. W. G. NIXON: I think you will find that the Department has records through its various Crown land officers in the north showing the lands which have reverted to the Crown. Of course in the unorganized townships, it would have to be secured through the records of the township clerk. Much of it is in unorganized territory and that information is available in the records, I think.

MR. DREW: What I have in mind is not so much the arithmetic of the areas which are opened up and the areas which are abandoned, as it is the fact that there is undoubtedly misunderstanding which exists in regard to those areas, because people so often do not investigate thoroughly, because looking at the areas which have been abandoned up there I think it is fairly definite that a great part of that which was abandoned was abandoned by people who did not intend to stay there; they went in, cut and left.

MR. W. G. NIXON: They were not interested in anything but the timber.

MR. DREW: Yes. What I have in mind is that if there are agricultural possibilities up there I suggest it would seem desirable that the area be looked after from the foresters point of view as well in order that the opening up be combined with the preservation of secure forest production in the area.

MR. W. G. NIXON: A study of the reports issued by the Dominion Experimental Station in Kapuskasing and throughout other areas in the north, will show definitely the possibilities.

HON. MR. NIXON: You actually worked over that area for years.

MR. W. G. NIXON: Yes, for twenty years. That was the work I was doing, so naturally I have some knowledge of it. Soil fertility is a big factor in crop production. The clay belt area unlike the area of older Ontario did not have the natural soil fertility which obtained throughout the part of the province where you had tree growth. The clay belt area is largely an evergreen tree growth. You have a different set-up in your soil accumulation. You find natural elements of food there required for that production, but we can build the soil through the medium of legumes of various kinds. Failures have too often been due to a lack of soil fertility more than to climatic conditions or length of growing season, like agricultural methods and so on and so on.

There are a lot of angles which come into the picture and the lower clay belt of which we speak is largely the district of Timiskiming on the Ottawa Valley Slope. When you get into the Cochrane district you get into the James Bay Slope. Even there there are some very remarkable results.

The third prize at the Chicago Grain and Seed show was taken by farmers

of the Madison district with field peas. The farmer had to have something worth while before he could secure a prize of that type at Chicago.

HON. MR. NIXON: And the same in potatoes?

MR. W. G. NIXON: Yes. A man named Johnson out near Clute, two years ago, harvested two thousand bags of marketable potatoes. He did it because he employed good agricultural methods. He fertilized, cultivated, and through his medium of cultivation to keep the frost away until his crop was matured. The settlers surrounding him, who did not cultivate, lost their crops because of lack of absorption of heat during the day time which would keep the frost away during the night, when the heat is given off in sufficient quantity to keep the frost from attacking the crop.

We experimented; we cultivated one plot and left another uncultivated. The uncultivated plot was frozen down, while the other cultivated plot remained unfrozen, because of those factors.

There is no doubt about the agricultural possibilities of much of the clay-belt area. To what extent it can be carried is a matter of opinion, having regard to the value of the timber which is there, markets, isolation, climatic conditions and so on and so on, but you cannot make a successful settler out of the average man on the street. He has to have some love in his heart for the work he is going to do, if he is going to succeed.

MR. DREW: But subject to that, you have convinced yourself that there are very great possibilities in that area?

MR. W. G. NIXON: It has been proven; it is a matter of record. It is not a matter of experimentation, but a matter of record that splendid results have been obtained there. One young farmer in the New Liskeard area obtained 600 bags of certified seed potatoes from his last year's crop, for which he is getting , without any trouble, $2.00 per bag.

MR. DREW: Q. Mr. Zavitz, in regard to the actual practice of the foresters as to enforcement of cutting regulations, disposal of slash and so on, someone else will review other than yourself?

A. Yes.

Q. You spoke of this briefly already, but can you give us a little more definitely, how far your department has gone in regard to the possibility of assuring the growth of the right type of timber in areas which have been either completely cut over or burned over?

A. Well, there have been no exhaustive studies made of cut-over and burned-over land, if that is what you mean.

Q. What I mean is, that when land is burned over or cut over—and I mean completely burned over or cut over—I understand it is the inferior grades which have a tendency to sprout most actively in those areas?

A. That is not always true. A great many of our stands in northern

Ontario are very good quality stands and have a fire history. It may have been 90 or a 100 years ago, but in many cases we have definite record of growth reproducing again to a good mixture of merchantable species.

The worst problem is found in lands which have years ago, been burned over three or four times—continuous fires—but that is not the case to-day. I mean, it is within limits, but fire control is pretty well solved.

Q. I think perhaps it was Mr. Schanche, who mentioned it yesterday, but in any event, you have nothing to suggest in regard to that?

A. No.

MR. W. G. NIXON: Q. Have we any reforestation work actually being done on any of the clay soils in the north?

A. On the clay-belt?

Q. Yes?

A. Nothing of any extent.

Q. Nothing of any extent?

A. No.

Q. There was a small plot at New Liskeard of Scotch pine?

A. Yes.

Q. But it did not do so well on the clay?

A. No.

Q. There would be some doubt about the feasibility of replanting on the heavy clay soil?

A. No; the clay-belt requirements in reforestation are absolutely different from ours.

Q. Quite?

A. I mean from the standpoint of species as well as soils.

MR. OLIVER: Q. Scotch pine is not recommended for clay land?

A. No.

MR. DREW: Q. Just before we leave this discussion, do you know of your own knowledge, if any separate reports have been made in regard to conditions on settlers' lands as a distinct problem?

A. No, I have no knowledge of that.

Q. What I have in mind is that settlers' lands are dealt with under special provision, and there is a good deal of question raised from time to time, as to the actual situation there, and as to how far they have actually been used as settlers' lands or how far they have simply been used as a means of cutting timber without restriction.

A. I have no knowledge of that situation.

Q. Do you know of any study of that particular problem having been made?

A. No, I do not.

Q. Or do you know of any special study of the problem raised by the cutting on Indian lands?

A. No, I do not.

Q. That is a distinct and separate problem?

A. No.

HON. MR. NIXON: Q. There were reports of extensive damage to forest areas from sulphur fumes of the smelters?

A. Yes.

Q. We all know that within a certain distance forest life was completely killed off; I understand, even forty or fifty miles away from some of the smelters, reports of serious damage are coming in. Have you made any investigation of that?

A. Yes.

I have been on these areas and I have flown over the areas, and all you have is your observation. I mean, the problem of that is to scientifically ascertain the amount of sulphur fumes, because throughout that region there are other factors which have discoloured pine. My personal information is only worth while, having regard to the impression one gets in flying over the area, and the study which I made would show that there is considerable damage out for a great many miles by reason of sulphur fumes. To actually get any basis for argument, would require considerable expensive study.

Q. Is it your opinion that the pine at Timagami was being injured from the smelters at Copper Cliff?

A. I think the white pine received some injury. The first tree which showed signs of sulphur damage in the old days was the white pine. It is more susceptible than any other of the pines.

Q. Are the roasting operations in the Long Lac area affecting the forests?

A. I do not know the situation in there at all.

Q. Your study has been mostly in connection with the Sudbury area?

A. The Sudbury region. I may say that has been going on for a great many years.

Q. But you have received reports of such extensive damage at such great distance recently, have you?

A. In the old days, before they put those 500-foot towers up, the local areas were affected. Now that the fumes are carried out over large areas, they are possibly disseminated a great deal and that is the reason it is showing up. That is the reason, we think, it is showing up at long distances from Sudbury or Coniston and those places.

MR. COOPER: Q. Someone testified here that the forest crop should be harvested when the trees are mature. Just what happens to a mature tree if it is not harvested? Does it die at the root, right in the centre, or what becomes of it?

A. On the question of maturity: The various species differ. Take white pine, for instance. The different soils or sites give you different results, but the tree actually becomes punk. It is actually an organism which is working in the heart of the tree and very often working from broken branches into the heart and the upper part of the tree, but it is an actual breakdown of the tissue. You say, "What actually happens to the tree?"

Q. The tree actually falls down eventually and becomes part of the soil again?

A. Yes; it gets weak at some point and blows over.

HON. MR. HEENAN: Q. The outward appearance of the tree would indicate that it is solid and yet the heart of the tree would be punk?

A. Yes. We have photographs and cases of old white pine which to, the uninitiated, appears like a very fine tree, but to the timber man or the old square timber man going through the bush—I remember very well, he pointed up the discolorations and you would find that that tree appeared outwardly to be all right, but there would probably be butt-rot all through it. It takes an experienced timber man to judge from the stand.

HON. MR. NIXON: Q. And that is not altogether a question of age or maturity?

A. It is purely a question of soils.

Q. Characteristic to the whole area?

A. Yes. You get areas where white pine is 100 or 150 years old—maybe very old physically—and we have lots of records of white pine in good condition, over 300 years old in some of the better sites in the Ottawa Valley.

Q. And other sections 40 and 60 years they are all poor quality?

A. Yes, you get that.

MR. DREW: Q. So that, without a survey which indicated that there was over-maturity at a certain point, you could not guess by its age that it needed cutting?

A. No.

Q. Is there any such survey, to your knowledge, within the Department?

A. Well, there were surveys made. I think there was a report produced of that general survey, and the details of that are on a great many areas on which timber is classed as mature, over-mature, or under. Those classifications were made, but it was a very local problem on any given timber area.

MR. ELLIOTT: Has anyone any further questions of Mr. Zavitz?

That is all, Mr. Zavitz.

THE WITNESS: Thank you.

HON. MR. NIXON: I suggest, to-day being Friday, that we adjourn.

MR. ELLIOTT: We will now adjourn until 10.30 a.m. Monday, April 29th, 1940.

TWENTY-SIXTH SITTING

Parliament Buildings,
Monday, April 29th, 1940.

Present: Honourable Paul Leduc, K.C., Chairman, J. M. Cooper, K.C., M.P.P., Colonel George A. Drew, K.C., M.P.P., A. L. Elliott, K.C., M.P.P., Honourable Peter Heenan, Honourable H. C. Nixon, W. G. Nixon, M.P.P., F. R. Oliver, M.P.P., F. Spence, M.P.P., Dr. H. E. Welsh, M.P.P.

THE CHAIRMAN: Order, please.

I have been informed by the secretary of the Committee that he has heard from Mr. Sensenbrenner. Here is a wire that he received Saturday, dated April 27th, 1940:

"Telegram received regret have important meeting of Finance Committee, Wisconsin University Board of Regents of which I am Chairman, in

Madison Saturday next. Can be in Toronto, Monday, May 6th, or Tuesday, May 7th, if Honourable Mr. Leduc prefers. Please advise."

Then I understand from the Secretary that Mr. Robinson will be here on Thursday at 10.30, unless advised to the contrary.

Then, John H. Hinman wrote me a letter, which is as follows, dated April 25th, 1940:

"Dear Sir: In reference to the telephone call on the 16th instant from your Secretary, requesting me to appear before your Committee next week, I am sorry it would not be possible for me to do so because of prior engagements.

"I have, however, asked Mr. S. L. DeCarteret, vice-president and general manager of Canadian International Paper Company, to attend in my place, and he has advised me that he will get in touch with you in this connection.

"Mr. DeCarteret is in a position to give you the same information and assistance that I could myself."

Would you be satisfied with that?

MR. G. A. DREW: Yes.

THE SECRETARY: Mr. DeCarteret will be here on Wednesday. I told him that there was another witness for the morning, and he said he could stay over.

THE CHAIRMAN: Very good.

Then I have a letter from a gentleman named John C. W. Irwin, of 29 Kelway Blvd., Toronto; and he tells me he has been in touch with you (Colonel Drew.)

Mr. Irwin criticizes the government policy generally, and states that he graduated in Forestry from the University of Toronto in 1922, "and for the last four years have represented the graduates in Forestry on the Senate in the University of Toronto; I am a member of the Canadian Society of Forest Engineers and of the Quebec Society of Forest Engineers, but, as indicated above, I would appear as a private citizen, and none of these organizations would be in any way responsible for anything that I might say. At the present time I am employed in an executive capacity by two book publishing firms in Toronto." He would like to have a day's notice of the time he would be asked to appear.

I understand that this gentleman has had no practical experience in Forestry.

MR. G. A. DREW: Apparently, by his letter, he has been president of some Forestry Associations.

THE CHAIRMAN: He is a member of the Canadian Society of Forest Engineers and of the Quebec Society of Forest Engineers, and for the last four years has represented the graduates in Forestry on the Senate in the University of Toronto.

He says he will appear on a day's notice at any time we wish to hear him.

Is it the pleasure of the Committee that we should hear Mr. Irwin?

HON. MR. NIXON: I would suggest that we hear him.

THE CHAIRMAN: He says, "If you are agreeable, I shall prepare for your consideration a series of criticisms of present conditions and definite suggestions for their amelioration."

Would you let him know that we would like to hear him?

MR. DREW: Yes.

THE CHAIRMAN: All right, we might proceed with the next witness.

Is Mr. Sweezey here?

MR. SWEEZEY: Yes.

THE CHAIRMAN: Will you come up here, Mr. Sweezey?

R. O. SWEEEZY, Called and Sworn:

THE CHAIRMAN: All right, Colonel.

BY MR. DREW: Q. Mr. Sweezey, just as a matter of record, I understand that you are the Mr. Sweezey who organized the Lake Sulphite Pulp Company, Limited?

A. Yes.

Q. I think, rather than going into a series of questions at the outset as to the details of that, perhaps the best way to lay the foundation would be for you to explain in your own words the attempts which led up to the formation of that company, and the original approach to the Department for the necessary authority to proceed?

A. In 1936 I was acting for the Great Lakes Paper Company, in a technical way, assisting Mr. Carlisle to carry on with the operation of that company, Mr. Carlisle just recently having become president.

I was familiar with that country,—had been for some years, having cruised it about twenty years previously, I mean timber cruising,—and in the carrying on of the operations of the Lake Sulphite it became obvious that large areas that the Lake Sulphite Company was then holding would have to revert to the Crown, as not having fulfilled the obligations which had been imposed upon them.

HON. MR. NIXON: You meant the Great Lakes. Your reference was to the Lake Sulphite, but are you not speaking of the Great Lakes?

A. Part of the land which belonged to the Great Lakes was taken by the

Lake Sulphite. The point then was, that I suggested to Mr. Carlisle that perhaps some of these lands would be retained if a separate company were formed and a mill built, in accordance with a modification of the former obligations imposed on them.

On the 6th or 7th of February, 1937, I took an aeroplane and flew over the area, the entire area comprised within those lands which were in process of being reallocated in one form or another. And out of that area, having been familiar before with it by land travel, I selected from it what I thought would be a good and sufficient area for the development of a sulphite mill. I felt manufacturing conditions would warrant such a mill in that spot.

I then came to Toronto to ascertain whether these lands could be acquired, and to build a mill as the fulfillment of the obligations for acquiring them. I sought the assistance of the local member, Mr. Cox, and I came to Toronto and sought the assistance of the Minister. And between the two I had good co-operation in the way of getting along fast with it, because I urged speed because it was not too obvious that financial conditions were going to maintain themselves, and I was anxious to get it done before there would be any collapse in the financial markets.

To make a long story short, I got the lands granted some time the following month, subject to the conditions. And I just asked Mr. Carlisle if he or the Great Lakes, or both, wished to join in this development. Mr. Carlisle, unfortunately, was away a good deal of the time just then, and I do not think he took to it very energetically; so we hadn't any time to wait. So I proceeded then to undertake the financing, and my firm underwrote the common stock, one hundred and fifty thousand common shares, at $22.00 a share,—I mean R. O. Sweezey Co., Limited, investment dealers.

Q. You underwrote one hundred and fifty thousand shares?

A. At $22.00. That produced $3,250,000 in cash. Then we underwrote also $3,000,000 of First Mortgage Bonds.

In underwriting the 150,000 shares, we made no provision for selling more shares beyond that; nor did we make provision for selling more bonds beyond the $3,000,000, basing our operations solely on a two hundred-ton a day mill.

The stock was sold; the money went into the treasury; was spent; and later on we were ready to issue the bonds. But at that time, in the Province of Quebec, there was a Bill No. 5, which prohibited the issuance of bonds until the property was actually there to represent it. In other words, as our property was not yet built, we could not issue those bonds in the Province of Quebec; and we were obviously in favour of having the two markets; so we postponed that issue, and in doing so ran into a period when the selling of bonds was not so good.

Incidentally, I may say that Bill No. 5 has been wiped out in the Province of Quebec; so, perhaps we will not have that trouble in the future.

Just prior to the issuing of the $3,000,000 of bonds, our firm asked for delivery of them from the Lake Sulphite.

MR. COOPER: Q. Did that Bill provide that the mill must be built before the bonds could be issued?

A. In the Province of Quebec, that Bill provided that no first mortgage bonds could be issued on any plant until the value of that plant was already there and established. In other words, that the financial valuation had been established. In other words, you must have the chicken before you have the egg. And you could not sell those securities.

That was a great detriment, and the Province of Quebec has since recognized that fact.

About the time that we could have delivery of those bonds, the directors were faced with the realization, as advised by the engineers, that the cost was higher than had been expected. So, in December, 1937, we raised $1,250,000 in cash, believing that was sufficient to cover the shortage. These funds were raised by notes among about a dozen people, in which my own firm took a very substantial amount.

In January, a month after we had raised this additional money through notes, in calling for delivery of the bonds, it was revealed to the directors then that there was still a shortage, in spite of those additional million and a quarter which had been raised. Consequently, the directors could not sign those documents for sale. We had regard to the blue sky law about the proper carrying-out of the issue. I have no doubt we could have taken those bonds at the time, and were prepared to do so; but naturally, when good delivery was not possible, without anybody's intent one way or the other, that became impossible.

MR. COOPER: Q. Actually, there was $4,000,000 went into the Treasury?

A. $3,000,000 and $1,250,000,—that stock was sold at a discount of five points, that is, they were sold at $95.00.

THE CHAIRMAN: So that approximately, it was $4,500,000?

A. Four million, five something.

Then you naturally ask, why did that mill cost exceed the expectations? There were very many reasons. In construction, one never knows; and perhaps we did not make allowance for a wide enough margin; but there was one point, if any satisfaction can be made out from it, that we now have, as far as we have gone, a mill which, instead of having a capacity for 200 tons a day, is more like 300 tons a day. In other words, things were done a little too well.

Had we been in ordinary times, we would not have hesitated, and would not have had any trouble about raising the money for that additional capacity.

However, we acquired the Nipigon Pulp Company's timber area; there was really no objection to increasing the capacity, unintentional as it was, from the directors' standpoint, because there would have been timber sufficient for it.

So now we have a mill which, in another five months, we should complete,

and when we do, the production should be 300 tons a day, according to the facilities now available.

MR. W. G. NIXON: Is it in process of being completed now?

A. No, it is at a standstill now, but the conditions now existing in the pulp market lead us to believe that with all diligence we can be back at it very soon. It is very hard to argue until the money is in the bank, but we have all reasonable expectations.

MR. SPENCE: That is a 200-ton mill?

A. With my knowledge, and from the knowledge I have gained from the various engineers who have investigated, we can call that a 300-ton mill, instead of a 200-ton.

Q. Have you any idea of how much it will cost to complete it now?

A. As an unbleached mill, we can complete it with an expenditure of around three and a half or four million dollars, without bleaching. To add the equipment for the bleaching plant will cost another million dollars.

Many parts of the mill are designed, not only for the 300-ton mill, but the steam plant and the wood handling plant will do more than the 300 tons a day.

The mill is so designed that it can be expanded easily to a capacity of double the 200 tons intended. The tendency was to lean a little too far toward that capacity for the future. That would have been all right if financial conditions had remained normal.

Q. Your market, of course, will be for sulphite alone?

A. For sulphite; for unbleached, at the beginning, and then for bleached. The tendency is to stay at unbleached, because the market at the present time will be better for it; but as time goes on, I have no doubt the tendency will be toward bleaching again.

This plant was intended as a plant for the best quality of bleached pulp.

Q. That is exportable without any duty?

A. Yes.

Q. With a good market and with fair profits?

A. There is a good market for unbleached pulp right now,—very much better than it was. It has come back, due to European and labour conditions.

Q. Does the newsprint require as much labour?

A. In newsprint, you employ something less than one man per ton daily production,—three-quarters to one. With this thing a 300-ton mill, we would

probably employ close to 400 men in the mill; and then in the woods we would probably have about 300 men employed throughout the year.

Q. There are some considerable liabilities outstanding?

A. Yes, there are liabilities which are a little difficult to measure; some of them are for contracts not yet delivered, and some of them largely delivered.

Q. That $3,500,000, will it take care of everything?

A. It will take care of all creditors; and the plan we have been working on is with the intention of taking care of all creditors.

I have dealt specifically with the case of Lake Sulphite. I do not know whether I have covered it sufficiently for you, but I am ready to answer any questions.

MR. DREW: Q. Now, Mr. Sweezey, start back at the fact that you have explained that you were engaged by Mr. Carlisle, of the Great Lakes Company, to carry out some work in that area. I think it possible, having regard to the discussion that there has been of this whole situation, neither you nor I are in any way ignorant of the comments that there have been of it?

A. Yes.

Q. What was the nature of your employment by the Great Lakes Company?

A. I was to give part of my time,—as much as I could afford,—approximately one-half of my time, towards assisting Mr. Carlisle, without any title, in connection with the Company.

Q. Assisting with what?

A. In the operation of the plant, particularly in connection with the Woods Department.

Q. In a managerial capacity?

A. So far as the Woods Department was concerned. I was simply consulting Mr. Carlisle very frequently. I spent half of my time at Toronto or at the mill; the other half of the time I spent attending to my own business in Montreal.

I made it clear to Mr. Carlisle that I was not giving all my time to it, and that I had to attend to my own business; and he recognized that.

Q. Was that field work?

A. It was largely field work, in regard to the giving out of contracts for the Woods work during the first and second years.

Q. What was the time or period of the employment?

A. It extended from September, 1936, and it lasted for about six months, approximately.

Q. Until about January, 1937?

A. It extended until about February, I think,—up until the time I took on definitely with the Lake Sulphite operations.

It became obvious considerably before that, that my work, so far as Mr. Carlisle was concerned, was nearly completed, because the Woods part of it was in good form and he had appointed a Woods manager, and the mill manager was there.

Q. Is that Mr. Avery?

A. Yes, Mr. Avery I think, was appointed in November, 1936. Mr. Carlisle asked me about Mr. Avery, and I heartily endorsed his appointment.

Q. Is it correct to put it on this basis, that you were engaged about September, 1936, by Mr. Carlisle of the Great Lakes Paper Company, to do work for that Company?

A. Yes.

Q. In a capacity which did not involve all of your time, but was any way for the purpose of giving service to the Great Lakes Paper Company?

A. Yes.

Q. And, while you were working in that capacity for the Great Lakes Paper Company, you did cover some of the territories controlled by the Great Lakes Paper Company on the ground?

A. Yes.

Q. Then it was at that time that you became convinced that the Great Lakes Paper Company had too much territory?

A. It was not that, so much; but I was informed that the Great Lakes were going to lose a good many thousands of square miles of territory that they had inherited, not that had been granted to them; and I said to Mr. Carlisle, "Let us make an application for these." But Mr. Carlisle did not feel that from the point of view of the Great Lakes Company he could go on with that.

Q. Who informed you of that?

A. It was probably public knowledge; it was in the Press and it was well discussed and had been for some months.

Q. Did you get your information from the Press?

A. Yes, and I confirmed it by inquiring from the Department.

Q. From whom?

THE CHAIRMAN: I think your question is, How did Mr. Sweezey know that Mr. Carlisle ——

MR. DREW: Q. How did Mr. Sweezey know it was the intention of the Government to reallocate these limits?

A. I got it from the Press, and it was common knowledge. I do not know at what particular point I became convinced, but it was so that grants of land were going to be taken away from companies.

While I was assisting Mr. Carlisle, we struggled for some weeks to retain much of those lands, knowing in the discussions that certain of those lands were to be taken away from us.

Those areas had already been subtracted from the Great Lakes Company, when I appeared to make a request to have them allocated to the new company.

Q. When did you discuss with anyone that these territories were or were to be taken away from the Great Lakes?

A. Mr. Cox was the first one who informed me about it.

Q. About when would that be?

A. About December, I think. And Mr. Cox was one who strongly urged me to form a company and get these territories reallocated to them. And I told Mr. Cox I was prepared to do that, and I wanted to get a company to which these lands could be reallocated.

MR. COOPER: Q. Had the Great Lakes too much timber?

A. I admit that they had too much timber; but it became a struggle on the part of the Great Lakes Company to retain as much as they possibly could of those areas which they already had. And the more distant ones were released, and the nearest ones were retained.

MR. DREW: Q. Well then, it is correct to say that the Great Lakes were not anxious to give up any of that territory?

A. Oh, no. I don't suppose any company would.

Q. So that while you were employed by the Great Lakes Company an effort was being made by the Great Lakes Company to retain that territory?

A. Oh, yes. And we failed in our effort to retain more than what was finally allotted, which was considerably less than—I think the Great Lakes had something like 10,000 square miles and we were struggling to retain all we could.

Q. When did you first become aware of the fact that the effort to retain all that territory was not going to be successful on the part of the Great Lakes?

A. I was first aware of that at the time that the Great Lakes was reorganized, it was quite evident they wouldn't be allowed to retain all that area without making further developments.

Q. When was that, Mr. Sweezey?

A. Oh, that was in 1935 if I remember correctly. The plan of reorganization for Great Lakes extended over a great many months. It was not as long drawn out as Abitibi but they were parallel with Abitibi at the time and they were both unable to get back on their feet.

Q. Well then, you say that from some time prior to your employment with the Great Lakes it had been obvious that part of the territory occupied by the Great Lakes should be given up, or was likely to be reallocated?

A. Yes, it was very obvious, and it was not a thing that Great Lakes had any great, strong arguments to withstand. I mean, if that was the intention of the Government we didn't have much to say in regard to argument against it, because it was quite obvious they had too large an area for their requirements.

Q. Were you present at any discussions between the Department and the Great Lakes Company—?

A. Yes.

Q. As to the reallocation?

A. No, not the reallocation,—Mr. Carlisle retained counsel for that and went at it in a different way,—although I was present at some of the discussions with Mr. Carlisle and the Minister, and we had to admit that we didn't have much grounds for fighting for more land.

Q. Did Mr. Carlisle then, too, admit they didn't have much ground for fighting for more land?

A. I don't think he ever admitted it to the Department; that wasn't the way to attempt to get more or retain what he had.

Q. You said, "We had to admit?"

A. I should point out that admission was between ourselves in our own discussions. The point was, we were discussing what can we retain out of all of this instead of giving up something?

Q. Well then, when did you first know the exact areas that were to be reallocated as far as the Department was concerned?

A. Well, the reallocation was made without my knowledge, and there was some period between December and the spring when that occurred, but I don't know just when, but the actual Order-in-Council. At least I don't know the date of any Order-in-Council that made thar reallocation.

Q. The Order-in-Council was as a matter of fact dated February 26th, 1937?

A. When I was aware that it was made—

Q. I beg your pardon: February 27, 1937. What was that, Mr. Sweezey?

A. I was aware of course that it was going to be done, at least I had knowledge of its likelihood of happening, was about October and November, in discussions with Mr. Carlisle we recognized the inevitable, but I was advising Mr. Carlisle to try and get certain other areas to compensate for that by concentrating more in the vicinity of his own mill, and I think such grant was afterwards made through Mr. Carlisle's effort and retaining counsel to assist him in doing so.

Q. Well, when did you first discuss with any official of the Department the possibility of forming a new company, which would take over the lands or take over the area reallocated from the Great Lakes Company?

A. Well, perhaps I should say here that the reallocation—I was not aiming at any particular lands of Great Lakes, I knew that lands were going to be reallocated, but in subtracting not only from Great Lakes, but from two or three other companies in that district—in other words, the theory was evolved that there should be an entire reallocation of all the mills and that reallocation should take place on a basis to make it more sound than it had been in the past, and it was quite obvious that in that reallocation of all the mills, there would remain certain unallocated areas which would call for further developments, because, now, up to that date obligations to make such developments hadn't been fulfilled—I mean a substantial amount of such obligations hadn't been fulfilled—and it was with a view to participate in that reallocation and fulfilling such obligations that I formed a company to do so, and my incentive arose in further discussions with Mr. Cox at the time, who kept urging me to do it and I saw a good reason for doing so. He wanted me to build a mill at Port Arthur, but unfortunately we didn't do, having received our selections for the watershed of the Nipigon, the obvious place to build a mill was in the watershed of the Nipigon.

I might say, a great many mills in Canada have been built in the wrong place in relation to their timber limits. There is hardly a mill in the direct position to-day, it is either a mile out of position or many miles out of position.

Q. Is the Lake Sulphite in the right position?

A. I believe so; we took a great deal of care and attention to select it by reason of its limits; and that is the reason we wouldn't go to Port Arthur: There was an advantage all right in having a town at Port Arthur, but that advantage was small compared with the added cost of transporting our raw material to that point for manufacture.

Q. Well, did you form the company before you discussed the allocation?

A. No, the company was not formed, I think, until March. We moved very fast, because the underwriting was made by my own firm, and when the

underwriting once started we formed the company, and when R. O. Sweezey & Company did those underwritings, they had the assistance then immediately afterwards of two other firms, who took each a third of our share of the underwriting; in other words, the three firms then had the three-thirds of the underwriting.

Q. Well now, what I would like to get a little more clearly, Mr. Sweezey, is this: You were employed by the Great Lakes Paper Company in some way that imposed upon you the duties of covering certain operations of the Great Lakes Paper Company?

A. Yes.

Q. You were aware that there was under consideration the reallocation of certain lands?

A. Yes.

Q. You then ceased to be engaged with the Great Lakes Paper Company and simultaneously with that almost, you began the preliminary steps in the formation of the Lake Sulphite Company, and the application for lands, a considerable part of which were being reallocated from the Great Lakes Paper Company? That is correct, isn't it?

A. Yes.

Q. Now, you say that at the time you became convinced that with this reallocation there was an opportunity for a new mill . . .?

A. Yes.

Q. You then flew over that area?

A. Yes.

Q. Then, following that flight, was it then you called upon the Minister for the first time in connection with this?

A. I think I saw the Minister with Mr. Cox before that.

Q. When would that be?

A. That would have been, oh, probably just a week or two before that, because I think, after seeing the Minister with Mr. Cox he asked me, "Well, what areas do you want?" "Well," I said, "I haven't figured that out yet; I want to know what areas will be available, and have you settled the question of what areas Abitibi and Great Lakes and Provincial Mills will have subtracted from them?" And I only received an approximate suggestion as to what those subtractions would be. Then I showed Mr. Carlisle a plan of what I thought those subtractions would be, and asked him if he would be interested in coming into a plan—at least, I asked him if he would be interested in joining in a new company that would undertake such developments, and I left Mr. Carlisle a

map two or three weeks before I flew over the area, suggesting what I intended to do and then proceeded to make the examination and came back to Mr. Carlisle after, but, as I say, he had one company to worry about and didn't want to take another one.

Q. I just want to get these times clear, because it is a question of clarifying the method by which this originated in the Department. You were employed with the Great Lakes Paper Company approximately up till the end of January, were you?

A. No, longer than that. I was really active with them until about that time, but Mr. Carlisle, very decently I think, paid my fees up until the end of February or the end of March, I am not sure which is the time, he gave me really a month or two more retaining fee than I had expected; I took that to be in appreciation of the work that I had done.

Q. Well then, if you showed Mr. Carlisle a plan two or three weeks before you flew over the area, that must have been . . .?

A. That was either in December or January.

Q. Either in December or January?

A. It must have been in January, because I wouldn't have had time to get the thing crystallized in my mind before that.

Q. Have you a copy of that plan?

A. I doubt if I have. I had the plan—Mr. Cox was assisting me on it at the time and I left the plan with the Department and I asked Mr. Cox to put his approval on it so that there would be no question as to the local member's acquiescence in the move.

Q. You say you left a copy of that with the Department, did you?

A. I think I did; I am not positive Perhaps the Minister can find that up there. I certainly haven't got it, because I have searched for it recently and I recall vaguely that I must have left it with the Department. It is a plan that would be easily recognized because I think I had Mr. Cox's approval on the plan or attached to the plan in the form of a letter, I don't recall which.

Q. Why Mr. Cox's?

A. It was not an approval, it was a recommendation.

Q. Why Mr. Cox's?

A. Well, Mr. Cox was the local member and I felt if he wasn't in step with me he could easily oppose me and perhaps block it. It is much easier to block a thing than to build it.

Q. Do you mean Mr. Cox's recommendation was to the Minister?

A. Yes.

Q. How was that delivered to the Department, by letter or personally?

A. Oh, I carried it up to the Department and left it with them but I don't recall ever getting it back. Mr. Cox was ill at the time and I remember that well enough because I had to see him while he was ill and get his suggestion and approval of it and recommendation—I shouldn't say "approval", because it was a recommendation really on his part.

Q. When you went in to see the Department—now I don't want to be vague about it in any way—?

A. No.

Q. This is a very large area that is involved in this, of presumably valuable timber?

A. Yes.

Q. And I would imagine that the starting point would be some clear survey of the area that was to be occupied. Have you a survey of the area that was discussed at the time of your application to the Department?

A. Well, that map would indicate the various blocks that I applied for on the understanding that those blocks were no longer owned by the companies to which they had formerly belonged. I didn't expect, however, to get all of these things I applied for, nor did I get them all, but I made my application wide enough so that within those applications I wanted a certain minimum to warrant the establishing of a mill; and they were not in one block, they were scattered in several blocks, I had to take the remnants of various left-overs from the others and these remnants were in themselves when you added them all together quite important and quite sufficient to warrant a mill of that size.

I should add further, that included in the area that I applied for there were areas that had never been allocated to anybody.

Q. Yes?

A. There were a good many hundred square miles in such.

MR. SPENCE: Mr. Chairman, it would be very fine if we had that map.

THE CHAIRMAN: I looked at the wall a moment ago and I saw nothing.

MR: DREW: Q. Mr. Sweezey, at the time you applied for this particular area was that application accompanied by a letter setting out the areas that you wanted and explaining why you thought it was necessary?

A. Yes.

Q. Have you a copy of that letter?

A. I haven't that with me but I think I can find it.

Q. I would like a copy of that letter as an Exhibit because that after all was the starting point?

A. Yes.

Q. So far as this matter is concerned—that is right?

A. Yes.

THE CHAIRMAN: What number would that be?

MR. FLAHIFF: 39.

THE CHAIRMAN: Well then Exhibit 39, copy of letter from Mr. Sweezey, to the Minister—?

WITNESS: It must have been addressed to the Minister, yes.

THE CHAIRMAN: To the Minister of Lands and Forests making the application for certain limits in the Thunder Bay district.

MR. DREW: Q. When would that application be made?

A. That was made in February I think, because I flew over the area I think it was the 7th February, and it was immediately after that the application was made. Or I made that—no, I am sure I made the application after flying over, although I discussed and tried to ascertain what areas would be affected in such a grant, and it was a little bit puzzling because you couldn't get any very definite information as to what areas would be but if we made an application then they would consider it.

Q. That, Mr. Sweezey, to be quite frank, is one of the things that I find extremely difficult in connection with it, in the evidence that has already been given, to understand just how this took shape, because it almost seems as if somebody had suddenly had a vision of this being the ideal area required for this new company, and so far I have had nothing that would indicate the exact process by which this particular area became the property of the Lake Sulphite Company?

A. Well, this particular area was the selection because it was all that was left in that region and I was endeavouring to get as much as I could of such an area within the watershed of the Nipigon, and I say the Nipigon included the Nipigon River and the Nipigon Bay, and in searching the map for what might be left if it were necessary, in numerous scattered blocks, among other things I applied for the islands in Lake Nipigon and we were not granted those; I also applied for the islands in Nipigon Bay and they were refused too.

Q. Would those be covered in the letter that you refer to?

A. If they were not covered in the letter they were covered on the map,

because in the letter this map was referred to and blocks A, B, C, D and so on were each of them described with an estimate. Each of those was described as close as I could with an approximate estimate of the concessions, and in arriving at them I desired a certain minimum number of cords in order to assure the continuity of this plan.

Q. Just to try to clarify the procedure a little, you applied by letter for a certain area and that application was accompanied by a map which set out the areas that you desired?

A. Yes. I did not receive the same areas, however, that I applied for.

Q. No, quite. But I am trying to get the starting point in a formal way of this development?

A. I am very anxious to give it to you if I can.

Q. Then as I understand it the first formal step was a letter requesting the allocation of certain areas—?

A. Yes

Q. —accompanied by a map?

A. Yes.

Q. You are absolutely sure of that?

A. Yes.

Q. And that went to the Department?

A. Yes.

Q. Then did you receive a reply to that by letter?

A. I don't recall a reply by letter, because I was then summoned to explain why I wanted certain areas, and what, and then there were numerous discussions that lasted for days; I was struggling to get something and they were opposing this and opposing that, but finally by compromise we got together areas that we could use. There were, I remember distinctly, two special blocks that I was anxious to get and they wouldn't grant them to me but they said that they would hold them until such time as the operation of the mill warranted their being granted; in other words it was an encouragement to get the thing going and extend itself for that purpose.

Q. Well then, at the time that it was decided what areas would be allocated was a further map prepared?

A. Yes, there was then a map prepared by the Department in which the final grant was clearly indicated and we signed a contract, an undertaking, and deposited $50,000 with that contract, and at that time when he deposited

$50,000 that $50,000 was put up by my own firm and then my firm promptly got to work to form a company and signed up all the necessary documents to put the company in funds and proceed with this work. Within one month from the time we signed the contract we were at work.

Q. Well then, in that case was the original contract with you personally and not with the company?

A. No, that was when the company was supported by the underwritings. In other words the company was not just a shell, because it had already deposited $50,000. I had expended the money on the preliminaries and the company was also in possession of the underwriting of my firm, that is R. O. Sweezey & Company, plus the R. O. Sweezey & Company in turn supported by the sub-underwritings, and by the end of April the company was in possession of three million, three hundred thousand in cash plus the underwriting for the three millions in bonds.

Q. Now, Mr. Sweezey, if that original map is not available in the Department you would have no difficulty in getting a copy of it, would you?

A. No. From memory I could mark out the various areas even if I hadn't a copy myself, I could make another.

Q. Wasn't it prepared by engineers?

A. No, it was prepared by myself. I am an engineer myself and a timber cruiser, so I made my own maps and preparations and then I—

Q. Well, was the map which you sent with the application—?

A. It was a printed map of the Department but the areas were marked out on it in colour.

Q. You had marked on one of the printed maps?

A. On one of the printed maps, yes.

THE CHAIRMAN: Q. Just a moment. I am looking at a contract, and I think as a matter of fact the whole of page 70, but near the bottom of the page particularly are different areas granted to the Lake Sulphite, and, "The whole of the foregoing territory is herein referred to as the cutting areas, and same are shown outlined on the map attached hereto."

That is the map on which you have spoken, Mr. Sweezey?

A. I beg your pardon, that is the final grant.

Q. No, no, I am speaking of the agreement on the 3rd March, 1937?

A. Yes.

Q. And it refers to a map "attached hereto"?

A. Well, that map that was attached to the agreement was one that had finally been outlined through a series of discussions—

Q. Oh, yes?

A. —and negotiations, but it was boiled down from my original application.

MR. DREW: Q. That is not the original map

A. The original map that Mr. Drew was speaking of was the one upon which I made my application; I didn't receive the same thing but I received a compromise.

Q. Well then, Mr. Sweezey, the agreement was signed and a map was prepared which set out the areas that were allocated by Order-in-Council and which since then have been known as the Lake Sulphite proposition?

A. Yes.

Q. And then a recommendation was made for an Order-in-Council on February 26, 1937, and the Order-in-Council itself was passed on February 27, 1937. In that this was the recommendation by the Minister, "The aforesaid company . . ." (that is the Lake Sulphite Company Limited) ". . . which has been duly incorporated, is desirous of entering the bleached sulphite pulp market and brings with it a sufficiency of capital to insure the full realization of its project?"

A. Well, we were required to show at that time what our financial condition was.

Q. Yes?

A. And we showed that we could produce this capital, due to our underwriting and our ability to dispose of the stock and bonds.

Q. Well, but how did you show that, Mr. Sweezey?

A. I revealed to the Minister the individuals who were putting up substantial sums of money apart from our underwritings—at least under our underwritings, rather.

Q. Well, was that done in writing?

A. I don't think so. I think I brought in certain individuals and introduced them and said, "Now these gentlemen are with me, and see who they are and look them up and see whether they are men who can undertake a thing like this." There is always some point at which we must start—nobody comes with $10,000,000 right in his hand, but you show your ability to produce it.

Q. Yes; that is exactly the point that I have in mind, it is a question of considering the exact procedure at that time. The Order-in-Council was based upon the recommendation by the Minister, that this company brought with it a sufficiency of capital to insure the full realization of its project?

A. Yes.

Q. Now what I am anxious to ascertain, not for any purpose of considering the failure, for the time being, of the Lake Sulphite to complete its undertaking . . .?

A. But as to the method.

Q. . . . but as to what method was taken at that time to obtain that assurance. That is, exactly how did you demonstrate that you were going to have sufficient capital to insure the full realization of the project?

A. By the reputation of the three firms that were underwriting the undertaking, and by the introduction and representations of certain individuals who would join with us, and at the time, to take that still further, had we called for six million six, I mean in other words, double what we had asked for, we could have received it, because our subscriptions were considerably in excess of the amount we had to offer. We were too modest. If we had know that market conditions were going to be as they were eventually, we might have made a much larger common stock issue and got all our money by common stock instead of by bonds. At that time we were only just beginning to recover from the depression, and we didn't know whether the market would be willing to accept six or seven millions of common stock, so in order to be sure, or to be safe, we said, "We will put about half of it in common and about half of it in bonds, issue common stock for cash." As a rule that is an unusual thing, because common stock in the past for these kind of things had been openly sold as water—when I say "water" I mean bonused for a senior security instead—and we made it cash for common stock, and nobody received common stock for nothing—nobody—everybody paid cash for it. Even the six or seven shares that the directors had, they had to buy.

Q. Before we get on to that question of stock which I do want to discuss separately, here is an area of over three thousand square miles being placed under the control of a company which obtained its rights on the assurance that it had sufficient capital to insure the full realization of its project. Now, was there some statement by construction engineers submitted to indicate what the total cost of the project was going to be?

A. Yes.

Q. And was that delivered to the Department?

A. Yes. It wasn't delivered as part of the contract, but it was delivered to the Department, the basis upon which we were going to construct it, how much it would cost, and it is the one which I relied on myself in raising that money. I had engineers' reports that told me: Here is what I think we will do and here is what we can do it for.

Q. And was that left with the Department?

A. I don't recall. I am sure it was in some form or another.

Q. There is no reason for me to disguise that the reason I want a definite

answer to that question is that there is no such analysis of the cost on the files of the Department?

A. Oh, well, it depends how much you mean by an analysis of cost. I mean, we had engineers' estimates and in issuing our prospectus, for instance, in selling our common stock, it was signed by the engineer in charge of the work. The engineer that we had in charge of the work is the engineer who designed the plant.

Q. You mean Mr. Stadler?

A. Yes.

Q. Did you have any statement by Mr. Stadler at the time, that was left with the Department at the time this application was made?

A. Yes, we had Mr. Stadler's estimates furnished to the banking firms, telling us what that would cost for a two-hundred-ton-mill, which was six million and sixty thousand dollars.

Q. Was that estimate left with the Department?

A. I don't recall whether it was or not. It was freely discussed, but whether it was actually left as a copy I don't recall. I don't think so. It afterwards became part of the public issue and it became public information and widespread.

MR. DREW: Q. At the moment I am dealing with a question of procedure, as to exactly what precise information was before the Department at the time the Order-in-Council was passed upon the assurance that this company had sufficient capital to ensure the full realization of this project?

A. Well, I think this, Colonel Drew; the Department at the time were more impressed by the performance in the past of the three companies who were financing this undertaking, and the fact that we had this money and were capable of producing it at the moment the company was ready. The three companies I refer to, and I am not exaggerating one bit when I say this, they have literally financed in the past ten or fifteen years, not less than a couple of hundred million dollars in Canada, so that their capacity to accomplish a task of this size could not possibly be questioned.

MR. COOPER: They were also impressed by the fact that you put up $50,000?

THE WITNESS: Yes. It is admittedly a small amount, but you rarely do more than that. These sums are a mark of good faith rather than a measure of ability.

MR. DREW: I do not think we can take $50,000 as being any test of ability to proceed with the mill.

THE WITNESS: Yes, but it shows we are not trifling when we put up that much money.

Q. I do not think anyone would suggest that there was not effort made to

get ahead with it, but before passing from that I would like you to amplify in any way you can, what information you had before the Department at the time the recommendation was made to the Cabinet-in-Council—and I am using the words of the recommendation—that the Minister had been assured that this company came with sufficient capital to ensure the full realization of this project?

A. Well, let me review the matter.

Q. But before I leave that, let me point out that no matter what the reputations of the firms may have been who undertook to put up this money, the fact remains that this company did not have sufficient capital to realize the project.

A. In the end, the same as a lot of other companies have ended, with insufficient capital.

Q. But I know of no case where a company which was supposed to be assured of sufficient capital to realize the project, went into bankruptcy as far short of even finishing the construction of the plant.

HON. MR. NIXON: Q. Did you not greatly enlarge the project?

A. If we did it was not intentional.

Q. You did not have any claim to Nipigon at that time?

A. No, sir. Nipigon was only half a million dollars, and that is a lot of money when you go out and endeavour to raise it. We made the agreement in May, paid the money in June. At that time optimism was still very much in the air, and we felt we would have our mill ready by the following spring, and then we could go on with our extension which we had in mind, because when we came to sell our product, we had arranged simultaneously with our financing, the sale of our product to about 15 or 20 customers in the United States. In a very short time—I would say, not more than four weeks—our sales agents reported 80 percent of the pulp sold, and that if we had more they were ready to go on; what should they do; and we decided we should not sell any more than 80 percent, but keep 20 percent for such customers as we might gain during the succeeding months. With the demand which was growing at that time, we thought we were justified in preparing for an extension, but I had no intention that part of those extensions be included in the current operation.

Q. To get back to that point, before we leave it, I might explain that this Committee is considering the general problem of the administration of the department dealing with forest resources?

A. Yes.

Q. And I am anxious to get as clear a record as possible as to the exact method followed in dealing with this. I do not want to keep repeating unnecessarily, but I am basing my question in regard to this point, on the fact that the Order-in-Council had premised on the recommendation of the Minister, that this company had given assurance that it had sufficient capital to ensure the full realization of the project?

A. Yes.

Q. Was that assurance given in clear written form?

A. Yes, as the undertaking of the firm's finances. We did not reveal the various clients who were putting their money in with us, except verbally. We said, We and Mr. So-and-so, and a number of gentlemen whose financial standing in the country is about as high as possible. I think one or two of the gentlemen in this affair ranked among the biggest men in Canada.

THE CHAIRMAN: Let us make this clear. You say your company had the written assurance of these three firms that they would underwrite the common stock of the Company?

A. Yes.

Q. You told the Department verbally that you expected to get money from certain sources?

A. Yes. And we showed them the underwritings, but we only had the one undertaking. We showed it to them and took it back with us.

MR. DREW: You presented nothing in writing by way of undertaking?

A. No, I do not think that was ever done. There are a number of big undertakings in Ontario, Quebec and other parts of Canada which have been done the same way. I do not think any company starting has ever started out with this money in the bank, but it has shown its willingness to risk its own money up to a certain point, and its ability to raise the balance. We felt that we had amply demonstrated our ability to raise the balance, and the fact that we did not, was due to unforeseen circumstances which we pioneers did not know about. Unfortunately, we do make a mistake on occasions.

THE CHAIRMAN: You had 150,000 shares of common stock, underwritten, $3,300,000?

A. Yes.

Q. And you planned to secure something like $3,000,000 or a little less from the sale of bonds of the Company?

A. Yes.

Q. Which would have given you a little over $6,000,000?

A. Yes. And that would have given us $6,100,000.

Q. And at that time you estimated that it would cost you, I believe you said, $6,060,000 to complete the work?

A. Yes.

Q. You mentioned the fact in your evidence, that the passing of Bill No. 5 by the Quebec Legislature had hindered the sale of your bonds?

A. Yes. It did not hinder them in that we did not expect to be able to sell them, but instead of selling them promptly when we sold the common stock which would have been the right way to do it . . .

Q. It delayed the sale?

A. It delayed the sale, yes.

Q. When was Bill No. 5 passed? I think it was at the Session of 1937?

A. Yes. It was passed just about the time we made our issue and it sort of hobbled us. If we had given more careful thought to it, had we been aware that that was going to happen, we might have made a greater issue of common stock and a very much smaller one of bonds, or we might have issued instead of bonds another form of security, but once we had committed ourselves we could not very well go back and ask the shareholders to pass another undertaking to adopt another method.

Q. Bill No. 5 had not been passed by the Quebec Legislature when you saw the Minister?

A. No, it was after it had occurred. It occurred about the same time, if I recall it. In any event the effect of it struck us all of a sudden.

MR. DREW: Q. Dealing with Bill No. 5 for the time being, you spent more than $3,000,000 on this property?

A. Yes; we spent $3,300,000 plus $1,250,000.

Q. And even Bill No. 5 merely required that there should be a value to the property against which the bonds were to issue to an amount equivalent of the bonds to be issued?

A. Yes, but we did not reach that point of expenditure until January, 1938, and then January 1938 was about the earliest date at which we could have, conforming with Bill No. 5, made a public issue of bonds and we were brought to do it. As a matter of fact, the day that the directors were informed of the excess of expenditure was the day we expected the directors to sign the release of those bonds in conformity with the Ontario Securities Act, and the directors finding that unexpected extra expenditure refrained from signing and said they could not do so, nor could the underwriters under the circumstances find any immediate way of getting around the difficulty.

If we had had more time between that Act and the urgent necessity for funds, I think we could have gone out and struggled for another million or two in another form by increasing our notes, but we were very much crowded between the information we received and the short time in which we had to raise the extra funds.

Q. At the time the application was made and the Order-in-Council was passed approving this agreement, was the assurance of financing reduced to any written form which you submitted to the Department?

A. Yes. We submitted to the Department a copy of the circular which we were going to use in selling our securities and it contained the estimate signed by the engineer of what the cost was going to be. That was supported by underwritings, as I have said.

Q. What I am getting at is that after all we are dealing with a very large territory and it strikes me that the least formality which would ordinarily be expected in any business enterprise of this kind would be to reduce to some written form the assurance upon which this whole matter was to proceed. Was that or was that not done?

A. Well, it was certainly done again and again. Whether it was reduced into a definite form or not I cannot recall at the moment. I think we were more than ready to give all kinds of evidence of what we could do—which we did verbally and in many other ways—but whether it was put exactly in a document, I am not prepared to say. I do not recall.

Q. There was no written undertaking to deposit with the Department by these financial houses to raise this money?

A. No, sir. We showed the Department the undertakings of these houses and the copies of the agreements between them and the company. We showed them the originals of those documents.

Q. But you left no copies with the Department?

A. I do not recall whether we did; I do not think so.

Q. I am not suggesting that you necessarily are to blame for that, but after all human memory may not only be very uncertain but it has also an unhappy habit of sometimes terminating before any of us expect it and my thought is that in a matter of such importance as this that any written assurances upon which realization was based would have been left with the Department. Were they or were they not?

A. I do not think they were left with it. I am positive we showed them the underwritings of the firms. We showed them the originals, but being originals we carried them away with us.

Q. You started with an allocation of land from the Crown and you also bought other property. Is that not so?

A. Yes. We bought the territory of the International Paper Company—in other words the Nipigon Corporation which was owned by International Paper Company—but it was not all the territory which that company owned because in the reallocation of limits they were put down substantially and part of their limits were given to the Great Lakes as compensation for what Great Lakes had taken away in other places. In other words the idea was to give

Great Lakes a concentration of area and it was suitable to take some from the Nipigon Corporation in order to do that. Therefore we took the remnant which the Nipigon corporation had.

Q. That was bought for how much?

A. That was bought for $500,000. We felt we were making a good buy because we knew that it had cost the International Paper Company well over $2,000,000. That included a mill, of course—a groundwood pulp mill.

Q. That mill is operating now, is it not?

A. Yes.

Q. That is the mill which is being operated by the English River Company?

A. Yes. It is leased by the Receiver to the English River Company. They have been operating since last Fall. There happens to be a good market for groundwood. They took advantage of it and employed a certain number of men.

Q. You had not estimated the Nipigon area in your original plans—or had you?

A. No. We felt after we got going that we would have liked to put in several other—when the time came, probably over the succeeding couple of years, that we would want to utilize other species of wood on the area and probably produce kraft pulp and soda pulp, to utilize both jack pine and poplar, and that when we got going on these other two the additional area would be very desirable particularly as International Paper Company had quite a comprehensive plan already worked out which we felt we could assume along the same style and profit by. They continued in the east instead of extending any further in the west. When I say "The East", I mean the Province of Quebec.

Q. Did you buy any other property?

A. No, except millsite.

Q. I just want to get a complete picture?

A. Yes.

Q. You got a certain amount from the Crown and you got the Nipigon corporation. Was any other property bought before the company went into receivership?

A. No.

Q. But you spoke of a millsite?

A. When we started our plan we figured on building nearer the village of Nipigon. One of our causes for delay was that we spent a good many weeks

feeling around for proper foundations. We found the Nipigon area would not give us any foundation even to a depth of 200 feet. Our borings went into the mud and so we had to move practically around the Bay. We got around to the site we finally chose; we did not own that land and we had to buy it.

Q. From whom was it bought?

A. From Mr. Johnson.

Q. What was it purchased for?

A. You mean the price?

Q. Yes?

A. I think we paid a little over $60,000. I am not positive of the exact figures, but somewhere around there.

Q. How many acres?

A. It was quite a large area. There were about 1,000 acres and we were given a choice of whatever we needed in that thousand acres but what we didn't need we should return to him.

THE CHAIRMAN: I do not want to interfere with the examination of this witness, but we are dealing with a private transaction between a private individual and the Lake Sulphite Company, with which we have nothing to do. After all, the purpose of this Committee is to investigate the administration of the Department of Lands and Forests. Whatever transactions may have been entered into by Lake Sulphite and the other parties, it seems to me, do not fall within the jurisdiction of this Committee.

MR. DREW: There is this about it, Mr. Leduc, that after all we are dealing with a rather unusual situation in which all these companies depend day after day for their continued operation very much on the goodwill of the Department. We have been considering here, for instance, for some days past the very wide powers of this Department to enforce certain arrangements upon the Newsprint Mills in Canada and it does not seem to me that in this industry the ordinary private relationships are on quite the same basis as they are where there is title absolute conferred on the companies who are operating. If the Government is going to interfere in business at all,—and I mean the Department,—it cannot displace itself of responsibility in regard to detail.

THE CHAIRMAN: It seems to me that the Government would have to approve of every step and transaction conducted by a private corporation and I do not believe any one of us wants to go further than that. The Lake Sulphite Company had cutting rights on certain areas which they obtained from the Crown in March of 1937 and later they purchased some cutting rights from the Nipigon Company in addition to a mill. But, I do not believe that it gave them the fee simple to one square foot of land. They have to purchase from some place; either from the Crown or some individual; the site necessary to erect the mill.

MR. DREW: Q. Is the mill erected on this site?

A. The buildings are all erected.

Q. The mill is erected on this site of which you speak?

A. Yes. We have bought the land and we own title to it .

MR. DREW: Mr. Chairman, do you mean by that that the mills in other cases are not built on the land conferred by the Department?

THE WITNESS: This was not conferred by the Department. This is land we bought privately. This was a private deal between ourselves and Mr. Johnson. We did not intend to buy Mr. Johnson's land. We thought we would build closer to the village of Nipigon, but this was the only land available.

Mr. Johnson could have held us up for a tremendous price if he had wanted to, but he was very reasonable and when we dealt with him he was very prompt to meet our desires.

HON. MR. NIXON: Of course there is already sworn evidence on record regarding this transaction. Mr. Johnson gave details of it.

MR. DREW: Is it your ruling, Mr. Chairman, that questions relating to private transactions do not come within the scope of this Committee?

THE CHAIRMAN: I think so, unless it can be linked in some way with the Department, because the purpose of this Committee is to investigate the administration of the Department of Lands and Forests. I do not know how far your cross-examination will go, but I am wondering if you have the right to investigate the affairs of the Lake Sulphite Corporation except in so far as the dealings with the Government are concerned.

MR. DREW: I am only asking for a ruling on it.

THE CHAIRMAN: Well, that is my ruling.

MR. DREW: And the ruling is that no questions can be asked in regard to private transactions?

THE CHAIRMAN: Unless they are related in some way with the administration of the Department.

MR. DREW: Of course I am only pointing out in so far as this subject is concerned, there is intervention by the Department in business activities of all these companies which is something entirely different to any other normal business situation.

THE CHAIRMAN: What do you mean?

MR. DREW: In this way: We have been hearing evidence, for instance, for some days in regard to the control by the Government under its powers hand-in-hand with the Province of Quebec and in that case the two governments have an understanding that they will intervene in the business affairs of the company to the extent of establishing certain fixed limitations on production.

My belief is that the Government cannot step just so far into the business affairs of these companies and say, You do this and you do that and not assume responsibility for going even further and requiring very complete information in regard to all the financial affairs of all these companies.

THE CHAIRMAN That would be a very large order. It would mean, practically, that the Department would have to have auditors in the office of every company all the time.

MR. DREW: That is one thing this Committee will have to decide in its discussion at the end, as to just exactly how far this Government and the Government of the Province of Quebec are going to go into the business affairs of companies, because, at the moment, they are being asked by the companies to go very far in their direct control of the business affairs of companies. I do not want to get away from this point, but I would recall that the whole discussion of this problem, and the examination of the general problem of the forest resources, has risen from the question of how far the Government should intervene in such things as company reorganization, because at the time an attempt was being made to reorganize the Abitibi, an order-in-council was announced which had the effect of apparently being linked up with a certain proposal for reorganization. I believe the whole question of how far this Government or any other government is going to go, in its direct contact with the business of companies, must be one of the things to be considered by this Committee, and personally, do not believe that when governments are exercising a more or less life and death power over all these companies—which they exercise under the Forest Resources Regulation Act—and assume that power, there ceases to be any strictly private transactions on the part of these companies.

THE CHAIRMAN: I cannot agree with that position. I think you are going too far there. This company, like any other company, came to the Government and the Department of Lands and Forests, and made certain representations as to its ability to carry out the building of a mill at the head of the lakes. The Minister was satisfied with the explanation and the assurances given. An agreement was reached which was signed on March 3rd, 1937 between the Government and the company. You have the circumstances which led up to the signing of that agreement, but having signed that agreement, as long as the company lives up to it, I do not see how the Department could very well interfere in private transactions. But the point is—I may be wrong, but in any event, it is my opinion—we were appointed by the Legislature to investigate the administration of the Department of Lands and Forests, not the affairs of any company. If there is anything which would link connection with the Lake Sulphite Corporation or any other company with the Department of Lands and Forests, I would say we have the right to investigate it, but not otherwise.

MR. DREW: We arrive at the point where it is definitely very necessary to have a clear understanding of the matter, believe I have every intention,—or had every intention—of asking questions in regard to the detailed affairs of this company, and in regard to various aspects of the stock transactions in connection with this company. If that is not to be permitted, then of course I want to know, because my intention is and I will explain why I think this is something which comes within the powers of this Committee.

At this very time, according to this information or evidence which has

already been given here, certain negotiations are under way in regard to different properties. I say there is no use reserving this remark until later: I am quite definite already, that I think there was a complete lack of any business-like methods in the handling of the application and approval of the original proposal. I must confess it is beyond my comprehension that some 3,300 square miles of very valuable property be transferred to the control of a company, without any written statement as to the basis upon which the financing should be done, or any written assurance that that financing would be offered, particularly when the recommendation of the Order-in-Council states in these words, "That this company brings a sufficiency of capital to ensure the full realization of this project."

In view of the fact that there is no written detail of that application, in the evidence of the Minister and Mr. Sweezey, they both say that there was merely verbal discussion. Mr. Sweezey says there were written agreements between the parties which were shown to the Department, but neither the originals nor the copies were left with the Department. So far as the files of the Department are concerned, they show no formal application, which explains in detail how the Department was assured that this financing was to be done, and it seems to me, having passed from that point without any detailed information, that if we are to form an intelligent opinion as to how things of this kind can be controlled, we must go into the exact details of how this company carried on from that point. That is my opinion and my argument.

MR. COOPER: Are we not getting pretty far afield? Surely the Government is not interested beyond the conservation and utilization of government forest resources.

THE CHAIRMAN: And the carrying out and effect of the agreement which it has with the Company.

That is my opinion; I may be wrong and the Committee may doubt it.

HON. MR. HEENAN: Q. Mr. Sweezey, your agreement with the Crown was to establish a mill costing a minimum of $5,000,000, roughly, of the money of Canada?

A. Yes.

Q. According to the evidence you have given this morning you have spent $4,500,000?

A. We have spent more than that if we include what we owe to creditors.

Q. Did that expenditure of $3,300,000 and the $1,250,000, making a total of $4,550,000, include the purchase also of the Nipigon?

A. Yes.

Q. So that when the Order-in-Council says that you had sufficiency of capital, you put down $50,000 to indicate the fact you had which brought you close to $4,550,000?

A. If we had been able to come in for delivery of bonds we would have had an additional $3,000,000.

Q. You have had large experience in the development and financing of pulp and paper mills throughout Canada?

MR. DREW: I am sorry, I cannot hear.

HON. MR. HEENAN: I am asking him if he has not had large and long experience in the development of pulp and paper mills throughout Canada.

MR. DREW: And long experience with governments also.

THE WITNESS: Yes, I have. The only way of developing the resources of this company is by dealing with governments, unfortunately.

HON. MR. HEENAN: Mr. Chairman, if you are going to let one member of the Committee speak to the Press to get headlines, two or three of us can do that.

MR. DREW: Go ahead.

HON. MR. HEENAN: Every paper mill which I know, which was ever established under the party of which my honourable friend is now the leader, has gone into bankruptcy of the worst kind even after they have been financed.

MR. DREW: I do not know that we are matching bankruptcies at the moment, I point out that we are dealing with Lake Sulphite Company.

HON. MR. HEENAN: The statement he has made now, apparently at length without your interruption, Mr. Chairman, has evidently been to gain more headlines.

The whole statement and the questions asked of the witness are so ridiculous; that the Department or the Government should go into all the private details of the corporation because they made an agreement with the Crown. That shows on its face.

If we have to go into a company, say, making a purchase of a thousand acres of land, and a mill is built, providing you get the endorsation of the Crown, then you will have to go into the purchase of machinery, how much did you pay for your machinery; what is the proper kind of machinery; what is the most efficient machinery; is your architecture the most efficient architecture that we have in Canada, and so on.

The purpose of the Crown is to make an agreement with the corporation to build a mill and our end of it is finished when we allocate the timber limits and when we take the deposit. If the company or person does not carry out the agreement with the Crown that deposit reverts to the Crown and we can resell it or do anything we like with the limits after that.

The words in the Order-in-Council about the sufficiency of capital have been well carried out. There has been $4,550,000.00 already spent.

MR. DREW: Mr. Chairman, I want a ruling from the Committee as to whether or not I am to be permitted to ask questions in regard to the business affairs of the Lake Sulphite Company.

MR. ELLIOTT: You are asking a ruling as to whether or not Colonel Drew can ask this witness questions relating to the case of the mill site. All this discussion is irrelevant because you, Mr. Chairman, did rule that he could not ask that question, because it never has been suggested that the Department at any time ever interfered to the extent of returning the mill sites of private companies.

MR. DREW: What you said was that you were going to take the position that it was not within the power of this Committee to go into private transactions of the company. I want a definite ruling as to whether or not I have the right to ask questions in regard to private transactions of the Lake Sulphite Pulp Company Limited.

MR. COOPER: Why not rule on all the questions?

MR. DREW: I may ask a series of one hundred questions and have one ruling after another. It is a perfectly proper and normal thing for a ruling to be made on a question of that kind.

THE CHAIRMAN: I do not believe it is within the jurisdiction of this Committee to investigate private transactions between individual companies, unless the Department of Lands and Forests is linked up in some way with it. That is my ruling.

MR. DREW: Yes, but ——

MR. ELLIOTT: You have to submit to the ruling; there is no appeal.

MR. DREW: This is not Germany yet.

THE CHAIRMAN: No, but other members of the Committee are here, and if you are not satisfied with my ruling I suggest that you appeal it and not refer to Germany.

MR. DREW: I was not referring to you in that remark, Mr. Chairman; I was referring to a suggestion over here that there was no appeal. I was going to point out to you that I want to know quite clearly whether or not I can pursue questioning in regard to the business transactions of the Lake Sulphite Pulp Company Limited?

MR. COOPER: Does not the Chairman's ruling just bear out what I say? The Chairman, as I understood it, said that you could not ask the question unless it pertained to the Department of Lands and Forests. How are we going to know if it pertains to the Department, unless the question is put first?

MR. DREW: That is exactly the point. My contention is that the Department must assume responsibility in regard to this company.

MR. COOPER: Yes, but one question may be admissible and another one might not be admissible. I do not see how you can make a blanket ruling.

MR. ELLIOTT: I think the ruling has been made, and it is quite clear. You should not accuse anyone of being communistic simply because he disagrees with you. I think it is our duty as members of this Committee to submit to the Chairman's ruling.

MR. DREW: Mr. Chairman, I think the question is perfectly clear, in so far as the business affairs of the Lake Sulphite Company Limited are concerned, following their authority to proceed. All the questions will be upon the same basis. They will either be admissible or not. But it is upon the broad ruling of whether or not it is proper in this Committee to ask questions about the business affairs of the Lake Sulphite Company Limited.

THE CHAIRMAN: But, Colonel, you referred to the fact that the Lake Sulphite Company Limited had authority to proceed. We are investigating the administration of one Department of the Government, the Department of Lands and Forests. They made an agreement with the Lake Sulphite Pulp Company Limited. As far as they are concerned, that is where their own power is ended. In so far as the sale of shares is concerned, I suppose they got their incorporation through another Department of the Government. Once they had fulfilled their promise to this Department they were able to go ahead. As far as the Department of Lands and Forests is concerned everything is contained in that agreement there. I do not believe the Department had the right to supervise their private financing or their private transactions with individuals. Now you asked a question concerning what I believe is a private transaction between the company and private individuals. And I ruled that I do not believe this Parliament has any right to investigate that transaction. And may I say this; if you can show in some way that the Department of Lands and Forests is linked up with it, you have the right to proceed with the examination.

MR. DREW: Mr. Chairman, as far as that is concerned, the only basis upon which an examination of the affairs of the Lake Sulphite Pulp Company Limited can be linked up with the Department is if you are prepared to agree it is within the jurisdiction of this Committee to examine those affairs for the purpose of understanding how far the Department should go in exercising control over that company. Any of my questions in regard to this question would necessarily be on the same basis; they would be private transactions within the company. There is no question about that.

THE CHAIRMAN: I do not believe it is within the jurisdiction of the Committee to go into these matters.

MR. DREW: May I say this just before we adjourn; that I have no intention of conducting any dispute with Mr. Heenan about the method; but I would point out that far from the questions being ridiculous, which I have asked this witness, I have been asking the witness questions in regard to the details of his application, and I have no hesitation in saying that I think it is an astonishing thing that in a transaction as big as this the details were not reduced to some form of writing and the undertaking placed over the signature of individuals and left with the Department in that form.

WITNESS: The agreement signed with the Government, I contend, should fulfill what the Colonel asks.

MR. DREW: No, no, but the agreement does not assure any financing. That company had just been formed.

WITNESS: Does the Government insist on having money in the bank for every undertaking that starts in this country?

MR. DREW: You had better ask the Government.

WITNESS: That is what you are asking.

THE CHAIRMAN: The Committee will adjourn until 2.30.

At 12.30 the Committee adjourned until 2.30 p.m.

AFTERNOON SESSION

Monday, April 29th, 1940—2.30 p.m.

MR. DREW: In view of the ruling this morning, Mr. Chairman, I am not going to ask any more questions.

THE CHAIRMAN: I see that Mr. Heenan is not here. Has any member of the Committee any questions to ask the witness?

Will you please step aside, Mr. Sweezey? Thanks for coming up and giving your evidence.

WITNESS: Mr. Chairman ——

THE CHAIRMAN: Yes?

WITNESS: Since your enquiry is on matters pertaining to limits would it be in order if I made a few remarks about limber limits or the industry, or anything like that, or would that be out of order?

THE CHAIRMAN: No; if you have any suggestions to make we would be glad to have them.

WITNESS: I have been in this business for so many years that I cannot help having views on the industry as a whole and forests in particular.

For the moment, if you glance at Quebec, the daily production of newsprint in Quebec is about 7,200 tons, and the production of newsprint in Ontario is about half that.

One thing to bear in mind is that Quebec's forests are now being operated

to the limit of their capacity, so that further development of the industry, or any enlargement of the industry in Quebec would not be sound because existing mills would suffer therefrom.

Q. You are speaking of Quebec?

A. I am speaking of Quebec. You have got to talk of the two, otherwise you do not know what one industry means in relation to the other. Ontario, on the other hand, is the only one in Eastern Canada that might expand in the industry from the point of view of the forest stands. I am not speaking from the point of view of business; that is a matter of operating. But the Ontario forests are not yet fully utilized, whereas the Quebec forests are.

Q. Let me see if I understand you correctly; that in Quebec the Crown has alienated to companies all the available timber limits?

A. Not only all, but the forests they have left obviously must be kept to support mills already existing on the St. Lawrence river; otherwise they will be out of wood in a short time. So there is no site in the Province of Quebec to-day where you could put a mill and have enough wood to carry on with unless you went into the James Bay slope. That would not be economical nor would there be enough wood to supply a mill.

MR. SPENCE: Do you mean that the yearly cut is more than the yearly growth?

A. The yearly cut is considerably more. There is no scientific forestry practiced in Canada to-day as it is in Europe, or, let me say, particularly Scandinavia. The reason for that is that it costs more to conserve forests, and every mill would have to add anywhere from a dollar to three or four dollars a ton of products to apply the methods of operation that are comparable with the Scandinavian methods.

Q. What have you to say about Ontario? We have quite a surplus, have we not?

A. You have at the present time in western Ontario but not in eastern Ontario. Eastern Ontario is now operating to the full extent of its forest capacity.

Q. The part in the north is inaccessible, is it not?

A. Beyond the height of land, yes. That is not interesting. But that part north of Lake Superior and north of Kenora, let us say, between there and the Manitoba boundary, there is a vast area of undeveloped forest resources.

But now is a good time to begin a method of scientific forestry, before they become too far depleted. As you know, the vicinity of Port Arthur and Fort William has been completely depleted for a radius of about 50 miles. Not only that, but that area up there has some very large spruce, too large, indeed, for pulp and paper, and should be used for lumber. It is costing $27.00 a thousand feet to bring lumber from British Columbia to the Atlantic coast to-day.

THE CHAIRMAN: You say the freight on 1,000 feet of lumber from B.C. ——

A. To Montreal.

Q. Is $27.00?

A. $27.00. That is lumber going to Great Britain. At the present time, Great Britain has interrupted to-day a million and a half cords of pit props that used to come from Russia and Scandinavia—I mean one million and a half cords a year. So that she must look to Canada for that supply during the war and probably for some time after the war.

MR. SPENCE: What is that, wood in the raw state?

A. Wood in the raw state. It might be peeled or it might be rough, but it is about pulpwood size.

Q. They manufacture that in England, do they?

A. They use it for pit props in the mines, for coal mining.

MR. W. G. NIXON: That would be taken there from the Atlantic seaboard?

A. That would be taken there from the Atlantic seaboard, and it is a further depletion of these limits which the paper mills are depending on for their future.

MR. SPENCE: That is about the same size in diameter as our pulpwood?

A. About the same size. And it is spruce. It has got to be black spruce in order to have any life. It various in length from about four to fourteen feet, and the price of it to-day is probably around $13.00 to $15.00 a cord on the Atlantic seaboard. Then it costs about $25.00 a cord to cross the Atlantic under to-day's conditions. It might cost more before many weeks.

Q. I believe that is more than we get out of it for export to the States?

A. That is more than we would get out of it for export. But it is also only a temporary condition.

Q. One realizes it is only temporary?

A. Yes. Our demand, of course, from the United States is enhanced by the fact that three of the most important lumber States in the United States are completely depleted to-day. You take Michigan, Minnesota and Wisconsin—all their forests are practically wiped out. They have had the advantage, however, in that the land has been suitable for agriculture and the raising of dairy products, while ours is not. Only a portion of ours is so suited. Therefore, it behooves us to maintain our forests on a perpetual basis.

You have got to combine three factors, the commercial, the technical and the government co-operating in it, otherwise you don't get anywhere. If you work the commercial and the technical alone you may not agree with the government, and any two without the third is apt to lead to cost without any result.

The forests of the Province of Quebec probably contain 225,000,000 cords to-day. The Province of Ontario has something under 200,000,000 cords, but not far from 200,000,000.

THE CHAIRMAN: What is the annual consumption in Quebec?

A. The annual consumption in Quebec is over 7,000 tons of newsprint—I do not know that I have the figures before me. It is about 4,500,000 cords.

Q. Per year?

A. Per year. That is only for the pulp and paper industry; it does not include the consumption for lumber, nor firewood. Firewood, of course, takes the other commoner species.

MR. SPENCE: Did you make the statement that they used more than double the amount used in the Province of Ontario?

A. The manufactured product is about double the Province of Ontario. But their limits are being worked to too great a capacity. In other words, they are using up more than the natural increment, because you must remember there is fire as well as the axe to contend with.

THE CHAIRMAN: Their mills are not running to full capacity, are they?

A. I beg your pardon. I should say that I am speaking now as to the capacity of the mills in normal times. Those mills will be running to capacity probably within twelve months. They have run to capacity before. But with the export of pulpwood, the annual cut is in excess of 4,500,000 cords.

HON. MR. NIXON: Do you know as to the export of pulpwood itself in Quebec?

A. The export of pulpwood from Quebec is only from freehold land, not from Crown land, because the Crown lands are nearly all owned by existing mills, which could not afford to export it because they need it. Anticosti is freehold, but the cost of operating there is too great.

THE CHAIRMAN: The method of planting these timber limits is quite different in the Province of Quebec than it is here in Ontario?

A. It has been in the past. They would sell you an area at so much a square mile, or sell you the lease, and then there is a premium added to the stumpage. At the present time, stumpages are fairly high in relation to the business, but as business gets better you can probably do better.

HON. MR. NIXON: Do they assess you for fire protection, or are you responsible?

A. The timber limits contribute. The individual contributors are grouped, and they divide the country into districts. Each group of rivers has its own forest protection under a central manager, who is an official of the government.

Then, apart from that, each company has its own little side line for protection. The methods of cutting, of course, and methods of operation, have a lot to do with fire protection.

THE CHAIRMAN: You mentioned the fact that they sold cutting rights at so much per square mile. I do not know that they have sold any of these limits recently.

A. That is a long time ago. There have not been any recent sales in Quebec, because there is nothing to sell.

Q. But in some cases the purchasers paid pretty substantial prices for the rights to cut, did they not?

A. Yes. Some of them held a limit for years for a sawmill operation, then the sawmill end of the business became unprofitable so they figured on going into pulpwood. Then somebody would come along and buy these mills. Already, some of the mills have exceeded their supply of available wood and have gathered up what they could in all directions.

Q. But I want to make this point clear, and you may correct me if I am wrong. All these companies who have contracts with the Government pay ground rent, fire protection charges and stumpage?

A. Yes.

Q. But they do not make any initial payment to the Government before they take possession of their limits?

A. No, because you have this difference, that in Quebec a limit may be acquired under obligation to build. That has been the practice in the past. You may acquire limits and if you do not build, well, you have to pay a premium for the right to hold that. In Ontario, on the other hand, whilst you did not pay a premium for the right to cut, you pay as and when you cut, but you also have an obligation to spend a good many millions of dollars. The increment in spruce forests in Quebec and Ontario is between two and three percent, if the forests were all growing; but approximately half the entire forests as they exist are mature or over-mature, and consequently on these areas there is no increment possible at the present time.

Scientific forestry would call for a method of operating those areas. One of the difficulties the industry has to contend with is the method of operating.

We employ a great many men at a concentrated period in the season, and those men are out of work for the rest of the year. In the old days, in the lumber business, the men were employed in a sawmill and when the logs were all sawn, they went to the woods in the fall and they cut logs all winter. By the time they came back in the spring they were ready to operate in logging. To-day we do not do that; the mill has to run winter and summer, night and day. The men who go to the woods come back from the woods with no work. That means, it is costing us more to employ those men only part of the year than if we employed them all the time.

Therefore, the method of operation should work out on a basis where, instead of carrying a great big pile of wood at the mill, we should work more from hand to mouth between the forest and the mill. With the method of transportation to-day, we are approaching that where we can do it. That is so in the Nipigon area. You have two railroads cutting across timber areas and you have two or three main highways. If much of a pile of wood which you get in one season, could be spread over the twelve months, your men, instead of being in the woods two or three or four months, could be kept there the year around.

On the other hand, that calls for special care in operating in the summer time, because the fire hazard is increased by the number of men you have in the woods in the dry season. All of which is part of a forestry programme such as they use in Scandinavia. But Scandinavia has a big advantage over us in its labour cost, particularly because it has found it worth while to save the forest before it was too far depleted.

MR. SPENCE: The amount they cut is not to be compared with what we cut over here, is it?

A. They cut more. In other words, their yield per square mile is greater than it is here. In the first place, they have to cut it in such a way that immature trees are allowed to continue to grow. They take an over-mature area and cut it and utilize it as quickly as possible and start it growing again.

Trees grow by the accretion of outer rings, so the bigger the diameter prior to maturity, the more volume you get per tree. But there comes a point when that maximum diameter is attained, and at that time you had better cut the tree and start another one growing.

We are not practicing that at all in Canada. We will. We will be bound to. The question is, are we going to wait till it's too late?

In the United States, they have not practised much of that, because many of the areas upon which trees were growing were required and wanted for other purposes. As long as they could get timber and timber products from Canada they didn't need to save their own.

Q. What will you say as to over-mature timber?

A. Well, when it gets over-mature, there are large areas—take in Nipigon and north of Kenora—there are large areas that are over-mature. We can't do anything with it. Conservation without utilization is of no use.

Q. Can you utilize the more mature timber?

A. There are places in Quebec, in Gaspe, where it may be over-mature, but it makes a very poor quality of pulp because its starts a rot in part of the tree and it works upward.

Limits of that kind are not nearly as good as the black spruce areas you will get up around Nipigon, because, despite the fact that the Nipigon areas are over-mature, they stand a long time after they have become mature before they

deteriorate. That does not happen in that part of the country, but where you have a moist country such as you have down near the Atlantic. Deterioration starts due to the moisture. You have a dry country up in Lake Superior and, therefore, moisture does not accelerate the deterioration.

THE CHAIRMAN: Thank you, Mr. Sweezey.

J. FRANK SHARPE, Called and Sworn:

MR. DREW: Mr. Chairman, I should like to have Dr. Hogg attend as a witness in regard to the problem under discussion as to the cost of power.

THE CHAIRMAN: Oh, yes.

MR. DREW: I mention it now because, as I understand it, we have a fairly free day to-morrow, and it might be more convenient to hear him then.

THE CHAIRMAN: Is it the pleasure of the Committee that we should hear Dr. Hogg? (Carried.)

MR. DREW: Mr. Sharpe, what is your official position?

A. Chief Clerk of the Woods Branch, and, by Order-in-Council, Forester in charge of provincial forests.

Q. As I understand it, you have the supervision of the practical problems of control of timber areas, control of cutting and other details of that kind; is that correct?

A. The chief activity of the Woods Branch would be timber sales, the measurement of timber and the collection of revenues; that is, stumpage, ground rent and protection charges.

Q. How long have you been with the Department, Mr. Sharpe?

A. Eighteen years.

Q. And in connection with the work, is the scope of your duties defined by any written memorandum?

A. No, sir; our actions are pretty well governed by the different Acts and regulations under those Acts, as to how we proceed.

Q. There are no supplementary memoranda that would define the scope of your activities in addition to the definitions in the Act?

A. No, sir.

THE CHAIRMAN: How long have you held your present position, Mr. Sharpe?

A. As Chief Clerk of the Woods Branch, since 1935.

Q. Where were you before that?

A. Well, I was with the Department.

Q. No, I mean were you in the field or in the Department?

A. Mostly in the field.

MR. ELLIOTT: In what capacity?

A. As Forester, carrying on inventory work; that is, from about 1922 to 1932 and 1933, there was a consistent effort on the part of the Department to take stock of the forest resources of the province and it was that work I was employed on during that period.

Q. What I want to know is, you have had some practical experience in the field before you took this position in the Department here in Toronto?

A. Yes.

MR. DREW: Mr. Sharpe, when an application is made for the allocation of an area to a company that proposes to carry on business, will you outline from your contact with it the manner in which you are brought into it and the information that is required from you in regard to that application?

A. I think in answering that question we would have to make a division in what we might call the sales of a more trivial character where there is, say, up to $10,000 worth of timber involved.

Q. Well, I might clarify it. We can deal with the other aspect later but what I have in mind more particularly at the moment is the manner in which the Department operates from a technical point of view in the case of an application for a particular area of timber land. For instance, in the case of the application of the Lake Sulphite Company, how were you brought into that and what was your contact with that application?

A. Speaking from memory, and I think, sir, that it is pretty well incorporated in the evidence—certainly memoranda that were prepared at that time—but as I recall it there was a map handed to me to work out the approximate quantity of pulpwood that would be found on the particular areas outlined on that map. We get that information from the results of the different forest surveys that have been made. I think in that case practically the entire area had been surveyed at one time or another. Therefore, there is set out for the information of the Minister or the Deputy Minister the quantities of timber involved in this particular application. We frequently make suggestions and try to confine areas as far as possible to watershed divisions. We are probably told either the quantity of timber required or the capacity of the mill that is to be erected; and from that determine approximately how much wood is necessary to operate that mill.

Q. Take the Lake Sulphite as an example; how were you brought in touch

with it; do you keep a memorandum stating that an application has been made for a particular area, and are you then asked to make a report on that application? What is the actual procedure by which you are brought into the picture when an application is made for a particular area?

A. No, I seldom get a memo; it is probably a request either from the Minister or the Deputy Minister.

Q. What form would that request take?

A. It may be handing me a letter that has come in, an application for timber, to make a report setting out the quantities involved, that is usually in the matter of estimates of timber on the area applied for.

Q. Just as a practical matter, how was it dealt with in the case of the application of the Lake Sulphite? Would it assist you if you had the file, or can you?

A. I remember fairly clearly because we went over it at the time here in connection with the Committee, that I was handed a letter.

Q. From whom?

A. I had better not— Yes, it would assist me to have the file. I think it was R. O. Sweezey.

Q. In any case you are not sure we can reserve it and check back on it at a later time?

A. I remember at the time there were two; either Mr. R. O. Sweezey or Mr. Bethune Smith; it might have been one and it might have been the other who signed the letter.

HON. MR. HEENAN: Q. That letter wouldn't be handed to you by Mr. Sweezey, it would be handed to you either by the Minister or ——?

A. Oh yes, I don't want to leave the impression it was handed to me by the applicant; it was handed to me by either the Minister or the Deputy Minister.

MR. DREW: Q. When you get that letter, do you get some written memorandum defining the enquiry you are to conduct, or what are you directed to do when you get that letter?

A. "Tell us how much wood is involved in the area that has been applied for," that is usually the only. That is not written, it is simply asked me.

Q. And do you make a written report on that?

A. Very often it is written out, the report made. In the case of the Lake Sulphite there was quite a lengthy report. Sometimes it is in more or less a rush, and you work it out in pencil and paper and appear with it.

Q. Have you that report on file now?

A. Yes, sir.

Q. From a practical point of view, how do you decide what area is necessary for a mill of this kind? What is the actual procedure within the Department by which you determine the area which should be added to any given mill—and I am now referring particularly, to the Lake Sulphite? I mean just in simple words, explain what happened after you got this letter.

What instructions would you give or what would you do following the receipt of that letter?

A. Simply work out the quantities that were involved in these different areas that were marked on the map.

Q. Well, but what is the yardstick by which you determine what area is required for a mill of this kind?

A. The capacity of the mill itself. That is, in this case it was a two-hundred-ton-mill involved.

Q. There must be some formula?

A. By a simple calculation a two-hundred-ton-mill,—due to the density of our wood, I think we could say that less than two cords will produce a ton of chemical pulp, say one and three-quarter cords to two cords times two hundred times the number of working days in the year,—it would give you approximately one hundred and twenty thousand cords a year if that mill operated to capacity.

Well now, there are simple formulae for deciding the quantity of wood necessary to maintain a mill of that capacity. I mean, if we go to the text-books on the subject, we would probably find about eighteen different formulae, if you have sufficient information to work them out. Our method is about two-thirds of the requirements in now merchantable timber, the other third in growing stuff; that divided by one-half your rotation gives you like the permissible annual cut that we have so often referred to.

In other words, if an area had four million cords now merchantable, we know that that quantity exists on approximately fifty percent of the land area, that has been our experience in surveying the Thunder Bay district, so that there is a similar area that is young and second growth standards, but the area of merchantable is, we will say, four million cords, we will add half of that, making six million cords, and we usually consider one hundred years as about the length of time it takes to grow a spruce tree to maturity; divide that by fifty, it gives you approximately one hundred and twenty thousand cords. It is simply a guide and something that needs to be gone into every so many years, as conditions may change.

Q. Well, is that laid down anywhere as a matter of practical method? I mean, can you go to any place in the Department and say: This is the way in which we arrive at this conclusion?

A. No, sir, as this is, I suppose, just part of our training.

Q. Well now, on Thursday, January 25th, a memo, was read into the record, it doesn't appear as an Exhibit, but it is read into the record; it appears at page 345 and it is headed: "Memo. to Hon. Peter Heenan, Minister of Lands and Forests," and then it points out that this is a memorandum from you, and the memorandum begins in this way:

> "This morning, you handed me a letter from R. O. Sweezey, of Montreal, which was addressed to Bethune Smith, of Toronto. In essence, this letter is an application for a quantity of pulpwood sufficient to operate a mill requiring one hundred and twenty-five thousand cords annually. The letter refers to four areas that apparently interest the applicant. In regard to this area No. 1, the Little Pic Watershed, this watershed is estimated to contain 912,000 cords of spruce and balsam, some 205,000 cords of jack pine. I would point out in connection with the Little Pic Watershed, 'that the Department has on file an application from the Pigeon River Timber Company, per E. E. Johnson, to have this area set aside so that the Pigeon River Timber Company could plan for a ten-year operation. (2) Black or Aquasabon River:" (Then an interjection.) "The Department has no estimate of the timber in this watershed. It constitutes the easterly portion of the concession under lease to the Provincial Paper Company, and which the Company desires to retain for their own supplies." (And then it goes on in regard to No. 3, Long Lac), "—within the watershed of Long Lac Lake: There is estimated to be 950,000 cords of spruce and balsam pulpwood. This, however, has been definitely set apart by agreement between the Department and the Pulpwood Supply Company," and so on; you go down through these various areas and outside of that one in which you say that there is no survey, you give an estimate of the yield, the cordage yield, of certain types of timber on these areas.

From what source was that information obtained?

A. From information within the Department—our own surveys mostly. You see in 1924 we had the responsibility of estimating the timber reserves of the entire watershed draining into Lake Nipigon. That first area you mentioned, the Little Pic-Steel River country, was cruised prior to the time that it was disposed of to the Great Lakes Paper Company. The Black or Aquasabon River referred to, we didn't attempt to submit any figures on that, it was under lease to the Provincial Paper Company who as far as I know had indicated their desire to retain it. We had our own cruises of both Purdom and Ledger Townships. The Nipigon Corporation area was cruised in 1924 under this Nipigon survey. The same way with the areas farther north all around Lake Nipigon. And it was that information that was used to build up the estimates that are used in this memorandum to the Minister.

Q. Well then, all these are areas which were actually allocated to the Lake Sulphite, those at the end of the memorandum on page 347?

A. The Little Pic, Prairie and Steel, yes.—I am sorry, sir, but I can't identify these by numbers from this memorandum, they are not the same numbers as those on the map there, these numbers don't appear. It isn't worth mentioning, but I mean Little Pic, Prairie and Steel as I know it refers to the easterly portion of what the Lake Sulphite acquired.

Q. Well now, this area which was subsequently allocated was partly taken from the area originally allocated to the Great Lakes Paper Company, wasn't it?

A. On the Great Lakes Paper Company it wasn't an allocation, it was a sale back in about 1916.

Q. Yes, but then there was a withdrawal under the Forest Resources Regulation Act?

A. Yes.

Q. And that was reallocated to this new company. Do you remember being asked to prepare any estimate of the areas acquired by the Great Lakes Paper Company and included in the designation of areas which you have withdrawn from the Great Lakes Paper Company by Order-in-Council under this Act?

A. I am reasonably certain I prepared a memorandum or memoranda on that.

Q. Would you be able to place your hand on that?

A. I would be glad to make a note of that.

Q. You see what I am referring to: Evidence has been given it was generally known at that time that some of the timber area under the control of the Great Lakes Paper Company was to be withdrawn from their control and what I want is any memoranda which would refer to the Departmental decision in that respect.

Let me take as an example some of these other companies. For instance, when the Pulpwood Supply Company made its application what procedure was followed in that case?

A. It would be a similar procedure, but I don't recall any written report. It was the Long Lac survey that we used to determine the quantity of timber involved; I know there were certain areas excluded, the watershed of the Sturgeon River that flows to Lake Nipigon, and certain townships to the east. In other words there were originally 3,400 square miles, which was reduced to 2,600 and something.

Q. What I am trying to understand is this: An application was made there for a very large area involving certain waterways as well, and in that case I would like to know just exactly how you as the official who would be largely responsible for the forestry practice involved, exactly how you were brought into that application?

A. In nearly every instance, sir, it is to give the Minister an idea of the quantity of timber. I mean there is no plan, forestry plan, laid down as to how they will operate. I mean, as far as I understand it the agreement is all predicated upon the Acts and regulations which exist which give—well one

hundred percent supervision over any area that is disposed of. That is, you take a timber license, the Acts are all listed on the bottom of the license as to what operations are subjected to, or what operators are subjected to when they commence to cut.

Q. Is there in the Department to your knowledge any report either by Departmental officials or others which establishes the basis upon which you arrive at the area that a mill of given tonnage requires?

A. No, sir.

Q. You see what interests me is this: From your practical experience, being there some time, you might be able to work this out, but suppose somebody else were called in to do that, is there anything there that would guide someone else in the method by which they would determine the area required for a mill say of 200 tons?

A. Well I think, sir, it is just a matter of knowledge and taking advantage of ——

Q. Just a matter of what?

A. A matter of knowledge of different systems used to arrive at it to answer that question.

Q. That is what I am anxious to find out. In an industrial plant if a certain operation is contemplated there are various formulae by which an expert can determine the amount of, say, metal and the amount of other material required for a certain operation?

A. Yes.

Q. What I am getting at is, where does one find in the Department the formula by which an area is fixed that will be adequate for a mill of a given tonnage?

A. I don't think you will find that formula in the Department. I mean I am referring to certain formulae, for instance Von Mantel's formula,—you don't mean that, do you? I mean that doesn't answer your question, does it?

Q. I don't know. I don't know the formula yet?

A. Well then, your merchantable timber plus half your growing stock divided by half your rotation will give you what you are permitted to cut.

Q. And what do you call that?

A. The volume of timber now merchantable plus the volume of immature timber.

Q. No, I am sorry; you used a name?

A. Von Mantel. Certain formulae are very complicated and involve more data and information than we have; therefore we cannot use them.

Q. Is that the formula that you use in arriving at the area required by a mill in the Province of Ontario?

A. Yes.

Q. And in each of these cases has that formula been the basis upon which the allocation has been fixed?

A. Oh, I wouldn't like to say that.

Q. What I want to try to get on record is this: We have here a series of applications for cutting rights over given areas. We are told that these areas were needed for mills of the capacity mentioned in the various applications and subsequently in agreements. Now I am trying to reduce it to an understandable method and to find out exactly how these areas are determined. If you say that the Von Mantel formula is the basis of arriving at the areas granted to any particular applicant then that seems to be an understandable answer, but if you then qualify that as you do by saying it is not necessarily followed then it leaves me at any rate where I was before, that I don't just understand how you do decide just what areas any given company is going to get when it applies. Am I clear?

A. Yes. You are asking, perhaps, questions that are out of my field there. You might take another concession, the English River concession.

Q. Yes?

A. We haven't any work of our own, we didn't do any work on the ground there to arrive at the quantity of timber; yet we believe that there is somewhere in the neighbourhood of ten million cords or more. We believe that from the fact that the whole area has been photographed by the Dominion Topographic Service. We have work in that vicinity and we simply build our estimates. Well, certainly that quantity of timber would be more than is necessary to operate the mill that was intended under that agreement. Therefore I say that the formula has not always been used in deciding whether this or that would be the area.

Q. Well, isn't it so that in at least one large area that you allocated in that way it was found that the timber on the ground didn't in any way correspond to your expectations?

A. In the English River or the Lake Sulphite.

Q. No, the English River? I understood that the timber stand was much less than anticipated from photographs. Wasn't that the finding?

A. Oh, I don't think it has ever been determined; not to my knowledge.

Q. I understood that it had been found that the photographs were rather deceptive as to the actual character of the timber there. You don't know whether that is so or not?

A. No, I don't.

Q. Then I gather from what you say that the evidence that has already been given, that we need extensive surveys of our forest resources, you agree there is still a good deal to do in that direction?

A. I feel satisfied that we know the quantity of timber in the province sufficiently well for administrative purposes.

Q. You think then that the photographs of an area are adequate for the purpose of allocation?

A. Where you are dealing in large areas if you know the extent of timber on an average per acre figure based on information which you may have in the vicinity I think it is sufficient applied to that area. You cannot narrow that down to small blocks of timber—there is no way of compensating. For instance, we know in the Clay Belt that probably the average timbered acre is around thirteen cords; well if you have an idea of the area of that timber and simply multiply by thirteen and it is a fairly large area I think that you will not be very far out.

Q. We have heard a good deal about the desirability of advancing work on these areas because of the importance of cutting the over-matured crop. Have you any reports worked out indicating the areas in which the tree crop is over-matured and requires cutting?

A. Most of our type maps indicate or give a rough idea of maturity.

Q. What do you say yourself about the importance of cutting matured timber and its effect on the forest growth as a whole?

A. Well, I think any forester will recommend that timber once it is matured should be cut; otherwise it goes back.

Q. Then is the decision to cut in certain areas based upon the recommendation of the foresters or based upon the application of the people who want to start cutting?

A. The pulp and paper companies under their agreement are required to file with the Department a plan of their operation. The Department here invariably refers that to the District Forester.

MR. COOPER: Q. Before you leave that question that Colonel Drew was asking about, how you estimated or arrived at the amount of timber, what is the cost of these ground surveys, to make a survey and find out how much timber is on a given piece of property? I don't mean in financing, I mean how do you go about it?

A. Our method?

Q. Yes. When you make a survey on the ground. I think you said that in 1920 or so you made a survey of a certain area.

A. Well, the best method as far as we are concerned is, where first you have photographed the area to get your topographic data, that is the lakes, rivers, and so on. We are fortunate in the Department in having a man who can sketch timber conditions accurately just by flying over the area and simply putting down on a map what he sees on the ground.

Q. Is it an expensive procedure, Mr. Sharpe, to do that?

A. No, it isn't. This photography alone will run around three to three-fifty a square mile.

THE CHAIRMAN: Q. Dollars?

A. $3 to $3.50.

MR. COOPER: Q. Is that a ground survey that you are telling us about or a ground cruise?

A. Pardon?

Q. Is that a ground survey where you actually cruise?

A. No. The preliminary work is to locate the timber.

Q. I beg your pardon?

A. The preliminary work is to locate the timber.

Q. I beg your pardon?

A. The preliminary work is to locate the timber and then follow that with ground parties to take samples.

Q. How did you do the Mississauga survey, for instance?

A. That was combined sketching and ground work.

Q. How did the cost run?

A. It was, oh, from nine to twelve dollars. We seldom spend more than two cents an acre.

Q. $9 to $12?

A. A square mile.

Q. You don't know the whole cost of that one particular survey, do you?

A. The Mississauga?

Q. Yes?

A. Oh, I would say forty-five to fifty thousand dollars.

MR. COOPER: Thank you.

MR. DREW: Q. Well now, Mr. Sharpe, would you say at the moment that there is a complete inventory of standing timber in Ontario?

A. Sufficient to say to anyone what our forest resources are. But when it comes down to management of areas, no, I don't think we have sufficient information, where you are directing operations as to where they would cut and where they may not cut.

Q. What would you suggest should best be done in those areas?

A. The first thing that has to be done is a plan of the area showing forest conditions. I wonder if I might illustrate that by a map?

Q. Yes, I wish you would, because what you are referring to now is from the point of view of practical operation. You say that there should be a plan of the area?

A. Yes.

Q. So that the cutting could be controlled, isn't that what you say?

A. Yes, sir.

Q. Yes, will you do that?

A. (Witness produces a coloured map): This plan on the wall, sir, is located between two of the Lake Sulphite areas.

It has first been scaled from the air and last summer we had a ground party in there making a careful estimate. Formerly this was held under license to the Abitibi Company who cut over. These hatched areas, the spruce and balsam pulpwood, what we are doing is cleaning up this cut over area. That is being cut by the Central Canada Forest Products. The operator understands now that he will not be privileged to continue into this site, into this jack pine, ninety-two years old. Over here is a stand one hundred and twenty-four years old and this is timber one hundred and forty years old (indicating). We consider it in the interests of the area for him to move his operations and clean up this before he takes any more timber and he is quite willing to work on that basis.

THE CHAIRMAN: Q. Where is the railroad on this map?

A. The railroad is not shown. There is the highway that runs, the Nipigon-Beardmore Highway, through here.

Q. Where is Beardmore?

A. Well, Beardmore lies down in here (indicating).

Q. Oh yes, I see.

A. When he comes to work of that kind our surveys are not in sufficient detail as laid out on that map.

MR. COOPER: Q. Has on all that territory the ground been surveyed to get that information?

A. The ground has been surveyed following the sketches.

THE CHAIRMAN: Q. What does that pink section show right on top of the dark green patch?

A. That is burnt.

MR. DREW: Then, with a map of that type, you can more effectively control the actual cutting to ensure continuity of growth; is that your idea?

A. Yes, sir.

Q. Then, when they go into that area marked in dark green which indicates two areas one of which is 120 years old and the other 140 years old, what method of cutting are they permitted?

A. We permit clear-cutting in there—and it is not on record, but a matter of discussion, that certain seed trees would be left.

In my opinion that area, if we could control fire, it would be well to cut it off and burn it because there is quite a high balsam content.

Q. So that area would be cut clean?

A. Cut clean with the exception of spruce, leaving a certain number of seed trees.

Since this sale is under review, in addition to the price tendered there are certain overriding charges. In other words no matter what a man would tender on that he would pay in addition fifty cents a thousand for spruce or jack pine; twenty-five cents a cord for spruce pulpwood and ten cents a cord for other pulpwoods. That money is to be used in the management of the area. At the end of this season's operations we have $2,700 and our intention is to try and clean up, by burning, some of the fire hazard which has been created on the area cut over last winter.

Q. When that dark green section is cut, what is the situation to be in regard to the rest of the area you have mapped?

A. It does not matter, because it is of fairly uniform age close south-west of it, from 90 to 100 years.

Q. Then how will you control the cutting in that area? I am now speaking as a matter of actual practice. How will control be exercised?

A. Through the district officer, his staff of scalers and inspectors.

Q. Will there be men in the area ensuring that the seed trees are left?

A. Whatever is laid down, yes.

MR. W. G. NIXON: Q. The cutting is according to regulations?

A. According to the regulations and the conditions of sale. Conditions of sale, of course, affect how operations are to be conducted.

MR. DREW: Q. Who was the purchaser of this area?

A. The company known as the Central Canada Forest Products Limited.

MR. SPENCE: This is a new experiment; it is an experiment or new idea; there is no other area treated like that.

THE WITNESS: We are operating in Timagami in that basis which involves some 5,000,000 or 6,000,000 feet of red pine. I think we have several examples.

MR. DREW: How extensive has been the use of maps of this kind in connection with sales of timber?

A. Well, it is comparatively recent. In the last few years. We started in 1935 in the Timagami section; that is within a provincial forest and comes under the Provincial Forest Act.

THE CHAIRMAN: Q. Part of the area covered in that map is also provincial forest?

A. Nipigon provincial forest.

Q. Nipigon provincial forest?

A. Nipigon provincial forest.

MR. DREW: You speak of tenders being submitted. Were they called for in this case?

A. Yes, sir.

Q. And this cutting is being done for what purpose; for sawlogs?

A. For the production of logs, ties, spruce, balsam, jack pine and pulpwood.

THE CHAIRMAN: Q. Does any mine timber come from that area?

A. Arrangement has just been made, Mr. Leduc, for an operator to go in and utilize certain timber just on the border line.

Q. Because their market is quite new?

A. Yes.

Q. Sturgeon River?

A. Yes, Sturgeon River.

Q. And Northern Empire?

A. Yes. I might say that we have a similar plan in mind for an area of 140 square miles near the north-west corner of the lake.

MR. DREW: Q. You have not gone to the extent of employing maps of that kind in connection with any of these larger companies?

A. No.

Q. Do not misunderstand me; I am not criticizing past practice, but I am merely trying to find out what would be desirable. Would you consider it desirable that this practice be adopted and always subject to funds being available?

A. I think, sir, that there is a chance that the Department might co-operate with the different pulp and paper companies, in the preparation of similar maps. We are just as interested as the company.

Q. In the long run even more so, but when you say "co-operate", how do you mean?

A. By participating in the survey.

MR. COOPER: Q. And by bearing part of the expense?

A. Bearing part of the expense and furnishing part of the men.

HON. MR. HEENAN: Q. Is it not a fact that large pulp and paper companies have their own forestry department?

A. Yes.

Q. Making their surveys?

A. That is true in many cases, yes.

MR. DREW: Q. Mr. Sharpe, has this been adopted as practice, or has it just been done experimentally in a few cases?

A. Well, it is not in general practice, but it is growing, getting more and more popular.

Q. And you think it would be desirable as a uniform practice, if it could be done from the point of view of having funds available?

A. When application is made for timber, there is a pretty careful survey made as to what the actual conditions are before it is offered for sale. If it is immature timber we turn down the application.

MR. COOPER: Q. But the companies make surveys, do they not?

A. Yes; they are making surveys all the time.

Q. And has the Department access to those surveys?

A. They are making surveys more to carry on their actual woods operations.

MR. DREW: Q. Their survey is from a different point of view of that of the Department. Theirs is from the point of view of being able to plan operations?

A. Yes.

Q. Their survey is more from the point of view of having cutting done on such a basis, and yours for the protection of forest wealth?

A. Yes.

Q. That is the difference in the two?

A. Yes.

Q. There is a different approach to it, although I do not suggest the companies have not that view in mind, but have you any recommendation to make as to changes which would be desirable from the point of view of practice, in extending the use of surveys of this kind?

A. No more than that I would like to see more and more of it done.

Q. A subject discussed here some time ago was that of the situation of Settlers' lands, Indian lands, Veterans' grants and Railway lands. In regard to the situation which exists on those various areas where there has not been the same control over cutting, have any surveys been made which would indicate the present situation on those particular types of cutting areas?

A. Not by our department.

Q. They constitute in the total quite substantial area, do they not?

A. I do not know the exact mileage. There are considerable areas of railway lands.

Q. In the case of those railway lands, can you say from the basis of any information on file in the Department, just what the present position is in regard to cutting?

A. No, sir. There are no operations conducted in the province without they get a permit, which is more or less a formality to know where operations are being conducted.

Q. Having obtained that permit, what control is exercised over cutting on that type of land?

A. None.

Q. None whatever?

A. No.

Q. If a permit is obtained, then they can go ahead and cut clean across that area, can they not?

A. Yes, sir.

Q. Have you any surveys in the Department which make it possible for you to say just what the position is in respect of the Settlers' lands, Indian lands, Veterans' grants and Railway lands at the present time?

A. There is nothing on Railway lands or Indian lands. We secured from the Spruce Falls Company, some very good information within the past year, showing the extent of clearing in the claybelt. That is a strip which parallels the Transcontinental Railway from about Fauquier to Hearst and these maps were prepared from figures, and show cleared land and various timber conditions.

MR. W. G. NIXON: Q. The regulations now call for a settler to do so much clearing each year. According to the statutes he is permitted to cut his timber, I understand. He must show so many acres of cleared land and he is allowed a permit to cut additional timber?

A. I think when he first starts in he may be given a permit to cut a certain quantity of timber, but he has to comply with the Settlement duties next summer. That is a Lands Branch matter.

MR. W. G. NIXON: Yes.

MR. DREW: Q. What I have in mind is that large areas have been granted to four different groups, namely, Railway lands, Veterans' grants, Settlers' lands and Indian lands and what I really want to get is first, in the Department at the present time, is there a comprehensive survey showing the situation on those lands?

A. No, sir. The only interest we may have is in regard to what timber may have been reserved to the Crown. On Veterans' grants the Crown has reserved the pine timber and that is the only thing we are concerned about.

Q. How far are those reservations checked in order to see whether or not they have been observed?

A. Well, perhaps just as much as any other Crown area would be checked.

Q. This is what I have in mind: We are considering a problem in respect of the first resources of this province. But there is a good deal of argument from time to time as to whether settlers' lands are really used sometimes for that purpose or whether they are not and as to whether Indian lands are really used by Indians or if others acquire the rights which are conferred or special kinds of

privileges and also whether veterans have done any cutting on some of these Veteran grants and also what rights should be permitted on railway lands. There is something there which requires consideration and it would seem to me in arriving at any conclusion on that matter, it would seem to me it is very necessary that there be information as to the present situation in these four different groups. Would you not think so?

A. I do not know whether I am prepared to offer anything very constructive along that line.

Q. I do not want to embarrass you because I recognize after all yours is purely the technical point of view and it is not for you to express opinions in regard to policy.

A. Practically all the railway lands, while the pine may be reserved to the Crown, there are very few cases wherein pine exists. Take the Algoma Eastern land south of Hearst, it is principally spruce and balsam and species with which the Crown has nothing to do, the same as in private land.

Q. This is what seems to be one of the difficult questions in connection with it. There is a great deal of discussion about whether or not the special rights given in particular cases such as in these four groups which I mention were abused or whether they should be controlled and having regard to the fact, considering the whole question of the administration of the Department which controls the forest resources. What I am concerned with is where does one go to find out what the actual situation is in regard to any one of those groups?

A. I do not think the information exists; it will have to be found out.

Q. You do not think it exists?

A. No. In respect of the conditions on Veteran or Indian lands,—we do not know what the conditions are.

THE CHAIRMAN. Q. Take the ten blocks of land between Fort William and Sioux Lookout which belong to the Canadian National; do you know if the railway has any information as to timber resources of those areas?

A. I would think if anyone had the information it would be the Abitibi.

Q. If anyone had the the information it would be the Abitibi?

A. Yes.

MR. DREW: Is it not a fact to your knowledge that a great many of the Settlers areas as well as Indian lands have been completely cut over by companies which acquired the rights from the settlers or the Indians to those areas? You must know whether or not that is so from your personal experience?

A. I have none. Take the case of the Abitibi Company with its mill at Smooth Rock Falls. They acquired a great number of lots—Veteran grant lots—which they regard as pulp concessions. It is the source of pulpwood; they hold it in their own name.

Q. And in that case subject to statutory regulation and otherwise they are free to go ahead and cut clear. Do you think from the point of view of forestry practice that that is a situation which it is wise to obtain?

A. Well, it just comes down to the control of privately-owned timber.

Q. I do not want to press the point with you, Mr. Sharpe, because it probably involves more the question of policy on which you should not be asked to express opinion, but at any rate you can say definitely that at present there is no accurate or comprehensive survey of the situation existing on Settlers' lands, Indian lands, Railway lands and Veteran grants?

A. Not that I know of in the Department.

Q. Do you know of any other place they would exist?

A. The only other place would be the holding company.

THE CHAIRMAN: Q. The Abitibi has the cutting rights on this land between Sioux Lookout and Fort William owned by the Canadian National?

A. Yes.

Q. And they also have some cutting rights on the Algoma Central land?

A. The Algoma Central Railway lands, yes; they have a ninety-nine year lease or something ——

Q. Are there any other companies interested in railway lands?

A. Yes. I cannot give you their names, though.

Q. There is one company which controls the lands formerly granted to the Algoma Eastern?

A. Up near Gogama.

Q. Yes?

A. They are land-holding companies. I have heard their names but I cannot remember them.

Q. Trans-Continental, or something?

A. That is the Hearst area—Trans-Continental Timber Company, but there are land-holding companies up around in the Sudbury district.

MR. COOPER: Q. What about the Pine Land Timber Company; it got some of the old grants to the Algoma-Eastern?

A. That was under the Canadian National. I think that area was a timber licensed area to the Canadian National.

MR. DREW: Q. Mr. Sharpe, in the case of cutting from these four groups of lands which I have mentioned, they must obtain a clearance before they can export; is that not so?

A. Yes.

Q. How do they obtain that clearance?

A. Through the District Officer.

Q. What information must the District Officer have?

A. Simply assurance as to where the timber is cut—providing it is exportable, of course.

Q. But you are aware that there is a very large amount of export from those lands?

A. Yes, sir; there is some; I would not like to say how much.

Q. It is a very substantial amount which is now coming from those particular lands. Let us get the actual practice.

Where they are exporting they must get a clearance and what is the actual practice by which that clearance is obtained?

A. From private or Crown lands?

Q. Private lands. I am talking about lands which are under private control.

A. He applies to the nearest District Forester and takes his affidavit as to the quantity he is exporting and from where it has been cut.

Q. Then, is there any inspection conducted to determine whether or not cutting is being carried on in that area?

A. Inspection is carried on quite often in the summer-time through the ranging staff.

Q. Then the clearance is given, at any rate, merely on the affidavit of the person exporting?

A. Yes, sir.

Q. Have you had any occasion to find out whether there has been any abuse of that privilege?

A. Well, I know there are occasions—they are rather trivial—where they will get over their land on to Crown property. If they are caught the penalty is imposed.

Q. If they are caught, you say?

A. Yes.

Q. Is it not a fact that cutting has been carried on in such a manner in the neighbourhood of a larger centre such as Fort William or Port Arthur in a way that it is necessary to go back some distance now for merchantable timber?

A. Oh, yes. The cutting has been very active around these centres.

Q. Do you think that is sound forestry practice?

A. I think it is pretty well tied up with land settlement.

I just had occasion the other day to look into an application of a man who wanted to operate another sawmill in the vicinity of Fort William. I think there are already 76 little mills in there, so we did not give him any encouragement. But, that is what follows, often, near a centre like Port Arthur or Fort William. Settlement gets in around there and a lot of little industries spring up which soon depletes the area of its timber.

Q. Is it not a fact that by permitting cutting close to the larger centres we have gradually increased the cost of timber very considerably?

A. Oh yes. The nearer your timber is to where you are going to use it, the less costly it will be.

Q. Looking back at the picture, would it not have been very much better—I only ask this question having regard to what may be done in the future—if the method of cutting had been enforced which would have distributed the cutting over a large area?

A. Oh, I quite agree with that but I also realize that to do that will require considerable extension in the way of roads and means of access to timber.

Q. Is it not a fact that if you permit clear cutting close in you gradually increase the cost of timber to a point where it may become uneconomic to have it delivered?

A. That would be a very gradual process because you are making your improvements just ahead of you all the time.

THE CHAIRMAN: Q. Otherwise you would have to make all the improvements the first year?

A. You would have very costly improvements to get to the back end of your watershed to start with which of course is essential if you are going to cut timber when it matures—at the proper time. All these areas will have to be accessible.

MR. DREW: Q. You have grants now on a large number of watersheds which go in for some distance. Is not the tendency to cut—and it is a very natural tendency—nearer the mouth of the watershed, fairly clean and keep on moving slowly back?

A. That is the common practice.

Q. Would it not be better practice to cut an average cut over the watershed even though the price is higher now? Would that not maintain a physical average of price?

A. I think it would be and it would be in the interests of the forest, but whether or not it is economical, I do not know. I have no cost figured as to what is actually involved.

THE CHAIRMAN: Q. I do not want to ask you this question in view of what you have just said, but perhaps you can answer it. Do these operators not pay for their improvements out of the profits they have made the preceding season?

A. Presumably so, yes.

Q. So if they had to make most of the improvements the first time to get access to the furthest corner of their limits they would have to make a very considerable capital investment to start with.

A. It would be very heavy, yes; and it could be quite heavy.

Q. Pardon?

A. It could be quite heavy.

Q. But the cost of those improvements would have to be charged yearly against the price of the lumber?

A. Yes, sir.

Q. I mean the interest on the money invested and the depreciation, when I say, "cost"?

A. I understand that.

MR. DREW: Q. How do you actually indicate to the companies what they may cut?

A. In the case of pulp and paper companies, for instance?

Q. Yes? Take the pulp and paper companies for a start?

A. There is always a formal application made by the company, accompanied by a plan showing where they intend to operate.

THE CHAIRMAN: Q. When do they make that application; at what time of the year?

A. In August and September for the winter operations, and usually in March for sap-peeling operations.

MR. DREW: Q. And what is your method of checking the cut?

A. The head office—it is very much a matter of formality—if everything looks reasonable they sanction the operation, but it is then referred to the District Forester, and he is given the privilege of objecting or sending in any further recommendations. It is up to him to keep track of things on the ground.

Q. How far do you check, for instance, as to the size of trees which are cut and so on?

A. Well, only through the District Officer. If a company wanted to cut an immature stand of timber, he has the privilege of saying, No. That does not get back through here again to any extent.

Q. Has that been fairly well enforced up to the present time?

A. Well, we have no reason to doubt it. I could not say. Perhaps we need more staff to enforce a lot of those things than what we have.

Q. I am sorry; I do not hear you?

A. I say, we might need more staff than what we have, to enforce a lot of these things and to carry them through.

Q. Do you feel there is any part of the situation at the moment which requires an increased staff?

A. I would like to see a larger field organization.

Q. What is that based on?

A. Trained men.

Q. What is that?

A. Trained men.

Q. Have you anything to do with fire control?

A. No, sir.

Q. Or fire protection?

A. No, sir.

Q. Under whom does that come?

A. Mr. Mills handled that until he enlisted the first of December—Mr. C. R. Mills,—under the Deputy.

Q. Who handles it now?

A. Just a short time ago they turned it over to Mr. Brodie, to look after the head office work—Mr. J. A. Brodie.

Q. He handles the head office work of fire protection?

A. Yes. The only place we are involved in protection is where we incorporate special clauses into conditions of sale dealing with protection, which we have done in quite a few instances, requiring operators to burn bush.

Q. Can you tell me of the present regulations regarding the cutting of timber on mining claims?

A. Well, that is governed entirely by the Mining Act.

Q. What is that?

A. That is governed entirely by the Mining Act.

We have to remember two dates; that is, 1869 and 1918. Prior to 1869 all timber went with the patent. Between 1869 and 1918 all timber other than pine went with the patent. Since 1918, the patented owner of a mining claim has no right to any timber, but it is required in the Mining Act that where timber is provided for the development of the property, the Minister of Lands and Forests can authorize them to cut that timber. If it is to be cut for resale, it is treated the same as any other commercial operation and regularly offered for sale.

THE CHAIRMAN: Q. Or if it is cut for use as fuel, the mines have to pay the stumpage and other charges only?

A. Yes.

MR. DREW: Has there been any occasion to prepare a report in the Department on the cutting of timber on mining claims, as a separate report?

A. No, sir.

MR. SPENCE: Some of it is exportable.

THE CHAIRMAN: That would be the old mining locations, about 65 or 70 years ago.

WITNESS: I would say that in claims staked out and recorded prior to 1918, it would be exportable the same as privately owned land.

MR. SPENCE: Is there a check-up on each limit by your scaler? Does he report the size of the logs and the shape of the timber cut?

A. Oh, yes, that is how we fix our charges.

Q. That is how you know your revenue; whether there are so many cords of balsam, and so on?

A. Yes.

MR. DREW: How are the scalers paid?

A. So much per day.

Q. Who pays them?

A. There are two systems. The Department pays them, the Government pays them. But in sales made, I would say, from about 1903 one-half the scaler's wages are charged back to the licensee. On the old lump sum bonus sales the licensee pays 100 percent of the scaler's wages. That is charged along with the timber account.

Q. Are there any regulations so far as the Department is concerned that the operators must take care of the board and lodgings of the scalers?

A. There is no place you will find that in any of the Acts or regulations. There are letters that have gone out from the Department over the signature of the Deputy Minister requiring licensees to provide suitable board and lodging.

Q. Does that prevail extensively?

A. If the accommodation is not suitable, our men are privileged to get lodging if there is any available, wherever they like, and we charge it back to the licensee.

MR. SPENCE: Have the scalers a license?

A. All scalers measuring Crown timber have to have a license.

MR. COOPER: You have a system of check scaling, have you not?

A. Yes, all the scaling is check scaled as well.

Q. I beg your pardon?

A. All the timber that is measured by a scaler, there is a check scale goes with it.

Q. Are all the scalers appointed by the Government?

A. Each year, yes.

DR. WELSH: Under examinations each year for scalers?

A. Not each year; depending on our requirements for scalers. If we are getting short, we may have several examinations scattered here and there over the province.

Q. Are they usually resident scalers, or have you a supply of scalers?

A. A lot of our men are resident in the district in which they work.

MR. DREW: Is there any question in your mind about the wisdom of having scalers partly paid either directly or indirectly by the licensees?

A. I do not think I could give any answer to that.

MR. ELLIOTT: Scalers usually work in pairs, do they not?

A. Except in the measurement of pulpwood. With timber they always work in pairs.

MR. SPENCE: As a rule these contractors obtain a bush scale, and is that estimated on the scaler's scale, your men's scale or—

A. The bush scale could be the scale by the Department's own men. We furnish the scale to the operator as soon as we know it.

MR. DREW: Having regard to what you have already said about reports in the Department, I do not know how far you can go on this, but, as I understand it, the grants made to the railways some time ago had as part of their purpose the idea of placing settlers in that area. Now, is there any report in the Department from which we can ascertain what results if any have been achieved in that direction by the grants made to the railway companies?

A. Oh, yes, I think that could be furnished to you. I do not know of any settlements on railway land.

Q. You what?

A. I do not know of any settlements on railway land unless it would be the town of Sioux Lookout. I believe it has been blocked in very close to it.

Q. So that generally you do not know of any settlers—

A. I do not know of any settlement on railway lands.

THE CHAIRMAN: You have in mind cultural settlements?

MR. DREW: Oh, yes.

Q. Have you considered whether if has yet reached the point of being practicable to go to the extent of marking trees for cutting as they have done in the Scandinavian countries?

A. I think there are places where we could do it and should do it. I hope we can do it in that area that we referred to on the map a short time ago.

Q. You think it would be a good practice?

A. Yes. We are doing that in Timagami with pine. We are marking trees on all the reserved areas along the highways, around lakes and portage routes where we consider they should be cut.

Q. Well, always having regard to the question of departmental expense, would you consider it a desirable practice to be adopted generally?

A. The forest itself decides that.

Q. What?

A. The forest itself pretty well decides how you should handle it.

Q. I do not understand what you mean.

A. The forest itself, I think, dictates its own policy.

THE CHAIRMAN: You mean according to the age of the trees?

A. You wouldn't serve any purpose by marking jack pine, for instance, because jack pine does not scatter seed; it will only release its seed when it is subjected to heat. Spruce, it is a different matter—white and red pine. We know that by removing the fire hazard that we improve the natural reproduction in white and red pine stands and leaving seed trees. And the trees that we are leaving are trees that are of no particular interest to the operator; they are obviously defective and if cut down would be left on the ground, in all probability, or else they would produce a very low grade of lumber. So they are being left standing, and I think we are getting results.

THE CHAIRMAN: We will adjourn until to-morrow morning at 10.30. We are now going to have a private meeting of the Committee to discuss the length of the inquiry and so forth.

At 4.30 p.m., Monday, April 29th, 1940, the Committee adjourned until Tuesday, April 30th, 1940, at 10.30 a.m.

TWENTY-SEVENTH SITTING

Parliament Buildings,
Tuesday, April 30th, 1940

Present: Honourable Paul Leduc, K.C., Chairman; J. M. Cooper, K.C., M.P.P.; Colonel George A. Drew, K.C., M.P.P.; A. L. Elliott, K.C., M.P.P.; Honourable Peter Heenan, Honourable H. C. Nixon, W. G. Nixon, M.P.P.; F. R. Oliver, M.P.P.; F. Spence, M.P.P.; Dr. H. E. Welsh, M.P.P.

MR. SPENCE: Before calling witnesses, there is one matter to which I would like to refer and which seems to me to be very important.

To date, we have had practically all those interested in the timber resources, with the exception of the settlers or farmers of northern Ontario. They contend that there is certainly something vital and of great importance to them in the timber policy of the province. I do not know of many organizations up there, but I do know of one in Thunder Bay—the Municipal League. They have had

an organization for some twenty years, started by Judge Dowler twenty years ago. There are two representatives from each township in the Thunder Bay district. They hold spring and fall sessions; one session at Port Arthur in the spring and one session at Fort William in the fall. They have had their session this year.

The matter was brought up, and they have telephoned me that they are going to send down a representative. The unfortunate part of it is that the farmers and settlers are not able to finance it. I do not know, but I would like to see the Committee finance it. I think it is in the interests of the members of the Committee and the Government that we have their side of the timber question as to just how it affects them—the policy—and what they can do.

HON. MR. HEENAN: Well, Mr. Spence, are they not in this position: You speak about the settlers in northern Ontario, but you really mean the settlers in the Thunder Bay district?

MR. SPENCE: Yes, but I think it would be the same in all parts so far as the timber policy affects the settler or farmer.

HON. MR. HEENAN: I cannot see any objection, except that there are a good many settlers' organizations throughout northern Ontario. It is very questionable as to whether or not the present policy, while it affects one body of settlers in the Thunder Bay district in one way, it affects the settlers in their own parts of the north in just the opposite way.

Then we have a number of workers' organizations. For instance, there are resolutions which I have been getting for a number of years. Take the Trades and Labour Council in your own district; the Trades and Labour Council at Fort William are opposite in their timber views. The Trades and Labour Councils at Fort William and Port Arthur are only six miles apart.

MR. SPENCE: Less than that.

HON. MR. HEENAN: If they could only get together on the timber policy, it would be of some value. There has never been a request to me, but there is the intimation, "We cannot afford to pay our way down, and we think this Committee should find some ways or means of paying our way down, in order that we may present our position to this Committee." And I have thought that, rather than run into that and listen to the different views of the different parts of northern Ontario, it would be better if they were to send in some kind of brief.

MR. SPENCE: I thought of resolutions. On phoning last night, evidently they would like to come down here and present their views to the Committee.

HON. MR. HEENAN: Let me give you an illustration and you can decide what you are going to do:

The Trades and Labour Council at Port Arthur are in favour of exportation of pulpwood, because they are interested in it and make their living in it, but the Trades and Labour Council at Fort William—less than six miles away—are opposed to it because they are making their living in wood. That is one case.

Then the settlers up in the clay belt, around Hearst and one thing and another, could not live unless they cut wood and export it. The settlers at Fort William and Port Arthur say, "If you cut out the exportation from Crown lands we will sell more from our settlers' lands." So, we could sit here for almost a year listening to it, and we would not know any more than we know now.

THE CHAIRMAN: We would probably have different points of view from different points in Ontario.

MR. SPENCE: My point is, that as it is important and vital to them, they should not be left out of the picture altogether. We have had everyone else representative of the timber business except settlers and farmers. They are the pioneers, and most of them are being accused of being timber or winter farmers and they have some rights. I grant you, this municipal league may be only one of the organizations up there.

MR. ELLIOTT: I think there is a lot of merit in what Mr. Spence is urging, because the regulations in existence now covering the disposition of lands to settlers have been in existence for a great many years. Roads have opened new territory, people are trying to make a livelihood in different localities where full agriculture cannot be had and it might well be that some change can be made in the policy of regulations in the light of what we might hear, which would be very beneficial in the administration of the Department.

DR. WELSH: Along that line, take the area down in the northern part of eastern Ontario where they are still trying to carry on perhaps in a much similar way, they have a really acute economic problem, and I would certainly like to have someone from that area brought in to present the picture and show the necessity, not only for reforestation, but to complete the picture as far as their economic situation is concerned.

After all, in the northern part of Hastings, that is all they have to depend on. Really the poor people depend on certain operators for their very existence. There is no organization or anything like that, but I have in mind a couple of men, Mr. Rollins of Coe Hill and Mr. Gunter of Princess Lake, now in South Renfrew. I do not know whether or not they would be prepared to pay their ways up here.

THE CHAIRMAN: You will have men from all areas in the north and some from eastern Ontario. You will sit here for another couple of weeks, and we will have to pay the expenses of all those men. I understood that to-day we were going to hear witnesses deal with the administration of lands. They are available; suppose we hear them first? We have witnesses from the Department who will be able to give evidence as to the administration of land as distinguished from forests. Suppose we hear them first?

MR. SPENCE: I just wanted to bring that matter up.

THE CHAIRMAN: But suppose we hear them first?

DR. WELSH: Yes.

MR. ELLIOTT: I would like to move, seconded by Mr. Oliver, that all regulations issued pursuant to any Act for order-in-council governing the sale or

disposition of lands by the Department, be produced as exhibits. This resolution is in the regular form.

THE CHAIRMAN: It is moved by Mr. Elliott, seconded by Mr. Oliver, that all regulations issued pursuant to any Act or order-in-council governing the sale or disposition of lands be produced as exhibits.

HON. MR. HEENAN: For any particular kind?

MR. ELLIOTT: I think they are all available. They have them in printed form, and send them out in general regulations and there are some special regulations regarding summer resort properties.

THE CHAIRMAN: You have in the motion "pursuant to any Act for order-in-council." I believe, as a matter of fact, in most cases regulations are made by order-in-council.

MR. ELLIOTT: That is so. Probably it is not worded correctly.

HON. MR. HEENAN: What I mean is, is there any particular date—that is back date—or for all times?

MR. ELLIOTT: I do not think there are very many of them. I am referring to the general regulations, of course.

THE CHAIRMAN: You mean regulations in force at present?

MR. ELLIOTT: Yes, such as the regulation regarding the sale of summer resort properties.

THE CHAIRMAN: You mean lands as distinguished from forests?

MR. ELLIOTT: Yes.

HON. MR. HEENAN: Suppose you put Mr. Ferguson in the box and ask him what we have and all that sort of thing.

MR. ELLIOTT: I think we should have the regulations before us, and if they are in printed form they can be handed to the members of the Committee. It would then be an easy matter for us to discuss the question of the regulations, and the procedure which now governs the sale of different land.

THE CHAIRMAN: Suppose we adjourn consideration of this motion until Mr. Ferguson is in the box, and we can then find out what there are and they can be produced?

HON. MR. HEENAN: I will call Mr. Ferguson now.

ALLAN FERGUSON, Sworn.

HON. MR. HEENAN: Q. Mr. Ferguson, how long have you been in the Department?

A. Since December, 1915.

Q. Since December, 1915?

A. Yes.

Q. Were you in the public service before that?

A. No, sir.

Q. 1915 was your beginning?

A. Yes.

Q. Have you been in the one Department all the time?

A. Yes, sir, in the one department since 1915.

Q. What is your title now?

A. Assistant Deputy Minister.

Q. Of lands and forests?

A. Of lands and forests, sir.

Q. Assistant Deputy Minister of Lands and Forests?

A. Yes, sir.

Q. You have heard what Mr. Elliott asked—a few minutes ago—with respect to regulations by order-in-council. Are they readily available?

A. No. I could have copies manifolded and present them for to-morrow's sitting.

THE CHAIRMAN: Q. For the sitting to-morrow?

A. Yes.

MR. ELLIOTT: Q. You have regulations in typewritten form which you send out with applications?

A. They are not really a copy of the regulations; they are just a summary. I will give you exact copies.

THE CHAIRMAN: Mr. Elliott desires that the Department produce all regulations issued pursuant to any Act or order-in-council governing the sale or other disposition of lands as distinguished from forests. Is that right, Mr. Elliott?

MR. ELLIOTT: That is right.

THE CHAIRMAN: Q. So, can you collect all the regulations and file them?

A. Yes; I will try to have them ready for to-morrow.

THE CHAIRMAN: They will be Exhibit No. 40.

EXHIBIT No. 40—Filed by Mr. Ferguson: Regulations issued by the Department of Lands and Forests concerning the sale or other disposition of lands.

THE WITNESS: I might say that I have copies of most of them here if you would like to work in them this morning, but I have not enough to distribute to the Committee.

MR. ELLIOTT: Yes. I would like to see them, Mr. Ferguson.

Q. You have to do with both lands and forests?

A. No, sir; principally lands; almost entirely lands.

Q. Mr. Draper is the chief clerk of the Lands Branch?

A. Mr. Draper is the chief clerk.

Q. And he supervises in the main a large amount of the work having to do with the sale and leasing of lands?

A. He does.

Q. The files and records in reference to the lands of the province are kept here at the Parliament Buildings?

A. We have a central filing system in the Department.

Q. You have a central filing system in the Department and all applications are made directly or indirectly to be disposed of in the Department?

A. Files are disposed of, yes; file rulings made, yes.

Q. In other words, the administration is centralized in the Department at Toronto?

A. I would say so.

Q. Has that always been the case?

A. During my term in the service it has.

Q. I believe there was a time when the files and records were kept at district offices years ago?

A. Not to my knowledge.

Q. Not to your knowledge?

A. No.

Q. Would I be correct in saying that there was a duplicate system where the records were filed at the district offices?

A. No, not to my knowledge. The agents still have filing systems. Each agent has a filing system and copies of all instructions and rulings from the Department.

Q. Of records coming to their hands?

A. Yes.

Q. They have not the original records?

A. No.

Q. There used to be an established district officer who has been abolished. District offices in various parts of the province have been abolished through the years where there were Crown Timber agents, as they were called?

A. I am not just sure about that question.

Q. There used to be Crown Timber agents with offices in various centres of the province and there still are but lots of them have been abolished for some few years?

A. The service was consolidated.

Q. Pardon?

A. The service was consolidated.

Q. That is, lands and forests?

A. There was a readjustment of field administration.

THE CHAIRMAN: Q. But you closed some of these offices. I remember we used to have a Lands and Forest office in Ottawa some twenty years ago. You must have closed some of those offices?

A. We had a Crown Timber agent in Ottawa.

Q. Named Mr. Knowles?

A. That is the gentleman.

Q. But that office was closed?

A. Yes, that office was closed.

Q. And there are probably some others in the province which were also closed?

A. There was a general readjustment of field administration.

MR. COOPER: Q. There used to be a Crown Land office and Crown Timber office, but now—

A. They are amalgamated; that occurred in several agencies, yes.

MR. ELLIOTT: Q. As a matter of fact, as a result of the lands being cleared the work decreased greatly in reference to the timber branch in certain parts of southern Ontario. I understand your Crown Timber offices used to be very busy but that the work decreased a great deal because there was a decrease in timber operations?

A. Well, I have nothing to do with timber. I could not speak of that.

Q. Of course you are the assistant Deputy Minister and you have been in the Department long enough to know whether the work has decreased in reference to the administration of timber branches in southern Ontario?

A. In southern Ontario?

Q. Yes?

A. Yes; naturally it has, because there is not the extent of lumbering operations there were years ago.

Q. There has been a very great increase during the years of applications having to do with lands for summer resort purposes, cottages, hunting camps and so forth?

A. There have been, yes; the tourist trade is increasing.

Q. And it has been steadily increasing?

A. Yes, has been.

Q. As the result of the development of our roads in many cases opening new territories?

A. Considerably.

Q. Pardon?

A. Considerably owing to the construction of roads opening up the territory.

DOCTOR WELSH: Q. Can you give us an idea of the number of applications per year?

A. For summer resorts?

Q. Yes?

A. I can tell you the number of parcels I have disposed of year by year by looking up the annual reports. I was thinking of the farming lands. I have them here. I have not the summer resorts; that is, I have not them before me now.

MR. ELLIOTT: Q. Are they shown in the Annual Report?

A. They are, yes.

Q, Have you it with you?

A. Yes, I have.

DOCTOR WELSH: Q. Does it also show the amount of revenue?

A. It does, yes.

Turn to page 65 of the last Report, Mr. Elliott. Oh, I do not think you have the last one; that is the year before.

MR. ELLIOTT: That is 1939?

A. Would you like 1939?

Q. What have you there? Can you answer the question?

A. Pardon me?

DOCTOR WELSH: Q. My question is as to the number of applications and the approximate revenue?

A. For summer resorts alone?

Q. Yes, for summer resorts.

A. I have not them totalled, Doctor Welsh; I have them by sections and districts. Algoma, Cochrane, Essex, Haliburton and various districts of the province. I have not the grand total here.

THE CHAIRMAN: Q. What about page 67?

A. I have on page 67. It is given here.

Q. Approximately 198.956?

A. Yes.

Q. That is the number of acres sold?

A. Yes.

Q. On page 69 the total acreage of lands sold and patented is what?

A. Number of acres sold 213.949 and number of acres patented 259.61.

MR. SPENCE: Q. During the year?

A. That is one year.

MR. ELLIOTT: Q. 213.949, and what is the other figure?

THE CHAIRMAN: 199 roughly; 198.956.

Q. Those are the lands sold?

A. Under summer resort regulations. That is sold.

MR. COOPER: Surely that is not for the whole province?

THE CHAIRMAN: Q. Generally speaking the policy of the Department is not to sell those lands?

A. In the older settled parts we have no objection to selling; in the more isolated and distant parts of the province—the newer parts—we prefer to lease.

DOCTOR WELSH: Q. Why do you adopt that policy?

A. There are two reasons in my opinion. One is the consistent revenue year by year, and the second is that the province still has control of the land.

MR. COOPER: Q. Is it not a fact that a man does not feel like putting a very big investment into a property unless he has title to it?

A. Some feel that way. We have not made tremendous objection to them.

MR. ELLIOTT: Do you sell island lake lands to some and lease to others?

A. Not generally speaking.

Q. But you can and you do?

A. Yes.

Q. You can do that?

A. Yes.

Q. And you do?

A. We do occasionally.

Q. Who exercises the discretion as to whether you should sell a particular individual land or lease the land?

A. Myself, as a rule.

DOCTOR WELSH: Q. For how long is the lease?

A. Mostly license of occupation.

THE CHAIRMAN: Q. On page 71 of your Report, Appendix 14, I find in reference to licenses of occupation, Mines 58 and Lands 368. Would these licenses be for summer resort purposes?

A. I think that would be for everything, Mr. Leduc.

Q. For everything?

A. Yes; that is for everything.

MR. ELLIOTT: Q. What basis do you use in order to determine whether you should sell or lease a particular individual land?

A. My practice is to consider just generally, how much Crown land we have in the immediate vicinity. If there is a nice block of Crown land and none of it disposed of, I naturally hesitate to sell and prefer to give a license of occupation.

Q. On what estimation do you base your finding?

A. On our office plans.

Q. Any other estimation?

A. Our land rolls if necessary.

Q. With that system, I think you agree that you might sell a piece of land this year to one man, and next year refuse to sell another individual land and compel him to lease it. That happens?

A. No, not generally. We might offer a man a license of occupation, but if he has a bona fide reason for sale to him we are open to consider selling. It is not a hard and fast rule.

Q. I know it is not a hard and fast rule, but do you not think that leads to discrimination in favour of or against certain individuals?

A. No, sir; absolutely not so far as I am concerned. So far as I am concerned there is no discrimination whatever; they all look alike to me.

Q. It leads people to say and to believe that the Department is discriminating in favour of or against certain individuals?

A. Probably.

MR. COOPER: Q. Which is the most expensive; to hold the license of occupation or the lease?

THE CHAIRMAN: To the public or the Department?

MR. COOPER: To the public.

THE WITNESS: Our minimum price for Crown land, if we sell, is $5.00. We may go as high as we wish, consistent with the value of the land. $5.00 an acre.

DR. WELSH: Q. Who gives you this information and who values the land?

A. In many cases we ask the local officer to inspect and put a valuation on it. With others, occasionally, in order to have the cost, we are guided by what we sell in adjacent parts of the forests.

MR. ELLIOTT: Q. In reference to the fixing of price, both for leasing and for the sale of land for summer resort purposes, do you take the position that on certain lakes there are certain lands available for sale, and you fix the price on the basis of so much per 100 or 200 feet?

A. It is on an acreage basis.

Q. We will say the public wants to buy it on the frontage basis. They do not as a rule buy land by the acre for summer resort purposes; they do not want 100 or 200 feet frontage?

A. Our regulations are based on the acreage basis.

Q. But the applications are not based on the acreage basis. I see many of the applications stipulate that the applicant wants 100 or 200 feet frontage, as the case may be?

A. If he wants 100 feet frontage he has to take 200 feet in depth. The frontage cannot be shorter than possibly half the depth. We compute the price on the acreage basis, not by the footage.

Q. Do you fix the price if there is certain tourist development on a lake uniformly for all the land on the water?

A. No.

Q. Suppose a man makes application to purchase land with a frontage of a 100 feet, you have told us you arrive at some basis for determining the price, having regard to the information in your hands or reports from the district officer, but if someone else goes to buy land adjacent to him, on what basis would you determine the price the next man would pay?

A. If we are in doubt, we would probably send the inspector in to look at the parcel and fix a price. On occasions, we have fixed the price by judging what we charged for contiguous or adjacent forest.

Q. I am informed that some times you charge the second man not what you charged the first man the previous year?

A. The previous year?

Q. Yes.

A. I have no knowledge of a smilar case.

Q. Were you ever increasing prices?

A. We are increasing from time to time. As the value of the land goes up, the value is increasing.

Q. If one wants to determine the amount he would have to pay for a location on a certain lake how would he find out what he would have to pay?

A. The individual?

Q. Yes?

A. By writing to the head office of the Department.

Q. And would he be told what he would have to pay?

A. If we knew we would tell him, yes. If not we would have our inspector look it over on application.

Q. That price might not be the same as obtained on another lot?

A. Probably not.

Q. And if he had a friend coming from another city in the United States and he made application for a lot, his price might still be different?

A. It might be, yes. What I mean by that, Mr. Elliott, the shore line might vary; one might be high and rocky with no beach, another might have a good beach and good boathouse site.

Q. I am going to suggest there are cases where you increase the price probably the following year—if a man makes application and he builds a cottage and somebody comes along the following year, you will increase the price?

A. No, I wouldn't say we would.

Q. Do you say you never have done that, Mr. Ferguson?

A. No, I wouldn't say that I know of a case.

Q. Where you charge a man $50.00 for a certain amount of land, and as the next year comes around somebody would make application and you ask twice the amount?

A. I would have to know the case. We probably had a reason.

Q. We will not give the individual case?

A. No.

Q. Under the system you have employed now to fix prices that could happen?

A. It could, yes. I mean by that, Mr. Elliott, no two inspectors or no two cruisers or no two individuals have the same conception of the value of land.

Q. I don't think that cuts any ice at all, Mr. Ferguson; I have reference to lakes where the lots are adjoining and similar areas where there is little difference. Don't you think, Mr. Ferguson, that you would promote the sale of lands if you had a survey made of the lakes—I don't mean an Ontario Land Surveyor's plan, but if you had a report made on the lakes and then you fixed the price, that people would have to pay for lots one hundred or two hundred feet frontage, as the case might be—they might vary slightly, having regard to other locations on the lake?

A. Yes.

Q. And then people making application would know in advance what they would have to pay for a lot?

A. We do that, Mr. Elliott, repeatedly, where we subdivide the shores of some of our principal lakes.

Q. But where you haven't got them subdivided—there is only a very small percentage of the land available if it is subdivided?

A. I feel myself, we would be quite prepared if there was any lake suggested to our Department that it would be possible to look over for disposal, we would be glad to do that.

Q. Don't you think you should do that in other cases?

A. An extensive plan?

Q. I don't say a plan, but just to get a report upon the lakes, so that you could advise the different officers and people generally, what they will have to pay for cottage sites?

A. It has its good features, yes.

Q. Why I say that, Americans come over to Ontario, they have friends with cottages here, they might negotiate with some settler or builder to erect a cottage, but they can't find out what they will have to pay for a lot?

A. If any member has any particular lakes in any particular township in his riding, I think I am free to say that we will be glad to inspect the lake generally, and fix a general price.

Q. Well then, Mr. Ferguson, I am just pointing out that under the system you now have, it leads to charges of discrimination, although there is no basis for it; at the same time, if you had a rigid policy, then the people would all feel they were being treated alike, and it would also save getting valuations in every case?

Isn't that so? Wouldn't it save many reports and inspections and determining the prices when each application is made, if you had fixed in advance the price to be charged?

A. It would save a great many inspections.

Q. Then, Mr. Ferguson, I understand that oftentimes people make enquiries as to what they might have to pay for a lot, and then you have an inspection made and report—that is your practice, isn't it?

A. Yes.

Q. And then in a great many cases they don't buy when you advise them the price, isn't that so?

A. I won't say a great many, no. There are occasions when they are not interested when we mention the price, but I know of very few cases where they declined to purchase because they thought our price was too high—very few.

THE CHAIRMAN: Q. What would be the maximum charge for a cottage site of say, one hundred feet frontage by two hundred foot depth?

A. I would say our average price, Mr. Leduc, is $25.00 an acre, for our better lands, some bush on it.

Q. So that for a plot of land size 100 x 200, that would be a little less than half an acre, that would be about $12.00 or so?

A. Yes.

DR. WELSH: Q. Is that in northern Ontario or the northern part of southern Ontario?

A. I am speaking of northern Ontario. That applies in the northern part of southern Ontario, near Hastings.

Q. I think that is very low, because I happen to know of a site where the original price was $200 an acre and now probably a hundred dollars. I think you are low?

A. $200?

Q. Yes?

A. Where was that?

HON. MR. NIXON: Hastings?

DR. WELSH: No.

WITNESS: The only place I ever sold—

Q. It wasn't sold; it is a hundred dollars an acre now?

A. I asked a hundred dollars an acre for one particular parcel of land I have in mind and I sold it, but our general price is twenty-five or thirty dollars an acre, or average—set average price.

Q. Have you any idea of what percentage of accessible sites, that is bearing in mind the road conditions and so on, are surveyed at the present time? Do you just wait until there is a demand, or have you those sites surveyed?

A. In a few parts of the province we have determined on sites along the shore line; generally speaking the responsibility of filing a plan of a parcel rests with the applicant, we don't make a general practice of going into all sections of the province and surveying the lakes.

THE CHAIRMAN: Q. Speaking of the north country, northern Ontario, you have applications for summer resorts on hundreds of lakes, haven't you?

A. Yes.

Q. And it would cost a terrific amount of money to have the areas around these lakes surveyed?

A. It would, yes.

Q. In some cases you would have to survey square miles of territory on account of one application being made by a prospective purchaser?

A. Added to that, Mr. Leduc, if we subdivided around these various lakes, after we had spent several hundred dollars in surveying we would find maybe we would sell two parcels in two years.

I might mention in passing, gentlemen, when I said an average of twenty-five or thirty dollars, our minimum price is $10 an acre.

DR. WELSH: Q. The lease in southern Ontario is year by year, isn't it?

A. A license of occupation year by year at the pleasure of the Crown.

THE CHAIRMAN: Q. There are no rights of renewal in a license of occupation?

A. No sir.

DR. WELSH: Q. Don't you think that offers certain restrictions for sale or opening up? People may think they have only got it for a year even though you do carry it on year by year and they are very hesitant to erect any cottages because of that clause, particularly Americans?

A. Dr. Welsh, a license of occupation is from year to year at the pleasure of the Crown but in twenty-five years' service I have never seen one cancelled if the occupant ——

Q. No, I grant you that.

A. A great many were thrown up. If the occupant carried out his part we have never cancelled.

Q. I suggest that you have lost the sale of a considerable number of sites because of that and because of the delay. You take a person who applies here and there is a lot of delay in securing those parcels of land, finally they give it up. Don't you think it would be better if for example the District Forester would have some record of those parcels of land, with the parcel numbers and so on, so that he could negotiate direct? Wouldn't it bring a lot more people here, with families, and more business to the locality?

THE CHAIRMAN: There might be some obstacle there. You see the lands of the province are in one common fund in which both mines and forests participate and the District Forester who is far away from the records might very well sell a piece of land which has been staked out years before by some mine.

WITNESS: Our local agent, Dr. Welsh, would not have the land register, he would not be in a position to know definitely whether there was any adverse claim or any prior application, and various features of that kind.

THE CHAIRMAN: There would really exist necessity for all the records to be sent to us because otherwise we might find some difficulty.

MR. COOPER: Q. Is there any way a man can take a piece of land under license of occupation and be assured for at least a few years that the rental is going to remain the same?

A. Mr. Cooper, we have in a great many cases started a man on a license occupation basis and after three years, or say five years, if he had built a habitable or substantial dwelling or made a certain investment we converted that into either a long-term lease or a sale.

THE CHAIRMAN: Q. But there is no proviso to that effect in the license of occupation?

A. In some there are.

Q. That is, you insert there a clause giving him the right to a patent or to a lease, provided he does certain things within a certain time?

A. In a certain time; we will sell the property. I am not speaking only of summer resort parcels.

MR. COOPER: Q. What I was interested in was this, to know whether a man could go on a piece of property under a license of occupation and be sure that his fees were fixed for a certain period of time, so that he would know he would not find the rental jumped up on him next year when he had put a certain investment on?

A. We would be very glad to arrange with him in such cases.

Q. Do you charge increasing amounts on that lease of occupation from year to year?

A. No. We have issued some of five-year periods, stipulating that at the end of a five-year period we would review the price, the Minister would charge what he felt fair.

MR. ELLIOTT: Q. On some lakes you are charging certain persons $5.00 on annual license, probably another ten and another one fifteen, on the same lake?

A. I have no particular case in mind where that practice is followed.

Q. Sometimes there is a little development and you are charging a person who wants a cottage site $5.00 a year; well then the Department will have the idea, and properly so, that the land is more in demand there, and then in two or three years, if people come along, they will charge them $10.00 a year. Isn't that so?

A. Possibly.

Q. And then you may even raise it in some cases to fifteen, where they make application?

A. Well, possibly.

Q. And you would be in the position there, that persons in possession of cottage sites on the same lake are paying varying amounts for rental? Is that so?

A. I have no particular case in mind.

Q. I am not pointing out particular cases, but I think you ought to understand that to be the case?

A. It is possible, yes. We endeavour to create a revenue, naturally, yes.

DR. WELSH: Q. What is the maximum number of acres that you allow in summer resorts to one person?

A. A summer resort applicant is entitled to five acres. If in the opinion of the Department it is not advisable to subdivide, that is to say, you want a boathouse site, we might let you have up to ten acres.

DR. WELSH: Q. Do you have a position anywhere in the province where someone has bought up the available sites? I am thinking particularly of Jacques Lake a few years ago, I haven't been there lately?

A. I understand the whole shore line is taken up mostly by one lady from Pittsburgh.

Q. How does that come about?

A. The original owner obtained the land under agricultural regulations, got his patent for farm lots and subdivided.

Q. That shuts out anybody who desires to go in there?

A. It would if he got his patent for the hundred acres, maybe two hundred acres—I mean, he gets a patent he may subdivide, we have no strings on him.

THE CHAIRMAN: Q. You said something a moment ago, I wondered if I understood you correctly: Did you say that the license of occupation was given for so much per year?

A. So much per annum.

Q. And then every five years you have the right to revise the price?

A. No, that wouldn't be on license; that would be on a lease.

Q. That would be on a lease?

A. I noticed that myself.

Q. For instance, you take a man who applies for an island in, we will say, Lake Timagami, and he gets exactly five acres and would like a lease for five years?

A. A five-acre island.

Q. That has been done, hasn't it?

A. We would, yes.

Q. You fix a price on that. How much would be the price in Timagami for instance, approximately?

A. Timagami is not on five-year lease; I didn't know you meant Timagami. Timagami is twenty-one-year lease.

Q. But in some other lakes you make a five-year lease?

A. If he wished a five-year lease we would, yes.

Q. I don't suppose many people would insist on a five-year lease?

A. Probably I could clear it up this way, make myself a little clearer: We would probably make a twenty-one-year lease with the option of revising the rentals at the end of every seven-year period.

Q. At the end of every seven-year period?

A. Yes.

Q. That is my point.

A. Yes.

Q. You take this man who leases an island for twenty-one years on Lake Timagami . . .?

A. It is a definite price.

Q. Of so much per year?

A. Yes.

Q. But every seven years you have the right . . .?

A. Not in Timagami.

Q. On certain lakes, then, you reserve the right to revise the rents every seven years?

A. Yes.

Q. Supposing you charge $10.00 or $25.00 for the first seven years, the man goes ahead and invests a large sum of money building a summer cottage, boathouse and so forth, in seven years you have the right to charge him ten times what you were charging him the first year, is that correct? I am not saying you are doing it, but again you have the right to do it?

A. It would be, yes.

Q. Do you think that encourages people to build expensive cottages?

A. I think I had better clear that just a little, Mr. Leduc: We have gone into a seven-year period in Crown leases; it is very rare on summer resort parcels, it is more where a man applies for a lease for other purposes.

Q. What other purposes would he want a lease for?

A. Well, we have had cases I assume where a man wanted lands for development along, we will say, reforestation, that is he is going to plant trees, and it is really his land, he is going to plant trees, erect a home—you could call it a cottage I suppose if you like—but he is going to live there and beautify it.

Q. And after seven years you have a right to increase it?

A. We could, yes.

Q. Do you think that would encourage him to spend a lot of money in reforestation and building himself a nice home?

A. Well, I think it would.

THE CHAIRMAN: You think it would. Well, I wouldn't.

MR. ELLIOTT: Q. Reverting to Dr. Welsh's point, he suggested it would facilitate local development if the district foresters had records showing the prices that would be charged for cottage sites, the officers in the district. Do you think that would be a good move?

A. Have an inspection made?

Q. No, but have a record showing the amount that would be charged for cottage sites on the various lakes? For instance, we will take in North Hastings where some cottages are developed and others that will be developed because of a new road put in there just a year ago. If the district forester at Tweed—or I think they have an office at Bancroft too, haven't they—?

A. Yes.

Q. If the man at Bancroft, the nearest place, had a report showing what would be charged for cottage sites on the lake, either for rental or for sale—?

A. It would have its advantages, yes.

Q. Because I presume when people come up there and are familiar with the lake they would like to find out readily, probably on their week-end, what it would cost to buy a property, and it should be generally understood by the people in the district what they would have to pay?

A. It would have to be more or less on a sliding scale if it were not subdivided.

Q. No, it is not subdivided?

A. Well we would be safe in saying twenty-five to thirty dollars an acre, whatever it was, would that be all right? There would be no two parcels alike.

Q. You could increase the price or decrease the price as the case may be on a part of the lake that was less or more desirable, there would be no objection to that?

A. I see no objection to his selecting some of the prime lakes and establishing a more or less general price. You couldn't actually tell without making a very close survey.

DR. WELSH: Q. Don't you think in that way you would create and facilitate the taking up of land and increase the summer population there in that district? I know that many people have come there, interested, and inquired, and it took so long that they just gave it up and forgot about it on account of the red tape?

A. Yes, no doubt there are persons anxious to know what it would cost to have a summer home on a particular lake, they are attracted by its beauties.

MR. ELLIOTT: Q. And then if a person wanted to buy property on the lake where it is not subdivided, and you have had very few subdivided in central Ontario having regard to the available land for sale, what procedure has he to go through in order to acquire a property, say a lot 122 x 130 feet?

A. Where there is no dubdivision.

Q. Where there is no dubdivision?

A. He makes a regular application to the Department.

Q. And then what happens?

A. If we have no idea of the value we ask our local man to place a value on the parcel; we notify the individual what it is worth and require him to file a survey or sufficient description to establish the parcel.

Q. How long would it be before he would be advised of the price?

A. That is a hard question to answer.

Q. Well, would it be a month or two months?

A. It would probably be a month.

Q. Probably be a month?

A. Yes.

Q. And sometimes longer? Wouldn't it be sometimes longer?

A. It has.

Q. Then you require him to file a plan of survey for or the description of the property before you can issue him a patent?

A. Yes.

Q. And that might cost him in some of these lakes a very substantial sum to get the survey out?

A. It might.

Q. Far more than the cost of the lot?

A. No, I wouldn't say. Well yes, in some cases more than the cost of the lot if it is a small parcel.

MR. ELLIOTT: Well then, my understanding is from what I know of the situation that nearly half of the people when they learn they have to file a plan of survey don't go ahead.

THE CHAIRMAN: Who should make the survey?

A. The individual.

MR. ELLIOTT: I am not asking that; I am just asking if that is not your opinion, that when people are asked to furnish a plan of survey at least half of them do not go ahead and do it.

A. No, I cannot agree with you.

Q. You cannot agree with me?

A. No.

Q. Am I right in saying that, having regard to the time it takes for you to arrange for a survey at certain times of the year when surveyors are not available, particularly in remote localities, it is often six months or a year before a man completes his survey and obtains his patent?

A. Do you mean that owing to the delay in the Department handling his application it is six months, or adding to that the time it takes him to put in his survey?

Q. The time it takes to get his survey and waiting on his patent is six months to a year?

A. The sale is carried out when he files his plan. The plan is not asked before issuing the patent, it is before we carry out the sale. We sell the parcel when he has filed his plan, and he has eighteen months in which to build a habitable house. Then he gets his patent.

Q. That does involve a lot of correspondence with the applicant, particularly if he does not understand the regulations of the Department. Half the people do not read carefully about the necessity of filing surveys, and so forth, and what they have to do to get a survey. Consequently the average application strings along for six months to a year from the time a man first writes you about it until he gets his patent. Is that not so?

A. The average would be. That is due principally to the fact we are waiting for him to erect his building. It is not a delay of the Department.

Q. I am not saying whether it is a delay of the Department or not. You have told us it takes as a rule a month to be advised of the price. Then he has to have the property surveyed, and, when he has sent you the survey, how long is it before you prepare a description and approve of the sale in writing until the property is sold?

A. Oh, say another month.

Q. The point I am trying to make is this, Mr. Ferguson; that from information I have received people, particularly Americans who only spend a matter of two or three weeks up there, or probably a little longer, if they could go to a builder in a place like Buckhorn and find out from him what it would cost to buy a lot and be assured they would get title to it in a matter of two or three weeks, a great many more of them would build; that the length of procedure is an obstacle which prevents them going ahead and building and negotiating the purchase of a property. Would it not be much more desirable if they could get title in a matter of two or three weeks?

A. Naturally, it would. It would take an enormous staff to accomplish that.

HON. MR. HEENAN: Is this not a fact, Mr. Ferguson; that when an application is received in your Department for a summer resort you have to go through the records to find out if someone else has not leased that same lot?

A. Absolutely. There is a careful search through our rolls and records to find if there is any adverse claim or prior application.

Q. If you have many applications in at the same time, it takes some time to lease a particular one?

A. Absolutely. There may be 100 applications ahead of that one.

HON. MR. HEENAN: I was just trying to clear up what might be the cause of the delay.

ME. ELLIOTT: Often times these Americans write you from cities in the United States, sometimes they write you from a place where they are staying in Ontario while here in the summer time, about land for sale; is that not so?

A. Yes.

Q. And Americans write you from various points in United States, also sometimes from points in Ontario when they happen to be here in the summer time?

A. Yes.

Q. And as a rule do you not find that the Americans, also settlers and people living in remote localities, do not seem to understand intelligently the regulations of the Department? I have examined the correspondence and it is quite apparent that you have considerable difficulty in explaining to people what they have to do in order to conform to the regulations of the Department.

A. No, I can't say it is dufficult. It is very simple. The regulations are clear.

Q. We will go on from there, Mr. Ferguson. You have in existence some regulation or enactment or statute which provides that there must be a road allowance of 66 feet around every lake; is that not so?

A. Yes.

Q. What statute is that?

A. It doesn't require a road allowance around each and every lake. In surveying, more particularly at the present time, when we do survey a township we provide that road allowance. And it is provided in a great many of the old surveys, but not in all of them. The general practice is to provide a road allowance for public purposes.

Q. In many cases, you have road allowances provided in plans where there can never be a road, where there are rocks?

A. Yes.

Q. And rough formations?

A. Yes.

Q. And you know very well that while road allowances are provided on the plan, they could not be employed as roads; is that not so?

A. Absolutely.

Q. Then, if a person buys a property with the understanding that he must build a cottage costing so much within six months or eighteen months, as the case may be, do you permit him to build on the road allowance, or do you consider, if he built on the road allowance, that this is in compliance with your regulations?

A. It is contrary to the regulations and any building erected is entirely at their own risk.

Q. If a man makes application and pays you $200.00 for a cottage site, and then he goes and builds a cottage on the road allowance, would you refuse to give him his patent, because he has not complied with the regulations regarding building on the lot which you have sold him within 18 months?

A. I don't believe I would.

Q. You would not give him a patent?

A. That is an exceptional case; it would have to be considered on its merits.

Q. It is a matter of discretion?

A. Absolutely.

Q. But you would refuse to give patents to some people . . .

A. Generally speaking, we would, if we sold to a man and he definitely went off the property and built elsewhere. I think I would withhold his patent until he had built on his own property.

Q. You will agree with this; that people who do build in such cases, on the road allowance, do so innocently and in the belief that they own the land to the water, and that they are complying with your regulations?

A. That is exactly what I mean: if a man in ignorance or in error accidently built a few feet off his property, I don't think I would withhold it.

Q. If he built altogether off his property and built on the road allowance—

A. I probably would, until he had moved his house back or made equivalent improvements.

Q. You would require him to build another cottage?

A. No; equivalent improvements.

Q. Even though he might have to spend $500.00 on the place?

A. I probably would, yes. The parcel was sold under certain definite conditions of sale; I do not see any reason why he should get the patent until he meets those conditions.

Q. Do you see any reason why you should have that feet road allowance at all?

A. Why we should have the road allowance?

Q. Yes.

A. Yes, I can see why we should have it.

Q. I can show you places, Mr. Ferguson, where it is absolutely impossible for them to be employed as roads and should not be provided at all.

A. In my opinion it does not mean road, it means a marine reservation or a reservation along the shore for the use of the public, if you want to get around to the other side of the lake.

Q. I am pointing out cases where it is impossible to be used as a road, where there are rock formations.

A. You can walk it.

Q. I beg your pardon?

A. You can traverse it on foot. It doesn't necessarily mean there will never be a road. It is for the public's use.

Q. I am only suggesting that that is an obsolete regulation and should be abandoned in a great many cases.

THE CHAIRMAN: May I ask you this: when you make a sale of land and before the applicant builds his cottage, he has to have the land surveyed?

A. Unless he can give us a satisfactory metes and bounds description.

Q. But if it is surveyed then that whole allowance, the 66-foot reservation, would be shown?

A. The surveyor will not include it in the parcel.

Q. It would be shown on the plan?

A. Yes.

MR. ELLIOTT: The question of whether he would be entitled to his patent, considering the price he paid for the lot either by sale or under lease, is all a matter of discretion with the departmental officials?

A. Yes.

Q. Do you find, Mr. Ferguson, that tourists and others who are negotiating with the Department regarding the sale of land, whether it is necessary or not, frequently do come up to the Department to see you?

A. Yes.

Q. And sometimes they make two or three trips, as well as writing letters, in connection with getting property on which to build a cottage?

A. A great many prefer to come up and discuss it personally in the Department rather than by correspondence.

Q. I am saying that some of them come up, they do find it necessary to come two or three times in connection with getting property?

A. I do not feel it is necessary to come at all.

HON. MR. HEENAN: There might be such a thing as a conflict of applications.

A. Correspondence, I feel, Mr. Heenan, would cover it.

MR. ELLIOTT: Then you have water lots. What regulation have you, or what Act is there that governs the leasing of water lots? What Act or what regulations are there in existence that govern the leasing or sale of water lots?

A. I do not know of any Act, Mr. Elliott. It is our general practice not to dispose of water lots—alienate them.

Q. Do you lease them?

A. We rent water lots.

Q. Have you any authority to rent water lots?

A. It is Crown property.

Q. Under what Act have you authority to rent water lots?

A. The Public Lands Act. There is no particular section referring to water lots. It is Crown property and we may dispose of it. That is my general authority.

Q. In what cases do you lease water lots?

A. In what particular cases?

Q. What regulation have you that governs the leasing of water lots? Have you any regulation?

A. There is no particular regulation.

Q. No regulation governing the leasing of water lots. That is solely a matter for the discretion of the departmental officials?

A. In our discretion.

Q. Do you as a matter of practice lease water lots?

A. In certain sections we absolutely decline to lease them.

Q. In the Stoney and Clear Lake section, I believe there are over 700 cottages and a great many boathouses there. Do you make a practice of leasing water lots there?

A. I think you are approaching a section that I would prefer to have the Chief Clerk discuss. I have not, myself, that I recall, leased any lots on Stoney Lake, water lots.

Q. Has the Department ever leased any water lots on Stoney Lake?

A. I think I am quite confident they have.

Q. That is years gone by?

A. I have not personally dealt with any myself.

Q. The policy is that you do not charge for water lots?

A. Do not charge?

Q. Yes, you do not attempt to lease the water lots?

A. Generally speaking, no; we do not charge for water lots in that particular section.

Q. And also another section. You take wherever you have a great many cottages, is it not the policy of the Department that you have abandoned the idea of leasing water lots?

A. I won't say abandoned; we are not charging at the present time.

Q. Do you think you will be charging in the future for water lots?

THE CHAIRMAN: Oh, well ——

MR. ELLIOTT: I am just suggesting ——

THE CHAIRMAN: That is a matter for the Government to determine.

WITNESS: May I say that this matter is one that has been discussed repeatedly, and I would prefer not to be involved in it.

MR. ELLIOTT: You are the Deputy Minister?

A. Assistant. I have an immediate chief.

Q. We only want to ask you about matters within your knowledge.

THE CHAIRMAN: Mr. Elliott, if the witness has heard some conversations in the Department in the course of his duties, I do not believe he should be asked about those conversations.

HON. MR. NIXON: Certainly a question as to what the future policy of the Department will be is surely out of order.

HON. MR. HEENAN: Have we not met this, Mr. Ferguson? Where we rent or lease a summer resort with the reservation of 66 feet—I think it is better to call it reservation than road allowance, although it has been known as road allowance—it is to protect the public?

A. It is for the use of the public, yes.

Q. Then you may have an application for a water lot to build a boathouse right in front of that man's cottage. Have we not got grievances sometimes along those lines? A boathouse to be built right in front of the cottage which would destroy the vision?

A. Will you permit me to draw this picture my own way? There is a marine allowance or reservation—call it reservation or road allowance, whichever you prefer—along the shore of this particular lake. If it is in an organized township the control of that road allowance rests with the municipality. And before that road allowance may be disposed of, naturally it must be closed. Now, in order to close that road allowance the municipality must have a by-law passed, a duly advertised by-law, and then they submit that by-law to the provincial government. The provincial government circularizes all branches of the public service to see if we have any objection to closing that road. If we have no objection, why, then, it goes to the Cabinet and an Order-in-Council is passed. The road is closed, but until it is closed that is for public use.

Now, Mr. Heenan, coming to your question, before we would grant a water lot in front of another man's property, we would seek his approval.

Now, in the case of an organized township, and the boathouse would be situated in front of that road, we would get the approval of the municipality before we would give any man the right, even if he owned the property behind the road, to erect the boathouse. In other words, we would have the approval of the municipality before we would permit even the man who owned the parcel beyond the road to build a boathouse in front.

MR. ELLIOTT: These road allowances are road allowances leading into the lake?

A. And around the lake.

Q. And around the lake?

A. And around the lake.

Q. That is where there was a road allowance in the original survey?

A. Yes.

Q. And you are still providing a road allowance in the subdivisions that you have made?

A. Present day surveys almost generally provide a road allowance around each particular location.

Q. Wherever there is a road allowance ——

A. Call it a reservation.

HON. MR. NIXON: Otherwise no person could get around the lake without trespassing?

A. That is what it is for.

Q. Or fish off the rocks?

A. He has not got to travel six or ten miles to get over to the other side.

MR. ELLIOTT: Who determines what lakes should be subdivided, or what land should be subdivided?

A. That is generally after a request has been made by the local citizens to provide summer resort parcels on this particular lake. It may be some of the leading associations, clubs or the local member—some responsible party or group who feel that we should provide summer resorts on certain lakes.

Q. Do you know Gull Lake or the Mississauga Lake? If you do not know them we will not go into them. I am pointing out that there was a subdivision in connection with Gull Lake and Mississauga Lake in 1928. I believe the plan was filed in 1929. My information is that none of these lots has been sold since it was subdivided?

A. That is one objection to subdividing because we go to enormous expense and maybe sell two parcels in two years. We should not subdivide until we are quite confident there is a serious demand.

Q. When you make a subdivision you increase the price of the property so that you will absorb your survey costs?

A. Absolutely.

Q. When you subdivide properties you make a charge of so much a lot. You generally set them up with a frontage of 200 feet as a basis. What are your prices? Who determines the prices?

A. Frequently we ask the Ontario Land Surveyor who makes the survey to fix the price. In other cases we send our local man.

Q. What would the surveyor know about prices?

A. He should be a qualified man. He has been an engineer and has been handling lots all his life.

Q. You mean a surveyor of the Department?

A. No, an Ontario land surveyor who has no contact with our Department.

Q. On his information you fix the price in some cases?

A. In many cases.

DR. WELSH: Eventually the applicant pays for the survey?

A. Oh, yes; we include that in our price.

MR. ELLIOTT: Sometimes you fix a price of $200 a lot, do you not?

A. Including cost of survey, we might go that high, yes.

Q. If you do not sell any of these properties over a period of years, do you ever consider reducing the price?

A. We would. If we saw there was no sale, we would.

Q. Do you know of any cases where you have reduced the price?

A. I can't recall one, no.

Q. You have certain fees that you charge in certain cases, Mr. Ferguson, like, for instance, the release of pine and that sort of thing? You know the way you release the pine, you give a patent?

A. Yes, there is a release of pine and pine patent.

Q. Do you charge for those patents?

A. In some cases we do; that is, we sell a man the pine. We lease the pine and we charge a patent fee of $10.00.

Q. Are there regulations governing cases in which you charge a patent fee?

A. I have not the regulations.

Q. Are there any regulations in existence?

A. Not to my knowledge. The release of pine and the granting of pine patents are both covered by 33 of the Public Lands Act.

Q. You sometimes charge a patent fee and sometimes you do not?

A. I know of no cases where we did not.

Q. I beg your pardon?

A. We generally charge the patent fee.

Q. You do not have to, there are no regulations requiring you to?

A. Not to my knowledge.

Q. And it is a matter for the departmental officials to determine whether the fee is payable or not?

A. To cover the cost of our clerical work.

Q. Then you sometimes charge for descriptions?

A. Yes.

Q. And sometimes you do not?

A. That is right.

Q. Is there any regulation that governs the charges that will be made in cases where ——

A. Descriptions?

Q. Yes?

A. Not to my knowledge. I might say that Mr. Fullerton of the Surveys Department, I think, would be better to ask that question concerning description fees.

Q. You are dealing with the people through correspondence when these fees are charged. In some cases they are not charged?

A. I mention that in saying that I know of no regulation. I do not know of any regulation.

Q. On the question of these water lots, I think you will agree that in these closely settled areas it would be in the public interest to charge for water lots that is to charge rent?

A. I would not like to express an opinion on that.

Q. You say there is no regulation in existence that determines the manner in which you will deal with the leasing of water lots?

A. Water lots are governed by the Public Lands Act. They are Crown property. It is land under the water.

Q. There is no mention made of water lots in the Public Lands Act?

A. No.

Q. And there is no specific authority in the Public Lands Act for you to charge rental for water lots?

A. No.

Q. You think it is the inherent right of the Crown to charge for the rental or sale of these lands?

A. It is Crown property, yes.

Q. You will agree that you have had a great deal of trouble with certain people over rental for water lots in various areas—take the Muskoka district?

A. I wouldn't say we have had trouble. It has been a matter of controversy and discussion whether we should or should not charge.

Q. If a person is to go ahead and build a cottage and boathouse, there would be no necessity of applying for a water lot for the boathouse, would there?

A. I fail to see where a person has the right to take possession of something that does not belong to him.

Q. But people do not apply for water lots when they build boathouses?

A. We have applications, yes. We get them from individuals who want to be certain of their ground. They want to build a boathouse and they have to invest money in it and they make regular application.

Q. And sometimes the Department writes back to people who apply, and states that you are not going to entertain an application for a water lot in that area?

A. What particular area?

Q. We will say Stoney Lake, for instance, where people made application.

A. I have in mind, Mr. Elliott, Lake Simcoe, where the council strongly objected to the permitting of any more construction of boathouses or docks on the shoreline of Lake Simcoe. Naturally, if a person applies here, we would not entertain the application.

Q. Because your policy is not to charge for water lots?

A. Our policy is not to permit construction on Lake Simcoe, because the Council has asked us not to permit it.

Q. Is it not a fact that there is a very small percentage of people in the province who have boathouses on Crown property who are paying any rent?

A. There are a large number that are. I would not go into the percentage basis. We have hundreds of licensees.

Q. Supposing I would say that out of six or seven hundred boathouses on certain lakes, there might not be five would be paying,—do you think that would be right?

A. On what particular lake?

Q. Say Stoney or Clear Lake.

HON. MR. NIXON: How many cottages?

MR. ELLIOTT: There are over seven hundred cottages.

HON. MR. HEENAN: Might it not be more proper to put the question in this way, Mr. Elliott, that anybody who is permitted to build a boathouse on any lake, some of them pay and some of them won't pay?

MR. ELLIOTT: I am told that in some cases they have told people that they did not need to pay.

HON. MR. HEENAN: I have seen it stated in newspapers that sometimes a Minister has told people that they could not build boathouses, but that is not correct.

MR. ELLIOTT: Q. Do you not think it would be well to have a settled policy in connection with water lots, that there should be something established, either by way of legislation or regulation, so that there would be uniformity and definiteness about the right of people to water lots?

A. There are two classes of water lots, Mr. Elliott. Take Windsor, a border city, where we have a great shipping centre, and we receive applications occasionally for dock purposes. That is in a different category from an application for a docksite up on one of the Muskoka lakes. At the Windsor border, we certainly require them to pay. Up in Muskoka, I cannot say that they would be required to pay.

HON. MR. NIXON: The circumstances would govern that?

A. Yes, certainly.

MR. ELLIOTT: Q. But you think it would be a good thing if there was by legislation or regulation a definite setting out of conditions to determine the rights of people to water lots?

A. The question of water lots is a matter of policy for the Administration. I am only a civil servant, and would not like to offer a suggestion.

Q. If the Department is going to meet that difficulty, it will be a matter for a changing policy with different governments?

A. It is a question.

Q. You have lands in the Crown, some of which have been located years ago and abandoned, without any patent being obtained, the application never having been approved? There are many lands in your hands, and some of those lands were obtained in 1890 ——

A. And probably farther back than that.

Q. And some buildings erected on the lands?

A. I can take you back to some before Confederation, where they have not obtained their patents yet.

Q. And you also have cases where defaults have been made in payments,—lands perhaps settled on back thirty or forty years ago, and they have not paid,—you have many cases of that kind?

A. Yes, we have many cases of old sales, where the property has descended to other individuals, and the purchase price has not been completed, and the interest now is greater than the purchase price.

Q. A man might have two hundred acres of land in a back township, and there would be a hundred acres suitable for pasture purposes and the title is in the Crown; and if you were asked what you would take for that land, you would say it was located by John Jones and there was a balance owing of $150 from 1887, and he could obtain it by paying the $150 and the interest from 1887?

A. That is just an outsider coming in?

Q. Yes?

A. I do not think I would ask him that price, myself.

Q. As a matter of routine, when a person writes about a property, that is the price they are given?

A. I would not be in a position to say he might buy it at all, unless I had wiped out the previous owner's title.

Q. Supposing the previous man's title was wiped out, then the price you would quote would be the balance plus the accrued interest?

A. No, I would have to know, first, what that land was worth.

Q. Have you not seen correspondence where the quotation was on that basis?

A. I do not think I have. I do not see how a man can fix a price, if he does not know what he is selling. There may be a report back on the file, a year or two back or within a reasonable time; and there might be improvements, and we might be charging for those.

Q. I am saying, if a man writes in enquiring about a piece of land, the price would be the balance of the purchase price plus interest and costs?

A. I would have to know what I was selling, because the land might be worth a great deal more than that.

Q. Take a case in Hardy Township, where the Department was insisting upon a price, and I suggested the valuation, and they did that and fixed the price at $1.00 an acre?

A. That is exactly what I am saying. You have to know what the property is worth before you can sell it.

Q. Should not that be done in every case where there is an application to buy, instead of the Department trying to hang to it, to try and find out what a fair price would be?

A. Are you asking whether it is our policy to dispose of these lands?

Q. I am speaking of agricultural land?

A. I have been led to believe that this present Committee have seriously thought of reforesting a good deal of old Ontario,—I will not say "reforesting", but cultivating tree growth there.

Naturally, if these lands are not fit for farming, why give them away?

Q. I am not saying whether they are fit for farming or not. I think it is generally the idea of the public to reforest their land?

A. I have been schooled along the line of the Department trying to look after their own resources.

MR. ELLIOTT: That is all I have, thank you.

HON. MR. HEENAN: Q. Is it not a fact, Mr. Ferguson, that one of the things with which you have to deal is that, generally speaking, everybody thinks he should get something out of the Crown for nothing?

A. Absolutely.

Q. For instance, if you have an application for a summer resort, I think one of the difficulties which you encounter—very few of those cases come to me—is that you have to vary the prices, as one man might select a point where he has a lane to a beach, and that is more valuable than where a man has no connection with the lake?

A. Yes.

Q. For instance, Hon. Mr. Nixon, here, has a farm, and if his farm was satisfactory for a summer resort, I imagine there would be some parts of his farm which he would want to sell at a higher price than other portions of it?

A. Yes.

HON. MR. HEENAN: What we call a road allowance, Mr. Elliott, is a reservation for the public. We do not want the old country idea that "this is my property, and you must not trespass on it", and therefore we have the sixty-six-foot reservation.

We find cases where a person is not satisfied that that sixty-six feet should be reserved, and he commences to claim it as his property and builds a boathouse on it, and dares anybody to put him off.

Another person wants a summer resort, and he says, I am going to fix upon such and such a point. I have written to the Department, and I have not had an answer, and he says he is going to build; and he squats on a part of a lot and starts building. And the more road construction and development we do throughout the country, the more of that sort of thing we meet.

MR. ELLIOTT: Has that ever happened in Kenora District?

HON. MR. HEENAN: It does happen, even in the Kenora District.

MR. W. G. NIXON: This development on Lake Muskoka or Lake Rosseau, with the wonderful summer homes, are they built on the lease basis?

A. Practically all of them are built on property that is privately owned, the people originally getting the lands as free grants, generally. In the Lake of Bays district, the settlers came in with the lumbermen, and they developed into farming.

Q. The owner of a site for a nice summer cottage would infinitely rather own the land?

A. Oh, yes.

MR. SPENCE: Q. Are we giving Americans any encouragement to own islands here? You have many applications from Americans?

A. An American, Mr. Spence, is in the same position to us as a Canadian. We do not require naturalization papers, or anything. He is free to make an application.

Q. I have found that people in the United States say, What must we do to get land up there? We want an island. Particularly since the Trans-Canada was put through, they want an island, say along between Nipigon and Schreiber. Are we making any provision or policy to handle those numerous applications? You know the country there, with one of the largest inland lakes in the world?

A. There is no particular regulation except our ordinary practice and regulations.

HON. MR. HEENAN: We have every convenience, Mr. Spence. For instance, if a man comes to Port Arthur and wants to lease or purchase an island or a piece of land, the office is right there, and he goes in and gets all the information in respect to it from the office; and then they communicate with the head office about it.

DR. WELSH: Q. Mr. Ferguson, what about fire protection of summer cottages—is that under the Fire Protection Act?

A. Any fire protection is entirely outside of my sphere, and I could not tell you.

HON. MR. HEENAN: Generally speaking, we do not make any difference, in our fire zones. We protect it, whether it is farmers' land or summer cottages.

THE CHAIRMAN: Is that all? All right, thank you, Mr. Ferguson.

Now, Mr. MacDougall, please.

FRANK A. MACDOUGALL: Sworn.

MR. ELLIOTT: Q. You are Superintendent of Algonquin Park?

A. Yes.

Q. What territory does that embrace?

A. About twenty-seven hundred square miles, and a fire zone of the same size.

Q. What district does that come into?

A. Part of Nipissing, and a little bit of Haliburton.

Q. You, of course, are in charge of the fire protection and the Rangers, and also of the sale or leasing of Crown lands?

A. Yes.

Q. Are there many lands which have been sold or leased in Algonquin Park?

A. Yes, about between three and four hundred twenty-one year leases.

Q. Many sales?

A. No sales, except one or two antedating the park, that the park has surrounded since.

Q. That is the policy is not to sell but just lease?

A. To lease.

Q. For twenty-one years?

A. Twenty-one years renewable for that period.

Q. For what period?

A. They are renewable every twenty-one years.

Q. On what basis do you charge?

A. $15 an acre per year.

Q. That is uniform throughout the park?

A. Yes, the rental is fixed for the twenty-one year period, and then if there is a raise of rental, at the end of the twenty-one years it is at the new rental. It was $10, and then $15, and now it would be up to $20.

Q. What procedure is followed when a person desires to rent a property from you?

A. We have set aside certain lakes which are open, that is all lakes which border on the two railway lines are open for location, and, providing they are not needed for our purposes, they are open for location.

A man is told where he can get land, and he selects his site and then puts in his application.

Q. When you receive the application there, what do you do?

A. Approve it and send it to Toronto. And then it goes through the regular routine. If a man is in a hurry to get started, we tell him to go ahead.

Q. What plan is followed?

A. Some of the lands are surveyed; others are tied in, and they are surveyed by some of our men, and then we tell them to get a survey. If there is any controversial question which makes it difficult to make a description, we ask him to get a survey.

Some are tied up by chains, or by corner posts. They must be tied in from a known point.

Q. The responsibility, however, is with the departmental authorities to supply the description in ninety percent of the cases or more?

A. Yes.

Q. When a man makes an application for a lease, how long is it before he gets his license, as a rule?

A. Some of them we tell to go ahead in a day. That does not mean that he gets his papers.

Q. Does it take a month?

A. Yes, sometimes longer. Usually a man takes a place one summer and builds his place the next summer.

Q. Usually, though, he can acquire title, in the ordinary routine, in a few weeks or a month?

A. It should be so.

Q. Then, after the man makes his application, there is nothing further which he can do?

A. Before he can build a place, it must meet with the approval of the Department,—he must submit his plans.

Q. When he makes his application and you supply the description, there is nothing further to do but to wait for the approval of his application?

A. Yes.

MR. ELLIOTT: And that is rather simple.

HON. MR. NIXON: Q. Whether it is simple or not, it works?

A. Yes.

THE CHAIRMAN: I notice that in last year there were water lots—

A. There are places where land is not open for a lease. That is, a man may want to get a place in the interior, and for some reason he is given a temporary lease. In other words, a logging company might want to put up a depot. It is not a bona fide summer resort.

MR. ELLIOTT: Q. Mr. Avery has established a tourist place?

A. In addition to the summer resort property, the regulations provide for tourist locations throughout the park; and we have restricted those to one to a lake. Avery's place has been there for a number of years. It was taken out by a man before him, and just transferred over. There was one open for location, but it was cancelled at the end of his lease, because he was an old man. There are no private leases on that lake.

MR. W. G. NIXON: Q. Is the charge there $15 an acre?

A. No, for tourist places they pay $20 an acre, five acres at $20.

MR. ELLIOTT: Q. Where a place is open for location you do not mean it has been subdivided?

A. Yes, by a surveyor. Some of them are just tied in with iron posts. In other cases a surveyor has fixed upon the land which he thought was proper for a summer resort; but in other cases the tourists choose rocky points, which the surveyor rejected.

Q. Where do they get the start—what ground mark is there?

A. There are township lines or concession lines or iron pickets to tie to. In other cases, where there is nothing to tie to, we ask them for a survey.

We do not write the description, but we send in the notes, and the Surveyor General writes the description. The applicant pays $10 for that description with his application.

Q. If he had to have a survey made, it might cost him $100?

A. No, around $30. It costs him $10 for the description, if the Department does it. If he does it himself, he gets credit for that.

Q. It is desirable to have as little red tape as possible?

A. Yes.

Q. It is easier to develop when you remove the red tape?

A. Yes, you can tell the man he can have the place.

DR. WELSH: Q. There seems to be less red tape than in connection with land in northern Haliburton. Are you governed by an Act?

A. It is departmental regulations.

Q. Everything is very satisfactory with regard to people coming in?

A. Yes, it usually is. There are sometimes odd difficulties, but nothing to speak of.

HON. MR. HEENAN: Q. Have you any Americans coming in?

A. About one third Americans buy licenses. They pay about $15.00 a year lease; that is about $300 an acre for the useless shore land.

Q. Are you bothered with any cases of two persons wanting the same piece of land?

A. Yes, we have had one case only of that. That came about because there was a question as to where the man made his application. I took the view that the man who made his application to the park office had the prior application. But the other man thought if he came down to Toronto, he had the prior right. It is very seldom that that question arises.

THE CHAIRMAN: Are there any further questions?

Thank you, Mr. MacDougall.

We will have Mr. Crosby and Mr. Brodie this afternoon.

We will now adjourn until two-thirty this afternoon.

At 12:40 p.m. the Committee adjourned until 2:30 p.m.

AFTERNOON SESSION

THE CHAIRMAN: The Committee will come to order.

The Secretary informed me this morning that Colonel Jones, president of

Price Brothers, will be available Monday, May 6th, and that Mr. Sensenbrenner will be available on Tuesday, May 7th.

Which witness do you desire to call now, Mr. Elliott?

MR. ELLIOTT: Mr. Crosbie.

H. W. CROSBIE, sworn.

MR. ELLIOTT: Q. Mr. Crosbie, what is your position with the Department of Lands and Forests?

A. District Forester.

Q. Where are you situated?

A. At Tweed.

Q. How long have you been with the Department?

A. Seventeen years.

Q. Were you always situated at Tweed as District Forester?

A. Prior to being District Forester I was Assistant District Forester at Tweed and at Sudbury.

Q. And in your office, I believe you administer the affairs of both land and timber?

A. Land and timber, yes.

Q. Your district covers what territory?

A. The northern parts of Peterborough, Hastings, Frontenac, Lennox, Addington, Lanark and the southern part of Renfrew Counties.

Q. We are dealing with the question of lands. You heard the evidence of Mr. Ferguson this morning?

A. Yes, sir.

Q. I suppose you have applications made to you for lands to be leased or sold for summer resort purposes?

A. Only occasionally.

Q. Do you have anything to do with the obtaining of reports, or making reports on lands in reference to applications made?

A. Yes; I am requested to make the examination through our staff of the lands which are applied for.

Q. Are you familiar with the cottage developments and tourist developments in that area?

A. Yes.

Q. And there are places where there are closely populated districts, such as Stoney Lake and Clear Lake?

A. Yes.

Q. And similarly, there are other locations where there are a great many cottages?

A. Yes.

Q. And there are areas also where there are just a few cottages?

A. Yes.

Q. Where there are probably large territories available for location?

A. Yes.

Q. You know the procedure followed in obtaining land for lease or purchase?

A. Yes.

Q. In your dealings with persons who are applicants, what do you find to be their attitude in reference to the procedure which they must follow in order to acquire title to leased property?

A. I find that a rather difficult question; that is, to state generally the attitude of people towards procedure for application. I have heard criticism of the delayed procedure in obtaining land.

Q. That is, in making application, to find the price first and then it is necessary to provide a survey and wait until being advised of the approval of sale?

A. Yes.

Q. I think Mr. Ferguson said this morning that not altogether through the delay of the Department but through the ordinary negotiations and delay occasioned to the purchaser in getting a survey, the transactions ordinarily run from six months to a year?

A. I have no knowledge of the time it takes to secure land.

Q. Regarding the subject of price for cottage properties I think you should be familiar with the land available for cottage sites in the territory in which you are situated?

A. Yes.

Q. It was mentioned this morning that the price is fixed by the Department and that prices—while this is not always the case—vary on the same body of water?

A. Yes.

Q. In the first place, what would you suggest, if you have any suggestion to offer, would simplify the procedure so people could readily learn the prices placed on various properties in your district?

A. Well, there would be great difficulty in establishing procedure other than what is in existence at the present time because of the great variation in valuation.

Q. But you some times make reports upon the basis of which prices are fixed?

A. Prices may be fixed on the price suggested as to the value, but the value which we place is not definitely the value accepted by the Department.

Q. It does not necessarily accept your recommendation?

A. No.

Q. Take a body of water like Papineau Lake, where there are many locations available and upon which there are just now a few cottages, do you not think it would be a good thing if a report was made placing the value per mile or per 100 or 200 feet of land, as the case may be, which may vary having regard to the accessibility of the land. Do you not think that could be readily done?

A. I think there would be difficulty in doing that because the value of land may vary from $10 to $200 an acre within a very short distance on that very lake. There are some very desirable cottage sites and they could not be placed on a map except by prior inspection and classification. Prior to that it would be necessary to make a survey of the subdivision and of the area suitable for location.

Q. What I have in mind is that instead of having to make an inspection nearly every time there is an application whether or not there is a sale of land around water, that if you went up once to a lake and set a valuation which you had before you to quote to the individual—and the Department would have one so it could fix the valuation readily—you would know and the officials of the various offices would know the price based on the various lots?

A. I think there would be difficulty encountered in that.

Q. But you have to fix a valuation for each individual lot when application is made anyway, do you not?

A. Yes.

Q. Then could you not go along a lake where the shoreline is about a mile,

covering similar land of a similar type, and fix the price per acre for that territory and you could go along and fix the price on another part of the lake?

A. Yes, it could be done, but I do not think it would be very satisfactory.

Q. Then the people could come along and they would first probably get the best site—and that happens in every case?

A. Yes. I think the people have an understanding of the value of the property or the price which would be charged by the Department when application is made.

Q. They should have?

A. They have; that is, on lakes where previous sales have been made, with the exception of those made many years ago. Prices have changed considerably in the past ten years in that district.

Q. Can you tell what you would have to pay for a lot on Papineau Lake on the south side at which points they have two roads going in?

A. Yes.

Q. Do you know the price the Department is charging in there?

A. I do not know the price the Department is charging, but I know our valuation price.

Q. You know your valuation price, but you do not know the price the Department is charging?

A. No.

Q. If a person came to you and asked you what they would charge for a lot on Jack's Lake or some other lake in North Peterborough or North Hastings, you could not tell what price the Department would charge?

A. No.

Q. But you have your valuations?

A. I have an approximate valuation for all properties in that district, but the final valuation which we place on them is set after inspection or at the time of inspection.

Q. Then you make a great many inspections where applications are made and no sales are made?

A. That I cannot say. We do not know the final disposition of the application.

Q. You know prices vary from time to time?

A. Yes.

Q. Of course, you do not exercise discretion except to make recommendations to the Department?

A. That is all we do—make our recommendations.

Q. In regard to the question of survey, are the township lines marked on the lake?

A. Very indistinctly in many cases. The surveys of the southern townships of the district were made between the years 1820 and 1840 and some later, but they are very indistinct.

THE CHAIRMAN: Q. Matawatchan Township is in Peterborough County?

A. Yes.

Q. I heard the lines were obliterated and could not be located?

A. Yes.

MR. ELLIOTT: Q. If the Township lines were determined, could you and your officials make descriptions similar to the ones which were made in Algonquin Park by the Rangers?

A. That would have to be answered by those who are responsible in plotting the descriptions.

Q. I cannot hear you?

A. That would have to be answered by those responsible for plotting the descriptions. I know we can make them and they are acceptable, but I know there are areas in some surveys in which we are not competent to make a description.

Q. It was said, except in rare cases where difficulties presented themselves, they obtained sufficient evidence in order to permit descriptions being made. If the Township lines are marked, except on those rare occasions where difficulties present themselves, you could make the description?

A. Not all members of our staff could; some could and some could not.

Q. Do you not think it would be a very desirable thing if that responsibility were undertaken by the Department, in order to convenience the public?

A. I think we would have difficulty in so describing surveys to be sufficiently accurate for entrance to the Land Title books. There are some cases—I will not say all—where we would have difficulty.

Q. Where you can, do you not think that should be done?

A. Yes.

Q. After all, if you make one or two descriptions on a lake, it should not be a difficult matter to make others?

A. No.

Q. It would be an easier matter because you have your land markings?

A. Yes.

Q. Would that not be so?

A. Yes.

Q. It would not be a very great inconvenience or present many difficulties except in rare cases, if the responsibility of making descriptions were to be assumed by the Department?

A. Yes.

MR. COOPER: Q. What would the cost entail? Would it cost much to do that?

A. In a ranging staff?

Q. Yes?

A. Little compared to an O.L.S.

MR. ELLIOTT: Q. If you charge $10.00 a description, would that be all right?

A. I think an average of $10.00 charged would be sufficient to cover it.

Q. My information is, that when a person purchases a property at a remotely-situated lake, it might be six months before a surveyor could go up there. It might be winter and the surveyor might be busy, which is a matter which causes a great deal of inconvenience to the applicant?

A. There are only three Ontario Land Surveyors in the district. There are none resident in the area.

Q. Can you make descriptions from aerial maps?

A. Not which would be accurate.

Q. They assist you, though?

A. They assist.

MR. COOPER: Q. You could not make a description sufficient for land title registration?

A. No.

MR. ELLIOTT: Q. You think a charge of $10.00 would be sufficient? Do you answer the question in that manner?

A. Well, it is rather difficult. I know of cases in the outer parts of the district where the charge may be $25.00 or $30.00.

Q. I say, that if the departmental officers received $10.00 in several cases for making a description, it would adequately compensate.

A. I would not say that.

Q. After you had made a couple the rest would be very easy?

A. It depends on the employee in that district, as to whether he is able to make that survey. Rangers in Algonquin Park are more competent to make a survey of that type than rangers in our fire district, because our men are only temporarily employed and are low-salaried men.

Q. You could acquire them?

A. Yes.

Q. It would promote very many sales, in my view, if you furnished descriptions and made a charge of $10?

A. And I suggest there is a possibility of confusion in land titles. These men are only $2.25 a day men employed five months of the year, and it is difficult to get an accurate description from a man of that type.

Q. You are on Crown lands?

A. Yes.

Q. If they can do it in Algonquin Park you should be able to do it in Hastings. What do you think about that?

A. Well, the problem in the Tweed District is very general over an area of 4,000,000 to 5,000,000 acres. We have from the Rideau Lakes to Stoney Lake. In Algonquin Park the area for lease is restricted to that along or immediately adjoining the areas and the area from which they lease land is very small compared to that in the Trent District.

MR. COOPER: Under the Land Titles Act I understand the Master of Titles will not accept a description unless it is signed by an Ontario Land Surveyor.

THE CHAIRMAN: But outside of that is it not safer for the purchaser to have his lands laid out properly. I know of a case near Ottawa where a man discovered his back line ran through his kitchen.

MR. ELLIOTT: Q. Have you anything to do with the leasing of water lots?

A. No, I have never had any experience in that—that is, only in one case have I had anything to do with the valuation of a water lot.

Q. Are lots generally under lease in the lake district?

A. Not to my knowledge. .

Q. In other words there is only a very small percentage of the cottagers having boathouses renting lots on water?

A. Yes.

Q. Do you believe it would facilitate matters if the files or certain of the files or records pertaining to the lands in your district were in the district office?

A. I do not know. I am not sufficiently familiar with the routine of registration in the granting of patents to answer that question.

Q. You do not want to give an opinion?

A. No.

Q. The point is for the convenience of the public, it is my suggestion that if the land files from the standpoint of administration were centralized and each district looked after its record of its own territory and assumed the responsibility of making surveys, it would be of great convenience to the public and would expedite transactions in the Department of Lands and Forests?

A. I do not think at the present time our staff is competent to handle the details?

Q. That may be so.

THE CHAIRMAN: I do not want to interrupt, but we have to have one centralized place at which records are kept and I think there are some claims staked out in southern Ontario; that is, mining claims. You might have the difficulty of having a claim staked out in my department on a site which could be applied for in Mr. Crosbie's office a day or a week after.

MR. ELLIOTT: They could notify the Department which Mr. Crosbie controls the same as they could notify the Department here.

THE CHAIRMAN: Here it is simply a matter of having access to the same records. We have only one set of records for both departments.

MR. ELLIOTT: I think that is a matter which would not interfere down there.

THE CHAIRMAN: We have had some difficulty before.

MR. ELLIOTT: We are not dealing so much with Crown lands as with territories available for agricultural purposes and multifarious transactions relating to cottages.

THE CHAIRMAN: As a matter of fact we have had a couple of cases like that in the north.

MR. ELLIOTT: It would be relatively small.

THE CHAIRMAN: But it is quite important to the man applying.

MR. ELLIOTT: But it should not determine the whole procedure in regard to the administration of lands.

THE CHAIRMAN: Quite naturally we want to avoid the possibility of mistakes.

MR. ELLIOTT: Q. Assuming you had a competent staff, do you think it would be desirable in the interests of the public?

A. I think anything which would facilitate the securing of summer resort land by those who desire to secure it would be in the public benefit, because we all appreciate the value of summer residents, particularly foreign residents who come into our country for the summer. It is of value if we can get a resident to come in and anything which would encourage or facilitate his coming in would be of advantage, I think.

Q. Do you not think it would be somewhat the same as in disposing of real estate, that the public would be facilitated if all your officers had certain information regarding the prices of property in the procedure followed in obtaining properties?

A. Yes, it would.

Q. In your territory there are some lands under timber license?

A. Yes.

Q. Is that not so?

A. Yes.

Q. And who grants those licenses?

A. The licenses are granted through the Toronto office.

Q. The licenses are granted through the Toronto office?

A. Yes, sir.

Q. And is there any procedure or regulation which you know of, whereby you can stop an operator from cutting, if he is decimating the property or territory and not practising reforestation by leaving sufficient seedings?

A. There are provisions in the Crown Timber Act to prevent the practice of operation which is detrimental to the best interests of the forest.

Q. Suppose a man has cut over a territory under timber license and taken off the merchantable timber, and makes application to transfer that license. What procedure would he follow?

A. He would make application to the Department in Toronto for the approval of license.

Q. What steps, if any, would be taken in determining the area over which he must go?

A. I do not know of any.

Q. As a matter of fact, is it not the case that when these lumbermen remove the merchantable timber, they sometimes sell their license to a settler or fuel-wood operator who will clean the land and cut everything away?

A. There are such cases, yes.

Q. What can you do to regulate that situation under the Acts covering the regulation of land? Is there anything you can do to prevent it?

A. Yes; there is authority in the Act to prevent that.

Q. Is there any regulation governing it?

A. No; there is a regulation governing the cutting of small pine under authority of the Crown Timber Act.

Q. I know that. We will assume there is no pine?

A. No.

Q. Are you familiar with the prices charged for rentals of cottage sites on various waters in your district?

A. Only those prices of which I am advised from head office.

Q. Each application has to be determined by head office?

A. Yes.

Q. That is all.

THE CHAIRMAN: Are there any other questions of this witness?

MR. SPENCE: In respect of the map on the wall, it looks like a timber branch map, or is it for fire protection?

THE WITNESS: That is our district for district organization. The boundaries of each district are designated on that map.

MR. DREW: Q. Your district is the one on the right side of the map?

A. Yes, the blue one.

Q. The dark blue?

A. Yes; that is right.

Q. That incorporates what area actually?

A. The area is designated as being in the Fire District, and it is parts of Haliburton, Peterborough, Hastings, Lennox and Addington, Frontenac, Lanark and the southern part of Renfrew County.

Q. Does that go over as far as the Muskoka Lakes?

A. No, sir.

DR. WELSH: What is the position at the present time of the settlers? That is, those who are part time engaged in the lumber industry in your district?

A. The settlers who are forced to secure means of livelihood through employment in the bush, are of the type who are of a very low economic status. They can be classed as the poor people of the district and they are a very low subsistence class.

Q. Do you think that north of Hastings lends itself to reforestation at the present time?

A. No, I do not, with limitations, of course. The soil is not sufficiently productive.

HON. MR. NIXON: Q. It will not grow a tree?

A. It will grow a tree, but it is not economically feasible to plant trees in a large percentage of the land in North Hastings.

MR. COOPER: Q. Was that not timbered before?

A. It was heavily timbered, but then repeatedly burned.

Q. Would you say the soil has changed now as compared to what it used to be years ago?

A. Very much changed by reason of fire and erosion.

Q. On account of the burning?

A. Yes.

Q. I see.

MR. W. G. NIXON: Q. What is the nature of the soil?

A. It is sand and gravel over the Laurentian area.

Q. It would be badly leached?

A. Yes, it would be badly leached.

MR. COOPER: Q. Do I understand you to say that formerly you were in northern Ontario?

A. Yes.

Q. What inquiry, if any, is made as to the arable land before a farmer is allowed to go on the land and take up homesteading?

A. We are asked a question as to if the land is fifty percent suitable for agricultural purposes. We must be assured that the man is going to make a living off his land before he is placed on it.

DOCTOR WELSH: Q. As to Mr. Elliott's questions regarding land for summer resorts, it is an altogether different problem in the Trent district than in northern Ontario?

A. Yes.

Q. I would venture to say we have lots and lots of Americans who will not come in because of the red tape of the Crown in the Province of Quebec?

A. That I cannot say. I do not know anything about what is happening in Quebec, but I know the Americans are very impatient. Most people want to build a cottage in a week. I do not know of any machinery which could be set up which would allow us to dispose of land within a week. Enthusiasm for a cottage probably develops in one day very suddenly and it wanes when the snow falls.

MR. ELLIOTT: Q. If you had a planned survey it would assist him so much that he would probably get it in a month?

A. Yes.

HON. MR. NIXON: Q. Do you find that when a man desires to build a cottage he wants to own the land on which he builds?

A. Yes.

Q. Rather than have some complicated lease?

A. Yes. Lands within the provincial forests cannot be other than leased.

Q. You are not dealing with those lands?

A. Yes. We have two provincial forests in our district.

Q. What percentage of the area is taken up with that?

A. Five percent of the Crown lands.

Q. Five percent?

A. Twenty percent, rather; one-fifth.

MR. W. G. NIXON: Q. Would you care to express an opinion as to the feasibility of selling as against leasing in that area? It is a controversial matter in Temiskaming?

A. I would much rather build on land I own than on land I lease.

MR. DREW: Q. Do you actually find it deters people when they find they cannot buy it outright?

A. I am of the opinion it does.

Q. Have you actually encountered that in discussions in regard to islands and so on?

A. Yes, I have.

HON. MR. HEENAN: Q. Are you familiar with the administration of lands on the American side?

A. I have visited the Adirondacks National Park in the Adirondacks.

Q. I do not know whether or not it is true, but I understand you can hardly buy land outright in the United States to-day?

A. That is true.

Q. It is on a lease or license of occupation?

A. Yes.

Q. If I am wrong in this, you might check me up, but I have heard that Americans have a fear of taking a lease or a license of occupation in Canada. They fear there might be some political effect upon change of government?

A. No, I have never heard that expression.

Q. I have had it in my own district. They think that a license of occupation or lease here means only for the life of the present government and due to some political effect such as in the United States, they are not safe in that way. Therefore they want to purchase outright. They told me this themselves—and in doing so that they cannot purchase in their own country—but have you ever known a license of occupation or a lease being cancelled without cause by any Minister or any department of the government?

A. No, sir.

THE CHAIRMAN: I have heard it mentioned several times that some American investors will not invest in mining property when it is held under license of

occupation. They want property definitely when they put their money into it. I suppose it is the same when they purchase summer resorts.

MR. ELLIOTT: Q. The two things which are really obstacles in the way of applicants negotiating for the purchase of land is the delay in learning of price they have to pay and the inconvenience and cost of providing for a survey?

A. Yes.

Q. Suppose you were to survey a lake like Papineau Lake, would I be right in saying that if you could have the work done at a cost of less than $10 ——

A. I do not think it can be done at less than that.

Q. Have you any idea?

A. I have no idea.

Q. You have no idea?

A. No.

Q. I think you agree that you and the other departmental officers really have these lands for sale and you do not know the prices in order to readily furnish them to the people making application?

A. No.

MR. DREW: Q. Mr. Crosbie, you spoke of the fact that the settlers in your district are of very low economic status, that is in the northern part. Am I not correct in saying that the condition of those settlers in the northern part of Hastings County, extending into the adjoining counties, is really a very serious one?

A. I do not think it is as serious as it was ten years ago.

Q. It has improved?

A. It has improved very much.

Q. What has caused that change?

A. The interchange of community life owing to the construction of new roads and the use of the motor car,—that has broadened their contacts with other people. Their social contacts are better now than they were. There is no intermarriage, such as there was years ago.

MR. COOPER: Q. Do you say the motor car has improved the social condition of the people?

A. Not the economic condition.

HON. MR. NIXON: Has the tourist traffic made any difference to them?

A. Oh, yes, it has been very marked economically, and quite marked socially.

MR. DREW: Q. But actually there has been quite a serious problem in connection with the economic status of those people who lived in there, as settlers, at the time that timber was being cut, and then found that they could not sustain themselves on the soil,—that did present a serious problem?

A. Yes, but I think that we who go into it worry about it more than the settlers themselves. They are satisfied, themselves. I know that the experiment was made in Haliburton, and a great many were moved out of there; and they returned and would much rather live in Haliburton than where they were moved to.

MR. COOPER: Q. You mean that they were taken to northern Ontario?

A. Yes.

HON. MR. NIXON: Were there actually many families that were moved?

A. Thirty-five families, I believe.

MR. SPENCE: It is not suited for tourist resorts, is it?

A. Oh yes, with many lakes, the best in the world.

DR. WELSH: Q. There are not many people with a background in there, are there?

A. We have a large number of them. Each year they are coming in greater numbers.

Q. What is the average price for parcels along the lake?

A. A hundred dollars, I would say. I do not really know what prices are charged, but the valuation is as I say $100.

MR. ELLIOTT: Q. What frontage would that be?

A. 109 feet frontage.

Q. You know Mississauga and Catchacoma Lake districts, that were surveyed and subdivided in 1929?

A. Yes.

Q. Do you know at what price lots were sold there?

A. No, I do not.

Q. You have no idea?

A. No.

Q. I have an idea that it was $200, but have any of those lots been sold?

A. Not to my knowledge.

Q. Do you know what the cost of survey was?

A. No.

Q. Do you know who prompted that survey to be made?

A. No, I do not.

HON. MR. NIXON: Do you know yourself?

MR. ELLIOTT: That is what I am trying to find out.

MR. DREW: Q. Well, Mr. Crosbie, I think we can reduce what you have said to this, that if there were some quick and satisfactory way of effecting sales of these summer resort properties, you are convinced from your experience that it would greatly increase the sale of islands and summer resort lots, is that so?

A. No, I would not say it would greatly increase it.

Q. Would it increase it?

A. It would undoubtedly increase the sales.

Q. Why do you qualify it by saying that you do not think it would greatly increase sales?

A. I think there is a service being given now which is meeting the needs of the applicants. While it may not be as speedy as is desired by the applicants for grants, yet there is the service being given.

Q. I have this in mind, that after all, these summer resorts are not only available for us, but we have summer resorts and islands beyond anything that our own population would use, and it is one of the rather valuable assets which we have by which we can attract money from outside of Canada?

A. Yes.

Q. And I would be strongly inclined to think that people who come here for summer holidays would be very much impressed with the desirability of buying an island, if they found that there was some means by which they could buy it within a few days, and could get it within the time that they are still interested in an island or waterfront lot, at the very time that they become interested,—would not that be reasonable?

A. Quite.

Q. So that there would be a considerable advantage in devising some method by which these summer resort islands and waterfront lots could be disposed of quickly and easily, other than having to wait?

A. Yes.

Q. In all fairness, you do feel that there ought to be some method devised for dealing with this type of island and waterfront property, which actually appeal to people during the summer season of the year?

A. I say it is desirable, but I am not able to say that the system we have at present, that the cost of the better system would be justified. I am not able to say that.

Q. I am not asking to express an opinion upon that, because, after all, the cost of establishing the other system would have to be worked out, because you say that it might take six or seven months to get a thing through after making the application?

A. There is a possibility of it taking that long.

Q. Would it not also be an assistance if within areas being mapped out, there was a fixed price which people could see when they wanted waterfront property?

A. Oh, decidedly it would be very much better.

THE CHAIRMAN: How many applications are received in a year?

A. They are not received directly in my office. They are also received by the Crown Lands Department.

MR. ELLIOTT: Q. Would it not eliminate a lot of administration cost if you had the prices fixed and the property surveyed, because you must know that a lot of applications and reports made now would be altogether eliminated if you had the information such as Colonel Drew suggests?

A. Under the present system, there is no duplication once a lot is asked for and inspection is made. With an inspection of an area there may be a lot of work done on lands for which there is no sale,—such as at Katchama.

MR. SPENCE: Do the applicants come to you directly?

A. No, they go to the local office, or to the land agent, or to the office here.

HON. MR. NIXON: There are few sales made?

A. Yes.

Q. I notice that there are only 190 acres in the whole province, and I think, in the County of Hastings, there was only one sale made in the whole year.

THE CHAIRMAN: And that was in the Township of Hungerford.

A. Tweed is in the Township of Hungerford.

MR. DREW: From a practical point of view, when someone is in that area and finds an island, to whom do they go?

A. They write directly in to Toronto, or to the Crown Lands agent, or if they come to me I will accept their application.

Q. Supposing, for the sake of argument, a visitor arrives at Madoc and then travelling north to Bancroft, sees some spot that he would like to go to, to whom would he go for information?

A. He could get the information from the Crown Lands agent, or from the Forestry Office in Bancroft, or in Tweed.

Q. Is there any system of informing tourists in regard to the places where they can obtain information as to the leasing or purchasing of lands?

A. Yes, all our places are advised, and there are publications and documents which are given out by the Tourist Bureau, and there are also publications issued by the Department upon the request of those interested in summer resorts.

Q. I recognize that to some extent it is covered, but, if you feel like expressing an opinion, I wish you would do so. I know that the tourist information has become increasingly useful, and that visitors to Ontario are greatly assisted by the material they are handed when they arrive. Do you not think it is obvious that it might attract them very much if they could be informed in some printed circular that arrangements exist whereby they could get immediate title, at such and such points, to islands or other territory that they might desire in that area, upon application to so-and-so?

A. It would be desirable, but there are difficulties.

If a man wanted to purchase patented land, from a man who has hung onto the land, there is considerable difficulty in making descriptions of land and transfers of title.

Q. They are not difficulties which involve delays of months, because transfers are being made of land in cities right along; and while this is not under the Land Titles Act, yet there is provision for properties being placed under the Land Titles Act; and, after all, all this land could be placed under the Land Titles Act, and once that was done, there would be no difficulty in providing a ready and easy means for handling applications. If that were done, I think you will agree with me that it might be an attractive feature to tourists who might wish to acquire land by lease or purchase, might it not?

A. Oh, yes, it would.

DR. WELSH: Q. Does the Chamber of Commerce in the City of Belleville or the Publicity Bureau, play any part?

A. I have interviewed some of the employees of the Chamber of Commerce, but I do not think they have sufficient knowledge of the methods of securing land.

HON. MR. HEENAN: Mr. Crosbie, this Committee is really anxious to find out if there is any better system than we have at the present time. I do not want you to hesitate to criticise, or to show any better system than we have. Generally speaking, an employee is a little loath to say that something might be better than it is. We do not want that, but we want your real, practical experience and opinion.

The situation, as I understand it, Colonel, is this: We have such a large area in Ontario, and some people come from the outside and they see some beach or some plot of ground, or some island that they would like to have. Of course we have not got Tourist Bureaus with all the information available so that you can just walk in, like you can into a Land Titles office. When they get in to make enquiries, I would say that in nine cases out of ten they cannot locate the island that they have been looking at. They go over the map and say that it is this one, or that one. All that takes time.

Then our department has to find out whether that island has already been leased to somebody else. Very often an island which will appeal to somebody passing by has been leased already to somebody else, and they are not carrying out their duty by building a cairn of a certain standard.

Then they come to our department, and our department does not want to shut the other party out; and they inquire from him whether or not he is going to go on with the development which he ought to have done in accordance with his lease. So we correspond with him for a while. That takes time. All the time that that correspondence is going on, the applicant is looking for an answer, and our department cannot give him an answer. And, in the event that it is free, and we say, Yes, you can have that piece of land, but in order that we may describe it properly, you must have a survey made. Well, he does not want to have a survey made of it, because that would cost him too much.

All these little things amount to a great deal of delay.

I do not know what better system we could have with regard to giving information. To go out and survey the whole province for all available territory, would be going to cost this province a lot of money. And if a man asked you for a survey and you did do it, it might be that he would not buy it anyway. I might say that we are in a pioneer state as to such laws.

MR. DREW: It is obvious that in view of the War, there would be a greater appeal to visitors and tourists from the United States than ever before in our history, and we ought to have the idea in our minds that visitors from the United States would be more inclined than ever before to buy islands and other waterfront property, than they have ever been. And that condition may last for a few years to come.

It is difficult to realize why people would be sufficiently interested to wait six or seven months to get title to an island, while, if some effective system were worked out, it could be done within two or three days.

The point I have in mind is that under the Land Titles Act, any area can be put under the Land Titles Act upon the fulfillment of certain requirements. Any people who own these lands could put their lands under the Land Titles Act. It would be much cheaper to have the whole thing done at one time. And, while it might mean the expenditure of a fairly substantial sum of money, that cost could be absorbed in the price of the property.

If a purchaser pays an amount for an island, nobody would feel that he was paying something in it for the survey. The cost of the survey might be included in the prices.

In this province we have hundreds of thousands of islands which can be sold, and by the very process of selling we attract year by year money from people who would spend money upon that very place. And at this time when there is a greater desire upon the part of people to visit Canada than at any past time even during the great War, it seems important that some speedy method should be devised.

I can understand an objection to any very ready means of transferring property from one person to another; but under the Land Titles Act every thing could be made so that you could provide for title in two or three days.

THE CHAIRMAN: If you sell the whole of the island, even by name or number, it is quite easy to find out whether island number ten has been sold or leased, and if not, to sell it.

But we have thousands of lakes in the north country which can be used as summer resorts. We do not know on which island a tourist would want to buy a few acres; and if we were going to get ready, we would have to survey the land around hundreds of lakes, which would make a tremendous expense.

Mr. Elliott, as I remember, mentioned the land around one lake, of which not one lot has been sold.

MR. ELLIOTT: Because the price was too high. The rest of the available land has been sold.

THE CHAIRMAN: Of course if the neighbours ask a less price than the Government, they might have the say. But if you have to ask Parliament to spend a large sum of money to survey land around a particular lake, while the people's fancy would go to another lake, it might change the whole picture.

MR. ELLIOTT: Of course, Gull Lake is coming into demand?

A. Yes.

Q. People were up there last fall and were trying to find out what it would cost to get building sites, and there were various views of what the cost would be, and it probably would be increased.

If the property could have been purchased at the same price that was paid by two people a year ago, it possibly would be sold.

I suggest that something should be put in the hands of the authorities at Bancroft. I think it would be well.

THE CHAIRMAN: You know what it costs to survey land around lakes. The members here know that there are thousands of lakes which would make wonderful summer resorts.

Parliament might be asked to survey around every lake.

DR. WELSH: If you sold an island or land at a lake, it might keep the others off.

MR. ELLIOTT: If you get a surveyor to make a survey and descriptions,—I think in most cases descriptions should be furnished by the Department.

THE CHAIRMAN: As a matter of fact, the land in the north country is under the Land Titles Act. And I think, Mr. Cooper, you are more conversant with the land titles up north than we are here.

MR. COOPER: Yes, and they can be transferred very quickly.

HON. MR. HEENAN: At one time the Department sold islands outright, and I agree it would be better to sell land for a small amount and keep people there. But the fact is that if you sell it outright, and if they leave it, you cannot sell it to somebody else. I think that has been the experience.

In the early days the Government surveyed and sold practically all the islands in the Lake-of-the-Woods, and now they are idle and nobody will buy them.

THE CHAIRMAN: Mr. Heenan, what would you think of disposing of islands or summer resorts under lease with a proviso in the lease, that if the lessee within a year or a certain term of years spends a certain sum of money in improvements, then you would be entitled to the land.

HON. MR. HEENAN: Yes, I would be in favour of that. In fact, I think we have disposed of some in that way.

There is a case in point. Americans came in over the Fort Frances Highway and if they spotted an island they would like, they go to the Crown Lands or the Forest Department, and find out whether it is in the Crown. It might be just the size of island that the particular man would want, three, four, five, six, seven acres. Such a man probably would have a good many Americans come to visit him, and he would have to put up a house costing five to ten thousand dollars,—some of them up there cost as high as fifty thousand dollars. He would like to own the land. We would say, if this man wants to have a proviso, we might sell the island to him.

Another man comes in and wants an island all to himself, so that nobody else could come in on it.

MR. COOPER: Q. It seems to me that a person who wants to go in, would

want to know in advance how much he is going to have to pay for that land. He does not want to pay a license year after year and not know when the title would be got from the Crown.

HON. MR. HEENAN: I do not know what the Chairman would do, but I would have no hesitation,—

THE CHAIRMAN: I cannot believe that there would be many sales, because, according to this Report for last year, throughout the Province the total area of islands sold was 213 acres; and on the mainland 198 acres. The whole together amounting to about two-thirds of a square mile.

HON. MR. HEENAN: And if the province went to the expense of making surveys, it would be a tremendous expense.

THE CHAIRMAN: I would not approve of the province making surveys of all these lands; but I would approve of the lease providing that the lessee might have title within two years if he would spend a certain sum of money. I think that would help to get people into the north.

MR. W. A. NIXON: Would you extend that to tourist camps as well? Up at Nipigon there is over a million dollars expended in tourist camps and cottages; and the tourists are claiming the right to own the property. They say it would be more of an incentive to improve their properties, where they would invest if they really owned the land. It is in the Park Reserve.

HON. MR. NIXON: And a different policy necessarily must apply there.

MR. W. A. NIXON: That is very true, but nevertheless, this is one of the problems which exists there.

MR. CHAIRMAN: I was told this morning by Mr. Ferguson, the witness, that in the Timagami the leases were for twenty-one years, with the right of renewal, but in other places we are told, the term of lease was for seven years.

HON. MR. HEENAN: That is practically the system that we have now.

MR. ELLIOTT: In every case, Mr. Heenan, when a man buys property, he has to undertake to build a cottage in eighteen months before he gets his patent, so that there is not only the small bit of revenue from the sale of the land, but you are encouraging further investment.

HON. MR. NIXON: I suggest, Mr. Chairman, we go on with examining the witnesses and leave this discussion till later, because it is costing us money to put this down on the record you know.

SELBY DRAPER, sworn:

THE CHAIRMAN: Q. Mr Draper, you heard the discussion that took place a moment ago?

A. Yes, sir.

Q. Is it a general policy of the Department—I am speaking more particularly of the northern country now—when a man asks for a five-acre lot or for an island for the purpose of summer resort, is it the custom of the Department to give him a lease with a clause providing for a patent upon the accomplishment of certain work?

A. Generally speaking, no The majority are sales of summer resort parcels.

Q. The majority are sales of summer resort parcels?

A. The large majority, yes.

Q. When we were dealing with it this morning my impression was—I may be wrong—that in the north country you did not give patents, you gave leases or licenses of occupation?

A. I think that evidence has to do with water lots perhaps.

Q. No, we were dealing with islands, because I submitted to Mr. Ferguson the case of an island of so many acres on which a lease was given to a private individual and he told me that the rental price would be checked up every seven years, so it certainly was not a water lot?

A. No, I see. Well, there are a few leases which are issued on a three-year and a five or seven-year basis, but generally speaking that is not the rule. As I say, the majority of summer resort parcels are sales and one of the conditions of the sale is that when they build they are entitled to their patent. They must build within a year and a half but they may build within a month and a half and get their patent.

HON. MR. HEENAN: Q. How long have you been in the Department, Mr. Draper?

A. Thirty-five years.

Q. Is that all? Has most of your service been in this particular branch?

A. Yes, sir.

Q. All your service has been?

A. Well, it was more general in the first five or ten years.

THE CHAIRMAN: Q. Have you a copy of the 1939 report of the Minister of Lands and Forests?

A. I have now, yes.

Q. Will you look at that, on page 71?

A. Yes, sir.

Q. That is a statement of patents, etc., issued during the year ending March 31, 1939, and I notice you have on the first line "Public Lands Patents 356". Now I suppose that would include all patents for agricultural lands, summer resorts, etc.?

A. No.

Q. No?

A. The total is 623 out in the margin on the right-hand side.

Q. No, but you have several more lines, "Free grants patents, pine grants patents, pine releases, transfers (townlots), patents, miscellaneous patents and vesting orders?"

A. Yes.

Q. That gives you a total of 623?

A. Yes, that is what I say.

Q. But the public lands patents would include summer resorts as well as agricultural lands, would they?

HON. MR. NIXON: You have your summer resort patents on the previous page.

THE CHAIRMAN: Yes, but this is a summary.

A. I think the summer resort patents appear on another page.

Q. Isn't that a summary of all the patents and all the licenses and so on issued?

A. Yes, sir.

Q. Well then, they would be included in your summary, wouldn't they?

A. Yes.

Q. Now if you go farther down to licenses of occupation around the middle of the page you will see that licenses of occupation for lands number 368?

A. Yes, sir.

Q. I don't suppose these would all be for summer resorts?

A. No.

Q. But the greater part of these would be for summer resorts?

A. I wouldn't say so.

Q. I am asking you the explanation, Mr. Draper?

A. Yes. Licenses of occupation issue for many other purposes; for instance, for pasture, ranching—

Q. Lands under water?

A. Lands under water—water lots.

HON. MR. HEENAN: Q. Lumbering?

A. In some cases, yes. And for various other minor plans and schemes that people have, such as maple syrup operations.

THE CHAIRMAN: Q. I might shorten this by making the suggestion, Mr. Draper, could you prepare and file with the Committee a statement showing how many summer resorts were disposed of by the Crown during the last year, during 1939?

A. Yes, easily.

Q. And how many were by lease or license to be followed by a patent?

A. Yes, we can do that easily.

HON. MR. HEENAN: Q. You heard, Mr. Draper, the discussion with regard to the delay that occurs when there is an application made for say a summer resort. You might give an explanation of what has to be done in connection with it; just take any one for example. A man wants an island or a corner of some lot, maybe away out of what might be regarded to-day as civilization. You might just give the Committee an idea of the different steps he would have to take and what might cause the delay?

A. In the first place, it depends altogether on the season of the year that he makes his application.

In the next place, it depends on the location; that is, whether it is accessible, or whether the Department has any information, even in a general way, as to the land about which he is enquiring.

And the other delay, if any, has to do largely with the applicant in securing his plan of survey, in case it hasn't been surveyed. Sometimes it is difficult to secure the services of a surveyor, and after he makes his survey it is sometimes, very frequently, some weeks before he sends his plans to the party or to the Department as the case may be, because when in a locality in a township on a lake, he often makes several surveys on the same trip, and that is largely the delay in my opinion, is getting the survey where survey is necessary.

HON. MR. HEENAN: Q. Then, after you get this application in, you have to satisfy yourself that you have not disposed of it or haven't promised it to somebody else?

A. Yes, sir. And we have found cases where, even with a survey, there have been errors. One case in point, where an island had been surveyed and the surveyor went in from one side of the lake, he surveyed an island and plans were laid down and the island was sold. In about two years after, another man came along and applied for an island in the lake, the lake, if I remember, had about seven islands in it all fairly close together, and the surveyor came in from the other side of the lake, tied the island in to another point on the shore of the lake, and when the Surveyor-General went to lay down the second plan, he found it right on top of the other island and not quite the same shape, but practically the same area—it was the same island. And that proves the necessity of getting a survey of all parcels of that kind; very dangerous to do it otherwise.

MR. DREW: Q. How is it actually handled in the Department, Mr. Draper? Who actually handles it when it comes in, the application?

A. Well, our Department is divided into three or four groups and a clerk usually handles the applications for a certain district, and the procedure is that when an application comes in, the first thing to do is to search and see if there has been any other correspondence respecting this particular part, either by that individual or any other individual back many many years, and if we are satisfied from the correspondence that there has been no prior application for that particular parcel, then we ascertain if it has been reported on in a general way, and following that, we either order an inspection or a survey, as the case may be, and there is necessarily some delay sometimes in making an inspection, because our field men have other duties and are delayed to a certain extent in getting their reports.

Q. I am not being critical of what is taking place in regard to this, because, after all, that is simply one of these developments which must evolve as the demand increases, but it does seem to me that the method you have described is a particularly disadvantageous one for people who are either visitors in this country and want to go to a definite place, get some place to stay when they are there, and have no desire to conduct a long-range correspondence or actually visit Toronto while they are here, possibly in connection with it?

A. It is not necessary to come to Toronto. They make their selection first, before we know of the parcel of land they are talking about, you see; they must make their selection.

MR. W. G. NIXON: Q. Under present regulations an applicant for a summer camp site, for instance, Mr, Draper, he must erect his building before title is granted?

A. Oh, yes.

Q. That is a safeguard?

A. To prevent speculation in summer resort property.

HON. MR. HEENAN: Q. And he can readily get the information as to whether or not that island or location is still in the Crown, he doesn't need to come to Toronto for that, does he?

A. No, but he can correspond with Toronto.

Q. Yes, but it is not necessary to correspond with Toronto as a preliminary, he can find out from the local offices, can he?

A. Generally, yes.

THE CHAIRMAN: Q. Mr. Draper, in the years you have spent in this office I suppose you have run across cases where some land had been staked under the Mining Act and it was subsequently applied for as a summer resort, or vice versa?

A. Yes.

Q. So that in any event you would have to search in the records at Toronto to find out if the land was available?

A. Absolutely—there would be no other place we could get the information.

MR. DREW: Q. Mr. Draper, it will be necessary for you to examine the records, will it, to find out the lots that were sold for summer resorts—you haven't got that information available?

THE CHAIRMAN: The number of patents issued for summer resorts.

A. Yes, we have the number of patents, I think, here.

THE CHAIRMAN: No, but I asked you—that is what you are referring to?

MR. DREW: Yes.

THE CHAIRMAN: Q. I asked you a moment ago to file a statement?

A. I will get that, yes.

MR. DREW: In 1939 we have 356 sales of lands, 368 licenses, and so on, but it is not analyzed.

THE CHAIRMAN: That is what I want Mr. Draper to get, a statement showing the number of sales, leases and patents for summer resorts.

MR. DREW: Q. And you might perhaps add to that, Mr. Draper, some of the forms you use?

A. I beg your pardon?

Q. You have printed forms of course of sales ——

A. Yes.

Q. And licenses of occupation?

A. Yes, sir.

Q. And leases that you use for summer resorts?

A. Quite.

Q. Do you use a different lease for lands in Provincial Forest Reserves than lands in other parts of the province?

A. No, the same lease form, modified perhaps in some instances to meet the situation.

Q. Well, you might file perhaps a copy of each one of those documents?

A. Yes, sir.

HON. MR. NIXON: Why not include in that the number of applications that have been made in the year and not finally dealt with?

THE CHAIRMAN: Yes.

MR. ELLIOTT: Is that applications by letter?

THE CHAIRMAN: Applications made generally to the Department for summer resorts.

MR. ELLIOTT: Made by letter?

THE CHAIRMAN: Made anyway—personal applications.

MR. DREW: Q. Mr. Draper, how many people would be working at this?

A. Do you mean on an individual application or in the Department?

Q. In the Department?

A. On this particular class of application.

Q. Yes?

A. Well, it would vary according to the season, you see.

Q. Yes?

A. As I say, the work is divided and one clerk, for instance, might handle the correspondence in connection with applications in the Tweed agency for instance and another in Parry Sound and Muskoka and another in one of the other districts.

Q. Would there be any way of estimating the cost of the administration of these properties?

A. I would think so, in a general way as to the —— You mean the salaries paid for that service?

Q. What it actually costs the province to handle the sale of these summer resort properties?

A. Well, they are not separated from lands sold by sale for farm purposes

or free land grant, it comes in in the general way of business, all applications are dealt with in a much similar manner. This time of the year, for instance, we would get perhaps five or ten percent of the correspondence might be for summer resort—perhaps not that much, perhaps two percent at this time of the year of the entire correspondence of the Department would come to it for land for summer resorts, so that we don't segregate that particular duty.

Q. When you are preparing the statement will you accompany that with a statement as to the number of acres sold?

A. We have that, the acres sold, in the report.

MR. DREW: Are these all summer resorts?

THE CHAIRMAN: Yes—it starts at page 65.

MR. DREW: Q. Have you the figures of the sale price of these patented summer resort lands?

A. No. We could get the total. It would be quite a little job though, but we could get it.

Q. Isn't that separated now in your books?

A. In a way, yes. We keep the summer resort sales separately.

Q. That is what I mean, you could get the total amount even if you didn't have the individual items?

A. Yes.

Q. Then will you have that at the same time?

A. Yes.

HON. MR. NIXON: Q. You have the individual areas set out here anyway and there are very few of them?

A. Yes, there are very few; the prices vary somewhat.

Q. It wouldn't be somewhat of a job for you to check or a clerk to check the individual transactions too?

A. No.

THE CHAIRMAN: Q. Do you keep a separate account of the rentals or annual charges received from summer resorts?

A. Yes.

Q. Would it be possible then for you to include that also in your statement?

A. Yes. But don't confuse, please, the revenues derived from summer resort leases or licenses, because it is very small compared to the proceeds of the sales.

Q. No, but you have I suppose a number of islands or areas which were let under leases?

A. Yes, sir.

Q. And what is the annual income to the Department from those leases?

A. Yes.

Q. I am speaking only of summer resorts?

A. Yes.

Q. And if you have any areas under license of occupation I would like to have the same information?

A. Yes.

THE CHAIRMAN: And this could be filed as Exhibit 41.

EXHIBIT No. 41—Filed by Mr. Draper: Statistics from Department of Lands and Forests concerning summer resorts.

HON. MR. HEENAN: Q. Mr. Draper, does a situation like this often occur, that a person applies for a summer resort and you find when you are about to dispose of it that someone has staked it out without permission and built?

A. Yes sir, we find that.

Q. And then there is the dickens to pay with the local member if you put them off, isn't there?

A. We don't deal in politics in the Department.

HON. MR. HEENAN: You see, Colonel, our experience has been in a great many cases people will build on Government land and then apply for it afterwards. We might have two or three applications in in the meantime.

MR. DREW: That is one way of getting squatters' rights.

HON. MR. NIXON: Possession is nine points in the law, isn't it?

MR. OLIVER: Q. What month would you say there was the largest number of summer cottage applications—July or August?

A. Yes.

MR. DREW: Q. There would be no way that you could state here the administration costs of this part of your work? Is there?

A. No, I don't think so.

Q. Are the costs of the Land Branch as a whole set out separately in this report?

A. No. I think it appears in Public Accounts.

HON. MR. NIXON: Q. The Public Accounts would include it?

A. Yes.

MR. DREW: Q. But not in here?

A. No.

THE CHAIRMAN: Anything else?

All right, Mr. Draper, thank you.

J. A. BRODIE, sworn:

THE CHAIRMAN: Q. Mr. Brodie, what position do you hold in the Department of Lands and Forests?

A. Forester in the Department of Lands and Forests.

Q. How long have you held that position?

A. I was appointed Assistant Forester in 1927 and Forester in 1934; I think that is right.

Q. And I understand you are now in charge of the Fire Protection Branch?

A. Yes, I have taken that over in the absence of the previous head who has joined the Royal Air Force.

Q. That is Mr. Mills, is it?

A. Mr. Mills, yes.

THE CHAIRMAN: Do you want anything from him, Colonel Drew?

MR. DREW: Q. Mr. Brodie, have you been actively connected with the Forest Fire Protection problem?

A. That has not been my main duties until recently; I have been connected with the Forestry Branch from the very beginning in 1923 when I came on the service. Forest Fire Protection was carried on as a separate department of the Forestry Branch during that time.

Q. Are you in charge of that now?

A. Fire Protection, yes.

Q. Well now, a suggestion has been made in different places, I don't mean necessarily in Ontario, that it is cheaper to patrol the forests by renting machines from existing companies than to own machines outright. Can you express any opinion on that?

A. That is aircraft you are speaking of.

Q. Yes?

A. The aircraft end of protection was started in the Ontario Branch about 1924. Now at that time it was virtually impossible to rent aircraft. Since the initiation of that commercial aircraft work has developed very materially. We might now be in the position in which it would be cheaper to employ it, to actually hire it, than use our own services, I am not prepared to say whether we have reached that point yet or not, but it certainly has not been for the greater part of that period that our service has been in operation.

THE CHAIRMAN: But would these private aircraft always be available when you need them?

A. Yes.

HON. MR. NIXON: You have hired a great deal of flying apart from your own branch?

A. Yes. In years like 1936 when there is very heavy suppression, aircraft are hired in addition to our own.

MR. SPENCE: Have you any estimate of the flying hours, or the minimum?

A. For our own service?

Q. Yes.

A. They are given in the annual reports of each year.

THE CHAIRMAN: Page 121.

WITNESS: Page 121 of the report of 1939, Table 2,* shows hours flown on various phases of flying operations.

MR. SPENCE: Page 121?

A. Yes. That gives the average for 1924 to 1928 in the first column, and 1938-39 in the second column.

THE CHAIRMAN: Pardon me if I correct you. It is not the average; I believe it is the total.

A. Yes, it is the total. Excuse me.

HON. MR. NIXON: These are all your own machines?

A. Yes.

Q. This does not include the flying that you rented?

A. No.

DR. WELSH: Is it 28 machines you have in the service?

THE CHAIRMAN: The list is there. Yes; 28.

HON. MR. HEENAN: My estimates show that the cost of special flyers varied all the way from $40,000.00 in one year down to about $5,000.00. It all depends on the necessity.

THE CHAIRMAN: You have the figures on page 119:

"The cost of purchased flying from the year 1924 to 1936 inclusive averaged over $45,000.00 a year, while the cost during the last two years has been altogether slightly over $23,000.00. This notable cost differential justifies the belief that an adequate transport balance in our fleet is economically justified."

MR. DREW: What is the condition of these machines at the present time?

A. That question really should be asked of the Chief of the Air Service.

Q. Who is that?

A. Mr. Cronsford.

HON. MR. HEENAN: I can give you the information, Colonel. Most of them are old machines ranging anywhere from 6 to 12 years of age.

HON. MR. NIXON: The Federal Government inspectors say whether you can take a machine up or not?

A. Yes.

Q. Or whether it has to be grounded?

A. Yes.

HON. MR. HEENAN: At the present moment it is questionable whether we will be able to use any of our machines after this year, some of the old machines, because of the fact that the Federal Government will not permit their use. They are not airworthy; at least, they will not be airworthy after this year.

MR. DREW: How many would that affect?

HON. MR. HEENAN: I would guess that would affect more than half of them right now.

MR. COOPER: Is it your opinion, Mr. Brodie, that this type of air patrol is necessary for the efficient preservation of the forests?

A. The greatest present use of aircraft and probably the future use, too, will be for rapid suppression work. In the initial phases, before the tower system was developed, aircraft were used very largely for detection work; that is, actually going out and spotting the fires and taking the reports back to headquarters.

At the present time the tower system has been so rapidly developed in the north that detection is very largely dependent on the tower system. And the use of aircraft is gradually becoming much less a detection service than a suppression service. And that has entailed the transfer from the light detection machine, which carries one or two passengers, to a type of transport machine which will carry up to a thousand pounds and operate in and out of fairly small lakes throughout the north country.

Q. But you would require a lesser number of machines?

HON. MR. HEENAN: I did not get that, Mr. Cooper.

MR. COOPER: I say he would require a lesser number of machines.

HON. MR. HEENAN: Oh, yes.

HON. MR. NIXON: A different type of machine.

WITNESS: Initially the air service was practically wholly on detection service. The early type of machine, which was mostly the H.S.2 L. actually could not get in and out of a very small lake with any load, and they were not much used, the early machines, for suppression work. They have developed aircraft now that will carry a fairly good load, take a fire crew in with the equipment, a small fire crew, and land on a small lake and get out without any outstanding danger. With that development in aircraft as well as the development of the detection system by towers we can now use the aircraft essentially for suppression work.

HON. MR. HEENAN: If we were to depend on commercial flying would we not be under this handicap; that the commercial machines might not be there when we wanted them and the commercial machines would not have the equipment in them which we have in our own machines? In other words, if we hired a commercial machine we would have to equip it with pumps, hose and certain other things that we have in our own machines now?

A. Quite right.

MR. DREW: Have any estimates been obtained of the cost of hiring machines to do this work?

A. You mean of taking over the entire work of the forestry branch?

Q. Yes.

A. Well, if there is, I have not had anything to do with it. I think there have been officially with the Department. There was some talk about it at different times.

Q. But you do not know anything about it?

A. It has not come through to me.

HON. MR. HEENAN: There have been several propositions made to me by the different companies that they take over the different machines and supply us with flyers. Up to the present time I thought it was better for the government to retain that service themselves.

MR. COOPER: Does aerial photography come under your Department?

A. It is under a special branch.

Q. There have been planes hired for that purpose?

A. Yes.

Q. I beg your pardon?

A. Yes, there have been.

HON. MR. HEENAN: We have one machine ourselves.

MR. SPENCE: What is the total cost? I notice on page 121—$109,428.53. That is the total cost of the flying operations for the provincial air service in 1939? Turning over to page 122 is shown Transport aircraft. It all comes under the provincial air service.

MR. DREW: Those are flying hours.

MR. SPENCE: Oh, I see. Well, what is the total operating cost for the provincial air service?

HON. MR. HEENAN: I do not think you will find that here, Mr. Spence. I think you will have to go to the public accounts for that. It varies from year to year.

MR. SPENCE: There is considerable controversy about this provincial air service.

THE CHAIRMAN: You have it shown on page 40:

"Air service—salaries	$166,023.45
Operating Expenses	154,127.07"

MR. SPENCE: Oh, yes.

THE CHAIRMAN: Are there any further questions from this witness? Thank you, Mr. Brodie.

The Committee will adjourn until 10.30 to-morrow morning.

At 4.30 p.m., Tuesday, April 30th, 1940, the Committee adjourned until Wednesday, May 1st, 1940, at 10.30 a.m.

TWENTY-EIGHTH SITTING

Parliament Buildings,
Wednesday, May 1st, 1940.

Present: Honourable Paul Leduc, K.C., Chairman, J. M. Cooper, K.C., M.P.P., Colonel George A. Drew, K.C., M.P.P., A. L. Elliott, K.C., M.P.P., Honourable Peter Heenan, Honourable H. C. Nixon, W. G. Nixon, M.P.P., F. R. Oliver, M.P.P., F. Spence, M.P.P., Dr. H. E. Welsh, M.P.P.

L. J. BELKNAP: Called.

THE CHAIRMAN: Q. You are President of Consolidated Paper Company, Mr. Belknap?

A. Yes, sir.

THE CHAIRMAN: All right, Colonel.

MR. DREW: Q. Now, Mr. Belknap, we have been discussing here through different witnesses the major problems affecting the industry and certain measures of Government control directly and indirectly which affect the industry and one of the most important aspects of this discussion has been the consideration of the present method of prorating the production of newsprint and its effect on the industry and an attempt to find some concrete plan for future steps that should be taken by this Government, and presumably by the Province of Quebec Government in co-operation with the Ontario Government. I simply say that as a basis for the questions that I will ask. The suggestion is made that you should come here as a witness for the purpose of giving the viewpoint of one of these large companies directly concerned with the attempts that have been made to stabilize this industry. It perhaps won't be necessary to go through the details of the method of proration as Mr. Vining, President of the Newsprint Association, has outlined that quite fully, but I would like at the outset to have your own opinion and in your own words of the effectiveness of proration to date and any recommendations you would care to make as to ways and means in which proration may become effective in the future if that is desirable in your opinion. Of course I might point out in connection with that there is some difference of opinion even in regard to the problem of proration itself and I would like you to express an opinion as to your experience with proration.

I think perhaps, just to keep the record clear, I should ask where are your mills situated?

A. We have five mills, all in the Province of Quebec, one at Port Alfred up on Lake St. John, which is a tide water mill; we have one at three Rivers, which is a tide water; we have one at Cap Madeleine, also a tide water mill; we have another at Grand Mere, Quebec, about thirty miles from Three Rivers; another one at Shawinigan Falls, about twenty-four miles from Three Rivers; that is all. And then we have a sawmill at Pembroke, Ontario.

MR. COOPER: Q. What is the rated capacity of your paper mill?

A. The capacity of newsprint is 614,000 tons per year this year.

THE CHAIRMAN: Q. That is newsprint?

A. Yes. That is the official rating.

Q. Of newsprint?

A. Of newsprint, yes.

HON. MR. HEENAN: Q. That is the whole five mills?

A. That is the whole five mills, yes. Then we have a mill also which is a combination mill and it makes newsprint and also specialty papers, that is kraft paper, which is wrapping paper, bag paper, and all these various kinds of paper.

Q. Is that in addition to the five?

A. No. That is a combination mill.

Q. But that is included in the five?

A. That is correct, just another building on the same property, same grinders and so forth.

Q. That is included in the five?

A. That is included in the five mills, yes.

MR. DREW: Q. Then I understand, Mr. Belknap, that your newsprint production is under the present plan of proration?

A. Yes.

You wish me to give my opinion of prorating? Is that it?

Q. I think perhaps, yes.

A. I might say the results speak for themselves pretty well even though there have been exemptions. This industry has been in a chaotic state for the

past ten years and I think if anyone investigates very carefully the last two years since the advent of proration the newsprint industry has probably been in better shape than it has at any time during the past ten years. As ineffective as total proration has been it has been beneficial to not only the newsprint industry but every industry in Canada. I need not tell you that the newsprint industry is probably the largest employer of any manufacturing industry in Canada. Our exports of newsprint are in excess of those of wheat and there have been no subsidies of any kind in the newsprint industry. Only this week the Federal Government is paying to the Wheat Pool some $50,000,000 for the deficit of 1938, and yet wheat in export value in 1939 was some $10,000,000 less than newsprint.

We read and hear a great deal about wheat, but we don't hear very much about newsprint excepting some subversive things that are said about it and the newsprint manufacturers, so that I think so far as I am concerned proration has been of great benefit not only to this industry but to the people who are employed in it, to the citizens who live in the territories and towns in which there are newsprint mills and contiguous territories that supply the wood therefrom.

Since we have had proration there have been about forty million additional dollars brought to Canada as probably the result of proration. 1938 was not a good year, 1939 was a little bit better. That money was distributed in Canada among our people, not only the newsprint manufacturers but the secondary industries that supply all sorts of things. Take our transportation of newsprint products: My corporation in 1939 was responsible for about $3,000,000 worth of transportation in and out; that is a secondary industry we will say to the newsprint industry.

Likewise our purchases from different sources within Canada amounted to another two and a half million dollars which gave work, gave employment, to other people in other industries. So that anything we can do to promote the newsprint industry and protect it is not only a matter for the benefit of newsprint itself but a benefit for the citizens of Canada very largely.

I don't know whether many people realize it or not, but most all of our Canadian dollars received for newsprint come into the country and stay here, from other sources, and we send out of the country practically nothing of our earned dollars for the purchase of anything that goes into the production of newsprint. Our corporation last year spent outside of the country six-tenths of one percent of its income in purchases for things that we had to have and couldn't obtain locally. Newsprint is a good deal like mining, it is one of our natural products, the result of it; our woodmen's operations for our forest products are really agricultural. It takes a tree probably seventy-five years to grow, whereas, it doesn't take that long for wheat to grow, but nevertheless I have had farmers tell me, who work in the bush who cut some timber themselves, that about the only cash they receive is what they receive from working in the bush, and therefore when they are not busy in the winter time with other things they are employed in the bush either directly or indirectly, which gives them considerable income.

I don't think perhaps that anyone would say they are entirely satisfied with proration, particularly as it has been conducted in the past, but I have never been able to find anyone who had any substitute that was economically

sound in so far as the country is concerned; therefore I must subscribe to proration as being probably the most equitable manner in which to handle this industry and, if it is worth saving, to save it—and I think it is worth saving.

Q. Well, what have you to say, Mr. Belknap, regarding the argument that is made not only against proration in the newsprint industry but in regard to proration in any similar industry, namely, that proration in the end promotes inefficiency up to a point where it becomes dangerous?

A. I don't think it does, Colonel. I don't think proration eliminates efficiency. I don't believe it in any way affects the man who is really an operator. I don't see why anyone should hold that it does. Proration, so far as economy from within is concerned, I don't believe there is a newsprint mill in Canada that is not struggling all the time to increase its efficiency and increase its sales; if they were not they would not spend these vast sums of money that they do in increasing their efficiency by things which they do within, perfecting their organizations and perfecting their sales organizations.

In the old jungle system before we had proration the downfall so far as income to the industry was concerned was largely created from within because of cut-throat competition. We can't blame the rest of the world for that—it is the Canadian industry that has been responsible for that—and it is the kind of industry that is different to most others in that you cannot stop and start mills by just turning the key in the door. And furthermore mostly all these mills are located in communities where there is no other business, there is no other industry, and if a mill is closed down grass will grow in the streets very shortly.

We have had some experience in having mills shut down and the expense of getting started, and the length of time it takes in case there were a sudden demand for paper announced being purchased, is enormous; you cannot start up a big mill that has been shut down for six months under $75,000. To get it started again it takes you weeks and weeks to get your organization together, to get your mill in trim shape to produce. Furthermore, if you anticipate you are going to be shut down you are not going to invest money in wood and have it standing idle there for an indefinite period and deteriorate—wood deteriorates very rapidly you know. Wood, if it does stay on the pile a couple of years, in a block pile, is not fit to use any more for making paper; it is perishable stuff; and in calculating what our wood requirements are we are thinking this minute of how much wood we have got to have that will last us from June 1941 to June 1942, and that is predicated upon what we think is the amount of paper we are going to make between June 1941 and June 1942, and I will leave it to you that it just isn't a forecast, it is an estimate. That is one of our problems in this business, and the amount of money invested in those investments is very considerable.

Q. The reason I ask that question, Mr. Belknap, is, that while there may be very considerable differences between the nature of the products there is a very general, shall we say suspicion, of the results of proration having regard to what happened in Canada in an attempt to control the output of wheat, also in attempting to control the output of rubber from the British producing areas some years ago, and I am merely referring to a concern that seems to be

generally expressed that over a period of time it might produce the same result. You apparently don't feel there is any danger?

A. I don't feel that way. Of course after all newsprint companies are tenant farmers in that the monopoly of the wood is controlled by our governments and our investment in our mills is dependent upon the supply of that material; we, being tenant farmers, pay ground rent and we pay for the wood. So that we have got to do something to, I don't like to say "control", I think "regulate" the manner in which this industry is conducted and I think in fairness to our shareholders and our bondholders and our citizens it ought to be conducted in a way that we some time or other can pay some wages to the money there is invested in this industry, which we haven't been able to do in the last ten or fifteen years. I think the people who invest their money in this industry are entitled to some consideration, and they certainly haven't gotten very much out of it in our business in the newsprint industry, I don't know about the others.

We have a real dollar investment of about twenty-five thousand for each man's job. That is, in other words, for a man to obtain a job there has to be an investment of about $25,000 per man. Now that includes working capital, to be sure, because that is real money that you have to have. Without that money there would be none of these jobs and I think that we must think about protecting the jobs and also protecting the money to a certain extent that is responsible for creating these jobs, and, as I say, I know of no other means of protecting that than through proration, which has been done in other industries.

I don't need to tell you the system of proration in the oil industry in the United States before the governments of various oil producing States got together and formed a central committee for the control of the production of oil. Through competition oil was selling at ten cents a barrel, which is terribly destructive from every standpoint. Well, with proration oil probably hinges around $1.15 to $1.25 a barrel, which is a fair price, which enables and encourages the producer to keep on drilling and producing, which is important. I think that maybe we are overlooking the fact that this industry was really the beginning of all industry in Canada very largely. Before 1910 we in this country were largely hewers of wood and carriers of water.

Q. I remember that expression, it originated in 1911 I think.

A. Yes. I am not sure of the date, around '10 or '11 or something like that.

But in this country, well, the amount of newsprint paper that was made at that time in the whole country could be made in six months by the Abitibi Company.

Then we prohibited the export of wood from Crown lands. Immediately the newsprint industry began to grow until to-day the production capacity is something over four million tons and the investment is a big one and employing a large number of people. That was the beginning. After that then all industry began to grow so that we were not confining ourselves to being hewers of wood and carriers of water—and this was quite a natural industry for this country. When this prohibition of the export of wood came

about newsprint mills and mills making other grades of paper began to develop very fast and the income of the country was very greatly increased.

I think that a cord of wood converted into paper is worth probably four times in our dollars that we keep within the country to what it is if we just sell it as wood. I might explain by saying that let us suppose for example wood is selling for $10 a peeled cord, some place thereabout, and rather than sell for $10 we convert it into paper, we will say that it would be $40; the additional $30 is pretty well kept within the country in our work that we are doing here, which is awfully important to Canada.

You will remember in this province,—I don't know when it was, but it seems to me it must have been twenty or twenty-five years ago—most all of the products of nickel and copper in the form of matt were shipped abroad to other places and refined and we were not getting the benefit of converting them into finished products. The result was, in this province, I don't know what the nature of the law was, but at any rate they prohibited the export and said that it must be refined within the province; the result has been another big industry has been built in consequence of that.

MR. DREW: Q. Now, Mr. Belknap, I had intended to come to that later but perhaps it would follow in sequence at this point since you have introduced it. You have mentioned at the time export was stopped that these mills then came into existence and that that was really the beginning of large scale Canadian industry. I assume that that observation means that in your mind it was the stopping of the export that prompted the establishment of mills?

A. I think so, yes; that together with the fact—and it became quite obvious —that they took the duty off newsprint in the United States. I think it was about that time, about 1911 or '10, but maybe that was done—I don't know— because of the fact it was difficult to get wood any more with which to continue the production of paper in large scale in the United States.

Q. Now, Mr. Belknap, as you know, to-day the subject of export is becoming a matter of very active discussion because export is rising very rapidly. What is your own opinion in regard to the wisdom of exporting raw pulp logs?

A. Well, I don't think we should export our wood. I think the reason for not exporting it is just as great to-day as it was at the time we prohibited it, and it was done for a purpose at that time, and I don't think the purpose has changed.

Q. Well then, do I take that you believe it would be wise to stop the exporting of pulp logs?

A. I do.

I think there are certain local conditions perhaps that might recommend the export of pulpwood to a certain extent, but I believe so long as we continue it indefinitely we are going to revert back to being hewers of wood and carriers of water. To a certain extent, I can't say there aren't extenuating circumstances temporarily that might make it necessary to export wood—employment

plays some part in connection with it, but that is only temporary—and that if we wish to develop our manufacturing industries we certainly should retain our wood, and I am not sure that we have got an awful lot of surplus; I don't know that we have. I am not a forestry engineer and I don't know very much about surplus of our available wood, but I think we want to think about it pretty carefully before we allow too much of it to be exported. The unfortunate part of it is, so much wood that is exported is taken from areas that are contiguous to good shipping facilities and it means that our own investments that consume wood have got to go back to find wood at probably very much greater cost.

I am not an expert on this wood situation at all but I do worry about our position sometimes nationally in connection with it.

Q. After all your worry about the future is one directly concerned with your own business and I can see that worry is based on ——?

A. I worry about it as a Canadian.

Q. I don't mean only that, but you have or must have some knowledge of the situation upon which you base that worry as to the future?

A. Yes, I have.

I might say in these last years we have had I think a number of people grinding their high yield pay dirt (in terms of mining) when they should be taking part of it and should be taking some of their high cost wood farther away so that their average cost would be down.

MR. W. G. NIXON: Q. Do you think we have room for more mills in Canada at the present time?

A. I think that we ought to really sell the products that we are capable of making with our present mills' average capacity. In the newsprint industry over a period of ten years our facilities have only been sixty-nine percent; in other words thirty-one percent of the capacity over those years in the industry have been standing idle. During the peaks of very short duration they have taken up a greater part of that capacity. Since my entering the newsprint industry, in the last eight years I have only seen one time in which (there were about four months out of the eight years I have been connected with it) we were operating at anything like capacity.

Q. Would that apply to chemical pulp as well as newsprint?

A. I think so. Particularly with regard to the general pulp situation. I think generally speaking the pulp situation has not done even as well as the newsprint industry has.

MR. COOPER: Q. On that question of export, your company I understand is in a little more favourable position than other companies with regard to certain wood that you have, at Anticosti, is it?

A. Anticosti Island.

Q. Yes?

A. No, that is not a favourable location for building a mill.

Q. No, but I mean if you wish to export you are permitted?

A. That is freehold, yes.

Q. And what pulp have you? How much pulp have you?

A. On that Island?

Q. Yes?

A. Well the cruises have shown there are about 15,000,000 cords.

Q. What about Peribonca?

A. Yes, that is a portion reserved north of the St. Maurice Watershed.

Q. And that is also exportable?

A. No, that is inland.

Q. And you say that is not exported?

A. It is not exported—that is Crown land.

Q. Haven't you some lands they call Seigniory lands?

A. No.

Q. You haven't any of them?

A. No. When I say we have not, I guess we have probably, oh, maybe fifty or sixty square miles and that is rather inaccessible for export. It may be exported in the sense that you can load it on cars and ship it out that way, but to export it abroad or by water it requires quite a bit of handling because it is far removed from transportation.

HON. MR. NIXON: Q. Do you export any wood?

A. No.

Q. Have you any operations on Anticosti?

A. No.

THE CHAIRMAN: Q. Are you the sole owners of Anticosti?

A. Yes.

MR. COOPER: Q. The reserves that you have on Anticosti, that is only good for export, isn't it?

A. Oh, no. We have in the past, a number of years ago we cut on Anticosti and loaded on boats and took it in here to our mills, the Port Alfred mill.

MR. DREW: Q. I don't want to break away from the particular point I was asking you about?

A. Well, you will have to ask me questions, Colonel; I haven't any plan or any thought of what you were going to ask me; maybe I get off the track here.

Q. I think I have been keeping you on the subject. In reference to Anticosti, was it not originally intended to erect a mill at Anticosti?

A. No.

Q. It was not part of the plan?

A. No. You see you could build a chemical mill on Anticosti or a ground-wood mill—not a ground-wood mill, a chemical, because there is no cheap power available for grinding, and of course in the chemical pulp process you don't need very much power and therefore that could be done there, but we have stayed away from it; we had some surplus capacity in pulp but we didn't get at it because it has never been a profitable business. As a matter of fact there are times when we can't sell it for anything like what it costs us.

MR. DREW: Q. Does that include bleached sulphite?

A. We don't make any bleached sulphite. We could, and I believe easily, without too much expense.

Q. Are you equipped to make it now?

A. Not to make bleached sulphite, no.

Q. The reason I ask that is that I believe there is substantial capacity for the manufacture of bleached sulphite in Canada at the present time?

A. Yes. Most of the time we have a surplus during the peaks as I say, but the only time I know of when we had a demand for bleached sulphite which might be profitable was in 1937, for a few months, and there is a good demand now, which is really unusual. Of course there is a good demand for bleached sulphite all right but I think we have to look at this over a long period of years; in other words, what is the load factor of the pulp industry over a period of ten years?—the investment is a permanent one.

Q. Again I am thinking of the observation you make as the basis of my question, which I thought perhaps I might ask later: In that respect don't you think, having regard to the history of the newsprint industry and the pulp industry in Canada, that there may be great danger of becoming too optimistic

about the sudden demand created through the effect of the war on the Scandinavian export? I mean, don't you think that having regard to our past experience it would be well for us to be extremely cautious in our estimate of future capacity based on that temporary condition?

A. Well, my experience in this pulp and industry is that with a little change in market conditions everybody gets enthusiastic and "Hurrah, boys, we are all set, it is going to continue in that way," and then begin to expand and spend a lot of money. In 1937 on one of our mills we spent half a million dollars to improve it—on part of it some changes were made in the mill that were really necessary whether we needed them or not—that half million dollars was used and operated for about four months and now it has been shut down ever since.

Q. Are you anticipating a possibility of utilizing that again?

A. Well, of course, no one can tell what we may need, but I don't see that we are going to this year unless a lot of changes take place. I don't see that. We might, but I doubt it very much.

Q. I do not want to indicate any personal pessimism about the future of this industry, but what I am concerned with personally having regard to our past experience in the newsprint industry as distinguished from newsprint production itself is the fact that very little encouragement in the past has been needed to expand far beyond normal producing need. Is that not so?

A. I think so, yes. I think we ought to devise ways and means of utilizing our investment and the possibilities we already have in the pulp and paper industry.

Q. In that respect we are still capable of meeting the normal needs both of newsprint and pulp for some time before we require any additional mill capacity?

A. I think so.

MR. COOPER: Q. Are all your mills operating?

A. No.

Q. How many are not?

A. One is not and the other is only partially operating.

THE CHAIRMAN: Q. Which one is closed?

A. Cap Madeleine.

MR. COOPER: Are you contemplating opening that mill?

A. Yes, it is a cheap mill to operate, but to open it we have to shut down another mill.

Q. What is its capacity?

A. It makes about 85,000 tons a year. We can operate that mill cheaper than we can some of the other mills for the reason that we are right on tidewater and because it is really part of another mill and does not take complete organization to operate. It is only a mile from our Three Rivers' mill, hence it cuts down a good deal of administrative overhead in connection with it, but when we operate it we will have to close another mill.

HON. MR. NIXON: Q. How long has that mill been closed?

A. About eight years.

HON. MR. HEENAN: Q. It is one of the mills which has been rated as zero under our proration scheme?

A. No.

Q. Did it have a rating?

A. Yes.

Q. It had?

A. It had.

MR. DREW: Q. Mr. Belknap, you have indicated your belief that it would be wise to limit our export of pulpwood in this country. Is that your opinion?

A. That is my opinion, yes.

Q. The answer so often given to that suggestion is that the pulp logs which we are exporting to mills in the United States are not making newsprint and consequently are not competing with mills in this country. I might explain in asking the question that I have been convinced for some time that the mere fact pulp logs go to particular mills making things which we are not making in Canada does not mean we are not releasing other pulp logs in the United States to other mills which would otherwise have to go to those mills which are now consuming Canadian pulp logs?

A. I would say that wood is wood, after all, and it does not make any difference whether it is wood in the United States from Canada. It is converted to some kind of paper over there. I do not know where it goes, but it may be that the wood which we export goes to mills which do not make newsprint or it might be going into newsprint mills so indirectly it would seem to me that it is going into newsprint. Do you mean that the wood we are exporting does not go into newsprint?

Q. Yes; that is the argument?

A. Well, I do not know about that.

Q. The answer to the contention that we should not export pulp logs is that it does not interfere with Canadian industry because it is being used in the

United States by mills which are not making products similar to products already made in Ontario and Quebec. I have this in mind, that after all the export of either pulp logs or pulp from Scandinavia is relatively small compared to Canadian production and it seems to me so far as the United States is concerned there is a certain maximum production or a certain maximum supply of raw material and that if we ship raw material from Canada to mills in the United States we are merely augmenting the raw material supply over there and making it less likely that mills will be set up here. Does that seem reasonable?

A. That seems reasonable.

HON. MR. HEENAN: Q. You spoke about the economics, Mr. Belknap. The raw pulpwood shipped from Ontario across Lake Superior to Wisconsin and around there, suppose the newsprint mills were limited in their pulpwood supply, would it not be uneconomical for that wood to be taken away from where the newsprint mills are located to where the pulp mills and book mills are located in Wisconsin?

A. Well, of course their idea is to get the wood at their mills as cheaply as they can and therefore they would take the wood from Canada which is most cheaply produced, I should think.

After all, wood is like paper or coal; the buyer is not interested in how much it costs at the point of production, but he is interested in how much it costs him where he uses it. For example, I know you can buy coal for $2 a ton at the mine and I know my coal at the pile at the mill at which we use it costs $6, so if I can get the producer to cut his coal ten cents a ton, he is doing a very good job if he can, but it does not make very much impression on the $6 I pay for it. I think the same thing applies to the raw material used by the Wisconsin mill, or the paper to the publisher; how much does his paper cost him at the press room.

Q. The discussion was that by the Wisconsin mills using our pulp it retained in the United States wood for the newsprint mills. They were getting the benefit of this indirectly and conserving the raw timber. Is that not adversely affected by the distance they would have to haul that wood from one point to the other in the United States if they had to use their own timber?

A. It might affect them, but would they not come over here to obtain their raw material in another form; that is, in pulp?

Q. Move their mills over?

A. Yes, or buy from existing mills. Many of them, of course, buy from existing mills and many of them buy pulp from Scandinavia, as you know.

Q. Yes; they tell me they get their pulp from Scandinavian countries cheaper than they can take raw pulpwood from Canada?

A. Oh, yes. There is always reason for that. You can build a mill over there for 25 percent less than you can build it in Canada—that is, build a mill—because our cost of machinery, cost of bricks and mortar, steamfitters and

everything else, is three or four times as high, hence the final capital cost is much less than it is here and together with their lower cost of labour it makes it very difficult for us to maintain if we maintain the standard of living which we have.

MR. DREW: Q. As against that is it not true that the timber is more expensive to them than to us because of the necessity for their rigidly enforcing effectively distributed cutting?

A. I doubt that. I doubt that very much because they have very much cheaper labour in their woods than we have. For example, in Finland. After all, this thing which we call natural resources of trees in the woods, as a tree stands in the woods it is not worth very much, but immediately you pay for labour to put an axe into it it then begins to accumulate costs and from then on the different operations build up costs which forms this labour, handling and so forth, which is indirectly labour, which makes our costs very high.

With their restricted cutting over there and with their cheap labour I think their wood probably costs them less than ours. It varies, but mostly it costs less than our wood in our money.

Q. To go back to a remark which you made a few minutes ago in regard to the cutting of timber in Canada, you said quite definitely that the mills in this country had been high-grading the timber to get wood as cheap as they could. I do not think there is any doubt about that, or is there?

A. I think they had to do it back a few years ago. We just could not live. We could not keep on cutting if we did not do everything we possibly could to decrease the cost of our raw material.

In the province of Quebec up to two or three years ago our wages in the woods were one-half of what they are now and wages in the mills increased from 20 percent to 35 percent. We were in such bad shape we had to go to the government—I have forgotten when, but about 1933 or 1934—and ask, "Please, will you not reduce the stumpage dues in order to enable us to get by?" That did not do very much good because through cut-throat competition we went out and gave it away to the users of the products we manufactured.

I remember Premier Taschereau was incensed with the newsprint companies because after the government tried to do something to help them they went out and through cut-throat competition gave it away. The government profited none and newsprint manufacturers profited none. That was really the beginning of the thought to control these natural resources of ours. I do not mean "control" I mean "regulate". I do not like the word "control."

Q. Have you any suggestion as to methods which should be adopted in this country in regard to the control of cutting?

A. I have not thought very much about control of cutting. I think in the Province of Quebec our regulations on cutting are pretty good. I am not a woods operator and I only learned what I picked up from others in those departments, but I gained some impressions, one of which is this: It developed about two or three years ago that the companies who have leasehold properties

protect their properties and regulate the cutting to the exclusion of settlers who cut a great quantity of wood. They cut and do not leave seedlings. There is no thought or regard for protecting the future at all. A large quantity of wood goes from settlers' tracks, but they have no idea of conserving the forest and there is no control over them in the way they cut.

I think in the province of Quebec our regulations are pretty good in regard to cutting. We have government inspectors in the bush and our regulations are well-defined. I think we do a pretty good job in the conservation of our timber. I do not agree in many respects to some of the regulations being sound. I think they can be changed and probably improved just now.

Q. Such as ——?

A. Well, for example, these areas are not all alike. I have been in the bush when we cut in certain terrain which is rough and subjected to wind. We left standing timber of a given diameter in accordance with the regulations. Much of our timber grows well on top of the ground with the roots spread out and we cut the big trees under the regulations but we leave the smaller trees to grow up.

In certain locations if you go into territory a year or two afterwards you will find these trees we leave have been turned over like this by the wind (indicating) and the roots standing up in a vertical position. I sometimes think it would be better for us to cut those smaller trees and leave the saplings which would not be turned over by the wind because they do not grow so high in the air. These trees grow small in diameter and very high so that a gust of wind turns them over very easily because the roots are not deeply embedded. I think in some areas properly selected we should cut those trees if they are below the authorized diameter and leave the little fellows which will not be turned over by the wind.

Mr. Spence: Q. Does that create a fire hazard?

A. No—you mean these trees being turned over?

Q. Yes?

A. Yes, I think they do.

Q. Because you leave the saplings anyway?

A. Yes. And if there were a fire, of course it would destroy the small saplings we leave.

I say these are my ideas from observation. I am not a woodlands operator, but I know we spent a lot of money in there and I take a look in there once in a while to see where it is going.

Q. I have seen it myself where wood is cut according to regulation and certain sized trees were left—undersized somewhat—but in two or three years they are all turned over?

A. Have you?

Q. Yes.

A. That would not be so in some areas where the larger trees have good roots, but there are areas where they just grow on top of the ground.

MR. W. G. NIXON: Q. If we were to prohibit the export of wood in order to market wood we would have to manufacture it at home. That would necessitate a greater market for our manufactured product. That seems to be one of our difficulties?

A. Of course it is. I often say to our operating organization, "Remember that any fool can make things—I do not care whether it be pamphlets or paper —but it takes an awfully good man to sell at a profit." That is our problem in all things, whether it be paper, pulp or wood.

Q. Is it not a problem in connection with the exportation of our raw wood—that is, pulp—to be able to manufacture it at home, which sometimes necessitates exportation in order to provide employment?

A. I cannot think of any better example of what was finally done. We were selling a lot of wood before the advent of the newsprint industry and the manufacturing industry. Most of our wood was exported at that time and when we discontinued it only took a few years to develop this huge industry. Perhaps the same may apply again.

Q. You think the same principle would apply at this time?

A. I am inclined to think it would.

MR. DREW: Q. I have this in mind, Mr. Belknap: one of the arguments used in favour of permitting the exportation of logs is that at a time when there is so much unemployment to a large number of men?

A. Yes.

Q. It would seem to me, however, that if by reducing the export of logs we developed a consumption even of a smaller number of logs at home that we would create greater employment having regard to the cutting, processing and handling of the finished product on the railways, ships and so on. Is that not logical?

A. Probably it would not happen at once, but it would in a comfortably short time, I think.

Q. I was very much struck with the fact that the dollars and cents value of logs exported although it has assumed a large total is extremely small having regard to the dollars and cents value of finished newsprint?

A. Yes.

Q. My recollection is about five percent.

A. Well, I do not know. You can use any figure you like. It depends on the value of the wood and the finished product. I simply use these words as an example to illustrate that if the wood sells at the point of shipment for $10 and if instead of being shipped at $10 it is converted into a finished product we will bring $40 into the country instead of $10.

HON. MR. NIXON: Q. The price of paper is $50 now, is it not?

A. Yes, but that is a delivered price and it is no good to us because freight has to be taken off it.

HON. MR. HEENAN: Q. Is settlers' wood imported from Quebec?

A. Yes, settlers' wood is exported, but I do not think and I have not heard of it in our province although they permit export of Crown wood from Crown lands.

Q. But settlers' wood is exported?

A. Yes.

Q. In that regard you have so many more settlers in Quebec which export in comparison with our proportion?

A. I do not know how many they are. It is not a large amount as compared to New Brunswick and Nova Scotia. It seems to me some of these woodlands men could tell you more about that than I.

MR. COOPER: Q. Do you not think the fact that there is an embargo on export has driven the United States into using Southern Pine?

A. No, I do not think so.

Q. What has caused this development of southern pine now?

A. Because the south has been a one-crop country very largely and it has been cut and they have been seeking and looking around for other industries in the south. The textile manufacturing business has gone south to the cotton. They have subsidized cotton and done everything under the sun to promote the sale of it and have an exportable surplus. They have been looking for other things. They have been lumbering down there for a great many years, and it always seemed to me that if newsprint finally became a profitable industry in the south there would be no difficulty in finding money with which to build newsprint mills, but apparently they have to get the United States Government to make loans in order to enable them to build newsprint mills. I am not saying that they will not successfully make newsprint, but I doubt very much if they will make any money out of it.

Q. What about kraft paper?

A. Yes; that has gone up enormously in utilizing their wood at a very rapid rate.

HON. MR. HEENAN: Q. Within very recent years?

A. But we cannot export kraft paper into the United States because there is duty on it and we are shut out. Naturally it has caused this development to take place in the United States and I think in time it will grow. It has been growing at a rapid rate. You do not find anything in the United States packed any more in wooden packing cases. Everything is packed in box-board. Their consumption of box-board is enormous. I think that it is going to grow and it is growing with us, to be sure. It is pretty hard to sell shipping stock at this time except in certain kinds of industries and while we are putting up flour, cement and sugar in paper bags all over the country, no part of the money we spend stays in the country whereas in years gone by we have sent out of our earned dollars $3,000,000 or $4,000,000 a year for cotton and jute out of which boxes are made and we advocate the use of the paper box because it keeps all our money in the country, not only because we manufacture the paper, because it is sound economy that we should do so. I am speaking about our import dollars in the pulp and paper industry. You know, it is unlike cotton and rubber goods. The earned dollars we spend on cotton and rubber goods, tires, boots and shoes, belting and that sort of thing, and part of our earned dollars are exported to buy raw material. These dollars we receive from the sale of newsprint come from within and they stay here. They are not part of our earned dollar. They stay here and there is no part of that raw material brought in here, exported and used by us.

THE CHAIRMAN: Q. You mentioned that you had heard some figures about the export of pulpwood from Quebec?

A. Yes.

Q. But you said you would rather have the foresters give us the amounts. Would you mind telling us what figures you have heard of?

A. I just cannot be sure, but it seems to me last year Quebec exported something like—I had the figures, but I just cannot remember; they were given to me about a year ago and I do not want to make a guess at it, but I was struck with the idea that it was not such a large quantity which was exported from Quebec. Those figures are available and I should think you have them here, Mr. Heenan.

HON. MR. HEENAN: I think we can get them.

THE WITNESS: As to the export of pulpwood from New Brunswick, Quebec and Ontario, I have the figures at the office at home, but I just cannot remember them.

Q. You would not go so far as to suggest that we should not export raw material as between provinces in Canada?

A. That is, as between the provinces?

Q. Yes.

A. No. I do not think we would want to set up any internal competition within our provinces. Have not we enough without that? There are enough troubles competing from without, without competing among ourselves. It does not seem sound.

Q. There has been evidence given here to the effect that forest or a tree is just a crop, the same as wheat, except it takes sixty or seventy years to mature and if we have sufficient of that matured timber we might as well sell it for export as let it lay in the bush and decay?

A. As I said before in regard to this so-called over-mature timber, I do not believe it occurs in any isolated area. I believe it comes along with the general cutting operation. The forestry fellows know more about that than I, but what I have been told is that mature timber is not in any isolated locality. Mature timber occurs in immature timber and I do not think it would be good operation to step in and say, "I am going to cut out this mature timber and leave the immature timber." You have to cut the two together.

Q. Suppose you have an area of 2,000, 3,000, 4,000 or 5,000 square miles upon which you know all the timber is of 150 or 200 years of age. You know it is all mature?

A. I do not know of any such area, but if that were true I think you ought to cut that timber and use it in our own mills. I know we have over-matured timber on some of our limits and we would like to take it out, but we have to take out the immature timber with it in order to carry on a reasonable operation.

Q. And clean up?

A. Yes, because you cannot build roads, put improvements in and just select your timber, because the cost of doing that is prohibitive.

Q. Do you get your concessions of timber areas, as we call them here, to supply your mills in the same way we get ours? Say you have a reserve of a few thousand square miles for each mill?

A. Yes. We have certain reserves which are not equally contiguous to our mills, but we believe that we must have them because our timber is being cut off; that is, that which is more accessible and as time goes on we find roads are built and they provide better means and easier accessibility.

We have the aeroplane now with which we can more cheaply provide fire protection for these areas which are far removed from mills. So, the cost of maintenance is not as high as it used to be. In all operations we have made plans very carefully. We have ahead of us all the time a ten-year plan of cutting on our limits of a given amount and we add to or deduct from depending on what our operation is and we go ahead another year and keep on projecting ahead of us. We have to do that and make our plans economically as we go along. We have no direct use of the moment for Anticosti. There is over-mature timber on Anticosti but we cannot operate in regard to it, so we say

that is a timber reserve. Now, with the studies we have made, allowing for pests, insects and fire, we have enough timber now with our reserves to run our mills in perpetuity and that can change if some disaster overtakes us, but we feel reasonably safe in that respect. We do not feel so safe as we did a few years ago for the reason that there has been very wide-spread insect or pest invasion which has damaged our wood. We are fighting it now, as you probably know. It is going to take a long time to kill it off and we do not know—nor do I think anyone does—how much damage has been done to the timber or how much it has depleted our reserves.

THE CHAIRMAN: Q. You mentioned that you held 56 square miles of freehold land?

A. Yes.

Q. Would you mind telling us the total extent of your limits?

A. Including Anticosti I think we have maybe 15,000 square miles.

Q. 15,000 square miles?

A. Yes, 15,000 square miles and much of that has been cut over already.

Q. What is the area of Anticosti?

A. 3,100 square miles.

Q. So you have roughly 12,000 square miles scattered over the province mostly on Lake St. John and in the St. Maurice or James Bay area?

Q. Mostly in the St. Maurice and James Bay Basin.

MR. DREW: Q. Anticosti is in the province?

A. Yes.

Q. I had an idea it was an independent island?

A. People had an idea as to that.

Q. Such as Mr. Mooniere?

A. Yes. He had an idea that he would establish a municipality some time.

Q. That had no foundation of fact?

A. No, sir.

THE CHAIRMAN: Q. The laws of Quebec apply in Anticosti?

A. Yes. We have liquor laws on the island of Anticosti. Anticosti is a great big wood farm which happens to be surrounded by wire.

MR. DREW: To get back to the question of proration; after all, it is common knowledge now that the whole question of the method of proration is under consideration and it would seem to me that one of the subjects this Committee must consider is the desirability of the continuance of the present method or the recommendation of some other method. You spoke of oil proration in the United States. The system there, as I understand it, is that there is a single controlling committee and the power of that committee to enforce proration is contained in statutes passed by the various states where oil is produced, so in effect the orders of this general supervising committee have the powers of law. Have you had occasion to study the effectiveness and desirability of that method?

A. I have not studied it very directly beyond the fact that like all schemes it is resented by some who would like to take advantage of others, but generally speaking I think the independent consumer of petroleum and also the operators and distributors are very glad of that system of proration. It has worked quite well. Back of that, again, I think under the Federal laws of the United States—I do not know whether or not they have a law, but I imagine they have; I do not know the name of it—it still supports this commission, as it were, because they do not allow interstate commerce in oil beyond the quotas established by the body. That is to tighten up on it a little bit.

Q. Would you care to go so far as to say whether you believe that would be a desirable method of proration to employ in this country in relation to newsprint?

A. I think, so far as newsprint is concerned, if we wish to preserve the industry, we have to have some kind of an interprovincial committee with certain powers to see that this thing is impartially administered. I do not know what legislation would be necessary, but I presume legislation would be necessary to bring such a thing about. Our failure to accomplish all we might have accomplished is in that we have no machinery by which to make it compulsory and it has kind of grown like Topsy and we have not been as serious about it as we might have been because there has been no power which would insist upon it being carried out equitably. Hence there has been some injustice done to labour, injustice done to shareholders, injustice done to the local people in local communities. It has hurt a lot of people. It has hurt the individual who owns a little store in one community who finds his business lags because of lack of employment there or at least it is not equivalent to what his neighbour may have in some other town or enjoy in some other town.

I have not given very much thought to that phase of the matter except that I believe that there ought to be some body or commission jointly which would administer this business. I would not think it would have to be a very big one, but it, I think, would be a very small one and they ought to be disinterested people. That is disinterested in the newsprint industry. It should be distinct, if you like, and if I may say so, politically, to mete out justice. That is all we need.

HON. MR. NIXON: Q. You are depending upon the governments?

A. Yes. I say this, if we had had this thing done impartially, I believe within this province you probably could have found a way very quickly to lift

the Abitibi out of bankruptcy. I think we have suffered as a result of this thing. I do not know that that is altogether true but I believe that it certainly would have helped and encouraged investors and outside people, who had to find additional money. The industry needed a lot of encouragement of some kind.

MR. DREW: Q. I suppose you are referring, Mr. Belknap, to the fact that under the existing arrangement Abitibi is considerably down in its share of business?

A. Yes, and we are too, but I am not complaining. I say, even with that, it has helped them a great deal.

Q. Now, Mr. Belknap, I understand that there is a situation in connection with this proration which has been disturbing a number of the companies, and that is a question of the exemption of certain mills. What have you to say about that?

A. Well, I think that any exemption is unfair to those who are not exempt. I think you do an injustice to those that are not exempted. I think you do an injustice to the people. I think you do an injustice to the owners. And, after all, it does not make very much difference. Probably in our company, as an example, if we are hurt it does not hurt me; I am just a paid employee; but it does hurt some twenty thousand security holders that we have,—probably seventeen or eighteen thousand of them are Canadians.

Q. It is as high as that?

A. Yes, I say "security holders" mind you, and I am including our bond holders; and we have not a very good record of those, because they are bearer bonds. But we know we have about seventeen thousand shareholders, and I can give you the figures, because I put them down here thinking that question might come up. Seventy-eight percent or 13,143 of our shareholders live in Canada; and about a total of 16,000 British,—that includes some in the British Isles as well. Outside of that, we only have eight hundred shareholders in the United States and two hundred in various other parts of the world, scattered all over.

So that about ninety percent are British, and about seventy-nine percent are Canadians.

Bondholders,—I presume some of those are shareholders who have bonds too, I do not know. We wanted to get an idea of who owned this company of ours, that is what their occupations were; so, before our last annual meeting, we attached a slip of paper when we sent out the proxies, asking the occupation of the people who own this company. The law provides that they must give their occupation, but I believe it is neglected a good many times.

Some of them were reluctant to say, of course, but up to about three or four weeks ago we got about ten percent returned. I do not know whether it would interest this Committee to know who own our companies. There is an idea that a few rich men own these companies.

I have put down some of them, and I will give them to you, so as to give you a cross section. There are fifty different occupations: baker, blacksmith, barber, butcher and butler, carpenter, chauffeur, seventy-two clerks, four commissioners, a controller, eight contractors, two cooks, and five draftsmen, and so on all down through the list.

MR. OLIVER: Any farmers?

A. Yes, sixty farmers.

MR. W. G. NIXON: Q. Is there a publisher in there at all?

A. Yes, twelve publishers.

Q. Are their holdings extensive?

A. I do not know, I did not look up to see; they probably have some stock in the company. They do not say what kind of publishers they are.

MR. DREW: Q. Your company is not largely controlled by any one publisher?

A. No. If there were, one of the things which appeals to me is that if exemptions are given to, say, publisher owned mills, what is to prevent now, if they are exempted and can operate at full capacity, which probably they do, what is to prevent other publishers buying existing mills and operating them for the future? And then what would happen to the other mills?

MR. COOPER: Is it not likely that that exemption was existing before this scheme came into effect?

A. No, I do not think that is the fact. I do not see that a publisher can have any pre-emption rights, because he happens to own the property. He sought an investment. I think he occupies about the same position as a steel company which might own an iron or a coal mine. I know this question came up a few years ago in the United States, where they have the Guffey Act; and the steel manufacturers said, We have our own coal mine, and we should be exempt from the Coal Act. But the Government said, No, that is a mining industry, and you should be subject to the laws of the coutry.

MR. DREW: Q. And were the mines owned and operated by the steel company put under proration?

A. I do not know, but I know that they have to operate under the Coal Laws.

Q. That would be merely a matter for the protection of labour, would it not?

A. Well, it might be that they had a coal mine contiguous to certain territory which might compel them to do something different. I do not know their law at all.

Q. In the case of prorating, do you know if any of the large Companies have their own oil wells?

A. I have never heard of it.

Q. It just struck me that possibly a company like the Ford Company, might have their own wells?

A. I would not think that they would, because oil is not a very important part in connection with the manufacturing of automobiles,—I have never heard that it is, anyway.

MR. COOPER: The New York Times had their investment in Kapuskasing long before proration, and so did the Chicago Tribune, long before there was any suggestion of proration?

A. Well, and so did the independents, and yet they are made to prorate.

THE CHAIRMAN: You mentioned a moment ago that a publisher was in the same position as other companies, because he came here to seek an investment?

A. Yes.

Q. Is it not so that he wants to be assured of his supplies? A publisher comes here and invests his money just to supply the needs of his company. Is he not in a different position entirely from a man who builds a mill to supply the market?

A. No, he built the mill because it was profitable for his own needs.

Q. Otherwise he would not have built it?

A. Yes.

Q. But the publisher does not build it to supply other needs?

A. No, yet, when you think of that in that way, are you not then discriminating against other publishers who do not have mills?

Then why should not other publishers come here and buy mills?

HON. MR. NIXON: I think that might be very desirable?

A. It seems to me that you would close up a number of other present mills, and have grass growing in the streets of their towns.

Q. You would have continually operations at their points, anyway?

A. For instance, in connection with the railways, I do not think you should close up a station just in order to get more traffic to another station ten miles up the railway.

MR. COOPER: Q. If it was just going to move your index up from fifty-nine to sixty-three, four or five points, ——

A. That is what it would do. I do not know.

Q. You can appreciate how serious it would be to force the New York Times and the Chicago Tribune out of their investments in this country?

A. They have crowded out other people, have they not? I do not like to get into this sort of a discussion.

I think the injustice is done to the independent publishers, who do not happen to own mills. For example, take the Hearst Corporation. The Hearst Corporation is the largest consumer of newsprint in the United States. Now, he pays whatever the price is in connection with it.

Q. I think Mr. White testified here that it was really the psychological rather than the commercial effect which was felt?

A. I mean so far as the consumer is concerned.

Q. So far as the producers are concerned?

A. Yes, I think the psychological effect is very considerable upon the producers, to think that the others have an advantage over them. I think the effect upon me is quite considerable, that he has that advantage.

MR. ELLIOTT: Q. You suggest that it affects your security holders?

A. Yes.

Q. And the inference is that there is a substantial loss?

A. Yes.

Q. Mr. White, Manager of the St. Lawrence Paper Mills, suggested there was a very slight financial effect, and that so far as the industry was concerned its effect was psychological rather than financial?

MR. DREW: Q. When that is being discussed, I think it also should be pointed out that Mr. Clarkson said he thought the effect would be very considerable, because any substantial increase in business reduces the costs?

A. Yes, it only takes a few percent,—a difference of five percent makes an awful lot of difference; because you distribute all of your costs upon, say, your first fifty or fifty-five percent of your production; and all the production over that, say five percent, is very helpful.

Q. Mr. Belknap, on that point is the position the same in the case of the New York Times as it is in the case of the Chicago Tribune?

A. Oh, I think those things are all relative, are they not?

Q. I understand the Chicago Tribune owns its mills outright, and the New York Times only partly owns its mills?

A. Yes.

Q. I am only trying to clarify my own mind on that. It seems to me that there may be some difference between a company which owns a mill outright and a company which is only part owner, because it would then seem that if you exempt a case of part ownership, there might be an attempt on the part of other mills to obtain part ownership, so as to obtain exemption as well?

A. Yes, that might be; but one is wholly and the other partially owned.

Say one mill is owned partially by shareholders and the other part is owned by a newspaper, then the relation is in proportion to the ownership, and the exemption is in proportion to the ownership as well.

Q. Mr. Belknap, this might be a good point to bring this up. After all, we almost entirely depend upon the United States consumers for the sale of the products of our newsprint and pulpwood, and for that reason the good-will of the consumer in the United States is of the utmost importance to this particular industry. You will agree with that?

A. Yes.

Q. We had the experience of creating a good deal of ill-feeling at a time when there was a general belief that the price of Canadian newsprint had been raised too high, by artificial means. I think that left a rather bad effect?

A. You are referring now to a good many years ago, when they got the price up to $150,—and that was just silly.

Q. I am not talking about anything recent, but some time ago, when the price was raised out of all reason,—that left a very bad impression in the United States, did it not?

A. That was not altogether the fault of the manufacturers of newsprint here. But Americans came here and made bids and begged for newsprint, and would pay any price to get newsprint. And they made bids, which were accepted. And it was not altogether the fault of the manufacturers at that time, but the manufacturers have been blamed for it.

HON. MR. NIXON: Q. An occasion such as that would warn a purchaser about the future.

A. No, I think not. There happened to be at that time a temporary shortage, and probably much of it was in their minds. They order a long time ahead.

MR. W. G. NIXON: Q. Was there not inflation all along the line?

A. Yes, of everything. I do not think the newsprint at $150 a ton was

inflated any more than copper was when selling at twenty-five cents a pound; and sugar was all out of line. And there was $2.00 wheat.

I do not think the newsprint manufacturers were quite as bad as they were painted, but it was rather stupid to get into that position. We do not want to see a market get into a position which would bring about that condition.

MR. COOPER: Q. I see that in the southern markets newsprint is quoted at $70 a ton. What was it when the war started?

A. I would think $48 or $49; I am not sure.

Q. I understand it was about $30.

A. It may have been for spot tonnage. Of course that is a little different proposition again.

This is the first unusual demand for this grade of pulp, and it is an unusual thing, because of the lack of Scandinavian pulp available.

I do not think there is a shortage of pulp in the United States to-day, but they are thinking that there may be one, and they are bidding up the price.

We are going to have Scandinavian pulp again after the war is over, and we will have it with a vengeance; and it is up to us to have some kind of a system working before that time, because, no matter what the position is, those people are going to have to have some money after the war is over.

They are like a farmer who has potatoes worth a dollar a bag, and yet he has to sell them for fifty cents a bag.

MR. DREW: Q. That would be an added reason why we should have the business controlled against a sudden stimulus?

A. I think so.

Q. I understand that bleached sulphite is used in the manufacture of explosives, is not that right?

A. It probably is, in some of the newer explosives. I think some cellulose products,—and this is cellulose,—are used in the manufacture of explosives. I do not know whether it is bleached sulphite that is used, or not. I have read that they have done that in Germany, and created quite a demand for sulphite in Germany prior to the war.

Q. Now, let us come back to the question of prorationing, which leads us down several paths very naturally, because the others are all tied up with it. It has been suggested that in view of the rather unusual relationship between the consumer and the purchaser in this case, where the production is made in one country, and very close to the total consumption is in another country, that it might be desirable, in the interests of the industry as a whole, that there should be some interlocking commission or committee which would cross the

border and tie together the consumer and the purchaser in some working arrangement,—do you think that is a practical possibility?

A. I do not think that would be a very practical thing. As a matter of fact, we are big consumers of petroleum products. What would they think over in the United States if we said, Because we are big consumers of petroleum products, we should sit in on the committee on the Proration of Oil?

I cannot see why the United States, as a big consumer, would take any part in our operations in Canada in the conservation of resources, our local problems of employment, our distribution of the work. I cannot see that they would play any part in our economic system in that respect. After all, I do not believe at the present time that the publishers of the United States are antagonistic. I think, judging from those I communicated with during the recent A.W.P.A. meeting, they were quite pleased about our attitude; they were quite pleased with the fact that notwithstanding that our costs were increasing we have maintained a reasonable price for newsprint. They believe it to be reasonable, the great majority.

Of course, a publisher is no different from a housewife that buys milk at 14 cents a quart while the producer only has half a cent a quart. The publisher wants to buy his paper on the same basis. When the price is increased, if it is increased $5.00 a ton, then he yells about it. But he never says very much about the time when we reduced it $5.00 a ton in one gulp. And that has been done in the past.

I think that the publisher is most interested in being assured that his neighbouring competitor does not buy paper any cheaper than he does. I think that is his principal interest. When a man buys paper on that side of the street at less than I pay for it on this side of the street, I resent it. But I do not mind if he pays the same price that I pay, assuming that paper is a large part of the cost of producing a newspaper.

HON. MR. HEENAN: I suppose that led to the clause being in the agreement whereby if any publisher got newsprint at a lower cost ——

A. In the old interlocking agreement, yes. He wanted to protect himself, and he insisted on that being in his agreement, that his neighbour or competitor could not buy paper at less than he could buy it.

MR. OLIVER: What do you think of a central selling organization for Canadian newsprint?

A. That, of course, is very idealistic. After all, human nature is about the same as it always was. I think a buyer would rather resent saying, "There is only one place you can go, and that is to him." Again, that would bring up the point of these exemptions. If he had to go to one central commercial mill and buy paper he would say, "What about the man over here that publishes a paper in Chicago or New York; he is free; he has got a mill there and he can sell paper to himself at any price he chooses?"

MR. DREW: Mr. Belknap, just to return to that one question, in your opinion, I understand the exemptions do create difficulties in prorations?

A. I think they do, yes. If I were in the position where I was the exempted mill, I think it would be rather distasteful to me to have that exemption changed. I do not blame these people for feeling as they do about it. I do not blame them at all, but I just think, myself, if you are asking me, that it is unfortunate, it is unfair.

MR. COOPER: If you were the publisher and had put your investment in this country, don't you think it would be distasteful to you?

A. Undoubtedly. As an independent investor, as an independent mill, it would be awfully distasteful, too. If you owned securities in, we will say, one of the big paper companies here and you felt that an injustice had been done them, you would feel that it was not a very good thing for you to have an investment in.

Q. I know, but I cannot help appreciate the difference, Mr. Belknap, between a man who is producing for himself and a man who is going in the market and selling.

A. Of course, when the investor invested his money in mills that are not owned by a publisher he did not believe he was going to be discriminated against when he made his investment, or he would not have made it.

Q. Oh, no; it was done for his advantage?

A. Oh, I doubt that.

Q. I beg your pardon?

A. I do not think it was done for his advantage. It has taken something away.

Q. You do not think proration has helped?

A. Oh, undoubtedly it has. But I thought you referred to the exemptions.

Q. No, no.

A. Oh, no. Oh, I see. Well, that is different, of course; it has helped them enormously, and I think, judging from the position of the industry to-day that the investor feels a lot more comfortable than he has felt at any time in the past.

You take our corporation before I was in it, it was in great financial distress. The existing security holders at that time accepted in the primary securities about 50 cents on the dollar to bring about reorganization. In other words, there were about $145,000,000.00, as I remember it, of senior securities of the Canada Power and Paper Company. Those people accepted something like $51,000,000.00 of senior securities. So it has been written down with a vengeance. You could not reproduce our properties for 30 percent more than they are at present.

MR. DREW: Would you say it has been written down to a point where the senior securities represent the actual cash investment in the industry?

A. Oh, my, even more than that, on a par value basis. Of course, they are not sold on any such basis as that.

THE CHAIRMAN: Coming back to the question of exemptions, when were those five mills of yours built? Take Port Alfred.

A. Port Alfred was part of the old Bay Sulphite Company. It was long before my time. I think that mill was built around 1926, '27 or '28. Before that it was a pulp mill called the Bay Sulphite Company, and it formed part of this newsprint mill.

Q. What about Three Rivers?

A. Three Rivers, that is about thirty years.

Q. Thirty years of age?

A. Yes.

Q. What about Cap de la Madeleine?

A. About the same time. It was put in about the same time that the Timagami mill was built. It was long before my time.

Q. What about Comeau Bay and Shawinigan?

A. They have been made more modern. They are old mills. Parts of them have been renewed and renewed.

Q. My point was this—

A. You know, an old mill does not necessarily mean—

Q. No, no, no—

A. It is an uneconomical mill.

Q. I mean—

A. The date of the building?

Q. Yes.

A. Yes.

Q. The point is this: there have been new mills built since publishers started building their own mills in Canada and there have been many people who invested their money in these new mills. These people knew that publishers of the United States had built mills here to supply their own requirements and they could not expect to get any of that business.

A. No; I think at the time those mills were built there were not any publisher mills.

MR. DREW: The Baie Comeau mill was built only about two years ago, was it not?

A. Yes. It is quite a new mill.

HON. MR. NIXON: You had a publisher mill recently built in Quebec?

A. Comeau Bay, yes; about two years ago.

MR. DREW: That is the Chicago Tribune, is it not?

A. Yes.

HON. MR. HEENAN: They do not supply all their needs; they purchase in the open market in addition to the supplies from these two mills. They are not in the market selling.

A. Before they built the mill they purchased a lot more paper.

Q. Oh, yes?

A. There was plenty of capacity in the country at the time. My recollection is that the industry as a whole protested to the Prime Minister against building this mill. We were dragging on bottom and mills were shut down, and if this mill was built it was going to shut more of them down.

HON. MR. NIXON: You take a publisher who has money tied up in a mill here, he is not using southern pine and supplies from Scandinavia, that is a sure thing.

A. Well, I do not know that it would make very much difference, Mr. Nixon. There is so much paper made in the world, and there is not anything that can stimulate, so far as the paper manufacturer is concerned, the consumption of paper. You could advertise newsprint paper, but you could not sell a ton more. The man who uses the paper would be awfully glad to buy a lot more of it, if he could sell more advertising or had more circulation. But there is nothing we can do as manufacturers to stimulate the sale of newsprint paper.

MR. DREW: I suppose that is one reason that would make you believe that proration in this industry might not be open to the same objection it meets in other industries, where there is some actual competitive factor?

A. Yes. You can increase the consumption of coca cola, if you spend money enough advertising it.

Q. And gets girls pretty enough on the posters?

A. Yes, you have to have that, too!

HON. MR. HEENAN: You said a moment ago that the manufacturers protested against the building of this mill. You were speaking of Comeau Bay?

A. Yes.

Q. So did I.

A. Yes, you did. I remember that.

HON. MR. NIXON: But the Quebec Government pressed just as hard to have it.

HON. MR. HEENAN: It should never have been built.

MR. OLIVER: Leaving aside the exempted mill, is the selling price of newsprint to the States about the same per ton. Has there been much variation in price as between the different mills?

A. I do not think there has. There may be. I like to restrict myself in answering that.

HON. MR. HEENAN: There is a difference.

A. Of course, there are some who are fearful of proration and the penalties that can apply against them.

MR. COOPER: What became of the old interlocking clauses in the agreement? Are they still there?

A. I do not think they are. I think those are pretty well cleared up. That was a vicious thing. That is pretty well cleaned up. As these contracts expired, they were not renewed with the interlocking clauses in them. That was a most vicious thing.

MR. DREW: Mr. Belknap, to move along to another subject, we have had some discussion here of the desirability of research in connection with this industry as a whole, and the possibility of some co-operative method of research. In that connection it has been explained that there is in existence now a research organization supported partly by the Dominion Government, partly by McGill University and partly by ——

A. The newsprint manufacturers.

Q. The newsprint manufacturers. The evidence we had, however, was that it is really playing a relatively small part at the present time. Is that correct?

A. Yes. They have not had enough money to put into the thing, to really do a good job. Then there have been so many elements in connection with it. There are the manufacturers, then there is the Government and then the McGill University involved, and we haven't had enough money to set it up as it ought to be set up, I believe.

Q. Is it not so, that in an industry in which there is an attempt to control the output, as in the present attempt at proration, research becomes of increasing importance in attempting, not only to reduce costs, but also to find new methods of utilizing raw products?

A. Yes.

THE CHAIRMAN: Is "output" quite correct?

MR. DREW: I noticed Mr. Belknap referred to it.

WITNESS: I do not like it. I like regulation.

THE CHAIRMAN: You are not regulating the output.

WITNESS: No.

THE CHAIRMAN: You are controlling the distribution of available supplies.

WITNESS: Yes.

THE CHAIRMAN: We do not tell the mills you shall not produce more than so many tons a year. We say, whatever is available shall be distributed in such a way.

MR. DREW: In view of the fact that there is a certain total, you get a certain fraction of that total which amounts to so much?

A. Yes.

THE CHAIRMAN: We do not tell the producers you are going to produce only a certain amount and that will have to do to supply the whole demand, whether it is high or low.

MR. DREW: Oh yes, there is no attempt to limit ——

THE CHAIRMAN: No.

MR. DREW: To limit production. But I do not know that there is any necessity to get into an argument about the definition of a word. There have been some attempts at proration in other products which have forced limitation of production to maintain prices.

THE CHAIRMAN: Yes.

MR. DREW: There is no suggestion of anything of that kind here.

THE CHAIRMAN: No.

WITNESS: No.

MR. DREW: I am inclined to think from some of the evidence we have had

that there would appear to be a desire on the part of many in the industry that there should be control.

A. Well, I am a little doubtful about that. I think with the right kind of administration and regulation—you can call it "regulation" or "control",—whichever you like as long as it is impartially administered, the other things will take care of themselves.

Q. Without questioning the use of the words "control" or "regulation", whatever method is adopted to effect an equitable distribution of sales, I understand it is your opinion that it would be desirable to have some impartial, independent, interprovincial organization exercising administrative direction, at least, over the distribution of sales?

A. I think so.

Q. And again without getting down to the necessity of defining a word, whether that be a commission or a board or a committee—I understand your suggestion to be that it would be desirable to have that body composed of men who are not themselves answerable to one political organization or another, and, I assume, not answerable to any particular industry either?

A. No. I think that they should be independent, as long as we can be assured of just regulation.

Q. Because you know, Mr. Belknap, no matter what differences of opinion some of us may have ——

A. The two words may be almost synonymous.

Q. I do not think that possibly the manufacturers in themselves can be any freer from the suggestion that they are not wholly impartial than can those who may be described as being in politics. It would seem to me that if it is to be impartially administered it must be taken both out of the political sphere and out of the actual control of the manufacturers themselves. Would that not appear to be reasonable?

A. I think this is a national problem. I think it is so important to our national economics that something should be done about it to preserve what is sometimes called our heritage. We should not be giving it away. We ought to make the maximum use of it in the future. I think we have not taken a long enough view in connection with this whole industry.

Q. In that respect, Mr. Belknap—I am not putting this forward for the purpose of raising an argument here—my opinion is that this must ultimately be some form of a national commission or board; because, while the majority of the production is within the two provinces, after all, we have been told, and there does not seem to be any reason to question it, that power and transportation are extremely important factors in the ultimate cost of this product. And so far as transportation is concerned neither provincial authority could have any control over that at all. Would you be inclined to agree with that viewpoint?

A. If it could be brought about I would think it would be a national problem. I would think it should interest all the provinces, if they are nationally minded.

Just think what this is doing for us at this minute. Our exchange problem is becoming more difficult all the time. In the first three months of this year we imported from the United States $50,000,000.00 worth more goods than we did in the first three months of last year. This exchange business is becoming more and more important, and we must look at it as a national matter as well as a provincial matter or as well as a newsprint matter.

Q. Have you any estimate, Mr. Belknap, of the percentage of the cost of your product that goes into power?

A. Well, I would say it all depends on the rate at which we operate. We have fixed contracts under which we have to pay whether we use it or not. I would say that it would be about 12 percent of our costs, as we are running at the present time. We are operating at 56 percent of our capacity at the present time. At least, we have during the first three months of this year. I would say that our power cost at this time is pretty close to 12 percent of our commercial cost.

HON. MR. HEENAN: That power cost would be reduced if you were working to greater capacity?

A. Oh, yes. You see, that is another thing. We have fixed power contracts that we must pay for. That power was contracted for at a time when it was so much. We were running at a higher capacity, and inasmuch as there are exemptions we are paying for more unused power than we would if we were operating at a higher capacity. That in itself would make our cost of power per ton less than it is at the present time because of our not having to pay for unused power.

HON. MR. NIXON: You do not generate any of your own power?

A. Not very much; just an infinitesimal amount.

MR. COOPER: What was that 12 percent? 12 percent of what?

A. 12 percent of our commercial cost.

HON. MR. HEENAN: 12 percent per ton.

WITNESS: Power is an important item. The higher the cost per unit of production the lower the rate you operate. Now, I am not criticizing the power companies. They have their fixed charges to meet. They invested money in a plant to be able to deliver power to you when you wanted it, and it may be that contracts were made on that basis. Then you must pay for it whether you use it or not, because the cost of power is largely fixed charges. You go into a power plant, a Hydro-Electric plant, where there is 150,000 horse power in operation, and you pass down through these huge generating stations and look around, and you can't find more than four or five men in the station. Your thought is, my power must be awfully cheap; there is no labour here; this thing

runs automatically. But you have forgotten that you probably have $15,000,000.00 or $18,000,000.00 working for you all the time, that makes this possible. Somebody has to pay the wages to that capital to produce power cheaply. And we happen to be paying for it. The power companies pay their bond interest, but we don't. We have not paid anything to our shareholders or bondholders for ten years.

THE CHAIRMAN: How much do you pay for power?

A. We have various contracts at various rates. We have some contracts as high as $18.00; then we have some very old contracts that are down around $13.00.

Q. $13.00?

A. Yes. But it depends on the location and the length of the transmission line.

Q. You are right next to the station at Shawinigan?

A. Right next to the power plant.

MR. DREW: What is the par value of your outstanding bonds and stock at the present time?

A. The par value of our outstanding bonds is about $51,400,000.00. Our stock is no par value. There are about 2,800,000 shares of that.

HON. MR. HEENAN: Your output about equals that of the Abitibi?

A. Yes. That, of course, includes, as I say, our lumber mill and our kraft mill as well.

MR. DREW: Could you give an estimate of what actual cash investment your corporation represents?

A. Yes. Roughly, I think somewhere around $90,000,000.00.

THE CHAIRMAN: What is your capital investments in limits?

A. $1.00.

Q. I know that is the figure in your balance sheet, but have you any idea of the amount actually paid to the Quebec Government?

A. No, I haven't, but I know when this Company was reorganized, it was rather new when I took charge of it, and there was a great question as to what our timber limits represented. I don't know; I think millions of dollars is represented on the balance sheet of a good many companies. But my thought was, that this is something we leased. We are tenants. We may have paid many dollars for the leases, and so forth. Therefore, I do not think that it is one of our capital assets. I wonder if it is. You can get into a long controversy over that subject. But that was my idea in connection with it.

Q. What I had in mind was this. You must have paid, not you, but the companies that acquired these limits, must have paid to the Quebec Government, a substantial sum when you purchased the limits or when you purchased the right to cut?

A. Yes.

Q. That must have run into a substantial amount, if you have 12,000 square miles of limits?

A. Yes. That was what we paid for the right to operate.

Q. Yes, but I mean the amount you paid must have run into substantial figures?

A. Yes, I think it did. I do not know how much; I have no idea.

Q. That represents an actual cash investment?

A. Oh, yes, there is no doubt about that.

HON. MR. HEENAN: Then you pay cordage?

A. We pay ground rent and we pay so much a cord for what we cut.

MR. OLIVER: Fire protection?

A. We pay our own fire protection, yes.

HON. MR. NIXON: Do you carry it out yourselves?

A. Not in all the areas, no. We belong to fire protection associations where a group, we will say, in that watershed are protected. There are other places where the Government protects it themselves. I think that the industry, judging from what I have been told in the past, has done a pretty good job on fire protection. I think they do a pretty good job.

Q. Can you tell us what it costs you on an acreage basis?

A. Fire protection?

Q. Yes.

A. No, I cannot. We probably spend in fire protection all told $125,000.00 to $150,000.00 a year. I do not know what it would be on an acreage basis.

THE CHAIRMAN: $120,000.00 would work out to about $8.00 per mile?

A. Something like that, yes.

MR. DREW: There is a situation which we had under discussion here before,

that is, the question of the erection of new pulp mills in Canada. Would you care to express any opinion as to whether at the present time it is wise to have new pulp mills constructed?

A. Well, I think that inasmuch as we have not yet over a period of years utilized the present facilities we have that any new capital invested in that sort of an industry would be very hazardous, or, at least, it would be very venturesome capital. And I would think that it might possibly cause some destruction to existing capital that may be invested in the pulp industry. That is my view on the subject. It would be very venturesome.

THE CHAIRMAN: We will adjourn now until 2.30 this afternoon.

WITNESS: Do you want me back this afternoon?

Q. We would like you to come back, yes. Do you intend to leave on the 5 o'clock train?

A. I wanted to, yes. I have a lot of things to do.

THE CHAIRMAN: Then we shall go on for another fifteen minutes.

WITNESS: I would appreciate it very much if you could. I should be very glad to make further contributions of my time, but I would like to get away.

MR. DREW: I did not know that. I will just go through this as quickly as possible. We were discussing the question of selling, and it has been suggested that it would be desirable as far as the overseas market is concerned to have one selling organization for the industry. Would you agree with that?

A. I think so.

Q. That is your opinion, is it?

A. That is my opinion.

Q. Would it be practicable to have that organization tied in with the larger organization controlling—I won't use the word "controlling"—directing the distribution of production?

A. I do not think so.

Q. You think that should be a separate organization?

A. I do, I think that should be a separate organization.

Q. Would you say that that organization should be distinct from any selling organization dealing with United States publishers?

A. You mean overseas?

Q. You think there should be two separate organizations?

A. I think there should be two separate organizations, if there were to be a domestic organization, we will say, a domestic organization in reference to the United States being domestic as well.

Q. Have you any suggestion as to the method of controlling sales in the United States?

A. I have not thought very much about that. I am a little doubtful as to whether or not there ought to be one selling organization in the United States. It might develop into that. I think we have got to continue to be careful we do not again regain the ill-will of the buyer of newsprint. I think we have to be a little careful about that. We are all human. We do not like to be told where we are going to buy our shirts and collars. We like to have two or three places where we can go irrespective of the fact that there is very much chance for us doing much better. It is human to want to do that.

MR. DREW: One of the rather interesting aspects about this whole discussion of proration is that, no matter what the law may be, it is strangely similar to the varying arrangements in respect of which certain countries which use wood products are being prosecuted at the present time in our courts.

A. Yes.

Q. It indicates the fact that this whole problem of proration is one on which there is not a very definite opinion formed?

A. Well, I am not a lawyer, but does not our Act provide that if they can show that it is not against the public interest in their having sold whatever their packages are then that is not a combine? Fortunately, we have not got the kind of Act they have in the United States, which is a most iniquitous thing. But with this proration scheme of things, if you meet a reason for it, it is probably in the public interest that something be done along those lines.

Q. I am not really arguing it, I am raising a point that does come up in this discussion. That, after all, is the contention of those who form these similar trade organizations or manufacturers organizations?

A. Yes. I am against it if it is an abuse. I am against any kind of an organization that abuses the public in what it does. On the other hand, I do not like to be compelled to destroy the capital there is invested in the institution of which I am one of the stewards. I do not like to be compelled to destroy this investment because of certain conditions that exist, and, really, we are placed in that position a great many times where these 20,000 people who own this company are hurt terribly because of the indulgence in things that destroy the interest they have in the company. That is not good for the country.

Q. Just in that respect, I think you will agree that it is highly desirable, having regard to the future stability of this industry, that public confidence be restored in the financial attraction of investments in newsprint companies?

A. Yes.

Q. In other words, if we are going to have expansion, based on new invest-

ments in the future, it is important that the public have more confidence in investments of this kind than they have at the present time; is that not so?

A. That is absolutely so.

Q. And, for that reason, would it not be highly desirable that any regulations which control the industry, be in a clearly defined form, so that those who are investing in the industry may say, "This is the measure of supervision to which our company is going to be subjected, and we are not left to guess what measures of supervision there may be?"

A. I think it should be well defined, that is right.

Q. So I come to this point; that in the setting up of any measure of supervision under a commission or board, will you agree with me, that it is extremely important that the terms upon which that supervision will be exercised, should be defined in the clearest possible terms?

A. Yes, I do.

THE CHAIRMAN: We are very much obliged to you, Mr. Belknap. The Committee will adjourn until 2.30.

At 1.00 p.m. the Committee adjourned until 2.30 p.m.

AFTERNOON SESSION

S. L. DECARTERET, Called.

THE CHAIRMAN: Q. Mr. deCarteret, you are the Vice-President of the International Paper Company—or one of the Vice-Presidents?

A. Vice-President and General Manager of the Canadian International Paper Company.

Q. You have been asked to come here to give us an opinion in connection with several matters, in connection with the newsprint industry. I think Colonel Drew has some questions he would like to put to you,—or would you rather if Mr. deCarteret made a statement first?

MR. DREW: Unless Mr. deCarteret has any particular matter he would like to say here, to give a statement first.

WITNESS: No, I have nothing; I am just here to answer such questions as you wish to put to me, if I have the information.

THE CHAIRMAN: All right then, Colonel.

MR. DREW: Q. Mr. deCarteret, to some extent, some of the questions may constitute a repetition of what was asked this morning, but I might say the

reason it was suggested, that either Mr. Hinman or some representative of your company attend, is in view of the fact that yours is one of the largest companies, and it was felt desirable, if possible, to have opinions expressed in regard to the present arrangement, and we appreciate very much your courtesy in coming here in this way.

Your company has mills located at what places?

A. We have three newsprint mills, one located at Gatineau, Quebec, one at Three Rivers, Quebec and one at Dalhousie, New Brunswick.

Q. What would be the capacity of the mill at Dalhousie?

A. The mill at Dalhousie has a capacity of between 635 and 675 tons per day.

Q. And the others?

A. Three Rivers mill approximately 800 tons per day.

Q. 800?

A. 800. One at Gatineau 750. Those ratings are per day. Of course, the actual production depends somewhat on the trim which you get to your machines, and the total rated capacity of the three mills figures up to approximately 725,000 tons per year.

Q. The Dalhousie mill would not be under the proration arrangement, would it?

A. Oh yes.

Q. It would?

A. Yes.

Hon. Mr. Nixon: Q. Do you have no interests in Ontario now?

A. We have a pulp mill at Hawkesbury, Ontario.

Q. That has not operated for some time?

A. Oh yes, it is operating right along.

Q. Oh, is it?

A. Yes.

Mr. Drew: Q. How close to capacity?

A. Up to September of last year it ran rather intermittently, I can't tell you off-hand what rate it was run at, but I would say that roughly up to September, 1939, it probably ran between sixty-five and seventy percent maximum.

THE CHAIRMAN: Q. What about now?

A. At the present time it is running one hundred percent. We also have another pulp mill at Temiskaming, Quebec, which up to September of last year ran about under the same conditions but is now running one hundred percent.

HON. MR. NIXON: Q. There is no prorating of pulp tonnage at all?

A. No.

THE CHAIRMAN: Q. I suppose that increase in production must have relieved the situation in Hawkesbury?

A. Very materially.

MR. OLIVER: Q. At what rate of capacity are your newsprint mills running?

A. Up to the end of March our newsprint mills were running about sixty-eight percent. Our sales, however, were—I will just check that figure, I have it here—the first three months of 1940 our sales were fifty-nine percent of capacity and, as I say, we were running at a higher rate of production, as we do from year to year at that time to build up inventories for ocean shipment, because at both Three Rivers and Dalhousie we store ahead for the opening of navigation.

MR. DREW: Q. Mr. deCarteret, you know that evidence has been given that it is important if proration is to continue that the proration should be strictly observed. Have you any comments to make on that evidence?

A. I agree with that entirely, that whatever rules are set for proration they should be strictly observed. When I say strictly observed I don't think that it is practical for every mill to hew to the line every individual month, but as overages or underages accumulate from time to time they should be adjusted as soon as possible.

Q. With reasonable variations depending on particular circumstances I gather that you agree that it is vital to success of any proration agreement that it is vital to success of any proration agreement that the terms be strictly enforced?

A. Yes.

THE CHAIRMAN: Q. But you would rather have the quota on an annual basis than a monthly basis?

A. No, for your quota to work successfully you have got to forecast ahead as to what consumption is going to be from month to month and those figures may have to be revised during the month.

But to have a quota on a yearly basis and have to make a count only once a year, if that is the point that you had in mind, large overages or underages could accumulate in that time which it would be very difficult to compensate later, that has been the trouble with the carrying out of the proration.

Q. That is not exactly what I had in mind. If your quota was say 120,000 tons a year you could sell 15,000 tons in one month and 5,000 the following month and so on so as to make a total of so much for the year?

A. I don't get your point.

Q. Well you said a moment ago that there might be an overage in one month?

A. Yes.

Q. And that would have to be made up on the following months?

A. Yes.

Q. So what I expressed is practically the same idea, that provided at the end of the year or at the end of any extended period you had sold no more than the quota allowed to you, but you might sell more in one month and less in another?

A. That is right.

MR. DREW: Q. Now, Mr. deCarteret, it has been suggested in evidence here by more than one witness that the exemption of any company in Ontario or Quebec from the general provisions of proration makes the operation of the prorating agreement difficult. What have you to say about that?

A. I agree with that statement. I believe that no formula or rule can be set that can be final under all circumstances. I think that when the governments of the provinces of Ontario and Quebec agreed on the proration plan and decided to put it into effect that that step is the principal one which has resulted in some considerable comeback of the industry. I feel that in making the exemptions which were made from time to time they were made in good faith by the respective governments. I don't think that either government wanted to err on the side of swinging the big stick or incurring any injustice; I think that undoubtedly that had considerable bearing in being lenient rather than harsh. However, in the light of what has occurred since those exemptions were made I believe that if proration is to be successful in the future an unbiased study has got to be made of all those exemptions which exist in the light of present-day conditions to see whether they were justified or whether they were not. Does that answer the question, Colonel?

MR. DREW: Yes.

HON. MR. NIXON: Q. You are not prepared to condemn them out of hand?

A. Not at all. Not at all. I can see where they have worked hardship on the rest of the industry.

Now am I free to refer to remarks that were made this morning?

THE CHAIRMAN: Yes, certainly.

MR. DREW: Q. Yes?

A. This morning, mention was made that if the exempted mills had run at the same ratio as the industry as a whole, it would have made a difference of possibly five points—was that it?

THE CHAIRMAN: Q. I believe that is the evidence given by Mr. Vining the other day?

A. Yes. I think that is substantially the statement made this morning. And reference was also made, I think, to a remark attributed to Mr. White, that that difference, the effect of it, was largely psychological rather than actual—is that correct?

MR. DREW: Q. Yes.

A. I don't agree with that statement exactly, for this reason: I believe that the amount of exempted tonnage is something like 400,000 tons, isn't it?

HON. MR. HEENAN: About.

WITNESS: About 400,000 tons of exempted tonnage. Let us assume that the industry was running at fifty percent of its capacity as it did, or approximately that, that would mean that the industry as a whole would be producing approximately 2,000,000 tons. Now, if the exempted tonnage had been run—to realize which by partial or whole exemption—on the same ratio as the industry that would have produced under those circumstances say, 200,000 tons instead of 400,000 tons, that 200,000 tons which they would not have run, would have been run by the rest of the mills, with the result that there would have been an increase of ten percent in their running ratio approximately. Do you follow me? In other words, the 200,000 tons would have been ten percent of two million. A difference in running ratio of ten percent makes a difference of approximately $2.00 per ton in the cost of the tonnage produced—of the total produced, and I don't think that that could be passed over lightly; particularly when an industry has been running, as ours has, on such a low ratio, where $2.00 or $1.00 or fifty cents per ton income is a very substantial and material item. I just wanted to clear up that point that you can't pass over lightly, that if the exempted tonnage had been reduced so that those mills would run on the same ratio as the others, that it would not have made a substantial difference in the operating success of the industry as a whole.

MR. DREW: Q. I think one can safely say, not only in this industry, but in others, that there comes a certain critical point in the graph line of production costs past which even a very small increase very greatly reduces the cost?

A. Definitely.

Q. And evidence was given here as distinct from Mr. White's evidence, that having reached the point they had reached, a relatively small percentage increase would substantially improve the position?

A. That is right.

Q. That, however, in itself is not an argument one way or the other, in favour of the exemptions or against the exemptions that are being granted?

A. No.

Q. I suppose there is a clear distinction between the arguments that might be made in favour of the exemptions of the mills supplying the *Chicago Tribune* and the *New York News*, and the situation which exists in the case of the *New York Times*, which has bought into certain mills by stock purchase, there appears to be a difference in the argument?

A. I would like, if possible, that I shouldn't be asked to testify too closely on that, for the reason that the company that I represent, takes up a considerable portion of the slack of the requirements of the *Daily News* and the *Chicago Tribune*. As was mentioned this morning, the two mills of the Ontario Paper Company do not supply the full requirements of their papers, and I would not like it to appear or to be attributed to me, that I was arguing for or against the exemptions of that company, because of the influence that it has on our own company's business.

Q. That is very reasonable, but there is an interesting point in connection with that. Is the production of the Ontario Paper Company mills consistently below their total consumption?

A. Oh, yes. Even when they only had their mill at Thorold, they were producing at that mill considerably less than their consumption, and their tabloid in New York, I think it is called the *Daily News*, has grown by leaps and bounds. This is an enormous mass of paper.

HON. MR. HEENAN: Q. I think they were purchasing something in the neighbourhood of 100,000 tons a year?

A. I think so.

HON. MR. HEENAN: In addition to their own production.

MR. DREW: Q. I can see that you would be put in an embarrassing position, in arguing one way or the other on that point, then?

A. I think I will set out my opinion clearly, so you can draw the conclusion from it that what I said previously, that in view of present conditions I think that every case of exemptions should be studied by unbiased parties, by an unbiased committee or whatever you want to call it, and the facts established as to whether the exemptions should be allowed to continue or not.

Q. Well then, will you express an opinion on the suggestion that has been made, that it would be desirable this whole problem be controlled by possibly a national commission or board?

A. I think it is strongly advisable that at least, some such body should be

brought into being to take care of the affairs of these two provinces, and if possible that it should be extended to cover the entire production of the Dominion.

Of course none of us like interference with our own individual businesses, but I think every fair-minded person who has appeared before you and will appear before you will probably admit, maybe grudgingly, or some freely, that proration has been the salvation of this industry. Some years ago I was connected with a small company which had one machine running on newsprint. We had a contract which had run for a number of years, it was one of these cut-price contracts, and when it came to renewal period and we tried to get the full price or the current market price it was absolutely impossible to renew that contract. We were offered renewal if we would make a price concession, not only a price concession but a concession in terms of payment which were very unreasonable, and fortunately we were not pushed to the position of having to accept those terms because another company voluntarily prorated to us. This was back before proration officially came into being.

Now the argument of publishers trying to drive a hard bargain with small companies with one or two machines running on newsprint is that we cannot count on continuity of supply from you as you have only one machine, what are we going to do if your machine breaks down or if our requirements rise, you haven't got the elasticity to take up the slack; therefore a small company with one or two machines has always been for years back in a difficult position to make contracts. That situation is solved now by proration, a small company is no longer at the mercy of a publisher who insists on driving a hard bargain in order to do more business.

Q. Have you any comments to make about the desirability of any special method of proration other than what you have already said?

A. You mean in regard to proration itself, or the method of enforcing it?

Q. I have in mind particularly what you heard discussed this morning. There are different methods of proration. In fact, there are many proration agreements of different kinds in effect to-day, but while it is not a manufactured product of quite the same type, there is some similarity between the situation here and the situation of the product of oil in the United States because we have perhaps relatively as dominating a position in the production of this product as they have in oil. Now they have not relied merely on voluntary agreements supplemented by governmental intervention, but they have actually a supervising committee which is given power of law to enforce its demands by state legislation and is in addition to that assisted by the Federal Government under certain provisions respecting interstate commerce. Would you care to express opinion as to whether that offers any practical suggestion for us here?

A. Did I understand you to say that we have a dominating position here—referring to Canada—in regard to newsprint?

Q. Yes?

A. We actually exert a big influence, you know, but we are not in a dominating position.

Q. When I said "in regard to newsprint", I meant in regard to the raw material?

A. Yes, we are to some extent, but still it is the price we get for the goods which is most interesting; is that not so?

Q. Take for instance simply this bald statement from the president last year of the pulp and paper industry in Canada: "Canada has the largest area in the world to-day of commercial timber that is suitable for the manufacture of all the new products of pulp and paper that are now so much in demand." Is that fairly accurate?

A. That is a fair statement. We have the raw material, but when it comes to marketing it competitively we have been at the mercy of foreign countries for years. Scandinavia, for instance, I think in 1939 its imports of newsprint were something over 300,000 tons, selling at a price anywhere up to $7 and $8 below our market price delivered to publishers in the United States.

In regard to pulp from Scandinavia the average importations to the United States have been something like 1,400,000 tons a year for several years. That pulp—a great deal of it—is used in the lake states. It comes right up the St. Lawrence River and is delivered in Wisconsin and adjacent states at prices with which we cannot compete.

I was interested the other day looking at some graphs which showed that while the consumption of those classes of pulp by the converting mills in the lake states has increased enormously, Canada's part of supplying that pulp has just gradually dwindled down because we cannot meet their competition as to wages, living conditions, subsidized ocean freights and all the rest of it. Every ton of that pulp which comes over here comes up through our canals and is subsidized by ourselves by reason of the free passage which they have through our canal system.

So, while we may be in the predominant position so far as raw material is concerned, we are far from being in a predominant position when it comes to delivering finished goods.

Q. I remember we had something of the same condition in regard to oil a few years ago when there was a very active press campaign in this country in regard to the effect of selling Russian oil delivered on the St. Lawrence River by boats direct from Russia. The position is not greatly different?

A. No.

Q. I only mention that, because it seems to me that it is exactly the same factor in the oil business as in the pulp and paper business. That was met, not so much by embargo, or anything of that kind, but by an emotional campaign against the purchase of Russian oil?

A. Yes.

Q. I think you should remember that?

A. Yes.

Q. I merely mention it, because it seems to me it brings the two back again on a somewhat comparable basis. However, without going too much into its comparative angles, you heard Mr. Belknap say this morning, that in his opinion it would be desirable that any regulations which were to be enforced in regard to proration, should be clearly defined and strictly enforced? Would you agree with that?

A. Yes, I agree with that. It may be superfluous for me to say this, but I think, in making the rules, that the industry necessarily should have the opportunity of expressing every view for and against, and that in the carrying out of the rules that the body which will exercise, let us say, the final policing power, will be entirely independent from the industry itself and from any intervention political or otherwise.

THE CHAIRMAN: Q. All seem to be afraid of political intervention, but I think it was political intervention which established proration?

A. It was.

Q. And that saved the industry?

A. It did.

Q. Then political intervention is not so bad?

A. Sometimes it is good and sometimes bad.

MR. DREW: Q. Although you may welcome the clergyman when he performs a marriage ceremony, you do not want him in the house all the time afterwards?

A. (No audible answer.)

HON. MR. NIXON: Q. The governments of the two provinces are real partners in this industry?

A. Yes, and we are partners with the two governments.

HON. MR. HEENAN: Q. As you state, government intervention has been the salvation of the newsprint industry, and the province established some kind of an order of policing in order to regulate the policy of proration. I think, outside of the publishers' mill, in which the governments agreed either rightly or wrongly, for the time being that they should not be included in this policy of proration. Taking it as a whole, the balance of the tons—that is of the mills—which have not been strictly adhered to, do not amount to more than about 60,000 tons in two years. What I mean by that is, that the Government has not at all done too badly?

A. It has done very well. It was a remarkable success.

Q. The remark of the Chairman was made and my genial friend on his left followed it up, and the questions and your answers would lead one to believe that the matter is not in such a bad mess?

A. Pardon?

Q. The remarks of my two friends and your answers, would lead us to believe that this has got into not such a bad mess?

A. (No audible answer.)

Q. And so I agree as Minister of Lands and Forests—and it looks as if I am going to be Minister for another forty years ——

MR. DREW: You are looking forward to complete proration?

HON. MR. HEENAN: Yes, I agree.

In fact, I suggested first that the matter should be taken out of the hands of the Minister of the Crown, who has not the time to devote to it, but I do not want it looked upon as if we have not tried to do our best.

THE WITNESS: If I have given any impression to the contrary, I wish to correct it. I have said in effect, that proration has been the salvation of the industry, and in the last two years we have had the results of it.

Q. That is better; much better.

A. But there is room yet for a lot of improvement.

Q. I agree. Referring to the two or three publisher mills—one in Quebec and two in Ontario—suppose we exempt them, we have only to tighten up in order to adjust the matter of 60,000 tons in two years. That is the amount of proration which some mills have gotten away with, so it does not mean a very big job to tighten up?

A. I hope it will not be a very big job.

Q. In other words, the fellows who did the rough work, made it easier for the fellows who are going to be on the Board.

A. (No audible answer.)

HON. MR. NIXON: Q. I was going to suggest that maybe the continued presence of the two governments in this set-up might give an air of respectability to what otherwise might be regarded as a gigantic trust or combine.

A. I do not think there has been anything which has not been respectable; do you?

MR. DREW: There is just a slight suggestion of that.

HON. MR. HEENAN: Q. In that connection, would you like to express

an opinion as to how this Board should be appointed? Should it be an industrial Board fortified with the legislation of the two provinces, or should it be a government board or Joint Board between the Provinces and the industries?

A. I would think that a Joint Board between the two governments of the two provinces and the industry would probably be the best approach which can be made to it.

I think you would probably have to have legislation in both provinces to make your policing power complete and I think, as I intimated before, that the final authority should be outside of the industry—and I will not add what I said about politicians. Now, may I continue?

Q. Yes.

A. That, I think, might be the practical solution of carrying out proration in an entirely satisfactory manner.

Linked up to that in a way this morning was the matter of overseas business. That, I think, has to come into the picture of proration in the way that overseas business should be handled by a separate organization apart from this committee of which we have been just speaking. I do not see any particular reason why there should be any direct link between, let us say, the overseas sales company and this committee except to this extent, that one of the rules of proration would be that overseas business would be prorated back to all companies where they actually ship paper into foreign markets or where they do not and that they would absorb on the basis of proration any difference in profits realized on overseas business as compared with domestic business, because in general I think in almost any industry or overseas business you are really into another market. The business you get overseas can be considered as increment business to your home markets; you can afford to take it as increment business and if you do that it should be prorated to the industry as a whole. Do you get my point?

In other words the mill net of overseas generally is considerably below your home mill net and after the present war is over and we are again in competition with our former competitors, the only way that we are going to be able to meet that competition—and this is what I think—is to put up a solid front and share the cost of the business.

THE CHAIRMAN: Q. How should that overseas selling agency be established; by the industry?

A. Yes. At the present time, you know, there are certain companies which have overseas arrangements which are to-day sharing the overseas business. Now, take the Australian business, for instance, that is shared—prorated—between certain companies here.

Q. And you claim overseas business should be prorated amongst all companies?

A. If that class of business is not as lucrative as the domestic business.

MR. DREW: Q. The only matter which would appear to throw any doubt upon that would be the fact that overseas business must depend even more upon the geographical location of mills; must it not?

A. Well, that is the point I have been trying to make. If you have a mill inland here it is not strategically situated for shipping in Japan or China. They may be shipping their entire output to the United States, realizing a much higher mill net. If that overseas business is, let us say for argument, 500,000 tons and the mill net on that is $2 less than the average domestic, it would be a million dollars. Even if this inland mill actually did not make any part of that tonnage I think it is fair that it should absorb its prorata part of that difference of a million dollars for the reason that the mills making that export tonnage have had to include it in their quota.

You can do one of two things: You can spread the difference in cost, or in distributing the tonnage on the quota basis you could say that a ton of overseas business is worth eight tenths of a ton of domestic business—or something like that. It is just a matter of working it out. One or more sales companies looking after export business would certainly give the Canadian industry as a whole a stronger position in foreign markets and individual companies competing for foreign business. I think that has been brought out several times, has it not?

Q. Then do you think there should be any similar selling organization in the United States?

A. No, I do not think so. I think several selling agencies working in the United States are preferable. I think some of the smaller producers—those of the one or two machine-type I mentioned—could well arrange with some of the larger organizations to take care of the disposition of their output, as is already being done. There are two of the smaller producers which have those arrangements now.

Q. Can you tell us actually what cash investment there is in your company?

A. I cannot carry all these figures in my head, but Canadian International Paper Company and subsidiary companies, which includes New Brunswick International Paper Company—which is the principal subsidiary—with plants and properties exclusive of woodlands, the present depreciated value at the end of 1939 was $66,556,000.

Q. Will you repeat that figure?

A. $66,556,000. The woodlands, less depletion, $15,728,000.

HON. MR. HEENAN: Q. How do you arrive at the woodlands figure?

A. I am sorry.

Q. I say, how do you arrive at the woodlands figure. Is that the amount of money which was raised on the value of the wood?

A. I am afraid that is a question I cannot answer, because I have only been with Canadian International Paper Company for two years or a little over.

Q. I am wondering if that is the value you put on your woodlands?

A. Here is a note which I think will answer your question.

In the total there is a little over $82,000,000. At cost of construction or acquisition to this consolidation, less reserves including $670,000, by which the book investments and stocks owned exceed the net assets applicable to such stocks, as shown by books of subsidiaries at dates of acquisition. That is cost of construction or acquisition.

THE CHAIRMAN: Q. That is the cost of construction or acquisition means acquisition by your company?

A. Yes.

Q. Not necessarily the price paid by other companies to the Government?

A. No.

MR. DREW: Q. What about the shareholders?

A. That is a figure I have not here. Of course, I can say in regard to Canadian International Paper Company, that all the common stock of Canadian International Paper Company is owned by the parent company in the United States, the International Paper Company.

I can tell you in regard to what portion of the funded debt is in the hands of the public, if that would be of interest?

Q. Yes, it would.

A. The funded debt total is $58,315,000, of which $37,900,000 is owned by the International Paper Company and $20,415,000 is owned by others.

Q. Are dividends being paid on the stock of the company at the present time?

A. There has not been a dividend paid on the stock of the Canadian International Paper Company since the company was formed about eleven years ago.

Q. It was formed about eleven years ago?

A. Yes.

Q. There is at least one thing in regard to which there can be agreement, namely, the investment returns have not been too satisfactory in any of these industries?

A. No. As Mr. Belknap said this morning, capital has not received much pay, if any—"wages", I think he said.

Q. I think it can be fairly said, no matter what other criticism there may be of the industry, its present plight is not due to overpayment of dividends?

A. Certainly not. There is, if I might go back to the question of proration, one remark I would like to make: Proration has given the individual units of the industry a certain degree of security. They have been able to plan ahead assuming, of course, that proration would continue and have been able to plan ahead in regard to keeping their mills in good shape, and planning their woodlands operations so that they could be run economically, instead of in the manner which obtained in respect of cut-throat competition when everyone was cutting the cheapest wood, exhausting their cheapest wood, and where they had a mill closed down, they were robbing that mill for parts to keep the mills which they were operating in repair, and the properties were getting to be in a deplorable condition.

With proration in effect, the last two years or more—and I believe it was really in effect to some extent prior to two years ago—I know in our mills, at least, and I think it is general, we have felt it was wise to build for the future along the lines of which I have spoken, planning woodlands operations ahead, particularly so that we were not using up all our cheapest wood in current operations, and we felt it was well to get our plants back into good shape.

HON. MR. HEENAN: Q. Can you tell us how many mills are now operating under proration in Quebec?

A. I think I can tell you that in just a second.

Q. I do not mean companies; I mean mills.

THE CHAIRMAN: If you do not mind, gentlemen, we will now adjourn until a quarter to four. Colonel Drew has some important business to which he wishes to attend.

(Resuming.)

HON. MR. HEENAN: Mr. Chairman, you were on proration, and I want, before we get away from proration, to ask one question.

THE CHAIRMAN: All right.

HON. MR. HEENAN: Q. How many mills were there in Quebec when it was under proration,—I think it was pointed out that there were twenty?

A. Twenty.

Q. And there are ten in Ontario. That is thirty mills; and yet there is only a disparity of sixty thousand tons in the two provinces, amongst thirty mills. So that even the Committee's administration cannot prevent a disparity of sixty thousand tons, with only twenty mills in Quebec and ten in Ontario?

A. The only unfortunate thing, Mr. Heenan, in regard to that sixty thousand tons is that most of the shortage is in two places. But the performance has been remarkable.

MR. HEENAN: Oh, yes, Ontario got the benefit of practically that sixty thousand tons.

HON. MR. NIXON: Was it a benefit?

Q. That was not Mr. Ferguson, was it?

A. Oh, he is still short.

HON. MR. HEENAN: There are two mills in Ontario which are short fifty thousand tons, and there are mills in Manitoulin.

HON. MR. NIXON: They are not in that picture, are they?

HON. MR. HEENAN: Yes.

HON. MR. NIXON: Q. A gentleman who was here this morning said that one of his mills had been idle for eight years and then the Abitibi has two mills which are idle; that might place the Abitibi in even a worse position?

A. The basis of rating these mills was a little bit complicated; but they took into consideration the cost of producing newsprint in the individual mills, and whether it would be practicable to operate them at a certain price. And on that basis of rating the mills, the two, Espanola and Sturgeon, did not qualify.

Now, the mill at Cap de la Madeleine, it was shown that that mill could have produced at the existing price, and, so far as capacity was concerned, it was rated on its production within a certain number of years back,—I have forgotten how far back they went. But according to their basis of rating, if a mill does not operate or does not go into production, its rating goes down.

That may sound a bit complicated, but that is the best explanation I can give you at the moment. You recall, Mr. Heenan, how, substantially, that was worked out.

HON. MR. HEENAN: Yes.

MR. DREW: Q. In connection with proration, a question has arisen in different cases already, and that is the question of exporting pulp logs. There seems to be a wide divergence of opinion as to the wisdom of exporting raw pulp logs. What is your opinion in regard to that?

A. There is a live issue. There are a number of influencing factors. In the first place, there is the question of whether you are using up forest capital which you will need for the future to support your present mills, in exporting wood.

I do not know what your inventory situation is in this province; but I think, before one can say whether or not it is economically sound to export wood, the inventory situation has got to be considered.

The second point is that if you allow wood to be exported, is it going to be

used for the manufacture of products which are going to compete with your own products? To illustrate the point there: up until the beginning of the war a good many thousands of cords of pulpwood were being exported from one of the eastern provinces to Germany. As a matter of fact, it ran into hundreds of thousands of cords over two or three years. The manufacture of that wood in Germany into newsprint, and particularly into pulp, which was again exported and subsidized, certainly had a very bad effect on the marketing of our own products in the United States and South America and other export countries in the world.

That is an aspect which certainly merits consideration.

I think that, unless it is a matter of national economy, the exportation of pulpwood from freehold or private lands is within the rights of the owner. On the other hand, I would like to see the time come when it may be possible to make it attractive enough to the owners of freehold wood to deliver their freehold wood to our own mills. There is one mill in eastern Canada which runs almost entirely on freehold wood.

Q. What mill is that?

A. In fact two mills,—two mills of the Brompton Pulp and Paper Company at East Angus, and at Bromptonville.

THE CHAIRMAN: Q. That is in the eastern townships?

A. The eastern townships, yes. I often wonder if it would not be possible to work out some plan, whereby more of this settlers' wood that goes to the United States could be brought to our own mills.

In the Province of Quebec, settlers' wood cannot be shipped out of the province, I mean out of Canada, until the lot is patented; and, if I remember correctly, it takes a period of something like five years before the lot can be patented, after the location ticket is granted.

But I think that our mills would be willing to use more settlers' wood, if they could be assured of continuity of supply from those sources. My experience has been, that you may get several thousand cords of settlers' wood this year, because things may be a bit depressed on the other side of the line; but as soon as things pick up a bit over there, the price that is offered for the wood is substantially more than it costs, cutting on your own lands.

I think that is something which should be carefully studied, as to the diversion of settlers' wood to our own mills, and the conservation of the timber on our own limits.

MR. COOPER: Do not the settlers get a better price for that wood in the United States?

A. I think very likely they do.

Q. Why is that?

A. Because, very often the cost of production and delivery of wood from our own limits is lower than the price that American mills are willing to pay.

When I say that a study should be made to see if we cannot divert some of this settlers' wood to our own mills, that might be done through a preferential rail rate to our mills.

MR. COOPER: That is a good idea.

WITNESS: I know lot of cases where thousands of cords of pulpwood go right by mills' doors and go out of the country.

MR. SPENCE: Q. Is not part of the problem that mills object to buying in small quantities from settlers, say fifty-cord lots?

A. I do not see any reason why they should object, if they can be assured of a continuity of supply year by year. Once they get their buying organization there to buy from settlers, they would find that the wood was going to the United States in the following year.

In other words, you cannot be jumping from buying settlers' wood in large quantities in one year, and switching over to your own wood the next year, or vice versa.

Q. But surely you can compete when it is going away to a long distance, and you have an independent operator who buys from the farmers, and where is his market?

A. The wood goes, at the present time, where it realizes the highest price, there is no doubt about that.

MR. DREW: Q. Why would our own mills not be able to pay as good a price as the American mills?

A. Well, they have their own carrying charges for instance, on their own properties; they have ground rent, fire protection, and their investment in their timber lands, which they have to amortize, and stumpage charges.

Those costs, on top of all, in conjunction with their own operating charges, in general, bring their own wood to their mills at a lower cost than a good deal of this wood that is going to the United States.

Of course, there are some places where considerable purchase wood can naturally come to the stream on which the companies are operated. But I am talking of the wood which is outside of that pale, which does not come to the Canadian mills at the present time because, principally, of rail freights and competition of foreign buyers.

THE CHAIRMAN: Q. What is the area of your limit in Quebec, Mr. Carteret?

A. I do not remember what the division is between Quebec and New Brunswick, but between the two provinces our holdings are approximately twenty-one thousand square miles.

Q. And most of that, I suppose, is held in your own limits?

A. Yes.

Q. Do you own any substantial areas of freehold lands?

A. No, but there are some small areas here and there. I do not remember the area now, but I do not believe the freehold holdings are of very great extent.

Q. What about the cost of fire protection,—what would it be for your company?

A. It varies in different regions, from three-quarters of a cent per acre to a cent and a half an acre.

Q. That would mean $4.80 to $9.60 per square mile?

A. I believe your calculation is correct.

Q. What is the total cost of fire protection to your company?

A. Oh, I would say that the average would be ——

Q. About a cent an acre?

A. Probably a little more than a cent an acre.

MR. DREW: Q. Then I gather from what you have said that you do not think there has been a sufficiently comprehensive inventory of our actual wood situation to determine exactly what should be done in regard to export?

A. I am not saying that there has not been, but I just raised the question as to whether there has been. I do not know. We are talking about the Province of Ontario, and I do not know. I know very little about the timber lands in Ontario.

Q. Do you know if it has been done in Quebec?

A. In the Province of Quebec, under our Crown Lands Regulations, if one does not wish to adhere to the diameter limits of years ago, which are practically obsolete so far as working operations are concerned, we have to submit inventories and working plans. And the practice on which cutting is permitted under the working plan is that the cut shall not exceed eighty percent of the annual increment.

Now, under those working plans different methods of cutting are permitted. Mature and over-mature stands, particularly where the trees are shallow-rooted, as mentioned by Mr. Belknap this morning, clear felling may be permitted, provision being left for seed trees, either in individual trees or in clumps of trees which will not blow down.

Mr. Belknap mentioned this morning about trees having been left, which later had been turned over by the wind.

These plans do not always work out as they are laid out. Sometimes trees which are expected to be wind-firm are overthrown. But that is not proof that the plan is not a good one.

In young stands, growing stands, the practice is to thin them.

HON. MR. HEENAN: Q. Have you any lumber in connection with your industries?

A. Do you mean cutting of logs for lumber?

Q. Yes?

A. Yes, we have, in certain sections, we cut some logs on the Gatineau. We have a sawmill at Calumet.

Q. You use it yourself for your own lumber mills?

A. Yes, we have a mill there in which we cut some of the pine, some of the spruce logs, and some of the jackpine.

Q. Does the Government retain any right to any species of timber on your own limits?

A. No, we have the exclusive cutting rights of all species under our license.

Q. And you cut your own large logs?

A. Yes.

Q. Do you cut your own large trees into pulpwood, then?

A. Unless we have a sawmill. The whole stand which is cut is converted into pulpwood in a good many instances.

Does that answer your question?

Q. We reserve the right here to sell logs over a certain diameter to any other concern, and I was wondering if you had the same thing?

A. No, we have not.

MR. DREW: Q. Are the areas designated where you may do your cutting on the ground or on the plans presented to the Department?

A. They are designated on the working plans, and then they are laid out on the ground in accordance with the working plan.

Q. By your own men?

A. By our own forest engineers and superintendents, and they are inspected by Forest Engineers and District Foresters in the employ of the Government.

In other words, the regions in which operations are being conducted are divided up into districts, and under district foresters, who has a number of inspectors under him. These inspectors check up as to whether the conditions of the working plan are being carried out.

HON. MR. HEENAN: Do you think that in the interests of the whole, the forests and the creation of wealth, it would be a better investment to utilize the various areas of timber, such as sawlogs, into lumber rather than to cut it for pulpwood?

A. Well, you may disagree with me on this point but I do not think that it is practical to have two different concessionnaires occupying and operating the same areas.

Further than that, the lumber industry in eastern Canada has gone down hill. It is not what it used to be. I do not think it will ever again be the important factor that it was thirty years ago. I do not think that in eastern Canada by and large of course—there are always exceptions to every rule—I do not think that a lumber business can be run successfully and profitably and economically from the standpoint of utilization unless it is right at the back door of a pulpmill because of the waste that is involved in utilization where you are just cutting sawlogs.

Q. Well, maybe I should have put it in another way. Assuming that there was a market for lumber and that they could establish efficient, up-to-date sawmills and that they could get the larger logs of these pulp concessions, even though they may have to depend on the larger concessionnaires to cut it for them at a reasonable price, do you not think it would be more valuable to the country as a whole if the larger logs were cut into lumber?

A. In our own experience, no. Down in the province of New Brunswick, for instance, we have operated a sawmill down there for I don't know how many years. But I was interested in looking over the operating costs for five years. They have a modern mill there. It is right on the Miramichi River where they can load direct from the yard right into ocean going vessels drawing 25 feet of water, and there was only one year in the file that that mill was not in the red.

Q. They had to depend on overseas trade, though?

A. Not necessarily. They could ship into the Boston market by rail, not so very far away. The Boston market is a good market for lumber from New Brunswick. The trouble with the sawmill business down in our province—and when I say "our province" I am talking about the Province of Quebec—is that there are about 1,800 small country sawmills that saw everything that will make a 2 by 3 six feet long and up, and they have no overhead. A good deal of their wood comes from farmers' lots, and they sell it mill run to the various dealers that come around. The city of Montreal is just flooded with that sort of stuff that is just coming in for all of this cheap building that is going on.

Q. I am beginning to wonder what we are going to do with our pulpwood and our lumber. I think it was Colonel Drew who read that somebody had

said we had the largest available timber areas in the world. And some gentleman here has suggested that we cannot sell our newsprint except by proration; we should not establish any more pulp mills; we should not export our pulpwood; we should spend more money protecting the forests; we should spend more money in research; and I am just wondering what we are going to do with all this lumber?

A. Well, we are using a lot more of it than we did 30 years ago, aren't we?

Q. I think we are getting into a discouraging position. We can't sell our newsprint and we can't establish more mills; we should not cut it into lumber and we should not export it.

MR. COOPER: We had evidence ——

HON. MR. HEENAN: I don't want to lose my job!

MR. DREW: I quite agree on that!

WITNESS: I do not think that we should get discouraged about that. I do not think that we have reached the limit of our manufacturing activity in the pulp and paper industry in this country. We have just got to go back and look over the record of the last 30 years and see what this industry has grown to mean to Canada. There was a burst of enthusiasm a few years back which was very costly, and in conjunction with the depression we have had the devil of a job to try to get over it. We are going to continue to live not forgetting all that foolishness in the way of these communities that have got to be supported or these mills, some of which needlessly sprang up. I think it would be better, and you may think I am radical in this, to let a lot of that timber rot right where it is than to assume the obligation for future generations of mill towns that would result from building mills when we cannot see that they are going to be able to carry their load after they are built.

Now, the matter of getting money to build mills, we have seen that too often. Under certain conditions it is easy enough to get investors to put money into it. But what is going to happen 20 years afterwards? Are they going to be able to compete?

I understand that suggestions have been made that further mills might be built in this province, that is, pulp mills. There is that great big market to the south which Scandinavia has been supplying with hundreds of thousands of tons of pulp that have come up from the St. Lawrence and the Atlantic seaboard. But, as I said earlier this afternoon, we have not been able to hold what we had ten years ago because we just can't compete with them. Are we going to be able to compete with them when this war is over, when they get back producing again? That is what I fear when anybody talks about building more mills.

HON. MR. HEENAN: You gave some figures here earlier in the morning to the effect that 1,400,000 tons of different kinds of pulp sulphites and sulphates came over from the Scandinavian countries. If we had someone come into this country and say to us, providing that we can give a price on timber, location, water power, transportation and so on, we can get that market—I can get that

market now; I can get so many thousand tons a year for ten or fifteen years; would there be any harm in letting that man in?

A. You say you can get a guaranteed market for ten years?

Q. Yes.

A. What is going to happen when competition comes again from Scandinavia? There may be that guaranteed production in these mills, but at what price is it going to be sold at? It is going to be sold in competition with foreign pulp, is it not? You are going to have somebody here to-morrow, I understand Mr. Robinson, President of the Canadian Pulp and Paper Association, who has been marketing pulp all over the world for the last 25 years. He can tell you all about pulp. So it is just a waste of time for me to talk much about it. But I asked him the other day about it. I said, "In the depths what was bleached sulphite selling for in Wisconsin?" He said it was selling delivered at lake ports there, as I remember it, for $34.00 a ton. "Well," I said, "what would the equivalent mill net of that be at Gatineau, Quebec, where we have an unbleached sulphite mill, or at Hawkesbury where we have a bleached sulphite mill?" He said it would be about $28.00 a ton; $4.00 freight for us to put it over to the same place. Well, we can't make bleached sulphite for $28.00 a ton and include all our interest, depreciation, and so forth, on investment.

Q. Will you agree with this, that rather than let our natural resources rot, we should concentrate on making an effort to get our costs down, so that we can meet that competition?

A. I am willing to try anything. I think we should try everything that we can. But how are you going to meet competition of mill wages over on the other side, that are only a fraction of ours under normal circumstances? I will just pick out a few for examples. We are talking about pulp. Digest of cook in Norwegian mill—39 cents an hour. In the American or Canadian mill it is 85 cents an hour. Suppose it is that you are going to compete with this pulp that comes over, that is almost 95 percent dry. Machine tender, Norwegian mill—44 cents an hour. American mill, the same width machine—$1.32 to $1.37 an hour. Corresponding comparison of wages, back-hand—33 cents against $1.16; and so on down the line. How can you compete with those wages, for one thing?

Hon. Mr. Nixon: Have you the wages in the bush?

A. I beg your pardon?

Q. What are the bush wages?

A. I do not think there is anything in here on bush wages.

Mr. Cooper: Your company has a large sulphite mill down in the southern States, has it not?

Hon. Mr. Heenan: Will you let me finish, Mr. Cooper?

Mr. Cooper: Yes.

HON. MR. HEENAN: My next question is related to that. I do not know what proportion of the cost per ton is labour; at least, I have not it in my head at the moment, but are there no further economies that we can concentrate on making to compensate for the difference in wages, such as transportation, power, stumpage dues and different things of that kind? Those represent the heaviest end of our production. Is it not worth while making an effort?

A. It is certainly worth while and I think it would be a grand thing to try it, to make every effort we can to meet that competition, because we are going to have it. I do not think I am taking any defeatist attitude in this thing at all, I am just trying to emphasize the fact that before we build any more mills, let us do everything that you have just mentioned there; see what we can do and assure ourselves that we are going to be in a competitive position before we chain ourselves to an investment in mills, and to building up a mill population which may prove embarrassing in the future if the thing does not pan out, as lots of these things have not in the past.

I am not adopting a defeatist attitude at all; I am all for doing everything we can to increase the manufacturing of our raw materials in our own country.

MR. DREW: After all, Mr. Carteret, it seems to me that it is an anomaly to consider at the same time proration and construction of new mills, because if we are in a position where new mills are needed, there would not be any justification for proration?

A. Well, I think, Colonel, that the conversation we have just been having now was in regard to pulp mills. I do not think that Mr. Heenan had in mind any more newsprint mills.

HON. MR. HEENAN: No, it was pulp mills.

MR. DREW: Do you share the opinion expressed by other witnesses here, that the pulp mills at the present time in existence are adequate to take care of immediate prospective demands?

A. Yes.

Q. In bleached sulphite pulp as well as in other types of pulp?

A. Normal demand under normal circumstances. We are in abnormal circumstances, of course, due to the war. But taking into consideration the foreign competition which we have to go up against in normal times, I would say yes, that our capacities here are adequate for the time being.

HON. MR. HEENAN: Assuming that these 1,400,000 tons a year are not going to come across to Canada, have you sufficient capacity to fill that in Canada?

A. No, I do not think we have.

Q. Who will supply that market?

A. I don't know where it will all come from.

Q. That is the point I am trying to make. Is this not our opportunity to try to utilize our own resources, not only to capture this business, but to hold it? It is on our continent. The market is there.

A. Do you think that you can jump in and take all that, and have several mills to take care of all that and hold it? What proof have you that you are going to hold it?

Q. You will never hold it if you do not make the effort?

A. No; I agree with that a hundred percent. But it is a long way to go to prove that you are going to be able to hold it.

You take back in 1937, the paper economists and all the rest of them had it figured out that there was going to be such a world shortage of pulp, they would not even call it pulp, they called it cellulose. They could not call it anything but cellulose. Pulp was too lowly a name for it. But there wasn't any world shortage.

MR. DREW: Mr. Carteret, as I remember it, the southern pine development came from long years of research in an effort to find some use for a pine that had not been in practical use in the manufacture of paper?

A. That is right.

Q. In other words, the existence of the pine and the hope of creating a new industry stimulated the research. Now, is that not a lesson for us here in that we have on these timber areas controlled by companies, low grades of timber as well as the better grades which have been used in the past? Would it not be highly desirable that, prompted by the same motives which produced some results in the south, extensive research should be continued in an effort to utilize the lower grades of timber to get our costs down, so that we can meet world competition?

A. I think that that is one way that we can very probably reduce our costs, in finding a way to utilize what we term now some of our weed trees. I do not know whether you consider jack pine a weed tree in this province, but we do in the Province of Quebec. And at the present time, we are using between five and ten percent in some of our pulps.

But I think there is a big field there to find the way to use jack pine.

THE CHAIRMAN: Your company has spent considerable sums of money in research work in the past, has it not?

A. Yes; we are spending it all the time.

Q. I beg your pardon?

A. We are spending it all the time on research. And, in addition to that, of course, there is the Research Institute of Canada which is located in Montreal. Some comments were made in regard to that this morning. I think the Institute

is going to become more effective from now on than it has in the past, because of reorganization of administration and internal affairs.

Q. Who is in charge of research work at McGill University?

A. There is what they call the research council, which is composed of members of the faculty of McGill, certain executives of the pulp and paper industry, and I am quite sure certain nominees of the Dominion Government.

Q. But who is in actual charge of the work, who directs the work there?

A. That is the place where this improvement which I speak of is to take place very shortly—a very active director of research. That is all I am at liberty to mention at the moment, because it is just in the position of being consummated.

HON. MR. HEENAN: Mr. Cooper, I am sorry I interrupted you a little while ago.

MR. COOPER: Mr. Carteret, your company have large sulphate factories down in the southern States?

A. Our parent company has. Canadian International Paper Company has no interest in the south.

Q. How are they competing with this Scandinavian pulp?

A. The consumption of box boards and all kinds of containers, which Mr. Belknap mentioned this morning, has grown by such leaps and bounds in the United States, that those industries have absorbed what has been produced in the United States, as well as very substantial quantities of sulphate pulp from abroad. I am just wondering if I have the figures here. I do not seem to have the figures. As I remember it there were some 500,000 tons out of the figure of 1,400,000 tons of sulphate pulp imported into the United States.

Q. What woods do you utilize there, the pine?

A. Well, you can. For the sulphate pulp which is made in this country you can use spruce, fir, hemlock and jack pine. In the south they use the southern pine.

A good deal of that sulphate pulp which came in from Scandinavia was of very high quality and it was used for all kinds of fancy coloured wrappings, which need strength, and for making manual boards and tags and all that sort of stuff.

Q. We had some evidence the other day that left somewhat of a mystery in connection with the floating of hardwood over the Scandinavian countries. I understand you have had some experience with that in Canada; is that right? I am talking of the floating of birch.

A. I personally have not had any experience in floating birch, and I do not know whether our company has. I know that it is quite practical to float

it short distances early in the spring when the water is cold. I do not think any practical method has been evolved of floating birch long distances where it is in the water for a long time in large quantities.

HON. MR. HEENAN: I think it was stated here by one gentleman who was giving evidence that in the manufacture of newsprint from southern pine—I do not know that they had to but they did purchase some spruce from some province in Canada and mixed it.

HON. MR. NIXON: Newfoundland.

HON. MR. HEENAN: Yes, Newfoundland. Do you know anything about that?

A. No. But the fact remains that they are making at that mill in Texas newsprint which is improving rapidly in quality. I saw a sample of it only the day before yesterday which compared with a sample which I had received two months ago. There was a remarkable improvement in the quality of the sheet.

MR. DREW: That is from the southern pine?

A. Yes.

THE CHAIRMAN: Gentlemen, I do not want to rush the members of the Committee but Mr. Carteret is quite anxious to leave this afternoon for Montreal.

MR. COOPER: Mr. Chairman, before the Committee adjourns—

THE CHAIRMAN: I am not going to adjourn—some other members may have questions to ask—but I would ask that you be as brief as possible.

WITNESS: I have plenty of time yet. I do not have to leave here for quite a while yet, as long as I get the bus at six o'clock from the hotel.

MR. SPENCE: You have had proration in force for some two years and practically everyone feels that it has been of benefit. Have you any view about it? I should like to get your opinion in this respect, as I presume it is the same in the province of Quebec as it is in Ontario. In your opinion is it not a detriment to new capital coming in here taking hold and utilizing these cheap species of timber if we are going to have prorating? I see many points in favour of it but there are many points against it, in my opinion, and that is one of them. I should like to get an opinion from one who is in touch with the utilization of our forest products?

A. Well, my answer to that is this, that if you have got to sacrifice the benefits resulting from proration to get other industries into the province you have got to make up your mind as to whether it is worth the cost. Because, put proration out of the window, let everybody run wild, and everybody may not want to run wild, but there may be one or two individualists that think they are strong enough to swing the world by the tail, then the price of newsprint won't stay where it is. You can see where it was before, down to less than $40.00.

HON. MR. NIXON: There is no suggestion of prorating pulp, is there?

A. No.

Q. Never has been?

A. No. But I take it from the member's question or point—I think his point is that if you have proration in the newsprint industry that they may frighten capital away from coming in and developing other wood using industries for fear that proration may be extended to them. Is that not your point?

MR. SPENCE: That is the point exactly. Then I believe those who have timber areas here or concessions certainly should do something towards the production of these cheaper grades; that is, they should put in extra equipment to manufacture pulp. You say we can't compete with the Scandinavian countries?

A. Maybe I am wrong. Maybe I have been too positive we cannot compete. I should say we have not been able to compete. But Mr. Heenan has brought out very well and very strongly the point that we should not just sit idly alongside and do nothing; that through research and so forth we should see what we can do.

Q. Absolutely. There is a great opportunity here to manufacture this other grade of pulp. Our aim should be to encourage production in these large areas which we have in the province.

A. Absolutely, if you can produce and market on a sound basis, that is going to bring you in a little more than each dollar you spend.

Q. When you said we were unable to compete with Scandinavian countries you were figuring that we were using our high grade spruce to make that pulp to compete with the lower grade wood in Scandinavia?

A. No; they are using high grade wood over there too. They are using just as good wood over there as we are.

HON. MR. NIXON: You said their pulp was a very superior product did you not?

A. No, I did not make that statement, but I said that they were making a good many higher grades for use. I made the reference just now for use in high-grade wrappings, and so forth.

Q. Yes, that is what I thought.

A. But we can make just as good pulp as they can.

MR. DREW: I am going to come back to a question which we have got away from several times, namely, that of export.

The contention has been made from time to time, that export does not interfere with manufacture in Ontario, because it is going to mills which are

not making the same kind of article which we make here. What have you to say to that argument?

A. You are now speaking about wood going from this province into the neighbouring states to the south. Is that correct?

Q. Yes.

A. Wood which we ship to the states referred to, may or may not be releasing other wood, which would otherwise be used in newsprint or other products with which we have to compete. I do not think there can be any doubt about that.

Q. Would you say, in your opinion, the export of pulpwood from Canada is likely to be detrimental to the manufactured production of pulp products in this country?

A. Over the long pull, yes.

HON. MR. HEENAN: Q. How long would that be?

A. Well, when this province and the Province of Quebec prohibited the export of pulpwood from Crown lands, there was immediate impetus to build mills on this side of the line.

I have discussed and argued that point with my friends several times, and some of them say the mills were to come up here anyway, but they have always had to agree with me that the prohibition hastened a great many of the mills coming up here, and I feel that as we can increase manufacturing up here economically, it is going to be by improved methods, it is going to be in more modern plants and over the long pull, a lot of these older converting mills in the United States are not going to be able to compete with us. That is what I mean by "the long pull".

As long as we keep letting substantial quantities of wood go out of Ontario into these states which have converting mills, they are going to patch up and put in new machines here and something else there, and improve and try to keep up, because it is natural that they do not want to pull up stakes and come into a foreign country to do business as long as they can do it at home. That is common sense, is it not?

MR. SPENCE: They certainly do not want to go to Finland, anyway.

THE WITNESS: Pardon?

MR. SPENCE: I say, they certainly do not want to go to Finland.

MR. DREW: Q. From your discussions in the United States on this subject, I am sure you believe it was the prohibition of export which hastened the erection of mills in this country?

A. Absolutely.

Q. And, subject to such questions as labour factors involved, and the necessity of gradual change in any of these companies, would you say you believe it would be desirable that we export as little as possible of the raw pulpwood?

A. Yes.

HON. MR. HEENAN: Q. Going back to discussion of the long pull again. For a great many years, we had prohibition of the export of pulpwood from these provinces, figuring that we were going to shorten that pull to the day when we were going to make them bring their mills over here. It was a long, long pull. You have said in a way, I think, "I do not think very seriously, that it would pay in the long pull, to let our timber rot in order to save the situation in respect of posterity." I am wondering how long that pull is going to be, how long we are going to have our wood going to rot in the bush, and our unemployed walking the streets and kept on relief.

HON. MR. NIXON: And still not open mills in Ontario.

HON. MR. HEENAN: No.

Q. Would it not be better to export and get the value of it, rather than to let it rot; give our men work and a little bit more muscle?

A. The more wood you let go out of this country of ours, the more you are going to delay the long pull development of manufacturing in this country. How long that pull is going to be I do not know, but I will give you an example.

I used to be connected with a company in the United States which makes high-grade papers of all kinds, and back in 1920, or around there —— was that when pulpwood went to such a price?

MR. E. E. JOHNSON: Yes.

THE WITNESS: —— they paid as high as $40.00 a cord for a few cars of wood delivered at their mill. They had to have it, and they paid as high as $40.00 a cord for that wood. They got their wind up and they bought a property—a freehold property—down the St. Lawrence as a source of supply for their mill. I was with this company for eight years. I helped develop that property as a source of wood for the plant in the United States, and prior to buying that property, they operated for over 25 years without owning a stick of timber. For the last five years of the eight I was with them, they spent most of their time figuring out what they could have done with the money they put into that property if they had not bought it. They were sorry they had made the investment, because they had the whole St. Lawrence waterways from Duluth to the furthest part of Anticosti to draw on for their wood supply.

In addition to buying that timber land property in the Province of Quebec, they were seriously considering building a mill in this country, that they bought a plant site on the Welland Canal. That was back as I say, around 1920. But with this free wood which they could draw on for the whole of the St. Lawrence waterways system, they will never build a mill in this country. That is why I say, the more wood which goes out of this country the more the delay in increasing the manufacture of our wood into finished products in this country.

HON. MR. HEENAN: Q. Have you any idea how many cords of settlers' wood are shipped annually from Quebec?

A. Freehold wood, there was practically — oh, will I answer your question first. I think the peak was a little over one million cords, and what it has been the last two or three years would be probably seven hundred thousand cords or thereabouts. Now, that is just a guess.

Q. How much?

THE CHAIRMAN: 700,000 cords.

MR. DREW: Q. To where does that go, mostly?

A. A considerable portion goes up the Great Lakes, and a lot of it goes to the northern New York mills. Some of it goes to West Virginia.

Q. I am sure from your statements that you have had direct contact, extensively, with the mills in the Wisconsin area?

A. No, personally have not had contact with them, but I was in the woods end of the industry for twenty-five out of thirty-two years that I have been in the industry, so I could not help but absorb a little about it.

Q. The reason I ask the question is that I am interested in this point: When the mills were originally established in Wisconsin, to where did they go for timber?

A. I think they used local timber; that is the first mills.

Q. Yes?

A. As to what mills sprang up as merely converting mills, I do not know the history.

Q. Am I correct in my understanding that cutting methods were such in the proximity of the Wisconsin mills, that they reduced their immediate supply to a point where, in any event, it became necessary for them to look elsewhere for pulpwood.

A. I have no direct knowledge of that, but I would presume that their methods of cutting were substantially the same as in the eastern part of the United States, which has been largely depleted of its forest capital.

Q. My understanding is that the available cutting areas in the proximity of the Wisconsin mills had been depleted by improper cutting methods.

A. As I say, I have no direct knowledge of that, but I guess you are right.

HON. MR. HEENAN: Gentlemen made the statement here, that you go along the river for two or three miles, and see all these mills in Wisconsin, two or three miles apart, and that their yards are piled high—piled high, mind you—with

Ontario wood. Do you think, as an expert, one would be able to go around and say, "That stick is from Ontario, that stick is from Quebec and that stick is from Manitoba?"

A. You would be a pretty good wood expert if you could. Maybe you could tell by the stamp marks.

Q. In our direct markets here when considering whether or not export is the proper thing, I think everyone agrees with you, sir, if we can get manufacturing here it is the best thing to do; but in our neighbouring states—right across Lake Superior—my recollection is that they use somewhere in the neighbourhood of about 3,000,000 cords a year, and 300,000, 400,000 or 500,000 cords will not keep those mills running. It is but a very small percentage of what they really use, and the general statement made was that the yards were all piled high with Ontario wood, so it appeared to me that they must be getting it from other places, such as Quebec. As you say, they come right up the St. Lawrence and over Lake Superior. Very often it is said that it comes from Ontario and it does; it comes through Ontario waters?

A. As I said before, I cannot see that we can morally put the brakes on freehold wood being exported, unless we assure ourselves that it is in the national interest to do so, but when it comes to Crown lands which are held under lease, it is the responsibility of the Government to decide whether they are going to profit in the present to the detriment of the future.

And it is a pretty hard problem to solve, particularly when we have gone through a depression such as we have, and the calls for relief have been so heavy and provincial income has been so reduced. Circumstances may have been sufficiently extenuating to permit what was done in regard to the export of wood—it may still exist; I am not competent to say whether or not—but I still maintain, as I have said several times, that I am firmly convinced if exportation of these substantial quantities of wood is allowed to continue, it cannot do anything else but delay our industrial development in the future.

Where the point of stopping or reducing is, I am not competent to say. Nor do I think anyone of us present is competent. I think it comes within the same range; that it should be studied very carefully, just the same as the utilization of other species and the reduction in the cost of utilization of all of them.

MR. DREW: Mr. deCarteret, is it not a fact that at the moment, we really need a great deal more research, not only from the point of view of utilization of products, but research in regard to our actual assets, their use, their preservation, and the most effective means of controlling them, from what you have described as the long-range point of view. Would you not agree with that?

A. You are now speaking generally of the country as a whole?

Q. Yes?

A. Yes.

Q. In other words, let me put it this way: I have found from the beginning of our consideration of this problem, the greatest difficulty in getting an accurate

analysis of any single phase of the problem. Do you not discover the same difficulty?

A. Yes. I might go back to 1930 or 1931, which I think, was when the so-called Bankers' Committee was trying to solve the problems of the industry. You will probably remember that. Most of the newsprint companies submitted very detailed questionnaires to this committee; we studied them for a year, and it was surprising to find the divergence of opinion which existed on the simplest subjects. I think one benefit of that study was, that it certainly got the members of the industry talking in the same language, to a certain extent, in regard to what constituted costs and so forth.

HON. MR. HEENAN: Q. It is only in recent years that these mills have built up or established in Southern pine?

A. Pardon?

Q. It is only in recent years that these mills have built up or established in Southern pine?

A. As far as making sulphate pulp for box-board and Kraft paper is concerned, that has been a development, I would say, of the last fifteen years, but it has had its greatest impetus probably in the last seven or eight years. In regard to the conception in making newsprint in the south, Doctor Hurtey, in 1930, I think, made his first samples of the newsprint sheet in an experimental way.

Q. What I am thinking about is, that we had Colonel Drew on the job, and we made an endeavour to cut down the cost of production of so-and-so and salvage our mills; those mills in the south might never have come up?

A. The question you are putting seems to be hypothetical.

THE CHAIRMAN: Gentlemen, unless you have further questions of Mr. deCarteret, I would like to ask him:

Q. What are your costs of power in Quebec?

A. I think my answer will have to be the same as Mr. Belknap's this morning, that contracts of long standing were at low rates and more recent ones are higher. What our average price is, I could not tell you off-hand, but I know of contracts which have been extended or renewed or increased during the last year of prices, varying from $18.00 to $24.00, depending on the distance the current taken travels from the generating station.

Q. Where does your Gatineau mill get its power from?

A. From the development of the Gatineau Power Company, on the Ottawa River.

Q. From the Gatineau?

A. Yes.

Q. Mr. Belknap told us this morning that power represented twelve percent of the cost of his quota. Would the figure for your company be the same?

A. I am sorry that I am not informed as to that.

Q. You cannot give us that figure?

A. No.

Q. Very well. We are much obliged to you for coming here and giving evidence to this Committee.

A. I am sorry I could not answer your questions more fully, but I can say I have really enjoyed being with you and I hope the information I have given will be of a little assistance. If at some later date our company can be of any assistance to you, please count on us.

THE CHAIRMAN: Thank you.

MR. COOPER: In view of what was said to-day in regard to the questions of proration and exemption, I would make a motion that at least two people be called. I would move that Mr. A. A. Schmon of the Ontario Paper Company and Mr. Earl Rowe of the Great Lakes Company, be invited to attend, and let us have the benefit of their evidence.

I am not suggesting that they be subpoenaed, but that they be invited if they wish to come.

THE CHAIRMAN: If they wish to come?

MR. COOPER: Yes.

THE CHAIRMAN: What you have in mind is, that we write to them and inform them that if they wish to give evidence to this Committee, it will hear them?

MR. COOPER: Yes.

THE CHAIRMAN: Is it the pleasure of the Committee?

(Carried.)

THE CHAIRMAN: We will now adjourn until 10:30 a.m. Thursday, May 2nd, 1940.

(At 5.00 p.m. the Committee adjourned until 10.30 a.m. Thursday, May 2nd, 1940.)

TWENTY-NINTH SITTING

Parliament Buildings,
Thursday, May 2nd, 1940.

Present: Honourable Paul Leduc, K.C., Chairman; J. M. Cooper, K.C., M.P.P.; Colonel George A. Drew, K.C., M.P.P.; A. L. Elliott, K.C., M.P.P.; Honourable Peter Heenan, Honourable H. C. Nixon, W. G. Nixon, M.P.P.; F. R. Oliver, M.P.P.; F. Spence, M.P.P.; Dr. H. E. Welsh, M.P.P.

CHARLES VINING, Recalled.

MR. DREW: Q. Mr. Vining, when you were last here, we were discussing the question of exporting pulpwood, and that is a subject that has been under consideration very actively. I would like your own opinion in regard to the wisdom or otherwise of exporting raw pulp logs?

A. Well, I must answer that question, warning you that I answer from a newsprint point of view—naturally I am primarily interested in the newsprint industry. From a newsprint point of view, obviously, the export of raw pulpwood is not a good thing, because it is the export of the raw material that is used for the manufacture of newsprint, and which directly or indirectly supplies competing producers with their raw material. I don't pretend to express any opinion on the wider aspects of the export of pulpwood, the social aspects that may be involved; from a newsprint point of view, I would say we would not regard it as a good thing.

Q. Dealing with it purely from the point of view then, of the question of the industry, one argument that has been offered in answer to the suggestion that it is not wise to export pulp logs is, that the logs that are exported from Ontario, for instance, to Wisconsin, do not compete with or do not go into an industry which is competing with the Canadian industry?

A. I am afraid I am not quite clear on that.

Q. The argument is this, it is said that the pulp logs that go from Ontario to the Wisconsin mills are supplying mills which make things that are not manufactured by Canadian mills, and consequently, a limitation of export in regard to those pulp logs would not affect the situation?

A. Yes, I see. I have heard the same argument mentioned with regard to exporting of pulpwood from the Maritimes to Germany, say, or European countries. I must say, I think that argument is rather a delusion. It may be quite true that, to use the Maritimes again as an example, that that actual wood, or that the wood which goes from the Maritimes, is not used for actual newsprint production, but it seems obvious to me it must release other supplies of wood which are used for newsprint and which otherwise would not be available.

I am just trying to think of some simpler example to illustrate what I mean: Suppose you have two men operating a leather shop and one man makes boots only and the other man makes both boots and saddles, and the second man

finds he is running short of raw leather supply, he may say to the first man, "Now you have got a good stock of leather on hand, lend me some of yours and I promise I won't use it to manufacture boots which will compete with you, I will only use it to manufacture saddles." I should think the first man would see at once that, of course, he would be simply releasing some supply for the second man to use in making boots that he might not otherwise be able to make. That is the way that has always struck me.

As far as Wisconsin is concerned, I have not analyzed the situation there, but speaking off-hand, there are newsprint mills in Wisconsin and in Minnesota; they are small mills; I think in those two states there are about five newsprint mills, off-hand I would say their production would be somewhere between 80,000 and 100,000 tons a year; I would have to check that, I am just speaking off-hand.

HON. MR. HEENAN: Q. Do you know the names of the mills?

A. The names of the mills? Yes: Wisconsin, River Watab, Manistique.

Q. That is three?

A. Blandin. Blandin and Watab, I think I am correct, are in Minnesota, and in Wisconsin there would be Manistique, Escanaba and Wisconsin River. Escanaba, I believe, has not been operating during the last year. I think the other four are operating, and off-hand, I think their total production would be between eighty and one hundred thousand tons a year.

MR. DREW: Q. Have you had any occasion yourself to examine those forest areas of Wisconsin?

A. No sir, I haven't.

Q. The suggestion has been made that if pulp logs are exported from here, they simply release other pulp logs in the United States no matter where they come from, and in that way they are in competition, no matter whether they go to mills not making newsprint or not. What would you say to that?

A. I would say that such statement I would agree with, just as the example I have used of wood going from the Maritimes to some European countries.

Q. Has any examination been made on that subject?

A. Not by me and not that I know of, no detailed examination, but it may have been made by the Pulp & Paper Association or by other bodies.

Q. But so far as you and your committee are concerned, not?

A. No, we have had no occasion to make any real analysis of that at all.

Q. Now, Mr. Vining, have you comparative figures of employment in the industry for the different years since this Association has been in existence?

A. No, I have not, Colonel Drew, the matter of employment, and I would

like to interject something here, if I may, because I can best answer your question in that way:

Q. Yes?

A. When I was last here, Mr. Chairman, I was here rather unexpectedly, unexpectedly as far as I am concerned, and most of my evidence consisted of reading extracts from a report which I was not able to identify, but which I explained to you privately, and which I can now explain to the Committee, was a report prepared for the Hon. Mr. Cote, the Minister of Lands and Forests of the Province of Quebec; I had prepared the report for him at his request, as information for the new administration in Quebec, and I had prepared it on condition that it would be available also to the Government of Ontario and the industry; I had just submitted the report to Mr. Cote and I did not feel free, as a matter of courtesy if nothing else, to submit it in entirety here to the Committee or to identify it. The point was raised and I explained that privately, that Mr. Cote might be willing later to release it. I have since spoken to Mr. Cote about it, and he is perfectly willing that the report should be submitted to the Committee in entirety, as evidence for whatever use they wish to make of it, so I am now in a position to do that, and I have asked our office yesterday to send you some copies for use by your Committee as you choose.

I would mention that because it relates to this question of employment Colonel Drew has asked.

Employment figures are very difficult to give in any detail, because the Dominion Bureau of Statistics, for example, gives employment returns for the pulp and paper industry as a whole, not broken down into newsprint and different products. When I had occasion to prepare this report for Mr. Cote, and that is why I interjected this, I was anxious to show something about the significance of the industry in employment and I found that the figures were not available. We made a rather rapid and preliminary survey of employment in Quebec and in Ontario, by getting figures from certain representative companies, and then estimating them for the entire industry. Our conclusion was that newsprint operations, including the woods in the two provinces of Ontario and Quebec, represented about sixty thousand employees, and taking that on the basis of approximately five to a family, it therefore represented the direct livelihood of about three hundred thousand people. That figure does not include farmers, perhaps more in Quebec than Ontario, who make their living from forest operations by selling wood to newsprint manufacturers, and it does not include employments dependent on newsprint in related services such as transportation and supplies. I am sorry that the only figure I can give you is the estimate we made for Mr. Cote's report, which, as I say, would be about sixty thousand men employed by newsprint operators, mills and woods in the two provinces of Ontario and Quebec, and on that basis they are the livelihood of about three hundred thousand people.

I might add to that that we ourselves have found that subject very interesting in trying to get some information on it for this report, that we are now endeavouring to make a much more complete analysis by communities and by provinces and by taking in the whole country and at different rates of operation.

Referring to the report, if you do choose to make use of this, you will notice the footnote touching on that on page 7.

MR. DREW: Q. Well, there is an analysis then being prepared, is there, of this whole subject?

A. Yes. I don't know how long it will take nor do I know how successful it will be but at least we are making an effort.

Q. Well, what would be the difficulty in obtaining any figures in that regard?

A. We can obtain quite accurate mill figures and I should think we could obtain reasonably accurate woods figures, that is the direct employment represented in the woods by each mill; the fringes are difficult to become exact about, that is the farmers for example who live by forest operations independently, and related services are very difficult to obtain; I don't know that we will be able to touch on them, I mean transportation and supply services of that kind. I think we shall be able to obtain quite accurate figures of the direct employment in the mills and in the woods but the difficulty of course is, or one difficulty is that the Dominion Bureau of Statistics has evidently found difficulty in supplying the woods operations in the newsprint, pulp and other grades of paper.

Q. In so far as the operations are concerned within the mills themselves have you figures of those, figures of employment in the mills?

A. I have some; I haven't got them with me.

Q. So that you are not in a position to give them?

A. No, I am afraid I am not.

Q. Have you figures of the export of pulpwood from the Province of Quebec?

A. No, sir, I have not. I understand, by the way, that you are to hear evidence from Mr. Robinson, President of the Pulp & Paper Association. I think that that is a matter that he might much more appropriately deal with.

Q. Have you any figures that would enable you to give some estimate of the relation of power to the cost of newsprint?

A. I could deal very generally with the cost of power, yes.

I hope you are not going to endeavour to lead me into details of production costs because that is a subject which I am sure this Committee wouldn't want anybody to deal with in a public hearing, it would be giving information to competitors, and for that reason would be undesirable.

Q. I quite recognize that?

A. Yes. But there are figures of costs analyses that I think could be given to the Committee for their private use but certainly not in a public hearing.

So far as power is concerned, Colonel Drew, the figures range from slightly under $4 per ton of newsprint—this is at sixty percent operation, approximately our present level—taking all companies in Canada, power costs would range, in one or two special cases they are as low as $4 or a few cents under per ton, to about $8, and I should say that a typical case, taking the industry as a whole, would be between five and six dollars per ton of newsprint at sixty percent operation.

I should like to add a note to that, that there is a difficulty in determining power costs, that is the average power costs, because you have some producers who own their own power plants, and to get their proper power costs you must take in their fixed charges, depreciation and interest on the investment involved in their power plants; and other manufacturers, the majority I should say, of course, buy their power from power companies, but you have those two classes. But as far as we can analyse it, and we think we have pretty complete figures, the range I have mentioned would represent the situation.

THE CHAIRMAN: Q. Have you any information as to the cost of power per horse power in Quebec?

A. No, I haven't Mr. Chairman; I haven't with me, and I haven't the figures well enough in my mind to venture them here.

I think I would like to add this on the matter of power: Power is the smallest of the five main items that go into the cost of supplying newsprint.

MR. DREW: Q. What are the five?

A. The five items in their order of size, I have a note of them here, the five main items that would go into the cost of supplying newsprint, that is not merely producing it but delivering it, in order of importance would be, first, depreciation and fixed charges; second, wood; third, freight; fourth, mill labour; and fifth, power.

I made some enquiry about this since I was here the other day and I will have to correct a statement that I made the other day and that I made in the report to Hon. Mr. Cote. In my previous statement I think I had said that the three chief items in the actual production of newsprint were wood, freight and power. I find that within some fairly recent period since the previous figures were made up mill labour is now slightly ahead of power, so these are the five items, first depreciation and fixed charges, wood, freight, mill labour and power. And of course there are other costs of taxes, general overhead, miscellaneous raw materials such as sulphur.

If I may, I think I would like to add one word on this subject: All of us it seems to me in this country, have fallen into the habit of misusing the word "profits"; I don't blame anybody for it, because I think we are all guilty and it has become a habit in the financial statements to use the word "profits" when it isn't profit at all; what it really is, is earnings that are available to apply against depreciation and fixed charges, which are just as real a cost as the cost of wood. I think there is a misuse of the word "profits", which gives rise to some misunderstanding and misinterpretation perhaps among our customers.

MR. DREW: Q. But that, of course, is common to all industry?

A. Yes. I mean that. I am not meaning it is peculiar to our industry. But very often a figure comes out in a statement which is labelled "profits"; it is before depreciation and fixed charges, and very often before taxes; it really represents what is left over the actual out-of-pocket production costs to apply against these things.

MR. COOPER: That wouldn't be a statement for income tax purposes.

MR. DREW: Q. Well, you are referring to the fact that in the statements the figure as shown is of gross profits?

A. Yes.

Q. Which is really sales over costs?

A. Correct.

Q. And then against that are charged the various fixed charges, that is what you have in mind?

A. Yes. I find very often among our own industry, and perhaps in a wider sense, we tend to forget item No. 1, which is the largest item and which is as true a cost item as any raw material, that is depreciation and fixed charges, and in the newsprint industry that is an item of extra importance, because in newsprint we have a turnover of our investment value only once in say three to four years as an average.

Q. But some of these charges have not been met in this industry for a while, have they?

A. Of item No. 1?

Q. Yes?

A. A very small part of them, sir.

Q. You haven't the total figures under those headings for the whole industry?

A. I have, but I shouldn't like to go into them, if you will excuse me; I think that would be competitive information.

Q. I don't want to force any information that would be embarrassing to the industry as a whole, but I don't just see on what point it would be?

A. Well, I think it would be giving information to our competitors as to our cost situation.

Q. You mean competitors outside of Canada?

A. Yes.

Q. I can see the argument, in view of the fact we are dealing in world markets, that it wouldn't be advisable to give those figures out, but I would be inclined to think those figures would be very useful for consideration of the problem?

A. Yes, I am sure they would, Colonel Drew, and if there is any way in which such figures could be discussed privately with this Committee—naturally our office would have to consult the manufacturers first, because we obtained those figures from companies on a confidential basis, but if they were to serve a constructive purpose of this Committee I think they might be available, but I certainly wouldn't like to, and I am sure you wouldn't like me to bring them out in a public hearing.

Q. I certainly don't want to bring anything out that is going to embarrass the organization of the industry; on the other hand, I do think that the actual realities of this industry must be faced, because I believe that a very constructive effort is being made now to bring these industries together, and I have no hesitation in saying I am convinced that the industry has staggered along for some years not facing realities; I don't say that just at the present time, but within the past?

A. Yes. Well, let me put that this way: We would like very much, indeed, to have the figures of even these five main items which I have mentioned without more detailed information, we would like very much to have those figures of, say, the Great Northern Paper Company and Box-boards and certain United States producers, they would be useful to us; we cannot get them, naturally, and I shouldn't like them to have ours.

Q. I can see the objection, and if the point comes up it is easy enough to obtain those figures for the purpose of further consideration of the subject later on?

A. Yes.

Q. Mr. Vining, we have had under discussion here at different times, and that was discussed while you were here, the subject of controlling in some way, the method of proration which is now being enforced under an informal agreement between the two provinces?

A. Yes, sir.

Q. Have you or your Committee, can you say, considered the operative desirability of a commission or board, organized on an inter-provincial basis or organized as a Dominion commission or board?

A. We have given a great deal of consideration to it, Colonel Drew, and, referring again to the report to Hon. Mr. Cote, I think when I was here last week I read general conclusions; I think, if you don't mind, I will repeat it and then if you wish me to enlarge on it some, I will do what I can.

Q. Yes.

A. Our conclusion in that respect was stated as follows:

"The present methods of applying and enforcing the policy need a thorough revision after two years of trial. The present arrangement of separate groups of Ministers and an anomalous committee, needs to be replaced by provision for joint, uniform administration, including provision for impartial and automatic application of penalties under certain sets of facts."

Now what we had in mind there was definitely an inter-provincial joint board of some description. When I say "inter-provincial", I mean inter-provincial between the Provinces of Ontario and Quebec. We had not considered—did you say a Federal body?

Q. Yes?

A. No, we hadn't seriously considered that. Such consideration as we had given to it, led us to the conclusion that a board between Ontario and Quebec would be more feasible for one thing, and would be adequate certainly to meet what we would believe to be a pressing situation.

Q. Why do you believe it would be more feasible?

A. Well, you already have machinery set up, you already have an agreement between these two governments, so that it is simply a matter of providing some additional features to a thing that is already in existence.

Q. I have in mind in asking that question, the possibility that you might have considered certain legal aspects of it. After all, this is a question that involves export, and it seems to involve a number of matters which are ordinarily under the control of the Dominion Government. If you have not considered that angle, there is no use my pressing the question?

A. It is true that export is a matter of Federal jurisdiction, if that becomes necessary. To be quite frank about it, such thought as we had given to Federal action included this idea, that there might be some very natural reluctance on the part of the provincial administrations, to have Federal intervention in a matter which is primarily natural resources under the control of the province, unless it becomes a matter of strict control of exports which, judging on the experience of the last two years, is not necessary.

Q. I suppose there is this angle to it, Mr. Vining, if it were possible to get an agreement among all the companies, and that were permitted by the various Governments concerned, this really could be administered fairly effectively under such an agreement, as long as all the companies were in agreement, couldn't it?

A. It would require legal authority, such an agreement. It would require to be legalized, that is what I mean.

Q. In the way that the prorating agreements have been in the oil states in the United States?

A. Quite, yes. If your question is, could it be administered by the industry itself, provided it were likewise and provided authority were established, yes.

MR. DREW: I don't think I have any other questions.

MR. SPENCE: Q. Mr. Vining, there is one statement that has been made here many times, and that is that proration of the export of pulpwood will naturally increase the production and selling expense, we have had many give that opinion, and you qualify yours as you are giving it from the newsprint industry standpoint. It strikes me that during the past ten years, during which time we have had prohibition of export and also we have permitted export as at present ——?

A. Yes.

Q. —— the record of the industry contradicts that opinion, it seems to me. What is there on the other side that I am not grasping? That is, there is more newsprint being sold now and business is in a better position, and yet we have export here in the Province of Ontario. During the period that export was prohibited, we had the dullest period we have ever had in the history of the business in Ontario. Now can you make those two statements coincide?

A. Well, I should say, Mr. Spence, if I grasp your point properly, that the two things are not related over a period. You compare one year's production of newsprint with another year's and the difference is entirely due to business conditions. It is not due to whether or not pulpwood is being exported, but due to the trend of general business and of the demand for newsprint.

I think what you are really getting at is this, that the point has been suggested to you, that in any one year there might have been a greater production of newsprint in Canada if there had not been exported, but not in comparing one year with another.

Q. Then, over a period of say the last five or six years?

A. I would say that over a period if pulpwood had not been exported there would have been a greater production of newsprint in this country. I think the history of the industry has demonstrated that.

Q. If the point is put up to you, you would agree upon the principle of limited export?

MR. W. G. NIXON: Q. Do you think if the raw wood was all manufactured here, that you could export it all without difficulty?

A. I would not say that. But in case of newsprint not being produced in other places, that result would obtain in Canada. For example, if we had, as we did have a good many years ago, free export of pulpwood from Crown lands in Ontario and Quebec, if you like, that would certainly result in their having a greater production of newsprint in the United States rather than here. That is to say, mills which in the United States have been compelled to go off production because of lack of raw material, again would be busy; and our mills would have to go off because of the lack of demand for our product.

Q. If they could get sale for all the manufactured material, that would be very nice, but the export of pulpwood as raw material gives many chaps here an opportunity to live?

A. I would not like to say from a newsprint manufacturer's point of view.

Q. You cannot suggest a means of utilizing the wood at home, supposing we would stop the export?

A. I suppose this is true, but again, as I said at the start, I am not taking into account all the social aspects. But if we compare the possibilities in 1940 with those of 1938, the wood exported in 1938 for relief, I suppose, would be utilized in Ontario and Quebec.

Q. Employment is a factor?

A. Yes.

MR. COOPER: Q. Mr. Vining, you gave the names of some mills which, I assume, were in Wisconsin?

A. Yes. I thought I had a note of those mills here, and I have since looked it up.

Q. Is that Escanaba Mill in Wisconsin?

A. Yes, it is in Wisconsin.

Q. And the Wisconsin River Mill is there?

A. Yes.

A. And the Manistique?

A. Yes.

Q. Are those the only three newsprint mills which are really competing with Ontario newsprint mills?

A. In Wisconsin.

Q. For instance, take this big mill down in Maine, it is such a big distance away that it would not be a competing factor with Canadian mills, would it?

A. Oh, it is very decidedly a competitor. It is our largest competitor,—in the use of pulpwood, you mean?

Q. In the use of pulpwood, they would not take that pulpwood from here?

A. I am glad you mentioned that, Mr. Cooper, because it is part of the question. Although it does not involve Ontario pulpwood, actually the Great Northern Paper Company, which is in Maine, is our chief competitor.

There is also the Bucksport Company in Maine; and there is also the St. Croix Mill.

THE CHAIRMAN: That is just at the boundary line?

A. Yes.

I cannot speak positively about Bucksport, but certainly the St. Croix takes a great part of their supplies by export.

MR. COOPER: Q. Those would not be drawn from Ontario,—it would come from Quebec?

A. Yes, largely.

Q. So that the exports from Ontario and Quebec would not alter the position?

A. From Ontario, that is true. I mention these mid-western mills because I assumed the Ontario pulpwood exported went chiefly into that area.

Q. To follow that up, I understand that the Escanaba Mill is shut down owing to the high cost of operating?

A. Yes, I mentioned that the Escanaba had not been operating for a year.

Q. That is not really a serious competitor?

A. No.

Q. Then the Wisconsin River Mill, is it true that it is not really an out-and-out newsprint producer, but it produces a paper product which might be described as halfway between newsprint and,—is it not glazed?

A. No, you will find, Mr. Cooper, that, with all other mid-western mills, speaking generally, they are not exclusively newsprint. They make various products, but they do make standard newsprint.

Q. But have they increased their newsprint manufacturing because of export?

A. I would not say that they had increased it. If I were to say anything it would be that they had continued it, but I would not say that either, because I have not traced it.

Q. The Manistique has a very small output of newsprint, has it not?

A. I could not give you individual mill figures, because we exchange these figures privately. I can give you totals.

Q. I would like you to give me the totals of the three mills which are in competition with us in newsprint?

A. The Wisconsin newsprint production by Wisconsin River and Manistique combined, was between forty-five thousand and fifty thousand tons. And in Minnesota, the two mills, it was between thirty-five thousand and forty thousand tons.

Q. That is approximately between eighty thousand tons and ninety thousand tons?

A. Yes.

Q. Have your association enquired into the increased production of any of those mills?

A. No, we have not enquired about it.

MR. DREW: Q. I suppose their production would be governed by their ability to sell their product?

A. Yes, their ability to sell is governed by their ability to produce and their costs; and that is governed by the wood they can get.

HON. MR. HEENAN: That Manistique Mill was owned by an estate?

A. Yes, I believe by the late Mr. Murphy. I want to make something clear: I did not intend by anything I have said here, to imply that Ontario pulpwood was making possible the products of these mills.

MR. COOPER: Q. But we have had the advantage of export by groups of people from Ontario; and on the other hand, we want to see its effect upon industry, to see where the balance comes?

A. I do not pretend to have made any investigation of the mid-west producers; but, on the whole, I contend that the export of raw material from Canada tends to affect the export of our production from our mills to the United States.

HON. MR. HEENAN: Q. What do you mean by that?

A. I mean the production which would otherwise be made in Canada.

Q. We have had evidence here that no matter how cheaply you produce here, it could not affect the manufacturer in other countries. If we manufactured, instead of exporting the raw material, it might bring manufacturers here to make the finished products, and in the next breath they would say, There is no use in bringing other manufacturers here, or otherwise we will all go broke.

HON. MR. NIXON: Q. In other words, they would say we ought to let the wood drop?

A. I think it would be very presumptuous for me to try to express too many views on this. It is a matter of policy.

MR. ELLIOTT: Q. In 1931, the pulpwood exported from Ontario, would that have any effect upon the production of newsprint in the United States?

A. That is a rather short period, and I could not answer that.

Q. My understanding is that they did get the raw material and that it did not have any effect,—that is according to the evidence of one of the witnesses here.

MR. COOPER: There is a type of paper called the Rota, I understand?

A. Rota-gravura, yes.

Q. That is the paper which I was referring to a moment ago as being made in the Wisconsin mill?

A. Yes.

Q. In no event would that be in competition with Canadian manufacture,—we could not get the American market, anyway?

A. I think you are right. Again, I think that is a question which you might save up for Mr. Robinson. I just want to point out again, that most of these old United States mills are dual-product mills, and make more than one product, and can switch readily from one to the other.

MR. DREW: Q. There is the old question of which comes first, the egg or the hen?

A. Yes.

Q. There is just one point I want to clear up. In explaining this morning that Mr. Cote was agreeable to the release of that report which you had prepared for him, was that for the private information of the Committee, or was it to go on record in this enquiry?

A. I asked him if there was any objection to it being submitted to the Committee as a record in the evidence, and he said, No.

Q. In that case, I think it should go in as an exhibit, in which case it would be understood that if the press wanted it, they would have access to it?

A. I think there is no objection.

THE CHAIRMAN: Then Exhibit No. 42 will be a copy of the report made by Mr. Vining to the Honourable Mr. Cote, Minister of Lands and Forests for the Province of Quebec.

Many thanks for coming back.

MR. VINING: Thank you.

EXHIBIT No. 42—Copy of Report made by Mr. Vining for the Hon. Mr. Cote, Minister of Lands and Forests for the Province of Quebec.

F. G. ROBINSON: Called.

THE CHAIRMAN: Mr. Robinson, you are President of the Canadian Pulp and Paper Association?

A. Yes.

THE CHAIRMAN: You have been asked to come here, and I thank you for coming up to Toronto.

MR. ROBINSON: It is a pleasure to come.

THE CHAIRMAN: I will ask Mr. Drew to proceed with the examination of the witness.

MR. DREW: Q. Mr. Robinson, you are the President, I understand, of the Canadian Pulp and Paper Association?

A. For this year.

Q. That is, you are at present, President of the Canadian Pulp and Paper Association?

A. That is right.

Q. Just as a matter of record, would you tell us what your position and occupation are?

A. I am President of the Riordon Sales Corporation.

Q. That has its head office in Montreal?

A. Yes. We are engaged in the sale of pulp.

MR. W. G. NIXON: Not newsprint?

A. No, I have no active connection with newsprint.

MR. DREW: Q. Again, as a matter of record, would you again explain the history and organization of the Canadian Pulp and Paper Association?

A. I have summarized that, and if you do not mind I will read from these notes.

Q. Yes?

A. The Canadian Pulp and Paper Association was formed in 1913 as a purely voluntary association. According to its by-laws, the objects of the

Association are: The consideration of matters of general interest to the pulp and paper industry; the promotion of its welfare and social intercourse amongst the members of the association. It does not consider or engage in regulation of price of products, the restriction of territory or of output.

In detail, the pursuance of these objects results in: Consideration and establishment of recognized trade customs in various branches of the trade; the collection and dissemination of trade statistics; the encouragement of the use of domestic products in Canada, as opposed to imported goods; questions relating to tariffs, and collaboration with the Government in respect thereto; collaborating with the Dominion and Provincial governments as to Legislation which is proposed, on which they want information as to its possible effect upon the industry;—in which, I may say that we have had a great deal of useful co-operation from both the Dominion and Provincial governments; the development and distribution of technical information in pursuance of research for the benefit of the industry; the examination of woods operations and forest management for the betterment of the industry and the workers; the improvement in quality of the industries' products to enhance Canada's ability to compete in world markets; collaboration with the transportation companies as to transportation problems related to the industry; the association, at a cost of some $350,000, erected in 1927-1928, a building to house the Pulp and Paper Research Institute. This comprises an up-to-date Cellulose Research Laboratory, an experimental pulp and paper mill with grinders, digesters, paper machines and other apparatus related thereto.

The work of research is carried on in this building jointly, under a joint agreement between the Association representing the industry, the Pulp and Paper Division of the Forest Products Laboratories of the Department of the Federal Government, and with McGill University.

The management of the Association is vested in a council, which comprises a representative executive of each company member,—one might consider that they are shareholders, just for an example.

MR. ELLIOTT: Q. Does the Federal Government give you any financial assistance?

A. Yes. Could I come back to that after I have just completed this short summary of the activities of the Association? Would that be agreeable to you, sir?

MR. ELLIOTT: Yes.

A. (Resumed.) The Council elects an executive committee, which might be considered relative to the Board of Directors of a commercial company, and has substantially the same sort of powers to manage the affairs of the Association for the Council, who are in effect the shareholders,—put it that way.

There are a number of sections within the Association that function in their own field, for matters relating to particular branches of the industry, such as the board section, the fine paper section, the chemical pulp section, the woodland section,—there are nine of such sections.

Meetings of the sections are held at intervals during the year. During last year, somewhat over one hundred and twenty such meetings were held.

I think that summarizes it, Colonel Drew. I am sorry to have been so long.

MR. DREW: It was not very long.

Q. Now, Mr. Robinson, just to deal with one of the later subjects you mentioned, first. That Research Institute on which you spent $350,000, where is that located?

A. In Montreal, to take advantage of the facilities of McGill University, their Chemistry Department. Also it fitted in with the plans and convenience of the Federal Government, who transferred their Forest Products Laboratory from Ottawa to Montreal as a more convenient centre for the industry.

Q. Well, is this feature connected in any way with the National Research Council?

A. Only in a co-operative way.

Q. Does the National Research Council conduct any research in connection with this problem?

A. In general, I think the Federal Government have arranged it in that way, that pulp and paper problems that come up under the aegis of the Department of the National Research Council are delegated to the Forest Products Division to be examined and dealt with in the Research Institute at Montreal. The relations with the National Research Council are very cordial and co-operative.

Q. We were informed yesterday that some steps had been taken to reorganize the Research Institute. That is the case, is it?

A. That is true. The representatives of the Government, of McGil University, and of the Association have been meeting in Committee for some time, and they have arrived at an agreement which is acceptable to all parties, subject to the formal approval of the Government by Order-in-Council; and it represents a substantially increased contribution from the industry to the support of that work,—financial support.

Q. I find that in a speech of Mr. R. A. McInnis, who was your predecessor as president of this Association, he made a statement which seems to me to be rather encouraging at the present time, and leads to a suggestion that perhaps you might answer. This was at the last Annual Convertion.

A. Yes, I remember the address.

Q. "It is my firm conviction that this industry stands on the threshold of the greatest opportunity that it has yet had, and if we will but face that opportunity intelligently and if we will co-ordinate and organize our activities and

energies intelligently, we can look forward to a tremendous increase in the production and sale of our various products."

Do you agree with that particular statement?

A. In a broad way, yes.

Q. Now, he speaks of co-ordination of activities. Have you any suggestion as to ways and means in which the activities of those interested in the Pulp and Paper Industry can be better co-ordinated?

A. I think, Colonel Drew, that Mr. McInnis had in mind the co-ordination with the Association.

Within the past year the Association has reorganized itself on the basis that I have described.

When the first came into being, the Association was operated by an executive council which consisted of the President, ex officio, the Chairmen of all the sections within the Association, and appointees of the President. That proved, as the industry expanded and more branches became active it having been established primarily on the basis of newsprint and pulp production only, and now the other branches of the industry, of paper boards, and so on, have become substantial contributors to Canada's export business, that organization proved cumbersome and unworkable, because all these heads of sections were distributed throughout the whole country, and it was very difficult to get the executive together and get action to carry on the business of the Association.

And when one did have a council meeting, it was rare that the same individuals who attended one meeting would attend a succeeding meeting; so that continuity was lost.

So, as I say, the Association reorganized itself last year, and we have now an Executive Committee which is like a Board of Directors in a commercial company, and consists of the President, ex officio, the two last living presidents, ex officio, to maintain continuity of policy, and six members elected by the Council from the industry, who represent a cross section of the various branches of the industry; and this Executive Committee can add to its numbers by its majority vote.

That, I think, was what he primarily had in mind. That organization having been recently accomplished, Mr. McInnis wished to press home to the Association, in his annual address as President, that the reorganized Association was in much better shape to serve the industry; and if we pull together and work together we could contribute greatly to the benefit of the industry.

Q. Is that Association fully representative of the industry?

A. There are some sixty members, and it represents officially over ninety percent of the companies producing, of the productive capacity in all branches of pulp and paper in Canada.

Those who are not actually members co-operate with the Association; and, in addition, we have Associate Members, who are manufacturers of paper products made from pulp and paper. So that I would say the Association is very definitely representative of the whole of the industry.

Q. Now, one of the points that Mr. McInnis raised, and the only reason I bring it up is because he was reviewing certain developments of the industry?

A. Yes.

Q. One of the points stressed was the possibility of increasing production in this country of products other than newsprint?

A. Yes.

Q. I do not mean by that that there was any suggestion that the production of newsprint shoud be limited, but he placed great emphasis on the market for their products other than newsprint in this country; and he spoke of the fact that there has been recently a tremendous increase in the United States in the consumption of other products than newsprint, which base their production on wood as the raw material?

A. Yes.

Q. He pointed out that already Canada sold and produced,—this would be in 1938,—1,400,000 tons of pulp and paper products, other than newsprint tonnage?

A. That is right.

Q. And he estimated that there was a further potential market, without any new developments, of possibly another million or million and a half tons in that field?

A. That is his estimate. I have not checked it.

Q. But you have no reason to disagree with it?

A. I think the trend is as he has described it.

Q. Well, could you tell us how far the research institute has gone in discovery of new opportunities for wood products?

A. That is a very difficult question to answer precisely. I go back to a conversation I had with Sir Arthur Currie one day some months after he had taken the Principalship of McGill University. He said, "Robinson, the trouble I find is that Professors do not profess, and Researchers do not research."

What he meant by that was that he could not see those tangible results which the ordinary business man wants to see.

And, in research work, to put your finger upon precise dollar and cent

advantages which have accrued from research is difficult. I will say this, in general, though, the Research Institute in its work has contributed a number of outstanding helpful things to the industry; and I might instance just two. They made a very exhaustive study of methods of producing ground wood, which is the basis of newsprint. As a result, the production per grinder was substantially increased, the quality of the ground wood, even at this higher rate of production, was so much better than it was before that it was possible to reduce the percentage of the higher cost product entering into newsprint, unbleached sulphite. That was a very definite contribution.

Then, if we go to quite another field, they developed a new product, in co-operation with one of the members of the Association. It was a by-product. It is known as Vanalin, which is a by-product of pulp and paper operation which forms the basis for perfumes. That is quite a large area; and in between they are constantly dealing either with specific problems of individual operators, referred to them for solution; and in that respect they have helped many people out of difficulties that they could not solve themselves,—I am talking of the smaller mills, particularly,—because they could not afford, with their smaller mills, and smaller business, to support a research organization of their own.

And, in addition, there goes on always a programme of fundamental research, which is worked out by the officers of the Research Institute in consultation with the Council of the Technical section of the industry and the Woodland section,—there are problems in Woodlands which are marginal with those of the Technical, which is the productive side of the industry, the Industrial side of the industry, apart from the production of the wood, which is the woodsman's duty.

And that programme is very carefully planned, and it was very carefully and thoroughly gone into in co-operation with the Technical section. So that the Institute is working on the problems that the technical people in the industry, the practical technical people in the industry, think is most important. So that first things are put first; and the programme meets with the approval of the Technical section of the industry as being planned on a basis which will lead to practical, useful results.

Does that cover it for you, Colonel Drew?

Q. Yes. I find, for instance, in the explanation of the discovery of the new base for perfumes something of the kind that I had in mind. What prompted my question is this: in their work during the last few years many new methods have been discovered for utilizing wood products, and they are, in fact, methods which can be clearly seen. There is, for instance, the production of sugar from wood; in Germany, clothing from wood; and, of course, we ourselves have the tremendous rayon output. There has been a large variety of new types of products worked out by research. I recognize that, so far as we are concerned, among these some might not be desirable from the economic point of view, because many of them are substitutes?

A. Where the national economy is quite different from ours.

Q. Many of them are different in their economy, and where normal views

might not obtain. But, without guessing at that, it does seem to me that national research might obtain for the finding of new uses for wood products in a country which has the greatest supply of raw material in the whole world, unless Russia?

A. Colonel Drew, you and the industry have a meeting of minds on that point; the background which you have described is exactly the ground which led the Association to reorganize the Research Institute and to contribute more money for research; because we believe just those things which you have stated, and we are taking steps to pursue them.

Q. Just to close that particular point, I assume that any of these developments of the Research Institute are available to all members of the industry?

A. Yes, except specific problems, dealt with for specific members. They are carried on confidentially and the individual company for whom that research is made, pays for the specific jobs; that specific work.

Q. That, then, is carried on in the same way they take special research under the National Research Council?

A. Yes, quite so. The same principle; the individual company.

Q. We have had a great deal of evidence in reference to the subject of proration of newsprint. That, of course, is a problem which affects only a part of your Association, but would you care to express any opinion on the subject of proration?

A. On that subject, I would say, sir, that the Association has taken no part in that matter. It has been handled entirely by the Newsprint Section, because it was a specialized matter, and the Association has taken no part in it whatsoever.

Not being actively associated with the Newsprint industry, I would prefer not to express an opinion, because I do not think my opinion would add to the sum of knowledge.

Q. Have you any figures in regard to the export of pulpwood from the Province of Quebec?

A. Yes, I have those figures:

EXPORTS OF PULPWOOD

	1937		1938	
	Cords	Value	Cords	Value
Quebec.....	456,335	2,995,067	312,461	2,193,435
Ontario.....	616,965	4,628,403	716,269	5,593,202
B.C.....	21,603	83,288	14,592	53,820
Others.....	610,128	4,381,571	707,937	5,801,341
Total.....	1,705,031	12,088,329	1,752,259	13,641,798

MR. COOPER: Q. Is that the value of the pulp sold?

A. Exports of pulpwood.

Q. Is that the value of the selling price in the United States?

A. It is the selling price.

Q. It seems ridiculously low. Can you figure out how much a cord it will mean?

A. For 1938 it works out at $7.79.

Q. Delivered in the United States?

A. No, I imagine that would be the selling price f.o.b. cars here.

MR. DREW: Q. In other words, that is the amount received by Canadians for that pulpwood?

A. That is right.

MR. ELLIOTT: Q. Have you any figures to indicate what portion of the pulpwood was exported from Crown lands, and what was cut from settlers' lands?

A. No, sir. I am sorry, I have not that information, and I do not know that it is actually available.

MR. COOPER: That includes Indian lands, Settlers' lands and Railway lands?

A. It includes every export from whatever source.

HON. MR. NIXON: To whatever destination? That includes New Brunswick exports to Germany?

A. Yes.

MR. W. G. NIXON: Q. Have you anything to show the average price paid for wood consumed in the mills during those periods?

A. No, I am afraid I have not.

MR. ELLIOTT: Q. Do you know how it would compare with the export price?

A. No, and I think for the same reasons Mr. Vining stated, it would not be proper to state that figure, even if I knew it. But I am sorry, I have not it.

HON. MR. HEENAN: Q. You specified certain provinces, Mr. Robinson, and you said "others", that would include Saskatchewan, Manitoba?

A. Yes.

Q. And Alberta?

A. Yes.

MR. COOPER: Q. You see, those figures are not very helpful to us unless we can get a breakdown, and find out exactly what is going on in regard to Crown lands. We have no control over Settlers' lands and other free-hold lands.

A. I doubt whether those figures are available.

MR. DREW: What is the source of your total figures?

A. The Dominion Bureau of Statistics.

Q. There is one matter which interests me: Your figure of 716,000 cords for 1938 in regard to Ontario is about 100,000 cords over the figures of export given here, so they must come partly from Indian lands and partly from other lands not under control of the Provincial Government.

A. I imagine these are compiled from the Customs Manifests covering the exports. As I said before, it would include all exports of wood irrespective of the source; no matter from where it comes—whether Indian lands, Crown lands or free-hold lands—and I think it would be an extremely difficult matter to break them down.

MR. COOPER: Q. Would that include poplar and other lower species of pulp?

A. Yes; it includes all kinds of wood exported as pulpwood.

Q. I understand.

HON. MR. HEENAN: Ontario is handicapped in its figures too and we are trying to analyse for ourselves as matters come up having regard to the vast amount of export from Quebec which comes right up the St. Lawrence and is cleared at the other side and all charged to Ontario.

THE WITNESS: I was not aware of that technicality.

Q. We have been trying to get the Dominion Bureau of Statistics to break it down; they are having difficulty and so are we?

A. Yes.

MR. DREW: Q. It would be extremely useful to have the total figures of cords cut in Canada as compared to those exported because it would give us some idea of the true relative importance of the utilization of our forest resources as compared with other methods?

A. Well, I can give you the consumption figures in Canada.

Q. That would help.

A. This information is from the same source.

Q. That is, from the Dominion Bureau of Statistics?

A. Yes. For 1937 the total consumption is 6,614,000 cords.

MR. COOPER: Q. What is that figure again?

A. 6,614,000 cords. For 1938, which was a very bad year generally for business, 4,588,000.

MR. DREW: Q. You have not the figure for 1939?

A. No; those figures are not yet available

Q. 1939 would be higher than 1938?

A. Yes, I would say so; between 1937 and 1938.

MR. COOPER: Q. What about imports of pulpwood into Canada?

A. I do not think there are any.

Q. Oh yes, there are lots from Newfoundland which come into Canada. Have you no figures as to the imports of pulpwood into Canada?

A. No. I have never heard of any.

Q. You show your figure as the amount of pulp which has been shipped out of Ontario?

A. Pulpwood, if I may correct you.

Q. Does that include trans-shipment from Quebec to Ontario?

A. That I cannot say because I do not know whether or not that is taken care of. That is covered by Mr. Heenan's remark, I think.

MR. W. G. NIXON: Q. The Dominion Bureau of Statistics does not show the value of the wood consumed at home, then; it just gives the quantity?

A. Yes, it gives the value also, if you would like to have it. 1937, $51,082,000; 1938, $40,327,000.

HON. MR. NIXON: Q. You have no knowledge of the imports into the United States of pulpwood other than from Canada?

A. I have not those figures with me.

Q. Do they not import a very considerable amount of wood?

A. The only place I think they might possibly have an important amount from would be Newfoundland and I doubt it very much.

Q. Was not Scandinavian pulpwood coming in?

A. No, never.

MR. COOPER: Q. There is something radically wrong with those figures or they would show the correct situation. They show the price per pulp cord of home consumption greater than the value of export, which cannot be?

A. I would not think so, because the free-holder sells his wood not based on cost. It is just what he can get.

MR. DREW: It is just what he can get.

THE WITNESS: What he gets for it in the open market, whereas the consumption is based on the cost of producing it.

MR. COOPER: Q. There is very little if any pulp used in Canada, yet there is quite a quantity shipped to the United States and yet it is much cheaper than any other species of wood. That may account for the difference?

A. Poplar?

Q. Yes?

A. Really, I am not an expert on woods operations, but my general impression is that the quantity of pulpwood exported would not be a very large proportion of the total.

Q. Frankly I cannot understand that. It is generally known the price you get for this wood in the United States is much higher than it is in Canada or it would not be exported, so the value per cord should be higher than home consumption?

A. I think my previous comment in that respect covers it.

Q. It did not convince me. I did not understand it.

MR. DREW: Well, there is one explanation.

MR. COOPER: What is it?

MR. DREW: That a lot of this is being cut on choice areas—on so-called Settlers' areas and areas of that kind—and being bought at prices which can be commanded locally, whereas the wood being consumed is a more expensive wood.

THE WITNESS: Quite right, Colonel; you have to go further to get it, whereas, the free-holder who exports wood, does not take cost into consideration. Really, he does not; he sells for what he can get on the open market.

MR. COOPER: Q. I understand the average per cord in the export of wood

from the head of the lakes is around nine dollars and something, and your average figure is something over seven dollars?

A. $7.79.

Q. $7.79. You are not suggesting that the pulp and paper companies pay anything like that to the settlers who sell wood locally?

A. I am making no suggestions; I am simply stating the figures.

MR. ELLIOTT: Q. There must be a great variation in the price paid, because in your statement of 21,000 cords from British Columbia the value is $80,000?

A. $83,000; roughly $4.00 a cord.

HON. MR. HEENAN: Q. You have a given consumption of wood in Canada. Is there any figure which would indicate the consumption of wood in the United States?

A. I have not those figures, I am sorry.

Q. I read some place where it amounted to about 23,000,000 cords per year?

A. I have no idea about those figures, Mr. Heenan. The figures I have are too old to be of any value.

Q. They are too old?

A. Yes. The last figure is for 1936.

Q. What is that figure?

A. According to the United States Department of Commerce Bureau of Census in the year 1936, which is the last figure we have, the total consumption of pulpwood in the United States was 8,715,916 cords.

MR. DREW: Q. That is the total consumption of pulpwood in the United States?

A. 8,715,916 cords.

Q. You have not the figures in regard to Canada for the same year?

A. And they imported at that time for the same year, 1,209,760 cords.

Q. What is that figure again?

A. 1,209,760 cords.

HON. MR. HEENAN: There is something wrong there. I read somewhere the other day that they consumed about 23,000,000 cords a year.

THE WITNESS: Well, that is the only figure I have, as reported by the United States Department of Commerce.

MR. DREW: Q. That, of course, does not include the pulp imported?

A. No, sir; only wood.

Q. Have you any corresponding figures in regard to pulp?

A. No, sir, I have not.

HON. MR. NIXON: Q. Our total exports in 1938 were 1,800,000 cords, and theirs in 1936 were 1,200,000 cords?

A. That is right.

Q. So, evidently they do not get much wood apart from Canadian exportations?

A. That is right.

HON. MR. HEENAN: They exported for a while, some wood from Russia?

A. I believe there was some wood imported from Russia some years ago, but that has long since stopped.

Q. Yes. I know there was a considerable amount. You do not know, of course, why it stopped?

A. I really do not.

MR. COOPER: And, of course, you cannot compare it. Take the consumption of wood in the United States in 1937, for instance, that wood would likely be cut here in 1936—the year before—would it not?

A. I gave you the figures for 1936 as to their consumption. Yes, you are correct. It might be. There is always overlapping from one year to another. It is very difficult to synchronize those figures.

HON. MR. HEENAN: Q. In regard to your export figures from Quebec. That would be measured by the figures of the Customs Department?

A. I would imagine so. I do not know where the Dominion Bureau of Statistics gets its figures, but that would be the normal way, I would think.

Q. For instance, if 250,000 or 300,000 cords of pulpwood exported from Quebec came into Ontario, it would not show as Quebec exports?

A. No.

Q. We have had considerable of that. The Abitibi imported quite a lot from Quebec. The Ontario Paper Company, up to within the last year or two,

brought in over 100,000 cords a year from Quebec. The Smith Mills and many other of the mills down east, bring in pulpwood from Quebec, but that would not show in the export figures of Quebec?

A. No, sir; these are export figures out of the country, and do not deal with interprovincial movements.

MR. W. G. NIXON: Q. The cost to the mills would be the cost at the mill, which would be the purchase price plus their cost?

A. I would assume so.

Q. Would you suggest the same might be true in respect of export, or would it probably be based on the price received by the seller at point of shipment?

A. I would think that is correct.

Q. In other words, freight would have to be added, possibly, to the final export cost, say, at seaboard, in order to get a comparison with the figures on home consumption.

A. I would say you are correct in assuming the value of exports of pulpwood is based on the f.o.b. cars value.

MR. DREW: Q. I would be inclined to doubt that they use a different method of computation in two related figures of that kind because they do not use the word "cost"; they use the word "value". In other words it would seem to me a surprising matter if the Dominion Bureau of Statistics use the word "value" in one case as f.o.b. cars or boats, as the case may be and in the other case have the same word applying to "cost" at the point of purchase?

A. Well, only the Dominion Bureau of Statistics knows. That is a very interesting point.

Q. The reason I raise that point is that I happen to know they have done their utmost to assure uniformity in the interpretation of words they use in giving various figures. For that reason I would be very surprised if in two estimates which are so closely related they use the word "value" in one case as being the amount received f.o.b. at the point of delivers?

A. They do not specify that; we are surmising that.

MR. COOPER: Q. Is this not the reason, that in Canada they deliver their wood right to the mill?

A. Most of it by water; floated.

HON. MR. HEENAN: Q. Colonel Drew read a few minutes ago from a speech by Mr. McInnis in which he outlined the progress of the business and suggested by closer study or co-operation he anticipated an increase in the business. Based upon that there has been evidence given here that we in Canada have a great many difficulties to overcome before we can hope to compete with the

Southern pine or Scandinavian countries in price. Does your organization take any part in collaborating in any way with the object of finding ways and means of reducing the costs in order to enable us to compete in our lines?

A. Yes. That is one of the main purposes of the research organization and it is a constant charge upon the technical and woodlands sections of the Association to reduce the cost of producing wood. For the Woodlands Section, to reduce the cost of producing wood; for the Technical Section to reduce the cost of converting that wood into various products and coupled with that to make better products. If you sum it up, to make better products at lower costs and to develop constantly new products which Canada has not been manufacturing previously, for which there may be an opening in export markets.

Q. Mr. Vining filed the main items which entered into the cost. First was the depreciation and fixed charges. I suppose the depreciation is pretty hard to change and the fixed charges might mean anything to each company. Then, there was the wood, freight and do I understand you to say that you have negotiated or attempted to negotiate with the railway companies from time to time in order to lower the freight rate?

A. I would like to say, if I may, that I was speaking not only of newsprint. Mr. Vining spoke only of newsprint, but I was taking the broader view of the industry; newsprint, pulp and other papers and paper products.

To answer your question directly: We collaborate with the railways on problems of transportation involving freight rates. For example, in the United States—and I will take one phase of the industry, namely, pulp—all selling prices are by trade custom based ex-dock at Atlantic Seaboard Port. The customer or buyer therefore pays the inland haul from that basic price. In addition to that basic price Atlantic Seaboard Port, he pays the inland haul. Those inland rates from dock to various destinations may in certain areas be reduced from time to time by the United States Railways. We then consult with the railways in Canada in order to see if they cannot put us in a competitive position—the same relative position in which we were prior to the reduction in those rates.

That is a specific instance and there are many other things such as the minimum loading permitted in a car in order to secure the benefit of carload rates and all sorts of questions are arising all the time. I must say we have found in general that the railways co-operate with us very well and consult us on these things in most cases before they take action.

Q. A great deal of stress has been put on by some of the witnesses or gentlemen who have been giving information as to the cost of labour in comparison with other countries. I was wondering if there was any effort made to take labour in this country into their confidence in a general way and reason with the labour representatives in this way: A man might be getting, in round figures, wages of $100 a month. If he is only working fifty percent of the time he is only making $50 a month on the average, so it matters little to that man how much he is getting per day or per hour, because at the end of the month he only earns $50. Are there any efforts made to sit down and talk over with those men the fact that if we can produce and sell more, operating full time

at a less rate, the men would be making more at the end of the month or at the end of the year?

A. I would say that the Association does not deal with those matters for the industry, but I have no doubt that individual elements within the industry have talked the matter over in that sense with their employees. Generally speaking, the relations between the labourer and the industry as a whole, are very good.

Q. There is no doubt about the relations being very good, but this is now an economic question which manifestly becomes more and more important the longer we hold the sittings of this Committee. In this province we have started a campaign which I hope will result in good for not only the Province of Ontario, but manifestly for the whole Dominion, namely, that if we are going to be able to compete with Southern pine, with Southern labour, with Scandinavian countries' cheaper labour, and with government assistance in one way or another, we will have to stand still and stagnate or make a move in some way if we are to meet that situation. We have through this inquiry endorsed by the Legislature to make an honest effort to get all the parties together—the Transportation companies, the Power companies, the Government and Labour—and as I see it everyone has to make an adjustment, which some people call a sacrifice, so that we will be able to meet this foreign competition. That is why I asked you that question, because I know of no real effort being made to discuss the matter with labour in a collective way, in order to show that by selling more we have to produce more and at the end of the year we will have more wages than at the present time. As I say, that is the reason I ask that question, but I do not know whether or not your organization went into it.

A. No; the Association does not deal with labour questions.

MR. ELLIOTT: Gentlemen, it is now 12.40 p.m. Apparently we cannot finish with Mr. Robinson before lunch.

MR. DREW: Q. At what time do you want to leave, Mr. Robinson?

A. If it is convenient to the Committee, it would be of great convenience to me if I could leave on the afternoon train.

Q. At what hour?

A. Five p.m. Daylight Saving Time.

MR. ELLIOTT: We will finish with you in lots of time.

THE WITNESS: Thank you very much.

MR. ELLIOTT: We will now adjourn until 2.30 p.m.

—— Whereupon, the further proceedings of this Committee were adjourned until 2.30 p.m.

AFTERNOON SESSION

Toronto, Thursday, May 2nd, 1940.

MR. COOPER: Mr. Robinson, this morning you gave some figures as to the value of wood. I understand you have an explanation to make regarding those figures.

A. During the luncheon interval I have been able to get, Mr. Cooper, the report of the Dominion Bureau of Statistics for 1937. In relation to those figures, it says that the table below gives details of wood purchased from settlers and others, in addition to the average value at the mill in each case.

So that the values of pulpwood consumed are at the mill, and one should take into consideration that the major part of the wood used at the mill is from companies' own limits.

MR. DREW: What is that report from?

A. That is from the Dominion Bureau of Statistics Concensus of the Pulp and Paper Industry, 1937.

Q. Is that the last one?

A. No, this is not the last. It is the last complete one, Mr. Drew.

THE CHAIRMAN: I beg your pardon?

A. It is the last complete one. They issue them in interim sections from time to time and then they bind them together. Here is the preliminary report for 1938.

MR. ELLIOTT: That would be the inventory value at the mill?

A. Actual cost at the mill.

Q. Would you say actual cost?

A. Cost of the wood delivered at the mill. Inventory cost, yes.

Q. It is the value at the mill?

A. Yes; inventory value.

Q. That might not necessarily be the cost?

A. Oh, yes, I would say the cost.

MR. COOPER: How is it delivered to the mill?

A. In some cases it is delivered by water; it is floated.

HON. MR. NIXON: Does that apply to settlers' wood?

A. No; settlers' wood would be delivered by rail or truck. But the majority of the wood used is companies' own wood floated down the rivers to the mill. You may keep that copy, Mr. Flahiff, if you like.

THE CHAIRMAN: You do not need it while giving your evidence?

A. I do not think so.

THE CHAIRMAN: Then we shall file it as an exhibit.

EXHIBIT No. 43—Filed by Mr. Robinson: Publication of the Dominion Bureau of Statistics re Pulp and Paper Industry in Canada, 1937.

MR. DREW: Is the supplementary report from the King's Printer or from the Dominion Bureau of Statistics?

THE CHAIRMAN: The King's Printer prints everything.

WITNESS: I would say that it comes from the Department of Trade and Commerce. I think if you apply to the Department of Trade and Commerce you will get it. You may keep that one, if you like; we have another copy.

EXHIBIT No. 44—Filed by Mr. Robinson: Preliminary report on the Pulp and Paper Industry in Canada, 1938, published by the Minister of Trade and Commerce.

MR. DREW: I notice that the gross production of wood pulp and paper for the year 1937, according to this, was $226,244,000.00. I am rather impressed by the fact that with that valuation, the total valuation of the export of pulp logs to the United States was $12,000,000.00.

A. Well, the exact figures is $13,641,798.00.

Q. That is for 1938?

A. That is right.

Q. But in 1937 it was $12,000,000.00?

A. That is right—$12,088,329.00.

Q. Yes. So that the actual dollars and cents value of the pulpwood exported is relatively small, in relation to the total value of all the products in this industry?

A. Quite true, but, on the other hand, one must consider that if that wood exported could be converted into paper products, instead of having a valuation around $8.00 per cord, it would probably be converted into an average minimum value of about $40.00.

MR. COOPER: Yes, but you cannot sell your paper products now, Mr. Robinson.

A. That is quite true, but the more pulpwood that is exported, as pointed nut by Mr. Vining this morning, the less is your opportunity to sell your product; and the difference between the $8.00 figure and the $40.00 figure is to a great extent wages.

Q. Would it not mean that the wood which is exported would simply not be used at all?

A. One cannot say that, because, if it were not exported, the product that it is made into in the United States might very well be bought from Canada.

Q. Yes, but that has not been the history when an embargo was on. That did not prove to be the case?

A. I would rather put it this way, Mr. Cooper; that had the embargo not been on the state of the industry would have been much worse than it was.

MR. ELLIOTT: Was there any decrease in the sale of pulpwood to the United States when the embargo was on?

A. Pulpwood?

Q. Yes.

MR. COOPER: From other sources.

MR. ELLIOTT: No, from Canada. Was there any decrease in the sale of pulpwood from Ontario to the United States when the embargo was on?

THE CHAIRMAN: You have the figures here.

MR. ELLIOTT: They are relatively small. I have reference, of course, to pulpwood exported from Crown lands as well as privately owned lands.

A. Are you speaking of the embargo in Ontario?

Q. Yes, from 1928 to 1931.

A. When did the embargo go into effect?

Q. I think it was 1928.

MR. DREW: Apropos of a question that was asked this morning, Mr. Robinson, ——

WITNESS: Excuse me, Mr. Drew, I was waiting to answer the question of this gentleman.

MR. ELLIOTT: I have the figures here from 1928 to 1937, both years inclusive.

A. That is from the Province of Ontario?

Q. Yes.

A. I have not got those figures here.

Q. From the Annual Report of 1939, 47 percent of the pulpwood exported to the United States out of Ontario was from privately owned lands?

A. How much was that?

Q. 47 percent of the pulpwood exported to the United States in 1939 was cut from privately owned lands?

A. Yes.

Q. So that if you put an embargo on pulpwood exported from Crown lands it might have the effect of increasing the demand from privately owned lands and might not accomplish the purpose of restricting very materially the export of pulp to the United States.

A. The 47 percent in 1939 was from private lands, and 33 percent came from Crown lands. Is that correct?

Q. 53 percent was from lands other than privately owned lands.

A. Yes, 53 percent.

Q. So that if you put an embargo on it would have the effect of increasing the demand for pulpwood from privately owned lands and might not substantially decrease the export of pulpwood from Ontario to the United States.

A. That is an open question.

THE CHAIRMAN: In the province of Quebec, Mr. Robinson, we have been told—and I believe it is quite correct—that all exports come from privately owned lands.

A. Correct.

Q. I do not think we have been given any definite figures, but I believe it was mentioned that around 800,000 cords or more per year were exported from Quebec.

MR. DREW: We were given figures.

HON. MR. NIXON: 1937 was the last year.

WITNESS: I have not those figures with me.

HON. MR. HEENAN: In 1937 the figure was 456,335 cords.

A. Yes, 456,335 cords in 1937.

Q. And 1938?

A. 312,461 cords.

THE CHAIRMAN: What were the figures for Ontario?

MR. HEENAN: In 1937 the figure was 616,965 cords, and in 1938 it was 716,269 cords.

WITNESS: Those are the figures I gave this morning. Those were the round figures I gave this morning.

THE CHAIRMAN: I was not here this morning when you gave those figures.

MR. DREW: Apropos of a question that was asked this morning, Mr. Robinson, I find in the preliminary report for 1938 that wood pulp to the value of $695,819.00 was imported from the United States. The large item which represents most of the amount was 28,443 tons of unbleached sulphite. Can you give an explanation for that?

A. That is largely the importation of the M. & O. Company at Fort Francis from their mill across the river in the United States for making newsprint.

Q. Well, is there no duty on that?

A. There is a 99 percent drawback if the paper is exported as it is.

Q. Mr. Robinson, has there been any study made by your association of the trend of production in the United States and the likely demand for wood products of various kinds from Canada in accordance with that trend?

A. I would not say that any specific study has been made by the Association as a whole; the various sections are constantly dealing with these questions because that is Canada's most attractive market both as to production and price.

Q. What I have in mind is this: We are considering the question of the desirability of export of pulpwood as compared with the restrictions that existed at an earlier date and it seems to me that in consideration of that subject it is really necessary to examine very carefully the production trends in the United States. It doesn't make very much difference if we simply take figures by themselves unless we know what the corresponding situation is in the United States at any given time?

A. I think I can answer your question in general terms: There has been a tremendous increase, a very large increase, in the production of bleached and unbleached sulphite pulp in the United States; it started about 1930, it has gone on steadily, it has been sharply accelerated since 1937, starting 1937. Most of that additional production is on the west coast of the United States. I am talking about bleached and unbleached sulphite pulp. In addition to that you know very well the very large increase that was taken place in the production of kraft pulp and the related industry of making board out of it in the Southern States over recent years.

Q. You see the importance of that is this, if the production of newsprint and other paper products in the United States has been on a fairly even level then the fact that we are exporting an increasing quantity of pulpwood while at the same time there is an increase in the production of newsprint in Canada would seem to dispose of any argument that the exportation of pulpwood can possibly affect the mills in Canada, but if in view of what you say it might appear that the increase in the consumption of pulpwood is largely due to the increase in new types of production in the United States——?

A. Increased production of wood consuming branches of the industry.

Q. Yes, and I am not giving evidence, but it seems possible that the export of pulpwood from here to mills which make things other than we manufacture here may merely be releasing pulpwood to newsprint mills in the United States which otherwise they would have to buy in Canada?

A. That is quite correct.

There is the added consideration also apart from newsprint the wood that goes from Canada to the United States is used not only for the manufacture of newsprint but for the manufacture of various kinds of pulp. The United States is Canada's best customer for pulp. The more wood that goes to the United States for the manufacture of pulp the less opportunity there is to sell to the United States pulp manufactured in Canada.

MR. COOPER: Q. Where do they get the wood they don't get from Canada?

A. They get it from various forest areas in the United States.

Q. Don't they import pulp from other countries?

A. I don't think they import from any other country but Canada.

Q. Don't they from Scandinavian countries?

A. Oh no, never.

Q. What about Newfoundland?

A. They may get a small quantity from Newfoundland; that was the only query; we covered that this morning; but in general the importation from countries into the United States of pulpwood other than from Canada is negligible.

HON. MR. HEENAN: Q. Have you any idea of the quantities of pulpwood the United States has on the west coast?

A. I have no specific information on that, Mr. Heenan.

Q. Well, in relation to this question, and I am speaking more particularly in relation to the Province of Ontario, if to-day, we shut off the exportation of pulpwood, what effect would that have—that the settlers in Quebec and the Provinces of Manitoba, Alberta, Saskatchewan and British Columbia would fill

the export to the same market that we were supplying—wouldn't there be just that much more to them that we had shut off? Or in other words, if we were going to shut off the exportation of pulpwood with the thought it would force the location of a mill somewhere in Canada, wouldn't the provinces all have to act similarly, having regard to the fact that there are various mills, for instance, in Quebec, who are not exporting from Crown lands, and yet there are numbers of settlers who have the right to export, they are very numerous, and then we have the Indian Department, or the Department of Indian Affairs, and timber is exported from every province in Canada—wouldn't it really have to be national to make it effective?

THE CHAIRMAN: And railway lands.

HON. MR. HEENAN: Q. And railway lands. Wouldn't it all have to be made a national organization rather than a provincial one?

A. I would say that that would be a very desirable thing.

Q. No, I don't say "desirable"; I mean ——

A. May I finish my answer? You will forgive me.

Q. Yes, yes.

A. If we look at the figures for 1937 and 1938—in 1937, speaking to your point as to whether the lifting of the embarbo on the exportation of pulpwood in Ontario would not induce greater shipments from other provinces—or the imposing of an embargo ——

Q. That is it?

A. —— on Crown lands exports from Ontario would induce greater exports from other provinces, that was your point, I think?

Q. Yes.

A. Well, if you take in the year 1937, the exports from Quebec, where the policy had remained unchanged, amounted to 456,355 cords. In 1938, the exports from Quebec were 312,461. In Ontario, in 1937, the exports were 616,965 and in 1938, 716,269. So that Quebec, apparently, did not participate in the 1938 market to the same extent that Ontario did.

Q. In other words, when we increased they decreased?

A. When you increased they decreased—correct.

Q. And if we hadn't increased ——?

A. But if you had decreased, I don't know that it would follow that they would increase.

MR. COOPER: Q. Well, why? If the American market demanded so much, wouldn't it follow if we decreased they would increase?

A. The demand in 1938 was just about the same as it was in 1937, the total demand.

Q. Yes. Well then, if Ontario decreased, wouldn't it follow that Quebec must increase to meet that demand?

A. I don't think so, necessarily, because I don't know that they have as much wood to export from freehold lands as you have in Ontario. The point that Mr. Heenan was making was a reversal, that probably Quebec had more freehold land from which to export than Ontario, but despite the demand that existed in 1938, the export from freehold lands in Quebec decreased rather than increased.

THE CHAIRMAN: Q. Well, you have quite a large area of freehold lands in Quebec on the south shore of the St. Lawrence, all the old Seigniories that were along the shore, and you have another quite large quantity of freehold, haven't you?

A. I can't answer that question. No, Mr. Leduc, you will forgive me, but I am not an expert on woods operations.

MR. ELLIOTT: Q. Do you believe, Mr. Robinson, that an embargo on pulpwood would decrease the export of pulpwood from Ontario—that an embargo on pulpwood being exported from Ontario would decrease the export from Ontario?

A. In general principle I would think, yes.

Q. Following the report of the Department of Lands and Forests for the year 1938, it shows that in 1928, when there was an embargo on the export of pulpwood from Crown lands, there were only 840 cords exported from Crown lands, and over 600,000 cords from other lands. Now in 1937, when there was no embargo, there were 512,000 exported out of which over half was from Crown lands, slightly over half; so that an embargo simply preserves the raw material on our Crown lands, and if you put an embargo on, you simply alter the distribution between Crown lands and privately owned lands, without necessarily restricting the export of pulpwood in Canada. Do you agree with that? Have you those figures? The Chairman has them before him; they are published in a report from the Department.

THE CHAIRMAN: Q. In 1937 for instance, Mr. Robinson, the total exported from Crown lands in Ontario was 242,372 cords; the total exported from both provinces, according to the figure you gave a moment ago was, 1,073,290 cords; so that there is really less than twenty-four percent exported from Crown lands out of the total exports from the two provinces. In 1937, if we had had an embargo in this province on exports from Crown lands, the total export would have been reduced by only about twenty-three percent.

MR. ELLIOTT: Q. The probability is an equal quantity of pulpwood might have been exported from privately owned lands.

Go back to the year 1928, when there was a great demand for our pulpwood

in the United States, there was less than a thousand cords from Crown lands and over 600,000 from privately owned lands.

HON. MR. HEENAN: Q. You see, Mr. Robinson, you have said that you are not a wood expert and you are in rather a neutral position, and it is just from a gentleman like yourself that I could get unbiased opinions. Keeping to Ontario, we have labouring men here who make their living by bush operations due to export; contrary to that we have men who are making their living in the mills—they are against export. Then we have men who have some rights to cut on Indian Lands favouring the embargo on exporting from Crown Lands. It is therefore to gentlemen like yourself that we look to get unbiased opinions?

A. I would much rather deal with this question on the broad principle as affecting the industry as a whole and I go back to my original statement this afternoon, that the more pulpwood that is exported to the United States to the greater extent is our possible market for pulp and paper products for sale in the United States restricted.

Q. You wouldn't care to put it the other way, that the longer the delays in bringing new industries into the country——?

A. I think that the question of bringing new wood consuming industries into the province is one that requires very careful consideration having regard to the competition that we will have to face following the war that is now on.

MR. COOPER: Q. And wouldn't it mean this too, that these mills would simply move to southern and western United States where there are enormous resources?

A. Not necessarily.

Q. Well, supposing to-morrow we put a ban on the export of pulp from Crown lands, is it your opinion that that would bring one mill over to Canada?

A. That I cannot answer.

Q. What is your opinion in view of these figures?

A. My feeling is this, that we face now in Canada an opportunity to develop the pulp and paper industry such as we have not had for some time. I said to Colonel Drew this morning in general I agree with the statements that were made by Mr. McInnis in his annual address but I think that the development of the industry must be with a very careful examination of the long term considerations; otherwise we get over-stimulation, and when you get over-stimulation you have a corresponding reaction. The industry itself has taken steps to gather itself together in its organization to take advantage of this time of better business into which the industry is entering now, to try and develop more efficient methods within the industry, examine all the possibilities for markets that this industry in Canada has not previously enjoyed and develop in a considered way, and in that we ask for the kind of co-operation that Mr. Heenan put so well this morning where everybody gathers together with this national industry to take advantage of the opportunities.

Colonel Drew also touched on that in connection with research. The industry has already taken that matter in hand and we seek only the best of co-operation so that we can integrate all those many activities in Canada that bear on the export development of the industry, as Mr. Heenan summarized that very well this morning, labour, transportation, Government support, all these things are needed, because I don't know of any industry in Canada that is so national in its scope and touches so many phases of our national economy in such a widespread way as does the pulp and paper industry.

In employment, there were in 1938, 30,000 regularly employed mill workers. In addition there were approximately 90,000 men employed in woods operations. The wages paid out to the 30,000 employees regularly engaged in the mills amounted to nearly $43,000,000.

MR. DREW: Q. That is the wages in the mills alone?

A. The wages in the mills alone, about $43,000,000. I will give you the precise figure if you want it: $42,620,000.

THE CHAIRMAN: Q. That is wages and salaries in the mills only?

A. Exactly, on woods operations.

In addition to that the industry contributes a great deal to agriculture, not only in the purchasing power that it gives by the payment out of these wages which we have just mentioned, but in addition the wages paid out to woods operators. The industry makes enormous purchases of fodder for horses and food for men in the woods and that extends to the canning and meat packing industries. It contributes to the mines; an enormous quantity of mineral products go into the equipment of the mills.

Q. Think of all the lumber that goes into the mines.

A. Quite true. That is lumber. I am talking about pulp and paper, sir.

Many of the heavy industries in Canada owe their inception to the pulp and paper industry and they have grown to large proportions.

MR. COOPER: I don't want you to get the impression we are cross-examining you in these questions.

WITNESS: No, no. I would like, if you would allow me, Mr. Cooper, that I might just interpolate this—I won't take very long, I would like to just cover this point. Is that all right?

MR. COOPER: Go ahead.

WITNESS: There are contributions in power consumption; the pulp and paper industry is the largest power consumer in Canada, and there goes along with that all the electrical apparatus related to power consumption for both steam and motive power. It contributes to the cement industry. Think of the

thousands of tons of cement that go into the dams and spillways. It contributes in the consumption of building products, bricks, fabricated steel, all the things that go into buildings. Now it seems to me that there has been a great deal of defeatist thought about the pulp and paper industry.

I have no reason to be a defeatist about it; because, in 1913, the exports of pulp and paper amounted to about $12,000,000; and in 1939, they amounted to $155,000,000. The 1913 figures are only three percent of Canada's total exports.

Now, if we have an industry that has grown within that period to that extent, and if it is as national in its contribution as I have indicated, I am entirely in accord with Mr. Heenan's opinion expressed this morning, that you have not the past to be ashamed of, but we rather have a future that we can take advantage of, if we all integrate our efforts in a positive way.

MR. COOPER: Q. There has been a lot of controversy over the pulp and paper industry in the last four or five years, is that not so?

A. Quite true, Mr. Cooper.

MR. ELLIOTT: Q. Have you the figures to show how the pulp and paper industry ranks as an employer of labour, as compared with the mining industry?

A. I have not those figures.

Q. I understand from the *Financial Post*, there are sixteen point two percent employed in industry in Canada in the pulp and paper industry, as compared with mining.

THE CHAIRMAN: I would like that checked up carefully.

MR. COOPER: Are you speaking as a minister?

THE CHAIRMAN: I am speaking as an impartial chairman.

HON. MR. HEENAN: Q. You spoke of pulp and paper, does that include newsprint as well?

A. Yes, that includes the whole pulp and paper industry.

MR. ELLIOTT: Q. What about the question of freight and transportation,—have you any statistics to show the value of the pulp and paper industry as to railway freights?

A. They exist, but I have not got them in front of me.

Q. Another thing which I think is important just now is the question of exchange, since this war started. Going back to depression years, the export of pulp and paper to the United States was a big factor in maintaining the Canadian dollar in the United States, was it not? Why I mention that, is that Mr. Clarkson, in giving evidence here a few days ago, stated that we needed exchange, and that that was one of the things which should be taken into consideration in

determining whether or not restrictions should be placed upon the export of pulpwood at this time.

A. There is no doubt that the pulp and paper industry contributes to a greater extent than any other industry to Canada's favourable trade balance.

MR. DREW: Q. That is, perhaps, dependent upon what you speak of as a favourable trade balance. After all, we have not had a favourable trade balance with the United States for years?

A. I said, "contributed toward it".

Q. I think what would be correct on the figures we have got would be that it is the largest single item assisting us in our trade relationship with the United States at the present time?

A. That would be another way of making my statement.

Q. The only reason I differentiate it is, because one usually speaks of a favourable trade balance as needing an excess of exports over imports?

A. I am an optimist, and always keep my eye on the goal and thinking of a favourable trade balance, and hope we will arrive there,—always on the way up.

Q. Now, Mr. Robinson, either under the Research Institute, which is associated with your Association, or under the Association itself, has there been any survey into the Forestry Methods enforced in Canada?

A. That would not come within the purview of the Research Institute. That would come more within the purview of the Woodland Section of the Association, in co-operation with the Forestry Departments of the various provinces and the Dominion Forestry branch. Many surveys have been made

Q. Is there any recent survey which has been made, that you can speak of?

A. No, I cannot think of any recent comprehensive survey that has been made; but I think that such a survey is very desirable in approaching the problems that we are discussing here to-day.

Q. You see, I believe that we have placed on record a great deal of extremely valuable information; but one of the needs that has impressed me in regard to a number of extremely practical aspects of this whole problem, is the extent to which we are all compelled to guess in regard to really almost vital aspects of the problem. Let me just amplify that before I ask you a question which I have in mind. For years people have been talking about our loose methods. I am not saying that critically of this or of any other province; but for years people who I believe can claim to be experts have been telling us of the absence of effective forestry practice in this country, as compared with Scandinavian countries and other countries where they have established that practice over long periods of years. And yet, when it comes down to getting concrete evidence in relation to the present situation and in relation to the situation elsewhere, it is almost impossible to get anything except general opinions. Can you suggest

to me any one place where I can go and get a really comprehensive, up-to-date survey as to forestry practice in Canada, in connection with what could be considered to be up-to-date forestry practices?

A. A great deal of information exists; much of it is available from the Woodlands Section of the Association. It consists of correlating information that is available from the various provincial and dominion sources of information.

One of the efforts that we made within the industry, and particularly within the Association, is to eliminate duplication of work and duplication of effort and expense on just such matters.

Many loose opinions have been expressed, mostly negative and critical of woods operations in Canada. In many cases these statements have been made with an ulterior purpose in mind. But forestry practice in Canada has been progressively better over many years, as a result of the studies that have been made with an ulterior purpose in mind. But forestry practice in Canada has been progressively better over many years, as a result of the studies that have been made by the Woodlands Section of the Association. And that information has been made available to the industry, all the members.

But it is a very broad question; and when you ask somebody to come before you gentlemen and give specific information on the subject, that comes to them entirely out of the blue, it is very difficult to give specific answers.

Q. I realize that.

A. I am not speaking of my own experience, which has been exceedingly pleasant with you to-day. I am not speaking of that. I am trying to convey to you, if I may say so, a corrective to your trend of thought, as I understand it, that the industry has not got the essential facts to properly carry on effective operations. They have the information, and it is available.

Q. Who has it, then, Mr. Robinson?

A. It depends upon what phase of the industry you wish to touch?

Q. I am glad to know that this information has been correlated, but I do not want to let the suggestion pass, for I assure you no corrective is needed of my train of throught. We have had men come here from all branches of the industry, and when we have come down to an exact analysis of forestry methods and comparative methods, it has been astonishing the lack of any clearly defined expression that it has been possible to get. And it occurred to me that perhaps there was some periodical report in regard to the general trend of forestry practices in this country, that might very well be placed on record. Or, conceivably there might be some particular individual who was dealing specially with this subject and could outline the facts for us. Is there somebody dealing particularly with that?

A. Would you leave that with me, and I will try and make a suggestion to you, Mr. Chairman?

THE CHAIRMAN: certainly. I want to make an observation, speaking of mining ——

MR. DREW: Just a minute. Mr. Heenan was very indignant the other day of any suggestion about headlines. He should be very careful that the Mining Department does not get headlines out of the Forestry Investigation. Naturally, I am only joking about that.

THE CHAIRMAN: Q. Every year, Mr. Robinson, there is a convention of the Institute of Mining and Metallurgy, of people interested in mining from all parts of Canada. You have a similar association?

A. Yes, we have.

Q. At that meeting papers are read on mining practices, and so on. I suppose the same thing is true of your Association?

A. Yes.

Q. Now, these papers given at the mining convention, I suppose, are published in the Northern Miner or in the publication of the Institute. And you must have some such paper or publication in which these matters can be found?

A. All those papers are available from the Secretary of the Woodlands Section of the Canadian Pulp and Paper Association, in so far as they are publications of the Association; and many of them are printed,—those that are considered of general interest are printed in the trade magazines.

Q. So that a number of these papers are available in printed form at present?

A. Yes.

Q. And I suppose the Secretary of your Association has them already in file?

A. He will be very glad to give them to you, if they will be of any assistance to you.

MR. DREW: Q. Possibly he could submit a digest of articles printed in regard to Forestry Practice? I do not mean a digest of the material in the papers, but a reference to the articles, so that we could know where to get them?

A. He would be very glad indeed to send you a list of the articles which have been published. That is what you mean, is it not, Colonel Drew?

MR. DREW: Yes.

THE CHAIRMAN: Q. And in that case, if we would like to see copies of these publications, he would have them?

A. I am sorry.

Q. If the Committee decides that they would want to see copies of certain of these papers, they could get copies of them from your secretary?

A. Certainly.

MR. DREW: Q. Is that something which he would already have before him, Mr. Robinson?

A. The Woodlands Section has already available a number of already printed articles on different phases of Woods Operation. And those are available immediately.

Q. I was wondering if it would be convenient for him to send down, in the next day or so, a list of them?

A. Yes, certainly, I will see that that is done.

Q. Because it would be extremely helpful. Do not imagine I am being in any way critical of what is being done, but the difficulty that I have experienced, at any rate, as to obtaining impartial opinions in regard to Forestry Practice, because there undoubtedly is a wide divergence of opinion, and that very often is affected by the approach to the subject?

A. I quite sympathize with your lack of information on that subject before this Committee.

My remarks that I made as to a corrective of your trend of thought, as I put it, were more to indicate that perhaps those whom you have had giving evidence here have not been specially associated with Woodlands Operations. And general opinions therefore on Woodlands Operations must be given, rather than specialized opinions. And you want some specialized information, Mr. Chairman, as I understand?

MR. DREW: Yes.

THE CHAIRMAN: Q. I understand that the papers which were prepared for your Association and read before it are prepared by people who are actively engaged in forestry operations?

A. That is correct.

Q. They were practical men, not theoriticians?

A. That is correct.

MR. COOPER: Mr. Staunton, the woodsman of the Abitibi is a practical man who appeared here.

THE CHAIRMAN: Yes, he is a practical man.

MR. DREW: There is another problem which may or may not have been considered by your Association, but it seems to me is one of great importance at

the present time. A few minutes ago you pointed out that there has been an increase in the general confidence in this industry in the past few years. One place where confidence has been rather lacking is in the investment side of this industry. Has any survey been made by the Association on financing methods in this industry?

A. Not to my knowledge. We have left that to the financiers. We are more operators and merchandizers.

Q. After all, financing is an essential part of the industry as a whole, and it occurred to me that possibly there had been a general survey of financing methods in this industry?

A. Not to my knowledge.

Q. Do you know of any survey which has been made by any financial group or otherwise into the broad problem of the financing of this industry in Canada?

A. I cannot recall any. I suppose that various financial houses have issued from time to time articles bearing on that subject; but I cannot recall any comprehensive, objective study, such as you have mentioned.

Q. Would you think that might be a useful thing, Mr. Robinson, to have some such study as that?

A. I cannot see its purpose.

THE CHAIRMAN: Q. The point is that you have capital and you want to conserve the capital which you have at present?

A. We want to be able to pay dividends.

MR. DREW: Q. Of course that is the best way of restoring confidence. What I have in mind is that there have been in this country and in other countries as well various aspects of financing, which have not contributed to the public confidence; and it occurred to me that possibly from the point of view of the industry itself a general study of financing might have been of value?

A. My view on that, Colonel Drew, is if the industry is now financed. Our sole effort is to return to the investors in the industry interest and dividends on the money that they have invested.

Q. You see, it was rather an interesting thing, a few days ago I was reading the report of a Royal Commission in England in 1690 in regard to the method of financing the paper industry in that country. So that this subject is one that goes back fairly far; and I wondered if it might not be valuable as a composite part of the whole picture, to have some consideration of that part of it?

A. I would say my view is this, that probably in 1690 they were starting to finance an industry that had not been financed publicly before.

This industry has been financed,—the pulp and paper industry has been financed by funds from the general public, and therefore it is a *fait accompli.*

Q. Mr. Sweezey did not think so, when here the other day. He thinks that there is still some financing to be done. I gather that there are some who still think there is some new financing to be done in this industry.

A. Probably there will be, if the industry develops.

Q. However, it has not been done. So that I am not pressing the point.

A. Not to my knowledge.

Q. In regard to these questions of survey, the reason I am asking this, Mr. Robinson, is because different witnesses have pointed out the necessity for research other than the scientific aspect; and it has been suggested that the investigation of some of these subjects would be useful. I was wondering whether any survey has been made of the comparative cost factors in the industry in Canada and in other countries?

A. Yes, surveys have been made on various phases of cost factors.

Q. Are they in the form of articles or reports?

A. The difficulty about making public the results of such surveys is that it gives information to those with whom the industry is in competition.

Q. What you mean by that is that some of these cases, even if surveys have been made, it might not be desirable to make the results of these surveys public?

A. Quite so.

Q. There is one side of this, however, which seems to enter into this whole question that we have in mind, whether it is desirable or whether it is undesirable, both in Ontario and in Quebec. The Government itself is now very closely associated with this industry, through the attempt it has made to stabilize this industry by intervention and prorating. And once any government takes some part in the affairs of the industry, it is difficult to tell just how far that interest must go. And it does seem to me that these questions of cost factors, and things of that kind, are part of the broad problem which cannot be ignored in determining how far a government can go in enforcing prorating.

A. I would suggest that you discuss that with the gentlemen of that section of the industry with whom you were discussing the question of proration.

A. Then let me put it in this way: When the time comes to actually work out the details of proration, is information available in comparative cost factors, which could be used by the Committee?

A. I would think that that question could more properly be answered by those with whom you were discussing the proration question.

HON. MR. HEENAN: Colonel, you mean cost factors within the mills themselves, which are the subject of proration?

MR. DREW: Q. True, rightly or wrongly, one of the most obvious criticisms of proration—not merely against proration in this industry, but in all industry—is that it places an umbrella over inefficient practices. It has been stated very emphatically that that is not so in this industry, that the real answer to that is to have the comparative cost factors as between industry operating under proration and industry not operating under proration. I do not want to pursue a question which might lead to the exposure of information which would be injurious to a major industry in this country, but I merely ask if that inquiry has gone to a point where such information would be available to those dealing with this question.

A. Please do not think that I am being non-co-operative. That is not my attitude at all, but really I think that is a question which can be more properly and comprehensively answered by that section of the industry with which you are discussing proration than by myself.

Q. Do you mean by that, the Committee which deals with proration?

A. I think it would be better to discuss the matter with them.

THE CHAIRMAN: Q. At the time they discussed proration?

A. Quite so.

MR. DREW: I have no further questions of Mr. Robinson, except I would say to him: You have been following the nature of the evidence here. Have you any comments you would care to place on record for the purpose of our information in regard to our industry which you think might well be considered by this Committee.

THE WITNESS: Not at the mement, Colonel Drew, except I would like to put this remark on record: My thanks to you for your courtesy and consideration. It has been a pleasure to be here to-day and I appreciate all the courtesies you have extended to me and I mean it sincerely.

THE CHAIRMAN: Well, Mr. Robinson, we are obliged to you for coming here and giving us the benefit of your knowledge.

I understand that you will ask the Secretary of the Woodlands Branch of the Association to send either to our Secretary or to myself a list of the articles which he has on file—and which of course are available—and that he will be ready to let us have copies of such articles as the Committee may think useful for the purposes of this inquiry?

THE WITNESS: That list will be mailed to you or to Mr. Flahiff to-morrow.

THE CHAIRMAN: Thank you very much.

THE WITNESS: Thank you, sir.

THE CHAIRMAN: We will now adjourn until to-morrow morning at 10.30 unless Mr. Flahiff notifies us that Doctor Hogg cannot be here, in such event we will meet on Monday morning at 10.30.

(At 4.30 p.m. the Committee adjourned until 10.30 a.m. Friday, May 3rd, 1940.)

THIRTIETH SITTING

Parliament Buildings,
Friday, May 3rd, 1940.

Present: Honourable Paul Leduc, K.C., Chairman, J. M. Cooper, K.C., M.P.P., Colonel George A. Drew, K.C., M.P.P., A. L. Elliott, K.C., M.P.P., Honourable Peter Heenan, Honourable H. C. Nixon, W. G. Nixon, M.P.P., F. R. Oliver, M.P.P., F. Spence, M.P.P., Dr. H. E. Welsh, M.P.P.

THE CHAIRMAN: Order, please.

I have just been advised by the Secretary that the Honourable Earl Rowe has expressed a wish to give evidence before the Committee; and it has been suggested that we hear him on Monday afternoon. Is that satisfactory?

I have also been advised that Mr. Schmon will be here on Tuesday afternoon. We will hear him after we finish with Mr. Sensenbrenner.

I have received a letter this morning from Mr. Bickell, of the firm of Bickell & Co., dealing with the proration of newsprint and the exemption given to certain mills.

Mr. Bickell ends his letter as follows: You can use this letter and the clippings as you see fit. I feel that the matter raised in this letter should certainly be heard by your Committee, and, if necessary, should certainly be made a public issue in the Press.

Mr. Bickell briefly states that the attitude of a newspaper which owns one of these mills is against the allies, and that something should be done about it.

I think if Mr. Bickell wishes to put his ideas before the Committee, he should come here and do so. If the Committee is agreed, I will instruct the Secretary to write him accordingly.

HON. MR. NIXON: I would rather consider that letter before we do anything with it.

THE CHAIRMAN: Would you rather let the matter stand until the adjournment?

HON. MR. NIXON: Yes.

THE CHAIRMAN: All right, Dr. Hogg.

DR. T. H. HOGG, Called:

THE CHAIRMAN: All right Mr. Drew.

MR. DREW: Q. Dr. Hogg, in the evidence that has been given here in regard to the problems of the newsprint industry, a good deal has been said about the importance of power as a cost factor in the production of newsprint. And there are two or three points which have arisen from that evidence that it would seem to me should be before this Committee in considering any possible way in which assistance can be given to the industry as a whole.

Before proceeding, however, with the details of that aspect, I wonder if you could tell us what proportion of the total power produced by the Hydro-Electric System is used by the newsprint industries in Ontario?

A. A comparatively small amount. The Thunder Bay System, a pretty high percentage of the capacity goes into newsprint. But the only other location where we have a newsprint load is in the Niagara System, the Ontario Paper Company load. They have about 40,000 horse power, or 35,000 horse power, which is a very small percentage of the total of the system,—a 35,000 horse power load out of 1,200,000 or 1,300,000 horse power.

THE CHAIRMAN: A little less than 3 percent?

A. Yes.

MR. DREW: I have some figures here that I want to ask your opinion on I refer first to an article on the Pulp and Paper Industry, which was in a series of articles reprinted from the *Financial Post;* and I see an opening paragraph, under the heading "$18,000,000 Power Bill,":

> "Canada's largest power user is the Pulp and Paper Industry. It provides by far the greatest individual market for the central electric stations, as it purchases more than 55 percent of all power sold for industrial purposes."

Would that be right?

A. I imagine that the statement would be accurate.

Q. Well, is the industrial purchase then such a small proportion of the total, that that 3 percent total would equal 55 percent

A. Do not misunderstand me. You asked me what proportion of our load is the paper load. I say we have a very small share of the paper load on our system; because the larger plants generate their own power.

The Abitibi generates its own capacity; and the only place in which we furnish a paper load, to any great extent, is in the Thunder Bay System, and in the Niagara System it is a small proportion.

In the case of the Thunder Bay System the newsprint power is about 40 percent, Colonel.

In the case of the Thunder Bay System, our load runs about 90,000 horse power, of which 40,000 is the newsprint load. That is about 40 or 45 percent. And that does not include, of course, the Kaministiqua load. Again I would say in the Thunder Bay load, Port Arthur and Fort William, 50 percent of the whole load is newsprint load in that particular area.

MR. COOPER: Q. How does that compare with the mining industry in Ontario, Dr. Hogg?

A. Mining is pretty small compared to that.

MR. DREW: Q. Mining is small in comparison?

A. I am thinking not so much of Ontario as of the whole country load.

MR. W. G. NIXON: Quite a proportion of the mining industry is served by other companies?

A. Yes.

MR. COOPER: The witness says that Mining is very small, as compared with the consumption of power ——

WITNESS: That is one way of putting it.

THE CHAIRMAN: Q. Have you added to the amount of power which you supply to the mines that which is supplied by the Northern Canada Power?

A. I am thinking particularly of the Thunder Bay area, of which we say here 50 percent is newsprint load. There there is about 12,000 horse power used in the mines, which is about 10 or 12 percent. Now, if you extend that across the country, that percentage will vary.

THE CHAIRMAN: Does that publication give the number of people employed by the Pulp and Paper industry?

MR. ELLIOTT: No.

THE CHAIRMAN: Yesterday a witness said the Pulp and Paper industry employed about 60,000 people. I know that in one district alone they employed that many in the mines.

MR. ELLIOTT: The Pulp and Paper industry is a continuing thing, which will be continued long after mining is wound up.

MR. DREW: I will refer to another statement in regard to the power situation, made in an exhibit which was filed here yesterday as Exhibit 42, a memorandum prepared by the Newsprint Association of Canada for submission to the government of the province of Quebec.

This is what it says, at the bottom of page 7, and I would just like your confirmation or otherwise of the statement:

> "Reports by Dominion Bureau of Statistics show that, in 1938 and 1939, the value of newsprint exports exceeded the value of wheat exports by over $10,000,000.00 a year. Power company officials estimate that newsprint mills use 40 to 45 percent of total power consumption in the two provinces. There are single mills taking more power than is needed to light Montreal and Toronto combined."

Is that a correct statement?

A. Oh, I think that is a little bit extreme.

Toronto takes close to 400,000 horse power, and I do not know of any single mill that uses that amount of primary capacity. They might use it in the replacement of coal.

HON. MR. NIXON: To light Toronto, it says?

A. I beg your pardon, I misread that.

MR. ELLIOTT: Does this include power used for industrial purposes?

A. No, this only includes that used for lighting purposes.

MR. DREW: "By direct employment, newsprint supports a population equivalent to the total combined populations of Chicoutimi, Granby, Kingston, Belleville, St. Hyacinthe, Guelph, St. Jerome, Sherbrooke, St. Thomas, Stratford, Valleyfield, Sarnia, Hull, Peterborough, Sorel, Levis and Sudbury."

I do not suppose you are in a position to make any comment on that, Dr. Hogg?

A. No.

Q. But would you say that that figure is approximately correct as to the total power consumption in the two provinces, 40 to 45 percent being consumed by the newsprint mills?

A. Yes, I would. I think the percentage is higher in Quebec than it is in Ontario. But I think the balance combined would be something of that order, of 40 to 45 percent.

Q. Now, I do not want to embarrass you in your official capacity, Dr. Hogg, on power costs, but one point which has come up here, on a number of occasions, is the importance of attempting to reduce the power costs as much as

possible in relation to this industry, having regard to the fact that practically all of the product is sold outside of Canada and must compete with competitors who have a lower power cost. If I use terms which are not technically correct, I hope you will correct me. But in the evidence given by Mr. Clarkson, the Receiver of Abitibi, he mentioned that they were able to obtain rather low power costs through certain very favourable factors in the delivery of power at the lake head. He pointed out, for instance, that of the total purchased it was distributed over the twenty-four hours in such a way that they were able to buy their power at a reasonably low rate.

I do not want to put you in an awkward position, as Chairman of the Hydro Commission, but, on the other hand, if you can answer the question, it does seem to me that it is an important part of this problem. Do you know of any method by which power costs could be reduced to the newsprint industry, without actually making reduction in the form of a subsidy by the province?

A. No, I cannot conceive of any such way except in the form of an indirect bonus. If the Department of Lands and Forests will cut off the dollar per horse power per year rental, we could pass that on to the consumers; but the Government will lose the dollar per horse power rental. And that is in the form of a bonus.

At the present time we have been very sympathetic to the position of the newsprint companies at the head of the lakes, to such an extent that we are selling them power now at, I think, about $4.00 a horse power less than Port Arthur and Fort William pay.

The cities pay something near $21.00; and our rate to the paper companies is $17.00. I suppose,—

Q. I do not want to interrupt, but that was the very point I had in mind. I understand, for instance, that Port Arthur pays $21.00 per horse power, or in that neighborhood?

A. Yes.

Q. And yet because of the fact that over the twenty-four hours period, they can distribute their sale of power, they make money on the power they purchase at that price,—that is correct, is it not?

A. Yes. I think what you are referring to is diversity. But the diversity between the paper load and the city load perhaps can be stressed too much, because the paper companies use their power almost continuously it is a steady load. I think their annual load is something like 85 percent over the whole year. So that you can stress that angle of the question of diversity too much.

To be frank with you, we have stressed it the other way, in the sense that we have cut the rate, I would not like to say "too much,"—I do not think we have; because, I think, in all fairness, what helps the newsprint mills helps the cities; it helps employment, and in that way the cities are interested in seeing that they get low prices, while at the same time they do not pay too much themselves.

You asked, could we give lower rates to the newsprint companies? Yes, we can give a lower rate, but if we cut the rate from $17.00 to $15.00, Port Arthur and Fort William must of necessity pay more for their power, $24.00 or $25.00, which would have to be reflected by higher rates to the domestic consumers in those cities. Of course that is a reverse action.

You may say, what right have you to-day to bonus the newsprint users of Port Arthur and Fort William to the extent of giving them $17.00 power, while the cities have to pay $21.00? and that is a fair question. The answer is a rather involved one.

This question of diversity comes into the picture, but behind it all is the fact that, on account of our financial set-up, the way our business is handled, Port Arthur and Fort William are building up year by year an equity in the Thunder Bay System. They are going to own it some day. Each year, as the sinking fund retires the capital, it is being reflected in their increased ownership; and therefore that $21.00 that they are paying is reflected in an increased equity; which is not the case in the case of the newsprint companies; they pay so much a horse power and they are through with it.

So that the difference between $17.00 and $21.00 is not a bonus on the part of the city. But, as to whether we could go any further than that and cut the price below $17.00, I do not think we can.

If the newsprint companies will move out to the power plants, or build close to the power developments, so that we do not have transmission charges and we do not have step-up and step-down charges, we would be able to sell at a cheaper rate. But when we undertake to do that, we run into difficulties with the cities of Port Arthur and Fort William, who want the mills located in the municipalities, to get the benefit of the employment.

I do not know whether that answers your question?

Q. Yes, that answers it. I suppose also there is another aspect of this question, and that is that by giving cheaper power to the mills that is also a direct benefit to the municipalities by increasing the employment in that area?

A. Yes, because the other angle, carrying that idea on, supposing they have the fixed rate to the newsprint companies at $21.00, the same rate as to the towns themselves, and thereby force the newsprint mills, during the period of the depression, to close their doors. The effect of that would be that the rate, instead of being left at $21.00, would automatically go up because you are not selling so much power. So that there is a compromise there which helps both parties.

MR. COOPER: Q. This is all firm power, is it?

A. Yes, I am speaking entirely of firm power. The secondary or interrupted power that we have we are glad to give to the mills at much lower rates.

Q. How much lower?

A. Oh, very much lower. That power, I suppose, nets us only about $3.00 a horse power a year. It helps them and it makes a saving, and it is increased revenue, so far as the Commission is concerned.

Q. Do any of them take it?

A. They take it all. We cut it off a few months ago because our storage was being depleted on Lake Abitibi, and we could see a position arising where we would need all the power we had; and so we cut the secondary. But if the precipitation is back, we will sell it to them again later in the season.

HON. MR. NIXON: Do you refer to Lake Nipigon, rather than to Lake Abitibi?

A. Yes, I meant Lake Nipigon.

MR. SPENCE: Q. It is hoped that power will become cheaper to the mills as the sinking fund retires the cost further?

A. Yes, I think our mills to-day are getting pretty close to the generator capacity of the system; but as you get closer to that generator capacity, the cost of power goes down.

Then of course you come to the position where a new plant goes in and then your costs go back up again until it is in full use.

By the way, sir, if I may go back to my previous statement, you asked me is there any way in which we can decrease the cost: Yes, with Mr. Leduc's permission we can increase the rate to the mines in the Long Lac area; they are paying $35 a horse power and if you would like to charge them more and reflect it in lower rates to the mills that is one way of doing it.

THE CHAIRMAN: That is the trouble, people are attacking the mines all the time. I don't believe that is a very good suggestion.

WITNESS: No, I don't think it is either.

The point I want to make clear is that in the case of the mines and the lines that we build out to furnish the mines where we charge $35 a horse power we retire the cost of that capital in a period of ten years because the mines may be a shorter term than the cities' load in Port Arthur and Fort William, that is the reason for that differential.

MR. SPENCE: Q. If the pulp mills increase their load factor—I don't know the technical term perhaps—the amount of power they take from the Hydro, would that have a tendency to lower the rate for power?

A. No.

The point I want to make is, we have certain fixed charges, we have a plant of a capacity of around 125,000 horse power; now if we sell 90,000 h.p. from that plant and get a certain amount of revenue based on a certain cost of power

there is a certain definite figure, but if you sell 100,000 horse power, 10,000 horse power more, your revenue at that same rate has gone up ten percent; therefore you could cut your rates by ten percent.

THE CHAIRMAN: Q. That is what Mr. Spence means, if you were able to sell all the available power there coming from Nipigon you could decrease the rate?

A. Yes. But that is an intermittent situation, remember, because just the minute you get up to that stage then you must put in a new plant.

Some day our troubles will be over because we will have substantial reserves to tide over that financial shock that comes as a result of putting in new investment.

MR. SPENCE: Q. Has the system there as it affects Fort William and Port Arthur reached or nearly reached that stage?

A. If the Lake Sulphite mill goes in operation, or even if the mills in the district go up to full capacity, I would say to-day that we have not any spare capacity there at all; we have got to immediately think of an additional development up the river.

MR. DREW: Q. You have to immediately think of what?

A. Of an additional development on the Nipigon River

Q. And that is available I suppose?

A. Yes. There is a very nice, very cheap development of good capacity, one hundred thousand to one hundred and twenty thousand horse power, sufficient to double the capacity of the system, at Pine Portage, and at very reasonable capital cost. That will complete the development on the river.

MR. SPENCE: Q. The Lake Sulphite mill you speak of, Doctor, what was their contract with you when they were running?

A. There was never any contract signed. I think that was based on the use of 5,000 horse power.

As I say, we are getting pretty nearly the limit, because I think our peak load last month was something of the order of 92,000 horse power, and that doesn't leave very much capacity; I think that the capacity of the system is 123,000 or 125,000 horse power, but actually that is based on the use of every bit of equipment. Actually the system is not good for more than about 110,000 horse power in safety, that is for long continued use, so we are getting very close to that limit.

MR. DREW: Q. Dr. Hogg, there is one side of this that may have no bearing on the question of cost at all but I want to ask the question because I don't understand the situation in the production of electrical power: In many industries if you reduce cost to a point where that industry can greatly increase

its general production a reduction below what might be normal cost at the outset may show a profit through the increased volume of production. I have in mind the fact that in normal times we are in competition with world markets, we are in competition with cheaper power in the Baltic countries and elsewhere, and I have no idea as to whether or not the reduction of power to an extent that would make it possible for mills to increase their sales in world markets might in turn sufficiently reduce the average cost of power to make that move a practical possibility.

Is my question clear?

A. Yes, I think I see it.

I of course am not an expert on this question of newsprint manufacture, I am not sure of the power they need per ton. My guess is though that $17 a horse power to those mills in Port Arthur and Fort William means a cost of about $4 per ton of production. If you cut the rate in two you only cut $2 a ton from the cost of newsprint, and, while I agree that lower costs are desirable, I don't believe that it is the one essential. I think that we are doing a pretty good job in giving them $17.

HON. MR. NIXON: Q. Do you know how that compares with the price that mills pay for power in Quebec?

A. I can't say that. I think perhaps some of them may have long term contracts that are better than those rates, but I wouldn't be too sure.

Q. I think the evidence given here was that it was fairly comparable?

A. Yes, that is my judgment, that it is comparable. From the long range view, looking ahead, I don't think that they are in any better position from the standpoint of cost of power than we are here in Ontario.

MR. COOPER: Q. One of the witnesses swore, if I remember correctly, that there was a long term contract at $13 a horse power?

A. In Quebec?

Q. Yes?

A. Well now, we have long term contracts here in Ontario of various types. In connection with the Ontario Paper they are much below that. That was made in the early days of the Ontario Power Company at Thorold. But some day those contracts will run out and I question whether they can be implemented for the future at those rates.

THE CHAIRMAN: Q. We had evidence, I think the day before yesterday, to the effect that power amounted to from twelve to fifteen percent of the cost of the finished product. If you were to reduce your rates by, as you say, fifty percent, the actual reduction would be only from six to seven and a half percent of the cost of the finished product?

A. Well, I was thinking, you see, if my estimate is correct of $4 a ton production cost with $17 power, then—

Q. If you will allow me, Dr. Hogg, Mr. Vining said this at page 1827 of the record, yesterday:

> "So far as power is concerned, Colonel Drew, the figures range from slightly under $4 per ton of newsprint—this is at sixty percent operation, approximately our present level—taking all companies in Canada, power costs would range, in one or two special cases they are as low as $4 or a few cents per ton, to about $8, and I should say that a typical case, taking the industry as a whole, would be between five and six dollars per ton of newsprint at sixty percent operation."

A. Well then, I think in the case of Port Arthur and Fort William you are well below the average.

MR. SPENCE: Q. Have you in view yourself that that rate could be much less?

A. Yes, it could be reduced.

Q. As the power development is paid for by the two cities?

A. Yes. As the capital is retired and as the cities of Port Arthur and Fort William expand and their loads grow the costs go down.

THE CHAIRMAN: Q. Allow me to put it to you this way, Dr. Hogg: You said the rated capacity in your Nipigon plant is 125,000 horse power?

A. That is our capacity.

Q. Is it possible to make contracts for more than 110,000 horse power from the point of view of operation?

A. Yes, you could, because of the question of diversity; they are not all at the same time, so you can run your contracts well up beyond that point and depend on the diversity to hold your peak load down, but if we came to the point where all our load charts were so that we were up to 110,000 horse power then I think we would have to go ahead with a new development.

Q. Suppose you reach that point, would that mean an appreciable difference in the cost of power? Would that mean a further decrease in the cost of power over what it is now?

A. We would have to have some new commitments for power or we would hesitate about going ahead with the Pine Portage development, and supposing there was in sight an appreciable increase then we would proceed with the development. I suppose that development would cost initially perhaps three and a half to four million dollars investment.

MR. COOPER: Q. How much power can you get at Pine Falls?

A. 100,000 to 120,000 horse power additional. But you wouldn't install the full capacity at once, you would start with perhaps twenty-five or thirty thousand horse power, perhaps three million or three and a half million investment. Now in order that the carrying charges would not cause a shock or a change in the rate structure immediately what we normally would do would be to defer sinking fund for a period of five years while the rate is building up.

THE CHAIRMAN: Q. I haven't got as far as that yet, Dr. Hogg. Suppose you were able to-morrow to sell another 15,000 horse power in the Nipigon system would that materially decrease the existing rates?

A. Yes, that would mean something of the order of $300,000 a year additional revenue and that would, subject to certain qualifications, I would say decrease the base rate about from probably two to three dollars a horse power.

MR. DREW: Q. That would be very important?

A. Yes.

Q. And that really comes back to the question I was originally asking you, where you haven't yet reached capacity a reduction which in turn might be reasonably expected to produce a favourable cost so that sales could be increased might easily be beneficial to the Hydro-Electric System as well as to the industry?

A. Oh, yes. I didn't quite see your point before. That is quite true.

THE CHAIRMAN: Q. But in the meantime the system would show a loss and someone would have to pay for that loss?

A. Yes.

Q. And that someone I suppose would be the Government?

A. No. sir. There is not much chance of getting the Government to help us out, we have got to paddle our own canoe.

MR. COOPER: Q. Who does take up the slack actually—the Hydro?

A. You mean in these periods of depression?

Q. Yes?

A. The Hydro as trustee for the municipalities, yes, and as trustees for the Government as the guarantors of the funds, and with their accumulated reserves they do take care of it.

Q. The power user pays in the long run though, Doctor?

A. Well, not the newsprint power user—he has been handled pretty gently.

THE CHAIRMAN: Q. Let us put it this way, Dr. Hogg: Supposing to-

morrow you reduced the price of power by $2 a horse power in the hope of increasing the demand and increasing the output of the newsprint industry, let us say, if there was no increase in the industry then you would lose money, you wouldn't be able to maintain your reserve?

A. Finally, yes.

Q. That would be the result?

A. Yes. But that is not a difficulty now. I grant you that if you made a cut and your rate expanded by other new mills or mills going on to full capacity or mills operating seven days a week instead of three days they are operating to-day that would mean increased revenue and would mean lower cost, we would probably get through without loss, but immediately the bad times come the newsprint companies fold up and we are left struggling along with the increased costs and decreased revenue and with the inability to collect from these newsprint companies in times of depression. I mean they object to paying stand-by charges and all the rest of it, and perhaps with a good deal of justice.

HON. MR. NIXON: Q. Doesn't Mr. Clarkson's Abitibi mill in Port Arthur buy its power from the municipality and not from you direct?

A. Yes.

Q. That was his complaint here the other day, that he buys through the municipality, whereas the other companies buy from you at a preferred rate?

A. Don't put this on the record: (A brief discussion ensued, off the record.)

MR. SPENCE: Q. How much would our system up there stand—you wouldn't want to take very much more than five thousand out of a pulp will in addition to what you have?

A. Of course you have the most wonderful river in the world, there is not anything that compares with the Nipigon River for the ability to carry a heavy steady load. You have a storage there that will carry over periods of from five to ten years of bad water conditions, there is not anything that compares to that that I know of in any other part of the world, the most uniformly regulated river in the world, and of course that means that it is particularly adapted for pulp and paper company load which is a constantly high load factor use. The same thing applies to mining load because they have approximately the same type of load factor.

HON. MR. HEENAN: Q. Well then, Doctor, according to your statement a mill located close to the point of power development should get and will get a reduction over and above the mill that is located at Fort William and Port Arthur?

A. Yes. The cost is less, therefore it can be reflected in lower rates.

Q. And the city of Port Arthur would not get any benefit from that?

A. No.

Q. That might account—I am not asking you to make the statement, but I make it—that might account for the Mayor of Port Arthur saying that mills shouldn't be built out in the wilderness, they should be built at Port Arthur, and therefore they are always in the wrong place if they are not at Port Arthur?

A. You know the Mayor of Port Arthur took the stand we shouldn't have gone ahead with the Camp Alexander development of sixty horse power, he repeated the statement recently that that is a plant that never should have been built, in which case we would not have the fifty thousand horse power we are taking away from that plant for use to-day.

Q. You should have got his O.K. on that first?

A. Well, I thought we did, but he changes his mind.

MR. DREW: Q. Well, Dr. Hogg, again don't answer the question if it raises any point that might create difficulties in relation to the Hydro, but if you can answer it I would like it on record. I would gather from your evidence that if there were a round table discussion of the whole problem of co-ordinating all the different types of activity connected with the ultimate production of newsprint and pulp that there may be some possibility that ways and means could be devised of lowering the cost?

A. I believe that is true. I think that is a proper method of attack. It would be a question of give and take.

This is not for the record: (Further discussion on this subject, off the record.)

Mind you, I think that there is a limit, as I think I made clear, that $4 a horse power is the power cost of a ton of newsprint, and the impossibility of visualizing costs below $12 a horse power. They talk of costs in Norway down as low as $7 a horse power. I think there may be something wrong with those figures because that looks pretty low to me. It would be possible, however, I would say, to get down to something of the order of $10 a horse power but in this country it looks impossible to secure this reduction yet. If you did get down to $8 a horse power, half of $17, you have only cut $2 a ton from the cost of your newsprint and $2 a ton would not appear to me to be the final crux as to whether the newsprint companies of Port Arthur were going to fold up or not.

Q. There is an old saying that many mickles make a muckle?

A. Yes. I grant you that.

Q. And the suggestion is that there may be also ways in which reductions can be effected in freight rates and other special rates connected with this industry which combined might give us a more favourable competitive position?

A. Yes.

Q. After all I think we will both agree in most industries there is a critical cost point beyond which even a few cents may make a great difference in selling in a world market?

A. Yes. And I do want to assure you as far as the Commission are concerned we are quite prepared at any time to canvass the situation and to sit down with the newsprint users or with any other body to see whether these costs can be reduced.

Q. Then I will just refer to one further thing in connection with that: You say there is a $1 a horse power rental. To whom is that rental paid?

A. That is paid to the Provincial Government. I think the lease reads "generated and sold"—a dollar a horse power generated and sold. That is an annual rental that we pay to the Provincial Government.

Q. Universally throughout the whole system?

A. Yes. Well no, the rentals at Niagara run less than that, I think about sixty-five cents a horse power, but the standard rental in the north country or other Crown leases is $1 a horse power. It is subject to this qualification, that in the early stages of development it is fifty cents a horse power, that is until you get up to sixty percent of the capacity of the plant, and then it becomes a dollar a horse power.

Q. You might explain upon what basis or how it is arrived at?

A. The measurements are taken in the power houses of the output, they are kept from day to day and month to month and then they are balanced up at the end of the year, the amount of power that has gone out from that station averaged up, and we pay the Government a dollar a horse power for it.

Q. Dr. Hogg, unless there is any other point, having regard to the extent to which you have been following this evidence, that you would care to raise in connection with this question of costs I will pass on to something else. Is there anything else?

A. No, I don't think so.

Q. Well then, I would like to refer to the work that has been done by the Hydro-Electric Commission in connection with a power development that is also available for the Pulpwood Supply Company for floating out logs. Have you your file in connection with that matter here?

A. I don't believe I have. I didn't bring any files along, except that I asked Mr. Jeffrey to bring some of the power costs with him. I will be glad to speak from memory.

Q. Is that work completed yet?

A. Yes.

Q. Fully completed?

A. Yes. There may be a little clean-up of the river, not material, I think that it is entirely completed now.

Q. Do you know the total cost yet?

A. I wouldn't like to say to the nearest dollar but I believe it is something of the order of $1,280,000; that is within a few thousand dollars of $1,280,000.

Q. What part of that is allocated to the costs payable by the Pulpwood Supply Company?

A. I couldn't say, sir. I don't know what the deal is with Pulpwood Supply.

Q. Is there any arrangement by which the Hydro-Electric Commission is reimbursed part of that cost from the Government?

A. Yes. As a matter of fact the Government is carrying all at the present time, carrying all of the charges until such time as it is put in use.

Q. Well, is there any arrangement as to what is to be done?

A. Afterward, you mean?

Q. Yes?

A. Yes. Finally a proportion of that charge will go against the Niagara system for the use of the water at Niagara, part of it I presume will be charged against the possible power development on the river itself because there is a capacity of some 20,000 horse power above Schrieber, that will take its share of the investment, and then the Government will take its share for the purposes of the discharge of pulpwood down the river.

Q. Is there any definite basis worked out yet as to the amount that the Hydro is to share and the amount the Government will share?

A. My recollection is that the Government were to finally, when the split was made, put up some $400,000 and the balance of the cost was to be carried by the power use in one form or another either on the river or at Niagara.

This was a little ahead of my time with the Commission, it predates my chairmanship of the Commission, but that is my recollection.

Q. Have you any immediate plans for the use of that development for power purposes?

A. Well, we have written it into the St. Lawrence Treaty and if the Treaty goes through and is implemented in the States I presume we will use it immediately—just at Niagara. There is no move except very tentative moves for development of the river itself, that is in the Aquasabon River, we have made some tentative estimates of developments there.

Q. I have in mind any power production right in that area?

A. Oh! We have considered the possibility of putting in something of the

order of 20,000 horse power close to Schrieber, it will be a little north of Schrieber; there is a very good possibility there for 20,000 horse power. We did consider the possibility of building a line up to the mining area and tapping on the Thunder Bay system at that point in the neighbourhood of Little Long Lac.

Q. What I really had in mind in asking the question was this: I may be wrong in my understanding of the situation, but I was under the impression that the only justification for the type of work that was done there was the expectation of putting some power development right in that area?

A. Oh no, not from my standpoint; I don't know what someone else may have had in his mind, but certainly the justification from the Commission's standpoint is the use of that water at Niagara, that is the real issue, and, by the way, when you say did we consider development in the area my remarks are of course subject to the fact that we couldn't use any development in the area until it is legalized by international agreement.

Q. That is quite so?

A. Because there is nothing to prevent the water going in. I don't think there would be any objection on the part of any international body to the water going in, but unless we have an agreement that it would be reserved for Ontario use we would be foolish to put it in until we have secured that agreement, because it is Ontario water.

Q. As I understood it you just said that the purpose so far as the Hydro-Electric Commission was concerned was to make that water available at Niagara?

A. Yes.

Q. Was construction of this nature necessary for that purpose?

A. Yes. I doubt very much whether there is any work entailed by reason of the log driving which would not have been rendered necessary by the diversion of water. Now that is not absolutely true because there is a certain clean-up of the river, the removal of debris and muskeg and that sort of thing for the discharge of logs down the river that would not have been necessary unless it was desirable to pass those logs down, but the difference in the cost is not very material.

The point I want to make is, it would cost almost the same amount regardless of log driving.

Q. Do I understand this then, that to give the log driving that was required there would have cost approximately this amount in any event?

A. No no, that is not true. The reverse. That is, if you were going to put in log driving alone then you could have put—I have forgotten what they call it—an incline—

HON. MR. HEENAN: A flume?

WITNESS: Not a flume, but so you could have lifted the logs up over the height of land.

MR. COOPER: A jack ladder?

WITNESS: A jack ladder. Brought them up and then discharged them in the Aquasabon and on through; now that could have been done at a very much reduced cost; it wouldn't be quite so good from an operating standpoint but it could have been done.

MR. DREW: Q. But so far as floating the logs out is concerned could a cheaper method have been devised than this?

A. Yes.

Q. Just floating them?

A. Well, by cutting a channel through. I suppose if you were handling that thing entirely from the standpoint of a logging operation you could have saved some money. Personally, I don't like that way of doing things though, I mean from the standpoint of stability, but it would have been possible to have used timber construction instead of concrete.

Q. Was this recommended by the Hydro-Electric Commission?

A. Well, you would have to go back some distance. I have forgotten when this first came up. I think it was back perhaps around about in 1926, many years ago anyway, when I had occasion to make surveys for the Long Lac diversion and for the Algouqui diversion to determine what was possible and with the idea primarily of securing additional water at Niagara. From that time on intermittently it has been brought up until, I don't know whether it was in '37—'36 or '37— the previous Commission decided to proceed in conjunction with the Department of Lands and Forests.

Q. Well, if no agreement were signed would this water be utilized?

A. If no agreement were signed? At Niagara?

Q. No treaty?

A. If no treaty were signed?

Q. Yes?

A. Well, it is tied in at the moment with the St. Lawrence Treaty by the United States interests. They are not prepared to proceed with the St. Lawrence without tying in the whole Niagara situation on this question of diversion. If the treaty failed of passing then it would seem to me that we could revert back to the Niagara situation and approach it separately, but you cannot at the moment, it is tied in tightly with that St. Lawrence situation.

Q. The water is not being used now?

A. No. There is no diversion being made. I think they drove some lakes last year—just an intermittent drive—and the water is cut off. What we had in mind, of course, was a continuous flow of water from Long Lac.

Q. What is necessary to make that continuous?

A. Just open the logs from the dam.

Q. That is all that is necessary?

A. Yes.

Q. And then there is a sufficient head of water to permit continuous flow?

A. Yes. There is a dam at the lower end,—on the north end of Long Lac—which when closed raises the level and then discharges south towards Lake Superior. At the moment the south dam is closed and the water is flowing to the north in its normal course.

HON. MR. NIXON: Q. And you require no alteration in the canal if the entire diversion is completed?

A. No, except to clean up. You cannot change the whole landscape by changing the flow of the river without doing a certain amount of damage or at least having to do certain repairs from time to time. I would expect there would be minor conditions arise; little blockages of timber and that sort of thing.

MR. DREW: Q. I understand at the moment the whole concern with this development is the water which will be available for the system?

A. Yes, there is some interest locally. 20,000 horse power will be available some day but at the moment we are not interested.

THE CHAIRMAN: That is all unless some other member of the Committee has further questions to ask.

MR. SPENCE: Q. Do you know the amount of water?

A. It is about 1,200 cubic feet per second. It is a matter of 35,000 horse power if we use it in the Queenston Development under the maximum head, and under the 200 foot head north of Schreiber it is something around 20,000 or 25,000 horse power. It means something at the Soo as well. Of course the head there is very limited, but I should think it would be something like 3,000 horsepower additional.

HON. MR. NIXON: Q. You might be very interested in reading two pages of Mr. Clarkson's evidence where he makes reference to Port Arthur. He complains when they are not using power they have to pay?

A. Well, that is the difficulty, that fixed charges on plants run on regardless of whether the power is used or whether it is not. We have endeavoured to

solve that situation by attempting to arrive at a compromise with them so the plants would not be too badly hit.

Q. You will notice that he drew to our attention the difference in the contract direct with the Commission enjoyed by the Great Lakes and the one he has to carry through the municipality?

A. I think perhaps what he says is sound. The fact it goes through Port Arthur and the fact that the load is sold through Port Arthur means that Port Arthur makes something out of that contract, but he is assuming, of course, that if Port Arthur did not make it, or if the contract were direct with us, it would be reflected in lower rates to the company.

That does not necessarily follow, because Port Arthur is setting up certain reserves because they are selling that block of power. If we were selling it we, in turn, would be setting up the reserves. So, it is questionable about whether it would be reflected in lower rates to the mill. He is thinking of it only from the angle of the mill.

Q. I have no further questions.

HON. MR. HEENAN: I have one or two.

Q. I understand that you have behind the Long Lac diversion about 1,500 square miles of drainage area?

A. Yes.

Q. Do you consider that is a fairly dependable flow?

A. Very, very good. It depends on what you mean by "Dependable flow". As you know, the flow varies during the year.

Q. What I mean is that one could likely open the gates and the water would run out in five minutes and you would not have any?

A. No, there is a steady inflow. Long Lac is a very large long lake with very considerable storage capacity and you have the ability to pull on that lake to equalize the flow.

Q. The statement is made here that after you float the logs out you would not have enough water left to run a sewing machine.

A. I think that is rather far-fetched.

THE CHAIRMAN: You mean it is a slight exaggeration.

WITNESS: It is a slight exaggeration.

HON. MR. NIXON: At least an understatement as far as the water is concerned.

WITNESS: It is true in the spring the flow might rise to perhaps 2,000. I think, as I remember it, the limit we put on the capacity of the canal is 2,000.

MR. DREW: 2,000 what?

WITNESS: It would rise up to 2,000 when the spring pressure is on and later on in the season it might drop down to 800 or 1,000. That is that range.

HON. MR. NIXON: Q. You have an 80 mile lake for storage purposes?

A. Yes, and the general inflow is very good in that area.

MR. SPENCE: Q. That is one of the sources of the Ogoki River?

A. No, sir. The Ogoki is north of Nipigon. This is east of Nipigon and it has no relation to the Ogoki area. The Ogoki comes in at least one hundred miles north of the north end of Lake Nipigon.

Q. Does the water from this not flow out of there?

A. Yes, and eventually goes into the Albany River, by cutting off the Kenogami River. When that is cut off it obstructs that amount from the north stream which the Ogoki flows into.

Q. There is no water from the north which goes into Long Lac at all; it is all local?

A. Yes.

Q. If you dam it up at the other end it makes it run up hill?

A. Yes. There is a river which runs in from the Little Long Lac area just above the diversion dam which we put in on the Kenogami River and by the dam the Little Long Lac area is all backed up and goes into Long Lac proper.

MR. DREW: Q. How much additional flow would that actually create at Niagara? Can that be estimated?

A. Yes, absolutely. Whatever goes into Lake Superior will be available at Niagara.

Q. What evaporation is there?

A. The evaporation depends on water area; it is not dependent on flow at all. In other words, supposing where Lake Superior, Lake Huron and Lake Erie as they exist to-day have a flow of only 100,000 second feet at Niagara, you get a certain evaporation for that area. Now, bring the flow at Niagara up to 300,000 second feet, you do not change the evaporation at all, because it has the same area, the same pans and the same loss of water occurs, so therefore whatever you put into Lake Superior will be available. The United States Government recognizes that, because it says whatever goes in at that point

will be available at Niagara. It will be measured at that point and be available at Niagara.

Q. Is it affected at all by the withdrawal of water by the Chicago drainage canal?

A. No, sir; they are an entirely separate addition which passes from Lake Superior via the Lake Michigan channel, but I cannot say that it has anything to do with respect to that situation at all.

Q. What I had in mind was that possibly an increase in water level through additional water might have automatically produced an increased flow in the drainage canal?

A. I think that is a question of opening gates, not so much a matter of level. Otherwise, if you had Lake Michigan at its flood level you would have a tremendous flow down the drainage canal, which is not true; they have gates and only allow a certain amount through, so it will not affect that at all.

Q. I have one further question: It has been said that the Lake Sulphite Mill may be put into operation. At the present time is power available for that?

A. Yes, there is sufficient at the moment, but the remark I made is that if the Lake Sulphite did go into operation that it brings the time closer when we must proceed with new developments on the river?

Q. That is what I had in mind. The power demand of the Lake Sulphite will not in itself create the necessity for that?

A. No; there is still 20,000 horse power surplus capacity.

MR. OLIVER: Q. Lake Sulphite is about 5,000?

A. Yes.

MR. COOPER: Q. I would like to read from the evidence of Mr. Cox at page 796:

> "The volume of water which will be required to take the wood out of that river will come down there at such a rate that the erosion and tearing away of those banks will make that stream larger and larger year by year and without having enormous amounts of money being spent for revetment walls you will find that will be an impractical drive—and I think I know something about driving."

What is your opinion as to that? That is, referring to Long Lac?

A. I would say it is a gross exaggeration of the facts.

Q. Further on the same witness was asked by Mr. Drew:

> "If the erosion from fast-running water will be as great as that, is it

not going to have, or is it not likely to have, a very considerable effect on the power factors available from the point of view of the Hydro-Electric power which can be developed there, or do you care to express an opinion on that?

A. My own personal opinion is that when you finally drive the amount of wood out of that lake which they contemplate driving, there will not be enough water left to make power enough to drive a washing machine."

What do you think about that?

MR. DREW: We are one up from the sewing machine.

THE WITNESS: Well, if you use the 1,200 second feet for the purpose of flushing the logs down through, there would not be any left for power, but on the other hand if you have to draw logs out and use some mechanical method for getting them by the power house, you would not need any.

Q. Is there anything serious in the argument that the force of the water is going to widen out the river and spoil the flow?

A. There is a series of lakes down there and the power development is only at the lower end where it breaks over the steep escarpment into Lake Superior.

HON. MR. NIXON: Q. A solid rock escarpment?

A. Yes. Granted, in the upper part where it passes through these little lakes where before there was just a little trickle, to-day we are going to put 1,200 second feet through and the banks are going to break back, undoubtedly.

MR. DREW: Q. Will that affect the flow of the water at all?

A. No. There might be a little pile-up and little local dams which they build out and break through, and piles of logs which must be moved, but that is true of every river in the north country.

MR. W. G. NIXON: Q. There would not be any unusual erosion there?

A. No, sir.

Q. As compared with other rivers?

A. No.

Q. It would be a similar situation?

A. Yes.

MR. COOPER: Q. The driving of logs, of course, does not affect the flow of the water for power development?

A. No, only to the extent that you use that water for driving purposes,

but I am saying that if the power were valuable to the extent you would not use any water for driving the logs by your power house. You would lift them out mechanically and take them down mechanically. It is done in some places, but if it were cheaper to do it the other way you might take a certain amount of the water, put it into your flumes and let the water go.

Q. That is all.

THE CHAIRMAN: Before we adjourn, I received a telegram from Mr. F. G. Robinson, who gave evidence here yesterday, which reads as follows:

> "Referring to evidence which I gave before the Lands and Forests Committee yesterday, I note that a Toronto morning newspaper contained report under heading 'Pulp Official Rebukes Drew at Conference'. I wish to emphasize that nothing I said was intended to convey any such attitude on my part towards Colonel Drew or any other member of your Committee stop I found all members of your Committee constructive in their questions and regret if any different impression has been created stop Would appreciate you have this message given to the Committee and Press and include it in your record of proceedings. (Signed)
>
> F. G. ROBINSON,
> President, Canadian Pulp and Paper Association."

The Committee will now meet in private.

(The further proceedings of this Committee were adjourned until Monday, May 6th, 1940, at 10.30 a.m.)

THIRTY-FIRST SITTING

Parliament Buildings,
Monday, May 6th, 1940.

Present: Honourable Paul Leduc, K.C., Chairman, J. M. Cooper, K.C., M.P.P., Colonel George A. Drew, K.C., M.P.P., A. L. Elliott, K.C., M.P.P., Honourable Peter Heenan, Honourable H. C. Nixon, W. G. Nixon, M.P.P., F. R. Oliver, M.P.P., F. Spence, M.P.P., Dr. H. E. Welsh, M.P.P.

THE CHAIRMAN: Order, please, gentlemen.

Colonel Jones is here, I understand. Will you come and sit here, Colonel, please?

C. H. L. JONES, called:

THE CHAIRMAN: You are president of Price Brothers, Limited, Colonel Jones?

A. Yes, and also of the Mersey Paper Co.

Q. That is in New Brunswick, is it?

A. No, Nova Scotia.

THE CHAIRMAN: You were called here at the suggestion of Colonel Drew, Mr. Jones, so I will let the Colonel proceed with any questions he may want to ask you.

MR. DREW: Q. Colonel Jones, as I understand it, Price Brothers Limited are one of the companies affected by the present attempt at prorating that has been carried out by the Committee that has been set up by the two provinces, Ontario and Quebec?

A. Yes, that is right.

Q. Where are the mills of Price Brothers situated, just as a matter of record?

A. You are referring to paper mills?

Q. The paper mills, yes.

A. Kewagama, River Bend, and Jonquiere.

Q. They are all in the Lake St. John District?

A. Those are,—so-called.

Q. And have you pulpmills as well?

A. No, just those three. We have sawmills on the south shore.

THE CHAIRMAN: Q. Would you mind giving us the capacity of those three paper mills, Mr. Jones?

A. Their full capacity?

Q. Yes.

A. In addition to newsprint, we make fine papers at Jonquiere. The capacity of those two mills is roughly about 1,150 tons a day or newsprint, at Kewagama and River Bend.

Q. And what about Jonquiere?

A. We manufacture only fine papers at Jonquiere, and it depends upon the quality of fine paper you are making as to the quantity that you get. If we are making up the fine paper, we are making up to 70 tons a day.

Q. But, as far as newsprint is concerned, you have only two mills, Kewagama and River Bend, with a total capacity of 1,150 tons a day?

A. Yes.

MR. DREW: Q. Jonquiere would not come within the prorating?

A. No.

THE CHAIRMAN: Where are the sawmills on the south shore?

A. Rimouski, Price and Matane.

Q. And you also mentioned that you were president of the Mersey Paper Company?

A. Yes.

Q. You say they have a mill in Nova Scotia, is that a newsprint mill?

A. Yes.

Q. Is that controlled by Price Brothers?

A. No, they have nothing to do with it. It is absolutely independent. Some of the financial people in Price Brothers are in the Mersey Company too. But they are absolutely separate boards, and all that sort of thing.

MR. COOPER: Are they in the proration scheme also?

A. They are partly in and partly out of it.

Q. What do you mean by that?

A. Instead of giving up tons, they give up dollars.

THE CHAIRMAN: What do you mean by that?—I do not understand that.

A. They contribute so much money, and that money goes to another mill in lieu of tonnage. In other words they get a money profit which we contribute, instead of their making the paper themselves.

Q. What is the capacity of that Mersey mill?

A. Roughly 350 tons a day.

HON. MR. HEENAN: Q. You say the Mersey contributes the money?

A. Yes.

MR. DREW: Q. Colonel Jones, are any of the other mills in Nova Scotia under any prorating arrangement of this kind?

A. The Mersey mill is the only mill there.

THE CHAIRMAN: There are no other mills there?

A. No.

MR. DREW: Q. Colonel Jones, one of the questions which has been under discussion a great deal is a broad question of prorating, and the desirability of setting up some machinery for prorating the newsprint production between the two provinces, some system of prorating the production of the newsprint mills in the two provinces of Quebec and Ontario. We have placed on record here a recommendation or a report made by Mr. Vining, on behalf of the committee set up to do this work, which was prepared at the request of Mr. Cote of the Quebec Government.

A. I am familiar with that document.

Q. You are aware, then, of certain recommendations which are made in Mr. Vining's report?

A. Yes.

Q. It would appear, then, that this Committee must, in reaching conclusions, express some opinion on this general subject, in so far as it comes within the scope of the Department of Lands and Forests of this province; and for that reason questions have been asked as to the effectiveness of the method and the desirability of devising some new method. It has been suggested that it would be desirable to have some interprovincial board or commission, with legislation giving it power to enforce its regulations, and there have been various ideas expressed in regard to that by presidents of other companies and by officials as well. Would you care to express your opinion as to the method which you consider most desirable, if, of course, you first consider that proration is desirable. And I will ask you: Do you believe that it is desirable to continue the method of proration?

A. I would say, yes.

Q. Well, if that is your opinion, will you explain to us how best you think proration could be carried out?

A. Of course the state of business where proration is not necessary is the best state of business; you are free to act based on your experience of carrying on business in an unfettered way. There is nothing to equal that, in my opinion.

Now, what happened was that too many paper mills were built That is all. We all know that too many were built; and the supply and demand were out of step. The result brought on a very unhealthy condition in the paper trade,—practically three-quarters of the companies and the tonnage were under the direction of the sheriff. Now, that is the worst possible shape that you could have it in. It is just like a person deciding to have an operation. He does not like operations, but he has an operation to cure him of something. That is what took place in the newsprint business in Canada. It had to take place. And certainly the present state of affairs, although it is not carried out as fully as it should be, represents the best control that we have ever had in newsprint.

Those of us who took part in the direction and deliberations of the Association can give you all kinds of evidence on that point.

I do not like proration, but I say it is the only thing that we can do.

Q. As it may actually in some way tie in with the discussion of this subject, which doubtless will be discussed publicly a good deal before the decision is reached,—I make that comment because I see the Press already is discussing it a good deal,—would you agree with me that it would be wise for a good deal of caution to be exercised at the present time in regard to these stories of war demands absorbing our capacity of production?

A. Of course a great many remarks have been made, but that is inherent to the newsprint business, because we sell our product to the Fourth Estate; and naturally they want to buy our product as cheaply as possible. And we have had a lot of advertising in connection with our business, because just of that point that the people who buy from us own the papers. And every now and again some particularly wild statement is made.

Q. What I am referring to particularly is this: In Mr. Vining's report he pointed out that back in 1935 and 1936 the people connected with the industry realized that it was necessary to do something to bring some measure of order out of the chaos that existed?

A. Yes.

Q. Then, because of the temporary appearance of prosperity in 1937, the cure was delayed. And now there seems to be some idea growing that because of the limitation of export from the Scandinavian countries, we are likely to see the situation taken care of by that simple fact. I notice, for instance, that a good deal of attention was paid to a statement that Great Britain was buying 200,000 tons of newsprint in Canada during the coming year, and that in itself was mentioned as indicative of the general improvement there would be in the business here. But, as I actually understand it, they bought 176,000 tons this year, which only means 24,000 tons additional, which your mills would only be about four days in making with their additional capacity?

A. That is all.

Q. What I am asking you,—and you can confirm or disagree with it,—is this: Whether it is wise that there should be any temporary delay in the cure that is necessary?

A. I would agree with that, and I would go a little farther. The same cause brought back into the picture which troubled us in the past, can bring about the same state of affairs that you referred to in 1935 and so on. The same things can bring about the chaotic state that existed then; only it would probably be a lot worse this time, because a lot of those companies were reorganized, and you cannot keep on reorganizing them forever.

Q. Without reflecting upon the industry with which you are connected, I think you will agree that this industry has been greatly bedevilled by financial operations of one kind and another?

A. I agree with that.

Q. And now, you agree, is a good time to exercise caution, because of a temporary movement?

A. I decidedly agree with that.

THE CHAIRMAN: Q. Colonel Jones, you might give me this information: You referred a moment ago to the fact that some people overbuilt newsprint mills,—that took place between 1925 and 1929, or around that time?

A. Yes, about that. I will go a little farther than that. Comeau Bay went into operation in 1938,—that is the last one.

Q. But could you give us,—it may be unfair to ask you this question,—the number of mills and the rate of capacity of those mills which were built around that time during the boom period?

A. That is quite a chore.

Q. As I say, it may be unfair, because you may not have the information?

A. By concentrating, I could tell you where they are. We will start at the Pacific Coast. Those mills on the Pacific Coast were partially built before the period that you mentioned. They were added to, you see. Some of them were new mills and some of them were extensions to the older mills; but it culminated really in 1929. The Comeau Bay mill was the only one built after that period.

Then we come through,—I built most of these mills or a lot of them that I will tell you about, myself. I come to Manitoba, and there is an about 300-ton mill there. Now come to Fort William and Port Arthur, where a great deal of activity took place. The Great Lakes Mill; the Fort William Paper Company; the Thunder Bay. They are all newsprint mills. Then there was the Spruce Falls Mill, built up on the main line of the Canadian National.

Now, coming back to Sault Ste. Marie, that mill was built prior to the date you mentioned, but it was extended and made to produce more paper.

Then at Espanola, we have a six machine mill there.

MR. DREW: Q. When was that built?

A. That was started in 1910. It was only started as a two-machine mill, and afterwards it extended, and they put four extra machines in there.

Then, of course, there is the large Abitibi mill which started about 1910 again, and was constantly added to.

THE CHAIRMAN: You mean at Iroquois Falls?

A. Yes, it was constantly added to.

Then the Sturgeon Falls Mill was a three-machine mill built in 1903, I think it was,—the Imperial Paper Mill,—and it was turned into a newsprint mill and another machine added.

Then, coming into the Ottawa section, we have the big Gatineau mill, and Booth's and Eddy's.

Then we skip to Three Rivers, where we have a great concentration of mills in that sector. We have the International Paper Company with eight machines in one mill there; we have the Belleville, with six machines,—I am not sure how many of those are on newsprint. Then we have the old St. Maurice mill, which has not turned a wheel for ten years.

Then there is the grandfather of all these mills, the little old mill of the old Laurentide Company of Grand Mere.

MR. DREW: That is still operating?

A. Oh, yes. They operate sometimes on different products than newsprint.

Then, going farther down into the Province of Quebec, we have the Price Brothers mills that I have told you about, added to.

The Kewagama Mill there was the original mill; then they put in the fourth machine in the mill at River Bend.

Then one of the latest mills is the Ste. Anne mill of the Abitibi Company, at Ste. Anne de Beaupre.

Q. When was that built?

A. In 1926 at Ste. Anne de Beaupre.

Then at Murray Bay you have two that were built at the same time; at 1927 they commenced to make paper.

THE CHAIRMAN: Q. Did you say two mills there?

A. No, one, Donovan's. Then you cross over to the other side of the river and you find the International mill at Dalhousie.

Then going into the Province of Nova Scotia, the Mersey Mill.

That covers your question. I do not think I have left anything out.

HON. MR. HEENAN: The Port Arthur?

A. Yes, Port Arthur was made into a newsprint mill ——

Q. About 1927.

A. In there, around 1926 or 1927.

THE CHAIRMAN: I think the International Paper, or is it the Consolidated Paper, has a mill at Kaplan?

A. That is the St. Maurice,—I have mentioned it.

MR. DREW: Colonel Jones, in Mr. Vining's submission to the Quebec Government he has one part devoted to the exemption of so-called publishers' mills?

A. Yes.

Q. What is your opinion in regard to that?

A. Of course, if you look up the definition of prorating in the dictionary, it means proration of all that exists; and I suppose that is what we talk about when we deal with Quebec and Ontario. There should be no exemptions, in my opinion.

Q. You know the arguments that are used pro and con?

A. Oh, yes.

Q. At the present time there are arguments and arguments on this subject. Would you care to amplify your statement at all?

A. Very definitely they should make their contribution to the social state that exists. That is what we are doing in the other companies, we are making a definite contribution to the social state. For instance, we carried 380 men extra up in the Lake St. John district outside of men who were cutting in the forest, just so that the people would have a job and would not be on the dole; and what business we had we divided it up in that way. That is making a direct contribution to the social state. We would be able to give more work to those men. What they got was a very thin, small pay cheque; but it was better than nothing.

THE CHAIRMAN: You talk of Lake St. John. The Price family have been connected with that region for practically over a hundred years?

A. Yes, the William Price family have been connected there for about 130 years. They were the real founders of that country, because when they went in there was but the Hudson Bay post, and that was all.

MR. DREW: Q. When did they first produce newsprint?

A. In 1912, I think it was,—no, in 1911.

Q. Didn't that correspond with the limitation of export of saw logs?

A. Well, in Ontario of course the Saw Log Act was long before that. What was the date of that Saw Log Act? It was in 1907, I think, or '06.

HON. MR. HEENAN: Do you mean saw logs or pulp?

MR. DREW: Q. I will explain my question: We had in one case here the statement that it was at the time that a limit was placed on the export of pulp logs that the newsprint industry really began?

A. Well, two things happened: The general start of the pulp business in Canada was just about at the time of the Saw Log Act. They built a pulp mill at Sault Ste. Marie in 1894, started it, that was supposed to be one of the biggest, I think it was the biggest mill in the world at that time, it made a hundred tons of ground wood pulp. Then other mills were built; the Laurentide mills sold pulp in addition to making paper. Two things happened, the start of the industry like that and then the removal of the duty on newsprint into the United States; that had a direct bearing. For instance in 1910 we started to build the Soo newsprint mill, and the removal of the duty, you will probably remember, was dependent upon the reciprocity clause, so that when Canada took the duty off newsprint automatically it went off newsprint into the United States, so that we got a chance from that of ten percent, so instead of building a two-machine mill at Sault Ste. Marie we built a four-machine mill, it was just of that importance. The mill at the Soo was strategically located with respect to freight rates and we could find a ready market for our paper in an area of low freight rates, that is why we built the mill, but with the duty off we could go still farther afield and we put four machines in. Then of course the situation was one of a country filled with good wood and good water powers, and also bankers and brokers who saw a ready field for the sale of slips of paper.

THE CHAIRMAN: Q. Is that the paper you are making at Jonquiere?

A. Yes.

HON. MR. NIXON: It depends on the quality.

MR. DREW: Some of it didn't have the lasting quality of some that was put into it.

THE CHAIRMAN: Q. You mentioned water power sites just now. There is a tremendous amount of power being developed on the Saguenay River and Lake St. John?

A. Yes.

Q. We had figures on the cost of power to newsprint companies last week?

A. Yes.

Q. Have you any objection to telling us what your power costs you? I think you are part owners of at least one company that generates power in that district?

A. Well we originally were but now we are only stockholders. We had some of our own power that we owned outright ourselves at Jonquiere and at Kewagama but in their wisdom they made another arrangement and bought

power. We still have a lot of stock but we have no direction over it, we are simply purchasers of power.

Q. Is the power cost an important factor in the cost of your newsprint?

A. Well, of course there is a tremendous variation in the cost of power. You asked me if I would tell you what we paid. That is only partially my business. It is the Saguenay Power Company, they own those powers, and I wouldn't like to give that information out without getting their permission.

Q. You come here willingly and I don't want to force you to give any information?

A. Well, you see, it is not altogether my business and I would have to ask the other man if he had any objection.

Q. We had evidence here last week, perhaps I might put it this way, to the effect that the cost of power per ton ranged from slightly under $4 per ton of newsprint to about $8?

A. Yes.

Q. Would that be about correct?

A. Yes. That is a strange thing about power as a commodity—I have had perhaps twenty different power contracts at various times and none of them agree with the other at all, and I suppose that it originates from the fact that each power site represents a different problem.

Q. I suppose your distance from your power site would affect the price?

A. That is a direct factor too because your line drop has to be taken into consideration—the farther you are away the bigger the line drop.

Q. Mr. Vining gave us this evidence, if I might read the end of a sentence, "I should say that a typical case, taking the industry as a whole, would be between five and six dollars per ton of newsprint at sixty percent operation." So that we can take that equally from you?

A. Yes. I would say so.

MR. DREW: Q. Well now, Colonel Jones, in regard to the general problem of prorating would you agree with this statement that if prorating is to continue it is very important that the regulations governing prorating be clearly established?

A. Yes.

Q. Be publicly known ?

A. Yes.

Q. And be strictly enforced?

A. I would heartily agree with that.

Q. In asking that I might say this, that personally having regard to the history of proration I feel very skeptical about it as a general principle but it does seem to me that there has been a good deal of misunderstanding and there is likely to be greater misunderstanding unless the public, and particularly the purchasing public, fully understand the method and how it is being carried out. I only repeat that for the record, that you agree with me that if proration is to continue the regulations should be clearly stated, publicly known and strictly enforced?

A. Yes, and means for enforcing brought into existence, because I can't see any difference between prorating oil and prorating newsprint. Oil is directly prorated in Alberta.

Q. Yes. Of course in Alberta they don't run into the problem of crossing provincial boundaries to work out the details as between two provinces?

A. No, that is true.

Q. I suppose the situation would be more similar to the prorating of oil in the United States where each of a number of States passes legislation which authorizes a controlling board or commission to enforce its regulations. Without necessarily going into detail, do you believe that something of that kind is desirable here?

A. Yes. If you are going to have prorating it shouldn't be a haphazard prorating—hit and miss.

Q. Now, Colonel Jones, if I go beyond the point of just merely asking questions it is to explain that possibly some of this discussion has taken place before. Personally, I find it very difficult to understand how prorating can work out if existing companies are placed under rigid proration and there is at the same time no restraint on the erection of new mills?

A. I agree in that.

Q. That brings us then to what appears to be a rather difficult point: If prorating has to be made effective under laws passed by at least the two provinces of Ontario and Quebec, and preferably by more, but if prorating is to be made effective then the very provincial authorities which pass the legislation to make that prorating effective could destroy the system of prorating if they permitted competing mills to be erected unless there was an actual necessity for added production?

A. Yes.

Q. Would you agree with that?

A. I would agree with that too. It was the haphazard building of mills all over the place that ruined the trade practically. There was no restriction.

For instance in the Province of Quebec the rest of us knowing that building

of another mill at Comeau Baie was just going to make a bad case worse petitioned the Quebec Government not to let that mill be built, that if they wanted a mill we could let them have one that was already in existence and not working, but it had to be and they built that mill and just made the case worse. Then that same mill exists without prorating.

HON. MR. NIXON: Q. And is actually running to capacity?

A. Oh yes, yes.

MR. DREW: Q. But there is no chance though, is there, Colonel Jones, that the mill at Comeau Baie is selling to other than the owners?

A. No. No suggestion at all. I feel sure they don't.

HON. MR. HEENAN: Q. In fact they buy some, don't they?

A. Last year they bought 32,000 tons. No, they have not sold to others, but whether it is because they just want to be good or they have not got enough capacity—

THE CHAIRMAN: Q. You will give them the benefit of the doubt?

A. I will give them the benefit of the doubt. But their papers, particularly the New York News, have had a phenomenal growth—still grow all the time.

HON. MR. HEENAN: Q. Colonel, with respect to proration it seems to be something new in this country, but having regard to what has happened in other countries have we not prorating under another name? For instance, take the coal fields of Great Britain which found that they hadn't the old market which they used to have and they closed up a lot of mines in Wales and Scotland and in the north of England?

A. Yes.

Q. And they call those distress areas, that is they close them up entirely and supply from their more economically operated mines, so that that was proration on another scale, and the government took control over those areas that were called the distress areas and put them on relief.

Then they have the oil in the United States prorated and there didn't seem to be very much fuss about that. I am going to ask you your opinion about that, because it has all been one-sided with respect to Canada's proration policy on newsprint: Is there not another side to it, the United States Publishers' side, they want a certain amount of newsprint; say that it required all our mills to supply them, then the demand goes down another year, if we were to shut those mills down tight and then a sudden demand came wouldn't it take you almost a year to get wood and get all your crews ready and your machinery in shape to start that mill over again?

A. Yes, if you had a start from scratch without any wood at all that would be the stumbling block to prevent you, your raw product, without it you couldn't make paper and you would have to wait until you got it.

Q. So the publisher is getting the benefit of this newsprint, he knows he can give the order and that under twenty-four hours your wheels are turning and you supply it?

A. Well, we have had to keep large stocks of wood on hand. It is a peculiar business in that respect.

Q. In anticipation of the orders?

A. Of an order coming in. I have seen it happen thousands of times you see in my career in the paper business.

Q. What I mean is this, I think there is too much emphasis on this; the surplus machinery we have now there is in reserve for the United States Publisher if he wants to use it?

A. Yes.

Q. If you get an order to-day for 100,000 tons of newsprint you can take it and know within twenty-four hours you are manufacturing, whereas if we closed the mills down you would have to say "Well, we can't supply you this within less than six months or a year?"

A. There is that side to it, and we are not compensated. That is one of our items of cost, that we have to carry large stocks of wood on hand subject to deterioration.

Q. Has there been an effort, Colonel, that you know of to sit in with the United States Publisher and acquaint him with the other side of the picture?

A. Well, I have personally told them all these things that we are talking about now. Not so much prorating because we don't talk of prorating except in Ontario and Quebec; it is a matter established by law through the means that you have as governments and that is all right, but the other provinces haven't got such a law.

I was going to make one point, Mr. Minister, and that is this: You almost touched on it but you didn't bring it in. In the coal areas, these coal areas in Great Britain, they closed down the mines not altogether from the point of view of scarcity of business, those mines that they closed down were the high cost mines that could not compete, they had got them down so deep in some cases that they couldn't compete any more; that is something that is inherent to the coal business, that the farther down you get the more costly your coal is and they finally get to the point where they cannot mine it; and that was the trouble with these mills that we are talking about, they were blocked out because they were too costly.

There was one point, and that was this—I thought you were going to touch on it: That is the closing down, perhaps along some lines we are talking about in connection with the coal business, the most expensive should be the first to go. Of course one of these men running those mills will tell you his costs are as good as any others, but that is not a fact. I have heard some of the executives say

that, but there surely must be something to pick and choose from that would cause you to shut a mill down and keep the other one operating. In other words you might have we will say three reserve mills that are kept with a skeleton staff and those will be the ones that will be started up, something like that. We have talked such plans over amongst ourselves and I think that that decidedly entered into the picture.

THE CHAIRMAN: Q. That would be a matter for the industry, wouldn't it?

A. Yes, it would.

MR. DREW: Q. Of course, Colonel Jones, as I see it there is one difficulty, if any Government goes so far as to become a party to a general method of this kind by passing enabling legislation then they cannot say we will enforce this general principle and at the same time divest themselves in regard to all other aspects of the problem?

A. No, quite right.

Q. And after all proration is nothing new, it has been carried out in many industries in Canada for many years?

A. Oh, yes.

Q. And in spite of the fact that a few were haled before the courts we know that the practice is pretty general?

A. Yes. But it takes the law to do it. I can think of two or three different boards where they have been haled before the courts because they were doing something that they hadn't the legal right to do. If you determine that this is the proper thing to do and then enforce it with law and see that it is carried out, well that is what we are talking about.

Q. Of course we are coming strangely close to the N.R.A.?

A. I know.

Q. And also we are getting back to an amendment to the Combines Act of Canada which in a certain section would have provided for the control of agreements of this kind where it was in the public interest, which was afterwards found to be ultra vires?

A. Yes.

Q. I am trying to clarify my mind at any rate on this general problem?

A. Yes.

Q. As I see it, if the case is to develop that proration in this industry is necessary because of special conditions then it does seem to me that you might say: We will pass laws to enforce proration and at the same time leave it wide

open for new companies to be formed without any restraint by the very authority which is attempting to enforce proration?

A. Well, you are not covering a very important point there. It has got to be controlled in other things besides simply proration.

Q. That is what I had in mind, that it is not enough for the proration to divide production between a number of existing mills, it seems to me that there are two other factors that are extremely important; one is the possibility of the erection of new mills which might disturb the balance of distribution and the other is the question of export of pulp logs, and I don't see how the latter can be divorced entirely from the question of proration at all?

A. No, I agree with that.

Q. You agree in that?

A. Yes.

Q. So far we have perhaps had a wider divergence of opinion on the export of these supplies of pulpwood than on any other one subject. Would you care to express your opinion as to the wisdom of permitting the export of pulpwood from Canada?

A. Well, the arithmetic of the situation is very simple. If you will treat first the arithmetic from the profit point of view and then treat what I suppose you would call the social aspect, where people want work and the trees are standing there and in many cases they are growing too old to get the best value out of them, and so on. Well now, let us deal with the simple arithmetic: Down in Nova Scotia I tried to get them to bring in an Act to prevent the export of wood, the famous Bill 151, and as a matter of fact I got it onto the Statute books but this Bill was hounded to death, the most awful criticism made of it, and I showed at that time that it left about $21.50, I think it was more, in the country if it went out as paper than if it went out merely as pulpwood—in rough figures just about four to one would keep in the country. And of course there is all the additional banking and transportation and so on.

Q. Is it your honest opinion, Colonel Jones, that if some limitation were placed on the export of pulpwood it would be likely to increase our production in Canada of newsprint and other paper products?

A. Well now —

Q. Let me expand that: Or other paper products and pulp?

A. Yes. You have covered a point I was going to say, there is a world shortage occurring and accruing through the situation in Scandinavia at the present time. English mills are out of pulp, that is why.

Q. World shortage in pulp?

A. Yes. You see they have converting mills in England and they have

got to get the pulp from outside so that with the market shut off from Scandinavia it means a shortage that prevents the paper being converted that was converted there. Since Norway went into the war in particular you haven't seen so much in the way of advertisement of the paper situation in England. And the same thing is occurring in the United States. The difficulty of the situation is that they can make cheaper pulp and cheaper paper than we can in Norway and Sweden and in Finland under ordinary conditions.

THE CHAIRMAN: Q. By the way, Colonel, I happened to read in a French paper which I received last week and which was published I think at the end of March, that there is a newsprint shortage in France. Have there been enquiries from France to Canada?

A. Yes. And paper is going over there.

Q. Is that going in any substantial amount?

A. Well the last I heard was last week when enquiry was made for 10,000 tons.

MR. DREW: Q. Then I gather from what you say, Colonel Jones, that because of that demand your impression is that the industrial production in Canada both in newsprint and in pulp and other products would be increased if we placed some limitation on the export of pulpwood? Is that your opinion?

A. Yes, yes, that is my opinion.

Q. You see the contention is made the other way, that if a limitation were placed on the export of pulpwood it would not persuade anyone to come here, that they could get on without our pulpwood?

A. You are not thinking of newsprint but other products.

Q. Other products?

A. Yes. There is sure to be some development. It is difficult to say to what extent though, because that is something that will have to be investigated.

MR. DREW: Colonel Jones, you have indicated that you have had some discussions with governments other than the governments of the province of Quebec and the province of Ontario; have you any suggestions to make as to the manner in which this question of the erection of new mills could best be tied in with proration?

A. Of course, proration concerns newsprint. There are two ways of accomplishing the thing. One might lie in the changing of some of the mills from newsprint into another paper product. We constantly study that. If we could convert an appreciable tonnage from newsprint into some other kind of paper, that certainly would help the situation. What we must prevent is a reversal to the terrible, chaotic situation which existed in the trade in 1935.

Q. In that respect, Colonel Jones, I understand that at the moment, quite

apart from this question of the exemption of mills, there is some objection on the part of some mills to the fact that there are mills which have not been recognizing the percentage of proration which was supposed to be established by this committee. Is that correct?

A. Yes, that is more or less correct.

Q. That is touched on by Mr. Vining?

A. Yes.

Q. I believe he goes so far as to at least leave the impression that it is necessary, if proration is to continue, that all mills observe the basis of proration.

A. Yes, decidedly right, in my opinion.

HON. MR. HEENAN: I am not so sure that there is not a wrong impression there, Colonel. I would like to be clear on that. I did not understand Mr. Vining to be very explicit.

MR. DREW: I am speaking about his report.

WITNESS: He makes that point.

THE CHAIRMAN: That was not the point, Mr. Heenan.

WITNESS: There are two kinds of things happening in connection with prorating; one is the so-called non-commercial mills making 100 percent, and the other is that there are so many companies which for various reasons are not living up to the prorating, and that means a thinner time to the rest of us.

MR. DREW: Colonel Jones, there is one point that has been under discussion and on which I would like your opinion. The two provincial Acts which are used to enforce proration do not in fact refer to proration at all?

A. No.

Q. The Ontario Act is the Forest Resources Regulation Act?

A. Yes.

Q. And the Quebec Act is a corresponding Act. It has been frankly stated that both of these Acts were passed with one of their main purposes being the enforcement of proration. My own opinion on this matter would be that if we are to maintain the good-will of the consumers in the United States and also to maintain confidence within the industry itself in Canada it is important that any Acts that do enforce proration clearly state their purpose and should not be open to misinterpretation. As I see it, it is like trying to prevent a man walking on the street by telling him that he cannot wear an overcoat because it is too heavy, or something of that kind?

A. Yes.

Q. This Act says one thing and apparently is intended to do something else. I come back to the point that I personally believe very strongly that if proration is to be carried out effectively such laws as are passed for that purpose should clearly indicate their purpose and should leave no doubt as to what their intention is. Will you agree with that?

A. Yes. That is decidedly an evil of the present situation and one that we have always recognized as such.

HON. MR. HEENAN: The Act clearly states that mills will operate in the public interest. That is clear enough.

MR. DREW: That is like something I once saw in Germany; that they had democracy in Germany because Mr. Hitler was the one man that represented the whole will of the German people. It is a rather vague term, as under that wide term you could dispense with all laws and leave it to any government to decide what was good in the public interest.

HON. MR. HEENAN: That is what the Combines Investigation Act says, and it is working all right. You must not operate against the public interest.

MR. DREW: Colonel Jones, you may or may not care to express an opinion on this, but would you care to express any opinion as to the wisdom of placing the details of the method of the control of this industry under some inter-provincial commission which would not only have power to prorate but also power to enforce certain methods of operation?

A. Yes. We have discussed that amongst ourselves and we discussed it from two angles: one that there should be something more to guide us than the present simple language that exists. Once you have arrived at that point you then, of course, have to have some commission—call it what you will—to administer it, so that some company is not going to just sit down and make 30,000 tons which another company—both of them being under the same Act—should not be making. In other words, you have got to administer it, and you have got, in my opinion, to have something that covers the necessary details as that there will be no vagueness.

Q. You raised a point which it seems to me is vital to a practical development of this system over any period of time. You pointed out that high cost mills should be the first to go if it is necessary to close down any mills?

A. If it is. I said "if".

Q. If, yes.

A. And I also said that there were those who made certain contentions, some people who were interested in mills which we know are not modern, although it is a funny thing they still exist and get pretty good cost too.

Q. The reason I mention that is this; as I said before, proration is not new, we have had a great deal of experience in Canada already in regard to the methods

of proration much of which has not been injurious to the public; but one of the problems that has been faced in practically every case where industries have attempted to work out proration has been the problem of determining how far they should preserve either inefficient or costly plants.

A. Well, once you have labelled a plant as being too costly, something has got to happen. What is it going to be? Confiscation of the mill, just close it down, or something like Mr. Heenan referred to in connection with the mines? There is a case in point. I read all about that at the time but I cannot remember how they did it.

HON. MR. HEENAN: I think the government compensated the coal owners for the closing of their mines. I think they did that; I am not quite sure.

MR. DREW: You mean in England?

HON. MR. HEENAN: Yes.

MR. DREW: There was expropriation and compensation.

WITNESS: I do not see how you could do anything else but that.

Q. Who would you think should have authority to do that?

A. Well, of course, that takes again much more machinery than exists to-day.

Q. Yes.

A. You would have to study the thing and set it up, that is all. I do not know. I know of two mills, for instance, the Espanola mill and the Sturgeon Falls mill. Both of these mills are down and I do not think they will ever be operated again because certain other things come into it. There is the matter of wood supply. Both of these mills have worked for so many years. It gets them to a point where they are like the deep coal mine where you have to go down so far that the raw product is costing you more than the market will stand, that is all.

Q. You mean by that that they have cut back to a point where the wood is too costly at Espanola and Sturgeon Falls?

A. That is one of the factors. I do not know whether I should be talking about somebody else's mills. I have built most of these mills, but I do not know whether you should quote me on somebody else's business. Perhaps I cannot justify myself discussing somebody else's business. But I happen to know those mills. We know that they are down, have been down for ten years and will probably not be operated again as newsprint mills.

HON. MR. NIXON: And there was no suggestion that the government should compensate the companies?

A. No.

Q. To keep them?

A. No. There is no machinery for doing it.

Q. You have the same problem as has every little sawmill?

A. Yes.

Q. Until finally it goes out of business?

A. Yes.

MR. DREW: Colonel Jones, would you go so far as to say that part of their problem at those two mills has been a disregard of strict forestry methods?

A. Well, I can perhaps do that because I was, after all, general manager of these mills. We were getting the wood wherever we could get it the cheapest and best. But that does become a problem for all of the pulp and paper mills. All you have got to do is go across the line, for instance. I know towns there where there were four paper mills in the same little town. Their problem became more and more acute until finally they reached the point where they had to give up.

Q. Or get Canadian pulpwood?

A. Or get Canadian pulpwood, exactly.

THE CHAIRMAN: What happened, as a matter of fact? Did they close down?

A. They all closed down.

MR. DREW: Colonel Jones, having regard to the social side of this problem would you agree that if there is to be a continuance of many of these mill towns it is necessary in future to have a stricter regard for the preservation of the forests behind these mills?

A. I would say so.

Q. You agree with that?

A. I agree with that. We have what we call ghost towns in Canada. I can think of half a dozen of them in the Georgian Bay district where they came in and cut the lumber off. People built churches and they built a city hall and went through all the acts of doing something for a place that was going to be in perpetuity. But the lumber was all used up.

Then what happens? You have got another ghost town on your hands. There must be ten of these between the Soo and Sudbury. They built just as if everything was going on forever. Finally there was nothing left but the postman.

HON. MR. NIXON: You have lots of churches in Espanola and Sturgeon Falls. Did you consider you had wood there in perpetuity?

A. There are two churches in Espanola; there is the Roman Catholic and the Episcopalian church. They were built on the joint efforts of the company and the people.

Q. But was it the opinion of the company when they were operating these mills under your management that you had wood for perpetual operation of the mills?

A. Well, I looked a little further ahead than most people. They still have wood, you know. You can bring the wood down on the Spanish River. But I have been looking at this from the big side of the picture. Take, for instance, twelve years ago. I was general manager of all these companies, and I was in those days giving my thought to where the wood was to come from. We knew that here was a mill, take the Soo mill, situated at the foot of Lake Superior, with a huge reservoir of wood that can come down to it. Or the mills at the head of the lake which are so situated. But where you have a mill like the Espanola mill on one river—well, you can certainly calculate what you have, and you can make timber cruises, which we did of course, and tell how long the wood will last. But I would not want to make any damaging remarks in connection with a company that I am not running now.

Q. But you consider that situation as inevitable?

A. Well, yes. It was even more so on the Sturgeon. The Sturgeon mill was built by the Ontario Paper Company. It was a two-machine mill, and they went in there and they neither had wood enough nor power enough, because when it came to the dog days there was nothing but a trickle coming down that river. That was the first fundamental mistake. Afterwards Garnet Grant bought that company, the old Imperial, and formed the Ontario Paper Company, put it in with the Spanish and rolled the two over again and sold some more shares. Then he tried to buy the Lake Superior Paper Company, of which I was then the president, and borrowed $3,000,000.00 to pay his debts and do some funny things. You know, just enough to add colour to it and sell some more shares. Well, of course, he didn't take the last hurdle, and when he was all through he paid out the $3,000,000.00 for debts and different things and didn't have his stock. They just grabbed his stock. The Lake Superior Paper Company gave him an option on Lake Superior Paper Company, but when we were all through the lean kine ate the fat kine and we had those mills on our hands.

The Espanola mill was a two-machine mill, and we made it into a six-machine mill. We did not get enough limits from the government. If we had, that mill would still be going.

Q. But the wood actually was not there, was it, to justify a mill of that size in perpetuity?

A. We thought we could get it. Of course, there was a great deal of wood that we did not get. If we had received it the story of the wood supply would be different. But you didn't always get the wood you went after.

MR. DREW: Colonel Jones, I personally have no intention of pursuing this question of forestry practice beyond a certain point because I recognize that, covering such a wide area as the province of Ontario and the province of Quebec, in some particular areas general theories might be worked out which do not apply to others, and I thought if we could arrive at some fairly broad conclusions that would be as far as we could go. Would you go so far as to agree that at least one of the difficulties of this industry has been an absence of sufficient strict forestry practices?

A. Well, that is pretty general language, Colonel. During the war I was on the Inter-allied Board and I had a great deal to do with the French foresters. Of course, forestry, as they practiced it in France and Germany and those European countries, is so far ahead of what we do or can afford to do here. Their forestry system was founded some hundreds of years ago, and they practiced forestry there in almost an intimate way. They say that a French forester knows all these trees by nicknames. We can't think in those terms at all. We have made estimates of what we should do, but nature does it and does it in such a cheap way compared to what we could ever do it for.

So that no real forestry has been practiced. They have tried to kill the pests and done some splendid work in that respect. And, of course, we have gone pretty much the limit in fire protection. But when it comes to practicing forestry—new forests, planted forests—we cannot afford to do it.

Q. Colonel Jones, it seems to me that the problem of the control of cutting and general forestry practices is a very important part of the broad problem of proration itself, because it would seem to me that, for instance, if you should have a system that protected one company in the same way that it protected another in regard to sales, then at the same time it would be improper to let one of those companies start hi-grading their timber as against another which was seeking to preserve its stand of timber in perpetuity?

A. Well, of course, the Frenchman in his forestry starts from scratch and he plants a forest. Then at a certain time he thins that out; he has a place for that thinned out timber to go. Then he lets it come to maturity. It is all the same age and it is cut down. Here when the wind blows seed it may blow it in one direction this year and in another direction next year or three years afterwards, so you have a mixed forest all the time. The right thing to do is to tree a forest just like a farm—farm your wood. When you go out to cut hay you cut it all down. If you had an artificial forest, which frankly we cannot afford, then you would thin it out, you would cut it down. The best way to preserve it is to cut the mature timber and thin the forest out to let the light in and get some more mature timber, and so on.

Of course, frankly, that adds perhaps the top log to the thing because it makes it more expensive. Wait five years and then go in and your roads, bridges and everything else have gone by that time. But that would be preserving the forests. We would have to get more money for our paper if we are going to do that kind of thing.

Q. Yes. I was coming back not so much to the question of rebuilding our forests as to the fact that it seems to me a uniform enforcement of cutting methods is essential to an equitable enforcement of proration?

A. Well, grant that each mill had sufficient wood for the life of its bond issue. We know that the mills live beyond that. But that is in our circulars. We always describe that there is ample wood for the life of the bonds, and that satisfies investors and everybody else. Now, if you had that for every mill perhaps that would be just as good an answer as you could get.

Q. That would not, of course, assure perpetuity, would it?

A. No, no.

Q. You would still be confronted with the problem of ghost towns?

A. Yes.

Q. Because I suppose the maximum period of repayment of most of these bonds is twenty years, is it not?

A. Some of them are twenty; twenty-five and thirty years.

Q. In that period, at any rate?

A. Yes.

Q. Then if you make the life of the bond the determining factor you would still be confronted with the problem of ghost towns?

A. Finally, yes. If you have an industry that has not a raw product you have a ghost on your hands in itself, because there is nothing which you can do with it. Newsprint runs to such large tonnages that you have got to have a huge supply of raw product.

Q. Well, Colonel Jones, in asking this question I preface it by saying that I believe in free enterprise as much as anyone, but it does seem to me that we are getting into something here where, if there is to be government enforced control of any kind, it cannot stop just at the beginning, and that all these related problems must in some way be brought under co-ordinated control. I have in mind, for instance, this fact: that proration in other industries has always failed in the past unless it was recognized that inefficient and high cost mills had to be eliminated from the picture as that situation was recognized. In other wards, that there could not be a monopoly over inefficient or high cost production?

A. That is important to remember too.

Q. Then another point that seems to me important is this, that there may be possibilities from time to time of changing a newsprint mill into the production of some other product?

A. Yes.

Q. And that if you have newsprint mills working under a strict proration system you may stifle the initiative to get into some profitable alternative

product unless in turn there is co-operation of activity and also co-ordinated research in regard to the whole industry. I am not suggesting that we get it under the same strict form of control, but I have in mind that in some of the European countries research, control of forestry methods, the elimination of inefficient mills are matters which are all tied in with their method of controlling output?

A. Yes.

Q. And with the recognition of our general principle of free enterprise, would you agree that it would be desirable that some method of co-ordinating these factors should be established here if possible?

A. I do not know whether we have reached the point in our national existence where we want to follow French forestry rules, and so on. Because cutting a tree down is quite a ceremony.

Q. As Mr. Heenan said it is like getting the last squeal out of a pig?

A. Yes. As I said a little while ago they have everything that could possibly be secured. For instance, they say, "Le bois de la femme du boulanger." It is a very descriptive thing. But over there the baker keeps all the good sound wood himself and he makes his wife cook with twigs.

Q. Well, I do not want to become an alarmist about this, but I do feel, Colonel Jones, that we have come to the point now where we must recognize that when this war is over, whenever that will be, we are going to face that same system of world competition?

A. Yes.

Q. In which our very economic survival here may depend upon the highest measure of efficiency possible in any given industry; and rightly or wrongly I am convinced that our newsprint and other wood product activities in this country must be put upon some more effictively co-ordinated basis than they are now if we are to meet the competition that will come after this war is over.

A. That is very sound reasoning, and you can just add this to it; that unless you have something like prorating and control, the same kind of competition is going to start again.

Q. Yes?

A. Because you can't get away from a basic law like supply and demand. You can't get away from it. And they will cut the price again just to get the business.

Q. You mean our competitors?

A. I beg your pardon?

Q. Our competitors, you mean?

A. No, I am just talking about the Canadian manufacturers.

Q. Oh, yes.

A. History is sure to repeat itself, because it always has.

Q. Yes.

A. You see, if you will just think of this: without control and without prorating, which makes the control, we went into the last war and we were selling paper at ridiculous prices. With prorating we have gone into the war with $50.00 paper this time.

Q. But I just bring it back to this point, Colonel Jones: Does it not seem reasonable that we should make use of such temporary assistance as we get from war conditions to put our house in order and to be in the most efficient position possible to meet world competition after the war is over, instead of looking on the war period as a time to delay any serious operation on the patient?

A. Yes.

Q. I mean, I think you will agree with me that this patient does need an operation of some kind?

A. You have the chance to do it, and, if you don't do it, you are going back to the same chaotic conditions we had, that is all.

THE CHAIRMAN: I do not like that word "operation"; I am wondering if "treatment" would not fit the situation better.

MR. DREW: I think the knife has to go below the surface in this case.

WITNESS: Sometimes you can cure without the use of the knife; and I think probably you do not have to use the knife with the reprieve the war is giving you. This is the time to do it. You see, we cured so many evils. We had all these contracts where the price of one company was dependent upon the price of another company. Sometimes there were five interlocking contracts all depending upon getting back to one man's price or one company's price.

MR. SPENCE: I understood you to intimate that the wood we export from the province of Ontario is manufactured into newsprint in the United States?

A. Yes.

Q. Then, have not the newsprint mills got control in their own hands? Why don't they buy this wood? It is manufactured into pulpwood at $12.00 in the rough and $16.00 peeled?

A. Yes; $18.00 sometimes in certain areas. It is up to $18.00 now.

Q. Then why not have our Ontario mills use that wood here that is available for export or buy it?

A. It is pretty hard to resist the argument of the inhabitants of a certain area where the trees are standing and there is a purchaser for the pulpwood, also the opportunity for work.

THE CHAIRMAN: I should like to ask you just one question, if I may refer back to something you said a moment ago about Bill 151 in Nova Scotia?

A. Yes.

Q. Did that refer to the embargo on all pulpwood or on pulpwood from Crown lands?

A. It was a very simple document; it put it in the Minister's own hands.

Q. Are there many Crown lands left in Nova Scotia?

A. No.

Q. The land is privately owned there?

A. Yes. Take, for instance, my company down there, we have three areas all contiguous to each mill, and then we have got a grant of 8,000 odd cords of wood up in Cape Breton where the wood is expensive and not very good, and we figure that we can certainly take care of the period of our bonds and then some. In addition to that we are on the seacoast, so we can go further afield and buy wood.

Q. What I had in mind was this, that most if not all of the exports of pulpwood from Nova Scotia came from privately owned lands?

A. Yes, farm lots and areas, and they certainly are taking the wood off very fast this year, pit props and lumber—the biggest year they have ever had.

MR. DREW: You say that that gave power to the Minister; you mean that he was able to control the export at his own discretion?

A. As a matter of fact, he never had the chance because they passed it—that was the Rhodes government—and the Rhodes government went out the following year. So they never used it. But they were terribly condemned for passing that bill.

HON. MR. HEENAN: That is not what put them out, is it?

A. By jove, it had a powerful effect. What they said was that it was a monopolistic bill introduced by our company and that the poor people would not be allowed to export it.

THE CHAIRMAN: I wish to thank you, Colonel, for travelling to Toronto and giving us the benefit of your evidence.

A. A very great pleasure. I hope I have given you something that will be of assistance. And I hope I have made clear two things: in the first place, I do not like prorating. Neither did I like castor oil when I was a kid.

Q. I was going to suggest that simile.

A. But the castor oil used to do me good. And I know that this prorating system is the only thing that I can think of to control, that is all. I can't think of anything else. You should have, I should say, an administration of perhaps three people, or something like that, to see that everybody behaves.

MR. DREW: You mean an inter-provincial board?

A. Yes. And we could all agree on what mills are to be built, if any, and the distribution of orders, and seeing that it was carried out.

HON. MR. NIXON: Also the price at which newsprint should sell?

A. You are getting over the fence now pretty far.

Q. I don't know that you are if you are going to ask the government to police your industry.

A. We should get more for our paper. I do not think we are getting quite enough.

MR. ELLIOTT: Also the price they would be required to pay for pulpwood?

A. There you go, all down the line.

HON. MR. NIXON: That is the trouble; when you once get into a business of this kind you do not know where government interference should stop.

A. Well, of course, there is not any doubt that ordinary business conducted without improper methods of cutting prices, and so on, is the best way to run things. But if these evils creep in —

Q. You will admit that in the last war it was not for the lasting good of the industry to run prices up to $110.00 a ton?

A. No, it was not. We have been trying to live that down ever since. We are still told about it. On the other hand, the companies that I was managing at that time did not run their prices up. We continued to carry out our contracts because, after all, they were contracts.

THE CHAIRMAN: The Committee will adjourn until 2.30.

(At 12.50 a.m., the Committee adjourned until 2.30 p.m.)

AFTERNOON SESSION

THE CHAIRMAN: Mr. Rowe, will you sit over here?

HON. EARL ROWE, President of the Great Lakes Paper Corporation:

Called:

THE CHAIRMAN: I think Mr. Rowe was invited here at your suggestion, Mr. Cooper. Have you any questions to ask him?

MR. COOPER: Q. You are the president of what company, Mr. Rowe?

A. The Great Lakes Pulp & Paper Company, Limited.

Q. And what mills does your company own?

A. The Great Lakes pulp and newsprint mill at Fort William.

Q. Have they just got the one mill?

A. Yes, sir.

Q. What is the capacity of that mill?

A. 113,000 tons, that is of newsprint.

Q. You were not here during the previous evidence that was given before this Committee?

A. No, sir.

HON. MR. NIXON: Q. Do you make anything else but newsprint?

A. Yes, sulphite pulp, approximately 24,000 tons capacity of sulphite pulp.

MR. COOPER: Q. There has been considerable evidence given to the Committee here, Mr. Rowe, with regard to the prorating of newsprint. Your company, I understand, is not prorated,—is that correct?

A. That is correct, sir.

Q. Your company, therefore, comes under one of the so-called exemptions?

A. I do not know whether we have that particular classification or not. We should have.

Q. Will you let us know the exact position of your company with regard to the proration scheme?

A. The Great Lakes Paper Company, Limited, I think, is in a position that it is impossible for it to subscribe to the proration policy.

Q. Will you give us your reasons?

A. I would want to summarize them, sir. The original set-up of the Great Lakes Pulp and Paper Company,—no doubt the Committee is well aware that several newsprint companies in Ontario have been in receivership for several years, at least. The Great Lakes Pulp & Paper Company, Limited, in 1936, was the first and the only one to date which has been taken out of receivership by reorganization.

This was made possible by the reduction of the capital structure from $39,000,000 to $13,000,000.

Q. And when was that?

A. The summer of 1936, sir. It was made possible under a scheme of reorganization, under which the junior stock interests, both preferred and common, were not considered other than they were practically wiped out, in a sense.

On the other hand, they were not dealt with the same as the balance of the stock, because those who held junior stock at that time had debts that were owing to the Great Lakes Pulp & Paper Company.

The bondholders agreed to sacrifice $4,000,000 of principal, $3,500,000 arrears of interest, and accepted five percent per annum on the remaining $6,000,000 of bonds, instead of six percent.

They received, in addition to their $6,000,000 of bonds, 90,000 preferred "A" and 80,000 common shares in the new company.

The unsecured creditors of the old company, with claims of approximately $3,000,000 accepted, in lieu of their claims, 10,000 shares of preferred "A" and the balance, 20,000, of common shares.

The inducement which made this reorganization possible was the fact that long-term newsprint contracts had been secured, which, with options maturing in 1938, would assure probably the minimum capacity operation of the mill.

Q. Were those contracts secured before the reorganization was entered into?

A. Yes, they made the reorganization possible, sir. It was those figures of ultimate earnings and the consequent establishment of a market value of preferred and common shares and reasonable earnings thereon, which prompted the bondholders and creditors, in good faith, to relinquish their claims, as it were, and accepted these junior securities in the new organization.

Therefore, I claim, sir, that any action on the part of the company's management in allocating tonnage to other mills is a serious violation of the company's contract with the shareholders.

Q. An act of bad faith?

A. Yes. That therefore, any action on the part of the company's management in allocating tonnage to other mills is a serious and direct violation of the company's covenant with its security holders.

The proration of tonnage is also impossible for Great Lakes in view of the very nature of our long-term contracts. The proration of tonnage involved seriously prejudices the interests of the publisher customers who were assured protection under their covenant with the new company, which has been fulfilled by them to the letter,—I mean by the publisher customers,—even though they have received only a small fraction of the compensation anticipated. For the company to disregard this covenant, would be unfair, unethical and illegal.

Proration of tonnage also involves a further violation of contract by reason that all the long-term newsprint contracts which formed the basis essential to the reorganization plan state specifically that all newsprint supplied must be manufactured at the Fort William mill of the Great Lakes Paper Company Limited.

In other words, the application of proration of the reorganized company would violate every principle which made the reorganization of the company possible, and I believe it would further prejudice the faith of prospective reorganizations of other companies that are endeavouring to get out of receivership at the present time.

This plan or reorganization only received the approval of the Supreme Court and the consent of the Ontario Government after long litigation and consideration. All features of the plan were thoroughly discussed, and the Government's approval was finalized and confirmed by a letter of March 24th, 1936, from Mr. A. J. Thomson, counsel for Great Lakes, addressed to the Honourable Peter Heenan, and one from the Honourable Mr. Heenan to Mr. A. J. Thomson in reply, dated March 24th, 1936.

I think it is only fair, sir, so as to have the record complete, that that letter should be read into the record, with your permission. This is dated March 24th, 1936, addressed to the Hon. Peter Heenan, Minister of Lands and Forests, Parliament Buildings, Toronto:

"Dear Mr. Heenan:

re Great Lakes Paper Company Limited.

"This is to confirm the arrangement made yesterday between yourself and the Prime Minister representing the Government, Mr. Rundle and Mr. MacKelcan representing the National Trust Company, and myself, representing Messrs. Aldrich and Gefaell. While I speak of it as an arrangement, I quite understand that the decision arrived at by yourself and the Prime Minister must be confirmed by the Cabinet, but I assume that your recommendation will be accepted almost without question by your colleagues.

"First: When the offer again comes before the court for approval my clients will consent to the imposition of the following term:

"'That no dividends shall be paid on the Class "A", Class "B" Preference shares, or Common shares, until the current published contract

price of newsprint for delivery at Chicago, Detroit, Cleveland and other American lakeports west of Cleveland is at least $45.30 per ton f.o.b. mill full freight to destination allowed or the equivalent figure if the price structure of the industry generally should be changed so that only part or none of the freight is allowed to the customer and not then if the effect of payment of dividends will be to reduce such current published contract price of newsprint below such $45.30 price.'

"SECOND: Messrs. Aldrich and Gefaell will recommend to the publishers whom they represent, that the contracts between them and the Receiver, under which, in a certain event, the Receiver grants a reduction of $2.00 per ton from the full market price, be amended by substituting 1st July, 1936, for 1st April, 1936, as the date when the Receivers' contracts become effective to supplant the ten-year contracts entered into by the new company. It is understood that the consent of the publishers to this amendment will have to be obtained by my clients before the return of the application of court for approval of their offer.

"THIRD: The new company now incorporated under the Companies Act of Canada will assign its right to receive conveyances of the assets and undertaking of the Great Lakes Paper Company to a new company to be incorporated under the Ontario Companies Act and such last mentioned company will be substituted for the Dominion company as purchaser.

"If this is a correct statement of the terms agreed upon yesterday and if the decision you and the Prime Minister made yesterday is approved by your colleagues of the Cabinet, I should like to have a letter from you saying that the Government's opposition to the sale will be withdrawn and that counsel representing the Government will appear in court and take this position.

"As Mr. Aldrich intimated to you in the interview which took place on the 13th instant, a public statement from you now is essential in order to obtain the consent of the publishers to the amendment of their contracts with the Receiver. I hope you will see your way clear to issue such a statement to-day in view of the short time remaining between now and the first of April.

"Both my clients and the new company appreciate that the co-operation of the Government now and in the future is of supreme importance to the success of the new company. I venture to express the hope that the resolution of our present difficulties which is now proposed will lead to a much better feeling on both sides as their interests are common. They also appreciate that it is important that the new company should work in harmony with the rest of the industry and whatever influence they have will be exercised to bring about that result."

In answer to that letter, the Honourable Mr. Heenan replied to Mr. Thomson, under the same date, March 24th, 1936:

"Dear Sirs:

Attention Mr. A. J. Thomson,
Re—Great Lakes Paper Co., Limited.

"Having regard to the conferences recently held and the interview I had with you to-day respecting the above subject matter I desire to acknowledge receipt of your letter of even date in which you set out the propositions submitted to the Government resulting from the objections raised by the Government and the discussions recently held.

"The undertaking that you have given which has been consented to by me on behalf of the Government is as stated in your letter.

"I am glad that your clients and those associated with them have at last realized the difficulty which the Government felt in approving of the plan as originally formulated and have been able to agree to changes in this plan which have made it acceptable from the standpoint of the Government. I hope that now this difficulty has been solved the relationship between the Government and the new company will always be of a cordial character.

"Yours very truly, (Signed) Peter Heenan, Minister, Department of Lands and Forests."

Now, the statements that were made to the Press at that time, public statements, I think might well be quoted with those letters, in the consideration of our position. The Honourable Mr. Heenan, the Minister of Lands and Forests, was quoted in the issue of the Mail & Empire, dated March 25th, 1936, (the following day) as stating that the difficulties connected with the sale and reorganization of the Great Lakes Paper Company, Limited, all had been completed "on terms which protect the public interest and which are therefore satisfactory to the Government."

Mr. Vining, by the way, also made a statement at that time,—Mr. Vining was the president of the Newsprint Association,—and his statement appeared in the same issue of the Mail and Empire, as follows:

"The settlement of the Great Lakes situation as announced by the Hon. Peter Heenan is an important step towards stability of newsprint conditions and newsprint industry in general will regard the settlement with satisfaction since it disposes of several disturbing possibilities."

"stated Charles Vining, President of the Newsprint Export Manufacturers Association of Canada to-day. "The industry and the public alike had reason to feel," he said, "that the Hon. Mr. Heenan had made a highly constructive contribution to the Industry's improvement."

Now, I read those letters at length, sir, to bring to your attention the statement that was made at that time, and to also bring to your attention as well a statement that has been made recently, a statement, indeed, that has been given considerable publicity too, first in a pamphlet on newsprint prorating that I believe is by Mr. Vining, who is president of the Newsprint Association

and as chairman of the committee, has submitted to each member of the Committee here, and handed to many other places, such as our press, and so on.

THE CHAIRMAN: I am sorry to interrupt you. It is not a pamphlet by Mr. Vining, but it is a report made to the Hon. Mr. Cote, Minister of Lands and Forests of the Province of Quebec, I believe, at Mr. Cote's request; and it was given to us the last time Mr. Vining was here with the permission of the Minister of Lands and Forests of the Province of Quebec.

THE WITNESS: Mr. Chairman, I only refer to it as a further indication, to my mind, of what is to some extent a misrepresentation of our position relative to those points that I have taken up by the reading of these letters.

The evidence that I believe Mr. Vining has given, is on page 1199, which I believe you have there, substantiates the report in this bulletin, which I feel in all fairness should be corrected, where he said that,

> "During March, 1936, an agreement was reached between the governments, representatives of National Trust and counsel for Messrs. Aldrich and Gefaell. The agreement as accepted by the governments and the industry consisted of two things: First, amendments to the plan regarding the basis of dividend payments, and secondly, an undertaking to the government that the new Great Lakes Company would participate equitably with other mills in such distribution of tonnage as the Government might require."

Now, the undertaking of the company, I do not think, can be subject to any such interpretation. It is clearly set forth in the letters which I have read to this Committee. This letter is dated March 24th 1936, from Mr. Thomson to the Government and is a confirmation, on the 24th, of the conferences that he referred to, that were held on the 23rd; and, as a confirmation, it points out the amendment with reference to the plan of dividend participation; but, secondly, as it states in that letter which I read to you, and which with your permission, Mr. Chairman, I will read again, to show that there was no relationship to the understanding, which I think was a misunderstanding:

> "SECOND: Messrs Aldrich and Gefaell will recommend to the publishers, whom they represent, that the contracts between them and the Receiver, under which, in a certain event, the Receiver grants a reduction of $2.00 a ton from the full market price, be amended by substituting 1st July, 1936, for 1st April, 1936, as the date when the Receiver's contracts become effective to supplant the ten-year contracts entered into by the new company. It is understood that the consent of the publishers to this amendment will have to be obtained by my clients before the return of the application to court for approval of their offer."

HON. MR. NIXON: You are not giving any of those reduced prices now?

A. No, we are maintaining the enhanced prices.

There is no relation, Mr. Chairman, to that undertaking whatever.

MR. COOPER: You say there was no undertaking that the new company would partake equitably with other mills in such participation of tonnage as the Government may require? Is that so?

A. Quite so, and there is nothing in the second part, nor in the third part whatever that would indicate any such understanding.

Therefore I claim that that misrepresents our position, and to my mind is wholly unfair; and I would further add that it would seem logically almost impossible to negotiate terms of reorganization if, before the ink was dry on the original contracts, we should have some other plan that would break and violate that contract.

HON. MR. NIXON: Mr. Rowe, have you never had any new tonnage, apart from that in the contracts which led to the reorganization?

A. Yes, we have had some new contracts.

Q. And you say that those do not come in under your original plan?

A. Yes, we had the right of extending our original customers, the publishers, the right of extending the contract, with commission of 51 percent of the publishers.

HON. MR. HEENAN: Q. Mr. Rowe, would you read that paragraph again relating to the co-operation of the Government?

A. It is the last paragraph, Mr. Heenan, of Mr. A. J. Thompson's letter to you. I will read the whole of the paragraph:

> "Both my clients and the new company appreciate that the co-operation of the Government now and in the future is of supreme importance to the success of the new company. I venture to express the hope that the resolution of our present difficulties which is now proposed will lead to a much better feeling on both sides as their interests are common. They also appreciate that it is important that the new company should work in harmony with the rest of the industry and whatever influence they have will be exercised to bring about that result."

HON. MR. HEENAN: That is the paragraph, I am pretty sure, that Mr. Vining based his belief upon that we agreed to proration.

A. His evidence did not indicate that he thought that; nor did this report to which I have referred. I think, however, sir, that we have worked in harmony with the industry, as far as it was possible for us to go in respect of our own contracts.

MR. COOPER: What was the amount of the original contracts that were approved of by the Government at that time?

What was the total, Mr. Rowe?

A. The company had the right to operate in carrying out their contracts.

Their agreement was for a minimum of 67,500 tons, or the maximum capacity of their mill.

MR. COOPER: Q. The capacity of the mill at that time was how many tons?

A. It was 90,000 tons, sir, at that time. Under the classification of the Newsprint Association, the capacity was found to be later 113,000 tons,—I believe, to be exact, it was 113,500 tons.

HON. MR. NIXON: What is your actual production now?

A. Our actual production, or our capacity?

HON. MR. NIXON: Q. Your production?

A. Our actual production has been running about 85 percent. That is not our output of shipments. Our actual production at the present time,—we are operating in anticipation of probable improvements in the industry,—

Q. 85 percent of 113,000 tons?

A. Our actual operations of shipping last month were 71.5 percent.

MR. DREW: Q. Just on that point, I think it might be well to get this point cleared up, because I see that Mr. Heenan was referring to the last paragraph of the letter, which is also referred to by Mr. Vining in his report on Newsprint Prorating, which was prepared for the Honourable Mr. Cote, and which was handed to each member of the Committee here with the consent of the Honourable the Minister of Lands and Forests of Quebec. Did you get a copy of Mr. Vining's report?

A. Yes, sir.

Q. I think there is a point on that, while you are here, which I think would be well to get cleared up, on page 44. You see, he sets out there, at the top, with two points that were supposed to be covered by the settlement. There was supposed to be an amendment changing the basis on which the "B" stock might be paid. That does not raise any misunderstanding.

> "2. An undertaking that the new company would participate equitably with other mills in such distribution of tonnage as the Government might require."

Then it goes on to review certain details of this. Then, in the last paragraph at the bottom of the page:

> "The Aldrich-Gefaell and National Trust representatives agreed to the two stipulations and the Government, in return, agreed to permit the reorganization to proceed. The next day, March 24th, 1936, Mr. Thomson returned to Hon. Mr. Heenan's office with a letter confirming the points of the agreement. The letter contained a clear statement of the amend-

ments regarding divided payments, but did not clearly state the undertaking with regard to distribution of tonnage."

That is the letter which you have read?

A. Yes.

Q. "Hon. Mr. Heenan pointed out this deficiency and referred to points in the above-mentioned memorandum which he wished to see included in the letter. Mr. Thomson thereupon explained that it would be embarrassing to his clients (Messrs Aldrich and Gefaell) to be obliged to spell out the future co-operation with the Government in this respect in a statement which would have to be presented to the publishers in the Aldrich-Gefaell group. To do so, Mr. Thomson said, would aggravate the publishers, who disliked governmental action, and he suggested that there was such a clear understanding of what would be required that it would merely be causing unnecessary disturbance to define this part of the agreement beyond the general statement in the final paragraph of his letter, which read as follows." And then he read the two paragraphs which you have read from that letter,—he left out the middle of the paragraph, but also read the rest of it:

"Both my clients and the new company appreciate that the co-operation of the Government now and in the future is of supreme importance to the success of the new company"—then he left out the middle sentence, and proceeded: "They also appreciate that it is important that the new company should work in harmony with the rest of the industry, and whatever influence they have will be exercised to bring about that result."

Then he goes on to say:

'Hon. Mr. Heenan accordingly did not press the point and accepted the above letter by a written acknowledgement written the same day. It later became apparent that the stipulation as to the new company's future conduct should have been made directly with the management of the new company, who would be responsible for it, but no management had then been appointed, since there was as yet no new company in actual existence."

I have read that because the new point was referred to by Mr. Vining while here the other day, and certain things which the Honourable Mr. Heenan said he understood.

Is it your point that these words do not represent the true understanding?

A. Yes, there evidently was a misunderstanding between the company and those who had verbally made it. I was not president of the new company at that time, and was not present. And all I have at hand is the record in the letters of the 24th March, 1936, confirming the understanding of the 23rd.

MR. COOPER: Q. Is not this the situation, that if Mr. Vining's interpretation is correct, that is, that you would participate, then you would be doing something directly opposite to what the Government had consented to?

A. Yes, that is it, Mr. Cooper. Again I would say that it would practically violate and break every covenant we made that made the reorganization possible.

To my mind, it would be a violation on almost the same day that the covenants were signed.

The understanding of working in harmony or in co-operation with the Government, I have endeavoured on behalf of the company that I represent to give the Government and the industry as much co-operation as possible.

Reference has been made in the evidence to an order-in-council imposing a penalty on the Great Lakes Company, and I think it was referred to, and probably might have left the inference that probably our company's position was practically the same as that of the M. & O. However, the order-in-council so far as the Great Lakes Company was concerned, was revoked in December, two or three months after a similar order-in-council had been revoked imposing a penalty on the M. & O.

It was the understanding that we would co-operate; but for valid reasons this was not and could not be understood as participating in the proration. However, it was understood by the Government and ourselves as co-operating to the utmost extent. I believe the Great Lakes has participated with the others to a greater extent, in tonnage, than any other mill in Canada.

MR. COOPER: Have you those figures?

A. Yes, 38,000 tons,—enough to keep the Great Lakes Company working at full capacity for four months.

When the Minister became convinced that the Great Lakes Company was doing everything it possibly could to meet the wishes of the Department, he promptly revoked the penalty by order-in-council.

I do not know that there is anything further with reference to our legal position that I can refer to with any particular enlightenment to the Committee. If there is anything further in that regard that you think I can answer, I shall be very glad to do so.

MR. DREW: Q. It is just one point that it would seem to me we should have clear, as to whether there is a misunderstanding or not. In this report of Mr. Vining's to the Hon. Mr. Cote, he speaks of two mills which are completely exempt, or two companies which are completely exempt; and then he speaks of the position in regard to over-tonnage in respect to other mills, and under-tonnage in respect of particularly the Abitibi. As I understand what you now say, your position is that you are not actually accepting any proration terms, so far as this Committee is concerned. Is that your position, or is there any modification of that. I do not mean this Committee which is sitting here, but the committee of three appointed by or for the Government, the Vining committee.

HON. MR. NIXON: That was never established as to the way that committee was appointed.

MR. DREW: I understood it was by co-operation between the Association and the Governments.

HON. MR. HEENAN: It was left as it was appointed by the Association, for the Governments.

HON. MR. NIXON: The governments have nothing to say as to the appointment of that committee?

HON. MR. HEENAN: Both the provincial governments, of Ontario and Quebec, accepted that committee as an advising committee, advising as to the condition of the industry in relation to the tonnage that each company was to ship. Their duty ends there.

HON. MR. NIXON: We do not appoint that committee.

HON. MR. HEENAN: They were appointed by the Association, but we accepted them.

MR. DREW: I thought it was reasonably clear that this committee was appointed not by the governments but with the approval of the governments of Ontario and Quebec.

HON. MR. HEENAN: Colonel, that Committee has been in existence for a long time, and then when we got into the prorating end of it, which company was to ship so much, then we accepted their figures as correct, their report to the Government monthly, we just accept their word for it.

THE CHAIRMAN: Mr. Vining, at page 1212, says:

> "I want to touch on this because here is the second stage of the committee, how it happened to continue as an instrument of prorating. The governments had stated that the industry itself must attend to the procedure involved in distributing tonnage. That is the actual mechanics. But they wished to receive reports from which they could ascertain whether their policy was being properly carried out so that measures of enforcement could be applied, if necessary. In order to provide for revision of capacity ratings from time to time, revision was necessary because new equipment was put in and the condition of mills changed. The manufacturers decided to retain the services of Mr. Paul Kellogg, the engineer who had been in charge of the original capacity survey."

MR. DREW: I am not going to argue as to the extent to which the Government approved or otherwise of that committee. So far as that is concerned, the Government accepted the existence of this committee, and from that committee they received reports with which from time to time, they have dealt with certain industries in this province.

My only point there was, I was referring to the Vining committee, not to this present committee.

WITNESS: Yes.

MR. DREW: As I understand it, you state positively that your company co-operates with the committee in every way possible, but your understanding is that you were not bound by the prorating arrangements of that committee. Is that right?

A. That is right. We feel we cannot, by the basic covenants which made the reorganization possible.

HON. MR. HEENAN: Would it not be better if you said that within the contracts, which were endorsed by the court, you are not a party to proration of that tonnage?

A. Yes, that would clarify Mr. Drew's question.

Q. If you went ahead and took many more contracts, in addition to these, you would not say the same about them?

A. No, our position then, I presume, would be that, working in co-operation with the committee and the Government, the company would be governed to a great extent by the wishes of your government.

HON. MR. NIXON: Of course the Government is interested in the proration.

MR. COOPER: Q. Is your company tied up with the old agreements?

A. Yes, in the first place there was the right of extension of those contracts, in the amounts of the contracts, which would enlarge them considerably; and also under the original covenant, that was approved of by the courts and consented to by the Government, the company had a right, with the permission of 51 percent of the publisher customers to increase their contracts to the maximum capacity of the mill.

Q. You got that 51 percent, I presume?

A. Oh, yes.

HON. MR. HEENAN: I wonder whether at this juncture it would be well to review the picture, so you would see the other side of it. There is not very much difference between Mr. Rowe and myself, but there is a story behind it.

I am glad that the Committee is getting a taste of this, because I have had it on my shoulders for quite a while.

MR. DREW: We are now talking about the Leduc committee, not the Vining committee?

HON. MR. HEENAN: Some part of the discussions,—Mr. Rowe was not directly in touch with the negotiations at that time,—he was boss of the great Conservative Party, at that time, and was not much interested in newsprint.

THE WITNESS: It was prorated too!

HON. MR. HEENAN: So that the Committee would be aware of how that came about, I think it would be well to review it in a way.

You have heard the various witnesses tell how the industry was brought out of its difficulties. The heads of the industries could not trust one another, and they had to have the Government police the companies,—

MR. DREW: Are you suggesting that they turned to somebody they could trust?

HON. MR. HEENAN: They did, and I am glad to sit here and say that their trust was well placed.

It was really over this Great Lakes Paper Company that first brought it to a head, or the McLaren Paper Company in Quebec went over to the Great Lakes customers, and we called it a steal at that time, but we have modified our language, and took about 30,000 tons of contracts that the Great Lakes Company held, at a reduced price. I do not know any other word that fits any better than "stolen" but there are objections to it.

Then the Great Lakes Company, or at least the National Trust Company, which at that time was operating,—it was evident to the Government that they would have to shut up the Great Lakes Mill because they did not have enough tonnage left to operate the mill.

Well then, the National Trust Company at that time was appealing to the Government they were going to have to close their mill because they didn't have sufficient tonnage left to operate their mill and it was at that time I went to Quebec and met Mr. Taschereau and he agreed it was time there was some agreement between the industry and the governments. He said he had tried this and failed because they didn't have sufficient co-ordination amongst the industry. So they passed the hat and got it up to pretty close to 20,000 tons and that left the Fort William mills of the Great Lakes operating.

So it was at that time that we had to have legislation if we were to have any hand in this at all, otherwise the industry would take no more notice of the governments than they would of one another. The National Trust Company decided to go in receivership under this plan. They had how many publishers' contracts?

WITNESS: Twenty-three original contracts.

HON. MR. HEENAN: And they agreed to give them their tonnage for a period of ten years with a further extension of five years at the end of the ten. The industry got alarmed at the situation because of this dividend which was they claimed, and there is no doubt about it, a profit reduction—$2.10 or $2.20 a ton reduction. The industry of Ontario fought that situation. It came up to the eleventh hour, the National Trust Company made a new contract with these twenty-three publishers. Don't forget the price of newsprint had started to go up; I think it was around about $41 a ton, it had been down to forty. But in the event of the court not giving approval, and I think they said the Government also, to this new move of reorganization the Great Lakes Paper Company

undertook to supply these publishers anyhow at a price of $39 a ton. Everybody got alarmed at that because it goes without saying it was done for the purpose of scaring everybody, and after further negotiation it was agreed that they would not pay this dividend until the price of newsprint reached $45.30 in Toronto, and it is on those points that the disagreement rests as to whether or not they meant proration. There is no doubt about it, what was intended, they had these twenty-three publishers with their contracts over in the United States, they agreed to this $45.30 and before they could go to the court this $39 price was going to go into effect. We didn't have time to go and see the publishers and talk the matter over. Well, that put proration in, or as I wanted to put it, take from and give to other companies but work on an average, but working in harmony in the industry would do the same thing. In other words, if they would spell it outright they mightn't get the approval of these twenty-three publishers and that would bring it down to $39 a ton. I accepted that, unfortunately, realizing the difficulty we were going to be up against, and you mustn't forget proration then was much more distasteful to the United States than it is to-day—it is distasteful enough yet. So we accepted this word "harmony" in place of proration and there is where our difficulty rests. So that Mr. Vining is right in one respect, the industry represented by Mr. Vining and the heads of the industry, the Abitibi and all these fellows, were around there in these discussions. They may not have been taking part in the discussions, but I would tell them how we were getting along, and the way that I wanted there was going to be no difficulty about it at all, they would give tonnage up when they were over the average and take tonnage when they were under the average, and so on. So I took the word "harmony" and I found out as we got along a little later and Mr. Carlisle was made president of the new company he never heard of the word, it wasn't in his dictionary at all, and I found out later from some of the directors they had never heard of such a discussion. So there you are, that is how the mixup occurs. I thought the Committee would be well to have the whole story and see how it was built up from one little start to where it is to-day. I still believe that some arrangement can be made with the Great Lakes to put them into proper position without breaking their contracts, by allowing them to fill those contracts. The rest of the tonnage if we are going to keep prorating over and above this contract tonnage should be prorated.

MR. DREW: Well, then as I understand it, you have said your recollection is that whether you call it proration or call it harmony or call it adjustment between the companies you understood that there was to be some adjustment of tonnage.

HON. MR. HEENAN: Yes.

HON. MR. NIXON: But Mr. Rowe says they are already giving them 38,000.

HON. MR. HEENAN: Q. Yes, but it is fair to say that that is over and above the tonnage you have already received in the court?

A. Yes. It was tonnage that we could allocate by straining every possible point without the outright violation of contract.

MR. DREW: Q. Just to close that point out, having regard to the other

evidence we have had, subject to the interpretation of your own company's position in connection with this specific contract have you any objection to the general proration as applied to the industry? I don't want to ask you a question that embarrasses you as head of this company, but the thing we are discussing is what recommendations should be made as to the relationship of the industry to the individual, and I think as the head of one of the industries we should have your opinion whether it is the fair way to handle the situation?

A. In answer to that I wish to point out, and prefer that you accept my observations as one to some extent not directly involved in the proration policy, because of the reasons I have outlined. Therefore my observations are merely my individual opinion of proration: I believe it has helped to divide the output of Canadian mills probably to the social advantage of a lot of different communities. I believe it can also be credited with having maintained reasonable price protection against the dominating influence of powerful newspaper purchasing corporations during a serious depression. I believe it might be classified as a more or less temporary expedient to meet the influence of these powerful interests that had pressed the price down to ridiculously low level. I think it can be said to be more or less of a relief measure in a time of depression.

For the present I don't think either of these problems is as serious as when proration was inaugurated. Conditions are improving. There is not the same danger from powerful purchasing interests upsetting the market as at that time. On the other hand I think the proration policy cannot be credited with selling any additional newsprint, which is essential to the progress of our industry. Neither has the proration policy assisted in improving our good-will position with our present and prospective customers in the United States of America. I think this is evidenced by the fact that during the time of depression and during which time when we were sadly lacking in sales of Canadian newsprint certain developments have occurred that challenge the serious consideration of not only your Committee but everyone interested in the newsprint industry. During this period that I refer to, I think this is common knowledge to you all, that southern mills have been established and a substantial expansion of newsprint output from Scandinavian countries. During the same period I refer to the United States of America have increased their imports from Scandinavian countries until last year they imported 769,000 tons of bleached and unbleached sulphite, 548,000 tons of sulphate and 300,000 tons of newsprint from overseas markets. I therefore feel that is highly essential that we develop our efficiency in both the direction of sales and production to meet the serious aftermath of the war that these tendencies would indicate. In my own personal observation again I would say that I wish to merely point out that the proration policy has done nothing to combat any of these tendencies. It has been since proration has been in practice in Canada the American Government has assisted with public funds certain newsprint manufacturing developments in that country. In my opinion an interprovincial joint control of output and sales might very easily invite further retaliation from the United States Government either in the form of further subsidies to such companies or even more damaging customs regulations. In other words I do not believe that state control of a major export product competing in a world market can possibly strengthen our good-will relationships with foreign customers or indeed our general trade relationship and understanding with the country itself.

In the face of the opposite view I believe our efforts should be directed towards

the lowering of our costs and the widening of our sales rather than any policy tending to maintain high costs and restriction of sales. To each of these I believe it will require an initiative that has not to say the least been encouraged by a proration policy. I think that summarizes my own somewhat carefully considered opinion of proration.

MR. COOPER: Q. What have you to suggest as a substitute that is any better?

A. Well, not feeling legally capable, as representative of a company, to enter into the present prorating policy, I would be reluctant to suggest what might take its place. I am only pointing out some of the weaknesses that I believe are inherent in the present policy and some of the advantages that we have achieved from it.

MR. DREW: Q. Summing it up, your opinion is that the best way to meet the competition that is bound to develop after this war is to increase the efficiency of the industry rather than putting an umbrella over it?

A. Yes, sir. That is about as neat as you can put it.

HON. MR. HEENAN: Q. Using Col. Drew's words, if there wasn't an umbrella put over the industry and kept over it what is there to stop them going out and cutting prices again and putting your company into bankruptcy again—they did that once before?

A. Yes, sir. Well, I think that whether we can anticipate with any pleasant satisfaction or not that that day is rapidly approaching when we are going to be forced to sell newsprint for less than we have sold it for if we are going to meet the competition that is promised us as the aftermath of the war in such situations as we have and I think an unnatural protection of what might be termed over-capitalization and obsolescence ——

MR. COOPER: Q. Why would the competition after the war be any greater than it was before?

A. Well, if it is as great, Mr. Cooper, it is very serious, unless the market is substantially enlarged.

HON. MR. HEENAN: Q. Suppose there was no umbrella kept over this industry, Mr. Rowe, what is to stop the various manufacturers going out and doing the same as they did before, enter into contracts with publishers with what has been termed the most vicious clause that was ever included in any agreement, that is the interlocking clause to say that they agree to take tonnage from some manufacturer provided that if there is anyone else in that same territory has got it at a reduction then theirs will automatically be reduced and bring it right down from $50 a ton to about $40? You see there is one point that I didn't make there, if you would realize the seriousness of the situation: these interlocking contracts so-called had this vicious clause in them. When the National Trust Company took the Great Lakes out of receivership the price of newsprint for the first time in the year started to rise and got from forty-one to forty-one-fifty or something like that. The agreement with the

Great Lakes was to supply these twenty-three publishers at $39 a ton. Now that ninety-ton mill as it was at that time, the product of that mill sold at $39 actually put down the price of three million tons in Canada, so you see how serious it was; that is $6,000,000 difference in Canada at $2 a ton. That is why I am asking, Mr. Rowe, now if there was no umbrella held over it what is to stop them doing that same thing again, scribbling the price away down till everybody is in receivership?

A. That is somewhat difficult to answer or to anticipate. It is, however, affected by the old law of supply and demand and I realize that it has worked both ways so far as the newsprint industry is concerned because I can well recall before I was connected with the Great Lakes many years ago when newsprint was selling for over a hundred dollars a ton and I feel that probably it is due to the fact that I have been accustomed to selling some raw products for what the customer would pay, and I have seen some experiments in wheat and I have observed some in the newsprint industry and can well recall that in both instances we have had the extreme high and in each instance we have suffered the extreme low and I am still very doubtful if the artificial means of state control as you might term it can give us long-term stability and progress. The tonnage that I have referred to of sulphite and sulphates and newsprint that the United States of America have bought during the years that our sales were falling is to my mind, again I would say, a challenge to our efficiency and to our costs. We have boasted for many years of the bountiful raw resources that we have, the great waters and great water powers, and it is no reflection of a compliment on our Canadian newsprint industry if we cannot compete more effectively than to allow that tendency to develop to where our mills are so far below capacity.

MR. DREW: Q. You say the Federal Government in the States at the present time are supporting this southern pine development, are they, financially?

A. Yes, sir.

HON. MR. HEENAN: They loaned them $3,000,000. But if I may say so that is no evidence that the United States Government or the United States investors wouldn't have dealt with Ontario anyway whether we had proration or not.

WITNESS: I wouldn't want to charge that it was a straight retaliation on our proration policy.

MR. COOPER: Is that all on that point?

MR. DREW: Yes.

MR. COOPER: Q. Where do you get your power for your company, Mr. Rowe?

A. Ontario Hydro-Electric.

Q. Your contract is direct from the Hydro-Electric Power Commission?

A. Yes.

THE CHAIRMAN: Q. Is it with the Provincial Hydro-Electric or the local commission at Fort William?

A. No, it is with the Provincial—direct with the Commission here.

MR. COOPER: Q. Do you care to tell us what proportion of your cost of production is power?

A. I would think, Mr. Cooper, approximately $4 or $4.25 a ton.

Q. Does your company export any pulpwood to the United States?

A. No, sir.

Q. It does export sulphite, does it?

A. Yes, sir, some.

Q. We have had quite a discussion about the advisability of the policy of exporting pulpwood to the United States. What is your opinion of that?

A. Again, not being responsible to a company that is in the export business, I would preface it by saying that my own personal observations are that I think so long as we have unemployed men and over-mature trees, a limited degree of pulpwood export is sound both economically and from the social interests of different communities although during that our Government might be well advised to achieve the objective of a gradual limitation of that export and subsequent utilization of these raw resources here in Canada. I think there is a tendency in that direction that has been continued right down through the years borne out by the fact that to-day we export only about five per cent of the United States' requirements of raw pulpwood and we export from sixty-five to seventy-five per cent of their newsprint requirements. I think it would be a hardship at the present time to prohibit the export of pulpwood entirely as I think even the consumers of the raw pulpwood who assure the Government that it is not being used in the manufacture of newsprint in the United States—is that no so, Mr. Heenan, they assure you it is not being used in the manufacture of newsprint?

HON. MR. HEENAN: Yes.

WITNESS: That they might very well secure it from the west coast resources of the United States or probably from the southern district, the small quantity that is shipped, and I think especially now under war conditions when the exchange situation is as it is and the unfavourable balance of trade with the United States of America that it helps considerably with other exports of commodities to improve our very necessary purchasing power with the country that we have to buy so much from. I think though that there should be a steady effort towards the gradual limitation of that export and the encouragement of its utilization in Canada.

MR. COOPER: Q. Where do you get the pulpwood for your mill, Mr. Rowe?

A. Off the Great Lakes owned limits, Mr. Cooper, mostly.

Q. You don't buy from settlers up there?

A. Oh, yes. Chiefly from the limit of the company but some from the settlers. The company has adopted the policy of purchasing from the settlers a proportion of their requirements similar I believe to what most other companies do, from the local settlers. In the case of the Great Lakes Company I think we purchase from settlers amounts of between twelve and fifteen thousand cords per year.

Some small lots are purchased from independent operators besides settlers, but the chief supply is from the Great Lakes limits—Black Sturgeon limits, chiefly, so far.

MR. COOPER: That is all the questions I have, Mr. Chairman.

THE CHAIRMAN: Any further questions?

HON. MR. NIXON: Q. What do you say you make in addition to newsprint?

A. Just unbleached sulphite—news grade unbleached sulphite.

Q. Do you use any other wood in that or is it the same?

A. It is practically the same wood. I think in that regard that spruce is considered to make better sulphite and therefore about the same grade is used by that mill for sulphite purposes as for news grade, chiefly spruce.

MR. SPENCE: Q. At what percentage of capacity are you operating?

THE CHAIRMAN: Their sales were 71.5 last month.

HON. MR. HEENAN: Q. Some months, Mr. Rowe, you manufacture in the winter and store and ship in greater abundance when navigation opens?

A. Yes, sir. And at the present time, to probably clarify the question you ask and also Col. Drew: Shipments last month were 71.5 but at the present time we are operating at greater capacity than that with the idea of storing certain quantities to ship later in the year, and it is a matter of operation planning, for it is at near capacity so far as operation is concerned.

MR. DREW: Q. Do you know whether that is common throughout the industry?

A. I don't know, Col. Drew. I presume where storage facilities would permit it would be the policy of other companies to manufacture sufficient for their general monthly requirements of their customers so that sufficient storage should be ahead in order to probably take advantage of water freight rates and so forth.

MR. SPENCE: Q. You ship more in the fall?

A. Late in the fall, November, in anticipation of winter requirements.

MR. DREW: Q. You mean that the production above your actual sales is more a question of taking advantage of the seasonal shipping facilities rather than anticipating higher orders?

A. Oh, yes, yes. Then in the winter months the same storage facilities are filled again to capacity for water shipment in the spring. We are not also unmindful of the promising prospects of some increased demand as well.

THE CHAIRMAN: All right, Mr. Rowe. Thank you.

WITNESS: Thank you, Mr. Chairman.

THE CHAIRMAN: Mr. Thompson, please.

Mr. Thompson, you are employed by the Department of Lands and Forests?

MR. THOMPSON: Yes, sir.

THE CHAIRMAN: What is your position in the Department?

MR. THOMPSON: Statistician.

THE CHAIRMAN: I understand you have certain figures to give the Committee.

J. B. THOMPSON sworn.

HON. MR. HEENAN: Q. How long have you been in the Department, Mr. Thompson?

A. Since February 2nd, 1925.

Q. You were secretary to Mr. Lyons at that time?

A. Yes, sir.

Q. And later secretary to Mr. Finlayson?

A. Yes, sir.

Q. And then made statistician?

A. Yes, sir.

HON. MR. HEENAN: Q. Mr. Chairman, in view of the discussion relating to conservation of exports and all that kind of thing I asked the Deputy to give instructions to Mr. Thompson to make a survey canvassing the pulpwood exported and imported so as to give the Committee an additional picture, better than we had given them up to the present time.

Q. And upon Mr. Cain's instructions you canvassed the different situations as regards export and import?

A. Yes, sir.

Q. Will you give the Committee the result of your findings?

A. Well, sir, the figures that result from the information we sought, some we had on file and some we supported by correspondence with companies that are operating in Ontario, and over a period of years it is revealed that ——

Q. How many years?

A. Well, I have nine here, sir; the total of net exports for the nine years allowing for these imports is 226,058 cords, that is the total, and that gives an average over nine years of 25,117 cords per annum.

Over the five years the aggregate shown by the Dominion Bureau is 1,601,377 cords. The exports appear in the Departmental report, in 1938 there is a complete list of them; 1939, which I have here, could not appear, but all but the 1939 I believe appear in the 1938 report.

The exports of pulpwood from Ontario for 1939 according to the present figures—I don't think it will be necessary to revise them—are, from Crown lands 258,635, and from private lands exportable, wood normally exportable, 174,506 cords.

Over the period of the last five years, which I have checked very carefully on this, owing to the fact that statistics are hard to prepare and hard to obtain I had to form an estimate on the past year to get anywhere near it, but it jibes, and for 1935 for instance the figures would be 271,000 and in 1937 they went up to 418,000—these are odd figures, just approximations.

MR. DREW: Q. 1937?

A. Yes, sir. These are imports, Col. Drew, I am just explaining that during the years these figures vary and I have the net figures here to show what came into Ontario each year as against the total exports.

Q. Where would most of that export come from?

A. Oh, from the Province of Quebec.

Q. Have you any idea of what percentage it is roughly?

A. Well, what year do you want? It might vary from year to year. I would have to estimate that, I wouldn't want to make a blind stab at it.

THE CHAIRMAN: Take last year.

MR. DREW: Q. The last you have, 1938?

A. Well, 1938 the imports are about 270,000 and out of that 270,000 about 235,000 or 240,000 would come from the Province of Quebec.

THE CHAIRMAN: Q. And the balance from Manitoba?

A. No, sir. There would be some from Manitoba, it wouldn't be all from Manitoba.

MR. DREW: Q. Where would most of it on the statement come from?

A. Well, the most of it comes from Quebec.

Q. But I mean the most of the balance—British Columbia?

A. From the United States.

Q. For 1938 you have 32,000 coming from the United States, 236,000 coming from other provinces?

A. Yes, sir.

Q. How much of it do you say would be coming from the Province of Quebec?

A. Well, out of that 236,000 I would say that the bulk came from Quebec, there are small quantities from Manitoba, and I am not sure but I believe in that year there was some 200 and some odd cords from Saskatchewan but I would have to look that up to make sure.

Q. Where is that shipped from and to, mostly?

A. There are no customs barriers between provinces as there are between countries and the result is that we are limited in finding out things without going to a lot of expense and it is just hard to tie it up exactly where it comes from, but, for instance, the Booth Company at Ottawa bring a lot of wood in and I try to prepare a record. The Abitibi for instance at Iroquois Falls, I can prepare a statement to show just some of the flow.

Q. There is rather an interesting angle to that, Mr. Thompson, because you see it means there is a very large importation of pulp logs into Ontario from another province and there would appear to be only one of two explanations for that, either it is because the location of the mills makes it natural to draw those pulp logs from forest areas on the other side of possibly the very same river that the mills are on, or it means that there are lower costs in another province which make it possible to deliver that pulpwood here cheaper, and in considering this whole problem while it may not actually get into the question of pulp mill administration it would throw a rather interesting light on that, in view of the general theory, where that is being consumed and where it is being received from. You follow my point, do you, Mr. Thompson?

A. Yes, sir.

THE CHAIRMAN: Q. In the case of that wood coming from Quebec, most of it as I say comes from the company's own limits?

A. Yes.

Q. The Booths have very large limits on the Quebec side?

A. Yes, sir. Howard Smith for instance sell quite a bit of Quebec wood as I can show you here, I brought a few from the file.

HON. MR. HEENAN: Q. Ontario Paper Company?

A. Yes, sir, Ontario Paper Company. Ontario Paper Company here in 1939 got 138,000 odd cords and Howard Smith 66,000 cords.

THE CHAIRMAN: Q. I note, Mr. Thompson, there were 326,000 cords that came from the United States in 1938. Where would they go to?

A. Well, sir, I believe it goes to Fort Frances.

MR. DREW: Those imports, I understand, from the United States are almost entirely imports by the M. & O. Company.

A. That is my understanding, Colonel, but I haven't any ——

HON. MR. HEENAN: I think that is right.

THE CHAIRMAN: And from Manitoba we got only 6,000 cords in 1938.

A. Yes, sir.

MR. DREW: Mr. Thompson, when we were getting evidence the other day in regard to exports, I noticed that we were given a figure of over 700,000 cords of exports from the Province of Ontario, and it was stated that those figures were obtained from the Dominion Bureau of Statistics. I wondered where the difference between those figures lies. Your total for 1938 is 631,000. Does that include Indian lands?

A. No, sir. I could explain that if I may be permitted to explain the workings of it.

Q. Yes?

A. The Dominion Bureau have access to the records of the Customs and Excise Department; consequently they have a complete record of everything that goes out of a certain area, or port of export or port of entry, as you may wish to call it; and our information comes direct from our own field staff. There is a system of clearances in order to control export pulpwood; and we get first hand information so far as the pulpwood that is leaving Ontario, from Ontario lands, but we have no record of pulpwood that leaves Ontario from Quebec or Manitoba lands, and that might apply to Saskatchewan. Anywhere if wood is brought through Quebec and into Ontario where there is no customs boundary and crosses Ontario and goes out at the border, presumably the clearance would be attached to the manifest and it would go, and, if it was not, it would not. So that there is a variation there which is very hard for us to break down.

Q. Would it be possible that the figures submitted by the Dominion Bureau

of Statistics, and which show nearly 100,000 cords more, might be based on figures of re-export?

A. Yes, sir, they might. We have compared the figures from time to time for years, and of course we established a long time ago—I can't tell you just when, because years go by and one is so much the same as the other—that there was this difference between our figures. But our figures are correct so far as Ontario is concerned, but theirs are not. Their figures do not reflect the accurate figure so far as Ontario's actual timber is concerned.

Q. You are satisfied, then, that yours are the correct figures in regard to export?

A. Oh, yes, I believe they are. They come from our field staff, and we have nothing to do with the customs excepting we issue these clearances under which the wood is permitted to cross the border.

Q. Can you think of any other explanation for the difference except the fact that included in the figures of export there may be some of the wood imported from Quebec?

A. Well, returns for statistical purposes come from different sources, and sometimes they are dated to-day and sometimes they are dated to-morrow. Then there is wood in transit maybe at the end of the month when returns are made up. There are different ways in which a variation of figures might easily be accounted for. And we just have to take the best we can get to make the real picture from the information that reaches us.

MR. SPENCE: Does the exporter have to purchase the clearance?

A. The clearance issues if the wood is exportable. The clearance is a recognition on the part of the Department that that wood is free to cross the border, and if it has not got a clearance it won't get across, if everybody does their duty.

Q. That question of mine had reference to the 25 cents a cord.

A. That is a different matter.

MR. DREW: Mr. Thompson, have you the figures of employment in the industry, both in the woods and in the mills?

A. Yes, sir, we have.

Q. Have you those with you?

A. I doubt if I have the figures you want in this file, Colonel. Each year, as the returns come in from the mills, we set up not the man days, just the number of men in the plant and in the bush by winter and summer. So we know just about what each one is doing. Then once a year the district foresters report to us, and we get a complete picture of the bush operations for that district for that year.

Q. Independent of the company?

A. Independent of the mills.

Q. Yes.

A. These are the licensed bush operators. And those can be set together for the purpose of this Committee or any purpose at any time.

Q. Could you do that reasonably quickly?

A. Yes, sir, I could get the up to date figures. As a matter of fact, in the report on page 16 the bush operation figures are given. But they do not include the mill figures. I have the mill figures, and I could provide a statement, for instance, to meet that.

Q. Could you supply a statement giving the corresponding years, for instance?

A. For the mill operations?

Q. You have prepared a statement showing the exports and imports; could you give us a statement for the corresponding years showing employment?

A. Yes, sir.

Q. In the various industries. I mean by that both mill operations and bush operations?

A. Yes, I could provide that.

Q. Then if you would prepare that so we can have it as a matter of record. The report does cover bush operations, but probably you have them for another year after the year shown in this report.

A. Yes. It is a slow process. You see, the operating season terminates with the fiscal year, but it takes time for the scalers' reports to get into district headquarters, and their joint returns have to come into head office and be checked and set up properly so that we can arrive at a figure so far as that kind of thing is concerned.

Q. Have you them for 1938 and '39 yet?

A. Yes, sir.

Q. Could you conveniently have those for us to-morrow?

A. Yes, sir, I can have them here to-morrow.

THE CHAIRMAN: I think we should file as an exhibit the statement from which the witness was reading.

EXHIBIT No. 44, Filed by Mr. Thompson: Statement showing Ontario pulpwood exports and imports for the years 1930 to 1938 inclusive.

Q. Just one more question before you go, Mr. Thompson. Colonel Drew

was asking you about the difference in figures given in the 1937 reports and the figures given by the Dominion Bureau of Statistics. Is pulpwood from the Indian lands included in your figures?

A. No. We have nothing to do with that land.

Q. You do not know how many cords are cut from Indian lands in the Province of Ontario, you have no record of that?

A. No.

Q. So it would not be included in the figures given in the 1937 report?

A. No, sir. The Indian lands are separate and distinct. They are not Ontario lands.

HON. MR. NIXON: You are not asked to give clearances in any way?

A. No, sir. Our wood is a different proposition altogether.

MR. DREW: Just before we leave that, would it not be of value to have that information?

A. From the Indian lands?

Q. Yes.

A. If we controlled the Indian lands.

Q. Well, I am only thinking of this, that to complete the composite picture it is necessary to take into consideration all the lands on which timber is cut whether they be under the exclusive control of the provinces or of the Dominion?

A. Yes, sir, that is true. We have always felt, apart from that, that we should absolutely know about our own business, which is our own forests; and we kept very close tab on what was happening there so far as these figures are concerned, at least we tried to do that, so that we would have the picture of Ontario's wood.

Q. I would think it would be an advantage to have those figures available because it is very difficult to form an opinion of just how important the cutting on Indian lands really is unless these figures are before us. Have you any idea at all of what it would amount to?

A. We have the total wood that is exported out of the province each year by the Dominion Bureau which must include everything, including the Indian lands and what comes from Quebec—no matter what its source may be, there is the picture. I believe you said there was a difference of 100,000 in a year, which would all be included there.

Q. Yes.

A. At least, we know that much about it. To trace each cord, well ——

Q. I cannot feel that there is such a complete separation between Indian lands and other lands, although it is true the Indian lands are under Dominion jurisdiction, because it all represents a part of that composite picture which it seems to me we should understand in determining the extent of exports from this province. After all, these Indian lands are among other lands which have to be controlled and protected by the provincial authorities; and I would think that not only the amount of the exports but the condition of those Indian lands are things that fit into the whole picture of forest control in the province of Ontario.

A. That is quite true, sir, but we know what the total is and we know how much of it comes off our land that we control; and, if we need to go farther, well, we can go farther.

Q. Yes, but you see what I have in mind.

A. Yes, I do.

Q. I understand you are merely acting in the capacity of statistician, but what I have in mind is this; for instance, drainage, fire hazard and all these other things enter into the question of the method of handling these Indian lands, and, while it is true they are under the jurisdiction of the Dominion Government, we in this province are directly concerned with whether the methods employed on these lands might adversely affect drainage conditions or erosion or any other factor connected with the Provincial Department of Lands and Forests. For that reason I would have thought that statistical information in regard to these Indian lands might have been of assistance to us.

A. Well, it might be of value. We have to pretty much stick to essentials, Colonel Drew, and it may be that that is essential. But so far as I know there is nothing to the prejudice of the Department of Lands and Forests in the holders or owners of the Indian pulpwood exporting it or how much they export. We could soon install machinery to provide us with a ready picture all the time if it became necessary.

THE CHAIRMAN: All right. Thank you, Mr. Thompson.

MR. COOPER: Mr. Chairman, Mr. De Wolfe undertook to file a certain brief when he gave his evidence. He is here to-day for the purpose of filing that brief. This is the brief, and he will explain what it is.

THE CHAIRMAN: Yes, Mr. De Wolfe?

MR. DE WOLFE: That brief was discussed in the evidence I gave on the 25th, and I said I would furnish it. I did not have it with me that day, so I brought it down. It is in connection with freight rates on pulpwood.

THE CHAIRMAN: Oh, yes. Then this brief will be filed as Exhibit 45.

EXHIBIT NO. 45: Filed by Mr. De Wolfe: Brief concerning freight rates on pulpwood.

THE CHAIRMAN: Have you any further witnesses this afternoon?

MR. ELLIOTT: Mr. Draper has certain information that we requested, but we can call him later.

THE CHAIRMAN: Then we shall adjourn until to-morrow morning at 10.30 o'clock. We hope to be able to finish to-morrow afternoon.

At 4.30 p.m., Monday, May 6th, 1940, the Committee adjourned until Tuesday, May 7th, 1940, at 10.30 a.m.

THIRTY-SECOND SITTING

Parliament Buildings,
Tuesday, May 7th, 1940.

Present: Honourable Paul Leduc, K.C., Chairman, J. M. Cooper, K.C., M.P.P., Colonel George A. Drew, K.C., M.P.P., A. L. Elliott, K.C., M.P.P., Honourable Peter Heenan, Honourable H. C. Nixon, W. G. Nixon, M.P.P., F. R. Oliver, M.P.P., F. Spence, M.P.P., Dr. H. E. Welsh, M.P.P.

THE CHAIRMAN: Order, please.

I am in receipt of a letter from Mr. de Carteret, who was here the other day, reading as follows:

"Dear Sir:

On May 1st, when I appeared before your Committee, the Hon. Mr. Heenan asked me the following question:
(Page 1815 of Record):

"Have you any idea how many cords of settlers' wood are shipped annually from Quebec?"

My reply to the above question was incorrect, in that the figure which I mentioned of 1,000,000 cords, represents the approximate total of pulpwood exported from *the whole of Canada* to the United States during each of the years 1938 and 1939.

Exports of pulpwood to the United States from the *Province of Quebec*, as compiled by the Department of Trade and Commerce, Ottawa, as are follows:

1936	373,961 cords
1937	379,679 "
1938	233,328 "
1939	255,617 "

The figures just quoted include wood cut on private lands other than settlers' lots.

You may wish to have these corrections included in the Record.

Sincerely yours,

S. L. DE CARTERET.

I might explain this is a duplicate of a letter that was sent me by registered mail, and which has not reached me, but which I will file as soon as I get it.

Mr. Sensenbrenner.

F. J. SENSENBRENNER Called:

MR. DREW: Q. Mr. Sensenbrenner, just as a matter of putting the record in order, your residence is where?

A. Neenah, Wisconsin.

Q. And you are associated with what companies operating in Ontario?

A. Spruce Falls Power and Paper Company Limited, President of the Company.

Q. Yes?

A. Indirectly, Pulpwood Supply Company Limited.

Q. How long does your active connection with matters concerned with our forest products in Canada go back, Mr. Sensenbrenner?

A. 1920.

Q. And was that connection with the Spruce Falls?

A. Spruce Falls.

Q. How far back does your connection with woods operations, or development of wood products in the United States go back?

A. Fifty-one years—1889.

Q. And that began where?

A. At Neenah, Wisconsin—in Wisconsin.

Q. You have been constantly then, associated with Neenah, Wisconsin, conditions for fifty-one years in the production of wood products of one kind and another?

A. Paper and pulp.

Q. Now, Mr. Sensenbrenner, rather than starting in by a series of questions with regard to certain specific matters that I have in mind, I would be very glad,

if out of your length of experience, you would tell us something of the development of the pulp and paper industry, if you feel like doing that, in your own words, and making any comments which you may have to make in regard to it, because, while your residence is in Neenah, Wisconsin, your industrial activities have been associated for some time in Ontario.

Just before I leave it at that point, may I say this, that we have been considering this whole problem from various aspects here, and there seems to be fairly general agreement that, although an effort is being made by the industry to right certain conditions which have caused difficulty, much remains to be done, and that there are certain diseases peculiar to this industry which need some remedy, if that remedy can be found, and if you would prefer that I should ask you a series of questions at the outset, rather than doing it that way, I would very gladly do so, but it occurred to me, in view of your long association with the industry first of all in Wisconsin, but also now in Ontario, that you might possibly prefer to describe your contact with that industry and the developments that have taken place, and give some suggestions as to ways in which, in your opinion, it may be improved, both from the point of view of the man working in the mills and the investor whose money, after all, is necessary, if these industries are to continue?

A. I would be very glad to move along the latter course, and am glad that you suggested it.

While I was away on holiday throughout the first session of your Commission, I was informed on my return, that Pulpwood Supply Company was the subject of considerable discussion, and some two weeks ago, I think, or two and a half weeks ago, I wrote to the Honourable Chairman of your Commission offering to come up here, after calling attention to that fact, and testify as to that particular interest and perhaps from that branch off into our Spruce Falls situation, which might cover part of the general ground you have suggested.

As to Pulpwood Supply Company: In September, 1936, in passing through Toronto on my way to Kapuskasing, I called on the Minister of Lands and Forests, Mr. Heenan, in accordance with my general custom, if I happen to be in Toronto to transact business here, or on my way north to Kapuskasing, I will call at the Parliament Buildings to pay my respects. The main situation at that time was, that he told me they had an area of land, the Long Lac concession so-called, the agreement for which had been executed some twelve or fourteen years prior, but nothing had been done with it, because of its inaccessibility, and he made certain proposals for my consideration as to taking over that concession, subject to the privilege of exporting some of the wood, and that it involved the provision of a waterway to get it down to the lakes. It didn't appeal to me, but he asked me to give it consideration while I was on my way to and up at Kapuskasing, and to call in on my way back. We had some further discussion, at which, in very general terms, the conditions under which we might take that area over were outlined. I told him I would go home, talk it over with some of our people, and after we had reached a tentative conclusion, I would come back to Toronto and see if we could work out the details of an agreement. I did come back after the lapse of a week or ten days, and we finally worked out an agreement, which among other things, provided for the right to export not less than 100,000 cords of wood per year. It provided for the creation of this waterway to make the floating of the wood down possible.

In the course of the discussion it was suggested that the estimated cost of providing that waterway would be somewhere between three and four hundred thousand dollars.

After we had worked out the agreement, reduced it to form, I took it back to Wisconsin with me and interested some of the other paper manufacturers in Wisconsin and one or two in northern Michigan to associate themselves with us in the undertaking.

Early in 1937, I don't remember the exact date or month, I was called to Toronto and informed—this was, mind you, after I had committed these other Wisconsin and northern Michigan paper millers to associate themselves with us in the enterprise—that owing to change in the conditions we would have to submit to an amendment to the agreement. The amendments proposed provided for the right to take out an amount of wood not in excess of 100,000 cords; it provided for re-leasing during the original concession about 800 square miles. It provided for the building of a chemical pulpmill, sulphite pulpmill, that is to start the building of it, by September 1st, 1939, subject, however, to the condition that if the waterway was not completed in time to enable us to operate in the timber the date by which we would have to start building the mill would be automatically extended. It provided further that we would have to amortize the cost of the creation of the waterway at a stipulated amount of $300,000 and at the rate of five percent per annum, to amortize it at that rate and on that basis, and to pay interest on that sum of $300,000 at the rate of three percent per annum.

After the execution of that amendment of the agreement I took it back to Wisconsin and either five or six of the paper companies that had associated themselves with us in the enterprise and had committed themselves to it had dropped out because of the change in the terms of the agreement with the Government.

I succeeded in inducing two other paper manufacturing companies not located in Wisconsin or Michigan to join us in the enterprise and we proceeded with it.

MR. DREW: Q. So that when that point was reached, Mr. Sensenbrenner, who then were the interested parties?

A. How is that?

Q. Who then were the interested parties at that moment, Mr. Sensenbrenner?

A. The Kimberley-Clarke Corporation, Meade Corporation of Ohio, Hammermill Paper Company of Erie, Wisconsin, the Wisconsin River Pulp and Paper Company and the Nekoosa-Edwards Paper Company.

We have been manufacturing sulphite pulp at our Spruce Falls mill since 1921 and in our Wisconsin mills for a longer period than that, but basing it on the experience of the Spruce Falls mill from the time we started manufacturing at that plant to the present time over the entire period we have not made a dollar of return on our investment. In fact we lost money. The experience

we had in our Spruce Falls mill I think was not different than that of the chemical pulpmills in Canada pretty generally, and it was due to the fact largely that in European countries, particularly the Scandinavian countries, they can produce pulp at a much lower rate than we can.

I am told on pretty good authority that the average wage rate in Norway is thirty-two cents per hour, Sweden thirty cents per hour, and in Finland sixteen and a half cents per hour, as against an average rate of sixty-four cents per hour in Canadian mills.

Then from the demoralized exchange situation due to going off the gold standard, in 1931 I think, that created havoc too among the Canadian as well as the United States pulp manufacturers. As an illustration: Swedish exchange in terms of the United States money, or United States money and at that time Canadian money too, although their exports are chiefly to the United States, Swedish money in terms of United States money, or United States money in terms of Swedish money was at a premium of forty percent. They could undersell Canadian and United States manufacturers for shipment to United States market twenty percent of their cost; they could undersell their cost twenty percent and still make a profit of twenty percent. They were actually delivering sulphite pulp at Manitowac and Green Bay, which are ports near Neenah, Wisconsin, the Fox River Valley so-called, at $28 delivered, which was from ten to thirteen dollars per ton less than the cost of manufacture in the United States, and probably practically that in Canada.

The question may be asked why in view of that condition we submitted to the amendment of our agreement with the Government and went ahead and built houses, camps, bought equipment and the like. Some of you gentlemen will remember—it may have been disclosed in the testimony which has already been given here—that there was a bulge in the price of sulphite pulp late in 1935, 1936, and it extended into 1937. We hoped that in view of that bulge it might prove to be permanent, that general business conditions especially in the States, who are large buyers of pulp from both Europe and from Canada, might continue at the rate of late '36 and '37, and that we could make good on the provision of our contract requiring us to build a pulpmill beginning with September, 1940.

As you gentlemen know, a secondary depression struck the United States late in 1937 and we have not recovered entirely from the effects of that up to date. Meantime has come the war. I am going to touch upon probably what is prominent in the minds of you gentlemen, and that is whether or not we are going to start building that pulpmill September 1st, 1940; that is the time that we ought to start building under the terms of the contract; and it may be assumed that because of war conditions and that there is another bulge in the price of sulphite and chemical pulps generally that we ought to do it. I have no faith that the present conditions in the pulp market will be maintained after the war than that from 1921 to 1939 we made no profit in our Spruce Falls pulpmill.

Besides, to build a pulpmill under present conditions of high cost of equipment, high cost of buildings, we would probably require a year and a half to two years, because of delays in delivery of materials, and probably be subject

to an investment of fifty to one hundred percent more than if the mill was built in normal times.

You have had in this province, one experience of a mill that was promoted and started to be built, and it is well along the way, that it was made possible to finance because of this temporary bulge in the market, which it was expected would be continued and be permanent, and the mill is not in operation to-day.

As an illustration of what you will likely be up against in the way of delayed deliveries, increased exchanges and so forth under present conditions, and they will undoubtedly grow worse as time goes on, we bought two idle paper machines from a mill located in the Province of Ontario, dismantled them and shipped them to Kapuskasing, and are reassembling the two machines there, making one machine out of them, we are going to use it as a drying machine. The investment in that second-hand machine reassembled and rebuilt will be $200,000. Some of the electrical equipment we have bought in this province and some of it in England, which will delay, so far as we can forecast now, the starting of that equipment about three months, and we are not certain about that, and meanwhile I fear that the conditions will be worse rather than better, both as to deliveries and as to costs, if we should undertake to start building that pulp mill beginning September 1, 1940. I am going to touch upon that situation a little bit further, as well as the export question, which I understand has been a prominent subject of discussion at the hearing, but I would like to go back to 1920, when we first became interested in an enterprise in Canada:

During that year we acquired a concession that had been granted to others some three or four years ago; we paid them something for the concession, after we had secured from the Government some amendment to the terms of the agreement, as to which our predecessors in ownership were in default. Our purpose was to build a sulphite pulpmill of 115 tons capacity, and we did build that pulpmill. We operated it four or five years at a substantial loss, and became convinced that we needed to expand the enterprise by the addition of a paper mill, if we were to create any hope of making it a successful enterprise. After looking the situation over, I approached Mr. Ochs of the *New York Times*, we having supplied them with grades of book paper for a number of years before that, so that I was quite well acquainted with him, and I asked him if he would be interested in joining us in expanding our enterprise up there, to include a four-machine paper mill and the development of the Smoky Falls waterpower, to insure to the *Times* for a long time in the future, certainty of supply and a good quality of paper. I said to him that I felt that because of our long experience in the paper business, we could give him a quality of paper that would be second to none manufactured on the North American Continent. The assurance of his supply over a long period of years had strong appeal to him. It took us about a year after I started the discussion with him to work out the details of an agreement, and especially because it involved the securing of an additional timber area, to justify the building of a plant of the size and with the capacity suggested. We finally secured the added area of timber and executed an agreement, and I may say that within twenty-four hours after executing the agreement between the *New York Times* and ourselves, we made a contract for the building of a mill. The plans contemplated the development of Smoky Falls waterpower with seventy-five thousand horse power installed capacity. As the falls were located fifty miles north of the Canadian National Railway, on which

line the paper mill is located, we were obliged to build fifty miles of railroad. The first thing we did was to build this fifty miles of railroad, to enable us to transport men and materials down to Smoky Falls. When the power development was well under way, we started building the paper mill, enlarging our sulphite pulp capacity and to build a town. The estimated cost of the undertaking was about $26,000,000; we actually spent $31,000,000, because we went into town development on a much greater scale than we had contemplated, and in addition to that our estimates were exceeded considerably.

I think we can claim, without fear of contradiction, that we have created a model town. It has all of the educational, religious, and recreational facilities of a town of much larger size, and located near populous centres.

We have a town of 3,800 people, four and a half miles of concrete paved streets; every home is supplied with filtered water, electric light, and has a sewer connection.

We have a fire-proofed hotel of 110 rooms; a hospital of 65 beds, which, so far as equipment of the hospital goes, is not second to the General Hospital here in Toronto,—in fact, they wrote the specifications for the equipment.

We have a community building housing bowling alleys, moving-picture show, restaurant and lunchrooms; we have bowling on the green, tennis courts, hockey and curling rink, and a golf course.

We, perhaps, spent more money up there along that line than on the face may seem justified. In fact, we have an investment in the town property, including houses,—and we were forced to build the houses,—of upwards of $3,000,000. And, in passing, I may say that the investment in town property results in an annual loss of from $135,000 to $150,000, that is standard.

Q. So that your experience is not different from the common experience at this time?

A. Not different; but we have had that right from the beginning. But Mr. Ochs and his associates enthusiastically shared our feeling, that in asking people to go out into so remote a section and so far removed from populous centres, that to induce people of the right type to come up there and to make them contented to stay, we ought to provide the facilities for their spiritual and healthy recreation and education, as good as they can get in most populous centres, that is, towns of 15,000 to 20,000.

In fact, Mr. Ochs and his associates shared our feeling that the management of an enterprise, and especially if located in a remote section, should be concerned not only to do their best to get profits out of the investment directly, but to do the things that will make everyone in their employ, from the boss down to the humblest worker, proud of his job, contented, and strive to do the best to co-operate with the management to make the enterprise successful. So that we do not regard the investment we have made in the town of Kapuskasing, which may be for the comfort and welfare of our people up there, as unreasonable.

You may be interested in knowing how the money was provided, because

we did all this thing at one time; we did not do it piecemeal spread over ten years. The money was provided right at the beginning.

The entire investment, as I said before, was about $31,000,000. Except $13,000,000 of that money, which was provided from the sale of bonds, the *New York Times* and the Kimberley Clarke Company provided every dollar of it; and the bulk of their money was provided and all of it was spent before one dollar of the proceeds realized from the sale of bonds was used.

In addition to that, despite the fact of our prior investment, we took secondary securities for our investment; the bondholders, of course, got the first security. The bonds were a serial issue maturing at the rate of $1,000,000 a year plus interest at five and a half percent.

You gentlemen can imagine what a strain we were under to meet those payments, in view of the depressed condition of the newsprint industry,—$1,000,000 per year, plus interest at five and a half percent.

I am proud to be able to say that we never defaulted, nor asked for extra time on the payment of a single dollar of obligation that Spruce Falls incurred, either on bonds, interest, or current obligations.

It is quite an unorthodox method of financing an enterprise of that kind, I take it, compared with the usual method of financing especially of the newsprint industry in this country, or any country, for that matter, but particularly here; because with a grant of timber by the Government, a lease of waterpowers at reasonable rates, the grant of timber not requiring any cash investment to protect the investment, in structures and equipment, furnished a base for the sale of securities to the public. I find no fault with that, except I want to emphasize the difference between the investment by the *New York Times* and ourselves, which practically made it impossible for any investor, no matter whether he was a Canadian or a United States investor, to lose a dollar, because of the investment of so substantial an amount of our own funds in the enterprise, which was satisfied by the issuance of secondary securities, the bonds having the first lien.

I may say in that connection, too, that to-day Spruce Falls has not a dollar of securities in the hands of the public, not even bonds. It three years ago refunded the remainder of the bonds outstanding, by a term bank loan,—a five-year loan; so that to-day there are no bonds in the hands of the public; and the total debt owing to the bank under that term loan amounts to $4,000,000.

Q. I do not want to interrupt your train of thought, Mr. Sensenbrenner, unless it is all right with you?

A. Yes, it is all right.

Q. But I would like to interject a question at this point,—is that satisfactory?

A. Quite, sir; it is all right.

Q. What impresses me so much about the statement you have just made

is this, that with a company building at a time when building costs were not low, and in fact, as you say, the actual cost of a large investment, you actually succeeded in paying off something like $11,000,000 of your capital obligations, that is net, because you owed the $13,000,000 of bonds, and you retired the bonds by a bank loan,—

THE WITNESS: I want to make a correction there, $4,000,000 of bank loan, and 1,000,000 to the Kimberley-Clarke Company. We took some bonds at the beginning. There are $5,000,000 still outstanding.

Q. Then in that event you have actually paid off $10,000,000 in obligations in that period of time,—that is correct, is it not?

A. Yes.

Q. What I have in mind is in no way a reflection upon this company of yours, but on the contrary. What strikes me is that you have been able to do something which seems to be the very reverse of what other companies have been doing in the same period. Can you explain why that is possible?

A. One item that perhaps would be a reason is that we did not have so heavy an interest load in proportion to the value of the total investment. Do I make myself clear?

Q. Yes.

A. It is one thing to incur interest obligations for the building of a plant and the equipment, using the timber and water lease as the base for selling the security; and quite another thing, so far as the interest load is concerned, if sixty percent of the capital is provided by the owners, as in this case.

In other words, supposing we had used our grants of timber and of water power as the base for selling securities to the public,—and there is value there, and I have no fault to find with that, although it may be questioned whether the sale of securities should be based upon those concessions solely, and whether or not the promoters should not be required to put in a substantial amount of their own money into the enterprise before selling securities to the public.

But, supposing our entire money required, $31,000,000, had been interest-bearing securities sold to the public at five and a half percent, why, the interest load, for one thing, would be a hundred percent greater than it was in our case. That is No. 1.

Secondly, and I hate to say this because it may seem like bragging, we have been paper manufacturers for a good many years. We started in in 1872 to make newsprint paper out of old rags on a machine of two tons capacity. We made newsprint as time went on all the time until 1916, when we shifted from newsprint onto other grades of paper, some of which we had been making in some of our other mills. I am talking about our interests in Wisconsin. And we quit making newsprint altogether; but we had had a lot of experience in the manufacturing of it, and much experience in the manufacture of other grades of paper.

We maintain a research department up at Kapuskasing for the purpose of finding ways and means for the reduction of costs and improvement in quality, and saving of waste. And we have a large research department at our headquarters in Wisconsin, all of whose findings Spruce Falls receives the benefit of.

In other words, we supplement and collaborate with the Spruce Falls Research Department at Neenah, Wisconsin, and anything we find up there we give them the benefit of; and then we bring some of their work up to Neenah and collaborate with them.

Some of you may know, as I say when talking sometimes, that we are the outposts of industrial civilization in Ontario.

Q. Some sometimes think you are beyond the outposts.

A. And consequently we have to pay the highest freight rate upon our product of any mill in Ontario and, I think, in Quebec. Our freight rate is about $9.00 a ton.

So we have accomplished quite a record, satisfactory to ourselves, although we did not get, during the entire period, a satisfactory return on our cash investment. In fact the mill, in no year of the eleven since it has been in operation,—the paper mill, I am talking about now,—has run full, but one year, and that was in 1937, when every mill in Canada ran full. In not a single year since we started operating that mill have we run the mill full, with that single exception.

I do not know whether any testimony has been given here to the contrary or not; but if there has been any testimony given here to the effect that the Spruce Falls mill has run full all the time or any of the time except 1937, our records prove to the contrary, and I make the unqualified statement that not in a single year of the eleven since the mill has been in operation, have we run full, except in 1937. In 1937 we ran 308 days, I remember; and 309 days nominally is the full time.

Q. I would leave a remark now that we can deal with later on. The reason I ask the question is this, that Mr. Vining, who is the president of the Newsprint Association, in giving us estimates of the important cost factors in the industry, pointed out that fixed charges and carrying charges were the first and heavy obligation in the industry; and I was rather struck by that item, and it occurred to me, when you indicated that your mill certainly was not built at the lowest point of cost in building, had been built in a relatively high cost, and yet had been able, during this period, to pay off its capital obligations until you have left but approximately $4,000,000 of those obligations. I would only leave that thought, that possibly there is some relationship between those two facts?

A. There is another element that enters into the proposition, in comparing it with some mills. As I said, we developed Smoky Falls power and provided the money to do it with. So that we have only the depreciation factor, the labour cost and maintenance. That is the cost of operating this power plant to contend with, as against the power rates, which run into considerable money, that some of these other companies may have to pay, that is, where they have to hire their power altogether.

THE CHAIRMAN: Q. Would you have any objection, Mr. Sensenbrenner, to tell us what is your cost of power per ton?

A. I am sorry I cannot tell you what it would be as to those two factors, depreciation and operation,—depreciation, maintenance and operation, including labour. I do not know what we would figure. That would, of course, have to be figured in with a return of the investment.

HON. MR. NIXON: Surely you would figure that in?

A. Yes, because if we do not, we get no profit on the investment element anyway. We let the profit take care of itself.

But we can readily see that mills which have to hire their power at $13.00, $15.00, $18.00, or whatever it may be, while we have to charge nothing against our power except depreciation and operation of the power plant, may provide a considerable factor; because we provided the cash in advance to build our power plant. These people are paying for it currently. The other fellows furnished the capital; and they are paying for it currently. That would be quite an element in the cost, where you have to hire your power; because, if you take a pulpmill, the grinding of the pulp is what takes the power. And I imagine some of the mills have high charges for power.

THE CHAIRMAN: I was wondering if your cost of power was about the same as the other witnesses have given?

A. I think, taking those factors of depreciation, maintenance and cost of operations into consideration, I can get you a figure on that for your records, if you desire it.

Q. Yes, you might give us those figures, if you will. Go ahead, Mr. Sensenbrenner.

MR. DREW: Q. Just before you leave that point, Mr. Sensenbrenner, have you paid any return on junior certificates yet?

A. We did, but from October 31st, 1932, until, I think, 1938, we paid no return whatever for that period of five or six years.

Q. Have you resumed payments since then?

A. Only intermittently, just as we had some free money.

Q. But you have made some payment on the junior certificates?

A. Yes, before October, 1932, we paid them more or less regularly; but since 1938, we have paid only intermittently.

There is one thing I would like to touch on in connection with our Spruce Falls enterprise, and I want to do it because it has some bearing on this export question, which in connection with the Pulpwood Supply Company, has come up pretty prominently. From the beginning, we made it a definite policy in

planning every year as to our annual requirements of wood for the mill, to first make all our contracts for wood with the settlers, that they expected to produce, and were willing to contract for with us. Our purchases from them, and especially since we expanded the enterprise, have been from 65,000 to 90,000 cords per year.

We were influenced in the adoption of that policy by two considerations. First, it conserved our supply of standing timber; secondly, and perhaps I should have put that first, we felt that people that went up there and did the pioneering, were dependent largely, especially in the wintertime, upon finding a market for their timber, and that we ought to arrange to take their wood first; and only invade our standing timber to make up the deficit year by year, despite the fact that that wood cost every year higher than we could produce it for from our own cuttings.

That served two purposes, as I have said, and I want to emphasize it. First, it is in the interests of conserving our own standing timber supply, and, secondly, we felt it to be an obligation to furnish those people a livelihood, because naturally our market was the nearest market for them; and to take their wood at the higher cost, regardless of the cost that we could cut it for on our own limits.

We have in Wisconsin bought pulpwood from Canada, freehold wood and Crown land wood, where there was no embargo on it, for a number of years. I know that some years we went away beyond Hearst to get wood. And, as a rule, the price paid for that wood by the American manufacturer-buyer was higher than they could find a market for it in Canada. That is not unnatural, and I find no fault with it. That was not unnatural. The Americans, perhaps in times of boom, wanted the wood worse than his friends in Canada wanted it, or wanted to pay for it; and you cannot blame the settler for selling his wood in the market that will pay him the most money for it. That is natural.

But, as to Kapuskasing, our policy has been, regardless of the fact that it was at a higher price, we bought the settlers' wood in any case at a higher price that he was willing to sell to us for; and invaded our own standing timber only for the difference between what we bought from the settlers and what our total requirements were.

Now I approach what I am thinking of at this time. You want to know something about what I think is the matter with the business, and what I think ought to be done to cure it, and I approach that phase of it with a little bit of reluctance.

There are two phases to the development of the newsprint industry in Canada,—and again what I am going to talk about touches a little bit upon the export question.

What forced the newsprint industry from United States into Canada in volume? The export of pulpwood had comparatively little, if anything, to do with it, in my opinion. The first phase of the question, that is, what started the movement, what shifted the newsprint industry from the United States to Canada?

It was, first, the reduction in the duty imposed by the United States from $6 per ton to $3.75 per ton. And then it was very much accelerated when in 1911, I think it was, the duty was wiped out entirely.

It dropped, I think, within two years from $6.00 per ton to zero in two steps, from $6.00 to $3.75, and from $3.75 to nothing. I know whereof I speak, because I had something to do with the opposition to the removal of the duty at the time back in 1911.

The final zero mark was reached at the time when the Reciprocity Treaty was made. The Bill which was introduced into the American Congress, in the final paragraph, provided, that unless Canada ratified, the action of our Congress failed.

Some clever fellow representing probably the publishers, put a paragraph in, or had a new Bill introduced. About that last paragraph that I have referred to, following that he put in, "Newsprint paper shall be free under the terms of the Treaty,"—but it followed the paragraph which provided that unless Canada ratified it, it failed.

So that the legislation passed. And Canada did not ratify; and newsprint was on the free list.

Now, that was quite a natural movement, shifting the newsprint industry from the United States into Canada, when newsprint could enter the United States free; because Canada had the wood and it had the water; and it required no capital investment in wood to protect a large investment in plant and equipment, as was necessary in the United States; and low or reasonable power leases. So that the shift was quite natural and has been going on ever since. It was accelerated during our heyday, during the eight years, and has been going on ever since.

Now, the second phase was the boom, the war boom and the post-war boom, which increased the consumption of paper greatly and forced the price up to an unreasonable amount, and made the paper industry a very profitable thing, the newsprint industry, particularly. It made the sale of securities very easy during that time. The result was over-expansion away beyond the requirements of consumption. I have had the feeling that unwise market policies, following this overexpansion of the industry in the 1920's is responsible for the troubles of the industry.

Q. When you speak of "market" you mean the newsprint market?

A. Yes, newsprint market policies, responsible for the troubles of the industry. And I have an old-fashioned notion that the good-will of a customer, especially where the relations of a seller and a buyer are of such magnitude as with a mill making newsprint paper and a publisher, running not only into hundreds of thousands of dollars a year, as between a single seller and a single buyer, but in a number of cases, into millions of dollars per year between a single producer and a single consumer, that goodwill is a priceless asset. And I know a good many publishers on the continent. I know numbers of them personally, intimately, and I know a good many more of them by reputation. And I know

that as a class they are a very reasonable lot of fellows. There are one or two or three or four exceptions, as there are in any group of people you may select or may have to deal with.

I know that the publisher is concerned about three things, and if you can satisfy him as to that, in attempting to deal with him, and carry out your obligations faithfully, you have got his good-will and you have got a permanent customer.

First is the assurance of supply. Newsprint paper is the life blood of a newspaper.

Secondly, good quality, good service and deliveries.

Thirdly, a reasonable price determined with due regard for costs and the law of supply and demand.

Now, strange as it may seem to be, I make this statement in connection with those other three points. He does not object to a uniform price if it is reasonable. I think the great majority of them prefer a uniform price, so that they may be sure that they are paying no more than their competitor in the same trade area.

The marketing policies preceding the last two and a half years, I do not think were such as to beget the confidence and therefore the good-will of your customers. Through changes in managers, resulting from receiverships and the like, there has been a very substantial improvement in the marketing policies of the industry,—a very substantial improvement.

That statement is proved, I think, pretty conclusively by the recent action of some of the mills in announcing, despite present war conditions which have raised the deuce with the pulp market, they have announced no advance for the third quarter of 1940; making the same price, which is the price which has been effective for the last two and a half years, effective until the first of October next.

I think that made a great impression on the customers of the newsprint industry in Canada.

Actions prior to that have antagonized them; and a return in the future to policies which did not recognize those fundamental principles, mean further expansion of the industry in the south; and temporarily you may force them to pay higher prices, if you return to the old policy of exacting all that the traffic will bear, getting while the getting is good, as the saying is; and taking your medicine when the getting is bad.

But the worst feature about that policy is that newsprint is a contract commodity; and if you lose your contracts, and it goes in big tonnages, you cannot recover it in a year; and the temptation then to demoralize the market is very strong.

Q. Mr. Sensenbrenner, you may or may not care to express an opinion on it, but there is a very current belief that one of the things in regard to marketing policies with which we would be more concerned, have to do with suddenly

increased prices, rather than by looking at the long-term picture, is the fact that to a considerable extent, those financially interested in the public handling of securities, in some cases, have also to do with the direction of the newsprint industries. Would you care to make any comment on that?

A. I am inclined to think that is so, because of the lack of experience, you know.

Q. I merely reflect one of the viewpoints in regard to an industry that is certainly far from in a satisfactory condition, and certainly a viewpoint is that there has been too close a tie-up between the stock market attitude towards this industry and those actually in control of the operation?

A. I think you are right.

Q. On the point that I asked you a question about a moment ago, Mr. Sensenbrenner, in finding some solution of the undoubted difficulties in which this industry as a whole finds itself, will you agree with me that the method of financing is one of the problems which should be considered?

A. Absolutely.

Q. And will you agree with me, that the assurance to the public of some more stable method of financing, would contribute greatly, not only to goodwill in relation to the industry, but also to the sense of confidence in the public mind in regard to securities of this kind?

A. Yes.

Q. Now, I come to a point which has not been raised so much here, but has been raised in certain public speeches which I have read, and was raised in the Quebec Legislature not long ago. It has been suggested that this industry presents an unusual situation, perhaps parallel to no other single industry, because at the moment we are producing a very large amount of newsprint in Canada, some 95 percent of which goes to the United States; and consequently, the good-will of that customer in a single market is vital to the continued success of the industry within Canada, which is dependent for its success upon its exports to one national market. Because of that fact, it has been suggested that not only for the purposes of marketing, but also for the purpose of maintaining good-will and establishing practices which will bring the purchasers and producers together, some international commission or committee,—call it by any name you will,—operating on somewhat similar lines to the Joint Waterways Commission, which is an international commission, and which has had an extraordinary record in regard to the solution of national problems.

It has been suggested that something along that line, not operating on too rigid a basis, but for the purpose of bringing the producer, the one company, into touch with the consumer, another company, which must remain interested throughout the life of this industry, might possibly be to the advantage of the industry as a whole. I might say, before I ask for your answer to a long question, with an explanation, that when that has been raised here there has been some

indication of approval, and there has also been the statement that it would not be practically possible. I must say that before I ask you to express an opinion as to whether or not it is a practical possibility?

A. I am afraid, if I get the effect of your question, that it again would create a question in the minds of your customers. As you say, ninety-five percent of your customers are over there, and I am afraid that it would create suspicion in the minds of the customers over there, and raise the question as to finding other ways and means of securing their supplies.

Q. The idea, Mr. Sensenbrenner, was to bring the customer into this picture and into contact with the producer?

A. Oh, I see.

Q. So that there would be a contact, which, through the nature of such an international business, cannot always be discussed with the publisher?

A. It would have to be on pretty broad lines, to get the co-operation of the publishers. You have an awful lot to overcome, to overcome suspicion which was engendered two and a half years ago.

A conservative price policy pursued in spite of abnormal conditions, such as we are looking forward to now, if you can restrain your inclination to boost the price under such conditions over a year or two, I think you will get the good-will of the customers; you will get their confidence, and then perhaps some scheme such as you suggest would be workable. I am a little fearful it is not in prospect now.

Q. It was really with that very point in mind that this was raised; and really I am not proposing to make it as a solution, but it has been suggested as one way in which we might achieve the very point you have in mind, that is, to gain the confidence of the customer, which must be continually in mind for the future?

A. That is right.

Q. Apart from that, have you any direct suggestion as to ways and means in which that confidence can best be maintained, or, if you will, restored?

A. I think the best means of doing it is through the proper conduct and management of these different mills. And if the demand, because of abnormal conditions increases to where supply and demand are nearly in balance and the proper amount of restraint is exercised by these mill men in selling their products, I think you are going to get yourself in a position within a year where something on the basis of an international commission, of which the publishers should be part, may be accomplished.

But you have got an awful lot to overcome before you can put something of that kind into effect, in my opinion.

Q. Can you suggest, and it is only a suggestion, any steps that can be taken to achieve that result?

A. None except proper conduct on the part of the people that market this product. And that is going to be made easier, as I say, with supply and demand getting into position where, possibly by the end of the year, they will be about in balance.

Q. About what?

A. About in balance. Then if proper restraint is exercised, as was done here a month or two ago when they announced the price for the third quarter, I think perhaps you can get into friendly relations with the publishers on some basis where through joint discussion—that is your idea, is it not, Colonel?

Q. Yes.

A. In advance of contracting—joint discussion, studying each other's problems, which may have some influence on reasonable action; I assume that is what you have in mind, is it not, Colonel?

Q. That is it. What I had in mind was this: rightly or wrongly it seems to me that first of all this industry has been bedevilled by methods of financing which cannot be justified by any argument that can be advanced. I do not suggest that that affects every company by any manner of means; but that the industry as a whole has been subjected to financing methods that cannot be justified in the public interest. Second, that we are in the technical position of having one national market—no matter how much we may talk about international competition, we have one national market of importance.

A. Yes.

Q. And it is vital to the continuing success and stability of the industry in Canada that there be good-will between consumer and producer. And while I personally am not too strong a believer in rigid regulations controlling any industry it does seem to me that if some form were provided which had on the one hand, at least, the blessing of the producers in this country, and, on the other hand, the blessing of the consumers in the United States, and receive such parental blessing as was necessary from the governments of the two countries, that something of that kind might offer a continuing contact point that would eliminate some of the friction which undoubtedly has entered into it in the past. Does that seem to you to be a reasonable suggestion?

A. Yes, yes. That would be an ideal suggestion. I foresee difficulty in bringing it about except after a lapse of time. I think that would be an ideal situation.

Q. I have in mind, for instance, the fact that the Newsprint Association in Canada does act to some extent as a governing body over the member companies—informally I grant you—nevertheless exercising supposedly some influence over the conduct of those companies. It occurred to me that if there were some similar organization combining the interests of the larger consumers in the United States, then when these two bodies came into contact in some informal group that you would have a contact point which would iron out a lot of the problems that undoubtedly have contributed to the difficulties of this

industry. Or is it possible that there are differences of opinion between the consumers that might make that impossible?

A. Some, probably. But you take the publishers as a class; they are a fine lot of fellows; they are a reasonable lot of fellows. Or, as I said before, there may be one or two that are a little difficult to line up with a suggestion such as you have made.

Q. Well, I have interrupted your trend of thought, Mr. Sensenbrenner.

A. I have about exhausted my subject.

Q. Well, have you anything further you wanted to say before I ask you some questions?

A. No.

Q. Mr. Sensenbrenner, in connection with the Kapuskasing development and which, incidentally, in addition to the other assets that you have mentioned, has also a very good airport now as well, I believe.

A. Oh, yes. We are getting to be quite metropolitan.

Q. Yes. I happened to land at that airport a short time ago.

A. I hope that some of you gentlemen will get up there occasionally and see what we have there.

THE CHAIRMAN: I have been there several times, and everything you have said is more than justified.

A. Thank you, Mr. Chairman.

MR. W. G. NIXON: You overlooked mentioning your nice horticultural development.

A. There are some things that even I do not know about. But that park, is that not a beauty?

Q. Yes; very fine.

MR. DREW: Mr. Sensenbrenner, in that respect you have established a community there which has all the physical requirements of a continuing community, having, as you say, the social and spiritual elements as well. To what extent are you assuring perpetuity of your timber supply there?

A. I am glad that you asked that question. We have, we think, two very able foresters, and the chief, I think, is as much concerned about doing everything possible to protect and conserve our timber stand up there at Kapuskasing as the Government can possibly be, and as far as is practicable. He does all of his planning first, so that over a period of years our average cost for wood, except as affected by increased cost of labour and supplies, will be substantially the same.

That is, he is taking some of his nearby wood bordering on the banks of a river, and then he goes back quite a considerable distance. We are operating, and have been for some time, on the Aquasabon River, the Kapuskasing River, Woman's River, and on this fifty-mile river. So that we are trying to maintain by that distribution of our operations, an average cost over a period of years, so that we will not have these violent fluctuations, such as would result by taking all our easily available wood and a consequent low cost this year and then have a higher cost next year.

He is conducting his cuttings in a manner which will conserve as far as practicable, natural regeneration. Understand, I am not a practical forester, but I go over these matters with him pretty thoroughly and get his reports very frequently. Because we have exceeded our obligations in our agreement with the Government by a very substantial amount in both pulp and paper, we feel that we have not got a sufficient supply of timber reserve to protect the future of that mill over as long a period as we should have. But we are doing everything possible. That is what you are concerned about chiefly, are you not, Colonel?

Q. Yes.

A. And the conduct of our operations so as to conserve the timber as much as possible or as much as practicable.

Q. You say you are of the opinion that you have not a sufficient area to assure a continued supply?

A. That is our opinion. There is nothing in the immediate future. We are protected for some time in the future. But we want to maintain that plant and support that community for an indefinite period, away into the future. No doubt the Government has that in mind.

HON. MR. NIXON. Q. How many millions of cords of wood did you have on your limits?

A. Off-hand I should say about eight to ten million. Have you any information on that, Mr. Heenan?

HON. MR. HEENAN: I have forgotten.

WITNESS: I can't remember. But we were committed to make 550 tons of paper per day. We have a capacity there of 700 tons a day. And we were committed to make 115 tons of sulphite per day. We have a capacity there to make 225 to 240 tons per day. So that we have gone away beyond our obligations under the contract.

In that connection, getting back to the building of this sulphite pulpmill, an obligation of the Sulphite Pulp Company, which according to the terms of the agreement we were to start on September 1st, for reasons already given I do not think we should be required to do it. I do not think that we should be required to do it under the circumstances. And we have faith in the Government, that they will not compel us to do it if we can show sound, economical reasons why we should not be forced.

During all of our experience in Canada over the last 20 years, we have always had fair and reasonable treatment from every government that has been in power. And we have faith, that against conditions which have existed in the sulphite market for the last ten or fifteen years and which make present conditions, and which make the building of a pulp mill under present conditions unsound, that the Government will not compel us to do it; that they will give us some extension of time. At least, we are going to make application for an extension.

MR. DREW: I have this in mind, though, Mr. Sensenbrenner, that if the area is not sufficient now, then it would seem to me that cutting must necessarily be done on a basis which forces the possible areas of sufficient cutting at a later date, back far enough from the town itself and from the mills that, you will greatly increase the cost of delivery of that wood to the mill. Would that not be so?

A. Yes, but we are going at considerable distance from the mill, now. In the early days of our operations, we had to do the clearing around the town to reduce the fire hazard.

Q. Yes.

A. But since 1926-7, we have been cutting in various areas; in fact, we are cutting on every creek and stream except Ground Hog. The Ground Hog traverses the Aquasabon, the Kapuskasing and Woman's River, and some of these reaches are at considerable distance from the mill, in order to maintain a sort of average cost over a period of years.

Q. How many square miles have you?

A. 4,700 originally. We have been cutting, you understand, for the last 20 years. A total of 4,700 square miles.

MR. ELLIOTT: Is that what you have left or is that what you had originally?

A. That was the original number, 4,700 square miles.

MR. DREW: There are still 4,700 square miles within the area that you control?

A. Yes.

Q. What is your average rate of production per day?

A. We actually average about 610 tons of newsprint paper per day, and about 230 to 240 tons of sulphite pulp per day.

Q. Is that bleached?

A. No; unbleached.

THE CHAIRMAN: How many cords of pulpwood do you require for that production?

A. About 280,000 cords a year.

Q. You purchase an average of from 60 to ——

A. From 65 to 90,000 cords a year.

Q. An average of about 75,000 cords a year?

A. Yes.

Q. So that you would have to produce on your limits, about 200,000 cords?

A. Yes.

Q. You estimated your supply to be 8,000,000 cords?

A. About that.

Q. That would give you 40 years' supply, if you do not increase the actual present capacity of the mill?

A. Yes. Of course, the settler wood may grow less and less. I am not so familiar with conditions up there, but I suppose they are going farther back.

MR. DREW: Can it be said, Mr. Sensenbrenner, that your foresters are attempting to assure perpetuity as far as possible on these limits?

A. I did not get that.

Q. Can it be said that your foresters are attempting to direct the cutting in such a way that it will assure perpetuity of the stands?

A. The area is not large enough in our opinion to assure that; but they are doing everything possible to promote growth and to prevent fires in collaboration with the Government.

Q. You have said that you are not an expert forester yourself, but you have been engaged in the industry a long time, and that raises a point on which I would like to have your opinion. It would seem to me that it would be sound practice for any enterprise of this kind to have a sufficient territory and for its practices to be so directed that, subject to such reasonable hazards as one can anticipate, the community could expect to continue in perpetuity in that same type of business. While I do not suggest that we can transplant the Scandinavian methods here, where it is really almost tree farming, the principle would appear to be the same; or it would appear to be desirable that we have the same principle, that is, that the communities which are established with the background of forest resources should be able to expect to continue in that area in that same enterprise. For that reason it seems to me it would be sound practice, with the areas we have available, to grant areas that are adequate to cut in perpetuity and for cutting methods to be enforced, preferably by the company itself by its own foresters, and which subject to unexpected hazards, such as fire, and so on, would assure continuity. Would that not seem to be sound practice?

A. I think that is desirable.

THE CHAIRMAN: That is what you are trying to do up there, is it not?

A. Yes, as far as possible.

Q. You mentioned earlier in your statement that you were purchasing wood from settlers for two purposes, the main one being to conserve your own resources and also to help the pioneers there?

A. Yes.

MR. DREW: Mr. Sensenbrenner, is it not so that if an area is too small for the actual production of any given mill or mills, that that will inevitably force upon any company cutting methods which may be destructive of that community no matter what territories are added at some time in the future? Is that not so?

A. Yes. The increase in the cost of pursuing selective cutting as against a concern that has vast areas and which does not practice selective cutting might put the mill practicing selective cutting at a great disadvantage. In cost, that is.

Q. I do not want to labour this point, but it seems to me it is very important as a question of general principle. No matter how intelligent the forestry control by any company may be, if they start with an area smaller than is necessary to assure perpetuity—not so much of that company as of that community.

A. Yes.

Q. Then it seems to me that they must adopt cutting methods which will denude the immediate area around that community to a point where the ultimate addition of new areas out beyond that would only provide wood at a cost which would be uneconomical and might result in creating another ghost town, no matter how sound the ordinary methods of operation might be. Would you agree with that proposition?

A. Yes.

Q. And would you agree that as a general principle, then, it would be desirable to start by assuring an area surrounding any community of this kind which will make it possible to establish cutting methods based on the attempt to assure perpetuity of cutting?

A. Yes.

Q. As you have said, you have had a lot of experience in Wisconsin. Is it not true that one of the reasons it is necessary for so many of the mills in Wisconsin to get pulpwood from Ontario is because sound cutting methods were not enforced there?

A. That has had some influence. But you would be surprised at the amount

of timber that is still in Wisconsin and in northern Michigan and Minnesota. You see, the Wisconsin mills are using a variety of species. They use hemlock. I guess there is no hemlock in the province of Ontario, or, if there is, there is very little of it. But they use considerable quantities of hemlock, jack pine, poplar, and balsam the last fifteen years has come into quite general use in the manufacture of sulphite pulp. So there is a vast quantity of that used. And there is a lot of timber in Wisconsin and northern Michigan still.

We have bought pulpwood in Ontario for the last 35 or 38 years during the period that the embargo was in effect. We got it off free land, soldiers' script, and so on. We were not so much concerned about the character of the land we got it from, that is, as to title, because we got it from contractors. For the last 35 to 38 years we have been getting pulpwood from the Province of Ontario in connection with our Niagara Falls mill, in New York, and some from Quebec. I remember 42 years ago we began to worry how we were going to supply our Wisconsin mills with pulpwood. It is true we have had to go a little farther away from the mills all the time, but we are getting a lot of pulpwood from northern Michigan and Wisconsin. When I say "we" I mean the mills in the Fox River valley and in the State of Wisconsin generally.

Q. From reading the forestry magazines, and so on, I gathered that there has been a good deal of criticism of the methods that were permitted in cutting in Wisconsin in the past.

A. There is no doubt about it; they cut and cut clean, you know. But there is a lot of timber in the northern part of Wisconsin still and in northern Michigan —a vast amount of timber.

Q. Now, Mr. Sensenbrenner, in connection with the Pulpwood Supply Company, is it your present intention to proceed with the erection of a mill?

A. No. We propose to petition the Government to give us an extension of time. It depends upon the action of the Government upon that petition. But I have faith in being able to convince the Government that it would be economically unsound to build a mill under present conditions.

Q. Then would you go so far as to say that it is economically unsound to build any further mills of that type at the present time in Ontario?

A. Why, yes, in view of the experience of the last 18 or 19 years largely due to the Scandinavian competition. But conditions may change. You see, the situation has been affected somewhat, too, by under consumption in the States particularly. The States are your market for pulp, just as they furnish a big market for Scandinavian pulp. Now, during the years of depression when buyers of pulp in the States were operating on 40, 45, 50, 55 and 60 percent basis of capacity, that meant 40 to 50 percent decline in their consumption, and that was a contributing factor. If we should run into a period of prosperity where for ten years the consuming mills run to full capacity it might tend to balance that situation.

Against that, however, is the building of sulphate mills down in the southern States of the United States. They can make pulp cheaply down there. They

are making paper pretty cheaply down there. I am not talking about newsprint paper. I do not know as to their costs; I have not any figures on that yet. But they are making some grades of paper down there cheaply. They have cheap labour, natural gas and fuel, and they have comparatively cheap wood. The wood cost angle I am not so much disturbed about for the time being, and probably less so as time goes on; except that they make claims they can have reproduction in 12 to 15 years. The more conservative people say 30 years. But up in northern Ontario, I guess it takes anywhere from 90 to 100 years, does it not, for the spruce tree to grow to merchantable size? They have that decided advantage down there.

Q. Do you care to express any opinion as to the measure of success that they are having in producing good newsprint from the southern mills?

A. We have seen samples of the product after the mill had been in operation a few days. It did not appeal to us very much. We have seen some samples since which show some improvement. And they are going to find ways and means, I think, of making a satisfactory newsprint paper. Whether it will be equal to the so-called spruce newsprint paper, I have my doubts.

Q. You have your doubts?

A. I have some doubt.

Q. Have you heard that they are mixing imported spruce with southern pine in an effort to do that?

A. Not definitely, no. I have heard some gossip that I didn't pay much attention to. I don't think that that is—well, I had better say I don't know.

Q. It just occurred to me that you might have had reason to know.

A. No.

Q. I had heard it suggested from reasonably reliable sources, that they were importing pulpwood from Newfoundland into the southern States for the purpose of blending it with southern pine?

A. Blending it with the pine?

Q. Yes.

A. I do not know.

Q. But you do say definitely, Mr. Sensenbrenner, that in the light of present conditions, you do not think it is advisable to go ahead with the erection of pulp mills in Ontario?

A. Decidedly.

Q. Does that apply to bleached sulphite?

A. To both.

Q. To both?

A. Both, yes. The demand at present is stronger for unbleached, according to our information, than for bleached. But it applies to both.

Q. It is stronger for unbleached, is it?

A. The demand is, yes.

Q. There have been some suggestions that it was the other way around; that there was a very heavy demand for bleached sulphite?

A. Is that so?

Q. Yes. Your information is that there is a greater demand for unbleached sulphite?

A. Yes; a greater demand for unbleached.

Q. What would you say about the existing capacity in Canada to meet the demand?

A. Ample, I think, if they put all the capacity that is available to work.

Q. For bleached as well as unbleached?

A. Yes.

Q. To return to the Pulpwood Supply Company, Mr. Sensenbrenner, you have explained that the Ontario company incorporated to operate in this area, actually represents the five associates with whom you are connected?

A. Yes. We have an American company, the Pulpwood Company, and these five concerns are stockholders in the Pulpwood Company, and the Pulpwood Company owns the stock of the Pulpwood Supply Company.

Q. But the Pulpwood Company owns the Pulpwood Supply Company outright?

A. Yes.

Q. It has a 100 percent ownership?

A. Yes, a 100 percent ownership, except qualifying shares.

Q. What is the paid-up capital of the Pulpwood Supply Company?

A. $100,000.00 cash.

Q. That is the paid-up capital?

A. Yes.

Q. Has there been any change in that situation at all, since the company was originally formed?

A. I think not. I think it was originally $10,000.00. That is my recollection; I would not want to be positive about that. But to-day, and it has been so for a number of months, there has been $100,000.00 cash capital.

Q. Have you figures with you as to how much money the Pulpwood Supply Company has spent?

A. Yes. We have only operated up there two years. The first year's operation resulted in a product of 32,000 cords. Last year's operation, that is, 1939, to the spring of 1940, was 52,000 cords.

The total amount of money spent was $850,000.00, but last winter's product has not been driven yet. So there was spent $850,000.00 of which $207,000.00 is invested in building, town buildings, warehouse, tugs, booms and other equipment, and includes $50,000.00 cash on deposit with the Department. $207,000.00 in fixed investment, and the balance of the $850,000.00 we have spent in the production of pulpwood.

THE CHAIRMAN: If you were able to spend all that money with a capital of $100,000.00, I suppose the American company advanced the funds required by the Canadian company.

A. That is it exactly.

HON. MR. NIXON: What was your operation in cords last year, did you say 52,000?

A. 52,000, yes.

MR. DREW: Did you drive out any last year?

A. Yes; 32,000 cords, ten of which has not been cleared. It is in the Aquasabon Lake. It was carried over the winter in that lake, so that there will actually come out of the mouth of the river, 62,000 cords as soon as the river is open. Our present plans are to cut 67,000 cords, beginning this month. That is, we are going to pile part of it and leave part of it in the rough, so as to give more constant employment.

MR. DREW: Are you setting up any sort of a community in there?

A. We have got half a dozen houses or more at the head of Lake Long Lac.

THE CHAIRMAN: Is that near the station? What do you call the head of the lake, the northern or southern end?

A. The northern end.

Q. That is, Long Lac?

A. Yes, the northern end. We have got an office building there, and half a dozen houses and a warehouse.

MR. DREW: Q. Would you explain the actual method of financing the operations of this company, just so that we will have it on record?

A. That is, this Pulpwood Supply Company?

Q. You explained that it has $100,000.00 capital, and yet with that amount of capital, it has been able to spend $850,000.00 in two years. Just how is that handled?

A. The mills each take their proportionate share of whatever amount of wood is produced. In our case, let us say it is one-third. We are under contract with the Pulpwood Company to provide the money necessary to conduct the operations.

Q. Yes.

A. So our proportion of, say, 66,000 cords would be 22,000 cords. We have to provide our proportion of the money to the Pulpwood Company, which in turn by contract, is committed to the Pulpwood Supply Company as the work progresses, to provide it with the money as the operation goes on. That $100,000.00 of capital of the Pulpwood Supply Company is actual cash and has been invested in fixed assets of the company.

Q. Well, is that $100,000.00 invested, or is it retained?

A. No, no, it is invested in tugs and buildings and so forth, and so on; and $50,000.00 of it is in possession of the Government.

THE CHAIRMAN: You have more than $100,000.00 invested in fixed assets?

A. Oh, yes; about $207,000.00. You see, the Pulpwood Company has a capital of $200,000.00. The Pulpwood Supply Company has a capital of $100,000.00. But through contract relationships with these mills, the shareholders of the Pulpwood Company are committed by contract, to take pulpwood from the Pulpwood Supply Company or from the Pulpwood Company, and to provide the money necessary from time to time as the operations progress, to take care of their proportion of the wood.

MR. DREW: I do not want to repeat it unnecessarily, but as I understand it at the present time, Mr. Sensenbrenner, your plan is simply to proceed with the cutting of the pulpwood on that area?

A. Yes.

Q. And not to proceed with the mill?

A. Provided we get an extension of time for the building of the mill from the Department.

Q. Well, suppose you did not get an extension?

A. We would feel very badly about it, and I would lose faith, despite our past experience.

Q. I am not asking that in any way as a catch question, Mr. Sensenbrenner. After all, if it is not advisable to build that pulpmill at the present time, I would assume that it is not the intention to build the mill. I quite recognize the interests of your company on the other side; but the fact remains that the Pulpwood Supply Company only has $100,000.00 capital and is a party to this contract, and I would not imagine that that company would embark on the substantial expenditure involved in a mill unless it were sound economically.

A. Yes. Well, I should feel badly if, in spite of our record for the past 20 years in Canada, we had not won the confidence of the Government to a sufficient extent to believe that, despite the fact that we are not directly stockholders in the Pulpwood Supply Company, that we would not stand behind the proposition.

Q. Don't think that I am suggesting you would not, Mr. Sensenbrenner; I am merely trying to get it down to a basis which has not merely the Pulpwood Supply Company in mind, but has the general situation in mind.

A. Yes.

Q. In your opinion, it would not be sound to proceed with the erection of the mill?

A. Very decidedly not.

Q. I do not think I will press it beyond that. You have given an answer, and you say that in your experience it is not desirable to proceed with that mill, and you have said that that remark applies to either bleached sulphite or unbleached sulphite at present?

A. Yes, sir.

Q. Now, I have only one other question, but I am putting the question to you because of the recognized position you occupy in the industry, and it is really to ask you to agree or disagree with a statement. Will you agree that it would be very unwise, having regard to our past history in this industry, if the temporary increased demand which appears to be resulting from the war, were used as the basis for a sudden expansion in this industry in Canada?

A. I should think it would be very unwise.

Q. Do you see any justification growing out of the war situation to expand the industry at the present time?

A. No, I don't.

THE CHAIRMAN: There is just one more question I would like to ask you, Mr. Sensenbrenner, before we adjourn. There has been quite a discussion before

this Committee concerning the export of pulpwood from Canada to the United States, and it has been stated that if we restricted or put an embargo on the export of pulpwood from Crown lands to the United States, it might help our newsprint industry here. It has even been stated—I forget whether it was here or somewhere else—that by putting an embargo on the export of pulpwood, we might force American mills to settle in Canada and consume pulpwood here. Have you any opinion to express on that point?

A. I do not think it would have that effect, Mr. Chairman, for two reasons: first, in view of the over capacity of the newsprint industry at present, there would be no incentive to build more newsprint mills by Americans; secondly, the other grades of paper that might be manufactured in Canada are subject to a duty, and I do not think that you could prevail on an American mill to establish an enterprise in Canada, because of that embargo on export in view of the duty on the product.

Q. If we were to put an embargo on the export of pulpwood from Crown lands, would that seriously embarrass the American mills, or would they be able to get their supplies somewhere else?

A. I do not think it would seriously embarrass the American mills. They would drift to the south. They would establish plants in the south. It has been demonstrated that sulphate pulp can be bleached, and they are making certain grades of envelope paper and magazine paper, and the like, out of this bleached sulphate pulp which is made in the south.

MR. DREW: From the southern pine?

A. From the southern pine. Then, too, looking at it from the conservation standpoint for the protection of posterity, I think good government is charged equally with protecting the existence of the living. If in some sections, particularly, the settler can find a better market at a better price in the States for wood that he owns, or can find a market for the product of his labour in the bush, on the other side, why should he not have the benefit of that market? We are paying him a higher price up at Kapuskasing than we can cut our own standing Crown timber for. We are paying him a higher price to conserve our standing timber, as I said before, and to give him a chance to live.

You have that same problem, it seems to me, with settler wood, and the labour of the individual who cuts Crown timber for export.

MR. SPENCE: There is not much chance for a settler to get a market for his wood when the mill is here to take all spruce.

A. Yes; they have to export it, don't they? They have a market. He ought to be protected to sell his wood in the best market that he can find.

Q. Because of your experience, and may I say that you have impressed me very much, what are we going to do with the cheaper grades of wood? If you say it would be unwise to build mills at Long Lac which would use considerable of the cheaper grades of wood, like balsam and jack pine and probably poplar and birch, then would it not be a wise policy to get rid of these cheaper

woods? I think the Government would be well advised if we were to build mills that could use this wood?

A. You could probably find some way to do that.

Q. At the present time you are using at Kapuskasing practically all spruce, are you not?

A. Spruce and balsam.

Q. What percentage of balsam?

A. I think our timber runs about 10 per cent balsam. And the Kapuskasing stand is about 95 per cent pulpwood, that is, spruce and balsam. There is comparatively little other species of timber mixed in with it. In our Long Lac area, that is true to the same extent.

Q. You can see the point I am trying to get at. Supposing you are holding a large area up there at Kapuskasing, over 4,000 miles ——

A. 4,700 square miles.

Q. And 2,600 down here?

A. Yes.

Q. And you have kept that whole area for yourself. If you are not using it, the only possibility that I see, then, if you say it is impracticable to build this mill, is to export as much as you can of it before it is over-mature. Jack pine, for instance. That is what you are doing.

A. We are not using any jack pine in the States, in Wisconsin and northern Michigan. In fact, in southern Michigan they are using considerable jack pine.

Q. I understand, too, that you permit some other operators to come in on this limit of the Pulpwood Supply Company?

A. That raises the question that I am very much interested in. I do not know whether you want me to say something on that, Mr. Chairman.

THE CHAIRMAN: Yes, go ahead.

WITNESS: I think that a concessionnaire of an extensive area ought to have control of all species of wood, for various reasons: minimizing the fire hazard, controlling the proper methods of cutting, and, again along the lines of conservation so far as it is practicable, to protect the Government in getting its stumpage dues, and the like. In other words, making the one concern responsible for all the species of wood on the area covered by their agreement. If you want to favour a small contractor, make him deal with the concessionnaire; or, if you want to favour a large contractor, make him deal with the concessionnaire, the Government holding the concessionnaire responsible.

MR. SPENCE: Q. Carry that to its logical conclusion and then you as the owner of a concession should be made to produce all the species of wood.

A. That is it. Either produce or sublet part of it, but it would always be under the control of the concessionnaire and the Government would look to him and hold him responsible for everything.

Q. I absolutely agree with you if every concessionnaire was compelled to produce on that area. The problem is to find out some way to use these cheaper grades of timber. We thought naturally in that area down there that you would come along and build this mill for producing pulp, not newsprint, but pulp, which is exported to the United States without duty?

A. Without duty.

Q. But when you manufacture it into the finished product it carries a duty of about 37 per cent?

A. Yes.

Q. That is one of the big drawbacks, and I would like to get around that. Those that are up there realize that they can export these cheaper grades which at the present time are growing up and decaying.

A. Yes.

THE CHAIRMAN: Gentlemen, if you have no further questions we shall adjourn until 2.30 p.m.

I want to thank you, Mr. Sensenbrenner, for coming here and giving us such interesting evidence.

WITNESS: I appreciate the privilege of being here, and I hope that in the opinion of you gentlemen I may have contributed something that is beneficial. Will you want me this afternoon again, gentlemen?

THE CHAIRMAN: No, we will not need you again.

At 1.05 p.m. the Committee adjourned until 2.30 p.m.

THE CHAIRMAN: Allright, gentlemen.

Mr. Schmon is already on the witness stand, Colonel, and he has given us copies of a statement which he intends to read us, not perhaps in its entirety, but which he wants to give in his statement. So we are ready to hear you, Mr. Schmon.

MR. SCHMON: Thank you, sir.

THE CHAIRMAN: Q. First of all you might tell the reporter your full name and your present position?

A. Arthur A. Schmon, President of the Ontario Paper Company.

ARTHUR A. SCHMON called.

THE CHAIRMAN: Q. All right, Mr. Schmon, go ahead.

A. I understand that I have been afforded an opportunity of attending your Committee mainly for the purpose of answering the suggestion that any policy of prorating newsprint tonnage should be extended to the Ontario Paper Company Limited and the Quebec North Shore Paper Company.

I should be very glad indeed to answer any questions to the best of my ability if I can be of any assistance to the Committee in doing so, but I would like to tell the Committee about our company.

I realize perhaps that I am at the tail-end of this investigation and I wish to take as little time as I possibly can.

The Ontario Paper Company takes no position for or against proration of newsprint tonnage or the allocation of selling contracts as between manufacturers engaged in selling newsprint. The Ontario Paper Company Limited has never engaged in that business, and the fact that it produces that commodity for the use of its owners is no reason for dragging it into the difficulties in which the selling manufacturers engaged in that business have involved themselves. If it is considered that proration is useful or necessary to correct abuses or give relief to manufacturers selling newsprint in the commercial field and that any revision of the present plan is desirable it should not be seized upon as an excuse to commit an injustice for the benefit of the revisors by attempting to extend its application to a non-commercial company whose mills were built to supply newsprint to its owners, and which has never sold a ton of newsprint in the commercial field.

The Ontario Paper Company is a wholly-owned subsidiary of the Chicago Tribune and its affiliate, the Daily News of New York.

The Quebec undertaking of the Ontario Paper Company was transferred in 1938 to Quebec North Shore Paper Company—a wholly-owned subsidiary of Ontario Paper—in order to comply with the requirements of the Quebec Government. Apart from technicalities, it is one undertaking and we usually refer to it as a whole as the Ontario Paper Company. Our total investment in Canada is over $46,000,000.

When the suggestion was first made by some of the selling manufacturers to extend their prorating policy to the Ontario Paper Company in December, 1937, and January, 1938, a memorandum on the subject was prepared and this was revised and the accompanying statistics were brought down to date about the middle of 1938. It may be convenient for the Committee to have printed copies of this memorandum, and I have them available, and we have submitted them to each member.

THE CHAIRMAN: Q. I think the statistics are to be found in the second part of this?

A. Yes, sir, of the printed memorandum. I should also like to submit a copy of this brief I am reading to the Committee as an Exhibit if the Committee desires to have it.

Q. Yes?

A. Our Thorold mill was built in 1912 and 1913. It was intended for, and has always been used for supplying the newsprint requirements of our owners, and for no other purpose.

The duty on newsprint imported into the United States was removed shortly prior to 1911, and our mill was one of the first investments of American capital resulting from that change in United States policy.

In 1913 the total productive capacity of Canadian mills, including our mill, was only 350,000 tons per annum, of which 219,000 tons of newsprint was exported to the United States.

Following the high prices which had obtained in the United States——.

THE CHAIRMAN: Q. Pardon me, before you go further, Mr. Schmon. At that time, in 1913, what was the capacity of your mill?

A. The capacity of our mill in 1913 was 120 tons. It is very interesting, that fact. There were only three other mills which had a larger capacity than we had at that time.

Q. About 36,000 tons per annum?

A. Yes, sir, 36,000.

Another interesting fact that might be given: when we started to purchase newsprint in Canada our production was seven per cent of the total productive capacity of newsprint shipped to the United States. It was the same in 1920, and it is the same to-day.

Following the high prices which had obtained in the United States during newsprint control in Canada, that was the period between 1917 and 1920, extensive construction of new paper mills was under consideration. The market available to them was, of course, an important factor, and the other manufacturers sought an assurance as to the position and the policy of the Ontario Paper Company with regard to the possible sale by it of paper in the market in case it should have a surplus.

The requested assurance was given by Mr. Mellen C. Martin, based on Colonel McCormick's letter of the 28th September, 1920, that the Ontario Paper Company would confine itself to supplying the requirements of its owners so that the market for the requirements of other companies would be left to the selling manufacturers, and they could use their judgment as to how far they should expand construction to take care of the market in which Ontario Paper

was not and never would be interested. This letter is as follows: it is dated September 28th, 1920:

"Dear Mr. Martin:

"I have carefully considered the matters discussed by us with reference to the sale of newsprint by the Ontario Paper Company and can assure you that I have no intention of disposing of our product on the market, except under compulsion now, or at any time in the future. The Ontario Paper Company was not organized for the purpose of manufacturing newsprint for sale other than to the Chicago Tribune and its subsidiaries, and we do not propose to engage in the sale of newsprint to any other publications. The requirements of the Chicago Tribune and the New York News are to-day far in excess of the output of the Ontario Paper Company, and I do not expect to see the time when these publications will fail to require every ton of paper which the Ontario Paper Company can produce.

"We have never sold paper, either in the United States or Canada, other than to the publications mentioned, except, under compulsion, for the purpose of exchanging an inconsiderable number of odd-sized rolls, not suited to our machines, or to replace newsprint loaned to us from outside sources at times when we were critically short of paper.

"The growth of both the Chicago Tribune and New York News has been such that even the increased production of the Ontario Paper Company mill, after the installation of the fifth machine in 1921, will fall far short of serving our requirements. Should there appear to be a surplus of paper at any time in the future, we always have before us the possibility of expanding the New York News, which lack of newsprint prevents us from now doing, and we would take this step rather than place such newsprint on the market for sale. Should, however, the Ontario Paper Company at any time be confronted by the most remote possibility of finding itself with a surplus of newsprint on its hands not required for the consumption of the Chicago Tribune or its subsidiaries, we would close down some of our smallest and least economical machines, rather than dispose of the paper on the market.

"Sincerely yours,

"ROBERT R. MCCORMICK."

HON. MR. NIXON: Q. He was your President at that time?

A. He was the editor and publisher of the Chicago Tribune and half owner of the interests we talk of.

The building of other mills proceeded, and you will find the particulars of these at pages 20 and 22 of the printed memorandum.

During that expansion the requirements of the owners of the Ontario Paper Company had substantially increased and they contemplated the construction of a mill at Baie Comeau to answer part of these requirements, though leaving them still in the market for a substantial tonnage.

I would like the Committee to note particularly this statement: in 1923 the Ontario Paper acquired from the Quebec Government at auction, 2,000 square miles of limits, on condition of building a pulp mill and developing a large water power, and that was at Baie Comeau.

Now, owing to an unfounded rumour at that time that the Ontario Paper Company contemplated supplying an Ontario newspaper, some of the selling manufacturers asked for confirmation of the continued policy of Ontario Paper, and this confirmation was given by letter dated December 12th, 1923, from Mr. Mellen C. Martin to Mr. A. L. Dawe of the Canadian Export Paper Company Limited, which was then the selling organization of the selling mills. I would like to read that letter—this is dated December 12th, 1923, a few days after our acquiring of our auction limits:

"Dear Mr. Dawe:

"I have received your letter of the 3rd of December and wish to advise that there has been no change in the situation with respect to the product of the Ontario Paper Company.

"The statement which I made on the first of October, 1920, to the members of the Newsprint Section of the Canadian Pulp and Paper Association on behalf of Colonel Robert R. McCormick and other officials of the Ontario Paper Company was to the effect that the mill of the Ontario Paper Company, located at Thorold, was not a commercial mill but was a mill designed to supply only the requirements of the Chicago Tribune and its American subsidiary publications, and that it was not the intention of the Ontario Paper Company to solicit business from Canadian newspapers.

"The position of the company with reference to this matter is not changed, and I trust that this expression of the position of the Ontario Paper Company will clear up any misunderstanding on the part of your principals as to the intention of the Ontario Paper Company with respect to the Canadian newsprint market.

"MELLEN C. MARTIN."

Following this the most active expansion of construction by the selling mills took place and was continued down to 1930.

From 1920 to 1930 the Ontario Paper Company added only one machine with a rated annual capacity of 18,600 tons as compared with a total expansion by the selling mills during the same period of 86 new machines, with a rated annual capacity of 2,523,000 tons.

During this period the owners of Ontario Paper Company purchased in the market newsprint tonnage above the production of the Ontario Paper Company amounting to many thousand tons and many millions of dollars. The total up to the end of 1937 amounted to 1,633,000 tons at a cost of $79,894.000.

The total of all of these purchases up to the 1st April, 1940, has amounted to over $85,637,000, and these were always purchased at very high prices.

During this period of expansion it was always understood by the other

manufacturers that the mill of the Ontario Paper Company at Thorold and the contemplated mill at Baie Comeau would be used only for the purpose of supplying the requirements of the Tribune and the New York News, and that none of the tonnage provided for by the Ontario Paper Company would be available as a market for the mills which the other manufacturers were building.

The investors who furnished capital for the mills of the many new companies taking part in this expansion knew of the status and classification of the Ontario Paper Company, and that to the extent of its production, its owners would not be in the available market for which the other companies—old and new—were building.

Ontario Paper was never asked for and never gave any assurance that it would not to the extent of its capacity supply its owners' requirements.

The additional requirements provided for by the Baie Comeau mill were brought about by the energy, ability and success by which their newspaper circulations have been increased. The publishing business is a highly competitive one and the extent of the contribution of our owners to the increased consumption of newsprint paper is indicated by the fact that their consumption of newsprint since 1920 has grown approximately three and a half times, whereas the total consumption of newsprint in the United States has grown only about three times.

Mr. Vining's report refers to the construction of the Baie Comeau mill as "Incident E"—"The last straw for Ontario." I would like to shortly state the history of this transaction: in 1923 the requirements of our owners were rapidly increasing and the Ontario Paper Company acquired a lease of timber and power rights on the Manicouagan limits and the Outarde River, at auction against other bidders. One of the conditions was an obligation to construct a ground wood pulp mill and a power development within a period of seven years; that is to say, 1930, it was to be finished.

The building of this mill was postponed on account of the rapid expansion of the newsprint industry in Canada which was taking place, and which even then looked as if it would, and in fact it did, result in over-production.

Off the record—I mean not in this brief but included in here—I can say that Colonel McCormick spoke often about the reckless expansion during those years even while we were thinking to take care of the business of our own building.

MR. DREW: Q. I don't want to interrupt, but I think you interpolated the words there "at auction"—that purchase was at auction, was it?

A. By auction, yes, sir.

THE CHAIRMAN: Q. I was just going to ask you, do you know what was the price paid to the Quebec Government for these limits?

A. It was an auction of stumpage dues, sir.

Q. No initial price paid for the purchase?

A. Oh, yes, it was $600 a square mile, but there was no auction price per square mile, just merely on the dues.

Q. But you had to make an initial payment of $600 per square mile?

A. Yes. That was about a million dollars—a little over a million dollars.

Q. And what was the extent?

A. 1,800 square miles.

Q. So that represented over $1,000,000 paid to the Quebec Government at the start?

A. Yes, and also a deposit with the Government that we would complete this development or default the money.

Q. This million dollars was never returned to you?

A. Oh, no.

MR. COOPER: Q. What dues do you pay on your spruce down there, Mr. Schmon?

A. Oh, stumpage dues are fixed I think at $2.70 a thousand feet.

From 1923 to date the owners of Ontario Paper Company purchased very large quantities of newsprint from the selling manufacturers at the prevailing market prices which, during the first seven years, were very high. The particulars of these I have already referred to. During all these years up to the construction of the Baie Comeau mill the Ontario Paper Company paid power rentals, ground rent and fire protection right on the limits. In order to show our good faith we did a certain amount of construction work building such things as wharves, dams and other works, and we had at that time in 1930, an investment of over $5,000,000, and this investment lay idle and the final outcome was often in doubt.

In 1930 the company contemplated proceeding with the construction of the mill in accordance with its undertaking to the Quebec Government, but in deference to the other mills, and with the approval of the Provincial Government, the development was postponed on account of the world-wide depression then beginning.

In 1934 the company was asked by the Quebec Government to complete the project or to buy an existing mill. For two years the company entered into various negotiations but it was found impossible to arrive at any satisfactory arrangements with various bondholders' committees and other committees, banks, etc., who were at that time struggling with plans of re-organization for some of the companies. We could not purchase an existing mill, not only because of the very great amount of legal difficulties, but also every one of these committees wanted to sell a mill on a basis of bailing out the bondholders and shareholders at values far beyond those which the property was worth, and far beyond what we could build a new mill for.

Great pressure was exercised in the United States to induce the owners of Ontario Paper Company to use southern pine. It could have built a paper mill in the United States and fulfilled its undertaking at Manicouagan by manufacturing ground wood only. The company naturally had confidence in the Canadian Governments and it was decided not to go to the southern States but to proceed with the construction of a paper mill at Baie Comeau, thus avoiding the loss of its rights and its investment, which were subject to forfeiture if it failed to construct according to the conditions of its lease within the time finally specified.

The construction of Baie Comeau was undertaken with the full knowledge of the Quebec Government, which had urged Ontario Paper Company to construct this plant.

It must also be remembered that the business upturn had begun in 1936 which, according to the general views of business men, would result in a considerable period of prosperity. This upturn did actually result in such an extended use of newsprint that many of the selling mills were running at full capacity for the last six months of 1937, and the paper manufacturers themselves saw fit in June, 1937, to increase the price of newsprint from $42.50 to $50 per ton, effective January 1st, 1938.

That this boom did not materialize more permanently could not have been foreseen, as it was due to many complicated conditions far beyond the control or foresight of any group of business men.

This mill was built in confident reliance upon the fact that the long-continued recognition of its position and classification as a non-commercial newsprint mill, not only by the industry, but also by the Provincial Governments, would enable it to supply its owners with their requirements of newsprint up to the capacity of its mills, and we believed that the company could safely assure its investors, employees and others, of continued stabilized operation, because it had been built for a purpose which was independent of market fluctuations and subject only to the success of the newspapers of its owners.

I would like to refer to our most recent investment, that is, our limits upon, and shipping facilities, based on Heron Bay in Lake Superior. While we had timber reserve sufficient to answer the requirements of both our mills, we were urged by the Ontario Government, at various times, to operate our Thorold mill, as far as possible, on Ontario raw pulpwood. We had been able to do this only to a very limited extent, until the Heron Bay limits became available. We acquired those from the Ontario Government, and we undertook a commitment to cut a large quantity of wood each year. We have made an investment of over a million dollars in the construction of the town, wharf and shipping facilities there, and we expect, during this season, to supply a large part of our requirements at Thorold from that source.

The Baie Comeau mill was completed in January, 1938, and even after completion, the *Tribune* and the *News* are still in the market for a large tonnage of newsprint.

Not only has Baie Comeau, not in any way contributed to the present

difficulties of the industry, but the maximum production at Baie Comaeu still left the owner-publishers as buyers in the market for over 32,000 tons of requirements not provided for by the Thorold and Baie Comeau mills, in addition to over 41,000 tons bought in 1937 for 1938 requirements, and the consequent fall in total consumption in newsprint by United States publishers.

MR. DREW: Q. Mr. Schmon, not in any way debating the statement or questioning its accuracy, I assume that the point that would be made by those who are raising the other side, would be that up to that time, the purchases of the *Chicago Tribune* and *New York Times*, would have been from other mills in Canada, or Quebec, which were deprived of them by the erection of the Baie Comeau mill. Wouldn't that be their point?

A. Yes. It would be made the contention that we have only been buying 30,000 tons of newsprint since the Baie Comeau mill has been constructed. The point we are trying to make here is this, that in 1936 we purchased around 150,000 tons of newsprint, and in 1937 we purchased 197,000 tons, but 40,000 of that was purchased in 1937 for 1938 consumption, because the manufacturers had announced a very large price increase, and obviously our newspapers were buying as much as they could get in 1937.

The point I am making is, we are carefully keeping to what we said we would buy, and that the Baie Comeau mill, in fact, is not taking anything away from the market, because we are increasing our circulation and our own requirements, and replacing that production.

Now in 1939, just about as bad business conditions, the purchases amounted to 67,000 tons, and for the first six months of 1940, the purchases amounted to 47,605 tons, and it is estimated that the total purchases for 1940 will be approximately 100,000 tons. We have, in fact, ordered that as an estimate already from our suppliers.

Having regard to the growth of the business of the owner-publishers, the excess tonnage which must be bought by them in the market, will probably increase substantially in future years.

In considering purchases of large tonnage of newsprint, we must always consider long-term trends, and we should avoid coming to long-term conclusions, based upon the events of a year or of a few months.

The following table shows what the purchases of newsprint by the *News* and the *Tribune* have been in two five-year periods, the first extending from 1932 to 1936, inclusive, and the second from 1937 to 1941, inclusive. We have made those two five-year periods, because the Baie Comeau mill came into operation in this one period we are considering.

We consider these periods to be thoroughly representative of good times and bad times, of years when publishers' stocks were high and low, and of years when new mills were built. Part of the purchases in the second period have had to be estimated, but we give our reasons and our basis for these estimates.

For the first five years we purchased an average of 113,975 tons, that is from 1932 to 1936.

For the period 1937 to 1941, estimating, of course, 1941 to be the same as 1940, we will purchase 99,371 tons per year.

Under present conditions and so far as we can estimate, it looks as if the excess tonnage to be purchased over and above the tonnage of both of our mills, will be about 100,000 tons per annum in 1940 and 1941.

The point I want to make there is that in making our statements at the time of the Baie Comeau mill we are now coming through with what we said we would do.

When the Newsprint Association was organized we joined it on the express condition that we were not engaged in the business of selling newsprint and should not contribute to any of its activities relating to selling.

In view of the chaotic conditions in the newsprint market which have frequently been described, both of the provincial governments insisted that the industry should put its house in order.

Reference may be made to the letters from the Honourable Mr. Heenan dated 4th March, 1936, and from the Honourable Mr. Taschereau, dated 5th March, 1936, to Mr. Vining, president of the Association.

The conditions which had brought about this deplorable condition had resulted exclusively from the practices of the selling manufacturers engaged in the sale of newsprint. Our company had not been concerned in them and was accordingly not brought into these discussions.

The selling manufacturers, under this pressure for action, nominated the Vining Committee. Mr. Vining's report states the object of the committee at page 13 to be:

(a) To work out an adequate plan of tonnage distribution; and,

(b) To satisfy the governments of the industry's good intentions in this respect.

Ontario Paper was not consulted or concerned in the appointment of the committee nor in the distribution of tonnage.

The selling manufacturers and the committee thereupon began the development of their plan of prorating tonnage.

The first step was a survey of the mills to determine the respective capacities.

The committee and every selling manufacturer knew and had always recognized that Ontario Paper was not engaged in the selling business but a suggestion was made that our Thorold mill should be surveyed. Mr. Vining accordingly wrote to us on the 13th April, 1936, as follows:

"Dear Arthur:

"I think you know pretty completely about the engineering survey of the industry now being made by the firm of Stevenson, Jordon & Harrison. We have not approached you about participating in this because we have appreciated your separate classification as a non-commercial mill.

"A suggestion has been made, however, that it would be very desirable to have your mill included in the preliminary part of the survey which has to do with determining accurate figures of the industry's productive capacity. It is pointed out that while we are on this job we should include in the capacity survey every mill in the country.

"Your mill and the Murray Bay mill are now the only two exceptions and I wonder if you would have any reason to object to the Stevenson engineers enquiring into your capacity by the same methods they have applied to other mills. This would, of course, not commit you to acceptance of the figures they may reach and I cannot see that it would prejudice or injure your position in any way. On the other hand I think there is a good deal of merit in the idea of having the industry's whole capacity calculated on a uniform basis. I would appreciate it if you will let me know how you feel.

"With kind regards, believe me, yours faithfully,

"Charles Vining."

We were not within the scope of the proposed proration plan at all and we therefore did not agree that our mill should be surveyed by the surveyors appointed by the other manufacturers and it never was.

In August, 1936, when remitting a cheque to Mr. Vining as president of the Association for a special assessment I wished to make certain that it should not be used for the purposes of the survey and other activities relating to the selling manufacturers in which we were not concerned and which would have been contrary to the conditions on which we had joined the Association. Accordingly, on the 5th August, 1936, I wrote to Mr. Vining who replied under date 7th August, 1936. These letters are as follows:

"Dear Mr. Vining:

"Enclosed is our cheque for the special assessment referred to in your letter of June 28. We wish it to be clearly understood by the Association that our position as a non-commercial mill is unchanged and that, in this position, our payment of assessment is to be regarded only as a contribution to the Association's general activities in promoting desirable conditions of stability within the industry to the benefit of manufacturers and consumer alike.

"As a non-commercial mill we have no part in solving sales problems of commercial companies and our payment of assessment is not to be used in connection with the recent engineering survey of mill capacities nor for similar activities in which we obviously have no participation. We are, however, glad to contribute to the general purposes mentioned above."

Mr. Vining's answer:

"Thank you for your letter of August 5th enclosing your company's cheque for $5,968.32 in payment of the recent special assessment.

"I understand the point you make as to your position as a non-com-

mercial mill and believe this is well established and recognized in the industry. The recent engineering survey to which you referred clearly demonstrated the industry's recognition of your position since your company was excluded and was separately classified as a non-commercial mill along with one or two others in similar position. The costs of this survey have already been paid by the commercial mills.

"Under these circumstances, I assure you that your position is clear and that your payment of assessment will be regarded only in the manner you have specified. We appreciate your contribution to the Association's general work. Yours faithfully, Charles Vining."

You will observe not only that Mr. Vining, representing the Association, of which all the other manufacturers were members, states that our position was recognized by all the industry but also that their action in dealing with the survey and in the formulation of their proration plan recognized it.

We heard nothing inconsistent with this position until about the end of December, 1937, or the beginning of January, 1938, when we learned to our surprise that an effort had been made and was being made by some of the selling manufacturers to induce the provincial governments, who had been asked to approve and assist in giving effect to the selling manufacturers' proration plan, to extend it to our company. We protested and on learning of the recognition of our separate and distinct classification and status fully recognized by all the other manufacturers up to that time and after careful consideration of the whole matter, the governments refused to do so.

This has been referred to by some of the selling manufacturers, as an exemption, granted to us as a favour by the governments, whereas, in fact, it was only a recognition by the provincial governments, of our separate and distinct classification and status, which had always been recognized by all of the other manufacturers themselves up to that time.

In as much as the recognition of our different classification and status had been based upon our announced policy of staying out of the business of marketing newsprint, both the provincial governments intimated that they should have a direct assurance from us that this basis would be maintained, and accordingly we wrote letters in identical terms to the Prime Ministers of both provinces, dated 17th January, 1938, one of which I should like to read to the Committee.

This letter is as follows:

"Dear Sir:

"I write this letter to confirm what I have said and undertaken on behalf of the Ontario Paper Company Limited, at our recent interviews in Montreal, with regard to the position of my company as a non-commercial newsprint manufacturer.

"I reaffirm the facts that the Ontario Paper Company Limited, a subsidiary of the *Tribune* Company, was incorporated as a manufacturing department of the *Chicago Tribune*, for the purpose of providing newsprint for the *Chicago Tribune* and its wholly-owned affiliates; that in accordance

with its settled policy, it has never produced newsprint for sale commercially but only for the *Chicago Tribune* and its affiliate, the *New York News*.

"The position of the Ontario Paper Company Limited as a non-commercial mill—not engaged nor intending to engage in the manufacture of newsprint for sale commercially or for delivery, directly or indirectly, to any publisher other than its affiliates above-mentioned—has hitherto been recognized by the other Canadian newsprint manufacturers, and also by the governments of Ontario and Quebec.

"I now confirm the verbal undertakings which I have given to you, viz:

"Its position as a non-commercial manufacturer being recognized, the Ontario Paper Company Limited:

"(a) Will not sell newsprint to any publisher other than its above-mentioned principals;

"(b) If at any time the Ontario Paper Company Limited should have a surplus of newsprint, after providing for the requirements of the above-mentioned principals, the *Chicago Tribune* and the *New York News*, it will shut down its paper machines sufficiently to limit its production to the requirements of such principals, and will in no event sell or dispose of such surplus on the market;

"(c) The Ontario Paper Company Limited will not, during the period of five years from this date, install any new paper machines in addition to those now installed at Thorold, Ontario, and Baie Comeau, Quebec (the now installed mills at Baie Comeau include the machines recently purchased and installed, and about to be placed in operation).

"I have the honour to be, yours very truly,

ARTHUR A. SCHMON,
President, the Ontario Paper Company Limited."

Thus, the position of the Ontario Paper Company as a non-commercial mill, which was first affirmed to and recognized by the other manufacturers in 1920, was affirmed to and recognized by the governments of both provinces in 1938.

I would like the Committee to clearly understand that the extension of proration to Ontario Paper Company would not be only to require its owners to leave idle a large part of the plants which they have built to supply their own requirements, but at the same time, to require them to buy elsewhere the very commodity which the idle parts of their plants would be capable of producing for them. In the case of the selling mills, the prorating plan provides some offsetting compensations, because, when a selling mill curtails production, it gets its share of the corresponding advantage resulting from the stabilization of the market price, and relief from the chaotic conditions in the market for newsprint.

There would be no corresponding advantage to the Ontario Paper. On the contrary, by curtailing production to the extent of approximately forty percent,

the cost of producing paper for its owner would be increased, and they would, at the same time have to buy the forty percent from the selling manufacturers.

The extent to which each selling manufacturer would participate in this confiscation would be relatively small, even if the consumption by the *Chicago Tribune* and *New York News* were not reduced. But, in addition to that, the owners of the Ontario Paper, after having spent their own money in order to obtain the product which they require for their business, would be compelled not only to pay higher costs for what they should be allowed to get from their own subsidiary, but also to buy the balance in the open market.

Neither the selling manufacturers nor the investors to whom they sell their securities would be under such a disadvantage; and the result would be that the owners of the Ontario Paper would be at an enormous disadvantage, in regard to their competitors and their own publishing business.

It cannot be impressed upon the Committee too strongly that the selling manufacturers are really asking for two things; first, to reduce through proration the production of the Ontario Paper; and, second, to compel our owners to buy from the selling manufacturers at market prices the tonnage which we would have to give up.

There is no advantage to the Quebec and Ontario companies if the owners of the *Tribune* and *Daily News* do not purchase paper from the companies located in these provinces.

Furthermore, if a manufacturer has constructed a mill for the production of a commodity for which there is an insufficient demand here, why should a person who has constructed a mill for his own supply be asked to indemnify the former for all or part of his loss?

The case is comparable to an owner who constructs a building for his own use. If real estate speculators construct too many buildings in the same locality and cannot find sufficient tenants to occupy all the available space, no fair-minded person would suggest that the owner-occupier should be compelled to leave vacant a part of the space in his building which he requires and rent corresponding space from speculators in another building. If a farmer raising livestock has grown sufficient feed for his stock, can it be suggested that he should not be allowed to use his own supply of feed but should be required to buy part of his from his neighbours, in order to relieve the difficulties of other farmers who have grown feed more than sufficient for their own purposes, for sale on an insufficient market?

MR. DREW: I do not want to interrupt you, and we are not to appear perfectly serious, but is not that what has been attempted in a jurisdiction not very far distant from here?

A. I do not understand.

Q. To control the output of feed on certain farms, when they should have used it for more livestock?

A. Do you prevent the man from using his own feed?

Q. I do not think it is right, but I think it has been tried?

A. You will be interested in the proration plan in the United States for coal companies. They exempted steel companies from that plan. The coal that they want, the coal of a steel company is called captive coal, and is free from proration.

THE CHAIRMAN: Are you sure of these facts?

A. I am positive of it. To-day I telephoned our law office in Washington, and this is the statement they give me —

Q. Is this in this brief?

A. No, sir, but this is the statement telephoned me here to-day. The point being raised, I felt I should be prepared for it, and having read the evidence. This is from a firm of lawyers who have dealt with a large number of coal operators in the United States and know the facts: There have been three Guffey Acts. The first two were passed in 1933 and 1935, and were attempted to control and distribute production. These were declared unconstitutional, and were not in existence long enough to be administered. The Act now in force came into force in 1937.

It is a marketing Act, pure and simple, and makes no attempt to prorate tonnage among the purchasers. Under this Act steel companies owning coal mines are exempt. The tonnage so exempt is known as captive tonnage, that is tonnage which does not go on the open market. And for these purposes steel companies go to Washington, claim exemption of their own mines, and get it.

Q. I do not intend to divert you from reading it, but the illustration, which seems to be a very strong illustration, I think,—however, it is one that has been actually tried,—about the distribution of growth of feed when a person has live-stock to consume it. However, I do not want to stop you on what you are saying.

THE WITNESS: The proposal of some of the selling manufacturers that their prorating plan be extended to the Ontario Paper, now again put forward by some of them, completely ignores the fact that the tonnage available to Ontario Paper was brought about by the successful efforts of the owners of Ontario Paper to extend their publishing business. The owners by their application to the problems of their business, foresight and ability, had been successful in expanding the circulation of their newspapers, which has naturally resulted in a greater tonnage of newsprint required by them from Ontario Paper.

The field of newspaper publishing is a very competitive one, and during the last twenty years there have been many casualties. In this period many newspapers in the United States have ceased publication, and many others have been absorbed or amalgamated. Publishers have had to meet competition from sources other than the daily newspapers, particularly from radio, and the great increase in weekly magazines, with the result of greatly curtailed advertising available to the newspapers. The hazards of the newspaper publishing business are probably best illustrated by the troubles in which the once great Hearst publications now find themselves.

Notwithstanding these difficulties and trends, the owners of Ontario Paper have during this period greatly increased the circulation of their papers, the *Chicago Tribune* and the *New York News*, and, consequently, the tonnage of newsprint to be supplied by Ontario Paper. They have done this by their own ability in an attempt to give the public more value for their money.

By the undertaking given by Ontario Paper in 1920, and affirmed in 1938 to the Honourable Mr. Duplessis and the Honourable Mr. Hepburn, the owners assumed in full the hazards above referred to and the risk of having to be successful in the maintenance and expansion of the newspaper publishing business of suffering severe losses which would result from shutting down machines, rather than selling newsprint on the market.

The selling manufacturers have assumed none of these risks, and have made no contribution to the success of the owners' business.

I find it difficult to believe that when the record is considered by this Committee it would recommend depriving the owners of Ontario Paper Company of a substantial part of the fruits of their efforts in order to divert to the selling manufacturers what it is proposed to take from the owners of Ontario Paper.

If the proration plan of the selling manufacturers were extended by government authority to the owners of Ontario Paper, it would mean that the owners of Ontario Paper would be deliberately deprived of the benefits of their own initiative, foresight and energy. Further, the incentive which has contributed to such a large consumption by the owners' newspapers of Canadian newsprint would no longer exist. It would in fact be reversed. In this respect it will be noted that when the price of newsprint was increased by $7.50 a ton to the present price of $50 a ton, there was a substantial reduction in the consumption of newsprint generally; and while it is not suggested that there were no other contributing causes, the increase in price was undoubtedly a fact which led other publishers to exercise ingenuity to reduce the amount of newsprint required in the publication of their newspapers.

If proration were imposed on Ontario Paper, it is very doubtful how much increased tonnage would become available to the selling manufacturers, because the owners of Ontario Paper would probably have to curtail the consumption of their newsprint. For instance, the *New York News* recently introduced a predated Sunday issue, which is sent by train or boat three weeks before sale, to all parts of the world. This issue alone has a circulation of one million two hundred and forty thousand on each Sunday.

Since the installation of the Baie Comeau mill, both the *Tribune* and the *News* have published extra sections of comics and other features. I have just looked up the statistics of that, and find that has increased by five percent in the comics; and that is since the construction of the Baie Comeau mill.

The imposition of proration would greatly minimize the incentive to increase circulation by the owner-publishers.

I would like to emphasize, for the consideration of the Committee, the important contribution that the Ontario Paper Company Limited and its owner-publishers are making to Canada's wealth.

Let me state some facts briefly: Since 1913, our company has expended in Canada for materials, payrolls and taxes, $153,736,000.00.

Since 1920, $85,000,000 worth of newsprint has been purchased by our owners from other manufacturers, in addition to substantial purchases made between the years 1913 and 1920, the amount of which is not presently available. That money has been a part of our contribution to the standard of living in Canada during the twenty-seven years of our operations here, over and above the amount spent in our own production.

The total amount of money that the *Tribune* and *News* paid for newsprint purchased, including our own, amounted to $37,000,000 last year.

Approximately ten percent of all the newsprint consumed in the United States is consumed by our owners' two newspapers. Their purchases are all made in Canada, and accounted in 1939 for about 5.25 percent of the total exports from Canada.

MR. DREW: You mean by that, of the total exports from Canada?

A. Of the total exports in 1939, which were $392,631,000; and the purchases that they took last year amounted to $17,937,000.

THE CHAIRMAN: I am going to ask you to explain this, Mr. Schmon. I understand that most of our newsprint is exported to the United States. Now, if the consumption of the two newspapers which own your company represents five percent of the total exports, surely it must be less than ten percent of the consumprion in the United States, because the United States produces some newsprint there, surely?

A. The total consumption of newsprint in the United States can be found, and you can check on the statements that have been submitted in writing in the printed brief.

In 1937, the latest figure, I have it here, the total United States consumption was 4,246,000 tons of newsprint. And the total consumption of the *Chicago Tribune* in 1939 was 346,254 tons.

THE CHAIRMAN: Is not that then five percent of the total exports from Canada?

A. Yes. The cost of that paper represents five percent of the total exports from Canada.

THE CHAIRMAN: Q. Do you mean of newsprint exports?

A. Of all exports. That is what I am trying to make clear.

MR. W. G. NIXON: What figure did you give before?

A. 326,254 tons.

THE CHAIRMAN: Q. That is the total exports from Canada to the United States?

A. 3,341,000 tons.

The point I am trying to make as to our contribution to Canada is, that these purchases constituted an important provision by the United States dealers available to Canada.

Except for a small issue of preferred shares, long since retired, which were purchased by employees and directors, we have never paid any dividends or made any distribution of capital,—I would like the whole of the Committee to pay attention to this,—but have reinvested all our resources in our Canadian properties.

In the circumstances which I have stated, we believe and submit that there is no justification for extending to the Ontario Paper any policy of prorating newsprint tonnage.

The well-founded recognition of the difference in the status and position of Ontario Paper as a non-commercial mill has been clearly demonstrated, I feel, and I would ask that this Committee do so find in its report.

THE CHAIRMAN: Have the Committee any questions to ask?

MR. DREW: How long have you been with the Ontario Paper Company?

A. I have been with them since 1919, since immediately after the war.

MR. DREW: I have no further questions, Mr. Chairman, unless Mr. Schmon has anything he would care to add, in regard to the general situation in this industry.

Q. I understand your purpose is to present these facts, in regard to that specific aspect of the proration problem, which has been discussed by you here. And if, growing out of any of the appendices to this report, further questions should arise, it may be possible, before any report is presented, to communicate with you and get further details about that? But, having regard to your connection with this industry since 1919, I would only ask if there is, from your knowledge of the industry, anything which you would desire to add?

A. I have not anything to suggest except as the Committee might want to ask me any questions.

Q. I might say, frankly, that a great many questions have been directed to the financing, the forestry methods, and the conduct of the business generally, and so on, of other companies. But it would appear to me that it is putting you, where you are insisting upon a special position, in an embarrassing position to put you in the position of one in the other field. For that reason, I would not care to ask any further questions, unless you care to add something to what you have already stated to the Committee?

A. No, I have nothing else to submit.

HON. MR. NIXON: Are you importing any wood from Quebec for your Thorold mill?

A. Yes, we have had two properties which we have been operating since 1919.

Q. How many cords are you getting from there?

A. We cut a hundred thousand cords of wood there this year. How much of that will arrive at Thorold will depend upon the drive and the shipping facilities, which may be scarce this year, and other factors.

THE CHAIRMAN: You import some pulpwood from Quebec, where do you get it from?

A. Quebec, adjoining Baie Comeau we have some limits along the north shore of the Gulf of St. Lawrence.

Q. And that is where you bring your pulpwood from?

A. Yes. This may be of some interest to the Committee, because in looking over the evidence, I noticed there have been a number of questions asked about the number of mills that were in existence in 1913.

In 1913, when we came into production, the total amount of tons made in Canada were only 350,000 tons: and there were a certain number of companies, I think about six or eight or ten companies. In the period from 1920 to 1930, these older companies that were established put in twenty-five machines, as part of this period of expansion; but the new companies that were organized, some twenty new companies, installed sixty-one new machines between 1920 and 1930; most of them in the period between 1925 and 1929.

HON. MR. NIXON: The capacity of the machines was not the same?

A. No, a machine may have a certain capacity when estimated; but through improvements in machinery and methods and the art of making paper, the capacity of that machine has increased.

MR. DREW: There is just one point here that I must admit I have some difficulty in understanding. I am referring back to page 27 of your brief,—I think I have it clearly now. When you say that the purchases for 1929 amounted to 5.25 percent of the total of all exports from Canada, you mean the purchases of these two newspapers?

A. I meant that the papers not only purchased from us but also from the other Canadian suppliers.

Q. In other words, the purchases by the *Chicago Tribune* and the *New York News* amounted to 5.25 percent of the total of all exports from Canada to the United States for that year?

A. Yes.

THE CHAIRMAN: Thank you very much, Mr. Schmon, for giving us your views on this matter.

EXHIBIT No. 46: Statement of Mr. Arthur Schmon, read before the Committee.

EXHIBIT No. 47: Figures as to the number of men employed in this industry in Ontario, in the bush and in the mills, to be supplied by Mr. Thomson.

THE CHAIRMAN: Is Mr. Draper here?

HON. MR. HEENAN: We have sent for him.

SELBY DRAPER, recalled:

THE CHAIRMAN: All right, Mr. Elliott, have you any questions to ask Mr. Draper?

MR. ELLIOTT: Q. Mr. Draper, will you refer to Exhibit 41? You undertook to furnish some statistics. You have here a statement showing the aggregate of the rent received from lots leased or licensed in the year 1939?

A. Yes.

Q. I think there are 215 lots or parcels, is that right?

A. Yes.

Q. Totalling 313 acres.

A. Yes.

Q. And that the total revenues are $43,300 odd?

A. Yes, sir.

Q. As I work that out, each of the parcels averages 1.4 acres, and that the rent for each parcel was $200.00, or a rental of $140.00 per acre. Is that the amount of rent which you received?

A. Those are the correct figures of the total amount of the rental.

Q. Do you suggest that they are correct, that you get an average of $140 per acre? My understanding would be that you probably would be receiving in the neighbourhood of $20 an acre?

A. I would not think the average would be $140 an acre.

Q. Do you not think those figures are obviously wrong?

A. I would not like to say that, I got them from a reliable source, the Accounts Branch.

Q. Do you suggest that you received $140 an acre rental a year?

A. I am suggesting that this is the amount that was received.

Q. But you got in 215 leases at $200 per lease, at the annual rental of $200 per lease,—that is what it works out at?

A. Does that cover town lots, too? 215 parcels covering 313 acres for a rental of $43,369.00,—that of course includes everything that was leased or licensed, such as town lots, town areas, areas that are set aside for reserves for water power, that is storage reserves for water; and all other areas similar, that are used for that purpose.

THE CHAIRMAN: But are all these areas included in the 314 acres, or is it in addition to the 134 acres?

A. That is leases covering 313 acres.

MR. ELLIOTT: Q. You state in this statement that the summer resort leases are 215, and that the rental is $43,300; so that every summer resort license that statement contemplates that you received an average of $140 an acre annually?

A. As I say, this includes townsites; it does not say summer resorts only, and it may include towns.

HON. MR. NIXON: Obviously, that acreage could not include much for water storage purposes?

A. No.

THE CHAIRMAN: The number of licenses for occupation and leases from summer resort parcels issued during the year ending March 31, 1940, 215; covering an area of 313.942 acres,—roughly 314 acres?

A. Yes, sir.

Q. For a rental of $43,369.66. What we were interested in principally was summer resorts. You mentioned a while ago, areas set aside for water storage purposes, or water development, and, as Mr. Nixon points out, you cannot have many of such areas included in this area?

A. I did not intend to suggest that it covered large water storage. But these items cover something beyond the parcels here.

Q. You show a rental for the 215 parcels of $42,369.00. Is that the rental for the 215 parcels, or is that rental, also, for something else?

A. The $43,000 is rental for these 215 parcels.

MR. ELLIOTT: Q. Then you suggest that you received $143 per acre?

A. I am not saying that.

MR. ELLIOT: Mr. Chairman, the statement is obviously wrong. This statement says it includes certain things, and then the witness says it may include some other parcels. Then, can you say you received an average of $143 an acre?

THE CHAIRMAN: As far as that is concerned, we can do the figuring for ourselves.

Can you give us any explanation on that point, Mr. Cane?

MR. CHAIRMAN: I have not seen this Exhibit before, so that I cannot speak as to it; but it may include some areas for water powers.

THE CHAIRMAN: Q. What does it show, Mr. Draper, as rentals for the summer resorts?

MR. ELLIOTT: That is not given in the statement.

THE CHAIRMAN: Yes, I have it here in the 1939 report. I suppose you have the same figures as in 1939 report, this at page 35.

The report of the Department should be a statement of the revenues of the Department of Lands and Forests for the fiscal year ended 31st March, 1939. Rent: first of all, Waterpower leases, and then, Other Leases and Licenses of Occupation, $60,053.31.

Now, that is the total amount received in that year for summer resort purposes and other leases, is it not?

A. I take it that the figures quoted as of March 31st, 1940, are as compared with the figures given in the report on the same category.

Q. But not for the 215 parcels?

A. Yes, for the 215.

MR. ELLIOTT: Do not you think, Mr. Draper, that an average rental of $15.00 per parcel would be about your average rental for 215 parcels, which would be something over $3,000 for the year. You are dealing every day with licenses for summer resort properties, and sometimes you have 5,000 acres, sometimes as high as 25 acres, but as a rule they are for five and ten acres apiece?

THE CHAIRMAN: Mr. Draper, may I put it in this way: For the fiscal year ended March 31st, 1940, you received for the 215 parcels a rental of $43,369.68. Now, if you had issued a similar number of licenses or leases for a period of ten years prior to that time, at the same consideration, you would have had an income in your Department from those resources of over $400,000. Is not that the total revenue received by the Department from those summer resorts?

MR. W. G. NIXON: Mr. Chairman, should we not have a breakdown of the total revenue received for these parcels, in order that we may have a complete report?

MR. CANE: May I be permitted to interrupt?

THE CHAIRMAN: Certainly.

MR. CANE: May I suggest that for your purposes a statement should include the rental received on each and every parcel, whether it be a rental or a lease for water power purposes or for a sawmill or for a pulpmill, or anything of that kind. Then you will have a complete picture and will be able to segregate the particular parcels.

On page 35 or 40 of our Annual Report, we select each and every case that we deal with throughout that year, either by sale or lease, if I recall correctly, and put it into the report. And that statement is already prepared in the report for that year, I believe even to the acreage. We should not have any difficulty, if we put in the complete data that you require.

THE CHAIRMAN: Yes, substituted for this Exhibit No. 41.

MR. ELLIOTT: Mr. Draper, you were asked also to put in a statement of the lands sold for all purposes, together with the acreage.

THE CHAIRMAN: Might I suggest that that be put in the same statement with the acreage and the price.

MR. DRAPER: We have the number but we have not the total amount.

MR. ELLIOTT: What is the total number sold?

A. One hundred and fifty.

Q. You sold one hundred and fifty parcels for cottage sites, and the total acreage is 133?

A. Yes.

Q. Were you not able to figure up the amount received?

A. We are able, but we have not had an opportunity yet.

A. You filed that statement last Thursday. Haven't you been able to figure it up in the meantime?

A. No, we have not yet.

Q. Mr. Ferguson told us in his evidence that the average price per acre for Crown land sales for cottage purposes would be about $25.00 an acre, so that that would be about $10,000 or $11,000 as the amount received for land sold for cottage purposes?

A. Yes.

MR. DREW: I want to make an observation while this matter is before us, that in the newspapers in the last two or three days there have been estimates of the enormous increase in the tourist business from the United States that

Canada will have. I saw an estimate that we might expect 20,000,000 people from the United States to Canada this year. And it does seem to me that it is of the greatest importance that facilities of some kind be arranged which will make it possible that persons who seek property for rental or purchase, may obtain all necessary information with the greatest facility possible. Because, unless we can do that, we are going to lose an opportunity to make permanent residents in Canada of some of these tourists.

Here is an opportunity to attach people to our soil by making tourists regular summer visitors.

MR. ELLIOTT: In reference to the question of the sale and lease of lands you have considerable to do with that as you are the chief clerk in the Lands branch?

A. Yes, sir.

Q. I think we were told the other day that the price you determine people have to pay for land is fixed in the Department similar to the rentals that are fixed when each application is received, is that not correct?

A. It depends on the report. The report is made.

Q. If a person makes application to buy a cottage site, you are not in a position to inform him what the price is that he will have to pay?

A. Unless we have previously ascertained the value of the land as a result of inspection.

Q. That is unless somebody else has made application for that site and you had had a prior inspection made.

A. Not necessarily. There are a number of parcels that have been subdivided or inspected in the province of which we do know the price.

Q. I am not referring to the price of subdivided lands, I am referring to the average man that applies to you. Most of them are Americans who make application to the Department for a price that they will have to pay, and you are not in a position to inform them what they will have to pay; you have to make an investigation after you receive their application?

A. As I say, not unless we have previously ascertained the value of that land.

Q. Unless it was subdivided.

A. No, not unless we have previously ascertained the value.

DR. WELSH: For instance, here is a lake in north-eastern Ontario, you have not that subdivided unless somebody comes along and makes application for a parcel on that lake?

A. Not subdivided, no. But we quite frequently know the value of the land obtained from an inspection in the locality, you see.

Q. By whom?

A. By the Department's officer.

Q. Why is that inspection made?

A. For instance, very frequently when an inspection is made of land or a summer resort parcel, we request the inspector to place a value on adjoining land.

Q. Yes, but that is only done when you receive an application for that site? Is not the application the initiation of the inspection?

A. Not always. We have reports on some areas that have not been inspected.

MR. ELLIOTT: Is it not a matter that can be readily done to furnish the Department with information fixing the price on a particular area on a lake?

A. It can be readily done as a result of inspection.

Q. Then it would not be difficult to have a survey of a lake made, so that you would know the price of all parcels on that lake?

A. Might not be difficult; it would be very expensive though.

Q. Do you think it would be expensive? I do not refer to a survey, I mean, just to have a report made so that you could fix the price, because you fix the price before you request the survey, do you not?

A. Not always.

Q. You do not?

A. No.

Q. Then a man might have to locate his property, and might have to go to the expense of having it surveyed, before you can tell him the price he will have to pay for it?

A. Not necessarily. We don't require him to survey it.

Q. You just made the statement, that in some cases you cannot give the price until the property is surveyed?

A. No, no, I didn't say that.

Q. Well, it is in the record.

A. I said, "inspected". You are confusing the word "survey" with "inspection".

Q. You give a man a price first, then you request him to file a survey?

A. If the land is not surveyed, yes.

Q. From what you recently said, it follows, therefore, that you can get a report as to the value that should be placed on land bordering the lakes, without the necessity of having the property surveyed?

A. Unless it is of such a nature that it is difficult for the inspector to know what particular parcel the man is applying for. That sometimes occurs.

Q. Then, sometimes he has to furnish a survey, before you can give him a price?

A. Yes.

Q. So a person seeking a cottage site might be in the position that he would have to not only make application, but go to the expense of having a survey made before you can give him a price?

A. Yes, for the reason that situations vary in certain waters. An island that might appear as an island, would be part of the mainland prior to the raising of the water, or something of that kind.

Q. I take it, you require a survey before you give a price. I do not think, except in very rare instances, anybody would go to the expense of having a survey to find out what price they would have to pay for land?

A. We sometimes have. The first we hear from the applicant, the survey is filed.

Q. You believe, of course, in keeping up the revenue of the Department?

A. Yes.

Q. I suppose you regard that as one of your chief duties?

A. Not necessarily.

Q. In any event, we will pass on from that question. We have had some evidence on the difficulties of procedure. On the question of water lots, Mr. Draper, there is nothing in the regulations covering the leasing of water lots, is there? There is nothing in the departmental regulations covering the leasing of water lots?

A. Only in a general way.

THE CHAIRMAN: I think we have had that before. There is nothing in the regulations, but they are regarded as Crown lands and dealt with as such. I think that was the answer given us the last time the witnesses were here.

WITNESS: And in practice.

Q. I beg your pardon?

A. And in the practice of the Department.

MR. ELLIOTT: As a matter of fact, in reference to water lots, it is a matter for the discretion of the departmental officials, whether any charge is to be made for boathouses situated on what you believe to be Crown lands?

A. It is a matter for the Minister to decide, certainly.

Q. I think Mr. Crosbie told us the other day, that in his district, there are very few water lots under license. To your knowledge, is that correct?

A. I think there are comparatively few in that district.

Q. The position is, then, that the great majority of people are not paying any rentals for boathouses situated on what you believe to be Crown lands, while the odd individual is paying? Is that not the situation?

A. I do not know how many there are who are occupying water lots, and who are not paying rent.

Q. The great majority are not paying licenses; you know that?

A. I do not know that.

Q. You do not know that?

A. We haven't any evidence to that effect.

Q. We have the evidence of Mr. Crosbie, who stated there were very few. I would offer the suggestion, Mr. Draper, that you probably would not find one in five hundred in these districts.

A. That is your suggestion, not mine.

Q. Do you think it is a correct one?

A. I would not care to pass an opinion on it.

Q. You would not care to pass an opinion on it?

A. No.

MR. W. G. NIXON: You do not determine the policy in respect to charges?

A. No, sir.

MR. ELLIOTT: The reason I offered that suggestion is this; that Americans usually think that they are being discriminated against, when demands are made upon them to pay a license fee for a water lot, when they know that their neighbours are not paying any license. You have had cases drawn to your attention like that?

A. We have one specific case in which you are interested.

Q. In which the Stoney Lake Cottagers' Association is interested, Mr. Draper.

A. Put it that way if you wish.

Q. In that particular piece, you ran into this question on inland waters, that as a result of the erection of dams, lands have been drowned and it is questionable whether cottages are situated on private property or on Crown property. Is that not so?

A. That is questionable, with reference to Stoney Lake.

Q. We will take Loon Lake, where there is a rise of seven feet; we will take the waters in Victoria County; they are all similarly affected by the erection of dams?

A. There is no land on Loon Lake that is seriously affected by that old dam, that we are aware of.

Q. There is no land seriously affected?

A. On Loon Lake.

Q. No, there is not; I will agree with you there.

But do you not think it would be a good thing if this Committee were to make a recommendation, so that there would be some definite policy laid down respecting water lots, so that there would be uniformity in the procedure?

A. There is a definite policy now.

Q. I suggest there is not, because I have never been able to find out how you deal with water lots. When these American tourists make application to you, do you simply inform them that the price will be such and such, and that they will have to provide a survey. Is that your usual procedure?

A. No, I do not say that. First, I would like to put you right on your suggestion that we are discriminating against Americans who buy summer resorts, because we are not. They are all treated the same. All applicants are treated the same respecting summer resorts.

Q. I think, if you were to examine specific files, you would see that there appears to be a lack of uniformity in your methods of dealing with applications. I am not saying it is done purposely, but, with the system you have of fixing prices, your prices vary?

A. Not as discriminating against Americans.

Q. Your system leads the Americans to think so?

A. No reason that they should.

Q. Well, I suppose you appreciate the fact that, when an American locates a cottage site which you sell to him, that benefits not only the Department of Lands and Forests, but we have increased our revenue in gas taxes, hunting and fishing licenses, and in many other ways?

A. As I say, we treat them just the same as any other applicant in that way.

Q. Well, you have told us, Mr. Draper, that sometimes you have information in the departmental files from prior inspections, which enable you to furnish applicants with prices readily, without the necessity of having a further inspection made?

A. Yes, sir.

Q. Then, it would not be a difficult matter for you to take a lake, for instance, and to have information on file concerning that lake, not only in your Department, but in all of the district offices, fixing the prices of land on all parts of that lake?

A. We have done that in previous cases, and we find we have gone to a great deal of expense, and the province has spent a lot of money in subdividing ——

Q. I am not referring to surveys. You do not have a survey made when you get these reports, in order to fix prices. Without survey, would it not be an easy matter for the Department to get information on file, so that you could fix the price of land on all parts of the lake?

A. We might pick out a lake, yes; but the price this year might not prevail next year.

Q. That is what I noticed.

A. And for that reason, if you will allow me to suggest it, the cause of that is that fires may get through the neighbourhood and change the outlook altogether, and timber is cut and removed and the situation is changed; roads are built in, and a lake upon which the land might be worth $15.00 an acre or $50.00, might not be worth a quarter of that the next year.

Q. It is always muddled, in any event, because the prices never seem to be the same from year to year?

A. They are the same from year to year, unless conditions change. It is a market value every time.

Q. A previous witness from your Department agreed that prices vary from time to time, also that the price of licenses varies from time to time. The point I am making is this: that the playgrounds of Ontario, that is, the Crown lands, are in the hands of the Crown, and that you should do everything you can in the Department to make it easy for tourists to locate sites for cottages?

A. That is what is being done.

Q. Well, if an American wrote to you with respect to a certain lake, would

you be able to give him any information as to the nearest improved highway, telephone service, postal service, the size of the water and the fishing game in the water; could you give him information of that kind?

A. Yes.

Q. Do you?

A. We do not guarantee fishing facilities, of course.

NON. MR. NIXON: What do you mean by "game in the water" —swimming?

MR. ELLIOTT: No, game fish. If you go to a district office now, as a district officer told us the other day, you could not get information as to the price of a certain parcel and the applicant would have to write to Toronto. It would seem to me that all this information should be compiled, and be in the hands of the Department, and in the hands of every Crown officer, so that it would not be a matter of long negotiation to get information that would lead one to decide whether he is going to locate on a certain lake or not. You will agree, Mr. Draper, that the files of the Department involve substantial expense, that is, the correspondence necessary under the existing system with applicants?

A. They are an expense, yes.

Q. You follow the policy concerning a great many waters, of preferring to lease rather than to sell?

A. Yes.

Q. And your license fee as a rule, is about $10.00 an acre, is it not?

A. For summer resorts?

Q. Yes.

A. Yes, sir.

Q. Do you think it would be preferable for the Department to sell rather than to lease?

A. No, sir.

Q. Do you think that the $10.00 a year which you receive absorbs the administration costs in connection with one license?

A. It produces an annual revenue.

Q. It produces an annual revenue, but, having regard to the cost of the administration of the Lands Branch, do you not think it would be better to eliminate that file and sell the property?

A. It would not be a continuous revenue to the Crown as it is now.

Q. Your revenue is more than absorbed by the cost of administration? You will agree with that statement?

A. No, I would not.

HON. MR. NIXON: Might it not be more advantageous to the development of the country to sell it outright rather than keep it on a lease basis?

A. On a lease basis we have an annual revenue.

Q. Yes, but a few thousands of dollars of revenue to the Department is of small consideration, compared with the development of the whole country?

A. It doesn't prevent development.

THE CHAIRMAN: Would you spend $20,000.00 cash on a piece of rented property, when you know that in seven years, the price may be jumped up to three times what you are now paying?

A. I am not arguing as to the amount of expense that might be put on, but I might say that not one timber license in the province extends beyond the 30th of April each year, and they have millions spent on their property. Why couldn't the summer resort man do the same thing? They are doing it.

DR. WELSH: I am told that in connection with the Loon Lake, when they bought their properties outright probably $250,000 was spent in there, and since the rental system has come into effect there has not been anything spent.

A. I do not think the rental system you speak of prevails on Loon Lake.

Q. It does now. I am told by people who seem to know, that the rental is disturbing the enterprise?

A. Well, we have had very, very few complaints about it.

Q. Maybe there are few to complain.

MR. ELLIOTT: The information is, that in a short space of time, $200,000.00 was spent in cottage development and tourist development, but since you have stopped selling property on that lake, and limiting your negotiations to leasing, there has not been anything in excess of $5,000.00 spent.

A. My information respecting Loon Lake is to the effect that the reason we stopped selling was, that all available summer resort land on that lake had been disposed of. The north shore of it is under timber license. That is the reason we could not sell there.

Q. There is a lot of available space on Loon Lake. There is a shore line of 30 miles?

A. Covered by timber license, yes.

Q. You take the Mississauga Lake, where you had a survey made some years ago, also Catchacoma Lake in connection with which you will remember Mr. West of Cleveland. You remember that file, Mr. Draper?

A. Yes.

Q. Well, there was a survey made, and a subdivision made on part of Catchacoma Lake and part of Mississauga Lake. Since the subdivision was made no land has been sold in the subdivision?

A. I do not think that is correct.

Q. Mr. Crosbie stated that in evidence, and that is my understanding?

A. I think some lands have been sold in those subdivisions. There are about three of them, I think.

Q. In any event, all of the available land on Catchacoma Lake has been sold for cottage sites, while the adjoining Crown land which was subdivided has not been sold. I am going to suggest the reason is that you are holding the land at too high prices.

A. The price that is usually set on any subdivided parcel, and I presume that applies to the one to which you refer, is that valuations are recommended by competent officers and fixed accordingly.

Q. Well, on Mississauga Lake to the south you refused to sell land which, although application had been made, you insisted that the parties lease?

A. I am not familiar with that correspondence, so I am not in a position to say. I will be glad to get the facts if you will give me the lot.

Q. What I am suggesting is, that you would have disposed of a lot of subdivided land if you had put the price down, and that you would have sold some of the lands that have been subdivided if you had consented to sell them, instead of insisting on leasing them. You believe that the present procedure is the desirable procedure to govern and regulate the sale and leasing of Crown lands for cottage sites?

A. I would not like to express an opinion on that.

THE CHAIRMAN: You surely should not ask a civil servant to approve or disapprove of what this government does.

MR. ELLIOTT: He has been there for 35 years.

THE CHAIRMAN: Even so.

WITNESS: I have been there long enough to know not to criticize the government in its policy.

MR. COOPER: Probably you would not have been there so long if you did.

MR. ELLIOTT: But you submit readily to far-reaching changes in government policy ——

HON. MR. HEENAN: You must not forget, Mr. Elliott, that the demand for summer resorts is growing now. You could have all the areas in the north country in Ontario surveyed at large expense, and you might not get an application for any one of them.

MR. ELLIOTT: Not at the price you charge.

HON. MR. HEENAN: Then, again, the policy has been changed from time to time by various governments, and I have not changed the situation since I came in. At one time they sold outright. As Mr. Nixon says it would seem a better course, and yet we have found men purchasing summer resorts outright for no other purpose than to sell them at exhorbitant prices; and therefore they were not sold. Then you will find a man putting up a cottage that costs him $200.00 or $500.00, occupy it for a while, and then it is burned down and he will desert it. It is out of the Crown then and nobody else can deal with it.

MR. ELLIOTT: For years now, you have made it a provision that they must build a cottage within 18 months, costing $500.00, otherwise you would not sell.

HON. MR. HEENAN: Supposing you and I built a cottage and we sold it outright. In a year or two your family or my family grows up, and you are tired of that summer resort, and the cottage burns down and we go away. It is out of the Crown and nobody else can get it, because it is deeded to you. That is going on all the time. It changes from time to time.

MR. ELLIOTT: Will you furnish a statement to the secretary showing the sale of lands for summer resort purposes for the year 1939, together with the number of parcels, acreage, and the price received?

HON. MR. NIXON: That has been agreed.

WITNESS: Yes, sir.

THE CHAIRMAN: All right, Mr. Draper. We will now hear Mr. Irwin.

J. C. W. IRWIN, Sworn:

THE CHAIRMAN: Mr. Irwin, you have asked to be heard by this Committee. I understand you have certain suggestions to make. You may proceed.

WITNESS: Mr. Chairman, if I may be permitted to make a short preamble, I will make it as short as I can, I do not wish to cover more than is necessary for clearness.

MR. COOPER: Would you mind telling the Committee, so that we might have it on record, your status in appearing here, what employment you have had, and who you have worked for?

A. Yes, I do not mind, sir. I graduated in forestry in 1922. During my vacation before that I had been in various employments, including the Ontario Provincial Government. After graduating, I was on temporary work surveying in northern Ontario in the Missanabie area. It was called reconnaissance work. That work terminated at the end of 1922, and from there I went to Price Bros., where I was on fire inspection.

Q. How long were you with Price Bros.?

A. About two years.

Q. How long were you with the Department?

A. From July to about the end of December.

HON. MR. NIXON: As a fire ranger?

A. No; reconnaissance, Mr. Nixon, up in northern Ontario, and up on the C.N.R., above Sudbury for the most part. Since then, if I may go ahead, I went to New York on a visit, and stayed there for four years. I came back in the publishing business in 1928, and since that time have been in the publishing business. But my interest in forestry, of course, goes back, I presume, not only to my previous work, but also to my education, and the fact that I have associated a great deal with other similarly educated persons.

I do wish, however, to give emphasis to certain things that were mentioned, and to discuss points of which I have knowledge, but seem not to have been put into the evidence. These have to do chiefly with the personnel organization of the Department, and its handling of what might be considered scientific problems.

Perhaps a brief history of forestry in Ontario would not be amiss. The first forestry class was graduated from the University of Toronto in 1909, and since then classes of varying size have been graduated every year, a total to date of 268, of whom 77 percent are still engaged in forestry or allied work. The Commission will be interested in knowing that a young Norwegian, who recently revisited Canada after an absence of ten years, following his graduation from our forestry school here, assured a number of graduates that the course given in Toronto was the equal of anything they had in Scandinavia, and in his opinion, the faculty in Toronto inspired the men with an extraordinary zeal and enthusiasm which he had not noted elsewhere.

At first the graduates were almost entirely absorbed into the Dominion and British Columbia government services, with a certain number finding employment in pulp and paper companies. About 1921, the Ontario Government entered the market for foresters, and from then until about 1930 absorbed a considerable number, putting graduate foresters in charge of nearly all its district offices. In most cases, the district forester was given a graduate as assistant, and occasionally, more than one. Until the beginning of the present administration in 1934, however, the duties of foresters in the Ontario government service were entirely confined to fire protection, and it was a case of "hands off", as far as timber administration was concerned. The present government saw the unwisdom of such a policy, and moved immediately towards consolidating the

functions of fire protection and timber administration in the various districts. This was decidedly a forward move. Unfortunately, at that time some fifteen technical foresters were discharged in what was called an economy drive, including five men whose jobs consisted mostly of forest or silvicultural research. This wholesale dismissal had a demoralizing effect on the entire service, for no one knew who would be next. It should be remembered that this took place in the fall and winter of 1934-35, in the depth of the depression. With such a history in the Department, I think you will agree that it would be a very brave forester, indeed, who would even now criticize government policies. Foresters in the employ of private interests, who work under agreement with the provincial government, are also silent in public, for fear of repercussions.

I am not concerned, particularly, for the men who lost their jobs; five or more have been re-engaged by the Department, and some others have obtained more lucrative and better positions elsewhere. I submit, however, that whatever *esprit de corps* the forest service had developed at that time—and it was becoming a very efficient and devoted service—was given a tremendous setback, and this could not work to the benefit of our Ontario forests.

Unfortunately, some of the most important districts were left without any technical foresters at all, either in charge or in subordinate positions—particularly the Thunder Bay district, with headquarters in Port Arthur, which, even to-day, has no technical forester. I need not point out the amount of cutting that is going on in this district, not only by the large pulp and paper companies, but also by private individuals cutting wood for export. I think you will agree that this is a strange condition.

MR. COOPER: You read a sentence which I did not quite catch. It was something about there being no technical forester at Port Arthur?

A. I know of none, sir.

Q. There is a technical forester up there.

A. May I have his name?

Q. A man by the name of Dawson.

A. He is not a graduate of any school, to the best of my knowledge; not so considered. As a matter of fact, I have not been able to find him listed in the employ of the Department under district foresters, in the last report which is available in 1939.

MR. ELLIOTT: Is there an organization of foresters?

MR. HEENAN: There is a graduate forester at Port Arthur.

MR. ELLIOTT: What is the Ontario Association, if there is one?

A. It is not Ontario as such. Ontario is divided into three districts, each having sections of what is called the Canadian Society of Forest Engineers.

Q. Are you a member of that organization?

A. Yes.

Q. Are you here as an official representative of that organization?

A. No.

MR. COOPER: Go ahead, but read a little slower.

A. I am sorry; I had regard for time.

HON. MR. HEENAN: Yes, but there are statements already made, to which I feel I should object, because they should not go unchallenged. The statement was made that sixteen foresters were dismissed, which had a demoralizing effect upon the rest of the staff. The inference there is that because fifteen or sixteen foresters were dismissed, the remainder of the foresters were afraid that they might also be dismissed. I do not know of anyone in this Department who is afraid of me, and I think I am about the only one they need be afraid of.

HON. MR. NIXON: There is certainly no one in the Department who is demoralized, that is a sure thing!

HON. MR. HEENAN: Do you know why these men were dismissed, Mr. Irwin?

A. I would not like to venture a suggestion, Mr. Heenan. I am interested, however, that five at least have been re-employed.

Q. Have you any idea whether they were dismissed for cause or not?

A. There are various stories going about in that regard, but I would not comment on them.

Q. I do not think it is fair for you to make that statement, unless you know why these men were dismissed, because the inference, whether you mean it or not, is that fifteen men were dismissed ——

A. Mr. Heenan, I will say this, that although you are technically the head of the Department, and I suppose will be considered responsible for the dismissals, I do not think you had very much to do with it.

Q. I had all to do with it. I had to sign it.

A. I am sorry to learn that, sir.

Q. Yes. There is no one else that I know of who could dismiss men in the Forestry Department, or any other department, except the Minister. I do not want to go into each one of these cases, because I have never done so, on the floor of the House, either here or at Ottawa, to say why a man was dismissed, never yet.

THE CHAIRMAN: You might proceed, Mr. Irwin.

WITNESS: Yes, thank you. One would wonder why these men desire to retain positions in the Ontario forest service, when it is pointed out that there are foresters who have been in the government service seventeen years, who are making only $2,100.00 a year. One man, in the service for twelve years, is making $2,000.00; another, thirteen years in the service, $1,900.00. Apart from the Deputy Minister and the chief forester, who is chief forester in name only, only one man in the forest service (he is in charge of the central administration of the fire protection service), makes $4,000.00 or over.

THE CHAIRMAN: Mr. Irwin, I am going to suggest one thing to you: The statements you have made so far, have managed to be rather offensive. The last one about the forester, who is forester in name only, is quite offensive. And, unless you are prepared to prove absolutely what you are saying, I suggest that you confine yourself to statements that are readily established.

HON. MR. NIXON: Maybe we could ask you for a comparative view of the thing—what your salary is.

A. It is considerably more than that, Mr. Nixon.

Q. It is lower than that?

A. Considerably more.

Q. More?

A. Yes. Mr. Chairman, may I correct your impression? I said, "chief forester in name only."

THE CHAIRMAN: Yes, chief forester in name only.

A. Well, if you prefer, I shall not take any more of these figures; I have other figures that I think are rather pertinent.

Q. We do not object, and nobody objects to your giving figures, but you might dispense with these comments which are rather offensive, and serve no good purpose; at least, I do not believe they do.

MR. COOPER: Did I understand you to say that the chief forester was chief forester in name only?

A. Yes, that is my statement.

Q. What do you mean by that?

A. A chief forester would be considered the man in charge of the forestry division throughout the entire province.

Q. Who is he?

A. There isn't one. Mr. Zavitz is called the chief forester. That is his title, but his work is confined, as came out in the evidence before, entirely to southern Ontario—practically entirely.

Q. He is in charge of reforestation. That is where they develop reforestation by tree planting, and his title is chief provincial forester.

A. His work is confined to southern Ontario almost entirely.

Q. Because his work is limited, does that cast any reflection on the manner in which his title designates him?

A. It casts no reflection, except the Department is supposed to have a chief forester, which one would conclude would be a technical officer in charge of its forestry operations, which is not the case.

Q. Who said they were supposed to have a chief forester? Is that in the regulations?

A. I am sorry, I do not understand the question.

Q. You said that the province is supposed to have a chief forester.

A. Well, if I used the word "supposed" perhaps loosely, I would say this, that in the public eye a chief forester has such and such duties to perform.

MR. ELLIOTT: Mr. Sharpe is the chief forester of the timber limits.

A. He has not that title. As I remember it, his title is chief clerk.

Q. Chief clerk of forestry.

A. Incidentally, if we may discuss Mr. Sharpe before him, Mr. Sharpe has been in the Department 18 years, is considered the technical adviser on all matters of cutting contracts and matters involving hundreds of thousands of dollars, and his salary is $3,600.00.

Q. He is not complaining, is he?

A. I am not saying about that.

THE CHAIRMAN: All right. Proceed, Mr. Irwin.

WITNESS: Perhaps you will remember that in 1934, figures were published showing that the Ontario Hydro-Electric Power Commission had on its payrolls, at that time, 46 men making $5,000.00 or more, in addition to the top-ranking executives. I submit that the trust held by these employees of the Hydro Commission is not a greater one than that held for the people of Ontario by its technical foresters. (Incidentally, our forest industries are one of the greatest, if not the greatest, single users of Hydro power in Ontario. Of some 36 graduate foresters now in the provincial service, a total of about 17 are in the home office, making occasional trips out, or are detailed to the work of reforestation.)

As a further example, I draw attention to the fact—and may I ask your protection, Mr. Chairman, to the extent that I am not able to state that a fact which was true two weeks ago or a month ago, is true to-day.

THE CHAIRMAN: I beg your pardon?

A. I ask your protection to this extent, that I cannot say that a fact which I knew was the case two weeks or a month ago, is true to-day.

THE CHAIRMAN: You are under oath, and if you are not sure that what you are saying is the truth, you had better not say it.

A. I understand that one man just resigned his position to-day, or a day or so ago—I do not know how long ago—so it is hardly to be expected that I should have that information right up to the last minute; at least, I think it is hardly fair that I should be expected to. May I proceed?

Q. Yes, proceed.

A. May I draw your attention to the area known as the Kenora district. This is given in the 1939 report of the Department of Lands and Forests as 9,600,000 acres in extent—an area of approximately 14,400 square miles, or a block 140 miles long and about 100 miles wide. This tract is presided over by a technical forester without technical assistance, and this man receives for his services, $3,000.00 after 17 years' employment. Not only does he administer the fire protection organization, but also timber, and has various other duties. I visited that particular area this last summer, including the Nipigon, and I am rather familiar with it. The Sioux Lookout district comprises 18,200,000 acres, or 27,300 square miles. It is handled by a technical forester. I am not sure about technical assistance. Fort Frances, 4,300,000 acres (6,400 square miles), is in charge of a man who is not a graduate forester; he has, however, one graduate assistant. The district of Port Arthur, which is the second largest in size, contains 13,100,000 acres, or 19,750 square miles, approximately, which we can picture as a strip 60 miles wide, extending from Toronto to Montreal. This immense area is presided over, according to my understanding, by a man who is not a graduate forester, and has no technical forester to assist him, although, I am advised by Mr. Heenan that he is a graduate forester. This is the district in which the Great Lakes Paper and Abitibi paper mills are located, and do their cutting, and here also is the ill-fated Lake Sulphite. It is from this area that some of the best timber is being cut for export, in fact, some of the best timber left in Ontario. It is amazing that such a condition should exist. I will mention only one other district, that centred at Kapuskasing, which contains 12,900,000 acres, about 19,000 square miles, and is in charge of a technical forester who receives, after 14 years in the service, $2,400.00.

In most of the agreements between the Crown and those securing the right to cut timber or pulp, there are conditions requiring certain practices, which on a casual reading, one would think would lead to a quite satisfactory cutting policy. I think no critic of the Department of Lands and Forests would say that we have not sufficient legislation to give the Government control of this cutting, which, presumably, looks toward the prepetuation of the crop, but with the staffs that are available in the forest districts, as I have pointed out, anything in the way of a strict adherence to a cutting plan could not be enforced, if indeed it were intended.

MR. COOPER: What do you mean, that there is not sufficient staff?

A. Yes, sir.

Q. What would you suggest?

A. I would say that you should have a well trained, what I would call, secondary personnel for every 10,000 cords or less, depending on the operation.

THE CHAIRMAN: For every 10,000 cords?

A. Yes.

MR. COOPER: What would you pay them?

A. I think such men should be employed on an annual basis, which I was going to come to under personnel, and I think they should be paid a $100.00 a month up.

THE CHAIRMAN: Let me get this. You mean every 10,000 cords of cut?

A. For any particular job, Mr. Leduc.

Q. But you said there should be one man for each 10,000 cords.

A. One inspector for each 10,000 cords of cut.

Q. That is what I meant.

A. I am sorry I did not make that clear. That is the system they are using in Quebec.

MR. COOPER: I understand there are more men now in the service, than one man for every 10,000 cut cords. Do you think that information is wrong?

A. You mean in the Ontario forest service?

Q. Yes. How many men are in the Ontario forest service?

A. You mean field technical foresters?

Q. Yes.

A. Roughly twenty, in addition to the other gentlemen who are considered foresters.

Q. Do you mean that you should have a graduate forester for every 10,000 cords?

A. No; I would have what I would call secondary personnel. I want to come to personnel. They are trained in Quebec in what they call a ranger school.

MR. ELLIOTT: Of course, you cannot have everyone a graduate forester.

A. No.

Q. Even the companies do not employ that practice.

A. I certainly would not recommend that. Now that you ask the question, I would say that perhaps 12 of such men, or 15 such men could be directly responsible to a graduate forester, depending on the extent of the area and the intensiveness of the cut, and to what extent the cut is being made, on a closely scientific basis.

MR. COOPER: You suggested paying these technical men how much a month?

A. The secondary men?

Q. The secondary men, yes.

A. I said from $100.00 up. That was my suggestion.

THE CHAIRMAN: Proceed.

MR. COOPER: Probably the members of this Committee should get a raise in salary, too!

THE CHAIRMAN: All right, Mr. Irwin, proceed.

WITNESS: When Mr. Sharpe was giving evidence, mention was made of a particular tract near Lake Nipigon, on which special cuttings were to be made, on what approaches a scientific plan. A somewhat similar idea is being followed at Timagami, and is contemplated in another area, to insure more mine timber for certain mines. It was indicated that the idea behind this particular set-up might be well expanded in many areas. With the present condition of personnel, such an expansion would be impossible. Indeed, it is out of the question to expect even general enforcement of the regulations for elimination of fire hazards. To leave this to the scalers is a ridiculous and unsatisfactory method.

If there is ever to be an expansion of cutting on something like a scientific basis, it will be necessary to have a large inspectoral staff of what might be called "secondary personnel". There must be men on every job day in and day out to see that rules are not violated. The necessity of cut inspection is particularly apparent in the case of the small operator whose interest in the forest which he is cutting ends when his logs are out of the woods. The large pulp and paper companies with their own foresters can be more reasonably expected to observe cutting regulations, providing the management is sympathetic and is not having financial difficulties. Further, it is only fair to competing companies that such regulations be enforced uniformly.

Much has been said about research, particularly as it applies to sales and improved methods of manufacturing. These are of great importance, but far more fundamental is the research necessary to make certain that we have a future crop to manufacture and sell. Nature gives no guarantee that a second crop of trees as valuable as the present will follow on any particular area when the forest is cut.

MR. COOPER: What is that statement again?

A. Nature gives no guarantee that a second crop of trees as valuable as the present will follow on any particular area when the forest is cut. Unless care is taken, first, a much smaller number of trees may compose the new forest, or, second, less valuable species will follow the more valuable. Or both results may follow. This is on the assumption that the area is adequately protected from fire—which in many parts of Ontario is only an assumption.

HON. MR. HEENAN: What do you mean by that statement, that fire protection in many parts of Ontario is only an assumption?

A. In the sense of protection, Mr. Heenan. I meant assured protection.

THE CHAIRMAN: Your statement was that in certain parts of the Province fire protection was only an assumption.

A. Which in many parts of Ontario is only an assumption.

Q. Yes, and Mr. Heenan wants to know what do you mean by the statement that it is only an assumption.

A. I mean that protection, apart from what is considered a service-protection is a different thing. The fact that a thing is guaranteed protection in such a manner that an insurance company would take it as a risk. If an insurance company would take it as a risk on a small premium, I would say it is protected. Complete protection is what I am intending to say there.

HON. MR. NIXON: The insurance company takes insurance risks against the mills, but does it take an insurance risk against the forest areas?

A. Not in Canada, no; in European countries they do.

THE CHAIRMAN: You mentioned fire protection which, you said, in certain districts is only an assumption. The only inference we can draw is that in certain districts the people in charge of fire protection are not doing their duty. Is that what you mean?

A. Mr. Chairman, if I read the sentence preceding it I will make it clear: "This is on the assumption that the area is adequately protected from fire — which in many parts of Ontario is only an assumption."

Q. Yes.

A. When I say "protected" I mean that fire does not strike; not that there is no fire protection service.

HON. MR. NIXON: You said that if an insurance company would take the risk at a low premium you would consider it protected?

A. Yes.

Q. And you say now that no insurance company takes such a risk.

A. That is exactly what I intend to convey, that fire protection in Canada is still in the initial stages as far as results are concerned. In 1936 we burned 2,000 square miles, for one thing. You can take your records back in the Lands and Forests reports and you can see the trmendous areas that are constantly being burned.

MR. COOPER: You cannot have a system, no matter how elaborate it is, that is going to insure you against fire, can you?

A. I come to that later.

THE CHAIRMAN: All right, go ahead.

WITNESS: The handling of the forests so that they will continue to yield profitably in perpetuity, the aim of scientific forestry, is a highly technical and scientific business, requiring for even average success, study and knowledge greater than that required for comparable success in agriculture. Every variation of soil, slope and moisture content may present a different problem if the optimum tree growth both as to species and quality is to be secured. This fact has not been generally recognized in Ontario. Proper woods management requires not only that the trees be cut or removed in such a manner as to assure the protection and development of the thrifty trees, saplings and seedlings that remain, but may also include the seeding (or planting) of areas which are not already regenerated when the cut is made. It takes thought for the continuance of the more valuable species rather than merely securing reproduction of whatever will grow.

MR. COOPER: You say cutting should be done so that the saplings will be saved. How can that be done?

A. It depends entirely on the stand. If you have a mixed stand with a large variation in age and you are removing only certain of the large trees, obviously it is impcssible to say you will save all of them.

Q. The felling of a tree certainly kills some of the saplings?

A. That cannot be avoided. But I have seen many trees felled very carelessly and thrown right into whole clusters of young growth.

It may specify any one of a variety of cutting methods or a combination of several, such as clear cutting, strip cutting, selection cutting, etc.

Such treatment of the forest requires much knowledge and experience. The experience available from other countries is valuable and suggestive, but must be supplemented by records in our own forests. In European countries, such experimenting and gathering of data is going on continuously, with results that are well known. If, by scientific management, we can double or triple our yield per acre, particularly on areas accessible to markets, the value of scientific management is obvious. In the accumulation of such knowledge, special experimental areas are necessary, but such should be supplemented by experimentation and recording wherever actual cutting operations are being conducted. This is necessary because, as suggested before, the many variations in soil, slope, moisture, etc., call for variations in handling. Two problems of great importance

to Ontario at the present time are, the replacement of pine and spruce in the new forests, by other species considered less valuable. The 1940 meeting of the Canadian Society of Forest Engineers was largely taken up with discussions of the problems of securing spruce reproduction—a very vital question. I have that report here, if any of you gentlemen would like to see it.

The proper carrying out of any forest management requires careful planning, and even, in some cases, marking of the trees to be cut. The success of the plan depends on careful adherence to the regulations laid down and penalties for breach of these regulations. Lumber and pulpwood operators are only human, and in times of stress, would observe forest regulations only if strictly enforced. Even the imposing of penalties for cutting contrary to regulations could not restore the injury to the forest if, for example, seed trees on which the plan of forest regeneration depends were among those cut.

It is easily seen that research of this kind requires the placing in the woods of a large number of technically trained men. The present personnel cannot even attempt anything comprehensive. Such research is quite in addition to anything the Dominion Government may do, although it might be carried on co-operatively with it.

In passing, may I say that if the replanting of waste lands in southern Ontario with tree seedlings is to be undertaken seriously, the present staff is quite inadequate, even to secure the best utilization of the seedlings now available for distribution. It should be pointed out that the seedlings distributed in 1938 were sufficient to plant out approximately 18,000 square miles, or a thousand seedlings to the acre. How insignificant such an annual planting programme is, compared with depletion from cutting, insects, and fire, is obvious. May I leave for consideration the thought that the replanting of southern Ontario should not necessarily be charged against forest revenues derived from the north.

MR. COOPER: Where would you charge it?

A. If it is to be done?

Q. Yes. You have to find the money some place, and the only revenue that is coming, I suggest, is from the north.

WITNESS: May I list the following recommendations for your consideration:

1. Legislation should be enacted to incorporate the technical foresters in Ontario, similar to that protecting lawyers, doctors, dentists, and land surveyors. Such legislation has been in force in the Province of Quebec since 1921 with excellent results, and was passed in 1937 by the Province of New Brunswick. Such legislation should do much to raise the status of foresters in Ontario, and give them more independence of action and speech than they now enjoy.

THE CHAIRMAN: I do not want to interrupt you, but I am wondering if that comes within the jurisdiction of this Committee. Is that part of the administration of the Department of Lands and Forests? After all, what you suggest is, that some legislation should be passed incorporating certain gentlemen in the same way as the Law Society or the Medical Association. I do not believe that comes within the Department of Lands and Forests, but go ahead.

A. I admit the criticism, but I think that inasmuch as the Ontario Government is a large employer of technical foresters, it may be interesting to them.

Q. Well, go ahead.

A. Since any programme of scientific forestry requires expert knowledge, it is obvious that all positions requiring this knowledge, or in which such knowledge is a useful background, should be filled by foresters or forest engineers, as graduates of university forest schools are called, in some parts of Canada. Such men have not only knowledge, but also the sympathy and sentiment necessary to a proper performance of all duties incidental to the raising and harvesting of crops of trees, and such qualities should also fit them to make a superior job of protecting them from fire and insect and fungal pests. The senior positions in forest administration work should not be filled by appointees, regardless of their lack of training, if the science of forestry is to be practised in Ontario.

2. Everything should be done to build up the *esprit de corps* of the entire forest service by assurance of security of tenure, freedom from political interference, and salaries comparable with those paid in other departments for a similar degree of responsibility. It is to be hoped that the day is not far distant when the Civil Service in Ontario will be on a non-political footing. I submit that if this possibility is too remote, the men administering our most important renewable resource should not be subject to wholesale dismissal without public hearing.

THE CHAIRMAN: In connection with that, I should like to read this to you, which I am taking from the 1939 report, page 31, under "District and Assistant Foresters". To shorten it I will not read their names, but I see that these men entered the service in the following years: 1924; 1923; 1923; 1928; 1923; 1935; 1926; 1910; 1930; 1923; 1926; 1934; 1927; 1921; 1919; 1924; 1921; 1930; 1928; 1935; 1934; 1928; 1918; 1930; 1908 and 1934. Does that look as if they had continuity of service? I see that only five have been appointed since 1934.

WITNESS: 3. For the close inspection necessary for the enforcement of cutting regulations under any scientific forestry plan, the Government should have a large number of what might be called "secondary personnel." These should be intelligent men of fair education, which education should be supplemented by additional practical and theoretical training. Theoretical training will not only make them more intelligent and alert about what they see and do, but also will give them sympathetic understanding so necessary to the proper performance of their duties. The addition of a small amount of botanical, zoological and entomological knowledge, coupled with some practical silviculture and surveying, makes a wonderul change in men of quite indifferent formal education. Men with such knowledge, present a great contrast in attitude and quality of work to those without. The employment of this secondary personnel, charged with the administration and protection of such valuable and vital resources, should be either by civil service examination or by their superiors in the service, and should not be dependent on the approval of the man who happens to represent the local constituency for the time being, or on that of the local committee.

MR. SPENCE: Where does this pamphlet that you gave us come from, the University?

A. No.

Q. Keep away from those representing the local constituency for the time being.

A. Every effort should be made to give such secondary personnel full-time employment, as it is obvious that men so employed will take more interest in their work, and be more loyal than those who are employed for only a few months each year. Such men could do fire protection work during the summer, and act as cut inspectors, scalers, etc., during the winter, with interim employment in forest improvement work. In this connection, may I remind you of Mr. Crosbie's comment on his part-time rangers compared with Mr. Macdougall's full-time men in Algonquin Park.

4. I recommend that those in charge of forest administration, immediately establish what might be called "ranger schools", similar to that which has been carried on successfully in Quebec for some fifteen years. Graduates of this school should be readily absorbed by the government service and industry, as in the case in Quebec.

THE CHAIRMAN: You mentioned that school once before. Where is that ranger school?

A. Just outside of Quebec City.

Q. Bergerville?

A. I think they had the school there at one time, but they have recently built a new building; the name of the place I cannot recall. I was there a year ago last winter.

Q. I thought Bergerville was the reforestation school?

A. It is. They had it there for a short time. I discussed that with Mr. Giroux, and he is entirely satisfied ——

MR. W. G. NIXON: You say that graduates of their school should be absorbed.

A. By that I meant that the demand should be sufficient. I did not mean that it was imperative.

Q. Well, no, because, after all, there might come a time when there were more graduates from the school than would be required both by the Government and the industry.

A. Actually, they limit them in entering.

5. It would be well to have some technically-trained foresters free to keep

up to date with new forestry literature and economic trends in the industry, both in this and in foreign countries (*e.g.* southern pine). Ontario foresters never seem to have an opportunity of travelling in the United States or Europe, to see what is being done elsewhere, and this is a great drawback to progress and the development of the profession in this province.

6. I should like to lay it down as fundamental, that forest revenue should not be expended other than for forest protection and forest amelioration until our forests are properly protected, and regeneration of future crops ensured. I submit it is entirely uneconomic to use up our forest capital as we do at present. Forest owners (this includes the provincial government) and those exploiting the forest, may well expect aid from the Dominion Government in relation to the amount of wealth, as measured in various ways, derived from the forests. At the present time, based on a five-year average (1932-36) of exports, the Dominion Government expends for agriculture, 2.55 cents per dollar; on mining, 1.65 cents; on fisheries, 7.98 cents, but on forestry 0.18 cents. Based on the net value of production, the figures are 1.37 for agriculture; 1.23 for mining; 5.61 for fisheries, and 0.16 for forestry (Canada Year Book). During this period, forest products ranged third as far as exports and net value of production were concerned. In other words, the aid to the forest industries from the Dominion has been negligible.

THE CHAIRMAN: Excuse me, I am afraid I misunderstood you. You said that out of each dollar spent by the Federal Government, 2.55 cents went to agriculture?

A. No, I am sorry. Based on the amount of export of agricultural products per dollar, the Dominion Government spent that.

Q. I am sorry I misunderstood you. Go ahead.

A. 7. I submit that one of the reasons that our forest industries have suffered in this and other ways is, because of the ignorance of large sections of our population regarding their importance. In Ontario the great centres of population are far removed from lumbering as a primary activity. I recommend that everything possible be done to inform the public as to the importance of this resource and how vital it is to the welfare of this province. Those in charge of administering our forest resources should have a large budget for propaganda purposes, and should do all possible to help the formation of local conservation associations, and to encourage public-spirited citizens who will support the government efforts toward forest improvement.

8. I recommend the considerable expansion of detailed inventories similar to those brought to the attention of the Commission by Mr. Sharpe, in connection with the special project being undertaken near Lake Nipigon. Our present inventory, as Mr. Sharpe pointed out, gives figures useful for application to large blocks, but proper forest management requires much more refined handling.

9. To facilitate the exploitation of our forests, particularly with the non-floatable hardwoods in mind, a considerable extension of permanent forest roads is recommended. Such forest roads, augmented by trails and portages, would make fires more easily accessible.

10. It is important that the building of towers be pushed forward rapidly, until entire areas under supervision can be viewed from these towers.

HON. MR. NIXON: Do you know how many towers were built?

A. Thirty.

Q. Would you consider that a fair programme?

A. Fair expansion, but, as I understand it, there have not been any built since about 1934.

MR. ELLIOTT: Mr. Irwin is reading from his brief. Might he not put it in as an exhibit and save it going into the record?

WITNESS: There are a couple more items which I should like to read, if I might.

MR. COOPER: What Mr. Elliott meant was, that the reporter was not taking it down.

WITNESS: He has a copy and he is amending any slight changes that I may make.

THE CHAIRMAN: We have extended that privilege to other gentlemen, and I do not think we should make any exception. Go ahead, Mr. Irwin.

WITNESS: If this were done, flying could be pretty well relegated to its more proper position as a supplementary aid; it could, indeed, be largely cut down if the road and trail system was extended as recommended. The air service cost (in a report of March, 1939), was $300,000.00.

11. More must be done about the elimination of fire hazards in the form of brush and slash, particularly in travelled areas. Fire weather prediction, which is becoming a science, should be taken in to consideration. The investigation of causes contributory to lightning fires should also be undertaken; the number of these being reported seems on the increase. There are many flagrant violations of the restrictions regarding the leaving of hazardous material by those operating in the woods.

12. In certain parts of the province where settlement has been undertaken, the survival of the settlers depends on supplementing income from agriculture, by revenue from their own wood lots, or from work for others in the woods. While active lumbering was going on in southern Ontario, the farms in what are now backward sections of the province, were able to make a reasonable livelihood. This should suggest the possibility of the economic rehabilitation of such areas, and the development of publicly-owned forest land in such sections with this in mind. (This is also being suggested, and I understand being considered by the Government for certain parts of the clay belt.) Small local industries might be encouraged, but in no case should a larger operator from an outside area be permitted to clear and cut large tracts of such forest. In some such backward sections, the growth of the tourist business has been a godsend without which survival would have been impossible.

An eminent Finnish forester, who was here a year or more ago, expressed the opinion that if Ontario persisted in what is considered the usual course of forest exploitation in a new country, the force of circumstances might make the southern part of the province the scene twenty or thirty years hence of the application of real forestry policy.

13. I recommend that consideration be given to the forming of a Commission to administer lands and forests, and would present the following considerations:

(a) There would be a greater continuity of policy; at the present time, one Minister of Lands and Forests may nullify much of the work of his predecessor.

Please do not misunderstand me, gentlemen. Nothing I say is personal. I have the good of the cause entirely at heart.

(b) With such a Commission, the recommendations of the technical staff would be sure of a fair and reasonable hearing; at the present time one official who is not a technical forester can reject such proposals, and there is no recourse. Such an arrangement does not tend to build a resourceful and aggressive body of public servants, active to improve the administration of a resource belonging to the public, who at present have no organization to insist on wise management.

(c) A Commission of men, coming from various parts of the province, would not be subject to the same degree of pressure for special favours that individual ministers often are.

(d) Members of the Commission could be assigned phases of the work as their chief responsibility, such as fire protection, cutting regulations, research, reforestation, tourist attractions, etc. In this way, at least, one man in a position of authority and in the public eye could be reasonably expert in one or more departments. Under the present system, the Minister of Lands and Forests may be in a position of knowing very little about certain phases of the work of his department.

(e) It seems to be the case that trained servants of a commission form of administration, are not subject to the same extent, to wholesale and unfair dismissal. A Commission should be more likely to realize the value of the work of its employees.

(f) A Commission could devote its entire time and thought to administrative work, without concern for the results of periodic elections.

(g) The best interests of our forests will be served, if those in charge of their administration, take the public into their confidence and secure their co-operation. This a Commission seems better able to do than a Government Minister.

THE CHAIRMAN: To whom would that Commission be responsible, Mr. Irwin?

A. I would have it responsible—I do not like to speak off the bat—it could be responsible, I think, since the forests now are vested in the Government, it would have to be invested in the Government, I should think.

Q. In the Government?

A. I should think so.

HON. MR. NIXON: Does any province in Canada have that system?

A. Not in Canada.

(h) The Commission should receive all revenue from the forest, and have the right to accumulate reserves, since fire protection and inspection must go on in bad times as well as good.

(i) It seems a logical development, if a commission form of administration were established, to place the handling of the game and fish resources under such a commission.

HON. MR. NIXON: Also the mines.

WITNESS: There seems little reason why trained forest rangers, cut inspectors, etc., who are constantly in the forests, could not combine the two types of work. Particularly if they were given some training, they could act as intelligent observers of natural phenomena and make the numerous reports required in the field of game and fish management.

Q. Don't they do that now?

A. Only in part. If they are asked for very special data, I understand they do report.

Q. Don't they keep an eye on the observance of the Game and Fisheries Act?

A. In conclusion, I should like to take a broad, dispassionate look at the problem without recrimination. It is unfair to point out the lumberman or government official, and charge him with responsibility for the present state of affairs. It is said that it was inevitable that our forest resources should be dissipated, as this is what always happens in a young country. If we admit that, is it not time to call a halt, take stock and make plans for the future? I am not concerned about the immediate future of our wood-using industries as far as supplies are concerned, but in looking forward to the day 20 or 30 years hence, when, if matters are allowed to go on as they are, it is reasonable to expect that a very great deal of our best remaining wood will have been used, and large sections of the country will have been burned over. At that time, the vast amount of second growth now being carefully nurtured in many parts of the United States will be in a position to offer competition; the southern pine, the annual increment of which I was informed by government officials in Washington, can be increased four times if forestry practices are followed in the south, will be an even greater threat; and the huge plantations of seedlings which have been made in the United States over the last six years will be approaching useability. If at that time the

only wood left in Ontario is what is now considered almost inaccessible, I think you will agree that we shall be in a sorry plight. The Federal Government in the United States is spending on forestry projects over a hundred million dollars every year, or about twenty-five times the revenue received, and this is entirely in addition to many millions spent by the various State authorities.

As I see it, our only salvation in this matter is to be in deadly earnest about it, to realize what a vital contribution to our provincial and dominion welfare the forests make, and even to forget for the time being, the expense involved, until our forests are put on a sustained yield basis, at least those areas which give reasonable expectation of ultimately paying their way because of the quality of the tree crop and accessibility. We should not forget that at the present time, tariffs favour the importation of our wood products into the United States; thirty years from now there may be a great clamour in the United States for protection against our forest merchandise. Surely the problem requires an up-to-date and informed outlook, not that of the pioneer. Thank you, gentlemen.

MR. DREW: On that one question, where you spoke of the game and fish being under the same control as timber, is there any place you know of where that is done at the present time?

A. In New York State. And in quite a number of the States they have conservation commissions there.

HON. MR. NIXON: And the same commission which administers game and fisheries administers forestry?

A. Yes.

MR. DREW: Forestry comes under that same commission?

A. Yes.

THE CHAIRMAN: In Quebec, I think it is quite different; there is a Minister of Lands and Forests, there is another Minister who administers game and and fisheries, and a third Minister who looks after the Maritime fisheries.

A. In connection with the Maritime fisheries, I understand there was a recent consolidation under Mr. Cote.

Q. I know the same Minister is not responsible for fishing in lakes as fishing in salt water.

A. I have spoken to the officials of the Department, and they look forward to it as an ideal not yet realized.

THE CHAIRMAN: Are there any more questions, gentlemen?

HON. MR. HEENAN: There may be a lot in what Mr. Irwin says about technically-trained men being used in greater numbers. The only thought I had was, that in connection with our lumberjacks, the men who go into the lumbering business, into the woods, become fire rangers, and so on, there is going to be little

opportunity for their advancement if we have always to take technical men. There would be little encouragement for a man to stay on his job, get interested in it and learn in the bush.

I think Mr. Irwin will agree with me that there are a great many young men who go into the bush lumbering, logging, acting as fire rangers, etc., who become very efficient men; and I do not think that they should be held back from promotion just because somebody else has had an opportunity to attend school.

WITNESS: I would certainly agree with that, Mr. Heenan. I think a comparable attitude and a comparable education, regardless of how achieved, should certainly be rewarded. I am not in any sense taking an exclusive point of view. I mean that the men who have opportunity for education, have a background that the others clearly do not achieve.

HON. MR. HEENAN: I find our most efficient fire fighters—and I knew it before I came into the Department—are men who were brought up in the bush, know how to get around the bush, and know how to fight fires. They are the most efficient fire fighters that we have. In fact, the records will show that at some places where we had the most highly trained men—and I am not saying this disparagingly at all, because we cannot help these things—we had the greatest losses by fire. Take the Port Arthur district in 1930. We had eminently trained men there, good fellows, and yet, you see the loss of fire we had that year in that particular locality. Now, the trained men were not responsible for that; but their training did not stop the fires. It is one of those things you can rave about from now until to-morrow, and you will still be right, you can't be wrong. For instance, we had a witness here the other day who said that the more efficient fire-fighting equipment we had the more fires we got. And he hardly got home until a home was burned right under his nose, with a loss of life. We have, in the City of Toronto, I suppose, one of the most efficient fire-fighting machines anywhere in Canada, yet you will find homes burned down with great loss of life.

HON. MR. NIXON: Yes, even hotels burn and churches.

HON. MR. HEENAN: And churches, too. So that when you have conditions like that in congested cities, what do you have over a large number of areas such as Mr. Irwin is talking about?

THE CHAIRMAN: Is there anything else, gentlemen? Well, thank you, Mr. Irwin.

MR. DREW: Thank you.

THE CHAIRMAN: If it is agreeable to the Committee, we will adjourn *sine die* to meet at my call. In the meantime, there are certain exhibits that are to be filed which we have not yet received, and I will ask the Secretary to prepare a summary of different points which have been brought up in the evidence, and upon which our discussions might be based whenever we meet again. Is that satisfactory to the Committee?

All right, then, the Committee is adjourned *sine die.*

At 5.35 p.m., Tuesday, May 7th, the Committee adjourned *sine die.*

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PROCEEDINGS OF THE SELECT COMMITTEE TO INQUIRE INTO THE DEPARTMENT OF LANDS AND FORESTS

SESSION OF 1941

JOURNALS

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OF THE

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PART TWO

APPENDIX No. 2

Report of the Select Committee Appointed to Inquire into the Administration of Justice

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1941

APPENDIX No. 2

Report and Proceedings of the Select Committee Appointed to Inquire into the Administration of Justice in the Province

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Session of 1941

Report of the Select Committee Appointed to Inquire into the Administration of Justice

To the Honourable the Legislative Assembly of the Province of Ontario:

GENTLEMEN:

The Committee of the Ontario Legislature appointed to inquire into the administration of justice in the Province begs to submit the following report:

The Committee was appointed by Order of the Ontario Legislature on Wednesday, February 21st, 1940, to inquire into:

> The administration of justice in the Province, including the constitution, maintenance and organization of Provincial Courts, both of civil and of criminal jurisdiction, and including procedure in civil matters in those courts, with a view to—
>
> (i) improving the constitution, organization and the system of maintenance of the said courts,
>
> (ii) simplifying, facilitating, expediting and otherwise improving practice and procedure in the said courts, and
>
> (iii) effecting economy to the people, the municipalities and to the Province generally,
>
> and to report upon what amendments are necessary or desirable to the existing law.

The Committee comprised—

The Honourable G. D. Conant, K.C., M.P.P., Attorney-General of Ontario, Chairman,

The Honourable Paul Leduc, K.C., M.P.P., Minister of Mines,

Messrs. Ian T. Strachan, K.C., M.P.P.,

Richard D. Arnott, K.C., M.P.P.,

Leslie M. Frost, K.C., M.P.P.

During the final sittings of the Committee the Honourable Mr. Leduc ceased to be a member by reason of his appointment as Registrar of the Supreme Court of Canada which prevented him from continuing as a member of the Ontario Legislature. While pleased to learn of the appointment of Mr. Leduc to the important post which he now ably occupies, the remaining members of the

Committee regret that his valued counsel was not available in their final deliberations.

The Committee met on March 6th at the Parliament Buildings in Toronto at which time Mr. C. R. Magone, K.C., Senior Solicitor of the Attorney-General's Department, was appointed Committee Counsel and Mr. E. H. Silk, K.C., Legislative Counsel, was appointed assistant counsel. Subsequently Mr. Silk was appointed as counsel succeeding Mr. Magone, and Mr. Robert Hicks was appointed secretary of the Committee.

Arrangements were made for the publication in the Ontario Weekly Notes of the report made by Mr. F. H. Barlow, K.C., Master of the Supreme Court of Ontario, on the administration of justice, and, in the same issue of the Ontario Weekly Notes, members of the legal profession and others were invited to present submissions to the Committee. Notice of the appointment and of the dates of sittings of the Committee were also sent to the judges, officials of the courts, legal and other organizations and other persons closely connected with the administration of justice as well as to boards of trade and chambers of commerce, insurance companies, loan companies and labour organizations. A list of persons to whom notices of the appointment and sittings of the Committee were sent appears as schedule "A" to this report. In addition the Chairman on several occasions expressed publicly the willingness of the Committee to receive submissions.

The Committee held public sittings at the Parliament Buildings on April 2nd, 3rd, 4th, 5th, 9th, 10th, 11th and 12th; on September 23rd, 24th, 25th and 30th, and on October 1st, 1940. A list of the persons who appeared before the Committee and an indication of the organizations represented by some of the persons so appearing, appears as Schedule "B".

The Committee was impressed by the co-operative spirit of the members of the Bench and Bar and other persons who appeared before it. In many instances the views expressed were not those of any individual but were made on behalf of an association or organization which had interested itself in the Committee's undertaking. Other bodies were of assistance to the Committee by filing written submissions. Government officials of the other provinces of Canada kindly furnished information to Committee counsel which was of great value.

It is significant that on comparatively few of the subjects under consideration were the views of persons making representations unanimous or substantially the same. Even among the barristers who appeared, many of whom were Benchers of the Law Society, a substantial divergence of opinion was apparent on many matters.

While most of the recommendations made in the report may be effected by provincial legislation, some will undoubtedly require to be implemented by Dominion legislation. In particular the Criminal Code will require amendment if effect is to be given to certain of the recommendations of the Committee. The Committee respectfully recommends that the necessary action in this regard be taken.

For convenience the matters considered will be here dealt with in alphabetical order.

ACTIONS AGAINST THE GOVERNMENT AND GOVERNMENT BOARDS AND COMMISSIONS

The rule of law which prevents the Crown from being sued in tort is one of the incidents of the principle represented by the maxim "The King can do no wrong". This well-known maxim had its origin at a time when the functions of governments did not include the many branches of administration and the innumerable undertakings which form a necessary part of administrative government to-day. The very conciseness of the maxim renders its application so general that, as the work of governments increased through the centuries, the ramifications of its application could not be foreseen and have not in all respects been desirable.

It is well recognized that governments, if entirely unprotected against legal actions, would be targets for avalanches of frivolous or vexatious litigation. Ample protection against unwarranted actions is, however, provided by requiring a fiat of the Crown as a condition precedent to the commencement of an action against the Crown or its agencies. This is generally the practice in those types of cases where actions may now be brought against the Crown. The Committee has studied the practice followed in Ontario in considering applications for fiats and is satisfied that fiats are not refused in proper cases.

It is a modern practice of governments to create boards and commissions which are charged with carrying on certain functions of government. Owing to the tendency of governments to extend their undertakings, some of these boards are authorized to conduct businesses which, while not usually in the past considered to be ordinary functions of a government, are rendered necessary by particular circumstances, and it is not the intention of this Committee to criticize any government for such practice. Some of the businesses which are carried on to-day by government boards and agencies include the operation of railways and other transportation facilities, the sale of liquor and the sale of electrical power and other commodities. Although many of these businesses are not operated in competition with private enterprises, the government, as represented by its boards and commissions, is carrying on business just as much as though the business were being conducted by a private individual, and the incidents of business which give rise to causes of action are present to the same extent.

There are of course exceptions to the general principles of law relating to actions against the Crown and against government boards and commissions. There is, for example, a provision in The Highway Improvement Act which permits actions to be brought for default in maintaining a highway in proper repair. The Hydro-Electric Negligence Act provides that actions may be brought against The Hydro-Electric Power Commission for damages arising in connection with the operation of any electric railway operated by the Commission. Provision is made in The Exchequer Court Act for the bringing of actions in tort against the Crown in the right of the Dominion in certain circumstances, and the Canadian National Railway Act permits actions to be brought without a fiat against the Canadian National Railway. For the purposes of this report it is unnecessary to refer further to the various exceptions to the general rule which exist to-day.

THE COMMITTEE THEREFORE RECOMMENDS:

1. That provision be made to permit a subject to recover against the Crown in tort by way of petition of right provided that the fiat of the Lieutenant-Governor in Council is first obtained; and

2. That the Hydro-Electric Power Commission of Ontario, the Liquor Control Board of Ontario and the Temiskaming and Northern Ontario Railway Commission, which are in fact carrying on businesses, be placed in the same position as private individuals with respect to the right and liability to sue and be sued in the courts so that actions may be brought against them without the consent of the Attorney-General, but that the present rights of expropriation and other extraordinary rights enjoyed by them be not thereby interfered with.

APPEALS FROM BOARDS AND COMMISSIONS HAVING QUASI-JUDICIAL POWERS

The duties and functions of several boards and commissions, as well as the procedure followed by each of them, were studied by the Committee. It has not been suggested that those matters now dealt with by boards and commissions which were not previously determined by the courts should be the subject of appeals to the courts. Therefore it is not necessary under this heading to consider further the position of the Liquor Control Board. Nor do the activities and practice of the Industry and Labour Board, the Milk Control Board or the Farm Products Control Board come within the scope of this Committee's enquiry.

The expression of the view by the Committee that a study of the functioning of the Industry and Labour Board, the Milk Control Board and the Farm Products Control Board does not come within the scope of the Committee's enquiry, as these Boards do not deal with matters which formerly came before the courts, must not be taken as an indication that the Committee favours entrusting to such Boards the wide powers which they now possess or that the Committee either approves or disapproves of the manner in which the powers are being exercised. No evidence was heard in that regard. It may be that a study of the manner in which such Boards are exercising the powers vested in them by a body appointed for that purpose is warranted.

ONTARIO MUNICIPAL BOARD

The Ontario Municipal Board exercises powers under several statutes and while the procedure varies greatly under the various statutes, it would seem that although the decision of the Board is final upon questions of fact in all cases, there is invariably an appeal from the Board on questions of law. As the Board appears to be ideally equipped to study and make decisions on questions of fact, the Committee does not favour any change in the right of appeal from the Board.

The Board will be further referred to under the heading APPEALS UNDER THE ASSESSMENT ACT.

Workmen's Compensation Board

The Committee heard comparatively little evidence concerning a right of appeal from the Workmen's Compensation Board and no representations were made to the Committee on the subject by any labour organization. References were made to it by a few witnesses who dealt with the subject more from an academic standpoint than from the standpoint of the actual operation of the Act. In all cases opposition to appeals on questions of fact was expressed. On the other hand some witnesses, notably the representative of the Ontario section of the Canadian Bar Association, advocated appeals on questions of law and principle. In view of the comparatively small amount of evidence heard the Committee is of the opinion that it should not make any recommendation on this point.

The Committee feels, however, that attention should be drawn to the social purpose of workmen's compensation and to the findings of previous commissions which have gone into the subject very much more extensively than the Committee has had the opportunity of doing. Almost since the establishment of the Workmen's Compensation Board some twenty-five years ago, suggestions have been made from time to time recommending appeals of various kinds from the Board. The following should indicate to those in favour of appeals in various forms that the present system and its workings should be the subject of very careful inquiry and consideration before any mode of appeal is introduced.

In considering any proposal for an appeal from the Board it is important to keep clearly in mind the purpose of the Board and not to lose sight of the fact that it is not a tribunal making rulings on questions between an injured workman and his employer. As Viscount Haldane has expressed it in Workmen's Compensation Board vs. Canadian Pacific Railway (1919), 48 D.L.R. 218, at p. 219:

> "The right of the workman does not . . . depend on negligence on the part of the employer, as in ordinary employers' liability . . . but arises from an insurance by the Board against fortuitous injury."

In Blatchford vs. Staddon, [1927] A.C. 486, Lord Blanesburgh describes workmen's compensation as "a compulsory system of mutual insurance throughout an industry at risk under it."

Idington, J., expressed himself in Dominion Canners vs. Costanza, [1923] S.C.R. 46, in the following language, at page 51:

> "The aim of the whole Act is to eliminate the litigious struggle and strife and judicial peculiarities in mode of thought and applying the law."

In the same case Duff, J. (now Sir Lyman Duff, Chief Justice of Canada) stated at page 54:

> "The autonomy of the Board is, I think, one of the central features of the system set up by The Workmen's Compensation Act. One at least of the more obvious advantages of this very practical method of dealing with the subject of compensation for industrial accidents is that the waste of energy and expense of legal proceedings and a canon of interpretation, governed in its application by refinement upon refinement, leading to uncertainty and perplexity in the application of the Act, are avoided."

THE MEREDITH COMMISSION. Whether or not there should be an appeal of any kind from the Board was a matter of careful and exhaustive study in 1913 by Sir William Meredith, a former Chief Justice of Ontario, whose investigation at that time covered the whole of Canada as well as the United States and Europe. Sir William considered it most undesirable that there should be an appeal from the Board. We quote from his report dated October 31st, 1913:

> "I think it would be a blot on the Act to have a right of appeal unless it can be shown there is danger in making the Board final."
>
> "One of the justifications for this law is to get rid of the nuisance of litigation, and I think even if injustice is done in a few cases it is better to have it done and have swift justice meted out to the great body of the men."
>
> "In my opinion it is most undesirable that there should be the appeal for which the draft Bill provides. A compensation law should, in my opinion, render it impossible for a wealthy employer to harass an employee by compelling him to litigate his claim in a court of law after he has established it to the satisfaction of a Board such as that which is to be constituted, and which will be probably quite as competent to reach a proper conclusion as to the matters involved, whether of fact or law, as a court of law."

THE MIDDLETON COMMISSION. Subsequent attempts to incorporate a right of appeal into the Act, some of which reached the stage of being reduced to the form of a Bill to amend the Act, were abandoned because of opposition from both workmen and employers.

In 1931 the Honourable Mr. Justice Middleton was appointed a Commissioner to inquire into and report upon proposed amendments to The Workmen's Compensation Act and in his report, dated February 11th, 1932, he states, at pages 11 and 12:

> "There is almost unanimous agreement on the part of all concerned that the introduction of any right of appeal would be disastrous. I am satisfied that the workmen should be the last to complain of the existing conditions. . . ."
>
> "I do not recommend any change looking to either an appellate tribunal or to any of the various schemes for Boards of Review."

For the reasons previously given and in view of the small amount of evidence heard, the Committee feels that it is not in a position to make any recommendation with regard to appeals from the Workmen's Compensation Board.

ONTARIO SECURITIES COMMISSION

While the functions of the Ontario Securities Commission under the provisions of The Securities Act extend beyond the power to license persons engaged in the marketing of securities, the discretionary power which the Commission is most frequently called upon to exercise relates to the issue, suspension and cancellation of licenses of brokers and securities salesmen. Since the Commission was established in 1931 this power has been vested in a single commissioner.

In considering the position of the Ontario Securities Commission, the procedure in the office of the Superintendent of Insurance has afforded the Committee a helpful and suggestive analogy. The Superintendent of Insurance is vested with the power to issue licenses to insurance companies and insurance agents. In this case also the decision is that of a single official. The power of the Superintendent to issue and revoke licenses is contained in section 281 of The Insurance Act and the principles to be followed in issuing and revoking licenses are contained respectively in subsections 3 and 8 of Section 281. Under the same section an advisory board is established, consisting of a representative of the insurers, a representative of the agents and a representative of the Superintendent. This board advises the Superintendent regarding the issuance and cancellation of agents' licenses when requested by the Superintendent. As might be expected decisions of the Superintendent made on the advice of a board on which both branches of the insurance business are represented have proven acceptable to those engaged in the business.

The Committee favours the establishment of a similar Board of Review to function under The Securities Act. It is important that the different branches of the brokerage business be represented on the Board and it seems equally important that the Chairman of the Board should not be engaged in or connected with the brokerage business. In view of the frequent urgency of preventing the continuation of fraud, the Committee is of the opinion that the Commission should have the power to make an order suspending or cancelling a broker's or salesman's license to be effective as soon as it is made, subject to review of the Commission's order by the Board of Review within a specified period. It is desirable to have the members of the Board of Review appointed by the Attorney-General and not by the Commission.

THE COMMITTEE THEREFORE RECOMMENDS:

1. That a Board of Review under The Securities Act of three members comprising,—

(*a*) a judge of a county or district court, as chairman;

(*b*) a licensed broker not being a member of a stock exchange; and

(*c*) the president of the Toronto Stock Exchange or some member of the Toronto Stock Exchange nominated by the President and approved by the Attorney-General,

be established, the judge and licensed broker to be appointed from time to time by the Attorney-General;

2. That, upon the application of a broker or salesman made within a specified period, the Board of Review have the power to affirm, rescind or vary any ruling or order of the Commission refusing to grant or suspending or cancelling a broker's or salesman's license after hearing such evidence as may be submitted; and

3. That where the Securities Commission refuses to grant, or suspends or cancels a broker's or salesman's license, the Commission be required

immediately to notify such broker or salesman, advising him that if he desires to have the matter reviewed by the Board he should so advise the Commission within a specified time; but that any such order or ruling of the Commission shall remain in full force and effect unless and until it is modified or rescinded by the Board of Review.

APPEALS FROM ORDERS ON MOTIONS TO QUASH INDICTMENTS

It appears to the committee that it would be advantageous to permit an immediate appeal from an order dismissing a motion to quash an indictment. If such an appeal were permitted it would undoubtedly prevent the loss of time and money in cases where, after the trial has taken place, the indictment is subsequently found to be defective by the Court of Appeal. However, it is important that any such right of appeal should not be permitted to be used as a means of delaying prosecutions, and the committee is of the opinion that the right to appeal to the Court of Appeal from an order dismissing a motion to quash an indictment should be dependent upon leave being first obtained from the trial Judge. The Committee is also of the opinion that an appeal by the Crown should lie to the Court of Appeal from an order quashing an indictment.

The Committee Therefore Recommends:

That an appeal should lie to the Court of Appeal from an order dismissing a motion to quash an indictment, before proceeding with the trial, upon leave being obtained from the Judge hearing the motion and that an appeal by the Crown should lie to the Court of Appeal from an order quashing an indictment.

APPEALS FROM SURROGATE COURTS

Appeal Tribunals

By section 29 of The Surrogate Courts Act, the matter of appeals from the judgments and orders of the Surrogate Court is dealt with as follows:

(1) Any party may appeal to the Court of Appeal from an order, determination or judgment of a surrogate court, in any matter or cause when the value of the property affected by such order, determination or judgment exceeds $200.

(2) A motion for a new trial after a trial by a jury shall be deemed an appeal.

(3) An appeal shall also lie to a judge of the Supreme Court from any order, decision or determination of the judge of a surrogate court, on the taking of accounts or upon an adjudication or to a claim or demand or as to the title to any property if the amount involved exceeds $200 in like manner as from the report of a Master under a reference directed by the Supreme Court.

The effect of the above quoted section is that an appeal lies to a single judge of the Supreme Court of Ontario from any order made by a surrogate court judge

on the passing of accounts or upon an adjudication as to a claim against an estate if the amount involved exceeds $200. A further right of appeal in such cases lies from the order of the single judge of the Supreme Court of Ontario to the Court of Appeal. On the other hand, as to such questions as the determination of the validity of a will and as to all matters which do not come within the language of subsection 3 of section 29, an appeal lies directly from the judgment of the surrogate court to the Court of Appeal when the value of the property affected by the judgment exceeds $200.

The Committee is of the opinion that the system of appeals provided for by section 29 of The Surrogate Courts Act is working satisfactorily and should not be interfered with.

Practice on Appeals

In the case of appeals coming within section 29 (3) of The Surrogate Courts Act, which are taken to a single judge of the Supreme Court in the first instance, the provisions of section 29 (3) must be read in conjunction with Rules 506 and 507 of the Consolidated Rules of Practice, 1928, which are as follows:

> 506. Every report or certificate of a Master shall be filed and shall be deemed to be confirmed at the expiration of fourteen days from the date of service of notice of filing the same, unless notice of appeal is served within that time.
>
> 507. An appeal from the report or certificate of a Master or Referee shall be to the Court upon seven clear days notice, and shall be returnable within one month from the date of service of notice of filing of the report or certificate.

A practical difficulty arises in connection with the application of the language of Rules 506 and 507 to section 29 (3) of the Act, because the practice of service of a notice of filing of a report or certificate is not used in the surrogate court. This matter should be clarified and the time for appeal provided for in section 29 (3) should be made specific.

The Committee Therefore Recommends:

1. That the present system of appeals from judgments and orders of surrogate courts be continued; and

2. That the time for service of a notice of appeal from an order, decision or determination of a judge of a surrogate court under section 29 (3) of The Surrogate Courts Act be limited to 14 days from the date of the service of a copy of such order, decision or determination upon such persons as the judge of the surrogate court may direct, by prepaid registered mail or in such other manner as the judge may determine, and that such appeal be upon seven clear days notice and be returnable within one month from the date of the service of a copy of such order, decision or determination.

APPEALS IN SUMMARY CONVICTION MATTERS

Except in the case of offences under The Liquor Control Act, appeals from summary convictions by magistrates under provincial statutes, as well as under

the Criminal Code, are by way of a trial *de novo* before a county court judge. On the other hand, both in civil and criminal matters, appeals to the Court of Appeal of Ontario are upon the record whether the appeal be from a decision of a judge of the Supreme Court or a judge of a county or district court or a magistrate. Because the practice of appeals on the record has proven satisfactory for many years, and because an appeal on the record usually occupies less of the appellate court's time and is less expensive than an appeal by way of trial *de novo*, appeals upon the record would appear to be preferable, all other things being equal. The practice of calling new and additional witnesses upon a trial *de novo* may also be considered to be an objectionable feature of that form of appeal for undoubtedly in some cases it reduces the hearing in the magistrate's court to something akin to an examination for discovery. An appeal by way of trial *de novo* has the further disadvantage of encouraging carelessness at the original trial because of the knowledge of the parties that the appeal will be by way of a new trial in the court appealed to.

While the Committee feels for these reasons that appeals by way of trials *de novo* should be abolished in summary conviction matters and that all appeals should be upon the record where a court reporter is present, nevertheless, as adequate and competent reporting is not always available, the Committee feels that it can make no such recommendation until this condition as to reporting is rectified.

However, if appeals by way of trials *de novo* are to remain, the Committee is of the opinion that on an appeal by way of trial *de novo* only those witnesses who gave evidence in the magistrate's court should be heard on the trial *de novo* unless the judge presiding at the trial *de novo* gives leave to call a new witness or witnesses on the following grounds:

(*a*) That at the time of the hearing in the magistrate's court the new witness was ill or out of Ontario or for any other sufficient reason was unable to attend the hearing in the magistrate's court, or

(*b*) That by the exercise of reasonable diligence the new witness whose evidence is offered could not be produced at the time of the hearing in the magistrate's court.

THE COMMITTEE THEREFORE RECOMMENDS:

1. That when adequate and competent reporters in the magistrates' courts become uniformly available in the Province appeals by way of trial *de novo* should be abolished and appeals should be on the record; and

2. That until such time as adequate and competent reporters are uniformly available throughout the Province in the magistrates' courts appeals by way of trials *de novo* be retained, but that only those witnesses who gave evidence in the magistrate's court should be heard on the trial *de novo* unless the Judge presiding at the trial *de novo* gives leave to call a new witness on the following grounds:

(*a*) That at the time of the hearing in the magistrate's court the new witness was ill or out of Ontario or for any other sufficient reason was unable to attend the hearing in the magistrate's court; or

(*b*) That by the exercise of reasonable diligence the new witness whose evidence is offered could not be produced at the time of the hearing in the magistrate's court.

APPEALS UNDER THE ASSESSMENT ACT

Although several submissions were made relating to practices prevailing in connection with the making and altering of assessments as to real property, the Committee limits its recommendations to the practice governing appeals under The Assessment Act, being of opinion that the practice on assessment appeals is a matter properly coming within the scope of this investigation, while other matters relating to assessment which were the subject of submissions are not.

Under The Assessment Act an appeal lies from an order of the court of revision to a county or district judge. Subsection 1 of section 84 of The Assessment Act provides for a further limited right of appeal thus:

(1) Where a person is assessed to an amount aggregating in a municipality in territory without county organization $10,000 or upwards and in any other municipality $40,000 or upwards, an appeal shall lie from the decision of the judge to the Ontario Municipal Board, and any person who had appealed or was entitled to appeal from the court of revision to the judge or the municipal corporation, shall be entitled to make the appeal to the Board.

It is difficult to understand why an appeal to the Ontario Municipal Board should be permitted as to property in unorganized territory if the assessment is only $10,000, whereas no appeal lies as to property in territory having county organization unless the assessment aggregates $40,000. Both amounts were no doubt arbitrarily set in the first instance, and, while the Committee considers $10,000 to be a fair and reasonable amount in a municipality in territory without county organization, the figure of $40,000 is in the view of the Committee unreasonably high as to property in territory having county organization, considering the amount of taxes involved annually on an assessment falling far short of that amount.

Another feature involved in appeals to the Ontario Municipal Board under the present practice is that there is an original hearing before the court of revision and two hearings *de novo*, one before the county judge and another before the Ontario Municipal Board. If the parties desire to appeal directly to the Municipal Board from the court of revision there is no real advantage in requiring a hearing with the expense incidental thereto before the county judge. However, where parties desire to go before the county judge for reasons of convenience or otherwise, they should not be barred from doing so.

The Committee studied the right to and the form of appeal to the Court of Appeal and the powers of that court. Representations were made to the Committee that in addition to the right of appeal as to questions of law now existing an appeal should also lie to the Court of Appeal from orders of the Ontario Municipal Board on all questions of valuation within the jurisdiction of that court as to the amount involved. In the opinion of the Committee the Ontario Municipal Board is well able and has ample opportunity to study matters of

valuation and to arrive at proper conclusions thereon, and the view of the Committee is that the right of appeal to the Court of Appeal should remain as under the present law.

THE COMMITTEE THEREFORE RECOMMENDS:

1. That in addition to or in lieu of the appeal from a court of revision to a county or district judge provided by section 76 of The Assessment Act, where a person is assessed to an amount aggregating in a municipality in territory without county organization $10,000 or upwards and in any other municipality $20,000 or upwards, an appeal shall lie from the court of revision to the Ontario Municipal Board at the instance and option of any of the persons mentioned in subsection 1 of section 76 of The Assessment Act against a decision of the court of revision or against any omission, neglect or refusal of the said court to hear or decide an appeal taken to it; and

2. That where a person is assessed to an amount aggregating in a municipality in territory without county organization $10,000 or upwards and in any other municipality $20,000 or upwards, and an appeal is taken to the county or district judge under section 76 of The Assessment Act, an appeal shall continue to lie from the decision of the judge to the Ontario Municipal Board.

ASSESSORS AND EXPERTS

The practice in the Admiralty Courts both in England and Canada of appointing nautical assessors is calculated to reduce the length of trials by eliminating the calling of expert witnesses. Where nautical assessors are appointed by order of the Admiralty Court neither of the parties is entitled to call experts or present the evidence of experts. In considering the advisability of permitting the appointment of assessors to the exclusion of expert witnesses in all civil cases, the Committee is not unaware of the fact that in New Brunswick this practice has recently been adopted in the civil courts and has been used for a short period in England in courts other than Admiralty Courts.

The appointment of nautical assessors appears to the Committee to be something which peculiarly lends itself to Admiralty Court problems where the questions involved invariably relate to the navigation of vessels. The nautical assessors appointed to assist the Admiralty Court in England, according to the information of the Committee, must be elder brethren of the ancient maritime society known as "The Corporation of the Trinity House of Deptford Strond" and there would be infinitely less opportunity for a divergence of views on the part of different nautical assessors in Admiralty cases than there would be between the opinions of experts in civil courts where matters of medical science, engineering and other sciences are frequently involved. In most cases involving expert testimony in the Ontario courts there would be considerable difficulty in having the parties agree upon a satisfactory independent expert because usually there are different schools of thought among the experts who would be qualified. There is in the present law nothing to prevent the parties from agreeing upon a single expert, but this is not often done. The Committee does not favour any proposal which would permit the court arbitrarily to appoint an expert

who had not been approved by all the parties since it has been so often demonstrated that men prominent in the same branch of science entertain views on a single point which are diametrically opposed.

Further, while constitutional difficulties are not insurmountable, it is not only important that the judge make his own decisions, but it is also desirable to have him sitting alone on the Bench making his decisions on the facts which he obtains from witnesses both lay and expert with the assistance of counsel representing all parties affected. While in the great majority of cases our judges would undoubtedly form their own decisions, the Committee does not favour any step which might tend to result in experts making decisions for judges.

THE COMMITTEE THEREFORE RECOMMENDS:

That a practice similar to that in the Admiralty Court relating to assessors be not adopted in any of the other courts of Ontario.

BAILIFFS

SUPERVISION

There are two types of bailiffs in the Province. First, there are bailiffs who are appointed by the Lieutenant-Governor under The Division Courts Act and, secondly, there are those who act under various Provincial statutes or as agents of landlords and conditional vendors of chattels.

Division court bailiffs are under the supervision of the Inspector of Legal Offices of Ontario, and are dealt with in this report under the heading DIVISION COURTS. There is, however, no supervision over bailiffs acting under The Landlord and Tenant Act and the various other Provincial statutes. Although municipalities may by by-law require bailiffs to be licensed and some municipalities have passed such by-laws, the licensing by municipalities does not involve any control over or assurance of the qualifications of bailiffs so licensed.

Many of the duties performed by bailiffs are of a technical nature requiring some knowledge of procedure and of the provisions of the statute under which the bailiff is acting. Some supervision of persons acting as bailiffs is, in the opinion of the Committee, most desirable in the public interest.

COSTS OF DISTRESS ACT

In many respects the services performed by bailiffs for which the fees are prescribed under The Costs of Distress Act are similar to the services performed by division court bailiffs under The Division Courts Act. The tariffs applicable to bailiffs under The Division Courts Act are more complete and appear to be reasonable. For the purpose of uniformity the Committee favours a revision of the tariffs under The Costs of Distress Act to render them the same, so far as possible, as those under The Division Courts Act.

LANDLORD AND TENANT

A practice has grown up in the levying of distresses for arrears of rent whereby the bailiff, after distraining the goods and chattels, takes a bond from the tenant which purports to permit the bailiff to withdraw from close possession of the

goods and chattels, at the same time retaining all rights existing under the distress warrant against the goods and chattels wherever they may be moved with full authority to retake possession at any time. Such a practice has the advantage of eliminating the necessity of removing chattels from the premises or of placing a man in possession, and consequently effectively reduces the expense of the proceedings for all parties concerned. It appears, however, to be a procedure which has developed without statutory authority. As it has become almost a standard practice with very desirable features it should be made regular and legal.

THE COMMITTEE THEREFORE RECOMMENDS:

1. That any person acting as a bailiff, except under The Division Courts Act be required to comply with the following provisions,—

(*a*) He shall not act as bailiff until the judge of the county or district court of the county or district in which he carries on business has certified to the clerk of such court that, after due examination, he has found such person to be qualified to act as a bailiff.

(*b*) The clerk of such court shall file such certificate of the judge and shall thereupon issue a certificate of qualification to such person.

(*c*) No renewal of any such certificate issued by the clerk shall be required, but every such certificate shall be subject to cancellation at any time at the direction of any county or district court judge;

2. That the tariffs under The Costs of Distress Act be revised so as to make applicable thereto the same fees, so far as possible, as under The Division Courts Act and that such tariffs of fees be prescribed by the Lieutenant-Governor in Council as is the case under most other statutes; and

3. That The Landlord and Tenant Act be amended to permit a bailiff who has distrained for arrears of rent to take a bond so that he may withdraw from close possession without relinquishing any rights.

CENTRAL PLACE OF EXECUTION

At various times in the past representations have been made recommending the establishment of a central place for the executing of all sentences of death imposed in the Province.

The advantages to be gained by the adoption of a central place of execution are negligible. The cost of a scaffold, in those counties and districts where no permanent scaffold exists, ranges from $30 to $100. On the basis of the number of executions carried out in Ontario in the past few years the saving on this account would not exceed $300 or $400 a year at most, and this would be offset by the cost of moving prisoners. No other financial saving would be effected. It would be inadvisable to have an official executioner otherwise employed in any prison or other institution containing a central place of execution because such a situation would be detrimental to the morale of the prisoners. The naming of a central place for the carrying out of death sentences would not

therefore enable the authorities to use an official executioner at other work and thus render his employment permanent and make him available for carrying out all executions, as has been suggested. Nor is it advisable to name any one community as a place in which all executions in the Province should be carried out and thus to saddle that community with all the emotional incidents thereof.

On the other hand there may be advantages in holding an execution in the county or district where the crime was committed. In a province the size of Ontario it is desirable that the relatives of the person to be executed should not be required to travel long distances to reach the place where their unfortunate relative is held prior to the execution. There must be considered also the danger of escape from custody in moving prisoners to a central place of execution.

THE COMMITTEE THEREFORE RECOMMENDS:

That no action be taken with regard to the establishment of a central place for executing sentences of death.

CLERKS OF THE PEACE

Duties are imposed upon the clerk of the peace by several statutes. He performs functions under the Criminal Code and the Naturalization Act (Canada) as well as under some fourteen provincial statutes. Throughout the Province, except in the County of York, the clerk of the peace is also the Crown attorney for the county or district. This means that, with the exception of the County of York, the one official must perform the functions of Crown counsel and court clerk in the county court judges' criminal court and in the court of general sessions of the peace. Such a practice is not conducive to the dignity of the court or the respect to which the office of Crown attorney is entitled.

There appears to be no reason why the county court clerk should not be required to act as clerk of these two courts. However, as it is important to retain the system of filings and preliminary procedure which now obtains in these courts, the clerk of the county or district court should perform only such duties of the clerk of the peace as are actually performed in the court room.

THE COMMITTEE THEREFORE RECOMMENDS:

That (except in the County of York) the clerk of the county or district court be required to perform those duties which the clerk of the peace is now required to perform in the court room, in his capacity as clerk of the peace, during the sittings of the court of general sessions of the peace and the county or district court judges' criminal court.

CONSOLIDATION OF COURTS

Consolidation of certain of the inferior courts of the Province has been suggested. The proposal would include the county and district courts, the surrogate courts, the courts of general sessions of the peace and the county and district court judges' criminal courts. Advantages would include a reduction in the number of courts in the Province and convenience to the public by reducing

the number of court offices. However, as there has been what might be termed a *de facto* consolidation in many counties and districts these advantages have already been partially attained. Although the number of types of books of account would be reduced, the actual saving in books of record, books of account and other items of expense would be small.

While consolidation is desirable, the advantages to be gained do not warrant such a scheme being put into effect at this time, having regard to the great many amendments to statutes and rules of court which would be involved.

THE COMMITTEE THEREFORE RECOMMENDS:

That consolidation of inferior courts be not proceeded with at this time but that hereafter in amending the statutes and rules of court regard should be had to the possibility of consolidation at some future time.

COUNTY COURT DISTRICTS

Prior to 1919 in Ontario the expenses involved in the interchange of county judges had to be approved by the Attorney-General. This is still the practice in the other provinces. However, under an Ontario enactment of 1919 county and district court districts were erected and an unrestricted interchange of judges within the respective districts was provided for in all classes of work under both Provincial and Dominion statutes.

The Committee has thoroughly considered the situation and finds that while there are many advantages in the system of judicial districts as set up in this Province in 1919, there have been extensions in the matter of exchanges which were apparently not contemplated at the time the legislation was introduced, and which the Committee does not regard as desirable. In this connection the Committee refers to the following types of matters as to which the interchange of judges in the districts has become common practice and which the Committee does not regard as desirable or necessary—revision of voters' lists, appeals under The Assessment Act, and division court sittings.

The Dominion Department of Justice has ruled that in the future the Dominion will not pay the expenses involved in the interchange of judges for division courts exclusively. Therefore the Province would have to pay such expenses and the Committee approves the action of the Attorney-General in advising the Dominion Department of Justice that it is not the intention of the Province to pay such expenses. No doubt the Dominion Department of Justice will advise the county and district judges that expenses involved in interchange for division courts only will not be paid.

THE COMMITTEE THEREFORE RECOMMENDS:

That the provisions of The County Judges Act relating to county court districts be limited in their application to county courts, both jury and non-jury, courts of general sessions of the peace and county court judges' criminal courts.

COUNTY COURT PRACTICE

General

Although the jurisdiction of the county courts is subject to very definite limitations, their practice is governed by the same rules as those of the Supreme Court. This means that the machinery of examinations for discovery, interlocutory motions and other proceedings necessary to enable the facts to be brought out and understood in involved cases in the Supreme Court is available in county court actions. This situation not only permits proceedings in county court actions to become unduly complicated and tends to delay trial but also substantially increases the costs of the litigants. Mr. Justice Middleton, whose knowledge and experience in matters of practice are well known, strongly advocated to the Committee that a simplified procedure adapted to the type of cases tried in county and district courts be made applicable to those courts. The Committee concurs in the recommendation of the learned Justice of Appeal. The working out of a simpler procedure with the many problems involved is, however, a work requiring much time and opportunity for study which are not available to this Committee.

Signing of Orders

The practice of having county court judges sign orders which they make while the clerk may sign judgments of the county court is general throughout the counties and districts of Ontario. If a county court clerk is competent to sign a judgment of the court he should be competent to sign an order of a judge of the same court. The present practice seems to have grown up because of the fact that while the county court clerk has in his office an accurate record of judgments there is no provision which ensures that he will have any record of an order made by a judge. The judge of the court is in most cases regularly engaged in court, either in his own county or in another county of the county court district. To require the signature of the judge upon all county court orders is a matter of inconvenience to litigants with no compensating advantage.

Appeals from Interlocutory Orders

It has been suggested that an appeal should be permitted from an interlocutory order in a proceeding in the county court. The Committee is of opinion that there is a real need for simplification of procedure in the county court and that to permit an appeal from an interlocutory order would be undesirable since it would render procedure in the court more involved.

The Committee Therefore Recommends:

1. That consideration be given to simplifying the practice and procedure in the county and district courts by the body which is responsible for the making of rules of practice for those courts;

2. That provision be made that where a judge of a county or district court makes an order he shall make an endorsement thereof upon the notice of motion and that the clerk of the court shall sign the formal order; and

3. That no appeal be permitted from an interlocutory order in proceedings in a county or district court.

COURT CRIERS

Although the office of court crier is very old it has ceased to serve any real purpose. The duties which are performed by the court crier might very well be performed by the clerk of the court, the sheriff or a sheriff's officer or by one of the constables. In any event there is no necessity for having a separate official present in court for that purpose. In most of the courts of England the office of court crier was abolished many years ago and his work is now performed by other officials.

The Committee Therefore Recommends:

That the office of court crier be abolished by providing that upon the retirement from office for any reason of any person now holding the office of court crier no appointment shall be made in his place. For this purpose amendments should be made to the section of The Sheriffs Act which provides for the appointment of court criers, as well as to one of the schedules to The Administration of Justice Expenses Act. The statute should also prescribe which officer shall perform the functions of the court crier.

DESIGNATION OF SPECIAL JUDGES TO SPECIAL CASES

It has been suggested that in the Supreme Court special judges should be designated to hear commercial causes, as has been the practice in England for many years, and that a similar practice be adopted with regard to matrimonial causes. While such a practice might be advantageous in some jurisdictions, it is not adaptable to this Province, in the opinion of the Committee, because of the geography and population of Ontario, and considering the number of cases which are usually heard at each sitting of the Court. As one witness stated, "It is not yet practical in this country," and certainly it would cause an unnecessary and undesirable amount of travel on the part of the judges in many instances, having regard to the number of cases and the distances involved. Furthermore, there does not appear to be any real need for the adoption of such a system.

The Committee Therefore Recommends:

That, apart from the present practice of assigning one judge to bankruptcy matters, the practice of designating special judges to deal with commercial causes, matrimonial causes or other special types of causes be not adopted.

DIVISION COURTS

Generally

During the proceedings before the Committee it became apparent that the division court system is open to two main objections, namely, the amount of the costs and the difficulty of recovery after judgment. The Act has also been criticized as being unreasonably long and complicated. When it is considered that the Act, exclusive of forms, occupies less than 70 pages and contains, in addition to matters relating to practice and procedure both before and after judgment, all provisions relating to the establishment of the courts, the inspec-

tion of the courts and provisions relating to judges, clerks and bailiffs, as well as sections prescribing the jurisdiction of the courts, special provisions applicable to partnership, evidence, appeals, absconding debtors, claims of landlords and other matters, the length of the Act does not appear unreasonable, nor can the procedural provisions, with certain exceptions, be termed unduly complicated. While the statement has been made that The Division Courts Act should be shortened and simplified, this is not an easy matter in view of the great number of aspects of division court constitution, practice and procedure, which must necessarily be dealt with in The Division Courts Act and the regulations made under it.

Service of Process

The practice of having all summonses served by a court official is peculiar to the division courts. In the higher courts service may be effected by any person whether or not he is an official of the Court.

Service by post is dealt with more fully in another part of this report and in a general way the observations therein contained are applicable to division court matters. One of the principal items of expense in connection with the prosecution of division court claims is the bailiff's fees for serving process. Service by registered mail has proven satisfactory in England, although the safeguard applicable in that jurisdiction, and discussed in another part of this report, must be borne in mind. Service by registered post has proven satisfactory in many of the States of the Union and service by ordinary post is working well in at least one jurisdiction. Because of the apparent success with which service by post has met in other jurisdictions and because of the public demand for a reduction in division court costs the Committee is disposed to recommend the adoption of service by such means in the division court. The Committee is, however, inclined to the view that service by mail in the division courts should be effected by a preferred type of mail so as to ensure, as far as possible, the receipt of the summons or other document by the addressee. The Committee is also of opinion that services by post in division court matters should be attended to by the clerk of the court. This will permit the clerk to keep a record of proofs of service as received by him and will enable him to arrange his court lists accordingly. Ample safeguarding facilities may be created by empowering a trial judge to require personal service where he considers such action warranted. In view of the practice in the higher courts, the Committee sees no reason why personal service should not, at the option of a party to an action, be effected by party or his agent, provided there is proper proof of service.

Court Costs

Objections to the present system of court costs in the division courts are twofold. In addition to the complaint that the costs are excessive, objection has also been taken to the fact that a litigant is never sure at the outset of a case either how much the costs will amount to before judgment or how much they will be by the time judgment has been enforced. Because of the uncertainty and difficulty of enforcing judgment, the Committee is satisfied that it is impossible to devise any system of costs which would take care of proceedings after judgment with any certainty as to the amount of costs involved. However, it is not only desirable but practicable to devise what might be termed a block system of costs to include all proceedings up to and including judgment. In

determining the amounts of costs which should be paid under such a system it would no doubt be necessary to have regard to average amounts involved in prosecuting a suit to judgment or arriving at a settlement before judgment under the present plan, making appropriate divisions according to the amounts claimed in each suit. If such a calculation is to be the basis for arriving at the amounts of fees payable under a block system, no rebates or other allowances could properly be made where the case is settled before judgment. If rebates and other similar allowances were barred the rates could be kept to a minimum. If service is to be effected by prepaid registered mail and the mailing is to be done by the court clerk, postage should also be included in the block tariff. If, however, service by the bailiff as under the present system is to be continued, it would not be feasible to include costs of service in the block tariff for this amount varies greatly in the rural and urban districts. In the northern parts of Ontario particularly, where long distances are involved, the costs of service are much greater than in the more densely populated sections of the Province.

Jurisdiction after Judgment

Where judgment has been recovered in a division court it is often necessary to realize upon it in some other part of the same county. The practice of issuing a transcript to a court of another division is one of the matters which increases costs in division court proceedings. As has so often been observed, with modern means of transportation and communication distances have greatly diminished and consequently it is a matter of no great inconvenience to a bailiff of a division court to travel to another part of the same county. The Committee sees no advantage in continuing the present practice which necessitates the issue of transcript from one division court to another division court in the same county or district.

Extra County Jurisdiction

Because of the arbitrary nature of boundaries of county and provisional judicial districts it is often more convenient for a person residing in one county or district to attend a division court located in the next county or district than to attend a division court located in the county or district in which he resides. The Division Courts Act, however, does not make provision for giving jurisdiction to a division court in more than one county or district. There are many cases in the Province where such a provision would work to the advantage and convenience of many people.

If this recommendation and the next preceding recommendation are embodied in legislation, consideration should be given to the jurisdiction after judgment of a court whose district includes parts of two counties.

Appeals

In cases involving over $100 an appeal from a division court may be taken to the Court of Appeal where three judges sit on the appeal. Substantially the same rules apply to division court appeals as are applicable to appeals from the county court and the Supreme Court where much larger amounts are involved. An appellant is required to furnish three copies of the transcript of evidence and three copies of an appeal book containing the notice of appeal, the pleadings, the formal judgment, reasons for judgment, if any, and exhibits. These matters

render the cost of a division court appeal substantial. The situation might be remedied to some extent by providing for an appeal to a single judge of the Supreme Court. Judges and lawyers appearing before the Committee whose opinions were sought regarding such a change in procedure were practically unanimous in approving of an appeal from the division court to a single judge of the Supreme Court. Owing to the congestion of the lists in weekly court and chambers it is not desirable to require any further matters to be adjudicated in those courts, nor does the Committee consider that it is necessary or desirable to alter the tribunal to which an appeal from a division court is taken. Therefore the Committee is of the opinion that appeals from the division courts should be heard and disposed of by a single judge of the Court of Appeal.

Juries

The Division Courts Act provides for a trial by jury in all actions where the amount sought to be recovered exceeds $50. In order to provide a fund to cover the cost of jury trials another section of the Act requires that there shall be paid to the clerk, on every action originally entered in his court, in addition to all costs or jury fees payable,—

(*a*) where the claim exceeds $20 but does not exceed $60—three cents;

(*b*) where the claim exceeds $60, but does not exceed $100—six cents; and

(*c*) where the claim exceeds $100—twenty-five cents.

Judge Morson, who for more than forty years presided over division courts in the County of York, estimates that he tried 320,000 cases in the division courts during that time out of which not more than 25 were tried by juries. Mr. McDonagh, who is clerk of the First Division Court of the County of York, which is one of the busiest courts in the Province, estimates that during the last six years approximately 42,000 actions have been entered and that there have not been more than 12 jury trials. These figures indicate that the number of jury trials in division courts does not warrant provision for trial by jury being retained in the Act, and that substantial sums of money must have accumulated in many of the counties in what is known as the division court jury fund. The Act requires the clerk to pay over to the county treasurer all moneys received by him as jury fees. Jury fees are not payable in provisional judicial districts.

Report upon Trial List

Many of the division courts are in outlying parts of the Province and owing to the lack of facilities for communication it is sometimes difficult for a judge to ascertain whether there are any cases to be tried on the date set for a sittings of the court. Where there are no cases for trial it is important that the expenses of the administration of justice should not be unnecessarily increased by having the judge travel to the court.

Garnishee and Attachment

For many years proceedings by way of garnishee in the division court have been a source of complaint. Not only does the proceeding increase the expense of

division court procedure but it is a matter of inconvenience to the creditor, the debtor and the debtor's employer for under the established practice a garnishee order may be made only against moneys that are due and payable to the debtor. Accordingly if wages are to be garnished from time to time a new order must be taken out and served each time wages become due. This brief description of the present practice will serve to indicate both the inconvenience and expense which are involved. In the Provinces of Quebec and Manitoba statutes have been passed with a view to assisting debtors who are indebted to more than one person and providing machinery for discharging the debts over periods of time. In Quebec the legislation is known as the Lacombe Law. It is contained in articles 698a and 698h of the Civil Code of Quebec which were passed in 1939 to replace article 1143. The law may be invoked by a debtor having several creditors provided that at least one judgment has been signed against him. He must file a declaration with the court clerk stating his salary, the debt upon which he is paying, his employer's name and other particulars. He is required to pay into court that part of his wages which is not exempt from seizure, within three days of each pay day.

The Lacombe Law is administered by the clerks of the Circuit Court in Montreal and the Magistrates' Courts in the other parts of the province. While these are the small debts courts of the province, the Lacombe Law applies equally to claims of all amounts and to a judgment of any court in the province. Where a debtor brings himself under the Lacombe Law by filing a declaration and then fulfills the requirement of the law by making regular payments into court on the seizable portion of his wages, no proceedings by way of garnishee or attachment may be taken against his wages.

The Manitoba legislation is known as The Orderly Payment of Debts Act, and was first passed in 1932. Having outlined the Lacombe Law, the Manitoba legislation may be conveniently described by indicating the chief respects in which it differs from the Lacombe Law:

(1) While the Lacombe Law applies only to wages, The Orderly Payment of Debts Act applies to all moneys owing to the debtor;

(2) Whereas under the Lacombe Law in Quebec the amount of wages exempt from execution is fixed by statute, under The Orderly Payment of Debts Act the amounts payable into court by the debtor are either agreed upon by the debtor and the creditors, or failing that, are fixed by the court;

(3) Under the Lacombe Law the employer is not brought into the picture at all, the moneys being paid into court by the debtor. This is not necessarily so under The Orderly Payment of Debts Act for under that Act the clerk may at any time require of and take from the debtor an assignment of any moneys due, owing or payable, or to become due, owing or payable to the debtor and unless otherwise agreed upon, he shall forthwith notify the person owing or about to owe the moneys of the assignment; and

(4) The Lacombe Law applies to all claims regardless of the amounts involved while The Orderly Payment of Debts Act does not apply to a claim for which an action may not be maintained in a county court and does not apply to a judgment in an amount exceeding that for which action may be brought in the county court (approximately $800) unless the creditor consents.

It should be observed that both the Quebec and Manitoba Acts have the common and desirable feature that the invoking of the provisions of the Act is entirely at the option of the debtor.

It was brought to the attention of the Committee that a practice in some respects similar to the practice under the Lacombe Law and The Orderly Payment of Debts Act has grown up in some parts of Ontario. Some seventeen collection agencies in the Province are now carrying on a practice that is commonly known as "pooled accounts". Under this system the debtor pays a portion of his wages to the collection agency and the collection agency distributes the amounts paid in among the creditors of the debtor. The charge, known as an "agency charge", for handling the debtor's accounts in this way, varies from 7% to 20% among the various agencies. However, where a collection agency has been authorized by a creditor to collect a debt from a debtor who has pooled his accounts with the agency, it charges that creditor its regular collection fee which varies throughout the Province from 15% to 37%. According to information furnished to the Committee, under this system a collection agency in some cases retains as much as 47% of moneys collected by it from a debtor and which would otherwise be payable to a creditor.

Before establishing any new procedure in the courts similar in nature to the Lacombe Law or The Orderly Payment of Debts Act, the cost of administration is an item which must be carefully considered. The Attorney-General for Quebec was kind enough to arrange for the attendance of Mr. P. A. Juneau, K.C., a Special Law Officer of his Department, to attend before the Committee and clarify many points relating to the administration and operation of the Lacombe Law. Mr. Juneau explained to the Committee that the fee for filing a declaration under the Lacombe Law is very small, being from 50 cents to $1.00. There is also a fee of a similar amount payable by a creditor filing a claim. The court, however, retains 2% of all moneys paid in when distribution is made. It is estimated that in the district of Montreal it costs the province $15,000 annually to maintain the system. A simplification of administrative features would substantially reduce the cost of maintaining the system and a sufficient percentage retained by the court would meet the expense involved. Mr. Juneau stated, "Instead of charging for any declaration and charging for filing any claim, I would suggest that when the debtor has deposited $50, before the distribution of his $50, we would charge $2.50, 5%, and in the end $1.25 would be charged to him and the other $1.25 would be charged to the creditor." In Manitoba the fee system appears to be the practice. The Committee is of opinion that to make such a system self-sustaining and in fairness to those affected by it, the retention by the clerk of a percentage of the amounts paid into court is preferable to the fee system. The Committee also expresses the view, having in mind the benefit accruing to creditors by the facilitation of collections effected by this system, that it is not unreasonable to require the creditor to pay one-half of the prescribed fee. In view of Mr. Juneau's suggestion, the Committee favours a charge of 5% upon the establishment of the system and if experience shows that such a charge is inadequate to cover expenses or exceeds that which is actually required the charge may be increased or reduced. The charge made should be no greater than is required to maintain the system.

In considering the scope of such a law it is felt that it would best serve its purpose by being limited to judgments of division courts or claims within the

jurisdiction of a division court. To make it applicable to claims for much larger amounts and then to make distribution on a *pro rata* basis would deprive a creditor having a small claim from any substantial benefit from the amounts collected. The Committee would also limit the law to wages. Such a law is particularly applicable to wages as it provides for the payment of debts on a deferred basis. This provision would mean that individual creditors could take such proceedings as they might deem desirable against other funds of the debtor regardless of the amount of their claims. The Committee would place the administration of the law in the hands of the division court clerks.

The Division Courts Act permits garnishment of a debt "owing or accruing" to a debtor. Whatever may have been the intention of the Legislature, decisions of the courts have rendered the word "accruing", as it is used in this provision, meaningless. The net result of the present practice is to embarrass and inconvenience the creditor in the collection of his debt by requiring him to act after a debt has become due and before it has been paid over, which requirement, particularly in the case of wages, is often difficult of accomplishment. The Committee favours the extension of the section so as to permit garnishment where a debt, though not yet due and payable, may properly be described as accruing due.

Rules, Forms and Tariffs

In another part of this report where rule-making authorities are dealt with, the recommendation that a special rule-making body should have authority to make all rules relating to court procedure is subject to a specific exception with regard to rules in division courts. The reason for the exception is that the practice and procedure in the division courts differ from that in the other courts in many respects, the procedure being as informal as is practicable. Since the abolition of the Board of County Judges the Lieutenant-Governor in Council has had the authority to make rules governing any matter relating to practice and procedure of the division courts, or other similar matters, and to prescribe fees payable to the clerk and bailiff. Any forms which are prescribed in The Division Courts Act are contained in a schedule to the Act. This practice which in modern legislation is the exception rather than the rule tends to extend the length of the Act. Further, it is often found that forms require to be altered to meet particular situations which were not anticipated when the forms were prepared. For these reasons it is advisable that the power of the Lieutenant-Governor in Council to prescribe rules and fees be extended to include the prescribing of forms.

Third Party Procedure

Section 89 of The Division Courts Act permits any person who ought to have been joined in an action or whose presence is necessary to enable the judge effectually and completely to adjudicate upon the questions involved in the action to be added as plaintiff, defendant or garnishee. There is one situation which is not covered, however, and that is the adding of a third party. Not uncommonly in division court practice it is desirable to have some person added as a third party, a practice recognized in both the county courts and in the Supreme Court, in order that all issues may be settled in the one action. As there is no provision for this procedure in The Division Courts Act or rules it is necessary to bring a separate action against the third party. Arrangements are often made to have both actions tried together. As the "third party" and the plaintiff are not parties to the same action the situation is unsatisfactory.

Interpleader

A practice has developed where a judgment summons or interpleader is issued, to enter it in the books as a separate action. There appears to be no authority for the practice nor is there, in the opinion of the Committee, any good and sufficient reason why this should be the case. Under the practice as it exists a second and separate deposit of costs must be made and as the various items which have been charged for in the original action are again charged against the second deposit, the costs become exhorbitant.

Executions

The Division Courts Act places restrictions upon execution against land on a division court judgment. It provides that "where an execution against goods is returned *nulla bona*, and the sum remaining unsatisfied on the judgment amounts to the sum of $40 or upwards, the judgment creditor shall be entitled to an execution against the land of the judgment debtor." The Committee would not interfere with the minimum amount of $40 fixed by the statute. In many cases, however, the judgment creditor or the clerk of the court knows that the issuing of execution against the goods of a debtor is an abortive gesture. In such cases the requirement that execution must be first issued against goods serves no other purpose than to add costs to those already incurred. Whether the creditor should be entitled as of right to issue execution against lands where the amount involved exceeds $40 or whether he should be required to file an affidavit deposing that the debtor has no goods which are subject to execution has been given some consideration by the Committee. It is only reasonable that judgment creditors in the division courts should have the same remedies for realizing upon their judgments as is the case in other courts, and particularly so because of the substantial increase in the jurisdiction of division courts a few years ago. In addition while a creditor may be reasonably certain that the debtor is not possessed of any seizable goods he may not be in possession of such facts as would permit him to take an affidavit to that effect. The Committee does not feel that it is necessary or desirable to require a creditor to take such an affidavit before being entitled to issue execution against lands.

Appointment of Clerks and Bailiffs

Under the heading Bailiffs the Committee recommends that every bailiff other than one engaged exclusively in division court work, be required to obtain a certificate from the local county or district court clerk that the judge of the court has approved of his qualifications to act as a bailiff. Under existing law the certificate of a judge that any person, other than a barrister or solicitor, desirous of being appointed a notary public is qualified for the position, is necessary before such person can be so appointed.

Because of the large number of division courts in the Province the appointment of division court clerks and bailiffs who are competent to perform the work of their respective offices has long been a problem. In the interests and for the convenience of the public it is important that where a vacancy occurs in the office of clerk or bailiff an appointment be made without undue delay. Having regard to distances involved and the pressure of other work it is not always possible for the proper officers of the Attorney-General's Department to

study the situation and make full inquiry as to the ability of the applicants. As the local judge is ideally situated and equipped to examine and report upon persons who are considered for appointment as clerk or bailiff, the Committee favours having such a judge examine and report whether a person is qualified for the office of clerk or bailiff before he is appointed. This practice would be substantially the same as the present law and practice with regard to notaries public.

THE COMMITTEE THEREFORE RECOMMENDS:

SERVICE OF PROCESS

1. That,

(*a*) service of process in division courts be effected by prepaid registered mail with a return receipt card (subject to provisions of clauses (*c*) and (*e*) hereof);

(*b*) the mailing of process should be done by the division court clerk;

(*c*) if the court is not satisfied that service by mail has been effected in any particular case, the court may require that personal service be effected;

(*d*) where personal service is ordered by the court the party on whose behalf the service is to be made may effect service himself or by his representative, in which case the cost of service shall be in the discretion of the court;

(*e*) in lieu of the form of service indicated in clause (*a*) above, a party may, if he so desires, effect personal service either himself or by his representative, but at his own expense; and

(*f*) where a party elects to make personal service himself or by his representative, or where personal service is required by the court, in cases where the amount does not involve more than $30 the provisions of section 79 of The Division Court Act shall continue to apply.

COURT COSTS

2. That a block system of costs in division courts covering all proceedings up to judgment be established and that the costs of service by prepaid registered mail with a return receipt card be included in the amount required under the block system.

JURISDICTION AFTER JUDGMENT

3. That after a claim has been reduced to judgment the division court in which judgment has been obtained shall have jurisdiction throughout the county or district and that division court bailiffs shall have authority to act in respect of any judgment throughout the county or district in which their court is located, provided that where a bailiff goes outside his own division he shall not be permitted to recover mileage for any travelling outside his division.

Extra County Jurisdiction

4. That The Division Courts Act be amended to allow the Lieutenant-Governor in Council to give a division court located in one county or district jurisdiction in part of an adjoining county or district.

Appeals

5. That provision be made for the taking of appeals from division courts to a single judge of the Court of Appeal.

Juries

6. That juries in division courts and jury fees be abolished.

Report upon Trial List

7. That where there are no cases to be tried at any sittings of a division court the clerk of the court be required so to advise the judge, and if the clerk has not mailed a notification to the judge which would in the ordinary course of mail reach its destination at least twenty-four hours before the time for the sittings of the court in the case of a county, and at least forty-eight hours before the time for the sittings of the court in the case of a district, the clerk be required so to notify the judge by telephone or telegraph at least twenty-four hours in the case of a county and at least forty-eight hours in the case of a district, prior to the time set for the sittings of the court.

Garnishee and Attachment

8.—(*a*) That a law similar to The Orderly Payment of Debts Act of Manitoba be adopted in Ontario subject to the following:

(i) That the operation of the law be limited as in the Lacombe Law in Quebec to wages of the debtor;

(ii) That all judgments of division courts or claims which are within the jurisdiction of a division court may be brought under such law where it is invoked by the debtor;

(iii) That no fees be charged for the filing of a declaration by a debtor bringing himself under the law, and that 5% be deducted upon distribution of moneys, such percentage to be subject to increase or decrease in the light of experience so that the charge may be made commensurate with the costs of administration of the law, and that one-half of the amount charged be payable by the debtor and one-half by the creditor; and

(iv) That the law be administered by the division court clerks who shall be required to keep a record of all the debtors in their respective divisions who have brought themselves within the provisions of the Act; and

(*b*) That the garnishment provisions of The Division Courts Act be made applicable to debts which although not yet due and payable, may be described as "accruing due."

Rules, Forms and Tariffs

9. That the provisions authorizing the Lieutenant-Governor in Council to make rules and prescribe fees be extended to authorize the Lieutenant-Governor to prescribe forms.

Third Party Procedure

10. That provision be made for the joining of third parties in division court actions.

Interpleader

11. That proceedings by way of judgment summons and interpleader, or other matters arising out of a division court action be dealt with by the clerk of the court as part of the same action.

Executions

12. That where the sum remaining unsatisfied under a division court judgment amounts to $40 or more execution may be issued against the lands of the judgment debtor without execution against goods returned *nulla bona* being first required.

Appointment of Clerks and Bailiffs

13. That no person be appointed a division court clerk or bailiff unless the judge of the county or district court of the county or district where the division court is located has certified that he has examined such person and finds him to be qualified to perform the duties of a division court clerk or bailiff, as the case may be.

ENLARGEMENT OF POWERS OF COURT OF APPEAL

The power of the Court of Appeal with regard to an appeal from a judgment based upon the verdict of a jury is concisely stated in Volume 3 of the Canadian Encyclopedic Digest (Ontario) at page 151:

"The duty of a court hearing an appeal from the decision of a judge without a jury is to make up its own mind, not disregarding the judgment appealed from, and giving special weight to that judgment in cases where the credibility of the witnesses comes into question, but with full liberty to draw its own inference from the facts proved or admitted and to decide accordingly, but where the jury finds the facts, it is the province of the court to determine whether there is any evidence proper for submission to the jury, and if it be determined that there is such evidence, a verdict based upon it is not to be disturbed unless the court should think it such that reasonable men could not have found as the jury did, or, in other words,

before a Court of Appeal is justified in granting a new trial on the ground that the verdict of a jury is against the weight of evidence, the court must be satisfied that the evidence so strongly preponderates in favour of one party as to lead to the conclusion that the jury in finding for the other party, have either wilfully disregarded the evidence or failed to understand and appreciate it."

While the volume from which the above extract is taken was published in 1927, the most recent case, Day vs. Toronto Transportation Commission, [1940] S.C.R. 433, indicates that the above is an accurate statement of the law applicable to-day where an appeal is taken from the finding of a jury. An extract from Lord Dunedin's judgment in Wilson vs. Kinnear, [1925] 2 D.L.R. 641, at page 646 is also helpful in indicating the principles upon which the Court of Appeal must proceed. His Lordship says:

"Had the verdict been the verdict of a jury their Lordships think that it could not have been set aside. But the judgment of a judge is in a different position. A Court of Appeal has not to consider whether there is any evidence on which the verdict could be reasonably based; it has to consider whether it, on the evidence, would have come to the same conclusion, and that is what the Appeal Court did."

While there are no doubt reasons why the Court of Appeal should be more restricted in interfering with a finding of fact by a jury than with a finding of fact of a judge sitting alone, the restriction under the present law appears to warrant some relaxation. The present rule renders it impossible for the Court of Appeal to interfere where the jury has acted unreasonably unless the finding amounts to something which might be termed grossly unreasonable. While taking the view that the Court of Appeal should be allowed more latitude than the present rule permits, the Committee fully realizes that any widening of the powers of the Court of Appeal must be effected with limitations. Great care must, therefore, be taken in drafting any amendment so that the Court of Appeal may not interfere with the finding of fact by a jury unless the jury is clearly wrong.

Many of the witnesses who appeared before the Committee, including judges of both the trial division and the Court of Appeal, as well as counsel having experience in the Court of Appeal, agreed that it would be well to extend the powers of the Court of Appeal but that any extension of the powers must be definitely and carefully limited. No one was able to suggest a formula which would satisfactorily take care of this situation. Undoubtedly if the provisions of The Judicature Act under which the Court of Appeal derives its power are to be amended so as to extend the powers of the Court of Appeal, the exact wording must be the subject of careful study.

THE COMMITTEE THEREFORE RECOMMENDS:

1. That the power of the Court of Appeal in appeals from judgments based upon the findings of a jury be extended, but that any such extension be definitely limited; and

2. That the matter of exact wording to be employed in effecting such extension of power be referred to the Law Revision Committee, if and when such committee is constituted.

THE EVIDENCE ACT

The law of evidence in Ontario relating to civil matters is, in the opinion of the Committee, a branch of the law which warrants careful study with a view to effecting a thorough revision in the light of present-day conditions and recent English legislation. The English Evidence Act of 1938 is, in some respects, a departure from well established rules of evidence prevailing in the common law countries and merits consideration and study in this jurisdiction. The considerations which prompted the preparation and introduction of that legislation are indicated by the Right Honourable Lord Maugham in an address which he prepared to deliver at the meeting of the Canadian Bar Association at the City of Quebec in August, 1939, at which time he was Lord High Chancellor of England. (See (1939), 17 Canadian Bar Review 469.)

The detailed and lengthy study of the whole field of evidence which would be involved in a revision of The Evidence Act (Ontario) could not be undertaken by this Committee. The Committee is of opinion that such a study might appropriately be committed to the Law Revision Committee, the establishment of which is recommended in another part of this report.

THE COMMITTEE THEREFORE RECOMMENDS:

That the laws of evidence be carefully studied with a view to revising The Evidence Act in the light of present-day conditions and of recent changes in the law of evidence in England and that such a study be made by the Law Revision Committee referred to in another part of this report if and when such Committee is established.

EXPENSES OF TRIAL WHERE THE VENUE IS CHANGED

While the Rules of Practice require certain types of cases to be tried in a particular county or district, such provisions apply to a small proportion of civil trials, the general practice being that the place of trial is chosen by the plaintiff and a change of venue is ordered only where justified by reason of "preponderance of convenience", having regard to the place of residence of the witnesses and other relevant factors. It is thus impracticable to provide for the reimbursement of one county by another with respect to the expenses of the trial whether the theory of reimbursement is placed on the basis of the place of residence of the parties, the place where the cause of action arose, or otherwise. In many cases at least one of the parties resides in a different county or district from that of the other party or parties, and in other cases the cause of action may have arisen partly in one county or district and partly in another county or district, the result being that it is practically impossible to lay down any rule which would be workable and which would apply satisfactorily to a reasonably large proportion of cases going to trial. The principle contained in section 18 of The Administration of Justice Expenses Act which applies to indictable offences is not adaptable to civil cases by reason of the different principles which apply in fixing the place of trial.

It is doubtful whether any county has suffered any real injustice by the present rules of practice because with the large number of cases which are tried

throughout the Province annually a natural balancing process operates to take care of the situation.

There is, however, an exception to the general rule applicable to the determination of the place of trial in civil actions indicated above, and that is the practice which permits a judge to change the venue from one county to another when he is satisfied that a fair trial cannot be had at the place where the venue was originally laid. In these cases a new venue is chosen either arbitrarily or upon principles which do not otherwise apply, so that the county or district in which the venue has originally been laid is relieved of the expense of the trial for reasons which do not ordinarily play a part in determining the place of trial.

THE COMMITTEE THEREFORE RECOMMENDS:

1. That where a change of venue is ordered in a civil action on the ground that a fair trial cannot be had in the county of original venue, the county of original venue be required to reimburse the county in which the trial is held and that such requirement be made appropriately applicable to provisional judicial districts; and

2. That the Rules of Practice should be correspondingly amended so as to require every order changing the venue to indicate the reason for the change.

JUDICIAL DISTRICTS FOR CRIMINAL ASSIZES

The proposal that the counties be grouped into judicial districts for the holding of criminal assizes has on more than one occasion been advocated and is usually justified by the statement that "we are not living in the horse and buggy days".

In view of the fact that criminal matters and civil matters are both tried at the same assizes, the juries for both types of cases being selected from the same jury panels, it is by no means clear that any advantage would result from the establishment of judicial districts for criminal assizes if no change were made with regard to the holding of sittings of the Supreme Court for the trial of civil cases. In any event the adoption of the system of judicial districts would compel parties, witnesses and counsel to travel greater distances. Some of the jurors would also have to travel longer distances if the jury panels were to contain residents of the county in which the proceedings originated. It is doubtful whether any saving of expense either to the parties involved or to the general public would result but, in any event, any saving so effected would probably be out of proportion to the inconvenience resulting. The Committee accordingly disapproves of the establishment of judicial districts for criminal assizes.

THE COMMITTEE THEREFORE RECOMMENDS:

That no action be taken with regard to the establishment of judicial districts for criminal assizes.

JURIES

Grand Juries

The advisability of abolishing or retaining grand juries has been a matter of controversy in Ontario for a great many years. The question has been discussed in many organizations and in the Legislature itself, a Bill for abolition having been introduced in the year 1933. There is undoubtedly a considerable difference of opinion both among members of the legal profession and others. The members of the Committee themselves hold different views as is indicated below where the further views of the Chairman are set out.

Few institutions in the British Empire are as old as the grand jury system. An excellent and brief outline of the development of the grand jury appears in the report of Mr. F. H. Barlow, K.C., Master of the Supreme Court of Ontario, to the Attorney-General, dated the 7th of July, 1939, and published in a special issue of the Ontario Weekly Notes dated March 8th, 1940. The Committee, therefore, does not deal with the historical background of grand juries being of opinion that Mr. Barlow's report covers the ground quite sufficiently and is readily available to interested parties.

The Committee probably heard more evidence and received more submissions on this than on any other subject and is of the opinion that before stating its recommendations the convenience of the Legislature and the public interest may best be served by setting out in brief outline the various reasons which were advanced for and against abolition. However, it may be stated at this stage that few witnesses who appeared before the Committee advocated outright abolition; in fact the overwhelming opinion expressed in written and verbal representations to the Committee was against outright abolition.

For Abolition—

Grand Juries in Other Jurisdictions. Grand juries have been abolished entirely or in part in many jurisdictions in the British Empire as appears from the following:

England—Abolished from 1917 to 1922; abolished again in 1933 with some minor exceptions.

Scotland—Grand juries never existed.

Ireland—Grand juries do not exist.

South Africa—Abolished in 1885.

Australia—From best sources available it appears that grand juries have not been used in Australia for nearly one hundred years.

Canada—

Alberta—Grand juries never existed.

Saskatchewan—Grand juries never existed.

Manitoba—Abolished in 1923.

British Columbia—Abolished in 1932.

Quebec—Abolished in 1933.

The abolition of grand juries in England was preceded in 1913 by an investigation and report by commissioners under the chairmanship of Viscount St. Aldwyn, and again in 1933 by the Business of Courts Committee under the chairmanship of Right Honourable the Master of the Rolls, Lord Hanworth of Hanworth. The findings of these bodies which resulted in the abolition of grand juries in England in 1917 and in 1933, are of interest and importance in considering the matter as it affects the Province of Ontario. The Committee, however, does not think it is necessary to quote from these reports since they are available to those having occasion to refer to them. Furthermore, the Committee, with the exception of the chairman, has felt that the reasons which brought about the abolition of grand juries in England would not be entirely relevant to the situation in this province, the problem being whether grand juries should be continued here under prevailing conditions.

For Abolition—

Saving of Expense. In his report above referred to, Mr. Barlow states, "It has been estimated that the cost of grand juries in the Province of Ontario exceeds $50,000 annually." This, however, was only the roughest kind of estimate. The Committee is of the opinion that it is practically impossible to arrive at any accurate figure as to the cost of grand juries, or conversely as to the amount which would be saved by their abolition. The impossibility of arriving at any accurate figure is due to the fact that the existence of grand juries creates many duties and situations involving expense, e.g., the work of the local boards of selectors, the work of the county or district selectors, the serving of summonses, the time of the court and court officials engaged while grand juries function, the time of petit juries delayed while grand juries function, the time of counsel and witnesses consumed while grand juries function, the witness fees and mileage paid to witnesses appearing before grand juries, the time of Crown counsel before grand juries and, of course, the fees and mileage paid to grand jurors themselves.

On the other hand, a grand jury, when it finds a "no bill", saves the community and the accused the expense of a trial and this phase of the matter must be considered in arriving at any estimate as to the net cost of grand juries. Mr. J. W. McFadden, K.C., Crown Attorney for the County of York, stated that there was always plenty of work which could be proceeded with in the Toronto courts while the grand jury was functioning. Furthermore, Mr. McFadden stated that in his opinion grand juries had saved money in Toronto since many "no bills" had been found. The saving suggested by Mr. McFadden in the case of Toronto, and which perhaps would apply in the other larger urban centres, is mentioned by the Committee to indicate the difficulty in arriving at any definite figure as to the saving which might be expected over the entire province. The overall expense throughout the province may be exceedingly small.

In the City of Toronto, according to figures submitted by Mr. McFadden, for the period from October, 1935, to January, 1940, 142 criminal cases were investigated by grand juries in Assize Courts. There were "no bills" in 34 cases, or in about 24 per cent of those submitted. In January, 1941, of 20 cases examined by Assize Court grand juries "no bills" were found in 6. In cases where "no bills" are found the public and the accused are saved the costs of trial which include attendance of counsel, witnesses and petit jurymen and all the other items going to make up the costs of trial. One grand jury may examine many

cases and save costs of trial in those in which they find "no bills". The figures for the year 1940 with reference to the work of grand juries throughout the province, as ascertained from a questionnaire sent out to all Crown Attorneys, are as follows:

	Courts of General Sessions of the Peace 1940			Supreme Court of Ontario 1940		
	Total Bills Presented	True Bills	No Bills	Total Bills Presented	True Bills	No Bills
Toronto, Hamilton, Windsor, Ottawa and London.....	78	70	8	70	65	5
Other County and District Towns...	59	48	11	62	53	9
Totals.....	137	118	19	132	118	14

For Abolition—

Magistrates' Preliminary Investigation. In all cases submitted to a grand jury, with the exception of indictments preferred by the Attorney-General or by a person with the consent of the court, there must be a preliminary investigation before a magistrate who, from the evidence adduced, determines whether there is sufficient evidence to put the accused on his trial. If the magistrate finds there is insufficient evidence to warrant putting the accused on his trial, he must dismiss the case on the preliminary investigation.

At one time a considerable percentage of the magistrates conducting such preliminary investigations were laymen. This practice, however, has been changed so that now only barristers are appointed to the Magistrates' Bench. With this change, ensuring the consideration of the evidence in preliminary investigations by men trained in the law, there may be a greater safeguard than was previously the case when lay magistrates considered and adjudicated on the evidence. The figures submitted under the sub-heading Saving of Expenses indicate that there is still much to be desired. The matter is further discussed in succeeding paragraphs.

For Abolition—

Fallibility of Grand Juries. In some jurisdictions in the province it is seldom that grand juries return "no bills". In other jurisdictions a considerable number of cases committed for trial by magistrates are returned by the grand juries as "no bills". This may suggest that in jurisdictions where a large number of bills are returned "no bills", there is only a perfunctory consideration of the evidence by the magistrates on the preliminary investigation. It may be that the certainty of a grand jury intervening before trial leads to carelessness on the part of the magistrates. If, however, the courts in such jurisdictions are so

crowded with work that the magistrates are unable to give proper consideration to such matters, then some change should be made in these particular jurisdictions.

The Committee has been informed of cases in which grand juries have found "no bill" and upon an indictment being subsequently preferred by the Attorney-General a second grand jury has returned a "true bill" and a trial jury has found the accused person guilty. Such cases do not indicate that grand juries are by any means infallible in finding "no bills". It is, of course, impossible to say whether in the cases where a magistrate has committed for trial and the grand jury has subsequently found a "no bill" the magistrate or the grand jury was mistaken. These situations, however, do clearly indicate that in the administration of criminal justice the greatest care must be exercised. Cases submitted to the Committee where "no bills" were found by grand juries after committals had been made by magistrates may indicate that preliminary hearings before magistrates do not altogether supersede grand juries as safeguards. It is impossible for the Committee to form any definite opinion as to who are more generally correct in their conclusions—magistrates in committing, or grand juries in finding "no bills".

In the result the Committee, with the exception of the Chairman, can not conclude that the safeguard afforded by an enquiry by the grand jury should be abolished in all cases. Particularly in cases of murder where the death sentence is mandatory and, when carried out, is irrevocable, the Committee hesitates to recommend the abolition of anything which affords a protection to the accused; in such cases every safeguard should be observed even to the extent of duplication.

For Abolition—

Secret Sittings of Grand Juries. Some criticism has been voiced against the grand jury system on the ground that the hearings are in camera. It has been suggested that grand juries sitting in secret may only reflect the opinion of Crown counsel who usually produce the evidence to the grand jury. There is thus, such critics aver, no real safeguard for the interests of the public, and it is desirable that the administration of justice should be open to all in all its important phases. Because of the absence of any cross-examination there may be some basis for the first objection. As to the second criticism, however, it is difficult to believe that Crown counsel and thirteen representative citizens would knowingly and dishonestly lend themselves to the side-tracking of an issue when they knew there should be a further trial by a petit jury.

Against Abolition—

An Ancient Institution. The historical aspects of the grand jury system have been referred to at the beginning of this section of the report. While there is always sentiment for retaining old customs and old institutions, your Committee, nevertheless, feels that this should not be permitted to stand in the way of bringing our administration of justice up to date to meet present-day conditions. If there are better ways and methods of administering justice, your Committee feels that such ways and methods should be adopted. Because an institution is ancient it is not necessarily fundamental.

Against Abolition—

Administration of Justice Requires Public Co-operation and Confidence. Grand juries provide an important field for public service. Grand

jury service imposes a responsibility for the administration of justice on the individual citizen and creates an opportunity for him to obtain a clear understanding of the care with which the rights of the state and the individual are protected. This knowledge creates a respect for the law and a responsibility for its maintenance. A great many people undoubtedly feel, and many give expression to the view, that the grand jury system should be retained because of its educational value. The holders of this view assert that the people should feel that the administration of justice is something which they control, that it does not consist of mysteries known only to lawyers and judges. The grand jury takes in a cross-section of the whole community in which it presides. It has a view of the moral conditions in that community. It has the opportunity to see how the law is administered and frequently it finds defects in the law and makes recommendations. It is a representative section of the community concentrated upon the moral conditions of that community with a view to improving them if it can. The grand jury imparts to its members a sense of respect for the law and its fairness which is carried back into the community from which it comes. It is an education to those who sit on the jury and it is a method whereby the public can be kept familiar with our laws and criminal administration and, consequently, it inspires public confidence in the administration of justice.

This is particularly important during war time when the public, in the interest of the welfare of the state as a whole, must submit to various forms of regulations; the public should feel that it is taking an important part in the administration of justice by reviewing the evidence before a subject's life or liberty is placed in jeopardy. The Committee, with the exception of the Chairman, is of the opinion that this argument in favour of the retention of the grand jury system is impressive.

This phase of the question also applies to the inspection of public buildings. Although there was much justifiable criticism levelled at the grand jury system because of the unnecessary duplication and repetition of inspections by grand juries, the Committee is of the opinion that occasional inspections of public buildings by grand juries have an undoubted value and that such inspections have a beneficial effect on the officials in charge of such buildings which could not be attained by inspections by departmental officials.

Against Abolition—

Takes Away a Fundamental Right. The grand jury is essentially a safeguard so that an accused person cannot be put on trial before a petit jury unless there is sufficient evidence to warrant putting him on his trial. The functions and adequacy of magistrates and of grand juries as safeguards have been discussed in a previous paragraph.

Against Abolition—

Safeguard Against Indictments by the Attorney-General or Any Person by Order of Court under Section 873, Criminal Code. Under the Criminal Code the Attorney General may prefer a bill of indictment for any offence and any person may prefer a bill of indictment by order of the court. In both cases the indictment must go before a grand jury and a true bill must be found before the person indicted is placed on his trial. It has been pointed out to the Committee that if grand juries were abolished, a person could be indicted

by the Attorney-General or by any person on the order of the court and placed on his trial without the intervention of a magistrate or grand jury or any other safeguard against capricious or unwarranted prosecution. It is conceivable that an accused person might be put on trial for his life without any impartial judicial body or officer having determined whether there was sufficient evidence to put him on his trial. The Committee agrees that this is a fundamental difficulty and one that must be met if grand juries are to be abolished. While, fortunately, the Province of Ontario has always had Attorneys-General who would be unlikely to abuse the power vested in them, the Committee feels that a long view must be taken and that a safeguard must be interposed which would prevent any possible abuse of the power.

The Committee has decided and recommends that where an indictment is laid by an Attorney-General or by anybody on the order of the court a reviewing jury should function in the same manner as a grand jury as more particularly hereinafter set out.

Conclusion

After carefully considering the representations and submissions made to the Committee and the arguments for and against abolition which have been briefly referred to, the Committee has come to the conclusion and recommends that there should be a partial abolition of grand juries in the province, subject to the views of the Chairman hereinafter expressed.

The Committee, with the exception of the Chairman, is of the opinion that there is a considerable difference between cases tried in the courts of general sessions of the peace of the counties and districts and those tried in the Supreme Court. In cases triable in the courts of general sessions of the peace the accused person has three options. He may be tried in a summary manner before a magistrate, he may elect speedy trial before the county judge without a jury, or he may elect trial by a jury. In other words, at the present time as to such offences the accused may elect a mode of trial which does not involve an enquiry by a grand jury. Hence, the abolition of grand juries in such cases does not involve as complete an interference with the rights of accused persons as would the abolition of grand juries in Supreme Court. In every case, however, there has been a preliminary examination by a magistrate and the accused has full knowledge of the charge and the nature of the evidence which will be adduced against him and the points which he will have to meet at his trial.

On the other hand, in cases triable in the Supreme Court the accused generally has no option to be tried in the several ways above indicated. Cases triable in the Supreme Court include such offences as murder, treason and rape in which the penalty is or may be death, and manslaughter where the penalty may be life imprisonment, and other serious offences.

The Committee, therefore would recommend the abolition of grand juries in the courts of general sessions of the peace but would retain grand juries in the Supreme Court, subject, however, to the views of the Chairman who, while agreeing with this conclusion of the majority of the Committee as to the abolition of grand juries in the courts of general sessions of the peace, would go farther and would abolish grand juries in all courts as hereinafter set out.

The Committee is of the opinion, however, that as previously indicated, safeguards should be set up where an indictment is preferred by the Attorney-General or by any person on the order of the court and recommends that this situation be met in the courts of general sessions of the peace by swearing in a reviewing jury of nine men from the petit jury panel which would function in the same manner as grand juries to find a "true bill" or "no bill" on such indictments. This practice is not without precedent because at the present time a jury may be sworn in from the petit jury panel to try the preliminary issue whether an accused person is fit to stand his trial.

In similar manner, if, under the laws amended pursuant to the recommendation of this Committee, an inspection of public buildings is deemed necessary by the presiding judge during the sittings of any court of general sessions of the peace, an inspecting jury could be sworn in from the petit jury panel for the purpose.

The question of the number necessary to constitute a grand jury has also engaged the attention of the Committee and representations have been made to the Committee on this point. The Committee does not feel that there is any particular merit in or necessity for the present number of thirteen to constitute a grand jury and is of the opinion that a grand jury of nine would provide ample safeguards for the purposes for which the grand jury is constituted and would effect some economy.

Further views of the Chairman

The Committee was constituted to enquire into the administration of justice with a view to,—" . . . . simplifying, facilitating, expediting and otherwise improving practice and procedure in the . . . . courts and effecting economy to the people, the municipalities and to the province generally." In my opinion, there is no aspect of the administration of justice in which these purposes could be more effectively accomplished than by the abolition of grand juries. The retention of grand juries is the very antithesis of the purposes of the Committee because there is nothing which more effectively complicates the practice and retards proceedings in the courts, involving expense which might very well be avoided.

While I am in agreement with the views of the majority of the Committee as far as they go, and I am entirely in favour of the abolition of grand juries in the courts of general sessions of the peace, I would unhesitatingly, and particularly in these war times, go further and abolish grand juries in all the courts.

There appear to be two main objections to total abolition—that grand juries are necessary as a safeguard for accused persons and that grand juries serve to familiarize the members of the jury with the administration of justice.

While every reasonable safeguard is necessary to prevent innocent persons being subjected to the jeopardy, inconvenience, expense and embarrassment of a trial, I do not feel that under our present system grand juries are at all necessary for this purpose. The report of The Business of Courts Committee in England under Lord Hanworth, March, 1933 (at page 70), states, "We . . . have not failed to appreciate that an accused person might rightly value the

rejection of a bill of indictment against him without having to stand a trial. Yet we have to balance these advantages against the cost both in time and money and the burden of service involved by their retention." That, I think, is the real question to be determined, i.e., whether the advantages are commensurate with "the cost both in time and money and the burden of service involved by their (grand juries) retention."

As to safeguards, the situation in Ontario is vastly changed from what it was some years ago. At the present time only barristers are appointed magistrates whereas prior to 1934 many laymen were appointed and the majority of magistrates were laymen. In 1933, of the 148 magistrates in Ontario 115 were laymen and only 33 were barristers. At present, of 72 magistrates in the province 48 are barristers and only 24 are laymen. This ratio of barristers to laymen will undoubtedly increase with the maintenance of the present policy of appointing only barristers as magistrates. We now, therefore, have the situation that in most of our magistrates' courts the evidence is heard and the law is applied by magistrates trained in the law and their decisions whether to commit for trial or otherwise, are a much greater safeguard than was previously the case when such a large proportion of laymen performed the same function. Furthermore, I am confident after several years experience as Crown attorney and more recently as Attorney-General, that the abolition of grand juries will engender more careful consideration by magistrates before committing than is now the case. It is only natural that when magistrates know there is no further intervening tribunal before accused persons must stand trial they will be very circumspect about committing for trial. On the contrary, and from the same experience, I am of the opinion that under the present system there is sometimes, and not unnaturally, a disposition on the part of magistrates to commit for trial, realizing that a grand jury will intervene to determine whether there will be a trial or not. As a matter of fact, it not infrequently happens now that cases are committed for trial by consent of counsel for the accused. All of this would be eliminated, and I am confident that there would be far greater care on the part of magistrates before committing for trial if grand juries were abolished.

The views of British jurists are also worthy of consideration. On this aspect of safeguards Lord Marshall of Chipstead had this to say (House of Lords Debates 1933, Page 1058),—"It has been argued that the safety of the subject is protected by the grand jury. . . . Inasmuch as representatives of the British press attend all our courts of summary jurisdiction they are the best protection for the British public." The Lord Chancellor, Viscount Sankey, in the same debate expressed himself similarly in these words,—"I quite agree with my noble friend Lord Marshall, that one of the greatest safeguards to prevent injustice being done nowadays is a vigilant press. . . . Experienced . . . magistrates . . . and a vigilant press have rendered the necessity for a grand jury quite out of date." I am in entire agreement with these statements and regard them as constituting very substantial if not, indeed, conclusive answers to those who argue that grand juries are still necessary as safeguards.

The figures as to the number of "no bills" found by grand juries in Ontario are offered by some as proof or, at any rate, as an argument for the retention of grand juries. If it could be assumed that grand juries are infallible I would agree that these figures are impressive. But again from my experience as Crown attorney and as Attorney-General, I am by no means convinced that grand

juries are infallible. As a matter of fact, I recall several cases, and no doubt many others have occurred, where grand juries found "no bills," indictments were afterwards preferred, subsequent grand juries found "true bills," and the accused were convicted at their trial. While, undoubtedly, safeguards for accused persons are necessary, the interests of the state are also of consequence. It is not, therefore, unreasonable or illogical to observe that of the number of "no bills" found by grand juries, some proportion may have been incorrectly so found and the state may have suffered thereby. In other words, it is by no means certain that grand juries are always right in their conclusions when they find "no bills" so that they may be safeguards to accused persons at the expense of that which is in the best interests of the State.

As to the argument that the grand jury system serves to familiarize grand juries with our system of the administration of justice, I refer to the remarks of Lord Darling (House of Lords Debates 1933, Page 1056) where he said,—"It is, I think, hardly worth while putting so many people to trouble and expense, as the Lord Chancellor has indicated, simply in order that some of the grand jurors may receive what is similar to a University education." In the remarks of Lord Marshall of Chipstead and of the Lord Chancellor, Viscount Sankey, which I have previously quoted, reference is made to the press and to a 'vigilant" press in relation to the administration of justice. I think that the splendid service rendered by the press nowadays, with their extensive reports of proceedings in our courts supplies whatever might be lost by the abolition of grand juries in the direction of familiarizing grand jurors with the administration of justice. Means of communication and for the dissemination of information have improved so enormously in the last few years that almost every detail—in fact sometimes too many details—of all important court proceedings are reported in the press. The radio also adds to the distribution of information along similar lines. I am, therefore, unable to see that this advantage, if it can be considered an advantage, is at all commensurate with or even an important factor against, "the cost both in time and money and the burden of service involved by their (grand juries) retention," to repeat the words used in the report of the Business of Courts Committee previously quoted.

I am unable to understand why it is necessary for us to retain grand juries in this province when they have been abolished in most other jurisdictions of the British Empire. Ontario is, in fact, the only remaining jurisdiction of considerable size and population which retains the grand jury system. I cannot believe that conditions here are so radically different from what they are in other British jurisdictions as to make it necessary for us to retain grand juries when they have been abolished in so many other jurisdictions. I am quite sure that the remaining safeguards in Ontario would be just as ample as they are in the other jurisdictions. I am equally certain that the desirability of familiarizing grand juries with the administration of justice is no greater here than in the other jurisdictions.

While, as stated in the report of the majority of the Committee, the opinions expressed and representations made to the Committee did not favour the abolition of grand juries, I am not particularly impressed with or influenced by this fact. It is, I think, regrettable that so many persons in Ontario who participate in or are associated with the administration of justice, either fail to appreciate the desirability of improving conditions or are so concerned with tradition that they are unable to reconcile tradition with the desirability of "simplifying, facilitating,

expediting and otherwise improving practice and procedure in the Courts and effecting economy to the people, the municipalities and to the province generally". In this repect we have lagged far behind most jurisdictions in the British Empire, and notably England herself. Enormous strides have been made in this direction in England within the last quarter century and I am unable to understand why we of this province cannot make equal progress, particularly since our jurisprudence, our practice and our entire system of the administration of justice is based on that of England.

Grand juries were abolished in England, probably as a war measure, during the period 1917 to 1922. It is most significant that with that experience, and after an interval of over ten years, by an Act of the British Parliament grand juries were again abolished in 1933 with some minor exceptions as to counties and offences and they remain abolished at the present time. I would, therefore, and as a war measure in the present very serious emergency, abolish all grand juries in this province for the duration of the war and for one year thereafter. I do not feel they are necessary for the reasons I have endeavoured to state. But I do feel that before the conclusion of the present struggle we will need the services of every able bodied man and woman to assist in our war effort, directly or indirectly. I think that it is an anomaly to continue, for the duration of the war at any rate, our grand jury system involving the attendance at court of a judge, grand jurors, witnesses, officials and all the array of persons which grand juries involve.

THE COMMITTEE THEREFORE RECOMMENDS, subject to the further views of the Chairman as expressed above,—

1. That grand juries be abolished in the courts of general sessions of the peace;

2. That the present system of grand juries be continued in the Supreme Court of Ontario;

3. That provision be made for the swearing in of reviewing juries from the petit jury panel when an indictment is preferred by the Attorney-General or by any person by the order of the court, before any court of general sessions of the peace;

4. That the number of grand jurors be reduced to nine and the number required to find a true bill be reduced to five; and

5. That the presiding judge, at any sittings of the court of general sessions of the peace, shall be empowered to swear in a jury of nine from the petit jury panel for the purpose of making an inspection of public buildings, if in the opinion of such judge an inspection is desirable and may be properly made under the laws as amended in accordance with the Committee's recommendations under the heading INSPECTING JURIES.

INSPECTING JURIES

For a great many years it has been the practice of the courts to permit the grand jury to make an inspection of the public buildings of the county. No statutory authority for such inspections existed in Ontario prior to 1936. Because

of the frequency of visits of grand juries to certain public institutions, particularly in the city of Toronto where seven grand juries are called each year, legislation was passed in 1936 for the purpose of limiting the number of inspections made by grand juries. The words which operate to effect such restriction and which are contained in subsection 1 of section 44 of The Jurors Act are ". . . where such an inspection has been conducted within the county or district within six months prior to the date of the commencement of such sittings, no inspection shall be made without the specific consent of the judge." The evidence before the Committee is that the legislation has not been as effective in restricting the number of inspection trips as it might be, by reason of the fact that some of the judges, acting under the final words of the provision, specifically consent to inspections being made by grand juries notwithstanding that inspection has been made by another grand jury within the preceding six months. In fact the city hall and the gaol at Toronto have been inspected by grand juries on thirteen occasions since October, 1936. The Committee is of opinion that a provision limiting the number of inspections by grand juries should not be subject to any exception by reason of a judge directing or consenting to the making of additional inspections.

THE COMMITTEE THEREFORE RECOMMENDS:

That section 44 of The Jurors Act be amended by striking out the words "without the specific consent of the judge" at the end thereof.

IMPROVING QUALIFICATIONS OF JURORS

Many submissions have been made to the Committee that it is desirable to improve juries by raising the qualifications of the persons whose names appear on the jury panels. It is the opinion of the Committee that if the present law were carefully carried out by the county selectors, local selectors and others who are charged with duties under it, there would be less cause for complaint as to the persons comprising jury panels.

With regard to the suggestion that assessors in compiling their lists should be required to indicate the educational attainments of persons eligible for jury duty, it was generally agreed by those expressing views to the Committee that, while in some cases educational attainments may be of assistance in determining whether or not a man will make a good juror, many persons eminently qualified to serve on juries have had little schooling. The suggestion that assessors indicate generally the education, experience and physical fitness of persons eligible for jury duty was also considered to be an unsatisfactory answer to the problem. In the larger cities assessors frequently do not see many of the persons who are eligible for jury service and the Committee has concluded that any information which the assessors might be required to furnish, in addition to that now given by them, would be of no material assistance.

The proposal that a board be set up in each of the larger urban centres, by increasing the size of the board of local selectors or otherwise, which would investigate all persons whose names are proposed to be placed upon the jury list must be dismissed as impracticable in view of the great amount of work involved in making a personal investigation of many hundreds and, in some cases, thousands of persons.

The Committee is impressed by the choice and clarity of the language by which the manner of selecting jurors is prescribed in The Jurors Act. Subsection 2 of section 16 requires the local selectors to "select such persons as in their opinion, or in the opinion of a majority of them, are, from the integrity of their characters, the soundness of their judgment and the extent of their information, the most discreet and competent for the performance of the duties of jurors." Subsection 1 of section 21 requires that the local selectors shall "distribute the names of the persons so selected into four divisions; the first consisting of persons to serve as grand jurors in the Supreme Court; the second of persons to serve as grand jurors in the inferior courts; the third of persons to serve as petit jurors in the Supreme Court; and the fourth of persons to serve as petit jurors in the inferior courts, and shall make such distribution according to the best of their judgment with a view to the relative competency of the persons to discharge the duties required of them respectively." The directions contained in these provisions if properly followed, would result in suitable persons being chosen for jury duty. In order to ensure that these directions are properly complied with, the Committee favours a provision that every selector be required to take an oath that he has conscientiously carried out the provisions of The Jurors Act relating to the selection of jurors before being entitled to receive any allowance in respect of his services.

Criticism has been directed at the number and nature of the classes of persons who are exempted from jury duty by section 3 of The Jurors Act. A study of the exemptions indicates that the classes of persons exempted are so numerous and some classes so large, that the general qualification of jurors on the lists is probably impaired. For convenience the exemptions are here set out:

> 3.—(1) The following persons shall be exempt from being returned and from serving as grand or petit jurors, and their names shall not be entered on the rolls prepared and reported by the selectors of jurors as hereafter mentioned:—
>
> (*a*) Every person sixty-five years of age or upwards;
>
> (*b*) Every member of the Privy Council of Canada and of the Executive Council of Ontario;
>
> (*c*) Every member of the Senate and of the House of Commons of Canada and of the Assembly;
>
> (*d*) The secretaries of the Governor-General and of the Lieutenant-Governor;
>
> (*e*) Every officer and other person in the service of the Governor-General or of the Lieutenant-Governor;
>
> (*f*) Every officer, clerk and servant of the Senate and of the House of Commons of Canada, of the Assembly, and of the Public Departments of Canada and of Ontario;
>
> (*g*) Every officer and servant of the Dominion and Provincial Governments;

(*h*) Every judge;

(*i*) Every police magistrate;

(*j*) Every sheriff, coroner, gaoler and keeper of a house of correction or lock-up house;

(*k*) Every sheriff's officer and constable;

(*l*) Every minister, priest or ecclesiastic under any form or profession of religious faith or worship;

(*m*) Every barrister and every solicitor of the Supreme Court actually practising, and every student-at-law;

(*n*) Every officer of any court of justice;

(*o*) Every physician, surgeon, dental surgeon, pharmaceutical chemist and veterinary surgeon qualified to practice, and in actual practice;

(*p*) Every member of His Majesty's Army, Navy or Air Force on full pay;

(*q*) The officers, non-commissioned officers and men of every militia corps, and a certificate under the hand of the officer commanding any such corps shall be sufficient evidence of the service in his corps of any officer, non-commissioned officer or man for the then current year, and of his exemption;

(r) Every pilot and seaman engaged in the pursuit of his calling;

(*s*) Every head of a municipal council;

(*t*) Every municipal treasurer, clerk, collector, assessment commissioner, assessor and officer;

(*u*) Every professor, master, teacher, officer and servant of any university, college, institute of learning or school;

(*v*) Every editor, reporter and printer of any public newspaper or journal;

(*w*) Every person employed in the management, working of a railway or street railway and every person permanently employed by any public commission carrying on the business of developing, transmitting or distributing electrical power or energy;

(*x*) Every telegraph and telephone operator;

(*y*) Every miller;

(*z*) Every fireman belonging to any fire department or company, who

has procured the certificate authorized by section 1 of The Firemen's Exemption Act, during the period of his enrolment and continuance in actual duty as such fireman; and every fireman who is entitled to and who has received the certificate authorized by section 4 of the said Act; but no fireman shall be exempt from serving as a juror unless the captain or other officer of the fire department or company, at least five days before the time appointed for the selection of jurors, notifies to the clerk of the municipality the names of the firemen belonging to his department or company, and residing within the municipality, who are exempt and claims exemption for them.

The Committee favours the repeal of clauses (*e*), (*f*) and (*g*) being of the opinion that there is no special reason for exempting civil servants from jury duty. The Committee would insert the words "police officer" and "police constable" in clause (*j*), because the nature of the duties performed by police officers and police constables renders it essential that they always be available for the performance of their duties. The Committee would restrict clause (*o*) so that it would apply only to physicians and surgeons in actual practice. The Committee favours the repeal of clause (*q*) as members of the Army, Navy and Air Force on full pay are exempted by the previous clause. The Committee also favours the repeal of clauses (*t*), (*u*), (*v*) and (*y*) on the ground that no real need for exempting the persons therein listed exists to-day. The Committee suggests that clause (*w*) should be repealed and the following substituted therefor:

(*w*) every person employed in the actual working of a railway or street railway or public commission carrying on the business of developing, transmitting or distributing electrical power or energy.

The purpose of this provision is to exempt persons carrying on essential services, and the Committee is of opinion that the revised wording would except from exemption those persons whose attendance at work is not absolutely essential.

The Committee's purpose in recommending a revision in the present exemptions is to achieve as far as possible an improvement in the qualifications of jurors. It is not to be presumed that the persons who are removed from the provisions of the exemption clauses have no special reasons to claim exemption. Rather it is an indication that any such reasons are outweighed by the need for jurors with the best possible qualifications.

Jury service should be regarded not only as the right, but the responsibility and duty of every citizen. Exemption from military service is not permitted upon the ground of inconvenience to the individual. Jury service is essential to our system of administering justice, and in the interests of the jury system and the administration of justice it is of paramount importance that individuals summoned as jurors should assume their obligation to society.

The Committee would not exclude in an arbitrary way any exemptions other than those provided by section 3 of The Jurors Act, but would recommend the adoption of means to prevent any person not coming within the exemption clauses from being excused from jury duty except after careful investigation of all the facts by a judge.

It has been represented to the Committee that it is not uncommon for persons to be excused from jury duty after being summoned by reason of their having important business engagements which conflict with their attendance in court and it is suggested that such a practice is becoming altogether too prevalent in certain parts of the Province. In order to dispel any suggestion that persons may be improperly excused from jury duty, the Committee would require all such applications to be made to a judge, and as Supreme Court judges attending the Assizes are in the county town for a very short time and have neither time nor opportunity to deal adequately with such matters, the Committee would give county and district court judges jurisdiction in such matters. In order that the sheriff may have ample notice of any alterations in the jury list by way of exemptions, all applications for exemption should be made not less than five days before the date fixed for the attendance of a jury and applications should be made to the judge through the sheriff who would be responsible for the attendance before the judge of any person desiring to be exempted.

THE COMMITTEE THEREFORE RECOMMENDS:

1. That every person charged with the duty of selecting persons for jury service be required to take an oath that he has conscientiously carried out the provisions of The Jurors Act with regard to the selection of jurors devolving upon him as a county or local selector, or as the case may be, before being entitled to receive the fees provided by the Act;

2. That the following persons now exempt be made liable for jury duty by making the necessary amendments to The Jurors Act:

(*a*) Every officer and other person in the service of the Governor-General or of the Lieutenant-Governor;

(*b*) Every officer, clerk and servant of the Senate and of the House of Commons of Canada, of the Assembly, and of the Public Departments of Canada and of Ontario;

(*c*) Every officer and servant of the Dominion and Provincial Governments;

(*d*) Every dental surgeon, pharmaceutical chemist and veterinary surgeon;

(*e*) The officers, non-commissioned officers and men of every militia corps;

(*f*) Every municipal treasurer, clerk, collector, assessment commissioner, assessor and officer;

(*g*) Every professor, master, teacher, officer and servant of any university, college, institute of learning or school;

(*h*) Every editor, reporter and printer of any public newspaper or journal; and

(*i*) Every miller;

3. That the exemptions applicable to persons employed in the management and working of railways, street railways and power commissions be restricted to persons employed in the actual working of such railways and commissions;

4. That police officers and police constables be exempted from jury duty; and

5. That any person summoned for jury duty be excused only by a judge upon showing reasons therefor beyond his control or reasons other than mere inconvenience; and that all applications be made to the county or district court judge through the sheriff at least five days before the day named for attendance.

Increased Fee in Jury Actions

With respect to the view which has been expressed that the jury fee now payable upon entering a civil action for trial should be increased to a more substantial amount, as is the case in the Provinces of Quebec and Manitoba, the Committee observes that while it is desirable to reduce the expenses of litigation which are paid out of taxation, it is equally important to ensure that no obstacle is placed in the way of any person who desires to have his rights determined by a jury.

The Committee Therefore Recommends:

That the fee payable upon entering an action for trial by jury be not more than a nominal amount.

Jury Trials Involving Corporations

In most of the provinces of Canada it has been recognized, either by legislation or by judicial decisions, that actions against municipal corporations are to be distinguished from actions against persons or other corporations in so far as the right to a trial by jury is concerned. The practice of requiring actions against municipal corporations, where the issue is based on the non-repair of a highway or sidewalk, to be tried without a jury is fairly general. None of the provinces, however, appears to have any special legislation relating to trials involving other types of corporations. The Committee is therefore not inclined to make any recommendation respecting the practice at trials where a corporation other than a municipal corporation is involved.

Section 53 of The Judicature Act reads:

53. Actions against a municipal corporation or board of police trustees for damages in respect of injuries sustained by reason of the default of the corporation in keeping in repair a highway or bridge, shall be tried by a judge without the intervention of a jury, and the trial shall take place in the county which constitutes the municipality or in which the municipality or police village is situate.

It may be observed that there are two principal limitations contained in

the section. First, it is limited to actions against municipal corporations or boards of police trustees and, secondly, it is further limited to actions for damages in respect of injuries sustained by reason of the default of the corporation in keeping in repair a highway or bridge.

There seems to be little doubt that the reason for the second limitation is that when the section was enacted a substantial majority of the actions brought against municipalities at that time were in respect of the non-repair of highways and bridges. To-day other actions based on negligence are frequently brought against municipal corporations by reason of the extended nature of municipal undertakings. As a convenience and service to the public, municipal corporations are called upon to and do operate utilities of various kinds including electrical supply systems, transportation systems and waterworks systems.

The narrowness of the first of the limitations in the above quoted section is probably explained by the fact that the section was passed before it became the general practice of municipal corporations to create public utility commissions and charge them with certain duties and functions otherwise carried out by the municipal council. Where, however, a separate board or other body is created for the purpose of exercising and performing powers and duties which would otherwise be exercised and performed by the council it appears that the same rights and privileges relating to trials of actions should be extended to that board or other body. The reasonableness of this is appreciated when it is pointed out that the section would apply to an action for the non-repair of a highway within a cemetery owned and operated by the municipality, whereas in a municipality where the council has delegated its power with respect to the cemetery to a cemetery board, the section would not apply.

On the other hand a board or commission which has been created by a municipal council to carry on certain of the undertakings of the municipality, may, with regard to some of its undertakings, be in actual competition with other persons or corporations. In such cases it may be argued that the creation of a board or commission by a municipal council does not justify the application of any special law to the board unless that law also applies to the competitor. In view of the possibility of such competition, the Committee is not inclined to recommend that actions against boards and commissions created by municipal councils be tried without a jury in all cases but feels strongly that such a principle warrants further consideration.

It may be pointed out that the exclusion of jury trials in actions against certain corporations is not without precedent. By section 28 of The Sandwich, Windsor and Amherstburg Railway Act, 1930, it is provided that "every action brought for damages by reason of negligence in the operation of the railway . . . shall be brought and tried as if it were an action against a municipal corporation for damages in respect to injuries sustained by reason of the default of a corporation in keeping in repair a highway."

THE COMMITTEE THEREFORE RECOMMENDS:

1. That section 53 of The Judicature Act requiring certain types of actions against municipal corporations and boards of police trustees to be tried without a jury be extended to apply to all actions for damages in

respect of injuries sustained by reason of the default or negligence of municipal corporations and boards of police trustees; and

2. That consideration be given to the extension of the principle of requiring trial of actions without a jury to all actions against bodies corporate created or established by municipal corporations pursuant to statutory authority in respect of injuries sustained by reason of the default or negligence of any such body.

Reduction in Number of Jurors

In certain of the Western Provinces petit juries have been reduced to six jurors in some cases and eight in others. In England a special war-time measure provides for seven-man juries. Why the numbers six, seven or eight were chosen in the various jurisdictions indicated is difficult to understand and it would seem that the numbers in each case must have been chosen arbitrarily. It would be reasonable to conclude that the principle purpose for the reduction in numbers in each case was to effect a saving of expense, although no doubt in England the engagement of a large part of the man power and woman power in war services and war industries was an important factor. It is unlikely that a reduction in the number of jurors in criminal trials would meet with favour by either the judges, the profession or the public generally. The dissatisfaction resulting would probably not be commensurate with the monetary saving involved.

The Committee Therefore Recommends:

That the number of jurors constituting a jury in the Supreme Court, the courts of general sessions of the peace and the county and district courts be not reduced.

Right to Jury Trial

It has been suggested that the rules governing the trial of civil actions with the intervention of a jury should be altered so as to provide that every action shall be tried by a judge sitting without a jury unless the party desiring a jury satisfies the court that the questions in issue are more fit for trial by a jury than by a judge. This would, in effect, remove the *prima facie* right to a jury which exists in the case of most common law actions and would place the burden of establishing the right to a jury upon the litigant who asks for it.

In the view of the Committee the present practice is preferable. While a *prima facie* right to a trial by jury exists in most common law cases every opportunity is afforded to eliminate the jury in those cases where its use would not be suitable. The law relating to the right to a jury has become well established under the present practice whereas under the proposal indicated it would be virtually impossible to draft legislation which would effectively prevent rulings as to the right to a jury from varying with the viewpoints of the various judges. If the judges were to follow the present law in determining whether the questions in issue were more fit for trial by a jury than by a judge, there would be little advantage in making any amendment. If they were not to follow the present law their rulings would vary greatly according to the personal views of each judge.

The Committee would also reject the proposal because the right to a trial by jury should not depend solely upon the discretion of a judicial or other officer and the *prima facie* right to a jury which now exists, with certain well established exceptions, should be preserved.

THE COMMITTEE THEREFORE RECOMMENDS:

That the right to a trial by jury which exists under the present law and practice should not be altered.

SPECIAL JURIES

Figures furnished to the Committee indicate that the average number of special juries which are required by litigants in Ontario does not exceed two or three each year. So far as the Committee was able to ascertain a special jury has never been used in a county court trial and has been asked for on only one occasion in connection with criminal proceedings.

While the legislation permitting a special jury to be required by a litigant has been criticized as a law for the rich, the fact that the party requiring a special jury must pay the cost of it in the first instance meets that objection to a large extent. Experienced counsel expressed the view that the trial of certain types of cases by a special jury is desirable and that the retention of the right to such a trial is important. No one strongly advocated the abolition of special juries. The present machinery for calling a special jury is working very satisfactorily. The panels used are those which are prepared for grand jury purposes so that no great difficulty or inconvenience is occasioned to anyone when a special jury is required. The Committee sees no advantage in discontinuing special juries in the Supreme Court of Ontario.

It is to be observed that where a special jury is required, it shall consist of persons whose names appear on the roll of grand jurors for the Supreme Court or on the roll of grand jurors for the inferior courts for the year in which the notice to the sheriff is given. Both rolls are used. If grand juries are abolished in the court of general sessions of the peace, the selection would be limited to the roll of grand jurors for the Supreme Court. While the roll of grand jurors for the Supreme Court in Toronto usually contains more than 200 names, which is ample for the selection of a special jury, the number is considerably less in many of the other counties and districts. This, however, does not constitute a problem for the sections of The Jurors Act respecting special juries provide for the taking of names from the roll of grand jurors for another year to make up a total of 40 names.

The situation would not be greatly altered by eliminating grand juries in the general sessions. As indicated above so far as the Committee is aware, a special jury has never been required in a trial in a county or district court. That is, however, not surprising having regard to the amounts involved in most county and district court actions and to the cost of a special jury. If, therefore, the abolition of grand juries in the courts of general sessions of the peace renders the elimination of special juries in county and district courts necessary or desirable, no serious objection can be taken. Moreover, apart altogether from the question of abolition of grand juries, the Committee is of the opinion

that the right to a special jury in county court actions is unimportant and that in the interests of simplification of procedure in the county courts, the right to trial by special jury in the county courts should be abolished.

THE COMMITTEE THEREFORE RECOMMENDS:

1. That present provisions as to special juries in Supreme Court trials be not altered; and

2. That the right to trial by special jury in the county and district courts be abolished.

WOMEN JURORS

Women were made subject to the same liability as men for jury service in England by the Sex Disqualification (Removal) Act, 1919, which appears to have been the last measure necessary in that jurisdiction to render women equal to men in all aspects of the law.

In this province, in view of the passing of The Married Women's Property Act, the granting of the franchise to women, and the general tendency in all legislation to place women on the same footing as men, it is difficult to understand why women have not been made eligible to serve upon juries. Since women are recognized as being able to hold property, transact business, engage in professions and callings, and generally conduct themselves in the professional, commercial and industrial life of the province in the same manner as men, it would be unreasonable to argue that they lack the qualifications essential to a good juryman. In short, as women are regarded by most laws of the province relating to civil rights and the holding of property as citizens, they should have all the rights and duties of citizens. There is just as much reason why they should be required to attend courts and act as jurors on the trials of civil and criminal matters as men, and similarly there is just as much reason why they should claim and be granted the right to perform this service, which is an essential part of the administration of justice, as men.

According to the information of the Committee the system of mixed juries has been found to be very satisfactory both in England and in the States of the United States of America where it exists. Of course, consideration would have to be given to certain special provisions if women are to be permitted to sit upon juries. In England it is not necessary that the number of men and women called on a petit jury be equal. The names of the men and women on the panel are placed in one box and drawn indiscriminately until the jury is made up. However, the sheriff must select such a number of women as will bear the same proportion to the number of men on the panel as the total number of women bears to the total number of men listed on the jurors' book. A husband and wife must not be summoned to serve on the same occasion. A judge may, on the application of the parties, or any of them, or at his own instance, order that the jury shall be composed of men only or of women only. He may also on the application of a woman, grant exemption by reason of the nature of the evidence to be given or of the issues to be tried. Where a woman satisfies a summoning officer by medical certificate or otherwise that owing to a special condition of health she is or will be unfit to serve as a juror, the officer may grant her exemption. Some special exemptions applicable only to women would no doubt be

required. Members of certain religious orders living in convents are exempt under the English Act.

If women are to serve upon juries in Ontario, to be practical the enactment providing therefor must apply equally to juries in criminal and civil matters. Juries in both types of trials are chosen from the same panels and to permit women on juries in civil trials but not in criminal trials would unreasonably complicate statutory procedure relating to the selection of jurors and result in other ramifications which are not desirable.

There are three difficulties which should be overcome before the inclusion of women on juries is permitted in Ontario. The first is the provision of the Criminal Code which requires a jury in the trial of a capital offence to be kept together. (Section 945, subss. 3, 4, Criminal Code.) The second is a matter of interpretation. Whether the word "person" as used in the Criminal Code with reference to jurors includes women is a matter which should be clarified before any criminal trial in which women compose a part of the jury, is held. The third difficulty is one of accommodation. Many, if not all, of the court houses of the province would require alteration so as to accommodate mixed juries properly.

If the provision is made by legislation for mixed juries at a session of the Legislature held in the late winter or early spring of any year, the earliest time at which juries trying cases could include women would be almost two years later. This delay is occasioned by reason of the fact that regard for the new law would be required on the part of assessors as well as selectors. Sufficient time must also be allowed to permit necessary alterations in the court houses of the province to be made. For these reasons and because of the amendments to the Code which would be necessary, provision should be made in the provincial legislation for its coming into force by proclamation of the Lieutenant-Governor.

In conclusion the Committee feels that mixed juries are desirable because they will complete the full status of citizenship for women, will assist in alleviating the shortage of men resulting from the engagement of many men in war services and war industries, and will encourage discipline in the jury room and thus be conducive to more efficiency and expedition in the deliberation of juries.

THE COMMITTEE THEREFORE RECOMMENDS:

1. That a system of mixed juries be adopted in Ontario so that women may be qualified to serve on juries the same as men; and

2. That in the legislation establishing such a system provisions similar to those in the English statute be included to ensure that the proportion of women on any jury would not be either unreasonably large or unreasonably small; to provide for exempting and excusing women from jury service in certain circumstances; and to prevent a husband and wife being included on the same jury.

LAW REVISION COMMITTEE

On January 10th, 1934, the Lord Chancellor of England appointed a committee "to consider how far, having regard to the statute law and to judicial

decisions, such legal maxims and doctrines as the Lord Chancellor may from time to time refer to the committee require revision in modern conditions."

Since its creation the committee has reported upon some eight matters referred to it by the Lord Chancellor but to indicate the type of legal problems referred to the committee it will be sufficient to quote the first four references which were made at the time of its appointment. They are as follows:

(1) The doctrine of no contribution between tort-feasors. (Merryweather v. Nixan, with special reference to the remarks of Herschell L.C. in Palmer v. Wick and Pulteneytown Steam Shipping Company Limited [1894] A.C. 318.)

(2) The legal maxim *actio personalis moritur cum persona*, and the rule that "in a civil court the death of a human being could not be complained of as an injury." (Baker v. Bolton (1808), 1 Campbell 493, and The Amerika [1914] P. 167, [1917] A.C. 38.)

(3) The liability of the husband for the torts of the wife. (Edwards v. Porter [1925] A.C. 1.)

(4) The state of the law relating to the right to recover interest in civil proceedings. (See in particular Roscoe's Nisi Prius, 19th Ed., Vol. 1, 508-12.)

It will be observed that in addition to indicating the matter upon which a report is requested, cases and texts which may be of assistance to the committee are also referred to. Other matters referred to the committee, as well as the reports of the committee, are available in the committee's reports which are published in pamphlet form by His Majesty's Stationery Office.

There appears to be no statutory authority for the creation of the committee in England. The members, who are appointed by the Lord Chancellor, number some fourteen or fifteen, and include members of the Bench and Bar and solicitors. No remuneration is paid to the members nor are they furnished with any elaborate staff. There is a secretary who is engaged in private practice. He is nominally unpaid but receives an *ex gratia* allowance from time to time averaging from £50 to £75 a year. He has a female assistant secretary who is employed in the Lord Chancellor's office but it is estimated that the total work of the committee does not occupy more than a thirtieth of her time. The committee has no other assistants.

The practice followed by the committee is that a subcommittee is appointed to consider each matter referred to it, and prepare a draft report thereon. The draft report is then considered by the full committee at which time a fairly lengthy discussion usually takes place. The committee sometimes requests experts in a particular sphere of law to prepare memoranda for its assistance, although this is not the general practice. After the report is drafted in final form and adopted by the full committee it is submitted to the Lord Chancellor and, if he thinks fit, he asks the Parliamentary draftsman's office to draft the necessary Bill which is submitted to the committee for its comments. The usefulness of the committee is indicated by the fact that several of its recommendations, after having been reduced to bill form, have become law.

In the State of New York a Law Revision Commission was established in 1934 by legislative enactment. It consists of seven members, two of whom are *ex officio* members, being the chairmen of the Committees on Judiciary in both houses of the State Legislature. The Commission is given a free hand to study and report upon such matters of a legal nature as it deems advisable. Reports of both the Lord Chancellor's Committee and the Law Revision Commission of New York State have been of interest and assistance in most jurisdictions where the common law system prevails.

Without reflection upon the New York State Commission and with the greatest respect for its accomplishments, this Committee favours the system under which the Lord Chancellor's Committee operates. This Committee is of opinion that the work undertaken by a Law Revision Committee should be subject to definite limitations. The system in England is to have the committee deal only with matters referred to it by the Lord Chancellor. While there is in Ontario no position corresponding to that of the Lord Chancellor, the Attorney-General, who is the Chief Law Officer of the Province and the head of the Law Department of the Government, is very properly the official who should, in a general way, supervise the work of a law revision committee and refer matters to the committee for study and report. The Committee, however, would not limit references to the law revision committee to "legal maxims and doctrines", being of the opinion that there are matters of "lawyers' law" arising out of the Statute law which might not be accurately described as either "legal maxims" or "doctrines", but which may appropriately be referred to such a committee.

If the practice of limiting the work of the committee, as suggested in the preceding paragraph is followed, the Committee is of opinion that the law revision committee would have ample assistance if one of the law officers of the Crown were appointed secretary of the law revision committee, in addition to his other duties. He would be expected to prepare a short brief of the existing law relating to the subject matter of each reference.

In determining who shall comprise the committee, while it is essential that all its members be selected from among the most able members of the Bench and Bar and the practising solicitors of the province, it would be unwise to overlook the fact that if power is given to appoint the members of the committee the person empowered to make the appointments would, of a certainty, be prevailed upon to appoint persons who might not be well qualified to act upon it. Such a situation should be avoided and accordingly the Committee considers it desirable to have as many of the appointments as possible of an *ex officio* nature. In providing for the appointments being made in this manner there should be no difficulty in ensuring that the committee comprises persons well qualified to serve upon it. This Committee has given much thought to the composition of a Law Revision Committee and suggests some of the persons whom it considers might well be appointed to serve upon such a committee.

The advisability of taking steps to promote law reform is capably discussed by Mr. C. A. Wright, K.C., S.J.D., Lecturer at the Osgoode Hall Law School, and Editor of The Canadian Bar Review, in an article entitled "Legal Reform and The Profession" (1937), 15 C.B.R. 633-641.

THE COMMITTEE THEREFORE RECOMMENDS:

1. That a Law Revision Committee be appointed by the Attorney-General to study and report upon such matters of law as may be referred to it from time to time by the Attorney-General;

2. That the Attorney-General appoint a chairman of the committee from among its members;

3. That one of the law officers of the Crown be appointed by the Attorney-General to act as permanent secretary of the committee; and

4. That the committee be composed as follows:

(*a*) Two judges of the Court of Appeal for Ontario designated by the Chief Justice of Ontario or in default thereof by the Attorney-General;

(*b*) Two judges of the High Court of Justice for Ontario, designated by the Chief Justice of the High Court or in default thereof by the Attorney-General;

(*c*) A county court judge, designated by the Attorney-General;

(*d*) A district court judge, designated by the Attorney-General;

(*e*) The Attorney-General, or a law officer of the Crown designated by him;

(*f*) The Chairman of the Legal Bills Committee of the Legislative Assembly;

(*g*) The Treasurer of the Law Society or a Bencher designated by him;

(*h*) The Master of the Supreme Court of Ontario;

(*i*) The Vice-President of the Ontario Branch of the Canadian Bar Association, or one of the Ontario members of the Council of the Association designated by him, or in default thereof by the Attorney-General;

(*j*) The Dean of the Osgoode Hall Law School or a full-time member of the teaching staff of the Law School, designated by him, or in default thereof by the Attorney-General;

(*k*) The Head of the Department of Law of the University of Toronto, or a full-time member of the teaching staff of that Department, designated by him, or in default thereof by the Attorney-General;

(*l*) The Editor of the "Ontario Law Reports"; and

(*m*) The President of the Lawyers' Club of Toronto, or a member of the Club designated by him.

MAGISTRATES

The importance of ensuring that judges shall enjoy security of tenure of office so that they may discharge their judicial functions without any fear of interference or appearance of interference has long been recognized in Canada.

As to the judges of the superior courts, section 99 of The British North America Act provides for their removal only by the Governor-General on address of the Senate and House of Commons. The Judges Act, Canada, provides for a cessation of the payment of salary to judges of the Supreme Court of Canada, the Exchequer Court of Canada and any superior court in Canada and certain other judges upon the report of the Minister of Justice that a judge has become by reason of age or infirmity incapacitated or disabled from the due execution of his office.

As to county and district court judges, the Judges Act, Canada, provides for their removal "for misbehaviour or for incapacity or inability to perform their duties properly on account of old age, ill health or any other cause" as found by a judge or judges appointed to make inquiry under commission of the Governor-General in Council.

At the present time in this Province magistrates do not enjoy the same security of tenure of office that judges enjoy, and it is the opinion of the Committee that magistrates and judges should be placed upon substantially the same basis in this regard. In recent years the duties of magistrates have become more onerous than they formerly were and magistrates to-day exercise exceedingly important functions frequently requiring consideration of complicated law and circumstances. The magistrates try many indictable offences and prosecutions for breach of the Defence of Canada Regulations involving the liberty of the subject are determined by them. It is, therefore, the decided opinion of the Committee that the security of magistrates in the tenure of their offices should be ensured so as to exclude effectively any suggestion or appearance of interference. By way of precedent, in 1938 it was enacted by the Nova Scotia Legislature that "every police magistrate shall hold office for one year after his appointment during pleasure and thenceforth during good behaviour, but every deputy police magistrate shall hold office during pleasure." In the same Act it was provided that "no person shall be appointed a police magistrate who is not a barrister of the Supreme Court of Nova Scotia of at least three years' standing."

The Committee is of the opinion that all sitting magistrates who are appointed in the future should be barristers.

In view of the provisions relating to superannuation contained in The Public Service Act, the Committee is of the opinion that henceforth no one should be appointed a magistrate who has passed fifty-five years of age. Moreover, as recommended under the heading SUPERANNUATION, the Committee is of the opinion that the Public Service Superannuation Board should take steps to bring under the superannuation provisions of The Public Service Act, on a contributory basis, all magistrates who are not disqualified by reason of age.

The Committee is also of the opinion that magistrates should not hold office

after attaining the age of seventy-five years. In this regard the Committee feels that the provisions of the Judges Act, Canada, as to the retirement of county court judges when they have attained the age of seventy-five years afford a desirable analogy.

THE COMMITTEE THEREFORE RECOMMENDS:

1. That every magistrate hold office during pleasure for the first two years after his appointment and that thereafter he be removable only for misbehaviour or for incapacity or inability to perform his duties properly on account of ill health or any other cause as found by a judge of the Supreme Court of Ontario appointed by the Lieutenant-Governor in Council to make inquiry regarding such misbehaviour, incapacity or inability;

2. That in the future no person other than a barrister duly qualified as such according to the law of Ontario be appointed as a sitting magistrate;

3. That in the future no person be appointed as a magistrate who has passed the age of fifty-five years;

4. That every magistrate retire from office when he has attained the age of seventy-five years; and

5. That the Public Service Superannuation Board take steps to bring under the superannuation provisions of The Public Service Act on a contributory basis all magistrates who are not disqualified by reason of age.

THE PARTNERSHIP REGISTRATION ACT

An infant may carry on business either in his own name or as a member of a partnership and the provisions of The Partnership Registration Act apply to infants as well as to other persons. Complaints were made to the Committee that the Act is being used for improper purposes. A creditor who has sued a partnership frequently finds when his case comes to trial that, although he had dealt with older persons, the partnership is in fact registered in the name of an infant or infants. It is not suggested that infants should be prevented from carrying on business but the situation complained of would, to a large extent, be remedied by requiring the declaration filed under The Partnership Registration Act to state the ages of the partners.

THE COMMITTEE THEREFORE RECOMMENDS:

1. That the declaration filed under The Partnership Registration Act be required to state the age of any person named therein who is under twenty-one years of age and that all other persons named therein are over twenty-one years of age; and

2. That penalties be provided for persons furnishing any false information in any declaration filed under The Partnership Registration Act.

POOR PRISONERS DEFENCE

The provision of defence counsel for impecunious persons charged with criminal offences has never been a serious problem in Ontario. No case has been brought to the attention of the Committee where a person charged with a serious offence has been unable to obtain the services of competent counsel to defend him. The courts always protect the interests of accused persons in this regard. Furthermore, there are usually several experienced counsel available to conduct the defence of such persons. So far as appeals to the Court of Appeal are concerned a list of counsel who are willing to conduct appeals in criminal matters without compensation, when so directed by the Chief Justice, is on file at Osgoode Hall. It must be borne in mind also that any system of supplying counsel for poor prisoners would be open to abuse by persons who would otherwise find means of retaining counsel on their own account.

The Committee Therefore Recommends:

That in view of the willingness of the legal profession to defend impecunious prisoners and argue appeals on their behalf, and the possibility of and opportunities for abuse, a system of poor prisoners defence which would be provided by the Government at the expense of the taxpayers of the Province, should not be undertaken.

PRACTICE IN THE SHERIFF'S OFFICE

Encumbrances Against Goods

It has been recommended that writs of execution against goods which are now required to be filed in the sheriff's office should for purposes of convenience be filed in the county court clerk's office and that notices of intention to give security under section 88 of the Bank Act (Canada) which are now filed with the Assistant Receiver-General should also be required to be filed with the county court clerk. So far as notices under the Bank Act are concerned, the Province has no authority to legislate and whether the liens should be centrally registered at the office of the Receiver-General in each province, or registered at offices throughout the Province, is a matter of policy for the Parliament of Canada. In addition, as the present practice accomplishes a centralization of registration, any alteration in the practice might be considered a disadvantage.

While it may be argued that it would be a convenience to file writs of execution against goods in the county court clerk's office because other encumbrances against goods are filed there, it may similarly be argued that it is a convenience to have executions against goods filed in the sheriff's office because that is where executions against lands are filed. However, in many counties and districts of the Province a *de facto* amalgamation of the county court clerk's office and the sheriff's office has been effected, while in most, if not all, of the other counties and districts the offices of the sheriff and the county court clerk are in the same building.

The Committee Therefore Recommends:

That the present practice as to the registration of writs of execution against goods be not altered.

Creditors' Relief Act

It has been suggested that a sheriff should be required to give notice of moneys which he has on hand for distribution by publication in a newspaper. The Committee is of the view that a creditor who is sufficiently interested to reduce his claim to a judgment, has ample opportunity under the present practice to give notice of his judgment to the sheriff so that he will share in any moneys coming into the sheriff's hands and which are available for distribution.

The view has been expressed that the clerk of a division court who has money to distribute should be required to give notice to the sheriff so that the provisions of The Creditors' Relief Act would apply thereto. The division court is manifestly the court for the recovery of small debts, although in certain types of cases, which are the exception rather than the rule, the jurisdiction of the court extends to amounts which according to some views might not be classified as small debts. Further, in the division courts a person entering suit is required to make a deposit which is usually sufficient to carry his case through to judgment. The average amount involved and the average amount recovered in division courts are not to be compared with the average amount sued for and the average amount recovered in the higher courts. Where a judgment debtor is not able to pay the amount of a division court judgment it is usually very difficult to locate any fund available for the payment of the judgment and as a rule any such fund when located is not large. As divisions under The Creditors' Relief Act are made on a *pro rata* basis, if The Creditors' Relief Act were to apply to division court judgments a judgment creditor in the division court, having spent substantial time and money locating a fund out of which payment of his judgment might be made, would often find that he had located the fund for the benefit of creditors of the debtor having judgments in the higher courts, with very little benefit to himself.

The Committee Therefore Recommends:

1. That the present practice with regard to the distribution of money in the hands of the sheriff be not altered; and

2. That the provisions of The Creditors' Relief Act should not be made applicable to division court matters.

Exemptions under Execution Act

The chattels which are exempt from seizure under any writ of *fieri facias* issued out of any court are listed in section 2 of The Execution Act. The section is a very old one and while it served its purpose for many years its provisions are now far from satisfactory. It was enacted at a time when conditions of life were quite different from to-day and accordingly some of its language is ill-fitted to present-day conditions.

It is important that a provision of this kind should apply equally to all persons regardless of vocation or calling. While this is carried out to a degree in the section there are instances where some of its provisions would apply only to persons engaged in certain businesses the result being that by the combined effect of all clauses in the section certain persons are entitled to greater exemptions than others. This should be corrected.

THE COMMITTEE THEREFORE RECOMMENDS:

That the exemptions of chattels from seizure under The Execution Act be revised with a view to adapting them to modern conditions.

SALE OF LAND UNDER WRIT OF EXECUTION

A sheriff is not permitted to make a sale of land under a writ of execution within twelve months from the date on which the writ is delivered to him. Although a proposal was made to the Committee to reduce the period of twelve months the Committee is of opinion that no real need exists for any change and that the present period is a reasonable one.

THE COMMITTEE THEREFORE RECOMMENDS:

That the practice governing the sale of land under a writ of execution be not altered.

SEIZURE AND SALE OF COMPANY SHARES

In a report made to the Attorney-General by Mr. F. H. Barlow, K.C., some months ago a change in the practice relating to seizure and sale of company shares was recommended. While the recommendation has a good deal of merit so far as the sheriff's office and the legal profession are concerned, it has been found that, having regard to prevailing commercial practices, the proposal would not be feasible, and Mr. Barlow, who appeared before the Committee, has advised the Committee that since presenting his report he has changed his opinion with regard to the matter.

THE COMMITTEE THEREFORE RECOMMENDS:

That the practice regulating the seizure and sale of company shares be not altered.

SEIZURE OF BOOK DEBTS AND CHOSES IN ACTION

The provisions of The Execution Act enacted in 1929 which enable a sheriff to seize book debts and other choses in action do not indicate the manner in which the seizure may be made. While the provisions are workable in their present form, it is highly desirable that they should be amended and clarified so as to indicate the manner of making the seizure.

THE COMMITTEE THEREFORE RECOMMENDS:

That The Execution Act be amended to prescribe an effective and simple method of making seizures of book debts and other choses in action.

PRE-TRIAL PROCEDURE IN CIVIL MATTERS

The term "pre-trial procedure" refers to a practice now existing in some of the United States of America. While there are several reports on the system as it exists in various jurisdictions a very comprehensive report covering its

operation in several jurisdictions is contained in the Reports of the Section of Judicial Administration of the American Bar Association, 1938, which are published in pamphlet form.

It appears to be generally agreed that the purposes of the pre-trial meeting are three-fold,—(1) to narrow the issues; (2) to shorten and expedite trials, and (3) to avoid trials in cases which should not go to trial. According to the information which the Committee has, the system has been tried out in some seven or more jurisdictions and has been reported upon favourably in all but two such jurisdictions. It has been abolished in Los Angeles after a trial of some two and one-half years; in San Francisco, where it was established upon a voluntary basis, it has ceased to be used. It would appear that while perhaps feasible in all courts, with the possible exception of single judge courts, it is of most assistance in larger cities where the court lists have become very much congested. Pre-trial procedure was first used in 1929 by the surrogate court of Wayne County, Michigan, in which is located the City of Detroit. At that time the Common Law calender was 45 months behind and the Chancery calendar 24 months behind. The system has largely corrected this situation. The second jurisdiction to adopt pre-trial procedure was the City of Boston where in 1935 it was made applicable to cases on the jury list. There also the court lists were badly congested.

From the information which the Committee has before it, it appears that in the majority of jurisdictions where the system has been adopted the condition of the court lists has been such that a case upon reaching the trial list would not be tried for several months, if not years, and there appears to be no doubt that pre-trial procedure is of great assistance in remedying such conditions.

The adaptability of pre-trial procedure to cases in the Supreme Court of Ontario, with the exception of the courts held in the City of Toronto, is doubtful. It is generally agreed that pre-trial hearings must be held before a judge with power to dismiss or give judgment by default upon non-appearance of counsel; otherwise counsel would be able to take an arbitrary and independent attitude resulting in an impasse at the pre-trial hearing. Most authorities also agree that it is inadvisable to have the pre-trial judge preside at the trial. Settlements are often discussed at the pre-trial hearings and, however fair a judge may be, many counsel would feel prejudiced at the trial if it were to be held before the same judge with whom they had frankly discussed settlement at a pre-trial hearing. Because of the long distances involved, the amount of work which each of the judges of the trial division is now required to perform, and the fact that the judges of the trial division all reside in Toronto, it will be seen that as to cases arising outside of Toronto the system does not readily adapt itself to this province. In passing it may also be observed that the power to dismiss or give judgment at a pre-trial hearing, which power appears necessary to the success of the system, is something which may well be considered as altogether undesirable, for it would place in the hands of the judges power or the opportunity to force settlements before trial.

Whether or not pre-trial procedure would be workable in Toronto, it is the view of your Committee that there is no real need for it. The trial lists in the Toronto courts to-day are such that any person desiring to have his case heard expeditiously may have it brought on for trial without any unreasonable delay.

While the Committee does not doubt that there is merit in the system known as "pre-trial procedure", it is of opinion that the system is not adaptable to many of the courts of the province and is also satisfied that trials in the courts of Ontario are expeditiously disposed of without undue delay.

Reference was made by one of the witnesses appearing before the Committee to the English procedure known as "summons for directions" which is, in some respects, a variation of pre-trial procedure. According to the information of the Committee, experience has shown that such a procedure has a definite tendency to become perfunctory in nature, the result being that almost invariably upon the return of the summons an order for "the usual directions" is made. In the result and from the information at hand the Committee does not believe that such a procedure would have any real advantage over the procedure now followed in Ontario.

THE COMMITTEE THEREFORE RECOMMENDS:

That pre-trial procedure be not adopted in Ontario at this time.

RULES AND REGULATIONS GENERALLY

Under the heading RULES COMMITTEE the provisions in the statutes authorizing the making of rules of court are referred to. The statutes contain many other enactments providing for the making of rules and regulations. For example, the governing bodies of several professions and callings which are regulated by statute are authorized to make rules or regulations. Wide powers are given to the Benchers of the Law Society under The Law Society Act, The Barristers Act and The Solicitors Act. The judges may also make certain rules and regulations under The Solicitors Act. Under The Medical Act the Council of the College of Physicians and Surgeons of Ontario may make orders, regulations and by-laws as therein prescribed. The Board of Directors of the Royal College of Dental Surgeons of Ontario is required to make such by-laws as are deemed necessary for the purposes indicated in the Act. Rule making authority is vested in similar boards under The Pharmacy Act, The Drugless Practitioners Act, The Land Surveyors Act, The Architects Act, The Chartered Shorthand Reporters Act, The Chartered Accountants Act, The Certified Public Accountants Act, The Professional Engineers Act, The Veterinary Science Practice Act, The Embalmers and Funeral Directors Act and The Optometry Act, all of which Acts relate to professions and callings. It will be observed that in many of these enactments the rules, regulations or by-laws, as the case may be, require neither the approval of the Lieutenant-Governor in Council nor publication in the *Ontario Gazette*. Many other statutes authorize the making of regulations by the Lieutenant-Governor in Council, boards, commissions, Ministers of departments, and other authorities. While it is perhaps true that in most cases regulations must either be made or approved by the Lieutenant-Governor in Council, this requirement does not exist in every case.

As to the advantage of requiring all regulations to be passed or approved by the Lieutenant-Governor in Council, the Committee points out that such a practice is desirable because where regulations are made or approved by the Lieutenant-Governor in Council they are on file in the office of the Clerk of the

Executive Council and are available to any person having occasion to refer to them. Where, however, regulations are not required to be made or approved by the Lieutenant-Governor in Council there is no assurance that either the original regulations or copies will be available for inspection by the public generally or by any person interested. Rules, regulations and other forms of delegated legislation when made in accordance with the authorizing statute form a part of the law of the province to the same extent as the statutes passed by the Legislature. The practice of delegating legislative authority is increasing in all jurisdictions. It is generally recognized that this tendency is due to the increasingly complicated nature of industrial, commercial and other phases of civil life and of civil government. Hence, it is of paramount importance that all rules and regulations made under statutory authority be readily available for inspection by the public.

In order to create a central registration office for all rules and regulations passed under the public acts of the province it is not necessary that all such regulations be either passed or approved by the Lieutenant-Governor in Council. The result may be attained by requiring that all regulations be filed with a named official and by providing that regulations shall have no force or effect until so filed. A provision would be required to take care of regulations now in force.

As all regulations which require to be passed or approved by the Lieutenant-Governor in Council are on file with the Clerk of the Executive Council, the Committee favours that office as a central place for the filing of all regulations, otherwise there would be a duplication of filing of those regulations which must now be filed in that office.

The publication of rules and regulations has been considered by this Committee. It has been suggested that all regulations should be consolidated in somewhat the same manner as the Revised Statutes, and that an annual volume corresponding somewhat to the annual volume of statutes should be published. One of the reasons that the provisions contained in the regulations are not enacted in the statutes authorizing the regulations is that regulations contain provisions requiring more flexibility than is possible with statutory enactments. The statutes are amended during the sessions of the Legislature and with few exceptions there is only one session held each year. While the amendments to public acts passed at each session of the Legislature occupy many pages of the statute book their volume cannot be compared with the volume of amendments to regulations made annually. Further, there are many regulations which are not of general interest. While these facts do not affect the desirability of making the regulations available for interested persons to inspect, they do reduce the necessity for publication.

An alternative mode of publication would be to require that all regulations be published in the *Ontario Gazette* before they have the force of law. However desirable such a requirement might be, the practical aspect must be considered. In this regard there are occasionally sets of regulations passed which would occupy many pages in the *Gazette* but which very few persons would have occasion to consult. In the case of such regulations the Committee feels that the expense involved would not be warranted.

Certain statutes authorizing the making of regulations require that they

be published in the *Ontario Gazette*. In such cases the regulations are invariably published. Other regulations made or approved by the Lieutenant-Governor in Council which in the opinion of the Clerk of the Executive Council, acting on the advice of those having special knowledge of the regulations, are of a general nature having general application, are also published although publication is not required by the statute.

The practice adopted not long ago of publishing a table of proclamations, orders-in-council and regulations which have been passed by the Lieutenant-Governor in Council, in the annual volume of the statutes has proven a convenience to members of the profession and others who have occasion to refer to regulations. It is desirable and would be feasible, if the Committee's recommendations contained in this part of the report are adopted, to publish in a similar manner a list of all rules and regulations which have been passed during the preceding year and up to the time of the publication of the annual statutes.

THE COMMITTEE THEREFORE RECOMMENDS:

1. That all rules, regulations and other delegated legislation passed under the authority of any Act of the Legislature be required to be filed with the Clerk of the Executive Council within thirty days of being passed or approved, as the case may be; that all rules, regulations and other delegated legislation heretofore passed be required to be filed with the Clerk of the Executive Council not later than January 1st next following the session of the Legislature at which legislation requiring such filing is enacted; and, that any such rules, regulations or other delegated legislation not so filed should have no force or effect. (This provision would not affect regulations required to be made or approved by the Lieutenant-Governor in Council as they are now required to be filed with the Clerk of the Executive Council);

2. That the Clerk of the Executive Council be required to keep an index of rules, regulations and other delegated legislation according to subjects as well as according to the Acts under which such delegated legislation is passed; and

3. That a list of all rules and regulations passed during each year be published in the annual volume of the Statutes.

RULES COMMITTEE

CENTRALIZATION OF AUTHORITY

Probably the most important provision in the Statutes authorizing the making of rules for regulating practice and procedure in the courts is contained in section 106 of The Judicature Act. The first subsection confirms the revision of the Rules of Practice and Procedure made in 1913, including tariffs of fees and costs proclaimed by the Lieutenant-Governor in Council, and authorizes the judges of the Supreme Court of Ontario to "pass rules repealing, amending or varying the same". The second subsection authorizes the judges of the Supreme Court to amend or repeal any of the rules and to make any further or additional rules for carrying The Judicature Act into effect and particularly for regulating

and otherwise dealing with the matters indicated in the various clauses. No limitation is placed on the powers of the judges in this regard except that the Lieutenant-Governor in Council must approve of any regulations made by the judges which regulate fees payable to the Crown in respect of proceedings in any court. The rules made by the judges may modify the practice or procedure prescribed by any Statute where such modification is deemed necessary to adapt the rules to the general practice and procedure of the court, unless that power is expressly excluded. Section 108 permits the judges to delegate to a committee of themselves any power or authority conferred upon them as a body. Further powers are given to the judges to make rules under The Controverted Elections Act, The Habeas Corpus Act, The Administration of Justice Expenses Act, The Estreats Act, The Quieting Titles Act, The Matrimonial Causes Act, The Solicitors Act, The Municipal Act and The Municipal Arbitrations Act.

By The Interpretation Act the Lieutenant-Governor in Council is authorized to make regulations for the due enforcement and carrying into effect of any Act of the Legislature. Claus (*zh*) of section 32 of The Interpretation Act reads as follows:

> (*zh*) "Rules of Court" when used in relation to any court shall mean rules made by the authority having power to make rules or orders regulating the practice and procedure of such court, or for the purpose of any Act directing or authorizing anything to be done by rules of court.

The Lieutenant-Governor in Council is authorized to make rules relating to practice and procedure in the courts under The County Courts Act, The General Sessions Act, The Surrogate Courts Act, The Division Courts Act, The Charities Accounting Act, The Adoption Act and The Juvenile and Family Courts Act. Under The Land Titles Act certain general rules may be made by the Lieutenant-Governor in Council or the judges of the Supreme Court, while under The Registry Act the Lieutenant-Governor in Council is authorized to make rules. The Supreme Court may make rules under The Mental Incompetency Act. The Arbitration Act authorizes the making of rules of court "by an authority to whom is committed power of making rules of court", and The Reciprocal Enforcement of Judgments Act simply provides that rules of court for regulating the practice and procedure "may be made". The Devolution of Estates Act provides that "rules regulating the practice and procedure to be followed in all proceedings under this Act and a tariff of fees to be allowed and paid to solicitors for services rendered in such proceedings, may be made under the provisions of The Judicature Act".

The Mechanics Lien Act simply provides for procedure "of a summary character". The Woodmen's Lien for Wages Act permits the judges of the district courts or a majority of them to "prepare and adopt forms of writs, summonses, attachments and other forms for the more convenient carrying out of the provisions of this Act". The Infants Act incorporates by reference the practice and procedure under The Surrogate Courts Act and provides that "the power to make rules under that Act shall apply to proceedings under this Act". The Municipal Drainage Act authorizes the judges of the Supreme Court "to make general rules with respect to procedure before the Referee and appeals from him . . .", and subject to those powers the Referee is also empowered, with the approval of the Lieutenant-Governor in Council, to frame rules regulating

the practice and procedure in all proceedings before him and also to frame tariffs of fees in cases not already provided for.

There are no doubt other provisions in the Statutes authorizing the making of rules which regulate the practice and procedure in the courts but from the foregoing it is apparent that while the judges of the Supreme Court are authorized to make many rules regulating practice and procedure in the courts they are by no means the only rule making authority with regard to practice and procedure in the courts. Nor does there appear to be any satisfactory explanation why so many rule making bodies should exist. In some of the instances cited above it is difficult to understand why authority with regard to the matters in question is given to the particular body so vested.

The distribution of authority has several disadvantages. It renders it difficult, if not impossible, to collect the rules regulating procedure in the various courts with any degree of certainty. The distribution of authority is not conducive to keeping the various sets of rules either consistent in their provisions or uniform in their drafting. It is desirable that one body should be vested with power to make all rules regulating practice and procedure in the courts as far as practicable. The Committee feels that it is not desirable to charge the body responsible for the making of rules in the higher courts, with the making of rules for the division courts, procedure in that court being of a specialized nature and not necessarily in conformity with the procedure in the other courts of the province. Persons well qualified to formulate rules for the higher courts might be quite unfamiliar with division court procedure.

Composition of Committee

In Ontario the judges of the Supreme Court are usually regarded as the rule making authority with regard to practice and procedure in that court. With the exception of certain comparatively minor matters of practice and procedure all the powers to make rules of practice and procedure in the Supreme Court are vested in the judges. There being no barristers or solicitors upon the rule making committee, any new rules or amendments to the rules are necessarily made from the point of view of the judges rather than from that of members of the profession experienced in practice, although members of the profession, of course, may make representations to the judges regarding amendments to the rules. In England a different practice is followed and by subsection 24 of section 29 of The Supreme Court of Judicature (Consolidation) Act, 1925, it is provided:

> "Rules of court may be made by the Lord Chancellor together with any four or more of the following persons, namely, the Lord Chief Justice, the Master of the Rolls, the President of the Probate Division, and four other judges of the Supreme Court, two practising barristers being members of the General Council of the Bar, and two practising solicitors of whom one shall be a member of the Council of the Law Society and the other a member of the Law Society and also of a provincial Law Society. The four other judges and the barristers and solicitors to act as aforesaid shall be appointed by the Lord Chancellor in writing under his hand and shall hold office for the time specified in the appointment."

The practice of having barristers and solicitors represented on the committee

ensures that the point of view of the profession as well as the Bench is before the committee. This is important for while each of the judges from time to time is concerned with matters of practice in weekly court or chambers or in other branches of his work, certain members of the profession, who appear regularly in weekly court and chambers and before the Master, are in contact with difficult matters of practice and procedure more frequently in the regular course of their practice than some of the judges. The advantages to be gained by having the profession represented on the committee are self-apparent while the Committee was not able to ascertain that any disadvantages would result.

As the executive branch of the government is responsible for the maintenance of the courts, it is desirable to have the executive represented upon the rule making committee. This may be done appropriately by appointing the Attorney-General to the committee or by authorizing him to nominate one of the lawyers of his Department to represent him on the committee.

It is desirable that such a committee should have the assistance of a permanent secretary, skilled in the work with which the committee is charged and always available. The Committee considers that the Registrar of the Supreme Court is the logical official to act in that capacity.

Approval of Rules

While some of the problems relating to rules and regulations made under provincial Acts are dealt with in another part of this report, at the expense of possible repetition it is well to point out here that rules, regulations and other delegated forms of legislation as authorized by the Statutes are just as much a part of the law of the Province as that contained in the Statutes. In the Consolidated Rules of Practice many matters are dealt with which are not entirely procedural and in many cases the rights of the subject are vitally affected. In view of this situation the Committee favours a requirement that all rules and regulations relating to the courts be approved by the Lieutenant-Governor in Council before having the force of law.

Rules in One Text

That rules made by the Rules Committee under the various statutes should be conveniently printed in one text naturally follows from the recommendations of the Committee which are set out below. Such a practice should prove a matter of convenience to the profession as well as to court officials and the general public throughout the province.

Amendments Required

If the recommendations of the Committee contained in this part of the report are to be carried into effect, amendments to many Statutes will be necessary, which is not a matter of any great difficulty. It may be pointed out, however, that this does not necessitate new rules under the various Statutes indicated above being brought into force immediately upon the coming into force of the statutes providing for the establishment of the new Rules Committee, for by section 16 of The Interpretation Act the old rules shall continue good and valid until others are made in their stead. It will, however, be necessary to

amend the definition of "Rules of Court" contained in The Interpretation Act, and it is also desirable that the term "Rules Committee" be defined in that Act.

THE COMMITTEE THEREFORE RECOMMENDS:

1. That a committee be established by statute with authority to make, amend and repeal all rules authorized to be made under any statute of Ontario for regulating practice and procedure in the courts over which the Provincial Legislature has jurisdiction but excluding division courts;

2. That such Committee comprise six justices of the Supreme Court appointed by the Chief Justice of Ontario; one county or district court judge appointed by the Attorney-General; three barristers or solicitors chosen by the Benchers of the Law Society in Convocation; the Master of the Supreme Court and the Attorney-General, or a law officer of the Crown appointed by him;

3. That the members of the Committee elect a chairman from among themselves;

4. That the Registrar of the Supreme Court of Ontario be the permanent secretary of the rule making committee;

5. That all rules made by the Rules Committee be approved by the Lieutenant-Governor in Council before coming into force;

6. That all rules of practice and procedure in the courts (with the exception of division courts) be published in one text;

7. That the definition of "Rules of Court" as contained in The Interpretation Act be appropriately amended, and that "Rules Committee" or such other term as may be used to designate the proposed rule making authority, be defined in The Interpretation Act; and

8. That the authority to make rules under The Division Courts Act continue in the Lieutenant-Governor in Council and that such authority be extended to enable the Lieutenant-Governor in Council to prescribe forms for use in the division courts.

SERVICE BY MAIL

The requirement that summonses and other process for violation of Ontario statutes be served personally adds substantially to the cost of proceedings in the courts, and occupies a great deal of the time of police officers and others who are engaged in making services. Many complaints have been received by the Attorney-General and other Crown officials regarding the amount of the costs which attach where a conviction is made under an Ontario statute and almost invariably it is found that such costs are made up principally of charges for effecting service. In England service of certain summonses by mail was authorized by the Service of Process (Justices) Act, 1933. That Act provides that service made pursuant thereto shall however be deemed not to have been effected unless either (*a*) the defendant appears, either in person or by counsel or solicitor, in manner required by the summons; or (*b*) it is proved to the satisfaction of the justices that the summons came to the knowledge of the defendant. While that qualification has been criticized, it appears to the Committee

to be a very necessary one although experience in some of the States of the Union indicates that the necessity of such a provision is doubtful. In a report on "The Growth of Legal Aid Work in the United States", issued by the United States Department of Labour, it is stated at page 41—"In fact service by mail works so well that the Cleveland court, which has used it longest, has discarded registered mail and uses the ordinary mail not merely in small cases but as a regular method of service in all municipal court cases." In order that a person so served may realize that it is in his interest to appear in response to the summons it would be well to indicate, preferably in bold faced type, on the face of the summons, that if personal service becomes necessary, the costs of the proceeding will thereby be increased and may have to be paid by the person to whom it is directed.

A great many prosecutions under Ontario statutes are in respect of violations of The Highway Traffic Act. The licensing system in force under that Act facilitates ascertaining of the names and addresses of offenders in most cases. Because of that fact and because the practice of service by mail is an innovation in Ontario, the Committee favours the adoption of that practice with respect to offences under The Highway Traffic Act. If, when applied to that Act it proves as satisfactory as it has in other jurisdictions, it may be extended to other Ontario statutes.

In order to avoid the purpose of the proposed provision being defeated, service by mail must necessarily be required in each case before personal service is resorted to.

THE COMMITTEE THEREFORE RECOMMENDS:

1. That summonses for violations of The Highway Traffic Act be required to be served by mail;

2. That the summons indicate clearly upon its face that if the defendant does not appear in person or by his representative in the manner required by the summons, service will be effected by personal service and the cost of the proceedings will thereby be increased and may be required to be paid by the person to whom the summons is directed if a conviction results;

3. That provision be made for personal service if the person summoned fails to appear in person or by his representative in the manner required by the summons sent by mail; and

4. That the limitation provision of The Highway Traffic Act be appropriately amended to permit service to be made in accordance with these recommendations.

SUPERANNUATION

COUNTY COURT CLERKS AND LOCAL REGISTRARS, SUPREME COURT OF ONTARIO

While the matter of superannuation does not come within the scope of the Committee's investigation, certain phases of that part of The Public Service Act relating to superannuation were studied briefly by the Committee because

of representations made to it by witnesses who appeared before the Committee to express views with regard to other matters.

The superannuation provisions do not apply to county court clerks or local registrars of the Supreme Court, because the Act applies only to civil servants paid a fixed salary and practically all county court clerks and local registrars are paid on the fee basis in one form or another. Most sheriffs are also paid on the fee basis but, because of a special provision inserted in the Act, they are brought within its superannuation provisions. The Committee was unable to ascertain any logical reason why the Act should be made applicable to sheriffs while other civil servants doing a similar type of work and paid on a like basis and similarly located throughout the province are excluded from the operation of its superannuation provisions.

Magistrates

So far as the payment of salaries is concerned there are two classes of magistrates within the Province. There are those who are paid by the Province, the Province being reimbursed to some extent by receiving a portion of the fines imposed by such magistrates which would otherwise be payable to the municipalities. Payments are made to the Province under subsection 2 of section 15 of The Magistrates Act. So far as these magistrates are concerned there is no difficulty regarding superannuation if they are within the age limit set by the Act when appointed.

The other class of magistrates are those appointed for a particular city in which they hold courts. While all magistrates are appointed for the entire province, some of them are, by the Order-in-Council appointing them, assigned to certain named cities and in the case of these cities the salaries of the magistrates are paid by the cities. Accordingly, as the salaries of these magistrates are not paid by the Province they are not entitled to come within the superannuation provisions of The Public Service Act. This situation could probably be remedied by having the salaries paid by the city to the Province or by some other means.

The Committee Therefore Recommends:

1. That the Public Service Superannuation Board consider the extension of section 53 of The Public Service Act to county court clerks and local registrars of the Supreme Court; and

2. That the Public Service Superannuation Board take steps to bring under the superannuation provisions of The Public Service Act, on a contributory basis, all magistrates who are not disqualified by reason of age.

TAXATION OF COSTS

Although the local taxing officers may tax most items in a bill of costs, certain items must be referred to the Senior Taxing Officer at Toronto. Hence, if a trial takes place outside of Toronto solicitors or counsel must either attend at Toronto or instruct Toronto agents as to the taxation of costs thereby involving expense and inconvenience.

As most local taxing officers are appointed from the ranks of practising barristers, there appears to be no objection to giving local taxing officers jurisdiction in such matters. Any objection which might be taken on the ground that taxations would lack uniformity may be remedied by providing for an appeal to the Senior Taxing Officer at Toronto in all such cases. The present practice is advisable where the local taxing officer is not a barrister.

THE COMMITTEE THEREFORE RECOMMENDS:

That all local taxing officers who were barristers at the time of appointment be empowered to tax all costs including all counsel fees, subject always to an appeal to the Senior Taxing Officer at Toronto.

TRIAL COURT LISTS

Much time is lost and inconvenience occasioned to parties, counsel and witnesses by reason of the present indefinite and unsatisfactory method of preparing trial court lists. The practice followed in most of the courts of the Province is to indicate only the names of the cases which are to be tried the following day. In the Toronto non-jury court a list is prepared weekly and this practice may be followed in some of the other courts of the province. So far as the Committee is aware in no case does the list indicate the nature of the cases or the approximate time which each will require for trial. On more than one occasion an action has been dismissed because of the non-appearance of the plaintiff or his counsel. Under the present practice litigants, counsel and many witnesses may be kept waiting about court rooms, witness rooms or hallways for long periods of time.

The Committee feels that this condition is wrong. While the convenience of the court is of great importance, so also is the convenience of the public, counsel and the witnesses involved.

In the King's Bench Division of the High Court of Justice in England there are two non-jury lists. One is called the "List of Long Non-Jury Actions" and the other the "List of Short Non-Jury Actions." Examples of these two lists may be found in The Weekly Notes. Upon each list the nature of the action is indicated briefly, also the approximate time which the action will require for trial. The List of Long Non-Jury Actions includes actions which will occupy six or more hours.

There is no reason why the practice of indicating the nature of the action and the approximate time it will occupy should not be adopted in all civil courts, with the exception of the division courts, throughout the province. The manner of determining the approximate time which any trial would occupy might require some study and that is likely one of the details which receives attention in England upon the return of the "summons for directions", a procedure unknown in Ontario practice.

In view of the many matrimonial causes actions tried at the Toronto non-jury sittings, the trials of most of which last only a short time, the practice of preparing two lists is desirable in that court and should be followed whenever two judges are holding sittings.

THE COMMITTEE THEREFORE RECOMMENDS:

1. That the practice of indicating the nature of each action and estimated time for the trial thereof upon the list of cases for trial be followed in all civil courts in Ontario with the exception of division courts; and

2. That the practice of the King's Bench Division of the High Court of Justice (England) of preparing a list of long non-jury actions and a list of short non-jury actions be adopted and used in the non-jury sittings of the Supreme Court of Ontario at Toronto whenever two or more judges are holding sittings.

WITNESSES

Throughout the trial of an action the judge, jury, the registrar or clerk of the court and the sheriff remain seated. Counsel are seated except when actually addressing the court or examining or cross-examining witnesses and persons who are charged in criminal proceedings are permitted to remain seated except when addressed by or addressing the court. In Ontario, however, witnesses are required to remain standing except when by reason of infirmity or some exceptional circumstance they are permitted by the court to sit down.

The unusual experience of appearing as a witness in a court proceeding, often before a large number of people, is a nervous strain on many persons. This condition is not reduced by requiring the person called as a witness to stand, frequently for a long period of time, and some times under arduous cross-examination. The Committee is of opinion that as a general rule nothing is to be gained by requiring witnesses to stand while giving their testimony.

Most of the court rooms of the Province, however, are constructed in such a manner that in order to be visible by and audible to the judge, the jury and counsel, the witness must assume a standing position.

THE COMMITTEE THEREFORE RECOMMENDS:

That so far as practicable witnesses be permitted to remain seated while giving their testimony, and that in constructing or altering court rooms, provision be made, wherever possible, for the seating of witnesses in the witness box.

CONCLUSION

In conducting its enquiry and preparing its report the Committee has endeavoured to deal only with matters included in the terms of the order appointing it. It has, however, been difficult on occasions to determine the scope of the Committee's investigation with regard to certain matters coming before it because the language authorizing an investigation covering such a wide field must necessarily be of a general and somewhat flexible nature. The Committee has, however, avoided dealing with minor matters of procedure, proposals for specific amendments to statutes, and other suggestions for changes in the law, except where in its opinion such suggestions or proposals were directed to improving the constitution, organization and system of maintenance of the courts

or simplifying, facilitating, expediting and otherwise improving the practice and procedure in the courts, or effecting economy to the people, the municipalities and the Province generally.

There are, accordingly, numerous matters which were brought to the attention of the Committee which, while not coming within the Committee's jurisdiction, warrant further consideration. In some cases the Law Revision Committee recommended by this Committee would be the appropriate body to consider such matters further, and in other cases the officials of the Attorney-General's Department or the Legislative Counsel's office might very well be charged with the further study required. It should, therefore, be understood by those who assisted the Committee by making submissions that the absence of any reference to any submission in this Report is not necessarily an indication that the Committee does not approve of the suggestion or recommendation made in the submission.

All of which is respectfully submitted.

G. D. CONANT, *Chairman.*
IAN T. STRACHAN,
R. D. ARNOTT,
L. M. FROST.

SCHEDULE "A" TO REPORT

List of Persons and Organizations who were Advised of the Appointment and Sittings of the Committee

The Chief Justice of Ontario.
The Chief Justice of the High Court of Justice.
The Registrar, S.C.O., Toronto.
The Local Registrar, S.C.O., Ottawa.
The All Canada Insurance Federation.
The All Canadian Congress of Labour.
The Associated Credit Bureaus.
The Builders Exchange and Construction Association of Toronto.
The Canadian Automobile Association.
The Canadian Bankers Association.
The Canadian Bar Association.
The Canadian Life Insurance Officers Association.
The Canadian Manufacturers Association.
The Canadian Retail Coal Association.
The Canadian Underwriters' Association.
The Chamber of Agriculture.
The County Court Clerks Association.
The County Judges Association.
The Dean of the Law School, Osgoode Hall.
The Division Court Clerks Association.
The Dominion Board of Insurance Underwriters.
The Dominion Mortgage and Investment Association.
The Hamilton Chamber of Commerce.
The Head of the Law Department, University of Toronto.
The Land Mortgage Companies Association.
The Law Society of Upper Canada.
The Lawyers Club of Toronto.
The London Chamber of Commerce.
The Lumbermen's Credit Bureau Incorporated.
The Magistrates Association.
The Ontario Associated Boards of Trade and Chambers of Commerce.
The Ontario Association of Architects.
The Ontario Association of Real Estate Boards.
The Ontario Fire & Casualty Insurance Agents Association.
The Ontario Insurance Adjusters Association.
The Ontario Mayors Association.
The Ontario Mining Association.
The Ontario Municipal Association.
The Ottawa Board of Trade.
The Property Owners Association.
The Registrars of Deeds Association.
The Retail Merchants Association of Canada.
The Sheriff's Association.
The Toronto Board of Trade.
The Toronto Home Builders Association.
The Toronto Insurance Conference.
The Trades and Labour Congress of Canada.

The Windsor Chamber of Commerce.
All County and District Law Associations.
All County Wardens.
All Crown Attorneys.

SCHEDULE "B" TO REPORT

List of Witnesses in Order of Appearance Before the Committee

F. H. Barlow, K.C., Master of the Supreme Court of Ontario.
His Honour Judge F. M. Morson, retired judge of the County Court of the County of York.
F. J. Norman, Secretary of the Ontario Association of Collection Agencies.
F. G. J. McDonagh, Clerk of the First Division Court of the County of York.
His Honour Judge T. H. Barton, a judge of the County Court of the County of York.
Gerald Murphy, of McMaster, Montgomery, Fleury & Co.
J. Roy Cadwell, Inspector of Legal Offices.
C. L. Snyder, K.C., Deputy Attorney-General for Ontario.
A. B. Gillies, Postmaster, Parliament Buildings, Toronto.
R. C. Buckley, Assistant Inspector of Legal Offices.
A. S. Winchester, Clerk of the County Court of the County of York and Registrar of the Surrogate Court of the County of York.
Dr. Horace Bascom, Local Registrar, S.C.O., Clerk of the County Court, Registrar of the Surrogate Court, Sheriff, County of Ontario, and President of the County Court Clerks Association.
George T. Inch, Local Registrar, S.C.O., Clerk of the County Court, Registrar of the Surrogate Court, County of Wentworth, and Secretary of the County Court Clerks Association.
P. A. Juneau, K.C., Special Law Officer, Department of the Attorney-General for the Province of Quebec.
D. L. McCarthy, K.C., Treasurer of the Law Society of Upper Canada.
Peter White, K.C.
J. C. McRuer, K.C.
G. T. Walsh, K.C.
G. W. Mason, K.C., Chairman of a Special Committee of Convocation of the Law Society of Upper Canada.
K. F. Mackenzie, K.C., Vice-President for Ontario of The Canadian Bar Association.
His Honour Judge L. V. O'Connor, Judge of the County Court of the United Counties of Northumberland and Durham.
G. A. Gale, representing The Lawyers' Club of Toronto.
His Honour Judge G. H. Hayward, Judge of the District Court of the District of Temiskaming.
R. M. Fowler, representing the Management Committee of the County of York Law Association.
F. A. Matatall, Secretary Manager of the Ottawa Credit Exchange Limited and President of the Associated Credit Bureaux of Canada.
R. M. W. Chitty, K.C., representing the Board of Management of the York County Law Association.
The Rt. Hon. Sir Wm. Mulock, K.C.M.G., sometime Chief Justice of Ontario.

R. J. Maclennan, K.C., Solicitor to and Secretary of The Sheriffs Association of Ontario.
Earle Dawe, Vice-President and Manager of E. W. Woods & Co., Limited, Bailiffs.
Stanley Thomson, Registrar of Real Estate Brokers and Registrar under The Collection Agencies Act.
David J. Ogle of the office of the Sheriff of the County of York.
His Honour Judge Daniel O'Connell, Senior Magistrate for the County of York and sometime a judge of the County Court of the County of York.
J. W. McFadden, K.C., Crown Attorney for the County of York.
J. G. Hungerford, an Estates Officer of The National Trust Company.
Harold S. Manning, K.C., President of The Property Owners Association of Ontario.
C. M. Colquhoun, K.C., Solicitor for the City of Toronto.
Alfred J. B. Gray of the Department of Municipal Affairs for Ontario.
Chas. Purnell, representing the Ontario Association of Real Estate Brokers.
R. S. Colter, K.C., Chairman of the Ontario Municipal Board.
Wm. H. Bosley.
C. F. Neelands, Deputy Provincial Secretary.
A. G. Slaght, K.C.
Jacob Finkleman, Professor of Administrative and Industrial Law, University of Toronto.
The Honourable R. S. Robertson, Chief Justice of Ontario.
The Honourable H. E. Rose, Chief Justice of the High Court.
The Honourable Mr. Justice W. E. Middleton.
His Honour Judge James Parker, Senior Judge of the County Court of the County of York.
I. S. Fairty, K.C., Chief Legal Adviser to The Toronto Transportation Commission.

Select Committee to Inquire into the Administration of Justice

Parliament Buildings, Toronto,
March 6th, 1940.

FIRST SITTING (ORGANIZATION MEETING)

Present: Hon. Gordon D. Conant, K.C., M.P.P., Attorney-General of Ontario, Chairman; Hon. Paul Leduc, K.C., M.P.P., Minister of Mines for Ontario; Hon. Ian T. Strachan, K.C., M.P.P., Government Whip; Richard D. Arnott, K.C., M.P.P.; Leslie M. Frost, K.C., M.P.P.; Clifford R. Magone, K.C., Committee's Counsel; Eric H. Silk, K.C., Committee's Counsel; Roy C. Sharp, Secretary to the Committee; MacIntire M. Hood, Secretary to the Attorney-General.

MR. CONANT: Gentlemen, the Committee being present in its entirety, I suggest that we first file a copy of the Resolution constituting this Committee. The Resolution is not immediately available, but it will be in a few minutes. That will constitute the first document on the record, if that is agreeable.

Now, I have here proposals regarding our personnel. First of all, a Secretary is necessary, and if it is agreeable, I would suggest Mr. Sharp, of the Law Clerks' Office.

MR. LEDUC: I will move, seconded by Mr. Frost, that Mr. Sharp be appointed Secretary of the Committee on the Administration of Justice.

Carried.

MR. CONANT: Then it is necessary to have Counsel for the Committee.

MR. LEDUC: I move, seconded by Mr. Frost, that Mr. Clifford R. Magone, Senior Solicitor of the Attorney-General's Department, be appointed Counsel for the Select Committee to Inquire into the Administration of Justice.

Carried.

I move, seconded by Mr. Strachan, that Mr. Eric H. Silk, Legislative Counsel, be appointed Assistant Counsel for the Select Committee to Inquire into the Administration of Justice.

Carried.

MR. CONANT: I might say that, as regards any legislation that results from the deliberations of this Committee, it is most necessary that the Law Clerks' Department should be familiar with it, and be actively associated with the work of the Committee.

Now, gentlemen, I am entirely open wide as to the methods of proceeding here.

I have had these same gentlemen prepare some memoranda, the first of which consists of a collection of names of organizations and persons who might be interested in the work of this Committee. It is a matter for decision, whether we should send a letter out to these organizations, or whether we would announce the sittings of the Committee through the Press. I would like the views of the Committee on that.

Now, if you will just glance at the list, towards the end, 30, you will see: "All County Councils," and then, "Council of the City of Toronto." The thought there was this: that the County jurisdictions are considerably affected by any changes made in the Administration of Justice, and Toronto, being a separate jurisdiction, would be also affected in that it bears a considerable part of the cost throughout, in the enforcing of the Administration of Justice legislation.

Now what is your view, gentlemen?

MR. ARNOTT: A notice should be sent out to these various bodies from the Committee, I believe.

MR. LEDUC: What kind of a notice would it be? That we are open for business, and we are willing to receive them? Would it not be better—I am only offering a suggestion—would it not be better to decide, first of all, what points we would take up, and then notify the people that would be interested in those particular points?

MR. ARNOTT: But I think they should be notified by the Committee, and then they may decide what they will do.

MR. CONANT: I might continue the discussion further, perhaps.

MR. LEDUC: And clarify it, yes.

MR. CONANT: May I crystallize it in this way: on the second memorandum—neither of these memorandums purports to be complete by any means ——

MR. FROST: Mr. Conant, before you go into that, how wide a distribution has this Barlow report been given?

MR. CONANT: Well, when that report was presented to me, we had four hundred copies mimeographed, at a nominal expense, and they have been distributed.

MR. FROST: And they would go to whom? The County Judges, and the Magistrates, and Law Societies?

MR. HOOD: Well, they went to every member of the Legislature, to all County Judges, and to all people who made submissions to Mr. Barlow, to the Crown Attorneys of the province, and then in addition to that, all requests which

we received from associations and individual barristers were taken care of until our supply was exhausted

MR. LEDUC: You did not mention Supreme Court Judges.

MR. HOOD: Supreme Court Judges also, yes.

MR. FROST: I find this: that there seems to be a lack of understanding as to what Mr. Barlow's recommendations were. I don't think that this Inquiry should be confined to lawyers, by any means.

MR. CONANT: Oh, no, no.

MR. FROST: I think that you should make it so that the non-professional or layman ——

MR. CONANT: Oh, quite.

MR. FROST: —— could give just as much information as the lawyers, because, after all, they constitute just as good a basis of inquiry as lawyers do.

MR. CONANT: Quite.

MR. FROST: But, as a matter of opening up, it might be a good thing to get the list of the law associations in the province; after all, they are representative of public opinion, to a certain extent, in their own districts, and it is quite an easy matter to obtain that, for the reason that the Department, I believe, makes grants to many law associations ——

MR. CONANT: Yes.

MR. FROST: —— by means of grants, law libraries, and so on.

MR. CONANT: Yes.

MR. FROST: I think it would be a good idea to send out a copy or two, depending on the size of the various law associations, of the Barlow report, with a request that their association should meet and consider this report, and consider its recommendations, and let us have their views. That would be one way of getting the views of the profession on these matters.

MR. ARNOTT: Mr. Chairman, what would you think of the suggestion of having that report published in the *Ontario Weekly Notes?*

MR. CONANT: Well, I think that is a very good suggestion. There are some 2,700 or 2,800 solicitors in the province.

MR. LEDUC: That would meet your suggestion, Mr. Frost.

MR. FROST: That would be cheaper than having other copies mimeographed?

MR. HOOD: Yes, it cost $350 to have 400 copies mimeographed; we can

have it published in the *Weekly Notes* for $250, and distributed as well. You see, the cost of distribution of these things is also an item. But the *Weekly Notes* would be distributed automatically, and $250 would take care of all the solicitors in the province.

MR. FROST: Well, I think, myself, that that ought to be the first thing that we should do, in order to give this report wider distribution, so that we could get opinions from a wide range of people.

MR. ARNOTT: Well, I would make that a motion, because, after all, the legal profession is keenly interested in it.

MR. CONANT: I was just wondering—before we put that motion, Mr. Arnott—I was wondering if we couldn't accomplish all that is necessary, by more or less abbreviating some of the items that appear in this report. It occurred to me in reading it, that there is some material that does not add to it, and might well be left out.

MR. FROST: Well, you could send a copy of the interim report—I mean that is the summary of it, and it is a great deal shorter than the entire report.

MR. LEDUC: You mean this report?

MR. FROST: Yes, it is made up of an interim report——

MR. LEDUC: You have the summary, first.

MR. FROST: Yes, of course; but after all, that is very abbreviated, is it not? What you might do, you might take the summary of recommendations of the final report, on page two there, and following, pages three, four and five. If anybody is sufficiently interested to inquire, why, they might then look into the reasons.

MR. CONANT: Well, there is one thing we would have to do if we were sending out this report; we would have to give the page reference in the summary. I have it in my personal copy, and when you refer to the recommendations, those page references come in handy.

MR. FROST: Supposing we were to ask the County Judges to help us out in this matter, and, in order to save expense, ask them if they would meet with their lawyers in the various counties, and take up the report in that manner? I believe that the County Judges would be very glad to help out.

MR. CONANT: Well, it is entirely a matter of expense, gentlemen.

MR. FROST: I am inclined to think that if you print this report and send it out to everybody, it will be just another report that will go into the waste paper basket, or onto someone's shelves and remain unread. But if you can get consideration of it by the various law associations, either under the guidance of a county judge, or some other arrangement of that nature, that you would really get something done. To be perfectly frank with you, if you spent $250 and had this report printed in the *Weekly Notes*, it would be just a question as to how many people would read it and how much real consideration we would get from it.

MR. CONANT: I see your point. Let us look as this aspect of the matter. It occurs to me, as Mr. Frost quite properly said, that the work of this Committee is of interest to a great many other people and organizations besides lawyers. It has always run in my mind, that the purpose of having it printed in the *Notes* was this, that that distribution would be limited, almost entirely, to lawyers. These various organizations that we have listed here, even, would naturally not come in contact with it.

I would be disposed to have a rewrite of this report. There is a lot of filling-in here. For instance, when we come to the Rules of Practice, he quotes, *in extenso*, word for word, a lot of Rules. Well now, in the first place, the layman doesn't care anything about that, and in the second place, the lawyer should be able to pick up his rule book, if he is interested, and read that part.

MR. LEDUC: I am looking at this part, for instance: page 31, paragraph 1, "Rules of Practice and Procedure of the Supreme Court of Ontario in Civil Matters." Mr. Barlow gives the whole background of these Rules. Could not that be left out?

MR. FROST: Well, I don't think, if you are having it mimegoraphed, that the additional cost of that would be very much, would it? After all, for a person who is interested in this subject, Mr. Barlow's background and the history that he gives there is very interesting. And very helpful.

But rather I wonder if, after these four hundred copies were written, the stencils were destroyed, or are they still available?

MR. CONANT: What about that, Mr. Hood?

MR. HOOD: It is quite possible that they might still be available, but even at that, the cheapest way to have it done, for the number of copies that would be required, is the method that has been suggested, of having the report printed in the *Weekly Notes* and then have the publishers of the *Weekly Notes* run us off reprints from their type, to whatever number we require. We might buy a couple of hundred reprints of the report only, reprinted from the type that is in the *Weekly Notes*.

MR. LEDUC: Yes, you wouldn't need more than a couple of hundred to circularize these associations.

MR. HOOD: That is the cheapest way of doing it, at this stage.

MR. CONANT: Well, if it is agreeable to the Committee, then, even in its present form, or with some abbreviations, perhaps, we will try to find the funds to publish it in the *Ontario Weekly Notes*.

MR. LEDUC: I think you might arrange to have more than two hundred copies, because you have the law associations. What is the circulation of *Weekly Notes*.

MR. HOOD: 3,300.

MR. LEDUC: Well, if they printed 3,300 copies of the *Weekly Notes*, and then we would get extra reprints?

MR. HOOD: That's right.

MR. CONANT: Well then, gentlemen, are we in favour of the publication in its present form, or with some changes?

MR. LEDUC: Pardon me, I see here you have, in this memorandum, the Toronto Board of Trade, and the Ontario Association of Boards of Trade and Chambers of Commerce. They are all one organization, that I know of, the Associated Boards of Trade in themselves, but there are also some individual boards of trade, for instance, Hamilton, Windsor, Ottawa, which might very well be circularized also. Then there is the Mayors' Association, the Retail Merchants' Association.

MR. CONANT: Have we those down there?

MR. SILK: Not the Retail Merchants' Association.

MR. CONANT: Well, let us complete that discussion first. If it is agreeable to the Committee, we will endeavour to make the finances available, in some way, and we will publish the Barlow report, either in its present form or, if it can be abbreviated to some extent, in the *Weekly Notes*, and perhaps we had better have an extra 500 copies available for any purpose that may arise. Is that agreeable, gentlemen?

Carried.

MR. ARNOTT: Mr. Chairman, with regard to that abbreviation, I think we should settle that right now, because if it is abbreviated to too great an extent, you are going to have inquiries coming in about the report itself.

MR. FROST: I don't agree with that. In looking this report over, he has not put in much material which is not necessary to explain the various points. I think that he has it very well condensed now, and if we start taking out parts of it, the result will be that the saving would be trifling and you might destroy the continuity or reasoning of it. You see, he gives reasons, following his recommendations, of why he makes his finding, and he gives his authorities, and what not, and I think if you start to abbreviate, you would destroy the value of the distribution of this report.

MR. CONANT: Well, this letter of July 7th, 1939, we will deal with that. What should be done there, of course is, if you are going to publish that letter, there should be put in the letter all the correspondence that was discussed in the House.

MR. LEDUC: Is it necessary?

MR. CONANT: I was of the opinion that we should leave the whole thing out.

Carried.

MR. CONANT: Well then, we will publish the whole report, *in extenso*, and we will leave out the correspondence.

MR. HOOD: There is no use putting in those page references there, because the pages will all be different in the printing. They will simply have to refer to the sections of the report.

MR. FROST: That's right.

MR. LEDUC: I think that is sufficient reference.

MR. HOOD: Your paging will be entirely different in the printed copy.

MR. CONANT: Well, I found from experience, that without them it takes some time to find items in the report.

MR. LEDUC: Well, there is one thing that could be done. It would make it more expensive, but it would be to put after each item in the summary, the number of the page it refers to in the *Weekly Notes*.

MR. HOOD: That means an index will have to be prepared after the pages have been set up.

MR. LEDUC: "Cost of Juries," and so on and so forth, you could just put in parentheses, "page so-and-so."

MR. HOOD: That's exactly what the Attorney-General has in his copy. This index will be of no use at all; it will have to come out altogether.

MR. FROST: Would it be a very difficult matter, when this report is set up, to prepare, not a full index, but an index somewhat along the lines of that one?

MR. HOOD: It would simply be a matter of renumbering pages, that's all.

MR. FROST: Well, that shouldn't be a very serious difficulty?

MR. CONANT: Coming back to our first discussion, gentlemen, what is the view of the Committee as to whether we should communicate with these organizations? I will continue that discussion a little further. In the second memorandum, are set out possible subjects to consider. It would be desirable, if it is feasible, to allocate certain days for certain subjects, I should think, and if we sent out a letter to these organizations, it would be in the hope of getting a reply from them to the effect that they are interested in so-and-so, and if they then want to make a verbal submission, they would be advised of the day or date on which we were going to sit on that particular subject. If we don't follow some such line as that in so far as your verbal end of it is concerned, it would mean an awful mix-up, if we had, say, Grand Juries for a half hour, and then something else. But we could only follow that within reason. For instance, if a man came from North Bay, and he wanted to discuss something before the Committee which we were not dealing with that day, we could not say to him: "You go back home and come here next Wednesday." We would have to show some latitude.

Or would we get sufficient contact with everybody, if we were to publish a notice, say, in the trade journals, and daily press and law journals, and so forth?

MR. FROST: I would suggest this: that the Secretary should send out one of these additional copies of the Barlow report, for instance, to the Secretary of every law association, to every County Judge and to these people that you have named in this list, and ask them to give consideration to this report, and to call together people interested in the matter considered and submit, if they care to, written submissions, and if they would prefer to do so, to advise us of the names of any witnesses they think would be helpful, and the lines along which they would give evidence. If you do that, I think that you would get wide publicity, just as wide publicity as you can give it in any manner. And the solicitors for the Committee could sort over that and see what is relevant and material, and it would give us, I think, something to work on. And I think the best method to follow would be to have Mr. Barlow give evidence in the first place; this is his report, he has considered all this; hear him first, and then, arising out of what he said, you will get suggestions and objections from other people.

MR. LEDUC: I think we will have to hear him more than once, because it would be rather lengthy to get Barlow to give evidence on all these items at the same time. I think we should proceed with some recommendations and exhaust them as much as possible.

MR. CONANT: Well, of course, I am rather of the view, gentlemen, that the functions of this Committee are not necessarily supplementary to, or tied in with, the Barlow report. While the Barlow report is a very convenient and a very valuable guide, this Committee is not by any means confined by that report.

MR. FROST: No, but it provides an orderly way to proceed.

MR. CONANT: Yes.

MR. FROST: It provides an orderly way to proceed, and you have his opinion. I must submit this, that I am in disagreement with some of the things that he suggests.

MR. CONANT: So am I.

MR. FROST: And I suppose many of us are in disagreement with some things that he suggests. On the other hand, he has given his consideration to these matters, and we can get his views, and then get the views of other people, and so try to arrive at something.

MR. CONANT: What I had in mind when I made that remark, Mr. Frost, is this: I don't agree with you that we should send out to these organizations copies of the Barlow report, because by so doing we are probably indicating to them that we are going to review the report, and that that is the scope of our Inquiry. I would be in favour of sending out a notice to these organizations, pointing out the purpose of the Committee and stating to the persons and organizations, that if there is any aspect of the administration of justice in which they are interested, or want to make any submission, we would be glad to have their written submission, or hear their verbal submissions. Then, if that organ-

ization or person comes back and says: "We would like to have a copy of the Barlow report," we might send it to them.

MR. LEDUC: I think you might save time by sending it to them, and saying that the discussion before the Committee is not necessarily limited to the report, but that they may present other suggestions. Otherwise, there may be correspondence back and forth, and there may be a waste of time. You might just as well send it in the first instance, but draw to their attention that if they have suggestions to make which are not relative to the Barlow report, it's quite all right.

MR. CONANT: Well, then, we will send a notice to each of these organizations, a first memorandum, and such others as we may have before we adjourn, pointing out the purpose and scope of the Committee's work. Then, if they are interested in any particular phase of the administration of justice, we will be glad to have their submissions, in writing, or, if they wish to make a verbal submission, to so advise us, and we will let them know when they can do so. And we are enclosing a copy of the Barlow report for their convenience, pointing out that the deliberations of the Committee will not necessarily be limited to the subjects that are set out therein, and that they can make submissions either on the matters dealt with in the Barlow report, or on any other matters in which they may be interested.

MR. ARNOTT: I think it would be a good idea, Mr. Chairman, to set out the purpose for which this Committee was appointed, taken verbatim from the reporter's notes.

MR. CONANT: Yes, that can be put in, without all the introductions, and so forth; we can do that, yes.

And I will suggest, gentlemen, that Mr. Sharp will draft that letter as soon as possible, and he will mail a copy of the draft to each member of the Committee not later than to-morrow, and he will either approve of it or make any changes that he sees fit and send it along. Is that agreeable?

Carried.

Now, this memorandum No. 1, gentlemen ——

MR. MAGONE: Before you get away from the printing, sir, are you going to ask for submissions in a notice in the *Weekly Notes?*

MR. FROST: I think it would be advisable.

MR. LEDUC: Well, I don't know; if you ask that, you are liable to have every lawyer in the province making submissions.

MR. MAGONE: Or else a notice to the effect that the Association may be called on.

MR. LEDUC: Would it be better to write to each Secretary of each law association and suggest it to them?

MR. ARNOTT: That is what I suggest. I don't think we should put anything in there except the Barlow report.

MR. LEDUC: I mean, we won't refuse to consider any submissions to us from other people, but if you print this and sent it out to 2,700 lawyers, you might find five or six hundred of them wanting to make submissions.

MR. STRACHAN: Yes, five or six hundred might have an individual case to bring up.

MR. MAGONE: Of course, if you say nothing, are you going to get any response? If you said that the Committee is communicating with the association, and they can get in touch with the association ——

MR. LEDUC: I think it might be a good idea to print a statement that the Committee is communicating with all the law associations of the province, to get the opinion of their members and forward it to the Committee.

MR. CONANT: Would it not accomplish it more directly and easier if we printed, along with this Barlow report, a short notice, or request, or advice, whatever you like, that the barristers or solicitors desiring to make submissions should make them through their law association or law organization? I think that would accomplish all we need.

Carried.

Let us keep this in mind when we set this up for the *Ontario Weekly Notes*, Mr. Sharp.

Now, are there any names that you want to add to this list, gentlemen? As I say, this is not intended to be exhaustive, by any means. You mentioned the Retail Merchants' Association, Mr. Leduc.

MR. LEDUC: And the Ontario Mayors' Association, because they would be interested in the Inquests, and Law of Garnishee, and perhaps, other questions on this agenda.

MR. CONANT: The Retail Merchants' Association, and the Ontario Mining Association.

MR. LEDUC: Then I notice you have here, "Appeals from Boards and Commissions." I don't know if that includes the Workmen's Compensation Board; they might be interested in that.

MR. CONANT: I may say that second memorandum is really a very brief extract from the Barlow report. There are some things added. If we are going to consider No. 25 on page 2 of the second memorandum, of course, that means an enormous field.

MR. LEDUC: You can sit for seven weeks on that point alone.

MR. MAGONE: On the Workmen's Compensation Board alone.

MR. LEDUC: Yes.

MR. HOOD: There are some requests from individual associations in the file there.

MR. ARNOTT: I think the Police Commissions should be added to that list.

MR. CONANT: Police Commissions?

MR. ARNOTT: Yes.

MR. CONANT: Well, how many are there in the province?

MR. HOOD: Around 60.

MR. CONANT: Well now, just a minute. Police Commissions consist of judges, mayors and magistrates.

MR. LEDUC: And all the judges will have a notice.

MR. CONANT: They are all covered.

MR. SILK: And we have the Mayors' Association.

MR. CONANT: They are all covered.

MR. ARNOTT: And they have a Magistrates' Association.

MR. CONANT: Yes.

Are there any other organizations that you can think of?

MR. LEDUC: I see—"13, University of Toronto Faculty of Law." Are there any other universities with a faculty of law?

MR. HOOD: There are no other universities with a faculty of law.

MR. FROST: I don't think you have in that list the county associations.

MR. SILK: Yes, 28.

MR. LEDUC: Now, you have all Crown Attorneys, and all County Councils; what about local Registrars and local Masters?

MR. FROST: Some of them have very good ideas.

MR. LEDUC: We had a very good local Registrar in Ottawa, Mr. McGee.

MR. SILK: There is no local registrars' association.

MR. CONANT: You are speaking of local registrars of the Supreme Court?

MR. LEDUC: Yes, I mean, when you come to discussing the Rules, these men might be able to give us the value of their experience.

MR. CONANT: Yes, I think that is right; the local registrars are the clerk of the County Court too, are they not?

MR. SILK: We have the County Court Clerks' Association.

MR. LEDUC: No. 6. But they are in larger centres. I mean here in Toronto, for instance, there is a different division from Hamilton, and Ottawa, and Windsor, I believe. You might cover those that are not County Court Clerks at the same time; there are only a few of them, and they would be the ones with the most varied experience.

MR. CONANT: Of course, you are getting into the realm, there, of a large class of individuals.

MR. LEDUC: No, there will be a few of those, Mr. Chairman, but because most of them are County Court Clerks, and they are covered by No. 6, I suggest those who are not County Court Clerks should be taken individually.

MR. CONANT: Well, all right, local Registrars who are exclusively local Registrars.

MR. LEDUC: Yes.

MR. CONANT: Then you mentioned local Masters, did you?

MR. MAGONE: I think there are only about two in the province who are not County Judges.

MR. LEDUC: Yes, well they are at the same time local Masters, are they not? In Ottawa the local Registrar is the local Master as well.

MR. MAGONE: No, the County Judge is the local Master.

MR. LEDUC: I think McGee is local Master.

MR. MAGONE: Yes, he is.

MR. CONANT: I think it is far better to deal with organizations, because, human nature being what it is, there are some individuals you get in touch with, who think that it is their duty to unfold a lot of stuff that we will have to wade through, something that, perhaps, is of no value. If an organization sifts it first, then we've got what is of some value.

MR. FROST: I think myself that it is a good idea to deal, as nearly as we can, with organizations, for the reason that with organizations you cut down so much, the volume of evidence, and the number of witnesses; the only place I don't think we should cut down, if we can avoid it, is for the layman who wants to come here.

MR. CONANT: No.

MR. FROST: I mean with the layman who has no organization at all, and

has a lot of good ideas, possibly we should listen to him; but you take, for instance, the lawyers. I don't think there is any necessity to bring up every lawyer who wants to say something; surely he can make his representation through his own local law association, and he has the Ontario law association, and if he can't make his representation through them, why ——

MR. HOOD: I would just like to interject this, Mr. Chairman; you are going to run into a bad situation, if you throw a wide open invitation to laymen to come before your Committee. Judging from the material that comes into the Department, complaining of an individual situation of alleged injustices, if every Tom, Dick, and Harry who thinks he has had a raw deal wants to come in, why ——

MR. FROST: I agree with that, but I think that is one of the places where there should be a little bit of latitude—I mean about going outside of the organizations.

MR. CONANT: Just on that point, you touched a very important point there. While the proceedings before this Committee must be free and open, it is my desire, and the desire of the Government, and I think it is the desire of everybody here, that we should do this work with the minimum of expense consistent with making a real job of it.

MR. FROST: Surely.

MR. CONANT: We don't want to waste the time of this Committee listening to, well, pranks—there's no other word.

MR. LEDUC: The word is well chosen; I was going to say, there is no department that receives as many letters from pranks as the Attorney-General's Department.

MR. CONANT: That raises an important point. I don't want to be misunderstood when I say that, but I think we will have to set up some arrangement, so that Mr. Magone or Mr. Silk will see every witness before they come before the Committee. While their time is valuable, it is not as valuable as that of the whole Committee, and find out what it is about, and I think that you will have to allow them a certain amount of discretion, and if it is a pure prank, we cannot hear him, and that's all there is to it.

MR. FROST: I don't think this is the place to come and air personal grievances.

MR. CONANT: No.

MR. FROST: If you are going to deal with individual cases, you will never get through. We want to get this thing through, in a reasonable time, anyway.

MR. CONANT: Here, Hood gives us this case. Here is a man who writes in:

> "By reason of the heavy snow fall, it is now, and already for several weeks, impossible for me to reach the highway by car."

Now that is the kind of stuff you cannot consider.

MR. FROST: Oh, you can't consider that. If you're going to get into individual grievances, we'll be here 'til Kingdom Come. What has to be done in this thing is to limit this to broad general principles.

MR. CONANT: Yes. So, I think it should be understood that one of our Counsel will see every witness who wants to give evidence, and sort it out and if he is in doubt, he may speak to me, but as Mr. Frost says, we are dealing with general principles, we can't deal with individual grievances.

MR. LEDUC: Oh, no.

MR. CONANT: They are infinite in the number and the extent to which you might listen to them. Then, Mr. Sharp, you will make out a revised copy of this list of persons and organizations, and mail it to each of the members at once, with the additions.

MR. MAGONE: Mr. Silk suggests that there is a Builders' Association which is making submissions from time to time, with respect to mechanics' liens. I don't know the name of it.

MR. SILK: I will have to check on the name.

MR. CONANT: Well, we will add that one.

MR. LEDUC: I mentioned this before; what about the Ontario Associated Boards of Trade and Chambers of Commerce? I know there is one in the north part of the province.

MR. SILK: I don't know very much about that.

MR. CONANT: Yes, I do; I was a Director for some years.

MR. LEDUC: Do they include all Boards of Trade in the province?

MR. CONANT: Yes, they are a sort of clearing house for all boards of trade, and their membership consists of the Boards of Trade and Chambers of Commerce of Oshawa, Lindsay, and so on. Their Directors' Board consists of the Presidents of several of these Boards of Trade. They are a fairly representative body.

MR. HOOD: They have a permanent office in Toronto.

MR. LEDUC: Do they cover the north country?

MR. CONANT: That is the point.

MR. LEDUC: There is an association in the north-west part of the province, I forget the exact name, but ——

MR. CONANT: I think, Mr. Leduc, there are two organizations, when we come to think of it; there is one that functions at the head of the lakes.

MR. HOOD: That's right.

MR. CONANT: Then there is one in northern Ontario.

MR. HOOD: There is one in the Timmins, Kirkland Lake, Cochrane area, and another one at the head of the lakes.

MR. LEDUC: I think these two should be notified, and I might suggest, also, that the Board of Trade of the larger cities, like Hamilton, Toronto, Ottawa and Windsor, London and Brantford ——

MR. CONANT: We have the Toronto Board of Trade.

MR. LEDUC: But you haven't the other larger cities. If you notify the Associated Boards of Trade, I mean the Association, and send them one copy of the Barlow report, it won't be long before you will get a request from the larger cities for copies. You might just as well circularize them at once.

MR. SILK; There would just be five, altogether?

MR. LEDUC: Yes, I mean the larger cities.

MR. SILK: Windsor, Hamilton, Toronto, London, Ottawa.

MR. LEDUC: What about Brantford?

MR. HOOD: I wouldn't get down to Brantford; you're getting down to a smaller city, and you will have to send it to all the rest.

MR. CONANT: Yes, I think those five cities are sufficient.

Well now, this second memorandum.

MR. LEDUC: Before we leave that, is there a Lumbermen's Association, some association of lumber manufacturers or dealers?

MR. HOOD: Yes, there is a Lumbermen's Association, and a Coal Dealers' Association.

MR. CONANT: Is it province-wide?

MR. HOOD: Yes.

MR. LEDUC: Coal Dealers' Association?

MR. HOOD: Yes.

MR. CONANT: Well now, on this second memorandum here, gentlemen, I think I can correctly say that, with the deliberations we are likely to have here this morning, I doubt if you will have to subtract much from this memorandum. I mean, it's rather a large order to sit down to in an hour or a few minutes and cover the whole field, isn't it?

MR. ARNOTT: It's impossible.

MR. LEDUC: Isn't there some question that we might take up at the next meeting? Do you intend to sit to-morrow?

MR. CONANT: No.

MR. LEDUC: You have the intention of adjourning for several weeks, I suppose?

MR. CONANT: On that point my idea was, subject to what Mr. Strachan would say, that we would adjourn to about the second week in April, on Tuesday.

MR. LEDUC: I can't do it, because we may have the Timber Probe sitting, then.

MR. CONANT: Will you be sitting continuously, then?

MR. LEDUC: I hope so. What about sitting the first week in May?

MR. CONANT: It's getting pretty late, then.

MR. STRACHAN: I think, Mr. Chairman, that we should keep in mind the court sittings in Belleville and Lindsay; Mr. Arnott goes to court there.

MR. LEDUC: That would be the first week in April?

MR. ARNOTT: No, the first week in April would be all right, as far as I am concerned.

MR. CONANT: Well, I had hoped to sit all through April, as a matter of fact.

MR. STRACHAN: Yes, we would like to sit right through for some time, if we could arrange it.

MR. CONANT: Is there not this possibility, that—my own thought was that we start, say with the first Tuesday in April, sitting Tuesday, Wednesday, Thursday and Friday, through April; that would cover a certain amount of ground. The evidence would be extended, and, excepting for the contribution he would make while he was here, the absent member can get the whole thing from the evidence that is adduced. It will all be extended in due course. We won't be running a daily copy—I don't think that is necessary—owing to the cost of the machinery that would be set up.

MR. LEDUC: It is quite all right with me; you may sit, and, of course, I may not be able to sit with you all the time, and I am afraid, if we sit for two or three weeks, you will simply have to go ahead without me. But after all, there are four members of the Committee without me, which would be all right, I think.

MR. FROST: I think that, perhaps, we could arrange to work the sittings so that they would not conflict with your Timber sittings.

MR. CONANT: When will they start again?

MR. LEDUC: The 8th of April.

MR. CONANT: May I make this suggestion, that we adjourn to the 2nd of April, the first Tuesday in April. I don't think we can look far enough ahead to see exactly what will happen.

MR. LEDUC: Is there not some question we might take up on that date?

MR. MAGONE: Mr. Silk has brought this to my attention, that by that time we will have a number of briefs, and we will have them copied and indexed, and made for the books of the various members of the Committee. We won't be in a position to know what question can be discussed until we receive these briefs.

MR. LEDUC: No, but isn't there some question here that we may take up for preliminary discussion, or could we not ask Mr. Barlow, for instance, to come here and give us more extended views on certain matters, so that we will have something to go on with?

MR. FROST: Mr. Conant could give us some background as to how Mr. Barlow was appointed in the first place. This is as I understand it; Mr. Barlow was appointed to consider the administration of justice in Ontario, arising out of a long series of suggestions and complaints about costs and all that sort of thing. Perhaps Mr. Conant could tell us just how it arose.

MR. CONANT: Yes, I could give you the background of it, and it perhaps originates as a personal slant. I have felt, for some time, from actual practice, that our administration of justice was due for an overhauling, that we hadn't kept apace with what might have been done in England, or even in the other provinces, and I discussed it with Mr. Barlow. I finally sent out a request in the form of a letter—he wasn't appointed a Commissioner, it was simply a letter of request from myself. He heard some evidence, by way of verbal evidence, and statements, and he got a number of written submissions, and he made his report. His report is really his own individual opinion, based upon his experience, and based upon the submissions that were made to him, and it was never intended by me, at any time, as anything more than a guide to what might be accomplished.

Now, the Grand Jury matter is not new, in the sense that there isn't much Mr. Barlow can tell us about Grand Juries that we didn't already know ourselves. But his report brought it up again, and it was considered as a proper matter for legislation.

I have never seen him since this Committee was set up, but he will be glad to come here at any time that can be arranged, to work it in with his other duties, and elaborate on any of the aspects that he has dealt with here.

I think, myself, that it would be as well, as Mr. Leduc suggests, if we were to meet, say, on the 2nd of April, and start to deal with some particular subject, or some particular subjects, and concentrate our attention on that, and examine the submissions that are made, as they come along, in orderly fashion.

MR. LEDUC: We might perhaps start, I think, Mr. Conant, with 12 and 13.

MR. ARNOTT: Would not 14 have a bearing on that?

MR. LEDUC: Well, yes.

MR. CONANT: Well now, that is a large field for discussion.

MR. LEDUC: I suppose that will be taken up before we take up 19, for instance?

MR. CONANT: There is a big field of discussion in 15, "Division Courts." It is territorial, from the point of jurisdiction, and also there is the possibility of setting up a small claims Court. That would be a very engaging subject to start with, if we wanted to.

MR. LEDUC: And the Secretary might notify all these people, and these associations when he writes to them, that the intention of the Committee is to deal with such a matter at its first sitting. Because, otherwise, we will simply meet here, hear Mr. Barlow, and then the Secretary will have to get in touch with everyone who wants to be heard on a certain matter, and it will take a few days before they can be brought here, in some cases, and we will simply be marking time, waiting for them.

MR. CONANT: What if we were to start off with No. 15

MR. LEDUC: Yes.

MR. CONANT: And go from that into 12, and then say, 13 and 14. Take them in that order, 12, 13, 14, and 15, as a group? They are not unrelated, and they would fit together to make one line of consideration, would they not?

MR. LEDUC: Well, 14 might be left off for the time being, because that is only a matter of arrangement.

MR. CONANT: That is not very important.

MR. LEDUC: Yes, the main thing is the jurisdiction and scope of the Consolidation of the County Court and Circuit Courts. We might start with this; I don't suppose there is any use in touching on the Rules of Practice until we have dealt with that jurisdiction, the matter of jurisdiction first.

MR. CONANT: Shall we follow that procedure, gentlemen? Start with 15, and then deal with 12, 13, and 14? 14 is not a very large matter. We have considerable data on it now. I think I would like the Committee to consider it, because I am of the opinion myself that abuses have crept into the system. I think there is another member of the Committee also that has the same opinion.

MR. ARNOTT: That is correct.

MR. CONANT: Is that agreeable, gentlemen?

MR. FROST: I think that would be all right, as far as I am concerned.

MR. CONANT: Start with 15, then, and go on to 12, 13, and 14.

Well now, it seems to me that some of these topics may be eliminated as we go along, and others may be added. There is an aspect, I think we might as well consider at the present time, and that is this: the scope of the work of the Committee, of course, is broad enough to deal with Rules of Practice, in fact, everything.

Under the present set-up, the Rules of Practice of the Supreme Court are made by the Committee of Judges, and of the County Court also, is that right, Mr. Magone?

MR. MAGONE: Yes.

MR. CONANT: Yes, made by the Committee of Judges of the Supreme Court. Surrogate Court Rules are made by our—in practice they are formulated by the Surrogate Judges and made effective by Order-in-Council, is that right?

MR. MAGONE: Yes.

MR. CONANT: Now go on with your other Rules. Your Criminal Appeal Rules.

MR. MAGONE: The Criminal Appeal Rules are made by the Judges of the Supreme Court by virtue of the power given to them by the Dominion Parliament in the Criminal Code, and the Rules regarding Certiorari and Prohibition and others are made by the Criminal Judges in Supreme Court.

MR. CONANT: And your Matrimonial Causes Rules?

MR. MAGONE: They are made by the Judges, too, under the Matrimonial Causes.

MR. SILK: That is Provincial legislation.

MR. FROST: Doesn't Mr. Barlow recommend that all of those Rules should be gathered together under one book?

MR. CONANT: Yes.

MR. FROST: Which would seem to be a reasonable suggestion.

MR. SILK: Or at least provide Statutes giving authority to judges to make rules.

MR. CONANT: I raised that point for this reason. I think the Committee should know this: The last substantial revision of the Rules was made in what year?

MR. SILK: 1928.

MR. CONANT: It goes further back than that, does it not?

MR. SILK: No, that is the last edition.

MR. STRACHAN: There was a substantial one in 1913.

MR. CONANT: You're right, the 1928 was not a substantial revision, it was a reprint, but the last substantial revision of the Rules was made in 1913. Now, I have this feeling myself, you cannot proceed very far in improving the administration of justice, from the standpoint of simplification, of expediting, or of effecting economies, without very soon getting into the Rules of Practice.

MR. FROST: Do you think, Mr. Conant, that this Committee is really—perhaps the word competent is hardly correct, but do you think we are a proper Committee to consider a revision of the Rules of Practice? I doubt that, very much. I think myself, that what we should do is this: that if we feel that, for instance, the County Court, the Surrogate Court should be consolidated, then there is the County Judges' Criminal Court, if we feel there should be a procedure set up under one Court to do that, that we should make that recommendation, and then ask, for instance, a Committee of Judges to consider the matter of Rules of Procedure, and what not. To be frank with you, I have practiced for about 20 years, and I dont, by any means, consider myself to be an expert in any regard, in the matter of court procedure. Like most lawyers, I trust to God to help me out when I get into a tangle, and I suppose that is the way most of us do. After all, there are experts—Barlow, for instance—there are other experts—some of the judges are experts, some of them are not; some of them admittedly are not experts at all, but if we get into—you take for instance, here, in this report: the recommendations he makes here in connection with changing certain Rules, and what not—it seems to me that that might be—that those questions, instead of us getting into an involved argument here about it, and all of the different views, and what not, that if these suggestions were referred to a Committee of judges, such as made the revision in 1913, why—my idea is to simplify this thing. I can see this ——

MR. CONANT: I hadn't quite completed what I was going to say, Mr. Frost.

MR. ARNOTT: It would be up to the judges, then.

MR. FROST: Here is my suggestion; we are a Committee of five members; we have the assistance of these gentlemen here. It seems to me that our investigation should generally be limited to general principles in this thing.

MR. CONANT: Perhaps, if I complete what I was going to say, your interruption was quite all right, but you might have a slightly different view, if I finish what I was going to say.

Under our present law, the rule-making body are the judges of the Supreme Court. Now, personally, I think that that is an undemocratic arrangement, and it is not in keeping with our present structure of government. Because the judges, with all deference to them, are responsible to no person, and in the making of the rules, they can affect the rights of individuals in many cases, as much as legislation passed by the legislature. In many cases.

MR. FROST: Yes, that is true enough.

MR. CONANT: I am strongly of the opinion, myself, and I am going to argue

with the Committee when the time comes, that the rule-making body should be differently constituted from what it is to-day, somewhat along the lines of what they have done in England. In England, they have made a rule-making body with various ex-officio members; for instance, in Ontario, we might add the Treasurer of the Law Society.

MR. FROST: Well, Mr. Barlow mentions that, does he not?

MR. CONANT: Yes, we might have the President of the Ontario Section of the Canadian Bar Association. I don't know that that is the proper person at the moment, but something of that nature.

Now, if you have an organization of that kind, I would be perfectly content to leave the rule-making to that body, because you would have a more representative body, and you have a representative in that organization who has a different view-point from the constituted and appointed judges.

Now, I am going to go further than that. I have discussed this with the judges, a matter of three or four months ago, and they have had under consideration for some time, some revisions to the rules, and they gave me a copy of it. I am not optimistic that, as long as the judges alone constitute the rules, that they will go very far in what you might call reforms, or towards expediting the administration of justice. They are by nature conservative, and do not like to see changes. So there are two aspects of the matter. In other words, two methods of approaching it. One is this, and this is purely exploratory, just so that you know the situation. One is that this Committee might consider the constitution of the Rules Committee. I think that the present system for the construction of the Surrogate Court Rules leaves a lot to be desired, because we have no well-defined method for setting up our Surrogate Court Rules, have we?

MR. SILK: No.

MR. CONANT: There isn't anybody who is doing it here at all?

MR. SILK: No.

MR. CONANT: If the Attorney-General, I presume it is, feels that they should be made, he may or may not, consult the Surrogate Court Judges; he makes a recommendation to the Council, and they become the Rules; so there is no really definite, clearly defined method. If this Committee—this is just my own view—if this Committee should be reconstituted, it could very well leave to that Committee anything that this Committee felt that it didn't want to deal with. But if the Rules Committee is not to be reconstituted, then I think it is a matter for this Committee to consider and make such recommendations to the Rules Committee as it sees fit.

MR. FROST: Well, just off-hand my own opinion is this: that I rather agree with what you say. I think this: that the Rules Committee might very well be made up of certain Supreme Court Judges and certain County Judges—and I notice that Mr. Barlow suggests, here, that the Chief Justice should appoint four lawyers. Now, I think the appointment of four lawyers is all right, but I don't know just why it should rest with the Chief Justice.

MR. CONANT: No.

MR. FROST: That is the point which you raised. I think that that might well be appointed some other way. I think, for instance, that you might ask the Ontario Bar Association to appoint.

MR. CONANT: And the Ontario Law Societies.

MR. FROST: Or all the Law Societies to appoint or name four men who would be on that Rules Committee.

MR. CONANT: And I think also, to interject this, that the Attorney-General or a representative should be on that, because the Province ——

MR. ARNOTT: Yes.

MR. CONANT: —— it has to create and maintain the machinery. It seems elementary that the executive should be represented on that Committee, doesn't it?

MR. FROST: Yes. Personally, I think some method of that sort might be followed, and it would get away from all this business of us going into these Rules of Court. To be quite frank with you, I'll put all my cards on the table, face up; I'm no expert in complicated Rules of Procedure and I very much doubt if any of the gentlemen here will want to claim that distinction.

MR. CONANT: Well, I have raised the point at this time, gentlemen, because it is rather fundamental—and I just throw out this suggestion—that this Committee might consider it at a very early stage, taking into consideration and hearing representations regarding the constitution of those Committees, because if as an interim decision the Committee is going to decide that we recommend to the Legislature the necessary amendments for the reconstitution of the Rules Committee, that, so far as I'm concerned, would materially affect my attitude towards the details of the Rules. I think that is a logical position to take, whether it is right or not, whether you agree or not.

MR. LEDUC: What is done in the other provinces of Canada? Take Quebec, for instance. The Quebec system, of course, is totally different from what it is in Ontario. Here we have a very short Judicature and quite a large number of Rules; in Quebec they have the Act on Civil Procedure which contains matters that are dealt with by our own Judicature Act, and the Rules are absolutely insignificant. The Judges makes the Rules of Court, but they are very few in number and very unimportant as compared to the Procedure.

MR. CONANT: That is not the case here.

MR. LEDUC: No, that is not the case here. The Judges have very, very vast powers here. What is being done in the other provinces of Canada?

MR. CONANT: Well, I have the data on that. There are several of them that have constituted a Committee, as I recall it, along the lines that we generally discussed this morning, and I raised that point because it is fundamental and it

might well affect the whole course of our deliberations in that, as far as I'm concerned, if the matter comes before the Committee that is a matter of practice, and as the Board is constituted at present I would want to consider it, and I would want this Committee to formally make a recommendation of some kind, you see, and I would approach it from a different standpoint, if the Rules Committee were differently constituted.

MR. FROST: Well, I think myself that in the matter of Rules of Court that in there lies the key for the simplification of our Administration of Justice.

MR. CONANT: Why, certainly!

MR. FROST: I mean there is such a ——

MR. CONANT: Gentlemen, you can't proceed very far; this Committee might sit for six months, but you can't accomplish very much by way of simplification, expediting and economizing in National Administration of Justice without getting in the realm of Rules of Practice and Rules of Procedure. You're bound to, and I think it is so fundamental to our whole inquiry and to the Administration of Justice that we might very well consider commencing our deliberations on that note. I have not the slightest doubt that both Chief Justices and perhaps some of the other members of the Bar will be very glad to come before the Committee and give us their views—I haven't the slightest doubt of it.

MR. FROST: Why not put that on the agenda near the beginning? In fact, I think it might be considered.

MR. CONANT: What do you think, Mr. Strachan?

MR. STRACHAN: Well, I would be inclined to deal with that first. If that is going to be done and set up in different law-forms body, as the Chairman says, it would relieve us of a great deal of consideration, if we are going to get into the Rules of Procedure we might get into.

MR. FROST: One thing that impressed me very much in Mr. Barlow's report was, his suggestion that all the Rules of Practice, Criminal and Civil, should be consolidated in one volume. If you do that and you get a good consolidation Committee, a great many of the discrepancies between various Acts, like the Division Courts Act and the County Courts Act, would be discovered and simplified. I think that would be a very effective method of simplifying it.

MR. CONANT: Mr. Frost, that has been in our minds for a year, and the situation is this. When the Rules are reprinted and republished, as they have to be, I want to include in one volume, all the Rules of Practice for all the Courts. The Committee of Judges have made what can only be described as partial amendments or revisions of the Rules. I am, personally, of the opinion that they haven't gone nearly far enough to meet what I had in mind, and what I think the amendments at the present time require. I have succeeded in having their idea that the Rules should be reprinted, held up, pending the deliberations of this Committee, but before they are reprinted and reconsolidated in this one volume, I am strongly of the opinion that all the Rules should be thoroughly revised. Your Matrimonial Rules can stand to revision, your Criminal Appeal

Rules and certainly your Surrogate Court Rules require revision. Now, as far as I'm concerned, I would be quite prepared to put the formulation or revision of all the Rules in one rule-making body.

MR. LEDUC: Well, all right, when you come to that. Everybody, so far, has taken it for granted that there should be a Committee, either of Judges or Judges and Lawyers, responsible for making these Rules. Has any thought been given to consolidating these Rules and making them an Act of the Legislature?

MR. CONANT: Under the present laws they don't have to be an Act of the Legislature.

MR. LEDUC: I know, but I am here to study it.

MR. CONANT: I think it is wrong. I never realized it until I went into it six months ago, but in the present system, the Committee of Judges make the Rule to the Supreme Court, to the County Court, Matrimonial Court and Criminal Appeals ——

MR. LEDUC: Quite so.

MR. CONANT: —— and they promulgate them without any Order-in-Council, without taking them into the Legislature, without any contact with the Legislature or with the executive whatsoever. I think that is a wrong system.

MR. LEDUC: That is exactly my opinion.

MR. FROST: You mean to say they actually have powers of Legislature?

MR. LEDUC: Right.

MR. CONANT: Absolutely. I'm not saying that they have or would abuse that power, but fundamentally the principle is wrong. Now, when we constitute any organization you can think of, whether it is a medical organization or anything else, and give them power to make rules, they have to come back for a validating Order-in-Council. I think that is almost a universal case, isn't it, Mr. Magone?

MR. MAGONE: Pretty well, yes.

MR. CONANT: I don't remember any exceptions to that. Now, those Rules, set up by such special organizations, are not nearly as fundamental or as vital to our people as the Rules of Practice in all our Courts.

MR. LEDUC: That is exactly my opinion. Should these Rules be qualified and made an Act of the Legislature—be passed by the Legislature?

MR. FROST: I think that they should be confirmed by Order-in-Council before they become effective.

MR. CONANT: Yes.

MR. FROST: That isn't the case now, is it?

MR. CONANT: Oh no, not by any means, oh no! I think that the Committee, as Mr. Strachan said, may very well consider first on its agenda, the advisability of recommending to the Legislature the constitution of one rule-making body for the province.

MR. MAGONE: Of course, we can't deal with Criminal Appeal Rules or Rules regarding Certiorari.

MR. CONANT: No, those are expressed by the Criminal Code, but we can deal with everything else.

MR. FROST: Of course, those Rules are not so far-reaching, are they?

MR. MAGONE: No, they are simply Rules of Procedure, they are not like Rules of Practice which, as Mr. Leduc says, are really subject of law.

MR. LEDUC: I think we might well give consideration to that point, whether or not we should incorporate these Rules in our Judicature Act, or have a different Act of the Legislature and have the Legislature pass upon them.

MR. CONANT: Go ahead, Mr. Leduc.

MR. LEDUC: The power should be left to the Judges to make certain Rules for anything that is not provided for. But I think that all these Rules affect the rights and privileges of the citizens of this country. You mentioned, earlier in the discussion, that a certain system was not a democratic system; I think the most democratic way is to have the Legislative Assembly—the representatives of the people pass upon them.

MR. CONANT: Well, would it be agreeable to the Committee?

MR. LEDUC: I'm sorry Mr. Conant, but I think that before we start discussing the Rules of Practice, we might just as well discuss Judicial Reports.

MR. FROST: Well, I think that may be all right. Those items 12 to 15 may be considered, and following that ——

MR. CONANT: 27, gentlemen, is the subdivision we are discussing: "Rules of Practice Committee." It is very brief.

MR. LEDUC: What I mean is this: before we start discussing what Rules should be made and how they should be made, and so on and so forth, we should know to which Courts they shall apply. I think the first thing we should do is study the constitution of the Courts and then we can go into the Rules afterwards.

MR. FROST: Yes, perhaps that would disclose some of the discrepancies and overlapping, wouldn't it?

MR. LEDUC: Yes, exactly.

MR. CONANT: Well, I should, perhaps, go a step further, and this is my way of reasoning, or at least suggesting, that we should deal with this constitution of the Rules Committee at an early stage, because the Chief Justice—I think it was Mr. Justice Middleton wasn't it?—furnished me with a copy of the revisions, and as soon as this Committee was constituted by the Legislature, I saw the Chief Justice. I had not gone through the Rules very carefully, because they came to me while the Session was on, so when I saw the Chief Justice I said: "Now, as you know, the Committee has been constituted. I can't tell at this stage what will be the scope of the work; I would like you to just hold these Rules in abeyance until the Committee has functioned long enough to see whether we are likely to effect what you have done." Well, they evidently set their mind on July the 1st to make these Rules effective. I am quite sure that if this Committee considered this matter, and gave any indication that they might favour a reconstitution of the Rules Committee, that would effectually dispose the whole matter, otherwise, I would be embarrassed by the requests of the Judges to provide funds to reprint these Rules.

MR. LEDUC: But Mr. Chairman, suppose we decide on a change in the Rules Committee, or a different system of making Rules, this change would take effect only after the next Session. In the meantime, we can not interfere with the rule-making powers of the present Committee.

MR. CONANT: Yes. But Mr. Leduc, the present Committee wouldn't put these into effect if there was a reason to think there might be any change.

MR. LEDUC: I see. Well, I don't suppose it will take a great many days to consider these points 12 to 15, and we might proceed immediately after with the consideration of the Rules Committee and the Rules of Practice.

MR. CONANT: Well, that is quite agreeable. I mean to say, it won't affect the time factor very much, anyway.

MR. LEDUC: No.

MR. CONANT: So we'll deal with items 12 to 15, and subject to what may transpire, branch into 27, is that it?

MR. LEDUC: Well, 19 and 27 are supposed to be considered together.

MR. SILK: How about 26?

MR. CONANT: No, 26 is entirely a different matter. We'll deal with 12 to 15, and then 19 and 27, is that agreeable, gentlemen?

MR. FROST: Yes.

MR. LEDUC: 19 and 27 would be the second item on the agenda.

MR. CONANT: Yes. 12 to 15 would be the first item of the agenda, if I construe the wish of the Committee properly, and 19 would be the second, and 27 would be the third.

MR. LEDUC: Well, 19 and 27, of course, will have to be considered together.

MR. CONANT: Yes, quite; they are all very closely related.

MR. LEDUC: You have also 30, which is a matter of Jurisdiction Procedure.

MR. CONANT: Well, that is, of course, of hardly sufficient importance to constitute a separate item.

MR. LEDUC: No, no, no, but it would probably be discussed in connection with 19.

MR. MAGONE: That should not be in connection with Rules of Procedure, but particularly in connection with motor offences.

MR. LEDUC: Oh, I see.

MR. CONANT: That subject will come up if we discuss and seriously consider what I call a Small Claims Court. That is a necessary element in a Small Claims Court where you are setting up Courts, say, of a jurisdiction of $100.00 and allowing service by mail or by the plaintiff himself.

MR. FROST: I would suggest that this business of getting large service fees and what not for serving a small claim of four or $5.00 against some poor man who can hardly pay the four or $5.00, let alone the service, seems to be utterly ridiculous to me.

MR. LEDUC: Service by registered mail would be just as effective.

MR. STRACHAN: Do you think we should now consider whether we should give any special invitations? I mean in regard to the items we are going to consider first?

MR. CONANT: Well, your County Judges Association has covered all of 12 to 15—your County Court Judges will give you all the submissions you want on that, won't they?

MR. LEDUC: Well, the Law Societies may have suggestions to offer also, especially when we come to the Courts. I would suggest that the Secretary should tell them, when he sends notices, that the first item in the agenda is this, so if they want to give evidence or make representation they may do so.

MR. FROST: Well, for 12, I presume, the suggestion is that there should be a consolidation of these various Courts into one Court in each County?

MR. CONANT: Yes, or district.

MR. LEDUC: That is, you would do all your Court work before the County Circuit Court work before the County.

MR. FROST: Yes.

MR. CONANT: That is a matter, for instance, that Mr. Barlow might very probably, and with considerable value, give us his views on.

MR. LEDUC: I think we should hear him on the 2nd of April.

MR. CONANT: Now, regarding that Division Court. Perhaps I may be pardoned for telling the Committee on that Division Court and Small Claims aspects of the wide discussion with Judge Barton in town here. He has had considerable experience in Division Court, he might be able to give us valuable help on that. Who was it that discussed the possibility of Small Claims Court?

MR. MAGONE: It may have been Barton, but I wasn't present. Barton has been taking a lot of the Division Court.

MR. LEDUC: As to some of the Judges purely ruling all districts might have something very interesting.

MR. HOOD: There is the Division Court Clerks Association.

MR. CONANT: Yes, that's right. Well, Mr. Magone and Mr. Silk will have to work out who should be particularly contacted for that first item on the agenda, and on the second item, the Rules of Practice and the Committee. I should think both Chief Justices, Mr. Justice Middleton and Mr. Barlow, should be advised.

MR. LEDUC: Well, on that point of Division Courts I would suggest one ——

MR. CONANT: No, we're dealing with the other.

MR. LEDUC: Pardon me.

MR. FROST: 19 and 27.

MR. CONANT: Yes. Well, the Law Societies and Canadian Bar Association would be particularly interested in that, wouldn't they?

MR. STRACHAN: I think we might get the expressions and submissions from the counsels. I think we can leave that to the counsel.

MR. CONANT: Is there anything else before we adjourn?

MR. LEDUC: I would like to suggest, for item 15, one man in Ottawa, Joseph Constantine, who is the dean, I believe, of the County Court Judges, and he may have some suggestions. He has been sitting for 37 years in the County Court and Division Court bench.

MR. STRACHAN: And His Honour, Mr. Morrison.

MR. CONANT: Yes, I think we should have some of these Judges.

MR. LEDUC: There is no compelling, but if they want to be heard we'll be glad to hear them.

MR. CONANT: Yes, or make submissions. I think that very often you get just as much out of a wise submission as you can out of them coming here. I think you should make it clear in your letter that we'll be glad to consider written submissions.

MR. CONANT: Well then, we'll adjourn until April 2nd.

Meeting adjourned until April the 2nd, 1940.

SECOND SITTING

Parliament Buildings, Toronto,
April 2nd, 1940.

MORNING SESSION

Present: Hon. Gordon D. Conant, K.C., M.P.P., Attorney-General of Ontario, Chairman; Hon. Paul Leduc, K.C., M.P.P., Minister of Mines for Ontario; Ian T. Strachan, K.C., M.P.P.; Leslie M. Frost, K.C., M.P.P.; Richard D. Arnott, K.C., M.P.P.; Clifford R. Magone, K.C., Committee Counsel; Eric H. Silk, K.C., Committee Counsel and Secretary.

MR. CONANT: Gentlemen, at our last meeting, the organization meeting, we appointed the officials of the Committee, including Mr. Sharp as Secretary of the Committee. At the time, I overlooked the fact that Mr. Sharp was only loaned to the Law Clerks' Office for the duration of the Sessional work, and that he was due to return to the Treasury Department on April 1, and I would therefore suggest a new appointment, and take the liberty of suggesting Mr. Silk, whom we have already appointed to be associated with Mr. Magone. I think Mr. Silk can very nicely combine the duties of both offices, and I have a motion, by Mr. Leduc, seconded by Mr. Frost, that Mr. Silk, Legislative Counsel, be appointed Secretary to the Administration of Justice Committee in lieu of Mr. Sharp.

Carried.

MR. MAGONE: Mr. Chairman, at our last meeting, we outlined the procedure to be followed for the first week, and following that, sent a notice to a number of associations, advising them that we expected to discuss the Division Courts, the Consolidation of county and district courts, courts of general sessions of the peace, county court judges' criminal courts, and surrogate courts, County court jurisdiction, interchanging of judges in county court districts, the Rules of Practice, and the Rules of Practice Committee. I think it is now important that we should know where we are going from here, and that the Committee might outline the next order of business, so that we may know. That is set out in Memorandum No. 2.

MR. CONANT: Was there not a separate extract, setting out the things we were going to deal with first?

MR. FROST: I think, Mr. Conant, you are probably referring to the circular letter of March 11.

MR. CONANT: Well then, are you prepared to proceed with the items we were to consider first, Mr. Magone?

MR. MAGONE: We are ready to proceed with items, 15, 12, 13, 14, 19, and 27, but I would like the Committee to indicate what they wish to take up next, in order that we may be prepared for it.

MR. LEDUC: Would it not be just as well to take up the organization of the courts before the Rules of Practice?

MR. CONANT: Well, there is an observation that I think is pertinent to make at this time, gentlemen, and concerning which I would like to have the Committee's views, and that is this: when you contemplate the whole field of the Administration of Justice, and the improvement of the constitution, organization, and maintenance of the courts, facilitating, simplifying, expediting and otherwise improving the practice and procedure, effecting economy, which is the broad scope of our reference to a large part of it, it would be impossible to allocate any particular percentage or definite part as involved in the Rules of Practice, and, as one of the members of the Committee remarked at the previous session, it is doubtful whether this Committee should, or could, deal exhaustively and constructively with the whole matter of the Rules of Practice. And I think that we should, at an early stage, perhaps when we have dealt with the items 15, 12, 13 and 14, which do not particularly involve the Rules of Practice, and which can be properly considered without becoming involved in the Rules of Practice, I do feel that after we have completed that, we should hear all submissions that might be offered, and give consideration to this question of the constitution of a Committee for the making of Rules of Practice, having in mind this fact: that if a Rules of Practice Committee is constituted to accomplish what now has been referred to this Committee, then we could, and would, quite properly, leave to that Committee, the various items that have to do with practice, as distinguished from matters of legislation or general jurisdiction. That is my feeling, and in response to Mr. Magone's request for guidance, I would suggest that we instruct counsel that, after we have completed items 12, 13, 14, and 15, we should give consideration to the matter of constitution of such a Rules of Practice Committee, so that, if it is decided that the Rules of Practice Committee should be constituted in a way likely to meet the situation, matter of practice would be more or less isolated from the work and consideration of this Committee and left for that Committee to determine. Now that is only my own view. I would like to have the views of the other members on that point.

MR. FROST: Well, I am quite satisfied with that procedure. I think, too, that if we proceed, for instance, with item No. 19, that we might get Mr. Barlow's views in connection with that, and also of others as well, and I think, possibly, after so doing, we might come to some conclusion on the matter, and probably leave that out for further consideration later on. I do not think that we are competent to make rules, or suggest changes in the rules. I think that is a matter for a Committee of experts. I agree with you, Mr. Attorney-General.

MR. CONANT: Is that agreeable to you, Mr. Strachan?

MR. STRACHAN: Yes.

MR. CONANT: Very well; we will proceed then, Mr. Magone, and until your submissions are completed, with items 12, 13, 14, and 15, and then we will deal exhaustively and more or less finally with the question of the Rules of Practice Committee, which encompasses items 19 and 27 of your original agenda.

I quite understand, and the members of the Committee do, no doubt, that in considering items 12, 13, 14, and 15, some references may be made to the Rules of Practice, but I think it is the wish of the Committee that, so far as is practicable, that your submissions should be confined to these items, 12, 13, 14, and 15, leaving, so far as is practicable, and so far as is convenient, all the submissions on the Rules of Practice and Rules of Practice Committee for continuity of submission.

MR. MAGONE: Yes. Mr. Chairman, I had intended, this morning, to ask Mr. Barlow to come here and give evidence; also, last week I wrote to Sir William Mulock, and sent him a copy of Mr. Barlow's report, and asked him if he would indicate when it would be convenient for him to appear and give his views to the Committee. I received a letter from Sir William saying that he would be here at ten-thirty, but I think that, while we are waiting for him, we might ask Mr. Barlow to give us his submissions.

MR. CONANT: All right. I have only this observation to make in connection with that. While I am sure we are all glad and anxious to hear Mr. Barlow, we want to arrange his hearings, as far as possible, to meet his official demands on his time, and I think that should be kept in mind. Mr. Barlow is a very busy man. And subject to that, of course, we are glad to hear from him at any time.

MR. MAGONE: I think we will be able to arrange that, Mr. Chairman. We might take Mr. Barlow one day a week, or half a day a week, and fill in the rest of the time with submissions from other sources.

MR. MCCARTHY (Treasurer, Upper Canada Law Society): Mr. Chairman, on behalf of the Law Society, may I take this opportunity of assuring you, sir, and the other members of your Committee, of our co-operation in the work that you have undertaken. I may say that Convocation as a whole, went over Mr. Barlow's report, and we have had the benefit of having the Judges' recommendations before us. At Convocation we dealt with the report clause by clause. There were certain suggestions which we felt we were not in a position to deal with at all, and as to which we made no recommendation. On others, we thought we could speak for the profession as a whole, and we have made certain recommendations. Mr. H. Percy Edge has been retained by the Law Society to attend your Committee sittings, and to report to us from time to time.

If, at any time, you wish any member of the Benchers or of Convocation to attend, or to assist you in any way, I am able to give you their assurance that either myself or the Chairman of Convocation, Mr. Mason, will be here, on any occasion you may wish, to assist you in any way.

With regard to the matter on which you spoke just now, Mr. Chairman, that is the Rules of Practice Committee, we felt as you do, and made no recom-

mendations with regard to the Rules, because we felt, as you do, that the members of the Rules of Practice Committee are the people who should deal with the rules, and as soon as that body is formed, we would be glad to co-operate with them. But that would involve, of course, an amendment to The Judicature Act, which could not be accomplished until the next session of the Legislature, because, under The Judicature Act as it stands at present, the revision of the rules is in the hands of the judges. But once a Rules of Practice Committee has been formed, and The Judicature Act amended to provide that, you have our assurance, Mr. Chairman, that we will be glad to sit in with you and assist in any way we can.

I am authorized to say this, that, in so far as the suggestion that Mr Barlow makes is concerned, that is that there should be a change in the Rules of Practice Committee, we are heartily in accord with Mr. Barlow's suggestion. In other words, Convocation thinks that the members of the Bar should be represented on that Committee.

Mr. Edge will be here throughout the sittings, and any time you want either myself, or any member of our Committee, of which Mr. Mason is the chairman, we will be glad to assist you and attend at any time.

MR. CONANT: I am sure, Mr. McCarthy, and I think I speak for the Committee, we appreciate that attitude of the Law Society, and I think it would be well to take this opportunity to say that the purpose, and the hope, of this Committee, is to be constructive. We are not here to destroy old forms without building something better. And that can only be accomplished by the fullest co-operation of all the sections, classes, and vocations that are concerned with the Administration of Justice.

We are nothing much more than a "clearing house" for ideas. It is my own conception of our function, to take the ideas and the views that are expressed, to sift them, to arrange them, and to express to the Legislature our conclusions from those views. That, as I say, is my own conception of our function.

And we certainly appreciate the attitude of the Law Society, and, undoubtedly, we will call upon you—I hope not too frequently—but at any rate fairly frequently, for assistance and guidance.

MR. MCCARTHY: We will be glad to be of assistance, Mr. Chairman. Mr. Edge will represent us during the sittings, and he will be in communication with us at any time you see fit to have him do so.

MR. CONANT: Thank you, Mr. McCarthy. I see Mr. McKenzie here, also.

MR. K. F. MACKENZIE, K.C. (Ontario Section, Canadian Bar Association): Mr. Chairman, I am here on behalf of the Ontario Section of the Canadian Bar Association, to express the same sentiments on behalf of the lower class of the Bar that Mr. McCarthy has expressed on behalf of the Benchers.

We will be glad and are anxious to assist this Committee in its work. The feeling of the Ontario members of the Canadian Bar Association is that this is a most important Committee, and that it is desirable, and, in fact, necessary, that the cost and time consumed in litigation should be cut down. I personally

will be glad to co-operate in any way, and any member of the Council of our Association will be glad to co-operate. If Mr. Magone wants any member of the Council, or any person not covered by Mr. McCarthy's undertaking to come here and assist and give his views, I will gladly come myself or procure them to come.

MR. CHAIRMAN: Well, I am sure the Committee is pleased to have Mr. MacKenzie come here and express those views. With all respect to other classes, I am sure the lawyers can and should be the most helpful in assisting us to plot a course in order to achieve that which the Committee has been instructed to achieve. And it is only with the co-operation of the lawyers that we will succeed, and the Committee certainly will appreciate any assistance they may give.

It does not necessarily follow that the individual members of this Committee, or the Committee collectively, will agree with all the views that are expressed, but that is not a reason why the submissions should not be made, for such disposition as the Committee might see fit.

MR. MACKENZIE: I might add, Mr. Chairman, the Bar has not made recommendations with regard to these matters, because there is divergence of opinion on a great many subjects, and we do not feel that we should put before you, as views of the Bar Association, something that wasn't unanimous, but that does not mean that we are not glad to assist and give our views, and produce people who will give their views, on either side.

MR. CONANT: Well, we will have to try to act as judge and jury, and sift them out, Mr. MacKenzie. Thank you.

Mr. Gale, have you anything to say?

MR. G. A. GALE: Yes, Mr. Chairman, perhaps at the risk of being impertinent, in view of the representations already noted, I should say that, when you asked Mr. Barlow, in the first instance, to survey this question, a Committee was formed of the members of the Young Lawyers' Club, of which I was elected Chairman, to co-operate with Mr. Barlow, and during the course of his survey we did make a submission, in writing, to him, and subsequently conferred with him on these matters.

The Committee has been instructed, by the Lawyers' Club, to continue in office during the sittings of this Committee at the present time, and I would like to offer the co-operation of the Lawyers' Club, and of this special Committee. We will endeavour to be present at all sittings, and to render whatever aid the Committee feels we might render.

I may say that, as you know, sir, the Lawyers' Club is perhaps the only official representation of the younger lawyers of Toronto.

MR. CONANT: We appreciate your offer of co-operation, Mr. Gale. And I don't think you should offer any apologies for representing the younger lawyers. I think they are just as entitled to their views as the older talent.

Now, Mr. Baker, have you something to say?

MR. BAKER: Yes; I am not appearing for a lawyers' group, but rather for those for whom lawyers act; the Property Owners Association of Ontario. Our membership is made up of some 35 groups, including building companies, real estate companies, loan companies, trust companies, etc., and we are interested in the consideration of mortgage laws. We are the ones who have to take such actions, and, unfortunately, on many occasions, the matter of expense is an important consideration, and I think that that expense may be reduced, and we hope that this Committee may give us some assistance in this respect.

I will be glad to give you any assistance that I can, or to obtain any information you may wish at any time. I expect to be on hand at least during the time the Mortgage Act is being discussed.

MR. CONANT: Thank you, Mr. Baker. Mr. Laidlaw?

MR. LAIDLAW: I represent the Real Estate Boards, sir. I was very much interested on receiving a copy of Mr. Barlow's report and an invitation to attend, and while I have not had an opportunity of consulting the Real Estate Boards with respect to recommendations, I am quite sure that the members will be very glad to co-operate in every way they can, and give any assistance possible in connection with the procedure in regard to mortgage actions. We are also very much interested in No. 24, "Appeals under The Assessment Act" as to which there has been a long standing feeling of injustice under the recent system, as is so clearly set out in Mr. Barlow's recommendations.

I will be glad to attend and give whatever information we can, if we are kept informed as to when those particular subjects will be considered.

I may add, we are having the convention in London two weeks from to-day, and we will take the opportunity, at that time, of getting the views of the representatives of real estate dealers and brokers from one end of Ontario to the other, and I hope we will be able to present some recommendation to you as a result of it.

MR. CONANT: We will be glad to have your submissions, Mr. Laidlaw. Mr. McDonagh?

MR. MCDONAGH: Mr. Chairman, I am not representing anyone, except perhaps one who is interested as a member of the Bar and as a Division Court Clerk.

MR. CONANT: Perhaps Mr. McDonagh will give us some suggestions when we come to these first four items, Mr. Magone.

MR. MCDONAGH: Yes, I am to co-operate with the Committee.

MR. CONANT: May I, at this stage, make this observation, gentlemen: of course, a work of this kind must be organized and kept in hand, and I would ask you to get in touch with Mr. Silk or Mr. Magone regarding anything that you want to bring before the Committee, and as briefly as possible submit to them what the matter is and the nature of it.

I think it is proper to make this further observation: that it would be impos-

sible, in the space of time that is at our disposal, and in anything short of several years, to cover the whole field of law reform. It is a vast subject, that practically knows no end. It is my view that the Committee will direct its attention to those matters with what might be called a more urgent or more obvious need, without endeavouring to exhaust the entire field. And that leads to the further observation that the submissions should be of a nature general in their application. I had an example of what I don't mean, in that connection, in a submission that was made a few days ago, which was a special plea on behalf of a special and a very limited section of the community. Mr. Magone knows the submission I refer to.

We cannot deal with all the individual and small sectional grievances in the province. That is not possible, and I ask and suggest that the submissions be more general, and have to do with the whole and larger field of the Administration of Justice, rather than with that of a small or particular class of the community, whether it be related to the lawyers directly or to any particular business organization.

Very well, Mr. Magone. You may proceed.

MR. MAGONE: I am calling Mr. Barlow first.

F. H. BARLOW, K.C., Master, Supreme Court of Ontario.

MR. MAGONE: Now, Mr. Barlow, will you kindly turn to page 33 of your report, dealing with Division Courts. Now in your recommendations, you suggest that:

1. That in place of the Division Court there be set up a small claims Court as a part of our County Court system, with a jurisdiction limited to all claims not exceeding $100.00, except those set out in sec. 53 of the Division Courts Act together with replevin, trover, interpleader and any other complicated proceeding (which latter should be named).

2. That the procedure be simplified;

3. That all services be made by registered mail;

4. That a procedure be adopted to enable a Judge to deal with contested matters in an informal manner;

5. That the fees be paid on a lump sum basis of $2.00 for claims not exceeding $50.00, and $3.00 in other claims, one-half thereof to be refunded where the claim is settled or paid before judgment;

6. That the territorial limit of the Courts at present existing be abolished and that the jurisdiction be made county-wide;

7. That claims exceeding $100.00 now dealt with in the Division Court be placed within the County Court jurisdiction;

8. That the County Court practice and procedure be applicable to the same,

except that claims not exceeding $300.00 go to trial on a specially endorsed writ and affidavit of merits without a jury, and without an examination for discovery unless otherwise ordered by a Judge; that such cases be placed on a separate list for trial; and that a reduced tariff of counsel and solicitor's fees in such actions be made applicable thereto.

Now, Mr. Barlow, would you explain what mechanics would be involved in that? Would it be a repeal of The Division Courts Act and an amendment of The County Courts Act?

WITNESS: Well, in my opinion the present Division Courts Act should be repealed regardless of what is done, because the present Act is based upon The Division Courts Act that was passed in 1850, and has, since that time, merely had additions made thereto, until it is probably the most complicated piece of legislation that we have on the statute books; instead of being simple and direct, as a small debts court should be, so that the individual might be able to know, without difficulty, the procedure, it is next to impossible for him to know anything about it. And so, regardless of what is done, I certainly would repeal the present Division Courts Act. I would simplify the whole Act.

Q. Well now, in England, they have no such thing as a Division Court, I understand?

A. No.

Q. The jurisdiction now exercised by the Division Court is in the County Court?

A. Yes.

Q. I understand, too, Mr. Barlow, that in England they have certain County, Borough and other Municipal Courts, which are presided over by Justices and Recorders, who have jurisdiction in small claims?

A. Who have jurisdiction in small claims, yes, and they have a practice similar to that in the Province of Quebec.

MR. CONANT: Would you mind repeating that?

MR. MAGONE: In England there are small debt courts, in some cases called Borough Courts?

WITNESS: Called Borough Courts, yes.

Q Yes, and other Municipal Courts and Parish Courts, presided over in some cases by Justices, Magistrates and Recorders, who have jurisdiction over small claims?

A. Yes.

Q. They differ in different parts of England, I understand?

A. Yes, it is all drawn up as a matter of custom, I believe.

MR. CONANT: Mr. Magone, is it your intention to cover at this time a general survey of several jurisdictions?

MR. MAGONE: Yes, I just want to go through some of the small debt acts of the other provinces.

MR. CONANT: All right.

MR. MAGONE: In Alberta, I understand, there is a Small Debts Court presided over by a Magistrate, with a jurisdiction of $100.00?

WITNESS: Yes, I believe so.

Q. And in British Columbia?

A. Yes, they have a small debts Court there; I don't know what the jurisdiction is; you may know.

Q. I understand it is $100.00.

A. $100.00.

Q. And it is presided over by a stipendiary magistrate.

MR. LEDUC: You have all these statutes, I suppose, Mr. Magone?

MR. MAGONE: Yes.

MR. CONANT: And these sheets are the summary?

MR. MAGONE: Yes, sheets 59 to 69 are the summary.

Q. Then, in Manitoba ——

MR. CONANT: Now on sheets 60A you have: Small Debts Recovery Act, No. 39—what jurisdiction is that?

MR. MAGONE: That is Manitoba.

MR. CONANT: All right.

MR. MAGONE: And the Manitoba court is presided over by a Justice of the Peace or Magistrate with a jurisdiction up to $100.00?

WITNESS: Yes.

Q. Then there is a similar Court in New Brunswick, called a Parish Commissioner's Court, with jurisdiction, in debt, up to $80.00, and in actions of tort to $32.00, and in addition to that, apparently, there is a Justices' Court, with a jurisdiction, in debt, up to $20.00, and in tort to $8.00?

A. Yes, that goes away back, prior to Confederation.

Q. In Newfoundland, I believe, there is a small debts court, Mr. Barlow, with a jurisdiction up to $200.00, trial by a stipendiary magistrate or two justices of the peace?

Q. And in Nova Scotia there is a small debts court called a Municipal Court, in which the stipendiary magistrate has jurisdiction up to $80.00 or one justice of the peace up to $20.00?

A. Yes.

MR. FROST: Actually, Mr. Barlow, in these other jurisdictions, is that a sort of parallel system to our Division Court system?

WITNESS: It takes care of practically the same claims, at least it takes care of the small claims, I should say. You see, our Division Court system, here, takes care of claims from $1.00 up to, in certain instances, $300.00, and I think, in some of them, $400.00.

MR. LEDUC: $400.00, yes.

WITNESS: Yes, but in these other jurisdictions, where they are presided over by a magistrate, I know of no instance—well there may be one instance there—where they go over $100.00. Most of them are under $100.00, and even in the Province of Quebec, which Mr. Magone hasn't mentioned, magistrates try up to $100.00 there.

MR. CONANT: Well, Quebec isn't on these sheets, can you tell us briefly what the system is there?

WITNESS: Well, Mr. Leduc is probably more familiar with it than I am.

MR. LEDUC: No, I have been out of touch with the Quebec system for a number of years.

WITNESS: The jurisdiction is up to $100.00 and the trial is before a magistrate and not a judge.

MR. FROST: In that event, they would have some civil machinery that would operate in conjunction with the magistrates?

WITNESS: Oh, yes, they have the same—at least I wouldn't say they have the same as we have here, but a simplified procedure by which a claim is put in to the magistrate, and notice given of the claim, and then it comes up for disposition by the magistrate.

MR. MAGONE: As I understand it, Mr. Barlow, the order of procedure is to apply for a summons to the magistrate, in the same way that one applies for a summons in a quasi-criminal matter?

MR. LEDUC: I don't think that is the procedure. I believe they issue writs the same as in the higher courts. I believe that is the method of procedure there.

WITNESS: Yes, we have a procedure here, by which small wage claims may be collected by the magistrate by the issuance of a summons.

MR. CONANT: Well, there are other examples; for instance, deserted wives.

MR. FROST: Yes, deserted wives.

WITNESS: But that is all the same type of procedure.

MR. MAGONE: Well then, just to complete this list that we have here, there is a similar court in Prince Edward Island, presided over by a magistrate?

WITNESS: Yes.

Q. What the jurisdiction is there, I am not sure.

A. I haven't looked it up.

Q. It is called the Municipal Court, there, and in Saskatchewan, they have a Small Debts Recovery Act, with a jurisdiction of $100.00

A. That is part of the district court out there, is it not?

Q. It is the Small Debts Recovery Act, a separate Act, and it is presided over by a justice of the peace. Now, Mr. Barlow, in most of those jurisdictions where they have this small debts recovery, in districts travelled by magistrates, it is usual for the complainant or plaintiff to apply to the magistrate for a summons, and attach to the summons a copy, a simple copy of the claim in writing, is that right?

A. That is the way it is done, and that is also the way it is done in our Division Courts here, a claim is attached to a summons, which the Division Court issues.

Q. Then in some of the jurisdictions, the summons that the magistrate issues may be served, in some cases, by registered mail, and in others by the plaintiff or any other person?

A. Yes, certainly.

Q. It is the exception, where it must be served by a constable, I understand?

A. Well, I m not sure of the practice in other provinces with reference to service, Mr. Magone. The special Act will show, though. I know that where they have set up small debt courts in different states of the Union, that service there is practically always by registered mail.

MR. CONANT: Perhaps it should be explained, for the benefit of the gentlemen who have graduated from Division Court practice, that under our Division Court of Ontario, all process must be served by the bailiff, is that not correct?

MR. MAGONE: That is correct.

WITNESS: All process must be served by the bailiff, and he gets 20 cents a mile, whereas the Sheriff, for serving Supreme Court writs, gets 15 cents a mile.

MR. FROST: I think service may be made by leaving it at the residence, is that not so?

MR. CONANT: Well, that is not peculiar to Division Courts.

MR. FROST: No, I suppose not, but it seems to me, in Division Court, under a hundred dollars—

WITNESS: Yes, under a certain amount, Mr. Frost, I think probably you are right. I don't know about that. Mr. McDonagh will know all about that.

MR. MAGONE: Well then, Mr. Barlow, in your report, did you consider a small debts Court, constituted in the same way as that in the other provinces?

WITNESS: Well, I don't know that I should, perhaps, express an opinion on that, Mr. Magone. My thought had not been that jurisdiction should be taken away from our County Court, just that they should preside in even the small debt Courts that would be established as part of our system. Because it has been the practice, for so many years, here, that judges do preside, and I think, for the better administration of justice, it would be better continued in that way.

Q. It would place a tremendous burden on the magistrates?

A. It would place a tremendous burden on the magistrates, which would probably mean the appointment of double the number you now have. But I think, so far as the public generally are concerned, they would feel that they were much better protected, if the practice continued to have the County Judges preside in Division Courts.

MR. STRACHAN: In Toronto, our magistrates couldn't cope with it. They try nearly a hundred thousand cases a year now, in our magistrates' courts, and, as you say, we would have to double their number.

WITNESS: Of course, you must remember this, Mr. Strachan; that if a small claims Court were set up, with a jurisdiction not exceeding $100.00, it would cut out a certain proportion of cases, although I don't know what proportion it would be.

MR. MAGONE: We can get the number of cases later.

MR. CONANT: I was going to make the observation: that, in our Province, if you were to shift this jurisdiction to the magistrates, it would mean a revision of our whole judicial economic structure, in the sense that by and large, your County judges have not got the demands of work on them that the magistrates have, and you would be relieving one branch of the judiciary which can quite easily take care of it, from the standpoint of their volume of work, at the expense of another branch which, I think equally so, is fully burdened with work.

WITNESS: And there is another thing to remember, Mr. Chairman, and

that is this: that even though a Division Court case may involve less than $100.00, the same involved points of law often times arise that arise in the larger cases, and the same consideration should be given to it. And if you have a county judge, who is dealing with matters of that kind all the time, he is much better qualified to give service to the public generally, than a magistrate, who is not, and cannot be, as efficient.

MR. CONANT: Is there any constitutional aspect of it, Mr. Magone?

MR. MAGONE: There is nothing involved. We now appoint the Division Court judges by statute, at least we appoint a County Court judge as Division Court judge; the appointment rests with the province. The other provinces all appoint the magistrates to preside over these small debt courts.

MR. STRACHAN: That is every County Court judge is a Division Court judge too?

MR. MAGONE: Yes. But, in your experience, Mr. Barlow, the County Court judges are not overworked, outside of Toronto?

WITNESS: Well, I wouldn't say outside of Toronto; I know they are certainly overworked in Toronto and in certain other jurisdictions. I will leave them to speak for themselves as to that.

Q. I am talking generally, with respect to this jurisdiction they have, if this work were taken away from them, it involves a substantial part of the work of the County Court judges?

A. Oh yes, the ordinary County Court judges, throughout the Province, aside from the larger cities, have sufficient time to take care of it.

Q. Yes.

A. And, in fact, many of them are asking for more work.

MR. FROST: Mr. Barlow, may I ask you this: in connection with this small debts court that you refer to in this section of your report through your recommendations, would your idea be that that small debts court should, taking for example the counties of Peterborough, or Hastings, or Victoria, that it should sit at various places throughout those counties, or that it should be confined to the county town?

WITNESS: No, I would not confine it to the county town, necessarily, Mr. Frost. My idea would be that where you make a change, your change should be, shall I say, as little felt as possible. My thought is that the present Division Court setup should, perhaps, be left very much as it is at the present time, but that these Division Courts could only try these claims up to $100.00, and the result would be, inevitably, that instead of having, as we have, ten or twelve in some of the counties, that they would gradually disappear, and you would bring in everything else into your county town. Now, with modern means of travel, with the exception of a few counties, I don't see why any matter that involves more than $100.00 should not come to the county town, and if it does

come there, it is going to help in many ways. Namely, the county judge is going to be at home, instead of off ten or fifteen or twenty miles for the day. He is going to be there, available for Surrogate work, promotions, for any matters that arise in the County Court and Surrogate Court, as well as in the smaller court.

Q. Perhaps, as far as the public is concerned, there wouldn't be any real saving, at the moment, for the reason that you would still have to employ your Division Court clerks, the bailiff, and so on.

A. There would be a saving in this way, Mr. Frost; that gradually the work of courts would be so small ——

Q. Of course, is it not happening now, Mr. Barlow? Mr. Magone, without actual figures, is there not a reduction in Division Courts at the present time?

MR. MAGONE: We will get that from the Inspector, Mr. Frost.

WITNESS: I don't know, I am sure.

MR. FROST: Well, the point is this, that a Division Court would be limited, according to your suggestion, to a claim of $100.00?

WITNESS: Yes, approximately that.

Q. Of course I think you would find that, if you were to put that limitation on the Division Courts, you would automatically abolish them, because you may say that is a public improvement, but the minute you do that you abolish them, for the reason there would not be sufficient business.

A. Well, perhaps that is a good thing, to bring everything into the county town. That is the very thought I had, behind it.

Q. Well, take Simcoe County, for instance; they have the town of Barrie, which is the county town; then you have the town of Orillia, which is larger than Barrie, 30 miles away; you have the town of Midland, the town of Collingwood, and so on. Now it does seem to me that if you make it that claims involving more than $100.00 should be taken away from Orillia, Midland, and Collingwood and taken down to Barrie, that that may seem more radical than at first would appear.

A. Oh, it is.

Q. You might for the same reason say that the $500.00 claims should not be taken to Barrie, but there has never been any difficulty about it.

A. Yes, but are there not more claims, for instance, under $500.00?

Q. Oh, I suppose that is true. I mean, I must admit, that I think that in these recommendations you have made, there is a great deal of common sense. For instance, take the example you give at the bottom of page B34, about a judge going to a certain place, and there being no cases to try when he arrives,

and the clerk of the court gets $4, the bailiff $4, the stenographer $8, and the judge $6, with mileage of $3. It doesn't look right, I agree with you.

A. No, and that is going on all the time.

MR. LEDUC: Yes, or the judge goes down for one case, and the defendant doesn't show up.

MR. CONANT: In other words, you have a cost of $25, and no cases.

WITNESS: Yes.

MR. ARNOTT: Would it not be a simple matter, Mr. Barlow, for the Division Court clerk to notify the Judge that there weren't any cases to be tried that day?

WITNESS: Quite true, Mr. Arnott, and many of the judges have that arrangement that they shall be so notified.

MR. CONANT: Have they not all?

WITNESS: His Honour, Judge Coleman, tells me that he always finds that ——

MR. CONANT: Have they not all that arrangement?

WITNESS: I would gather not.

MR. FROST: Well, of course something may be devised to take care of that situation.

MR. MAGONE: Mr. Barlow, there are abuses of the system?

WITNESS: Apparently there are, yes.

Q. Is it not a fact, Mr. Barlow, that the County Court Judges' Association have asked for increased jurisdiction?

A. Yes, they have asked for increased jurisdiction.

MR. CONANT: How is that related to this, Mr. Magone?

MR. MAGONE: It is related in this way, I suggested before, that the County Court Judges outside of Toronto are not very busy; that is an indication of it; they have asked for increased jurisdiction.

MR. LEDUC: Increasing it downwards?

MR. MAGONE: Increasing the amount upwards, of County Court jurisdiction.

MR. CONANT: You should perhaps recall to the mind of the members of the Committee that there is on the Statutes now, provision for increasing the jurisdiction, which can be brought into operation by Order-in-Council; is that right?

MR. MAGONE: That is true, on the recommendation of the County Court judges. So that, if this Division Court jurisdiction were taken away from the county judges, and given to the magistrates, in a number of cases county judges would not have nearly enough to do?

WITNESS: Well, that is quite true. I would not take it away from the County Court judges and give it to the magistrates.

MR. STRACHAN: There is no serious suggestion that we give it to the magistrates, because we have so many laymen acting as magistrates, and even a $5 claim might involve very serious points of law.

WITNESS: Quite right.

MR. MAGONE: My reason, Mr. Chairman, for dealing with this exhaustively now is this: that, apparently, in every province in the Dominion, there is a small debts jurisdiction, vested in the magistrates and justices of the peace, and you received a large number of recommendations, I understand, Mr. Barlow, suggesting a similar jurisdiction here, did you not?

WITNESS: I had certain recommendations, yes.

MR. CONANT: Well now, were they sufficiently specific that they were suggesting magistrates, and such tribunals, or just generally a small claims court?

WITNESS: Oh, just generally that the Division Court should be presided over by a magistrate. But there are not so many of those, Mr. Magone. Those recommendations, as I recollect now—I could easily tell by going through a memorandum I have, but I haven't it here.

MR. MAGONE: Yes, well I think probably we may come to those, and I may read some of the recommendations of the various organizations that wrote to you, and have written to us.

MR. FROST: Mr. Barlow, where would you think the real saving would be to the public in limiting these claims to $100.00? Would you think that it would come about in the gradual disappearance of the Division Court throughout Ontario, and its concentration in these cases in county towns?

WITNESS: Yes, it would concentrate practically all of them in county towns.

Q. Well, there is another angle to that; first of all, is there not some advantage in having these courts throughout the county, from the standpoint of bringing justice close to the people? I have heard that argument.

A. Why, it may be, but ——

Q. Of course, personally, I would not lay so much stress on that, in these days.

A. You have seen them operating, as I have.

Q. Yes.

A. Well, just what ——

Q. Well the point that bothers me is this ——

MR. CONANT: Have you never attended a Division Court in a small town on a cold winter's day?

WITNESS: Yes, and they sat around the stove.

MR. FROST: Well, after all, what is wrong with, for instance, trying a case involving say a couple of hundred dollars, on a note or something of that nature, in a court in some perhaps isolated village? What difference is there between that and trying a case, say, of only $100.00? Isn't there this to it: that, supposing Mr. B. lives up in some isolated point, say, in the district of Algoma, and he is a hundred miles away from the county seat.

WITNESS: Oh, yes.

Q. Isn't there this to it, that the matter of bringing the witnesses there, and so on, in the end, is cheaper to the public, than bringing them down to the county seat. You will find a number of cases, in our counties, where it is a hundred miles to the county seat.

A. There are certain instances of that kind, Mr. Frost, and there is no doubt that some provision should perhaps be made. You speak of Algoma; now, I will go so far as to say this, so far as Algoma is concerned, that it works a hardship, in county court cases up there, to bring litigants and witnesses as far as they have to in certain instances, and there were recommendations made, from that district, that some provision should be made for certain places, fixed, for trial, even for county court actions, so that they would not have to travel the distances they do.

Q. I had in mind, for example, certain places in the County of Ontario, Mr. Conant's county, where it is a hundred miles from Rockford down to the county seat of Whitby. Again, in Victoria and Haliburton, it is a hundred miles Dorset to Lindsay, and it is more than a hundred miles from the localities around Bancroft down to the county seat. Now do you not think that you might accomplish many of the things you want to accomplish here—and many of your suggestions, I think, are thoroughly sound—by revising the Division Courts Act, making it more simple, making it more workable and modernizing it? I agree with you in what you say here, for instance, that many of these things have come down from 1850, and they have just been added to, and subtracted from.

A. Adding more and more to it.

Q. Yes?

A. You must remember this, though, Mr. Frost, that when this Division Court system was set up, originally, we were back in what I chose to call "the horse and buggy days"; people, in travelling ten or fifteen miles with a horse,

consumed much more time than it now takes to travel seventy and, perhaps, a hundred miles by car.

MR. CONANT: Yes, and when you consider it from that angle, it takes away much of what you have said with reference to it.

MR. FROST: Yes.

MR. CONANT: Mr. Frost's question as to the economy effected raises this aspect of the matter, and I would like you to approach it from this angle, Mr. Barlow: that, in the final analysis, the citizen is the one who is benefited or otherwise by whatever may result from our deliberations. Now your experience of office indicates that it not infrequently happens that a small claim is cluttered up with costs.

WITNESS: It is.

Q. Now approaching it from this angle, supposing we were to revise the Division Court Act, as it badly needs, but create, within that Act, what we might call a small claims division, up to $100.00 or whatever it might be, and make, for those claims, the simplest possible procedure, with a block system of costs, so that a man could go into court, be he a doctor or a merchant, with a claim of $50 and know exactly what it would cost him; have these cases on a special list on Division Court day, and, what is perhaps of most importance in that connection, that all those claims could be served by the litigant himself, or by registered mail.

Now I mention that for this reason: Mr. Frost has touched, very properly, and very capably, upon the question of territory, to the effect that the geography of the thing is a difficult question to meet, and the number and distribution of Division Courts is an equally difficult thing to meet. Because Mr. Frost and the other gentlemen may not know it as well as I do, but we have in our Department now a policy that, when there is a vacancy in the office of clerk or bailiff, we endeavour to close that Court if the number of cases handled in one year is less than fifty; that is our policy, and we have succeeded, in some cases. But in the majority of cases there is such a clamour arises from the locality, that it is a practical impossibility, in the present state of public opinion. But you are perfectly right that, with the modern forms of transportation at our disposal, there are far too many Division Courts. Time will take care of it, but it does seem to me, Mr. Barlow, that there are practical difficulties that confront us, and I would like you to direct your remarks, if you will, to the possibility of creating, within our present structure, a simplified, inexpensive, definite procedure for these small claims. What would be your views on that?

MR. MCCARTHY: Mr. Attorney-General, may I implement what you and Mr. Frost have said by saying that that is the view of Convocation.

MR. CONANT: Thank you, Mr. McCarthy.

WITNESS: There is no doubt, Mr. Chairman, that this simplified procedure could and should be, in my opinion, created as far as small claims are concerned.

MR. CONANT: Before you enter on that, if you will pardon me, I intended to ask this: there is also the other difficulty that, unless, and until your distribution, until the number of Division Courts is considerably reduced, you would have an uneconomical arrangement, because, with the Division Courts dealing only with small claims, you might have a judge going fifty or a hundred miles to try no cases, one case, or two cases. Whereas if you leave with him, in that Division Court, the jurisdictions he now has, with the classifications that I have roughly outlined, he will be more likely to have work at the court to justify the expenses involved in visiting that court. That was another item I had in mind. Now will you deal—pardon me for interrupting you—with the possibility of creating, within that Court, a simplified procedure on small claims.

WITNESS: Well if I understand you correctly, Mr. Chairman, your thought is that claims, say, up to $100.00, should be dealt with by simplified procedure?

Q. Yes.

A. Claims which are not, of course, subject to appeal?

Q. Yes?

A. And with very much less in cost to the litigant?

Q. Yes?

A. That is very possible; there's no question about it.

Q. Yes?

A. But it is quite true, what you say, that in that event the revenue accrued to a court would be practically nil.

Q. Yes?

A. And if it is going to function in these outlying jurisdictions, either it must be taken care of by the local municipality, or by the central Government, or you must add to it a higher jurisdiction. If you do that, you are practically back where you were before, so far as jurisdiction is concerned, except that you would probably be able to collect—at least the clerk would be able to collect his fees.

Q. Well, just dealing with that; I'm glad you mentioned that. The jurisdiction of the Division Court now cuts off, very definitely, at certain defined points.

A. Oh yes, it does.

Q. Would it be feasible, under certain conditions, to increase that, having in mind, for instance, as Mr. Frost has said, that in the county I come from they have to travel eighty or one hundred miles to the courthouse?

A. Well, Mr. Chairman, I think that would be very unwise, because if you

do that, why then you are taking a retrograde step, and you are building up something that never would have to be built up in its present form if we had had the means of travel at the time the system was originally set up that we have at the present time.

Q. Of course you have in mind that there is no examination for discovery?

A. As a matter of fact, I don't think that there should be any examination for discovery in small claims. My suggestion here is that even in the increased jurisdiction, and when I say increased jurisdiction I mean jurisdiction over $100.00, when you go into County Court, I suggest that that should be dealt with without examination for discovery, except in special cases.

Q. Well I don't think there is any difference on that part of examination for discovery, but you have touched upon a very vital point.

A. But you see, Mr. Chairman, the difficulty that I see at the present time is that your expense is largely a result of decentralization. My thought has been to try and bring everything more or less to the county town, so that it will be dealt with there at a minimum of expense.

MR. LEDUC: Have you given any consideration to the situation of the north?

WITNESS: Not particularly, Mr. Leduc, except that I realize that there is something that has to be dealt with, in my opinion, on an entirely different basis from the counties in the older part of Ontario.

Q. Well, what I had in mind was this: somebody mentioned Algoma; you find the same situation in practically all the northern districts; for instance, now, Hearst is about 150 miles from Cochrane.

Q. Yes?

Q. Then you have Geraldton, which is a little town but growing fast, about 170 miles from Port Arthur.

A. Well, Geraldton was one of the places that I was especially thinking of, because I was talking to a lawyer from there, and he mentioned the fact that he had to travel a long distance with his witnesses, and it would be much less expensive if the judge and his clerk could come to Geraldton and try even County Court cases there.

Q. Yes, and the same thing applies to Kenora?

A. Yes. Oh, I think that must be dealt with ——

Q. Special provisions must be made for it?

A. —— dealt with especially, yes.

Q. Yes?

A. And not only as to small claims, but also as to some of the larger claims, and I think some real consideration should be given to the north.

Q. Well, we are getting away from the Division Court, but you would be prepared to say that County Courts should sit in more than one district in some places—I should say District Courts?

A. The District Courts, I would say they should, yes.

MR. FROST: At the present time, Mr. Barlow, there is no provision for that, is there?

WITNESS: Not that I know of.

Q. Well, if a judge feels, on representations regarding a particular case, feels that it would be of convenience to the public, for instance, that the County or District Court should be held some place other than the county town, is there any real reason why that should not be done?

A. No, I ——

MR. CONANT: Are you referring to non-jury trials, Mr. Frost?

MR. FROST: Yes, non-jury trials.

WITNESS: No, I don't think there is, and my recollection now is that I have been told of one or two instances in the north—it may have been Geraldton, Mr. Leduc—where they suggested to the Judge that if he and his stenographer came down, that there would only be the expense of two, whereas if they all went to the District town there would be the expense of perhaps a dozen, and while there is no special provision for it, he acceded to it and did come and try the case. That is my recollection.

MR. MAGONE: I see in Chapter 103, Sec. 13, subsec. 2:

> "The Lieutenant-Governor in Council may, where it is deemed necessary or expedient, direct that the sittings provided for in subsection 1 shall be held at some other time and in some other place than the time and place specified in the said subsection 1."

MR. FROST: Supposing that were left at the discretion of the County Court judge, so that if he wanted to go to Beaverton, say, to try a case, he could go there?

WITNESS: I don't see there is any reason why it should not be done.

Q. It seems to me that that is something that might provide for a saving.

MR. LEDUC: Mr. Barlow, you referred to a small claims Court having claims up to $100.00; now Mr. Frost has remarked, and he is borne out by the Chairman, in his remark, that in certain cases, that would create a hardship on the witnesses, because they would have to travel great distances to reach the Court. The same situation would exist in the north?

WITNESS: Yes.

Q. Could you not solve the difficulty by extending the right given to the Lieutenant-Governor in Council in Districts to the counties, and have the County Court, if necessary, sit in more than one place in the county?

A. You could solve it that way, yes.

MR. FROST: There is merit in the suggestion. I can see that.

WITNESS: You could solve it in that way, and at the same time, your own clerk would handle all these matters.

MR. LEDUC: Yes.

WITNESS: And so far as the convenience of the litigants is concerned, it would be met by the county judge sitting in various places.

MR. LEDUC: Yes.

MR. CONANT: Well, coming back, my colleagues, to Division Courts, I am still disposed to the idea, although I am not prejudging this, that the solution lies, Mr. Barlow, in a simplified machinery procedure, with definite costs, and with a definite method of service within our present framework of Division Courts, up to $100.00, but Mr. Frost raises this very pertinent point, that under that arrangement a great many courts, and particularly the bailiffs in those courts, would find their earnings largely depleted.

MR. LEDUC: You would abolish the bailiffs.

WITNESS: Mr. Chairman, your bailiffs will practically disappear with service by registered mail.

MR. CONANT: Yes.

WITNESS: And then you will have to fall back, for the enforcement of judgment by way of execution, you will have to fall back, I think then, upon your sheriff, and I am not sure that that isn't quite all right.

Q. Well, would it not be feasible, Mr. Barlow, to meet the situation so far as the bailiffs are concerned, at any rate, by following the practice of enlarging the territorial jurisdiction of the bailiffs, both to meet that situation and also with the hope of attracting better men to the positions?

A. Quite true.

Q. Wouldn't that be the solution?

A. Quite true.

MR. FROST: Do you mean to extend the bailiffs' jurisdiction beyond the county?

WITNESS: Oh, no, within the county.

MR. CONANT: I think every active practitioner here can call to mind—I can —adjoining Division Courts, a few miles distant, where you have a Division Court bailiff here and another one four or five miles away, and neither one of them is making enough out of it to make it a real job. Now if that Division Court bailiff was functioning in both Division Courts, and with the same judge, they would never sit the same day, and that might be a solution, would it not?

WITNESS: Quite true.

MR. FROST: I could never see any real objection to a bailiff, for instance, on the border of Ontario County, acting as a bailiff in Durham County, but under the present set-up he is prevented from doing so.

WITNESS: It is even more difficult than that, Mr. Frost, because each Division Court has its own little territorial jurisdiction within the county, and he acts within his own little territorial jurisdiction.

MR. LEDUC: I don't think it would be wise to extend his jurisdiction outside the county. You have to stop somewhere, unless you give him jurisdiction in the whole province.

MR. FROST: That may be going far afield, but at the same time——.

MR. CONANT: May I interrupt there, Mr. Frost, because I want it brought up at some time. Mr. Magone, you are seized of this point; I would like the Committee to consider, at some time, the question of border jurisdiction in the province. We have a lot of Division Courts which are one mile from the border of the county, and the nearest Division Court in the next county may be twenty miles away, and I think we could consider a rearrangement of those jurisdictions. I would like you to refer to that.

MR. FROST: Am I not correct in saying that, at the present time, a Division Court bailiff may act only within his own county?

MR. LEDUC: I think he is appointed bailiff to a certain Division Court.

WITNESS: Yes, but what Mr. Frost says is right, I think; he cannot enforce the execution outside of that.

MR. FROST: I think this, now; for instance, supposing you take a bailiff, say in Oshawa, and he has to enforce an execution in Beaverton; I don't think that that bailiff should be permitted the fees and the mileage, and so on from Oshawa to Beaverton, but oftentimes you will find a good bailiff, who is looking for work, and he is a good man for all parties, he is prepared to go up to Beaverton and do the work up there and carry it out very satisfactorily for both parties concerned, I think that, provided there is some limitation in his fees, I don't see why he shouldn't have the jurisdiction to do that.

WITNESS: Mr. Frost, Mr. McDonagh can probably tell us, but my recollection now is that an execution issued here must go to the bailiff of another Division Court.

MR. MAGONE: Is that so, Mr. McDonagh?

MR. MCDONAGH: It's covered in Section 165, subsection 2:

"The Clerk, at the request of the party prosecuting the judgment or order, shall issue an execution to a bailiff of the Court or to a bailiff of any other Court within the county."

MR. FROST: Well then, we are all right, yes.

MR. CONANT: That is on a transcript, is it?

MR. MCDONAGH: Well, it doesn't say so; it should say. That is one thing the Act is not very clear on.

MR. FROST: Has not the practice been, though, that a bailiff in the county is authorized to enforce an execution?

MR. MCDONAGH: The practice is to issue the execution to the bailiff of your own court; if you wish him to go to another court, you send a transcript to the judge, and it is done there.

MR. CONANT: That's right.

WITNESS: There is a further point, Mr. McDonagh; can a bailiff of the 1st Division Court go out into the jurisdiction of the 8th Division Court and make a seizure?

MR. MCDONAGH: We do not do that.

MR. FROST: Of course it is being done in some places?

MR. MCDONAGH: It is being done, but then you run into the difficulty which we are trying to avoid, of getting into the jurisdiction of another court, because they are quite jealous of their fees, naturally, because that is the way they are paid.

MR. FROST: That arises really from inefficiency in the bailiff service? You will find, perhaps, one good bailiff and twenty-five poor ones?

MR. CONANT: Would you say it is quite that high, Mr. Frost?

MR. FROST: You would say probably ten poor ones, would you?

MR. MCDONAGH: I think the answer as to that is that when the Act was framed, the bailiff of the Division Court was supposed to have knowledge of those in his jurisdiction; but the city affairs changed that, now, because, the bailiff in Toronto can't know the circumstances of the individual living in West Toronto or North Toronto or East Toronto.

MR. CONANT: Well, Mr. Barlow, is there anything other than the curtailment of revenues to these various Division Courts that would arise out of a

small claims Division Court, and a simplified procedure with a block tariff of costs? Any difficulty that you can see?

WITNESS: No, I can see no difficulty in it at all, Mr. Chairman.

Q. You think that is feasible?

A. I think it is feasible, quite.

Q. That would meet the desire to simplify or provide inexpensive procedure for small claims, wouldn't it?

A. It would do that, and the Act covering the procedure should be simple, and the forms simple, so that any layman would be able to understand them.

Q. Then when the judge went to that court, whether it was Beaverton or whatever it was, presumably he would have his small claims as a separate list?

A. A separate list.

Q. And he could either try them first or last or whatever he might determine?

A. I don't know whether it still is the practice, but it used to be the practice in Toronto to take ——

MR. LEDUC: Cases under $100 first?

WITNESS: Yes, under $100 first; I think that is still the practice.

MR. STRACHAN: Yes, that is still the practice.

MR. CONANT: That possibility would fit into the present framework of the Division Court?

WITNESS: Oh, it can be made to so fit, yes.

MR. LEDUC: But don't you think, Mr. Barlow, that it might be better to reduce the jurisdiction of the court?

WITNESS: To do which?

Q. To reduce the jurisdiction of the Division Court and make it strictly a small claims court, and transfer other cases to a higher court—County Court?

A. That is my original recommendation, and my original recommendation was made with the thought that I have already expressed, namely, you should centralize as much as possible for the purpose of economy and saving in the time of the judge, which will make him more available.

MR. CONANT: You mean, Mr. Leduc, instead of having a small claims division and the present jurisdiction, you would make it all a small claims court, reducing the jurisdiction?

MR. LEDUC: Yes, except of course, coupled with the right being given to the Lieutenant-Governor in Council to authorize County Court to sit in more than one place in large counties.

WITNESS: What Mr. Leduc has in mind is this, I presume: that if there were a case, we'll say, a hundred miles away in any one of our counties, a judge going up there to try a Division Court of small claims could also set the venue for a County Court action for $200, $300 or $500.

MR. LEDUC: Right. I would not go, perhaps as far as that, but take, for instance, the case of Geraldton, which has been mentioned here before—and the same would apply in some southern counties—why not give the right to the County or District Court judge to hold County or District Court in Geraldton?

WITNESS: Quite right, I quite agree with you.

Q. You might do the same thing in southern counties which are very large. Mr. Arnott, of course, knows Hastings better than I do, but I suppose he could very well suggest one place in the northern part of the county where County Court could sit a certain number of times every year.

A. Quite true.

Q. If you were to do that, you would reduce the jurisdiction of the Division Court to $100?

MR. FROST: What difference would there be in that? Supposing a judge has a case, a non-jury County Court case, if he says, "I'll try that at some other point," that could be fixed by Statute?

MR. LEDUC: Well, I don't see any objection to it.

WITNESS: There is this one feature, that has not perhaps been considered here, namely, that small claims of under $100 are very often dealt with by the litigants in person, and very seldom is a claim of over $100 dealt with except through a solicitor, and where you have solicitors, the solicitors are usually centered in the county towns.

MR. LEDUC: Yes?

WITNESS: And then it rests with them to make their arrangements with the judge as to whether, if your suggestion were to be carried out, they should have it in the county town, or whether they should go out to this outlying district to try it, and it would work out in that way very satisfactorily. But my main thought about the small claims court is that the litigant himself oftentimes comes into his small actions, and that it should be simplified so that he can understand it; it should be made convenient, and as easy as possible for him to get his matter settled.

MR. CONANT: Coming back to the Hon. Mr. Leduc's suggestion, which, briefly, was that the jurisdiction of the Division Court should be perhaps decreased to some extent and make it all a small claims court, with simple procedure and

block system of fees, and service by the litigant, and so on, are you then not aggravating the difficulty that confronts me as the practical administrator of this business, in that you would be further depleting the revenues of your Division Courts?

WITNESS: I am not so sure. The real question to be considered is not the service to the public. A small claims court, it seems to me, should not be looked upon from the standpoint of even maintaining itself, but it should be a service that should be rendered to the small litigant.

Q. Yes, but I presume that you will concede, Mr. Barlow, that, whereas I have outlined a small claims division of the Division Court, and dealt with the difficulties that arise there, Mr. Leduc's suggestion would aggravate that difficulty, would it not?

A. You mean financially?

Q. Yes.

MR. LEDUC: You could probably temporarily reduce the number of Division Courts.

WITNESS: That is the very thought I had behind it, that it would reduce the Division Courts largely in number, so that you would only have, in each county, Division Courts in a very few centres.

MR. CONANT: Well then, I have no doubt that that would result, in a very short time, in having a great many less Division Courts than you have now, limited to the larger centres.

WITNESS: And with the result also of much more efficiency.

MR. FROST: Well, if you followed that course, the reduction would just take place naturally?

WITNESS: Oh, just naturally, yes.

Q. Well, don't you think that if you followed Mr. Conant's—I won't say his suggestion, but along the lines of his questioning—supposing you were to introduce in Division Court a small claims division, as it were, claims for less than $100, and leave the other jurisdiction, for the moment, and clarify it and cut out all the deadwood and make it a decent, understandable Act, don't you think that probably five years would see the disappearance of some of the superfluous Division Courts, and the concentration of them—I think there is a tendency to concentrate now, anyhow—don't you think that that might accomplish what we are after in this matter?

A. I don't know, Mr. Frost.

Q. You see, you might get away from the territorial consideration. At the present time, a man comes in from a very distant part of the county, to his lawyer in the county town, and says: "I have a claim for $300," which is within the

jurisdiction of the Division Court. The lawyer says: "Well, that is in Division Court No. 10; we must sue it there." It has to be sued there, and counsel, from the county town, travel away out there, and the judge travels away out there. It would be much cheaper to have the litigants come into the county town. Of course a great deal of that is done by arrangement now.

A. Oh, I presume it is.

MR. CONANT: Well, it seems that we have arrived at some conclusion.

MR. FROST: Mr. Conant, before you leave this question, I think that you are going to find this, that in connection with a matter of this sort, you really have to arrive at a compromise. You know what I mean, when you begin to abolish Division Courts, instead of getting the co-operation of the public, you are going to raise a devil of a row.

WITNESS: You see, my thought is, not to abolish them at all but—

MR. CONANT: To starve them.

MR. FROST: No.

WITNESS: No, I wouldn't say that.

MR. LEDUC: After all, you know we should remember that some 20 years ago the jurisdiction of the Division Court was only $200—$100 and $200, whereas now it is $400.

WITNESS: Yes, $60 for damages, and now $120; it used to be very small.

MR. CONANT: Well, we seem to have arrived at two possible suggestions, or solutions; one is a small claims division of the Division Court, and the other is making the whole Division Court a small claims court, simplifying the procedure, with a block tariff system, and perhaps some decrease in jurisdiction. Have you any other suggestions to make to meet the situation? I think that crystallizes our discussion so far.

MR. LEDUC: Well, except for this, Mr. Chairman, I would like it remembered that special consideration should be given, in any event, to the northern districts.

WITNESS: Quite right.

MR. LEDUC: On account of the great distances the people have to travel up there.

MR. CONANT: In respect to Division Courts, you mean?

MR. LEDUC: Well, yes, that is what we are discussing at the present time.

MR. CONANT: Very well, then; let us proceed.

MR. LEDUC: For instance, if you should decide to have a small claims court

in the southern counties with a jurisdiction of $100, it might be better, in the districts, that that jurisdiction should be $200 or more. What I have in mind is this: take the case of a man living at Hearst, having a claim of $250; well, it could be a real hardship on both parties to force them to travel to Cochrane, which is the district town.

WITNESS: That is one of the great difficulties they have.

Q. It is quite different from a man who lives at Mimico, or Newcastle, and who has to come to Toronto.

MR. CONANT: Well, but that special provision or consideration, Mr. Leduc, would only arise in the event of the adoption of your suggestion.

MR. LEDUC: Oh, yes.

MR. CONANT: It would not arise with the scheme I outlined.

MR. LEDUC: No.

MR. CONANT: But I think you are right; that should be taken into consideration.

MR. CONANT: Well, proceeding on from that, we have mentioned the simplification of The Division Courts Act; were you going to go on with that next, Mr. Magone?

MR. MAGONE: Yes, Mr. Barlow, the Hon. Mr. Conant, in his questioning, indicated that possibly the present Division Court Act could be used as a framework for the new small claims court; is that not so?

WITNESS: No, I would repeal it and start again.

MR. LEDUC: Oh, yes.

MR. MAGONE: Start anew?

WITNESS: I certainly would, because it has just been added to, here and there, all the way through, until it is practically unintelligible.

MR. LEDUC: I believe the jurisdiction of the Division Court is more complicated than that of the Supreme Court.

WITNESS: It is.

MR. CONANT: Well, now, have Mr. Barlow outline whether there is any other Act as a model, or what line he would recommend following in revising that Act, or in recasting it.

MR. MAGONE: Probably you might do that, Mr. Barlow. Your suggestion, in your recommendations, is that the Division Court be consolidated with the County Court, and a small claims division constituted.

WITNESS: Well, perhaps that interpretation might be taken from it; I didn't intend that it necessarily should be consolidated with the County Court, but that there should be a small claims court, which I would still continue to call the Division Court, because the public are accustomed to that name. I wouldn't call it a small claims court; I merely called it that to illustrate it, as to what I really mean, you see, but I would still call it the Division Court, but with this lessened jurisdiction. And as far as simplified procedure, and so forth, is concerned, there are plenty of precedents to be found in recent legislation in the different States of the Union, some of which I have down at my office, where the whole matter is set out, so that, as I say, the layman can read it and understand it. It is just a matter of wording.

MR. STRACHAN: Would you need a separate Act at all, Mr. Barlow? Could it be included in our present County Courts Act?

WITNESS: There may be something in what you say, Mr. Strachan; yes, I think possibly it could be done. It's just a question of machinery, that's all.

MR. MAGONE: If we did that, would we not lose our jurisdiction to appoint the judge of the court?

WITNESS: Oh, no, why would we lose it?

Q. Well, if we made it part of the County Court, in view of the fact that the Dominion has the right to appoint County Court judges, then, as I say, if we made this Division Court jurisdiction part of the County Court jurisdiction, we would lose the right to appoint the judge.

A. Well, if there is any point to that, Mr. Magone, we can draw up a special Division Courts Act.

MR. LEDUC: What judge do we appoint?

MR. MAGONE: We appoint a County Court judge by Statute.

MR. CONANT: Let me get this clear; Mr. Magone has mentioned that before; isn't he automatically a Division Court judge when he is appointed County Court judge?

MR. MAGONE: Just because this legislation says so.

WITNESS: There is no special appointment made. The Legislature merely says that by virtue of his appointment as County Court judge, he becomes Division Court judge.

MR. MAGONE: Yes. Well, if that suggestion were followed through, would you make the small claims division as the court is now, that is, a court of equity and good conscience.

WITNESS: Oh, yes, because there is no appeal from it. It should be a court of equity and good conscience.

Q. What did you say about providing for informal sittings? I believe you said something about that in your report.

A. Yes, that can be done. It could be left to the discretion of the judges, I presume.

Q. That is as to sitting in chambers without gowned counsel?

A. Counsel are never gowned in Division Court.

Q. But if you made it part of the County Court they would be?

A. Oh, I wouldn't have them gowned, not in Division Court.

Q. And as to pleadings, Mr. Barlow?

A. No pleadings. Merely as at present, your statement of claim, which sets out briefly what it is and the evidence.

MR. CONANT: I am not sure, Mr. Magone, that we have not rather confused this. There are two suggestions before the Committee. One, propounded by myself, a small claims division of the Division Court; another, propounded by the Hon. Mr. Leduc, making the whole Division Court a small claims court, and different considerations would arise under those, it seems to me, although, in either case, it would be necessary to revise the Division Courts Act. I was asking Mr. Barlow, or started to ask him, if he had in mind, or could offer to the Committee, any more or less general suggestions, as to what he had in mind when he said the whole Act should be scrapped and a new one constructed, and I go as far as asking you if there were Acts in other jurisdictions which might be used as a model.

WITNESS: Yes. Well, I said there were, Mr. Conant, so far as your small claims court, if we might so call it, and, as I say, I would continue to call it a Division Court, even if you decided to give it jurisdiction only up to $100. But if you adopt the further jurisdiction that you suggested, might still be left there, you might have to have a little more complicated machinery, although, at the present time, all claims are put in and dispute notices are filed in exactly the same way, whether it is $10 or $300.

MR. LEDUC: Or $400.

WITNESS: Or $400.

MR. CONANT: Yes, but if you were continuing the Division Court as it exists to-day and as distinguished from a small claims court, you still think that Act would have to be amended?

WITNESS: Oh, I think the whole Act should be repealed and a new simplified Act drawn up.

Q. Yes.

A. Simplified procedure.

MR. MAGONE: Mr. Barlow, isn't the great criticism of the present Act, or one of the big criticisms, the cost of litigation in Division Courts?

WITNESS: Yes.

Q. Well, if we continue the Division Court sittings, as they are now, in different places of the county, could you reduce the costs of litigation in that court materially?

A. You mean to the litigants?

Q. Yes, without having the Province make contributions to it?

A. I would certainly think so.

MR. FROST: Well then, Mr. Barlow, getting on to a very touchy question, wouldn't you then be bringing Division Court cases, what are now Division Court cases, within the County Court tariffs, and wouldn't you then be again increasing the costs?

MR. LEDUC: Oh, no, there is a recommendation made for that.

WITNESS: Oh, no, I made a recommendation here that reduced tariffs, counsel and witness fees, be made applicable thereto. Oh, no, I would reduce that, I would take care of that, Mr. Frost.

MR. FROST: Frankly, I had thought, myself, that they might well be graded; there is too much of a jump now, between Division Court costs and County Court costs.

WITNESS: Quite true; I agree with you.

Q. I think possibly that is something that should be graded throughout; it would be far more satisfactory and more equitable. It does seem ridiculous, at the present time, that a claim is tried in Division Court, and there is a certain cost, and the minute you are a dollar over that, you increase the cost not by a small amount, but by many times.

A. Oh, yes.

Q. It's ridiculous.

A. If you get judgment for damages for $120, you get merely disbursements, and perhaps a small counsel fee of $10 or $15, I just forget now.

MR. LEDUC: $25 is the limit.

WITNESS: But if it is $130, you can tax it on County Court scale; that is not right.

MR. CONANT: Mr. Barlow, having in mind the administration of justice in all its aspects, would you express any opinion as to which you think would

be the better system? That is to say, the small claims court within the present Division Court framework, but with an entirely revised Act for the present framework, or a small claims court throughout, perhaps with decreased jurisdiction, and everything else dealt with in County Court?

WITNESS: My opinion would be to have a small claims court not exceeding $100, under the name of a Division Court, with as I have said before, an informal procedure, and everything else over and above $100 thrown into the County Court, but with special procedure, and a special tariff to take care of it.

Q. Up to a certain limit?

A. Up to, say, something like the present limits of the Division Court.

Q. Well, now, you are looking at the—and I don't say this offensively—more or less idealistic or theoretical standpoint. What suggestions have you to offer towards meeting the practical difficulty of continuing the machinery, the clerk and the bailiff, of these hundreds and hundreds of courts, when their revenues would, undoubtedly, be cut to practically nil?

MR. LEDUC: Well, may I interrupt there, Mr. Chairman; if the service of a summons is made by the plaintiff or by anyone, could not the office of bailiff be abolished and all the work done by the clerk?

WITNESS: I think the bailiff practically disappears, except so far as services are required under an execution. The large part of the bailiff's work, at the present time, is serving summonses; the work of enforcing executions is comparatively small, and that, as I said a while ago, could very well be done, I think, by the sheriff. But you speak of these hundreds and hundreds of courts. It is true, there are all those courts, but I say that is the very thing you should gradually get rid of them, and you would, under this scheme, gradually get rid of them, and instead of having ten or twelve in one county, you would have three or four, which would be presided over by a clerk, with perhaps one bailiff to look after all of them, and it would be much more efficiently done, and as I have said a while ago, your distances would be taken care of because of the methods of travel used.

MR. CONANT: Well, then it comes down to this: if you adopted the plan of having one small claims court, to distinguish it from the present structure, with a simple procedure and a block system of court fees, service by mail or by the litigant, and perhaps with a decreased jurisdiction, and all the rest to go into the County Court, with the present machinery of the Division Courts, that is the clerk and the bailiff, and the bailiff would have nothing to do except probably an occasional seizure?

WITNESS: That's all.

Q. That might very easily, and, I think, properly, and certainly more effectively, be done by the sheriff in most cases, and the bailiff and the clerks——.

MR. FROST: Mr. Conant, you run into an additional expense there again; in the ordinary small seizure, a local bailiff does that a good deal more cheaply

than a sheriff does, having to bring a sheriff for a considerably greater distance. I don't know whether you find that, Mr. Arnott?

MR. ARNOTT: Yes.

MR. CONANT: Would it be feasible to set up, just as we do now, by Order-in-Council—we set up Division Court jurisdiction by Order-in-Council, and we give each Division Court a certain territorial jurisdiction; would it be feasible to appoint, what you might call "bailiff's areas" by Order-in-Council, appoint a bailiff for these two or three townships, and for the other two or three townships, and so on?

MR. FROST: Well, knowing the practical difficulties that you encounter if you take your bailiff and give him jurisdiction in a whole county, the good bailiff is going to supersede the bad one, and the bad ones are going to be dropped out, and, in the end, you are going to be able to effect, in a very painless way, the changes which your bailiffs require.

MR. CONANT: I'm not sure it would be painless to the Attorney-General.

MR. FROST: I know, but he doesn't feel pain anyhow!

MR. CONANT: All right, Mr. Magone.

MR. MAGONE: I was wondering, Mr. Barlow, would it be possible to appoint sheriffs' deputies or agents in other parts of the counties?

WITNESS: That occurred to me a moment ago, Mr. Magone. I suppose it is not impossible to take care of it in that way. Mr. Arnott says the northern part of Hastings County is a long way from Belleville; the sheriff could very well have a deputy up there, who would look after the odd seizure there would be; I suppose there would be very few in a rural district, is that not right, Mr. Arnott?

MR. ARNOTT: Well, if you are going to reduce the solicitors' fees in the County Court, why not reduce the sheriffs' fees in connection with these executions that are placed in his hands.

WITNESS: I think you are quite right; that would have to be taken into consideration.

MR. CONANT: Your mileage is a large item.

WITNESS: But you would get around it, Mr. Conant, if you adopted that idea.

MR. LEDUC: I think, in cities like Toronto, Hamilton or Ottawa, we could keep a bailiff for Division Court, because he would have enough work to do.

WITNESS: Yes, it is only in the outlying districts that that would apply.

MR. CONANT: Going a step further, the present jurisdiction is $120 and $240, is it not?

MR. MAGONE: Yes.

MR. CONANT: Whether you left it at that or decreased slightly, you would be throwing into County Court the balance of the cases; where would you draw the next line, for making another category of costs in the County Court? Take it this way: suppose you left the jurisdiction the way it is, and made it all small claims, $100, $200 and $400; you mentioned, I think, in passing, that you would have another scale of fees for the lower claims in the County Court?

MR. LEDUC: Oh, no, Mr. Barlow had in mind transferring all claims over $100 to the County Court, and making a special scale of fees for those.

MR. CONANT: I see.

WITNESS: For those up to the present Division Court tariff.

MR. CONANT: Where would you draw the next division line, $500?

WITNESS: Well, there is a line drawn now in the County Court tariff, as I understand it.

Q. Well, I have sent for the tariff, and we will have it here very shortly.

A. Well, I think it is $40 to $500, and $70 afterwards, is that right? I haven't seen that tariff recently, Mr. Conant.

Q. Well, I think it is relevant to have it at this point.

A. But I do know that is taken into consideration.

Q. As I understood it, if you had limited the present division, or made it a small claims court up to $100, that everything else would go in the County Court, and then for claims say up to $500 you would have a special or lower tariff of fees than the County Court costs, is that it?

A. No.

MR. LEDUC: Might I suggest this: in the Province of Quebec they have a Magistrates' Court. They have only two courts in the city of Montreal, the Circuit Court, which is the equivalent to the Magistrates' Court.

WITNESS: Yes.

Q. The main court is the Superior Court, and they have a tariff of fees which is based upon the amount involved. I am speaking generally, there are some special cases, which are looked after, but generally speaking, the actions are divided into four classes, according to the amount involved, and the fees are fixed according to the class of the action. Would it not be possible to do the same thing in our County Court?

A. Oh, quite possible, quite possible.

Q. And there are some differences in the fees.

A. Yes.

MR. CONANT: What have we now, Mr. Magone?

MR. MAGONE. Preparation for trial, including notices of trial, notice adduced, subpoenas, and advising of evidence, ten dollars, subject to an increase, in the discretion of the judge, in cases involving more than $200, up to twenty-five dollars. That is preparation. Then counsel's fees at trial, twenty-five dollars, subject to an increase in the discretion of the judge, in cases involving $200 or more, to a sum not exceeding fifty dollars, or in cases involving $400 or more, to a sum not exceeding seventy dollars.

MR. CONANT: We could further break that down, if we wanted to?

WITNESS: Oh, yes, you could break it down as much as you like.

MR. MAGONE: Well now, Mr. Barlow, I think you mentioned that you would have a fairly simple Division Courts Act; would you not have to deal particularly with interpleader, such is done now in the Division Courts Act?

WITNESS: Interpleader is in the Division Courts jurisdiction, is it not?

Q. No, there is provision for it.

A. Of course we are again trying to delve through this jurisdiction, that even lawyers don't understand.

MR. CONANT: Yes.

WITNESS: There is no reason, Mr. Magone, where the amount involved is small, why it should not be dealt with in Division Court, except that the expense involved by seizure, and so on, might make it prohibitive.

MR. LEDUC: Section 54 of the Act sets out the cases where the court has jurisdiction, and surely that could be simplified?

WITNESS: Certainly it can be simplified.

Q. I draw your attention to subsection 2 of section 54.

A. Yes.

Q. And the proviso there.

MR. CONANT: We have all burned the midnight oil to figure that one out!

MR. LEDUC: It's ridiculous.

MR. MAGONE: There is provision in the Division Courts Act, Mr. Barlow, for the examination of judgment debtors, for instance; that is a special jurisdiction in The Division Courts Act?

WITNESS: Yes, I believe so.

Q. Let me deal with a few other special provisions.

MR. CONANT: And more particularly with the orders that result.

MR. LEDUC: Well, that is one point, now, because there is not that jurisdiction in the County Court.

MR. MAGONE: No.

MR. LEDUC: With regard to your reference to a judgment summons, — I am not expressing my opinion now, but why should a poor devil be subject to a judgment summons if he owes $100, and not be subject to it if he owes $500.

MR. CONANT: That is the present law.

MR. LEDUC: I know, and I think it is most unfair, whichever way you look at it.

WITNESS: Well, with reference to that, Mr. Leduc, may I call your attention to the Lacombe law, which you no doubt know very well, in the Province of Quebec, which, in my mind, is something that should be considered by this Committee, and perhaps it will take the place of our present system of judgment summons.

MR. LEDUC: There is a class of people in this province to whom the Lacombe law would not apply, because you cannot garnishee their wages, that is, the federal and provincial civil servants.

MR. CONANT: What is the Lacombe law, briefly?

WITNESS: I don't know if I can tell you, Mr. Chairman; I think Mr. Leduc understands it better than I do.

MR. LEDUC: Briefly it is—I forget the exact procedure, but it amounts to this: a man against whom there is an execution issued, can go to the clerk of the court and agree to pay to the clerk, on pay-day, a certain proportion of his salary, or wages, which is fixed by statute, and as long as he keeps up his payments, no order of execution can be issued against him, and any other person having a claim against him goes to the clerk of the court, files his claim, and the moneys paid in by the debtor are distributed pro rata, at certain intervals, to the creditors. Now in this province you can garnishee the wages on pay-day; in Quebec you can get an order from the judge declaring the seizure not to be in effect unless the debt is not paid.

WITNESS: Or unless notice is given by the employer that the employee is no longer employed by him, and unless that notice is given, the employer is still liable to it in the proportion.

MR. FROST: Do you think, Mr. Barlow, that that is a very great improvement over our system?

WITNESS: It is a great improvement, because it does away with ——

Q. Pyramiding costs?

A. —— pyramiding costs of taxable proceedings by each individual debtor, and for each weekly or monthly payment coming along.

MR. STRACHAN: If a man is paid in advance, here, you cannot garnishee his wages.

WITNESS: Yes, but I have had instances even in the higher courts, where you would have to have an attaching order taken out every month. There there is one for all time.

MR. LEDUC: And the court costs would be very little.

WITNESS; Usually very little.

MR. FROST: And the poor debtor goes along and pays every month.

MR. CONANT: Mr. Magone, have you any more questions you wish to ask?

MR. MAGONE: Yes, Mr. Barlow, there are special provisions, in The Division Courts Act, regarding evidence; that is the books of account used in evidence? My reason for asking this is to find out whether you would consider continuing these provisions in the new Act.

WITNESS: You must remember, Mr. Magone, that if you adopt my suggestion, that the claims be limited to $100, with no appeal, then the whole matter is dealt with informally by the judge, and he can take his own evidence, in his own discretion in these matters. That is the way in which they are handled in the States.

MR. LEDUC: It applies only to cases where less than twenty-five dollars is involved.

MR. MAGONE: Yes, not more than twenty-five dollars; but Mr. Barlow interprets the jurisdiction of the Division Court judge as permitting him to take that kind of evidence in any case, as I understood your answer?

WITNESS: Well, in the small claims court. I don't know what happens directly in the other provinces, but I imagine it is very much the same. There is no appeal and it is left entirely to the discretion and good judgment of the judge or officer trying the case to decide the merits as between the parties without being tied down to evidence.

MR. LEDUC: In other words, it is a court of justice.

WITNESS: Exactly.

MR. MAGONE: You wouldn't make the rules of evidence apply?

WITNESS: I wouldn't make the rules of evidence apply. We have in our present Evidence Act too many things that tie it down and make it difficult to get at the real facts.

MR. STRACHAN: Judge Morson solved that pretty effectively.

WITNESS: He solved it very effectively, Mr. Strachan. He didn't pay any attention to any rules and he got by with it.

MR. MAGONE: Would you abolish the procedure for a new trial set out in the Act in section 16?

WITNESS: Oh, no, I wouldn t abolish that. There may be cases in which a new trial should be granted. That should be left to the discretion of the judges.

Q. Then arbitration, section 156: where the judge, with the consent of the parties, may order arbitration?

MR. LEDUC: Does that happen very often, Mr. Magone?

MR. MAGONE: I don't think so.

MR. LEDUC: I have never heard of one.

MR. MCDONAGH: It hasn t happened in the First Division Court since 1934.

MR. LEDUC: Would you leave that out?

WITNESS: I would leave that out.

MR. MAGONE: With respect to executions against lands? As I understand it the execution must be over thirty dollars and must be returned *nulla bona?*

WITNESS: That's right, it must be over thirty dollars and must be returned *nulla bona* in order to have an execution by the sheriff.

Q. Would you leave that as it is?

A. Oh, I presume it is quite all right as it is, Mr. Magone.

MR. CONANT: Should there be executions against land in small claims?

MR. LEDUC: Sometimes it's the only thing that he has.

WITNESS: Yes. Of course you must remember that at the time that Act was passed forty dollars was worth a great deal more than it is now.

MR. CONANT: Yes.

WITNESS: If you consider it from that standpoint, perhaps there shouldn't be any execution against lands on claims of less than $100.

Q. Any claim up to $100, you say?

A. Yes.

MR. MAGONE. I wonder how often it would happen that there would be a sale of land for a claim over forty dollars and up to $100?

WITNESS. Not very often.

Q. Not very often. It wouldn't be used very often, anyway. Then there is a suggestion of yours, that The Creditors Relief Act be applied to executions under The Division Courts Act, I think?

WITNESS: I don't know, is there?

Q. Not in connection with Division Courts, but some place else, under the provisions of the Act as it is now the bailiff makes his seizure in the Division Court and the money is distributed to the creditors, whereas, if the sheriff made made the seizure, it would be available to all the creditors.

A. Oh, yes, I remember now.

MR. LEDUC: Is that under XIII, page B37?

WITNESS. Yes.

MR. FROST. I think that suggestion is proper too.

WITNESS: Well, it is bringing it in line with the suggestion making the Lacombe law applicable, by which every one gets part of it. That is the intention of it.

MR. MAGONE: It would involve extra work for the clerk of the Division Court every time there is a seizure?

WITNESS: Oh, yes, I suppose so. Yes, I suppose that is true.

Q. The Division Court, Mr. Barlow, is the only court now in this province that is self-supporting, is it not?

A. I think you are quite right, as far as I know.

Q. And it is the poor man's court?

A. It is the poor man's court, and there is a very large surplus aid to the province.

MR. LEDUC: There is another way of fixing that, you know; it is to make the other courts self-supporting.

WITNESS: Well, there is a lot to be said for that.

MR. MAGONE: In some jurisdictions, in connection with a small debts practice, the judgment is registered with the County Court clerk, and it becomes a judgment of that court, does it not?

WITNESS: I think there is that practice, yes.

Q. Would that work out in connection with our Division Courts here, and reduce the cost of proceeding?

A. Then give that part of an execution to the sheriff?

Q. Yes.

MR. LEDUC: I don't get your point, Mr. Magone; you suggest that the judgment of that small claims court be filed with the clerk of the County Court?

MR. MAGONE: Yes.

MR. LEDUC: Then it becomes a judgment of the County Court, and the procedure of the execution follows the practice of the County Court?

MR. MAGONE: Yes.

MR. LEDUC: So there would be no execution procedure in the small claims court?

MR. MAGONE: Yes.

WITNESS: If you do that, why, then that leaves nothing for the bailiff at all to do, and that solves your question of bailiffs.

MR. MAGONE: That is what I had in mind.

WITNESS: It does, it solves your question of bailiffs, Mr. Magone. I would think very properly, too, for a further reason, that the clerks of the Division Courts throughout, that is the small Division Courts, have not the same facilities of keeping track of things over years that a County Court clerk has, and if all these were sent to the County Court clerk, then you would have a permanent record.

MR. LEDUC: Would that be satisfactory in all cases?

WITNESS: Well, you might have to make exceptions in some of our larger courts, Mr. Leduc; I am thinking, again, about the smaller rural courts.

Q. The rural courts, yes.

A. Because it is the rural courts that are more important, so far as this Committee is concerned, than the city courts.

MR. MAGONE: Mr. Barlow, the submissions that were made to you by various organizations, did they not complain that it was very difficult to get the bailiff to act after the issuance of an execution?

WITNESS: They complained that it was very seldom that the bailiff actually realized on an execution.

MR. LEDUC: In nineteen cases out of twenty there is a return of *nulla bona*.

MR. FROST: Where is that?

MR. LEDUC: Generally.

MR. MAGONE: Generally, Mr. Frost.

MR. LEDUC: I think it is worse in the cities than in the rural districts.

WITNESS: Yes, there's no doubt about that.

MR. CONANT: You touched upon a very important point there, because, in my observation, that is one of the places where our Division Courts system falls down.

WITNESS: It does fall down.

Q. The inability, unwillingness or something, of the bailiffs to get any results on executions. I think everybody at this table has experienced that.

MR. MAGONE: Is the reason for that, Mr. Barlow, probably because the fees of the bailiff have to be paid before he does anything? Do you think that is true?

MR. LEDUC: The cause may be that a bailiff is sure of his fees.

MR. FROST: I think that arrangement is largely due to inefficiency. You take if there are a dozen Division Court clerks, some Division Court has a very small amount of business, and the bailiff is appointed to that court and he is asked to make a seizure—well he has another occupation, and the result is that he rather shys at making a seizure, and the result is that you will find about one good bailiff in a county and that good bailiff is the man who is getting the work, and he makes it his business to serve the summons, make seizures and look up the Landlord and Tenant proceedings, and so on, and that is the reason, I suggested, a while ago, that the bailiffs' jurisdiction should be made county-wide; I think you would get rid of a lot of that inefficiency that you have at the present time.

MR. MAGONE: Well, just along that line, Mr. Barlow, you might answer that; if you made the Division Court jurisdiction the whole county, is there any objection to having a bailiff and a sheriff?

WITNESS: There is no objection to have both; the sheriff could do all the work.

MR. LEDUC: With deputies?

WITNESS: Yes.

MR. MAGONE: Yes, with deputies.

MR. FROST: I agree with that, but if you are going to have a Division

Court, I suppose you have to have some Division Court machinery. If you are following out your suggestions and actually abolishing Division Courts, and putting all those cases in County Court jurisdiction, then of course the sheriff is the machinery, and the bailiffs automatically go, but on the other hand, if you leave the Division Court there, it may be pretty difficult to abolish your bailiffs.

MR. MAGONE: Yes, well, I asked Mr. Barlow a question that was suggested by the legislation in some of the other provinces, that is, that once you get judgment in the Division Court, you transfer the judgment to the clerk of the County Court and it becomes a judgment of the County Court then, and the sheriff of the county is the one who acts on an execution.

MR. FROST: I think, myself, and wouldn't you think, Mr. Barlow, that there might be merit in that suggestion?

WITNESS: Great merit.

Q. Providing that there is a limitation in the fees that would be charged?

A. Yes, according to the amounts.

Q. Yes, according to the amounts.

A. Quite true, I think the real solution is there, that the judgment in the Division Court is registered with the County Court clerk, filed with the County Court clerk, and execution issues, and it then becomes a judgment of the County Court, having been filed with the clerk of the County Court, and the execution issued from the County Court on that is directed to the sheriff, and the sheriff of the county or his deputy then enforces that execution anywhere in the county.

MR. LEDUC: You said a few moments ago, Mr. Barlow, if I remember rightly, that it couldn't apply to the larger Division Courts?

WITNESS: I said it wouldn't apply—I said it shouldn't apply, necessarily, to the larger Division Courts.

MR. STRACHAN: They could not handle it in our County Courts?

WITNESS: No, they couldn't handle it, because it's a different thing; as has been done throughout most of our legislation, you would have to make special exceptions so far as Toronto is concerned, and probably Hamilton, London, Windsor and Ottawa.

MR. CONANT: Now I am rather intrigued with that idea. Let us take a practical example. Would it be feasible to have, say, in my own county of Ontario, a sheriff, who would have deputies say, in Marmora, another in Thora, and another for Uxbridge and Agincourt?

WITNESS: Quite.

MR. FROST: And they would only get mileage for those particular districts?

WITNESS: They would just be employed the odd time. Yes, that is very feasible.

MR. MAGONE: I see that in Manitoba that procedure is adopted under the Small Debts Recovery Act.

MR. FROST: Have they deputy sheriffs, then?

MR. MAGONE: Yes, Manitoba isn't divided into counties, but into districts; they call it a County Court clerk in the Act, but I think they have three or four districts in Manitoba.

MR. CONANT: Would you call those deputy sheriffs, Mr. Barlow?

WITNESS: Yes.

MR. MAGONE: I notice there is provision in the Administration of Justice Expenses Act, Mr. Barlow, for a constable, in making distress, in the Constables' Tariff.

WITNESS: Is that a constable to protect the bailiff?

MR. MAGONE: No, a constable under The Summary Convictions Act may be required to make distress of goods, is there any reason why township constables couldn't be appointed deputy sheriffs for the purposes of these small claims?

WITNESS: No reason.

Committee rises for lunch recess.

AFTERNOON SESSION

F. H. BARLOW, K.C., Master, Supreme Court, Ontario, Recalled.

MR. CONANT: You may proceed, Mr. Magone.

MR. FROST: Mr. Barlow, have you found your report has been widely read by the lawyers?

WITNESS: I think it has been very widely read.

Q. Well, what comments have you received?

A. Very favourable.

MR. MAGONE: We will have some reports, Mr. Frost, from various organizations and societies, with respect to Mr. Barlow's report, and we propose to divide them up and put them in separately; that is, we will put in those dealing with Division Courts first, and those dealing with Consolidation of Courts next,

and so on, in order that it will be kept clear on the record. Now, we had almost finished with Division Courts before recess, and at that time, the suggestion was made that the judgment of Division Court be made a judgment of the County Court, and Mr. Silk reminded me at noon that the execution might be issued directly by the clerk of the Division Court to the sheriff, and cut out one step in the procedure; would that be feasible?

WITNESS: There is no reason why that should not be done, Mr. Magone, and the only reason I had in filing it with the County Court clerk was that it might be a more permanent record than perhaps what there might be kept in the individual Division Court, and you would find then a record of Division Court judgments for the whole county in one central office.

MR. CONANT: Judgments on which executions had been taken.

WITNESS: Of course. So far as your executions being issued by the clerk directly to the sheriff, that could be provided for without legislation.

MR. MAGONE: The Supreme Court judgments, County Court judgments, and Division Court judgments, would all then be in one office, the office of the sheriff?

WITNESS: No, the executions.

Q. The executions, I mean, yes.

A. Yes, the executions would all be in the one office.

MR. CONANT: And then that would also be of some value in your Creditors Relief Act operation?

WITNESS: Quite true. It would mean a centralization of them for that purpose too, yes.

Q. Yes, so that you could make a distribution apply to all judgments?

A. Quite true.

Q. That is a merit, too, then?

A. Yes.

MR. STRACHAN: Could our sheriff's office in Toronto cope with that situation, Mr. Barlow, or are we still dealing with the rural areas?

WITNESS: No, again, Mr. Strachan, as Mr. Leduc mentioned this morning, exception might require to be made so far as Toronto is concerned, and perhaps two or three of the other larger centres.

MR. CONANT: Yes, I think it would.

MR. MAGONE: Mr. Barlow, will you turn to page B29 of your report. On page B31 you recommend that:

"1. That the necessary legislation be drafted and passed for a consolidation of the County Court, the Court of General Sessions of the Peace, the County Court Judges' Criminal Court, and the Surrogate Court, into one Court to be known as 'The County and Probate Court of the County of. . .' with a provision that in all matters in which a County Court Judge is *persona designata* that the jurisdiction be conferred upon the Court and that the practice and procedure applicable to such Court shall be followed.

"2. That Rules of Practice and Procedure applicable especially to such consolidated Court be drafted and adopted."

Now, Mr. Barlow, can you tell the Committee what would be accomplished by making that consolidation?

WITNESS: Various things would be accomplished. Probably the first thing would be one set of officials, who would be responsible for the carrying out of the duties of the one court, with deputies where necessary. Another feature would be that all documents would be filed in the one office, and available, in a search, in the one office.

Q. Yes?

A. And another feature would be, of course, a saving in expense, quite naturally.

Q. Well, do you mean by that it would cut out the duplication in books?

A. Cut out a duplication of books, yes. At the present time, I understand that where a judge acts as *persona designata*, there is great question as to if orders made shall be entered, and where they shall be filed; there is no special practice, apparently; so I am told by county judges.

MR. CONANT: Because there is no one functions as officer of the Court?

WITNESS: There are no officers of the Court so far as that particular duty is concerned, yes. This recommendation that I make here, of course, is primarily one made to me by the County and District Judges' Association, and they, from their daily experience as judges in these various courts that are mentioned here, have first-hand information, and I would suggest to the Committee that the Chairman of that Association—I think it is His Honour Judge Holmes, of Walkerville—should be called and perhaps some of his Committee, and their evidence be taken, because they can speak with much more authority than I can, because I am only speaking of what information I obtained in connection with the Survey.

MR. MAGONE: Are you familiar, Mr. Barlow, with the legislation in Saskatchewan? I understand they have done just that.

WITNESS: They have done just that in Saskatchewan. I have not read the legislation in detail, but I do know they have done it.

Q. That is they have created a County and Probate Court, and cut out of that Probate Division the County Judges Criminal Court Division?

A. Yes.

Q. And I don't think they have any General Sessions of the Peace, have they?

A. No, they have not.

MR. CONANT: Would that involve any very considerable revision of our present statutes and rules?

WITNESS: Well, I don't know just how far that would have to go. I would say that it would probably involve considerable revision, Mr. Chairman.

Q. Yes?

A. Yes, I think it would, because at the present time, each one of these is set up as a separate court, with a separate Act applicable to it.

MR. MAGONE: As far as the County Court Judges Criminal Court is concerned, that is a jurisdiction as conferred upon county judges by the Criminal Code?

WITNESS: Quite right.

Q. And then, as I understand it, the Ontario Legislature has passed an Act, known as the County Court Judges Criminal Courts Act, and it is merely for the purpose of setting up, as it were, the machinery by which the provisions of the Criminal Code might be carried out?

A. That's quite true, yes.

Q. But if the County Court Judges Criminal Courts Act of our province were repealed, altogether, I don't suppose it would have any serious effect, because the jurisdiction is now conferred by the Criminal Code upon the judge who acts as chairman of the General Sessions?

A. He acts as chairman of the General Sessions and that jurisdiction is conferred upon him, yes. You must remember that almost the same situation existed in this province prior to 1881, with reference to our Superior Court, and you had four divisions there, of Queen's Bench, Common Pleas, Exchequer, and Chancellery, was it?

MR. CONANT: Yes.

WITNESS: And they, each one, had their own officers and separate practice prevailed for each court, and the Queen's Benchers, then, I think, had the permanent jurisdiction, as I recollect, and it was very, very cumbersome. The Chief Justice of each Court represented the Chancellors of the Chancellory Court. Of course that was all done away with as long ago as 1881. I think it

was 1873, when the Judicature Act was passed in England; am I correct as to that date?

MR. MAGONE: Yes, I think it was.

WITNESS: 1873, yes, in which they did very much the same thing, and we followed suit here in 1881. They established a somewhat similar consolidation in Prince Edward Island in the late '70s.

Q. Yes, I think so.

A. Were you calling my attention to that?

Q. I don't know the date of it.

A. Were you calling my attention to that?

Q. No.

A. What happened down there might be interesting; there were two lawyers who were not on the best of terms, and one of them succeeded in getting himself made Chancellor, and the other one, who became Attorney-General, then revised the procedure in the courts, by which the Chancellory Court was done away with.

MR. STRACHAN: The officials of the County Court, the County Court Clerks' Office has nothing to do with this?

WITNESS: The County Court Clerks' Office has nothing to do with it, and the clerk of the peace, in practically all the counties with the execption of Toronto and one or two others is the Crown attorney, and you have the anomalous position of the Crown attorney reading an indictment, swearing the witnesses, and then examining and cross-examining.

MR. CONANT: Yes.

WITNESS: Which is a ridiculous situation.

MR. MAGONE: That is the result, Mr. Barlow, simply of practice? There has been no clerk appointed to the County Court Judges Criminal Court?

WITNESS: Oh, I think the Act provided that the Crown attorney shall be clerk of the peace.

Q. No, the County Court Judges Criminal Courts Act, Chapter 105, provides that the judge of every county and district court or a junior judge or deputy judge thereof, authorized to preside at the sittings of the Court of General Sessions of the Peace, and to quote the section in question:

1.—(1) The judge of every county and district court, or the junior or deputy judge thereof, authorized to preside at the sittings of the court of the general sessions of the peace, is constituted a court of record for the trial, out of sessions and without a jury, if any person com-

mitted to gaol on a charge of being guilty of any offence for which such person may be tried at a court of general sessions of the peace, and for which the person so committed consents to be tried out of sessions, and without a jury, and the court so constituted shall have the powers and perform the duties mentioned in Part XVIII of the Criminal Code.

(2) The court so constituted shall be called the county or district court judges' criminal court of the county or district in which the same is held, as the case may be.

And that is all. Then there is a further provision with respect to appeals, under the Criminal Code, and the Summary Convictions Act.

A. Where is the provision that I speak of, with reference to the Crown attorney being clerk of the peace, is that in the Court of General Sessions Act?

MR. CONANT: Do you mean that the clerk of the peace shall be clerk of the court, Mr. Barlow?

WITNESS: No, I am dealing with the Crown attorney being clerk of the peace.

MR. MAGONE: No, the General Sessions of the Peace Act provides for the appointment of a clerk who is the clerk of the peace.

WITNESS: What is the exact provision in that regard, do you mind looking that up?

MR. MAGONE: Chapter 104, Section 10:

(1) There shall be a clerk of the peace for every county and district, who shall be appointed by the Lieutenant-Governor in Council.

. . . . . .

(3) Except in the County of York every clerk of the peace shall be ex officio Crown attorney for the county or district for which he is clerk of the peace.

WITNESS: That's the point.

Q. Then there is Part XVIII of the Criminal Code, which provides for speedy trial, and that section 1, sec. 824, which reads as follows:

"The judge sitting on any trial under this Part, for all the purposes thereof and proceedings connected therewith or relating thereto, shall be a court of record, and in every province of Canada, except in the Province of Quebec, and except as hereinafter provided, such court shall be called the county court judges' criminal court of the county or union of counties or judicial district in which the same is held."

and then Sec. 823 (1):

"In the Province of Ontario, judge means and includes, any judge of

a county or district court, junior judge or deputy judge authorized to act as chairman of the general sessions of the peace."

Now, my suggestion is that it is simply a matter of practice, because the judge who sits in court of general sessions of the peace as judge of the court, clerk of the peace is also clerk of the court?

A. That's true.

Q. Do you not think that is the way it arose?

A. That is the way it arose, quite apparently.

MR. CONANT: Is there any reason why the County Court clerk could not act as clerk of that court?

WITNESS: There is every reason why he should, I would say. Except perhaps in a jurisdiction like Toronto.

Q. Yes, quite.

A. But in the ordinary, smaller jurisdiction, yes.

MR. MAGONE: A simple amendment to the County Court Judges Criminal Court Act would fix that?

WITNESS: Oh, yes.

Q. In so far as the general sessions of the peace is concerned you have the same Dr. Jekyll and Mr. Hyde procedure?

WITNESS: Yes.

MR. CONANT: Yes, I well know that.

MR. MAGONE: But if you had the clerk of the County Court acting as clerk of that court, then you should abolish the clerk of the peace, should you not, because he is the clerk of the general sessions of the peace?

WITNESS: I think you are quite right, you should, yes.

MR. CONANT: Well, of course if you go into it further, you will find that he does perform functions other than that.

WITNESS: But there is no reason why the County Court clerk should not perform all those functions.

MR. FROST: That is the point.

WITNESS: Then you would have all the documents in one office, again.

MR. STRACHAN: What other functions does he perform?

MR. CONANT: Certification of certain things.

MR. MAGONE: And the naturalization jurisdiction.

MR. CONANT: Yes, I forget all the details, but there are some other functions.

MR. MAGONE: There are a lot of duties come to him with respect to the drawing up panels of juries.

MR. CONANT: Yes. I don't think you could abolish the office, but I think it is well worth considering making the clerk of the County Court the clerk of both of those courts and to keep the records of those courts too, very well worth considering.

MR. CONANT: Now, Mr. Barlow, if you were having one court, styled as you have suggested here, would you add to that probate division, a county court division, county judges criminal court division, and so on?

WITNESS: Oh, no, I don't see any object in doing it; most of those separate divisions were entirely abolished so far as the Supreme Court is concerned, and there is no longer a chancellory division, or an exchequer division, or a criminal division or a civil division.

Q. In other words, you would be placing that court in much the same position that our Supreme Court is in now?

A. Only that it would be an inferior court, and the other is the superior court; that's all; they are parallel.

Q. And the nature of the case would determine the practice that was followed?

A. Quite true.

Q. Yes.

A. We can well recollect when, down at Osgoode Hall, we had a separate set of officials, with a Master in Ordinary, and a clerk to the Master in Ordinary, and a Master in Chambers and a clerk to him, and there was a clerk in Chancery —I've forgotten some of the others, there was the criminal end of it, anyway, there was a separate clerk for that, too, but that has all been done away with.

Q. But I asked before, Mr. Barlow, and you will know better than I do, when the change was made in Ontario here, in the beginning of the 80s, I think it was, it involved a considerable revision of all the statutes and rules and everything else?

A. It did; there is no question about that.

Q. And, obviously, it would be the same thing here.

A. The same thing here. You will find that under the Act in 1881, which

combined all these divisions, the judges of the different courts at that time were made judges of the combined court, and so on.

Q. With regard to your observation about officials, in most of the counties, at the present time, there are the same officials for all parties?

A. It has come to be so very largely, that is true, although not entirely true; but one of the difficulties is they occupy the position but they have a separate set of books, and a separate place for many of the orders for each division, and so on. There is a terrible lot of clerical work that could be simplified, so they tell me.

MR. MAGONE: When the change was carried out, in 1883, it didn't become absolutely effective in Ontario until a short time ago, and I understand that there were two offices in London, the clerk of the court, and the other the local registrar, were both local registrars of the high court, do you remember that?

WITNESS: I didn't know that, no.

MR. CONANT: Is that so?

MR. MAGONE: Yes, they didn't discharge the officers out of hand, but they abolished one office and made him local registrar of the Supreme Court, as the offices became vacant. In London you had your choice; if you liked Mr. Wells, who was the clerk of the old Court of Chancery, you would start your action there, if you didn't like him, you would go to the registrar of the King's Bench division, and start your action there.

MR. FROST: I suppose the purpose of that was to avoid discharging certain officials there?

MR. MAGONE: Yes.

MR. FROST: The idea being to let time cure the difficulty?

MR. MAGONE: Quite.

WITNESS: The same thing happened here with regard to the judges; the chief justices of the Chancery Court held that title as long as they lived, and gradually, when they died or retired, the office disappeared.

MR. CONANT: That was Mr. Justice Plaxton?

WITNESS: He was the last one.

MR. FROST: Well, this consolidation does seem to be a natural step, does it not?

WITNESS: I am surprised that it hasn't been done long ago.

Q. In effect, it is in operation, in some places, now?

A. It is in operation by reason of bringing the different parts together and letting them all work together, but separately, that's all.

MR. CONANT: Taking my own county, you know there is an absurd situation there; you have the same man, who, one minute is clerk of the county court, and the next minute he is surrogate court registrar, and the next minute he is something else. It makes no sense nor reason.

MR. MAGONE: And this consolidation would not involve any such gradual changes as were necessary in the consolidation of the superior court?

WITNESS: Oh, no, because it is almost being done now.

MR. FROST: Mr. Barlow, I submit that this is one point in your report on which I thought your grounds were well taken. Would you mind telling us this; your report has now been published; no doubt this recommendation has been very widely read; have you had any objections to this? Or have you heard any reasons advanced why this should not be done?

WITNESS: No, on the contrary, I have heard the very opposite to what you speak of, that is recommendations that it should be done, and that it is something that is only the natural trend.

Q. That is what I found too. The only objection I found at all was the suggestion that we would be better to let well enough alone, but if you are going to adopt that attitude, you will never change anything.

A. You will always find those who are reactionary, and never want any change.

Q. Never want any changes at all, no.

MR. CONANT: Of the formal submissions that have been made with direct reference to Mr. Barlow's report, there is a report of the judges?

MR. MAGONE: Of the Supreme Court, yes.

MR. CONANT: Did they make reference to it?

MR. MAGONE: On page 12, yes; they go through Mr. Barlow's report and refer to all his recommendations.

MR. CONANT: What is their attitude?

MR. MAGONE: Consolidation is on page 12; they say:

"This is a matter for grave study and consideration before taking any action.

"It is doubtful whether any advantage is to be gained by consolidation of the local civil courts with the local criminal courts. That would appear to involve the already over-burdened officer, who commonly acts as local

registrar of the Supreme Court, clerk of the County Court, registrar of the Surrogate Court and sheriff, taking over also the duties of the clerk of the peace. Consolidation of these offices has already reached a point where the efficiency of the local officers has become gravely impaired. Whether there is in truth any advantage to be obtained from the uniting of the county courts and the surrogate courts may be a matter for investigation, but there will be no saving in the number of officers in most counties by that consolidation.

"It might be noted that the provision set out in the latter part of Clause 1 of the Commissioner's recommendation, viz., in matters in which the county judge is *persona designata*, is already provided for in the main by the provisions of The Judges' Orders Enforcement Act, 1937, R.S.O., chapter 123.

WITNESS: I don't know what that has to do with the matter. In fact, I haven't looked it up, but my reference to the difficulty where a judge is *persona designata* comes to me from the county judges themselves, who either wrote me or with whom I discussed the matter, and who told me of the difficulty of finding officers for the work, and so on.

MR. FROST: It says here:

"That would appear to involve the already overburdened officer, who commonly acts as local registrar of the Supreme Court, clerk of the County Court, registrar of the Surrogate Court and sheriff, taking over also the duties of the clerk of the peace. Consolidation of these offices has already reached a point where the efficiency of the local officers has been gravely impaired."

Have you found that these gentlemen were overworked and that their efficiency is impaired?

WITNESS: Not that I know of. I certainly have not heard of it; in fact quite the contrary.

Q. Well, that's what I thought.

A. The information which I have comes from the county judges, who are in a position to know, I would think.

Q. You say, for instance, here in the city of Toronto ——

MR. LEDUC: Well, there is no consolidation here.

MR. FROST: But if there were consolidation here, they would have to have more assistance, but there is no reason why, in an office where there is a lot of work, why there could not be extra help taken in?

WITNESS: No question about it at all. The large portion of this report, and particularly on this particular matter which we are now dealing with, does not refer to the city of Toronto at all, because we know that there are offices

here that have to be manned, and whether they are manned by a registrar and half a dozen clerks, or one clerk and so many deputies, doesn't matter.

Q. That's the point.

A. But it is outside, the outlying counties, that I had in mind, and it is the recommendation of these judges, who have had experience throughout the province, that I have followed.

MR. LEDUC: Mr. Barlow, I suppose when you say Toronto, you include all the other large cities?

WITNESS: Yes.

Q. There is an official who is registrar of the Supreme Court, and one who is clerk of the County Court?

A. Quite.

MR. MAGONE: Mr. Barlow, with respect to the suggestion of the judges that The Judges Orders Enforcement Act covers that part of your submission dealing with *persona designata* jurisdiction, The Judges Orders Enforcement Act, chapter 123, says:

> "Subject to the provisions of the statute under which he acts where jurisdiction is given to a judge as *persona designata*, his orders shall be entered in the same way as orders made by him in matters pending in the court of which he is a judge and may be enforced in the same way as judgments of the court."

Does not that get over the difficulty suggested by you?

WITNESS: It would appear to, wouldn't it?

MR. LEDUC: In which court would it be entered?

MR. CONANT: That is not the difficulty that arises in this *persona designata* business; you are all right after you have your order, but there is no machinery for taking care of your preliminary steps and proceedings; isn't that the case, Mr. Barlow?

WITNESS: Quite right, sir.

Q. Now, after you have your order, and entered the proceedings in court, you file your papers, and he puts them in a big envelope, and when you go up with your motion, you have them. At the present time, and I have known this to be the case, the judge is the custodian of those papers; there isn't any other place to take them.

A. There is no place to file them; that is the complaint.

Q. And the judge, in many cases, has very wholesomely and completely lost them.

A. There is no clerk of the court whose duty it is to take charge of those papers and produce them.

Q. And if the clerk loses them, you can censure him wholeheartedly.

A. But if the judge loses them, you have no remedy.

MR. MAGONE: Would not your recommendation involve this: that in matters which are now *persona designata*, such as, shall we say, Unmarried Parents' Act, and matters of that kind, with an informal procedure, you would have a court action with a clerk and everyone present and the corresponding increase in costs?

WITNESS: Give the jurisdiction to the court, and not to a judge, and if you give the jurisdiction to the court then you have the court's machinery to use.

Q. Is there any advantage in having all the machinery of the court available in the initial stages? Do you not only need it after you have judgment?

A. We certainly need it in the initial stages, just as you need such machinery on any application that comes before the court, somebody with whom the papers can be filed and who is in charge of them, and who will know where they are when wanted.

MR. CONANT: There is only one aspect of this, Mr. Magone, pardon me for interrupting your line of questioning. I don't mind prejudging this item, because I have had some very singularly difficult experiences, where the clerk of the peace opens the court and swears the witnesses, and reads the indictment, and addresses the jury, and examines the witnesses—all within an hour, as you have seen it happen. I think that is the most absurd thing I have seen. There is only one difficulty that arises there, which should not be a difficulty, but it would have to be met; there are certain fees that pertain to that work. Under the Administration of Justice Expenses Act, the clerk of the peace gets certain fees from that.

MR. MAGONE: Yes.

MR. CONANT: It would be a matter of consideration as to how those fees would be adjusted if you rearranged it, would it not?

MR. MAGONE: Yes, well, power is given to do that by Order-in-Council, Mr. Silk reminds me.

MR. CONANT: I understand that. That is why I wanted that amendment last year.

MR. MAGONE: Yes, instead of having all those items under the heading of clerk of the peace, the only amendment necessary would be to change it to clerk of the County Court Judges Criminal Court.

MR. CONANT: Well, yes, that's right; it is not a large part of the earnings of the office.

MR. MAGONE: No, it is very easily remedied.

MR. CONANT: While we are here, let us have some record of the views this assemblage represents. The consolidation might be made effective in all excepting the county of York, and the counties of Wentworth, Middlesex, Essex and Carleton; would those be the exceptions?

WITNESS: I see no reason why the consolidation should not be made effective in all those jurisdictions as well, Mr. Chairman, and then you would have a uniform practice. What I do say is that it is not—there is not the same necessity for it there.

Q. Yes?

A. But there is no reason why it could not be made applicable to those jurisdictions as well, and it merely means that instead of having a registrar or a separate registrar and a separate clerk of the peace, and so on, you would have one clerk of the court, or one registrar, whatever you might call him, and deputies for these other divisions in those larger cities.

MR. MAGONE: I suppose it would be reasonable to make an exception apply only where there is a separate clerk of the peace, and that would only be Toronto?

WITNESS: Yes, that could be done.

MR. CONANT: Well, now, you have County Court jurisdiction; were you going into that yet?

MR. MAGONE: Yes, but we have read the recommendation of the Supreme Court, which is against Mr. Barlow's recommendation; I think I should read in the recommendation of the county and district judges, which is favourable.

MR. CONANT: All right.

MR. MAGONE: This is the recommendation of the County and District Judges Association for the Province of Ontario, and they say:

> "We fully endorse the recommendation that the County Court, the Court of General Sessions of the Peace, the County Judges Criminal Court, and the Surrogate Court, should all be consolidated under the name of County and Probate Court of the County of....., and that there should be included therein all matters in which County Court judges are now *persona designata*, and that the Rules of Practice and Procedure applicable especially to such a new consolidated court should be drafted and adopted."

Then there is a recommendation from the Lincoln County Law Association, one of the associations which has apparently gone carefully into it, and on page 3, they say:

> "Our Committee approves of this consolidation, provided that it in no way interferes with the present remuneration of the County Court judge. It was felt that the judges' salary, at the present time, is not enough, and

if it were lessened, it would be difficult to obtain the high standard necessary for our judicial system."

And the Elgin County Law Association:

"This association is in favour of the recommendation of Mr. Barlow as to consolidation of the County and District Court, Court of General Sessions of the Peace, County Court Judges Criminal Court, and Surrogate Court."

The Toronto Board of Trade similarly concurs in the recommendation.

MR. G. A. GALE: May I interject, Mr. Chairman, that during our discussions with Mr. Barlow, at the time this was brought up, the Lawyers' Committee was heartily in accord with his recommendations.

MR. CONANT: May I suggest, Mr. Magone, that you have your staff put those extracts in one memorandum, as part of the recommendations to the Committee, and let each member of the Committee have a copy. Do you agree with that, Mr. Frost?

MR. FROST: Yes.

MR. MAGONE: Well, I have been reading them into the record for the purpose of getting a copy of the recommendations all together.

MR. CONANT: Well, you can do it that way, I suppose.

MR. MAGONE: I intended to read a good deal into the record, sir; if we have copies made of everything, it is going to mean an awful lot of typing.

MR. CONANT: Are you going to read those further at the present time?

MR. MAGONE: No, I am separating them, and reading them at the time the particular matters come up.

MR. CONANT: All right.

MR. MAGONE: On page 72 of your report in the *Weekly Notes*, Mr. Barlow, you deal with County Court Districts.

I understand, Mr. Barlow, that that was done about 1919, at the request of the then Government of the Province of Ontario?

WITNESS: So I believe.

A. And that the Government of the Dominion acquiesced and passed an Order-in-Council approving of the formation of the Province into County Court districts?

A. Yes.

Q. After the Province had passed an Order-in-Council separating the Province and the districts?

A. Yes.

Q. There has been a good deal of criticism, I understand, just as to the operation of that system?

MR. CONANT: Well, now, Mr. Magone, pardon me, but I think the effect of that system should be put on the record, and explained a little more clearly as you go ahead.

MR. MAGONE: The effect of that is under Section 18 of The County Judges Act:

> "The Lieutenant-Governor in Council may order that a county or two or more counties shall form a County Court district for the purposes of this Act, and the district so formed shall be erected and established as from a day to be named by the Lieutenant-Governor by his proclamation in The Ontario Gazette."

Then under section 20:

> "After the erection of a County Court district, the several county courts, courts of general sessions, division courts, courts for the hearing of appeals and complaints under The Assessment Act or The Voters' Lists Act, and all other courts which a county judge may hold in each county shall be held by the judges, including the junior judges in the district, in rotation so far as may be practicable in view of the respective general length of service and strength of the other judges, and the special duties assigned to junior judges as well as in view of other offices, if any held, by any of the judges, and all other circumstances."

Then, following that, an Order-in-Council was passed by the Lieutenant-Governor dividing the Province into a number of districts, and grouping such counties as Lincoln, Welland, Haldimand, Norfolk, Brant and Wentworth into one district, and the same all over the Province, and following the passage of that Order-in-Council, in 1928, that superseded an earlier Order, the Governor in Council, at Ottawa, passed an Order, under section 34 of the Dominion Judges Act, to provide that:

> "Each of the County Court judges of Ontario in any county or provisional judicial district in the Province be and is hereby required to hold any of the courts and to perform any other duty as County Court Judge in and for the whole County Court district."

MR. CONANT: So that each judge has concurrent jurisdiction in the whole district?

MR. MAGONE: Yes.

MR. CONANT: All right.

MR. MAGONE: And that is so, apparently, in matters over which the Provincial Legislature has jurisdiction, and, by reason also of a Dominion Order, in matters over which the Dominion has jurisdiction.

MR. CONANT: Now, Mr. Magone, have you any evidence or submissions to present to us as to what was the genesis of that? What was the purpose of that?

MR. MAGONE: I haven't any.

MR. FROST: Mr. Barlow gives us the answer to that in his report:

> "This was originally conceived to relieve County Court judges from the embarassment of trying cases of which they might have a more or less personal knowledge within their own county and also to relieve them from what is sometimes embarrassing, namely, the same counsel appearing before them continuously."

MR. BARLOW: That's it.

MR. MAGONE: I think, my recollection is, too, that there were a number of counties where judges were actually crying for work, and that it was designed for the purpose of permitting judges from one county to go into another county and to work out some system of rotation, to that there would be a division of the work.

MR. STRACHAN: And to relieve the judge of some of the work, such as the case of Judge Elliott, for instance.

MR. MAGONE: Yes. In some counties there would be two judges, and one judge would be very busy, while the other judge would not be so busy, and to permit the junior judge, where there was one, to be used around in the other counties where he was required.

MR. CONANT: Well, now, how is this worked out? Let us——

MR. FROST: Just in connection with that, before you go ahead with your request, Mr. Attorney-General, doesn't that same condition apply as regards magistrates, or do you know that, Mr. Barlow?

WITNESS: You mean does the same practice apply?

Q. Yes.

MR. MAGONE: Well, the magistrates now have province-wide jurisdiction; they are appointed for the whole Province of Ontario, and it is just a matter of direction by the Attorney-General through the Inspector of Legal Offices.

MR. CONANT: As to where they sit, yes.

MR. FROST: Mr. Attorney-General, Mr. Barlow says this, in his report; he says:

"The result is that not only do a number of the County Court judges seldom try a case within their own county, but they travel long distances for the purpose of taking Division Court sittings, with the result that the municipality and the Dominion Government are put to a very considerable and very unnecessary expense by reason of the absence of the judge from his own county town."

Now, I suppose this is common knowledge; I think that is a fair comment on what is taking place. I think it is a fact. You take, for instance, with regard to magistrates; we have magistrates who will exchange courts, and they will travel long distances, and their mileage charges are charged up to the public in some way or other, and I think that same thing is happening as regards the judges.

On the other hand, the reason that you have given there, that this was done to release county court judges of the embarrassment of trying cases in which they might have an interest, and also in saving them from the embarrassment of having the same counsel continuously appearing before them, I think that is true; do you then think there is some happy medium we might strike in between those two points? I know your difficulty; you are going to ask: where are you going to establish the medium? But there is that to it; the County Court judge sits in the same court, he has the same lawyers appearing before him; the result is that oftentimes, perhaps likes and dislikes enter into the situation, many things that are not desirable and many things which are desirable, on the other hand. We know that abuses are taking place in the matter of excessive travelling expenses, and I wonder if there isn't some happy medium there.

MR. CONANT: Well, there is no question, Mr. Frost, of abuses creeping in. The Committee, I think, will take my word for this statement: last June, I was called to the telephone one Monday morning by the clerk of one of the county courts not far from Toronto, who wanted to know what he was going to do for a judge—I think his sessions started sitting in June—what was he going to do for a judge. I inquired and found out that the judge that was coming to that court was from another county, and that he had been taken ill, and on further inquiring, I found that every one of the four judges of the four counties constituting that district were changing around in the whole district, and I have since made further inquiries and find that that has been the common practice practically since this arrangement was set up, and made statutory. Now I think it is stretching our credulity to have us believe that that is the situation the law was intended to meet, isn't that right?

MR. FROST: Quite.

MR. CONANT: There is no doubt about that. And we must do something about it. I may say, though, that this has been in the consideration of my Department for some time. We have compiled the figures—which I have sent for and will file here in due course—as to the expense accounts involving the county judges for the province for the last year, I think, and also we have had correspondence with the Department of Justice, and in due course, Mr. Magone, you will ask Mr. Snyder to come and outline the correspondence and the present situation as it affects this Department and the Department of Justice.

But I think it is proper, at this stage, for Mr. Barlow to say, if he cares to do so, whether there is any solution, having in mind, I feel, that there are occasions when interchanges are necessary and desirable.

MR. FROST: I do, too.

MR. CONANT: There is no doubt about that. It may be on account of sickness, it may be on account of a judge being interested in a case, or related to the litigants. But our difficulty arises—and I have studied this in my own way in my own Department for some time—that we have no central authority who can meet and decide upon particular cases involved. There is no chief justice of the County Court, so to speak. There is no co-ordinating officer for the county courts of Ontario.

Now, if you had a co-ordinating office or officer, be he who he may—I don't know who he would be—who could deal with the question of interchanges with some semblance of dealing with them on their merits, of course, that would be the ideal system. But perhaps Mr. Barlow, from his vast experience, can suggest if and how that can be met.

MR. FROST: Mr. Barlow, the question you raised here mainly comes from mileage, does it not?

WITNESS: Well, it comes from mileage, and it also comes from a per diem allowance of ten dollars in cities and six dollars, I think it is, outside cities.

MR. CONANT: When they are away from the county town.

WITNESS: Yes, per day.

MR. FROST: I wonder why that should be? It does seem to me that some of these mileage allowances are ridiculous. Why should, for instance, a judge or a magistrate, if he is going, for instance, from one town to another, receive more than out of pocket expenses? Now I mean reasonable out of pocket expenses.

WITNESS: I am not sure that it is put on the bases of mileage, so far as our judges are concerned, or not. I think it is put on the basis of per diem allowance, plus travelling expenses. It comes under, as Mr. Magone said, under The Judges Act, and the same applies to our Supreme Court judges in travelling on circuit, the same per diem and the same expenses, and I think it is put on the basis not of mileage, but actual railway expenses; is that right?

MR. MAGONE: Yes, and a per diem.

WITNESS: Yes, plus railway expenses.

MR. FROST: The allowances, then, are really beyond our jurisdiction?

WITNESS: Your magistrates in the Province who travel by car, as many of them do, they are allowed a mileage, so much a mile if they use their own car.

MR. CONANT: Mr. Barlow, I don't want to interrupt, but I think we can

get this in a very definite and succinct form from Mr. Cadwell or Mr. Snider, and I don't think it is worth while struggling with here.

WITNESS: Yes.

Q. But I do think—pardon me for interrupting—but I do think it is worth while having Mr. Barlow present to canvass the situation as to how a proper interchange might be regulated, if there is any way of doing it. I don't know of any.

A. Mr. Chairman, some time ago, and you have mentioned it again to-day, you raised the question of a chief justice of the County Court, if you wish to call him such; someone, anyway, of the County Court judges who should have control over all other judges throughout the province. As it stands at the present time, once a judge is appointed judge of the County Court, there is no one except the Minister of Justice who has any control over him, and he very little; there is no direction at all. And I notice that under the County and District Judges Act, with the section setting up the county court districts, a provision is made that:

> (2) The judge in a county court district who, in point of time, is senior in appointment to office shall convene the meetings referred to in this section. . . ."

That is only a slight indication of what might be done, but I do think this question of interchange of county judges can only be solved by some central control, and that central control can perhaps best be done by a senior judge whose duties would be supposedly limited to keeping the machinery working smoothly throughout the whole Province, and where necessary, the application would come to him, and he would rule, and that would be a check on unnecessary travelling and motoring from place to place of these various judges. It seems to me quite unnecessary that a county judge should travel a long distance into another county merely for the purpose of holding Division Court, as happens continually. It is more likely to happen in a county court case, or in a criminal case, at the sessions, or in the county judges criminal court. But the Act here covers everything, even to courts for hearing appeals and complaints under The Assessment Act and The Voters' Lists Act, and all other courts which the judges may hold in each county.

MR. MAGONE: Well, the appointment of a chief justice is beyond the jurisdiction of this Committee; we can only consider it and recommend it?

WITNESS: It is beyond the jurisdiction of the Province, I presume.

Q. Even among the county judges already appointed, the jurisdiction of the Provincial Legislature would not go so far as to permit them to name a chief justice of the County Court?

A. I don't think that the Province has any power to name anyone county court judge, and say that he shall have control over the other County Court judges. That is a matter of Dominion jurisdiction, I would say.

MR. CONANT: Well now, have they not had a somewhat similar situation, and found some remedy, in some of the other provinces?

WITNESS: I don't know, Mr. Chairman.

MR. ARNOTT: Mr. Barlow, would it not naturally follow, if your recommendation were carried out here, that there would be action taken at Ottawa?

WITNESS: I'm sure—well, I wouldn't say I am sure, but I would presume that Ottawa would be glad to co-operate.

Q. Yes.

A. With any legislation that this Committee might decide was necessary for the purpose of taking care of the situation, because they apparently are very much alive to it.

MR. CONANT: Yes. There is no doubt about that; but we are still confronted with the problem of how to reconcile the need for interchange, that sometimes exists and arises, with some kind of control or co-ordination.

WITNESS: Well, as I said before, if you have one ——

Q. You see—pardon me—Mr. Frost mentioned the case of magistrates. Well, none of them present any difficulties, because the magistrates accounts are audited all the time; they go to the Criminal Audits, and if there is an abuse, we step on it.

A. Yes, and they are controlled by your Department.

Q. Yes.

MR. FROST: This interchange of judges, though, is authorized by an Act of this Legislature?

WITNESS: Supplemented by an Order-in-Council of the Dominion, though, which gives it force; otherwise there would be no jurisdiction, in a judge of one county to go into another county, as I understand it.

MR. CONANT: In criminal matters.

WITNESS: In criminal matters, yes.

MR. MAGONE: We might get some help, Mr. Chairman, from what applies in the other provinces. We wrote a letter to the Legislative Counsel of the other provinces, and in Alberta, with respect to that, the answer is:

> ". . . in connection with the points you raise as to travelling district court judges, I would call your attention particularly to the amendment of 1936, which for district court purposes amalgamated the 16 existing judicial districts and set up two district courts, one, the district court of the district of northern Alberta, the other the district court of the district of southern

Alberta. . . . With respect to travelling expenses, these are paid by the Dominion Government; the Province does not bear any share."

It does not indicate that they have had any difficulty there, but it was just done in 1936 in Alberta.

MR. FROST: What would be the effect of that? That means the per diem allowance would be out, if the judge was acting in his own judicial district; he would have authority to act everywhere, but he would get his travelling expenses only?

WITNESS: No, I understand he would get his expenses and a per diem.

MR. MAGONE: Yes.

MR. FROST: Out of his town?

MR. MAGONE: County town, yes.

WITNESS: Yes.

MR. MAGONE: They get it now when they are out of the county town. For instance, a County Court judge of York, holding a Division Court in Newmarket, gets a per diem.

MR. CONANT: We understand, and probably Mr. Barlow and Mr. Magone can assist us in the answer, that at the present time a county judge gets a per diem allowance whenever he is away from his county town?

WITNESS: Whenever he is away from his own county town, he does, yes.

Q. So that if he goes from Whitby, let us say—only because I am familiar with that territory—to try a case at Uxbridge, he gets six dollars a day, is it, Mr. Magone?

MR. MAGONE: Yes.

WITNESS: Six dollars a day plus travelling expenses.

MR. CONANT: And if he goes to Oshawa, he gets six dollars?

WITNESS: Yes, I presume so; yes, it is a question of being outside his own county town.

Q. Yes, I see.

MR. MAGONE: And in Manitoba, the province is divided into districts.

"I have no complaints regarding travelling expenses of our County Court judges, and no information in the Department which would assist you."

MR. CONANT: That is a young province. They are not versed in the ways of the world yet!

MR. MAGONE:

"I think the practice in Manitoba is different from that in Ontario. We have four judicial districts, and a judge is assigned to each district. In the eastern judicial district, there are four judges. The Judges Act provides that where a judge is absent, the judge of a neighbouring judicial district can act in his stead. The expenses incurred by the relieving judge are, I believe, paid from the Department of Justice. I am asked, from time to time, to approve of expense accounts."

That practice is, in other provinces, that where a judge from one county or district goes into another county or district, the Attorney-General of the province is asked to approve of the account before the Department of Justice will pay it.

MR. CONANT: I am not certain that I am in favour of that.

MR. MAGONE: In New Brunswick they have a system of county court districts, but no complaints, apparently, regarding travelling expenses of judges.

MR. FROST: I thought travelling expenses were all paid by the Dominion Government.

MR. CONANT: Oh, yes, our jurisdiction would extend to an amendment to our own Act, if we saw fit, and so far as we would have legislative jurisdiction, and recommendations to the federal authority. Obviously that is as far as we could go.

WITNESS: Yes.

Q. Yes, and if any control was to be exercised, it would have to be by some Dominion arrangement, would it not, Mr. Barlow?

A. It would have to be by Dominion arrangement, because the judges are appointed by the Dominion. As an illustration, the Dominion appoints the chief justice of our high court.

Q. Yes.

MR. FROST: What is meant by this, Mr. Barlow?

". . . but they travel long distances for the purpose of taking Division Court sittings with the result that the municipality and the Dominion Government are put to a very considerable and very unnecessary expense."

Why the municipality?

WITNESS: Well, there are certain costs that are paid by the municipality, I understand. Now, in this illustration that I have given on page B34, where a letter was received from the reeve of Blyth, setting out for the clerk, four dollars, bailiff, four dollars—Now I understand that those two items, and also the stenographer's fees, are paid by the municipality. But the judge, and his mileage, are paid by the Dominion Government.

Q. But in that case, apparently, the reeve was taking some objection that he has paid the last two items.

A. Yes, well I don't know, he may not have known ——

MR. CONANT: What page is that on?

WITNESS: Page B34, of the Report in the *Weekly Notes*, the breakdown of that expense item mentioned.

Q. Well, Mr. Polson, gentlemen, whom I have sent for, will be able to explain the details of that.

A. He will know the details of it, but I understand the first three items are paid by the municipality, and the other two by the Dominion Government.

Q. Well, now, Mr. Barlow, you would not recommend repeal of those provisions about interchange in their entirety, of course?

A. I haven't recommended their repeal in their entirety because ——

Q. The necessity does arise?

A. The necessity does arise. But it seems to me that if a plan could be evolved by which they would be subject to a central control, that it would do away with the abuses that arise.

Q. Yes.

A. The recommendation that I did make here was that it should be limited to County Court district matters and courts of general sessions of the peace, and also county court judges' criminal courts.

Q. Yes, you have a suggestion here that in order to prevent in part the situation that is responsible for such an abuse, we may make it only apply to certain functions.

A. Certain functions.

Q. And leave ——

A. The more important.

Q. And leave the judge in his own county to exercise the remaining functions within his own county.

A. Quite right. But I think that it should go further, and I think the only proper solution of it is a central control to prevent abuses arising.

Q. Well, now, is there anything more on this point?

MR. MAGONE: Just this: most of the objections raised are with respect to the judge taking Division Courts, are they not?

WITNESS: I presume they are the ones that the most objection is taken to, yes.

Q. And if we repealed the provision by striking out the word "Division Court" in section 20 of The County Judges Act, that would leave, I presume, only the judge of the County Court of the county or the junior judge to take Division Court sittings?

A. Quite true.

Q. That is in the county for which he is appointed?

A. Quite true.

Q. Then, Mr. Barlow, if there is any difficulty, that could be got over, I presume, by having the judge appointed a barrister of ten years' standing, as they used to do?

A. Quite true.

MR. CONANT: Yes.

WITNESS: Or the Attorney-General, I think, has power to direct a judge to go from one county to another.

MR. CONANT: Do you see any reason, Mr. Barlow, why, in Division Court matters, especially if we revise it as we have in mind, a judge should sit in other counties than his own?

WITNESS: I don't see any reason for it at all.

Q. With that provision, that if it is a case of a relative or something that he cannot fairly try, you can easily appoint somebody?

A. Very easily appoint somebody.

Q. It would not happen once a year?

A. Quite true.

MR. CONANT: Here is Mr. Polson now. Mr. Polson, in this question of the expenses of the Division Courts, how is the municipality involved in that expense?

MR. HUGH POLSON: Just to the extent of the county ——

Q. Just a minute, before you go into that, I want on the record, your official position?

A. Assistant Inspector of Legal Offices.

Q. You have been in that position for how many years?

A. Ten years.

Q. Now go on; tell us about the matter.

A. Well, the counties have to pay the stationery, books, etc.

Q. Yes?

A. The procedure books, the county pays all that. The municipality in which the court is located has to pay the clerk and the bailiff four dollars each sitting, where they are earning less than $1,000 per year.

Q. That would apply to most of the courts of the province, would it not?

A. Quite a number of the smaller ones, yes, but very few cities. It runs from about twenty-four dollars to eighty dollars, I would say, in the municipalities.

Q. Yes.

A. The municipalities have never objected to that, because they figure that the Division Courts brought in a certain amount of trade to the town, people coming in, and so on.

Q. All right.

A. Some counties have objected—I think Mr. Arnott's county objects once in a while to the excessive expense of the books, because there are so many courts down there, far more than they need.

Q. Yes?

A. Hastings County could be looked after by about three courts.

Q. Well then, who pays the judge?

A. The Dominion does.

MR. ARNOTT: Who pays the court stenographer?

MR. POLSON: The Dominion pays all expenses in connection with that.

MR. FROST Do they pay the court stenographer too?

MR. POLSON: Going with the judge?

Q. Yes.

A. The Dominion pays it. We don't pay it.

Q. I understood the counties paid that.

A. It may be the county.

MR. CONANT: I think you had better look that up. Mr. Cadwell, you are the Inspector of Legal Offices, can you settle that point? I don't think the Domintion pays the stenographer; I think it is part of the county's expense. Can you tell us?

MR. CADWELL: No, I haven't it definitely, sir, but my impression is that the county has to pay it.

MR. CONANT: Well, get it and let us have it to-morrow, will you, please? File a copy of a memorandum with Mr. Magone as to a breakdown of these costs in Division Courts, costs of books, costs of clerk, bailiff, stenographer, and judge, and file that memorandum with Mr. Magone to-morrow.

MR. CADWELL: Well, Mr. McDonagh has given me the reference here, sir, Section 88, subsection (4) of The Division Courts Act, Chapter 107, R.S.O. 1937.

MR. CONANT: Yes?

MR. CADWELL:

"(4) The fees and expenses of a shorthand writer appointed under sec. 17 of The County Judges Act attending for the purpose of taking down the evidence as provided in subsection (1), shall be borne and paid in the same manner as fees and expenses of a shorthand writer attending a sittings of a county or district court."

And are paid by the county, of course.

MR. CONANT: Yes, that's the answer.

Here is a letter from the Deputy Minister of Justice, Mr. Magone. I think we should read it and have it placed on the record.

MR. MAGONE: Very well; this is a letter to the Deputy Attorney-General, dated January 27th, 1940.

"Referring to your letter of December 7th last, I have given some consideration to the question of the interchange of County Court judges in the Province of Ontario. It seems to me that if the conditions of which you complain are to be remedied, it will be necessary to amend the provincial legislation on the subject, or that some effective action be taken by your Department to apply the same rules to the travelling expenses of the county judges in Ontario as are applied to the county judges in other provinces.

"As you are aware, sections 20 to 22 inclusive of The County and District Judges Act, Chapter 102, R.S.O. 1937, require the judges to hold courts within a group of counties in rotation, or in accordance with the provisions of section 21. Reference may also be made to section 34 of The Judges Act of the Dominion, although I am informed that all the cases which have given rise to complaints are cases in which the judges had interchanged arising within their own group of counties, under the provisions of the Ontario Act, and not in the exercise of the power incurred by section 34, subsection 2 of the Dominion Judges Act.

"By paragraph (d) subsection (1) of section 21 of the Dominon Act, it was provided, as you know, that: 'no travelling allowances shall be granted to a judge of a County Court in respect of any attendance at a place not within the county or district for which the judge is appointed, unless it appears to the satisfaction of the Minister of Justice that the attendance was duly authorized and necessary.' This provision is strictly followed in all the provinces of Canada. Whenever a County Court judge holds a court outside his own county, he sends his account to the Attorney-General of the province for approval. Usually that approval takes the form: 'Certified that the holding of the above court was approved and the attendance was necessary" and is signed by the Attorney-General or his deputy and sent here for payment. The Department places great confidence in the above certificates, and relies upon them implicitly, and I may say, for your information, that complaints about County Court judges travelling in other counties of the province are exceedingly rare in practice. However, this provision of the Dominion Act is not carried out in Ontario because of its apparent conflict with the provisions of the Ontario Act regarding the grouping of counties and the rotation of judges."

I might interject, there, that the Deputy Minister of Justice has apparently forgotten about the Dominion Order-in-Council which authorizes ——

MR. CONANT: Yes.

MR. MAGONE: —— the Dominion judges to act.

"Nevertheless, although County Court judges in Ontario are appointed judges of the County Court of a certain county or union of counties, no cognizance is being taken of the grouping system so far as their appointments are concerned.

"Possibly the time is propitious to bring the County Court judges under the provisions of the above-mentioned Dominion Act. But you will observe, from the above, that the question is one primarily for the consideration of the provincial authorities. So far as this Department is concerned, we will be glad to co-operate in any scheme which will improve the administration of justice and at the same time tend to reduce the travelling expenses of the judges.

"I quite agree with you when you say that the interchange system can only be run on a proper basis if there is some person other than the judges involved to sanction the interchanges.

"(Signed) E. STEWART EDWARDS,
"Deputy Minister of Justice."

MR. CONANT: That part of the letter can be made part of the record. The rest of it has to do with something else. I don't want it involved in these proceedings. Now what does that bring us to, Mr. Magone?

MR. MAGONE: Well, I think to this. I was asking Mr. Barlow if the complaint regarding interchange was principally concerned with the sittings of the Division Courts, and I understood him to say that it was.

WITNESS: So far as I know, that is the real complaint.

Q. Well, then, by simply deleting the words "Division Courts" from section 20 of The County Judges Act, we would then be in a position, if a judge took a Division Court out of his county, in the same position as in the other provinces, apparently, which is made apparent by the Deputy Minister of Justice's letter.

MR. FROST: That is, he gets consent from the Attorney-General?

MR. MAGONE: Yes.

MR. CONANT: Then, Mr. Barlow, your report is properly framed to meet Mr. Magone's objections or observations?

WITNESS: Well, not entirely so, Mr. Chairman, because section 20 of The County and District Judges Act is as follows:

> "After the erection of a County Court district, the several County Courts, Courts of General Sessions, Division Courts, Courts for the hearing of appeals and complaints under The Assessment Act or The Voters' Lists Act, and all other courts which a county judge may hold in each county district, in rotation so far as may be practicable in view of the respective general length of service and strength of the other judges, and the special duties assigned to junior judges as well as in view of other offices, if any, held by any of the judges, and all other circumstances."

So that section 20 as it now stands ——

Q. It is a nominative section?

A. It is a nominative section; all that Mr. Magone suggests taking out is the word "Division Courts".

Q. Yes, but your report is more exclusive than that, or more limited than that, because you would limit their jurisdiction to the hearings to be heard in the County Courts, and Courts of General Sessions.

A. And I will add to that County Court Judges Criminal Courts.

Q. Well, then, Mr. Magone, if that were amended to cover the County Court, the Court of General Sessions of the Peace and the County Court Judges Criminal Court, would you not then be meeting the situation as to all these other functions that have been exercised, Division Courts, Assessment Courts, and so on *ad infinitum?*

MR. MAGONE: I would think so.

MR. CONANT: Yes. Is that what you would recommend?

WITNESS: That is what I would recommend, yes.

Q. Taking the conclusion of your recommendation and adding to it the County Judges Criminal Courts?

A. Quite true.

Q. And then you would have it within reasonable limits, is that it?

A. Yes.

MR. MAGONE: Now, I think I should read into the record some of the observations on Mr. Barlow's recommendation. They are all very short.

On page 35 of the Supreme Court judges' observations they say:

"The Committee agrees with this recommendation in principle, but with the understanding that the Commissioner's recommendation should refer, not only to the County Court and the Court of General Sessions, but also to the County Judges Criminal Court."

MR. CONANT: That is exactly what we just said, yes.

MR. MAGONE: Yes. And then the Elgin Law Association; their recommendation is "that a County Court judge shall have jurisdiction in any court as a resident county judge, and that the County Court judges be interchanged, but that the expenses of such interchange be limited to hotel and travelling expenses.

And that the powers of a local judge of the Supreme Court under Rule 210 be extended, so that he may have full authority in his own county to deal with all matters in his own county as to items 7 and 10 of Rule 208."

MR. CONANT: Well, they are simply recommending the present practice less per diem?

MR. MAGONE: Yes. Then the Lincoln County Law Association:

"Your Committee is not in favour of the suggestion of the Barlow report that the jurisdiction of County Court and district judges be limited to matters to be heard in the County Court, Court of General Sessions; it was felt that the present system meets the convenience of the litigants and counsel. In some cases, a county judge would prefer to not hear some particular case, and it would preclude him from calling in a neighbouring County Court judge of the same district to hear the case."

Then the Board of Trade of the City of Toronto:

"The Master recommends that the County Courts Act be amended so as to limit the jurisdiction of the County Court districts to matters heard in the County Court and in the Court of General Sessions. This will restrict County Court judges from hearing matters or arguments other than those heard in these courts in adjoining counties. Generally the Board concurs with this recommendation, but is of the view that the restriction should not be so rigid as to prevent judges in one county hearing cases in another county in the event of the judges in such county being unable to attend the courts because of illness or for other reasons."

WITNESS: They overlooked the provision for that.

MR. MAGONE: There is provision for that interchange under those circumstances?

WITNESS: Yes.

MR. CONANT: Yes.

MR. MAGONE: There is an item on the agenda, Mr. Chairman, in respect to County Court jurisdiction.

MR. CONANT: Well, just before we leave this subject, and referring to your observation, if our statutes were amended to limit the interchanging jurisdiction, say, to County Courts, General Sessions and County Court Judges Criminal Courts, then what other safeguard would there be, Mr. Barlow? What do you make from this, what other safeguards would there be?

WITNESS: I don't think I understand your question, Mr. Chairman.

MR. CONANT: In your recommendation, you recommended the interchanging jurisdiction be limited to County Courts, General Sessions and County Court Judges Criminal Courts.

WITNESS: Yes.

Q. Now, I understood Mr. Magone to make the remark that the interchange in other cases would be subject to some further control or jurisdiction; what was the remark, Mr. Magone?

MR. MAGONE: Well, I thought that section 20 providing that the judges should act in these cases in rotation, might very well be repealed and would leave the judge in the county to take cases in his own county except under circumstances that might arise, in which case he could call in another judge from another county.

MR. CONANT: But in some of the other provinces, as the Deputy Minister of Justice's letter seems to indicate, there is a system whereby these expenses are approved by the Attorney-General's Department, is that so?

MR. MAGONE: Yes, only where the county judge goes out of his own county at the request of a judge of another county to take a case, then the expenses are only paid by the Dominion if the Attorney-General approves that going beyond the county was necessary.

MR. CONANT: Would that not cover all the other cases?

MR. MAGONE: That would cover all the cases except those provided for by your amendment.

MR. CONANT: That's what I am getting at; so it all comes to this: that we might amend our statute to limit the courts in which there would be an inter-

change, and, in addition to that, the interchange—or the expenses arising from that interchange, might be subject to the approval of the Attorney-General, is that it, Mr. Magone?

MR. MAGONE: Yes.

MR. FROST: Well, there is just this: that the judge could leave his county in connection with a County Court matter, a Court of General Sessions matter, or a County Court Judges Criminal Court matter, he has the power to interchange with other judges in connection with those courts, but if it involves anything else, a Division Court case, or an Assessment Appeal, he has to go to the Attorney-General to get consent before he can do it.

MR. CONANT: Well, I just want to get that clear; is that the way you put it, Mr. Magone?

MR. MAGONE: Yes.

WITNESS: That's right; that's the practice in some provinces.

MR. CONANT: That is, in these cases in which he would be entitled to take absence under our statute, there is no further control required, there would be no control or audit, is that it?

WITNESS: There would be no control or audit of his accounts.

MR. MAGONE: Yes, we wouldn't have any more control than we have now in those cases.

MR. CONANT: All right, then, it would give him jurisdiction in other cases, but in those other cases it would be subject to approval?

WITNESS: Mr. Chairman, no more jurisdiction than he now has; as I understand it, at the present time, if a judge, as illustrated by you, is absent from one of the courts in a district, you have power to direct a judge from another County Court outside that district to go into that county town and hear cases there in which event, of course, his expenses are taken care of. That is already provided for, and has been provided for for years before these districts were set up.

MR. CONANT: Yes.

WITNESS: But under this County Court Judges Act ——

MR. FROST: The exchange is very wide.

WITNESS: —— under sections 19 and the following sections, the practice is for the judges to meet and set up a regular circuit within that district, and the judge from Kingston goes to Belleville, the Belleville judge goes to Picton, and the Picton judge goes to Napanee, and so on, and then also the various Division Courts.

MR. CONANT: Well, I am not quite clear; I would like to get the record clear on this point; if our Act is amended so that the judges in the entire district had jurisdiction for the County Courts, the Courts of General Sessions, and the County Court Judges Criminal Courts, would his accounts be subject to approval in those courts?

MR. MAGONE: No.

WITNESS: No more than they are now, and they are not.

MR. CONANT: No. Then is it your idea that he would be given jurisdiction above that under any other special circumstances, or subject to any control?

WITNESS: I would not change the practice that now exists, which practice is ——

Q. No, we're getting away from it. As I understand the scheme we set up a demarcation here; on this side of the wall are County Court cases, General Sessions cases and County Court Judges Criminal Court cases.

A. That is jurisdiction of the county and district courts.

Q. There would be no other control?

A. No.

Q. On the other side, there are all other cases, Division Courts, Assessment Courts, and so on.

A. No, in those, he must stay within his county unless permission is given by you.

Q. In which case what?

A. In which case he gets expenses the same as he does now.

Q. Approved by whom?

A. I don't think they are approved by anybody.

Q. Don't you think they should be approved by somebody, in the latter case?

A. Possibly so, it would be a control.

MR. FROST: That is a Dominion Government matter; once he is authorized to do it, the expenses are authorized by the Dominion Government, and you haven't really anything to say, except that ——

MR. CONANT: Well, Mr. Frost, apparently the letter of the Department of Justice would certainly not be adverse to some measure of check or control, is that right?

MR. MAGONE: Yes.

MR. FROST: What they said in their letter is this: that, for instance, if you authorized a judge to go into another county to try a division court case, that his expenses, I think, are subject to your O.K. and then they accept the account on the approval of the Attorney-General.

MR. CONANT: Yes, well then, it comes down to this: trying to crystallize it, again, in cases of County Courts, General Sessions or County Judges Criminal Courts, the right of interchange would remain as it is, and the method of paying expenses would remain as it is, that is to say no control, but in all other cases, the interchange would be at the direction of the Attorney-General, and before the expenses in connection with them were paid, they would be approved by the Attorney-General. Does that crystallize it?

MR. MAGONE: That crystallizes it.

MR. CONANT: Is that right, Mr. Barlow?

WITNESS: That's right.

MR. CONANT: All right, Mr. Magone.

MR. MAGONE: Before leaving that, I want to read the observations of the judges of the County Court with respect to Mr. Barlow's recommendations:

> "Apparently Mr. Barlow has been misinformed as to the present set up of County Court districts when he states that 'the result is that not only do a number of the County Court judges seldom try a case within their own county but they travel long distances for the purpose of taking Division Court sittings with the result that the municipality and the Dominion Government are put to a very considerable and unnecessary expense by reason of the absence of the judge from his own county town.' We are not aware of any such condition existing anywhere, and if it does exist, appropriate rules should be made to prevent such action. We also feel Mr. Barlow was mistaken as to the reason for the constituting of the County Court districts. These were not constituted to relieve County Court judges from embarrassment, but they were provided in order to equalize the work between the County Court judges, having in mind the area and population of the adjoining county, the number of County Courts, and the age and physical health of the respective judges. Furthermore, there are now no junior judges except in large cities, and if a judge is ill or absent, some other judge must take his work. If there has been an abuse of the system of interchange, it can be remedied by proper regulation, but doing away with all Division Court interchange is not practical; as for Mr. Barlow's suggestion that there only be interchange for County Courts and General Sessions, we believe that the interchange for Division Courts should be preserved, and that there should also be interchange, as there is at present, with respect to County Court Judges Criminal Courts and in Surrogate Courts."

MR. CONANT: Just before leaving that subject, the figures are now avail-

able, and as Mr. Snyder, who has been dealing with it, is here, and with the permission of the Committee, I would ask him to give us any figures he has. I don't think the names of the judges should be mentioned at this stage. Are you agreeable to that, gentlemen?

MR. ARNOTT: Yes.

MR. CONANT: That is as to the expenses incurred by some judges.

MR. SNYDER, DEPUTY ATTORNEY-GENERAL: Mr. Chairman, these are given as some examples ——

MR. CONANT: Given by whom?

MR. SNYDER: Given by the law firm of Nickle & Nickle, of Kingston, who made inquiries and reported to the Hon. Mr. Lapointe, Minister of Justice. They have to do with judges who hold office in the eastern part of the province. One judge was paid for travelling expenses, in the year ending March 31st, 1938, the sum of $158.37; that is travelling expenses only. Another judge was paid travelling expenses for $705.10 . Another judge was paid travelling expenses amounting to $1,900.64. Another judge was paid travelling expenses of $1,185.50. They are merely given as examples of what is going on in eastern Ontario.

MR. CONANT: Well, Mr. Snyder, has anybody in our Department ——

MR. FROST: Does that cover the per diem, Mr. Snyder?

MR. SNYDER: Just travelling expenses.

MR. CONANT: Was anybody in our Department instructed by me to compile those for the whole of Ontario?

MR. SNYDER: Yes.

MR. CONANT: Are they being compiled?

MR. SNYDER: They are being compiled, yes.

MR. CONANT: Do you know when they will be ready?

MR. SNYDER: Just as soon as we get the information from Ottawa.

MR. CONANT: Well, have these figures completed and bring them to the Committee as soon as possible.

MR. FROST: Could you get the per diem allowance too, Mr. Chairman? It involves no more work.

MR. CONANT: Yes. Mr. Snyder, you will direct your attention to that, and see that somebody in the Department gets the per diem and travelling expenses of all the judges in the province for the last available year, and bring them to the Committee, because I think that is important in the consideration of a matter where we are talking about dollars and cents. All right, Mr. Magone.

MR. MAGONE: There is a provision in the Dominion Judges Act for travelling allowance to District Court judges of $500.00 per annum. This is the provision of the Dominion Judges Act with respect to a judge performing duties outside his county, in section 34:

"It shall be competent to any County Court judge to hold any of the courts in any county or district in the province in which he is appointed, or to perform any other duty as a County Court judge in any such county or district, upon being required so to do by an order of the Governor-in-Council made at the request of the Lieutenant-Governor of such province.

"2. The judge of any County Court may, without any such order, perform any judicial duties in any county or district in the province on being requested so to do by the County Court judge to whom the duty for any reason belongs.

"3. The judge so required or requested as aforesaid shall while acting in pursuance of such requisition or request be deemed to be a judge of the County Court of the county or district in which he is so required or requested to act, and shall have all the powers of such judge."

Then there is provision for retired County Court judges acting in certain cases.

MR. CONANT: Now there is no doubt about ample statutory authority for jurisdiction in these interchanges.

MR. MAGONE: No, even in the absence of a district set-up, such as we have.

MR. CONANT: Yes. Well, are you going to deal with County Court jurisdiction now?

MR. MAGONE: Yes, I was. Mr. Barlow, in his report, doesn't deal with County Court jurisdiction, I think.

WITNESS: No, I don't recollect that I did, Mr. Magone.

Q. But there is an extended jurisdiction given to County Courts in an amendment to The County Courts Act?

MR. CONANT: What is the effect of that?

MR. MAGONE: It hasn't been brought into force yet. The effect of this amendment is to strike out the figures 800 where they occur, and to increase that to 1,000. That is an amendment to The County Courts Act of 1937, which was to have been brought into force by proclamation. It has never been proclaimed. I don't know whether the Committee wanted to deal with that.

MR. CONANT: Well, I think we should discuss it, and hear everything there is to be said about it. Have you any views in the matter, Mr. Barlow?

WITNESS: I had the matter called to my attention during the course of

my survey, and I felt that no steps should be taken to vary the jurisdiction as it is at the present time, and therefore did not include any reference to it in my report. It seems to me that the limit has to be drawn somewhere. Originally, the jurisdiction of the County Court, I think, was $500; and it was raised, some years ago to $800, and now the question is of raising it to $1,000. When one considers that, with the consent of the parties, an action for any amount may be brought in the County Court, I think that it is as far as the jurisdiction should go at the present time.

MR. FROST: I agree with that.

MR. CONANT: Well, Mr. Barlow, have you any means of forming an opinion as to the extent to which the optional jurisdiction is used. I mean by this, in regard to the present practice in most cases, the litigant issues a writ in a County Court, and unless the other party objects, it stays there.

WITNESS: Quite right.

Q. Is that practice not considerably used?

A. It is used quite considerably. I understand our figures, from our county of York could be very easily obtained, which would show the number of cases of decreased jurisdiction. With reference to my general knowledge with reference to it, I would say there are a very large number of them.

Q. And then there is the other angle to it, Mr. Magone. It seems to me you might question Mr. Barlow on this, the relative burden upon the Supreme and the County Court, because that would have some relevancy if there was any thought of increasing the jurisdiction.

MR. MAGONE: Yes. Well, are you prepared, Mr. Barlow, to know what increased work would be placed on the county judges if the jurisdiction were so increased?

WITNESS: No, I have no figures which would tell me anything with reference to it at all. I don't know what increased burden would be brought upon them, I am sure.

MR. CONANT: Well, do you think that the County Court judges are carrying relatively a greater burden than the Supreme Court judges, or the County Court judges?

WITNESS: The County Court judges in the city of Toronto are carrying a very heavy burden. The same applies to them, I understand, in the city of Windsor, and the city of Ottawa. As to the other jurisdictions, as far as I know, they are not burdened anything like the same etxent.

Q. Well, the effect of an increase in jurisdiction would be to shift it from the County Court judges—

A. Shift it from them to the Supreme Court judges.

Q. Shift it from them to the Supreme Court judges, is that it?

A. Or no, rather the other way, it would shift the burden from the Supreme Court to the County Court judges.

Q. Yes, from the Supreme Court judges to the County Court judges; well, there might be some merit to it from that aspect of it?

A. Well, there might be, but I don't know that I would care to express an opinion further than what I have done. With my experience, I would think that you perhaps would get a little more useful information from the County Court judges and some of the Supreme Court judges.

MR. MAGONE: I have a recommendation from the County Court judges, which is dated 1934, which you may remember, Mr. Chairman, which is referred to in the submissions made by the County Court judges just recently, and in that they ask for an increased jurisdiction. It was taken care of in the amendment. I will read part of it.

> "It is, however, proposed that the jurisdiction of the County Court, and thus of the contemplated consolidated court, should be widened. Already, indeed, County Courts have the right to deal with matters formerly under the exclusive jurisdiction of the Supreme Court, but only if formal objection is made. In practice wide advantage has been taken of this right, with apparent satisfactory results. The present proposal simply makes this practice obligatory rather than optional, and it is suggested that such a course will simplify and expedite trials. The extent to which the jurisdiction should be widened is not one that can be readily determined, although, as requested by the Hon. the Attorney-General, we now make certain suggestions.
>
> "For the present it is suggested that section 19 of the County Courts Act be amended by striking out the figures '$800.00' in clause (a) of the said section and inserting the figures '$2,000.00'; by striking out the figures '$500.00' wherever used in any of the clauses of such section and inserting therein the figures '$1,000.00'; and by substituting for the figures '$2,000.00' in clauses (g) and (h) in such section the figures '$5,000.00'; and also that the figures '$5,000.00' be substituted for the figures '$2,000.00' in subsection 2 of section 19. Clause (b) of section 19 (1) might also be amended by deleting the words 'except actions for criminal con. and actions for libel'."
>
> "Some years ago the jurisdiction of Division Courts was practically doubled. One inevitable result has been the very pronounced narrowing of the jurisdiction of County Courts. Now the ground covered by the latter court is so greatly restricted as to render it of little use except where advantage is taken of its optional jurisdiction. Even without consolidation it should be increased. Already we have some Surrogate Court matters within the competence of the judge of that court in which sums are involved of great magnitude, while in Mechanics' Lien actions and in various other proceedings dealt with by the County Court judge as *persona designata* there is practically no limit. There seems to be no great reason for granting such wide jurisdiction to the County Court judge acting in some capacities and withholding it in others."

Then the judges of the Supreme Court, in answer to that recommendation, said:

> "The increase in the jurisdiction of the Division Courts has been accompanied by some increase in the jurisdiction of the County Courts, and it may be expedient to increase the latter jurisdiction still further, but not, we venture to think, to the extent suggested by the County Court judges. We would be in favour of an increase in the jurisdiction in all cases to $1,000.00, and would recommend that that include both actions founded upon contract and actions founded upon tort."

MR. CONANT: How does that jibe with the amendment made?

MR. MAGONE: That is the same as the amendment, practically. The County Court judges asked for $2,000 and the Supreme Court judges recommended $1,000.00, and that is what was done.

MR. CONANT: Have you any other references, Mr. Magone?

MR. MAGONE: No, that is all that deals with the jurisdiction of the County Courts.

MR. CONANT: The merit of this, gentlemen, is that it would shift some of the work from the County Court to the Supreme Court, is it not, and also the merit that litigants especially in outlying counties would have available, in a larger number of cases, County Court machinery and County Court judges?

MR. FROST: Mr. Chairman, just discussing that angle of it, here is the situation; there are many cases, beyond the ordinary limit of County Courts, I suppose dozens of them, that are being tried by County Court judges rather than Supreme Court judges right now?

MR. CONANT: Yes.

MR. FROST: I think it largely depends upon this: many County Court judges have an aptitude for certain types of cases, and when it is known that they have, they receive any cases along those lines.

MR. CONANT: Yes.

MR. FROST: On the other hand, if they have not, then it goes to the Supreme Court, and I think that you are probably safer to leave the rates where they are; the difference, actually, is only $200.

MR. CONANT: Yes. Well, we can consider that in Committee. Can you add anything further, Mr. Barlow, on that point?

WITNESS: No, I have nothing further to add.

MR. CONANT: What were you intending to go into next, Mr. Magone?

MR. MAGONE: Well, we have some more recommendations to-morrow in

connection with Division Courts. Judge Barton and Judge Morson in the morning, and in the afternoon, Mr. Cadwell.

Committee rises until following morning.

THIRD SITTING

Parliament Buildings,
April 3rd, 1940.

MORNING SESSION

MR. CONANT: Gentlemen, at adjournment yesterday, our counsel, Mr. Magone, asked for some guidance from the Committee as to the sequence of the course of our inquiry.

May I say that I have given it some thought since then, and discussed it with Mr. Magone and Mr. Silk, and if I may do so, I will make the suggestion that when we have completed that which we have in hand, that is, items 12, 13, 14, and 15, and 19 and 27, that we revert to the beginning of this proposed memorandum or agenda and simply take them as they come, or such of them as we decide to deal with. While it is possible to pick and choose here and there, I don't know that there is any better sequence than has been set out in this memorandum. But of course it is for the Committee to decide; that is only a suggestion.

I note there is also, more or less, a logical sequence here; take No. 1, for instance: "grand juries"; then "petit juries", "pre-trial" and so on, following along more or less logically. But I would like to hear the members of the Committee express themselves as to whether they are in agreement with that or not.

MR. ARNOTT: Well, it would be a more orderly procedure, Mr. Chairman, I think.

MR. STRACHAN: I would be in favour of that, Mr. Chairman, because then we can anticipate what we are coming to.

MR. CONANT: Is that satisfactory, Mr. Frost?

MR. FROST: I am satisfied, yes.

MR. CONANT: I might add this: that there are some items here which I doubt if they merit consideration, or, certainly do not merit a very lengthy consideration. For instance, number 6; I don't know that there is any issue there. Our Coroners Act has been revised substantially within the last couple of years, and as far as I know, there have been no representations for any further revisions, have there, Mr. Magone?

MR. MAGONE: No, I think they have been taken care of in the recent amendment.

MR. CONANT: Yes, that is one we might jump, and perhaps number 13, "court reporters"; I don't think that there is anything that arises there. And so, as we go along, there may be some items that the Committee feels that, unless submissions or representations arise in the meantime, we may feel there is nothing to be gained by dealing with them. So I think I express the wish of the Committee, Mr. Magone, and Mr. Silk, in saying that, when we have completed the items that we now have in hand, we will start back at the beginning of your agenda and proceed subject to what departure may be necessary to meet the convenience of the witnesses, or those making submissions.

Now, then, have you something ready for us to go on with, Mr. Magone?

MR. MAGONE: Yes, Mr. Chairman, Judge Morson has kindly consented to attend the sittings of the Committee and give his views and his experience in connection with Division Courts.

HIS HONOUR JUDGE F. M. MORSON, County York.

MR. MAGONE: Judge Morson, you were county judge in the county of York for 43 years, I understand?

WITNESS: Yes.

Q. And you sat on the bench—

A. Forty in the County Court, as a matter of fact, and three in the Surrogate Court.

Q. So that you occupied the bench in the county of York longer than any other judge in the province, I think?

A. In Canada.

Q. In Canada. And during that time, you had a great deal of experience in the Division Courts, as all of us know. Now, judge, certain recommendations have been made to the Committee with respect to amendments to the Division Courts Act; among them was a recommendation by Mr. Barlow which is set out in his report.

A. Yes, I read it.

Q. I wonder if you would care to give the Committee your views with respect to Mr. Barlow's recommendation, first, that the Division Court might be abolished and its jurisdiction consolidated with that of the County Court, and a small debts division of the County Court formed to take care of small claims?

A. Well, I have three, what I might call serious objections to that; in the first place, it is going to increase very materially the County Court lists. And of course, that, as a matter of fact, would increase the cost of the sittings of the County Court, and it would delay, of course, litigants and their cases being heard. Take a case of $101.00, for instance, which can be tried in the Division

Court; the litigants may have to come to the county town, where it is suggested all of the cases be tried, which is a very serious objection, to my mind. For instance, I am not familiar with the distances in a great many counties, but supposing the litigants had to come to a county town from an outside place far to the north; look at the expense he incurs in coming that distance to attend the court, and in addition to that, all the witnesses may be up in that district. You see, the Statute the way it is now, it fixes, just to overcome that difficulty, it says that the jurisdiction shall be where the cause of action arose, or where the defendant resides, so that they had in view, apparently, that feature. It is not fair to bring them from one end of the county to the other, and it creates expense.

Another reason, in my view, is that if the Division Court cases are put in to the County Court, of necessity there are pleadings in the County Court, as I understand it, formal pleadings, and so on; now a poor defendant, in a case of $101.00, if he has his case tried in the County Court, must follow the procedure of the County Court, and of necessity he would have to engage a lawyer to draw his statement of defense, and so on, and that, of course, adds to the cost, and in my view that one feature alone, in itself, is the strongest reason why the Division Court cases should not be tried in the County Court. And, of course, the County Court list would be increased, and while the list of the County Court may not be so bad out in the smaller counties, in so far as the county of York is concerned, it is absolutely objectionable.

Q. Judge, in Mr. Barlow's recommendation, he suggests that a small debts division be formed and that the judges sit outside the county town for the trial of small debts.

A. I understand, but then why? The Division Court now tries those cases of small debts; it's the same judge, and so on; now why have a separate court? Of course, if you put all cases over $100 in County Court, of necessity you must have this small debts court; I agree with that; if you are going to transfer the Division Court cases over $100 to the County Court, then I agree that you must have a small debts court, or whatever you call it, to try cases under $100; I agree with that, but not otherwise, of course.

Q. Judge, probably we might get your views with respect generally to the working of The Division Courts Act; in your experience, are there objections, do you recall?

A. No—well, there are certain objections to some of the procedure; for instance, take the judgment summons; there's part 1 and part 2; you lawyers all know what that means. No. 1 is when you bring them up on a judgment summons, examine them, and make an order that they pay so much a month; and if they fail, you have No. 2; then they have to show cause why they didn't obey that order. Well now, I think I would do away with that, because I think it is only fair to assume that, in the case of a judgment for $20, for instance, if a man doesn't pay a judgment of $20, isn't it fair to assume that the poor devil hasn't got the money? There may be isolated instances where a man wouldn't pay that has the money, but speaking generally, don't you think that where a man fails to pay a small judgment, it is his inability to do so rather than wilfulness? And if that is so, then what is the use of the show cause summons to bring

him—to go to that expense to bring him up and examine him as to why he did not pay that debt? I think that the ordinary inference, the reason is that he hadn't the money. Then if counsel for the plaintiff hears or knows that he has some money and that he has concealed it, or something, then get an order from the judge to bring him before him and examine him. I think some form of procedure of that kind could be enacted, but I certainly would do away with this No. 2.

Q. That is just the No. 2, the show cause summons?

A. Oh, yes, that's all, the show cause. Oh, I wouldn't do away with No. 1, because I think that is only right, to have the right to bring a man up to show why he wouldn't pay his debts.

MR. CONANT: You mean you would put the onus on the plaintiff to show—

WITNESS: Yes, to show, Mr. Chairman, whether he has money or not. They could realize under the execution if they found out certain facts that the plaintiff has heard of or discovered.

Q. By the way, that is the procedure in attachment proceedings, is it not? Before you can attach a debt, the plaintiff has to show—

A. Oh, yes, he has to make an affidavit.

Q. That's right.

A. That's true in attachment proceedings, yes, but talking about that, I think I would suggest that I would not go to the expense of an attachment order in judgments under, we will say, $25, because I am very strong in that belief of human nature that in a small judgment or debt the debtor, as a rule, is honest, and will pay if he can. Then if he can't pay the $20 judgment, it seems pretty hard to get an attachment order and attach a small amount of money that is due—I mean, you know, depriving him of what little money he has to live on. An attachment order would do that. I think, therefore, that I would limit attaching orders to judgments at least over $25. That follows from my own experience, and I think it would be a good thing.

MR. MAGONE: Are there other matters of procedure where you think improvements might be made?

WITNESS: Well, yes, I would do away with juries in Division Courts. You see, in cases over $100, there cannot be many disputed facts, it wouldn't be a trial on facts, because the jurisdiction of the Division Court in cases over $100 is limited to cases where the amount is ascertained by the signature of the defendant, such as promissory notes, or contracts, or something of that nature, and there cannot be many facts to try them on; that is one reason why there is no necessity for a jury; it is more a question of law.

Q. Judge, in your experience on the bench, can you say how many juries you had, in Division Court cases?

A. Yes, I think so. I think, in my 40 years on the bench, I don't believe I have had 20 juries; I'm sure I haven't.

Q. Well, that is a fair indication.

A. In fact, in the last few years, I never had any. I suppose they thought my guess was as good as a jury's!

Q. Judge, what about the service of process in the Division Court?

A. Well, I don't like to say anything that is going to hurt the bailiffs, and so on, but—

Q. Probably you may as well now, judge!

A. I think probably the costs are far too heavy in Division Courts. I don't like to say that because it may affect people's positions, you know, but I must be honest about it, and I think your bailiff's costs are far too high.

MR. CONANT: Your Honour, I might remark that this Committee is very much concerned with the simplification and the lessening of Division Court costs; is there anything that you can say to indicate ——

WITNESS: Yes, well I agree with you.

Q. —— how justice can be done and expenses reduced? That is a very interesting point to this Committee.

A. Well, of course I agree with you that the expenses should be reduced, but I suppose the only way you can reduce them, as far as I can see, are the costs which plaintiffs pay when they enter a claim through Division Court procedure, and the bailiff's costs, such as costs of service, and so on, and mileage, and I suppose the only way that you can lessen the costs is by reducing the cost in both these cases, both to the clients and to the bailiffs. But of course I wouldn't be prepared to fix the amounts. There are others who know more about it than I do who can do that, but I quite agree with you, Mr. Chairman, that the costs are far too high in Division Courts, and that the bailiffs costs are too high.

Of course you must remember that the bailiff may have to travel a long way to enforce a judgment, you know, in cases of that kind, and that is another reason why there is objection in cases tried in the cities.

MR. MAGONE: Well, would there be any serious objection to the service of process by registered mail?

WITNESS: I was just going to refer to that. Now, to my mind, that is a very dangerous suggestion. Mr. Barlow was suggesting that the service of summonses be made by registered mail. Now, Mr. Chairman, in my view, that is a very dangerous suggestion. I'll tell you why. You probably know, from your own cases, as I do from mine, that when the bailiff serves a summons, the law very properly requires an affidavit of service to prove that he has served it, and it is under oath, and it is fair to assume that it is true; but if you send a registered

letter, as you know, the registered letter remains in the post office, as far as the county is concerned, and supposing the defendant—it doesn't follow that he is going to call at the post office every day, and according to procedure, he has to file a defence within a certain time, and he may not call at the post office in time to get that registered letter and to be notified that he is being sued, and therefore, he would be too late in entering his defence, and he would have to apply to the judge for leave, and so on.

MR. LEDUC: I was going to say this, judge; a man sending a registered letter can ask the post office to get a receipt from the addressee?

WITNESS: Yes, but the letter carriers make mistakes, just as I do and everyone else does, and that is too uncertain. You see, it is very important; when a man is sued, he has to put in a defence within a certain time, or judgment goes in against him, and if he fails to do that, just look at the cost the man is put to, to apply to the judge, and so on. I don't think that's fair.

MR. CONANT: Your Honour, don't you think that could be met in this way: suppose a system were set up whereby service might be made by registered mail, and at the end of the prescribed time, the judgment, if there was one, by default, would be in the nature of a decree nisi, let us call it, or something like that, and there would be a further period of fifteen days before the judgment would become absolute.

WITNESS: I know, but Mr. Chairman, again, it is possible for a defendant to be away from home, probably for a month or longer. You can't tell. I mean, it may be an isolated case, but still, it is only fair to that one man that he should have proper notice before any judgment is issued against him and a decree nisi entered.

MR. LEDUC: But if we insist on the defendant signing a receipt for the letter?

WITNESS: Ah, that's a different thing, of course; my point is that by registered letter, he may not get the registered letter in time. But that's perfectly true; I am quite willing to agree that if there is a receipt by the defendant, it's just as good, and in fact, better than the affidavit of the bailiff.

Q. Yes.

A. Yes, but he's got to get it.

Q. Oh, yes.

A. My point is, he may never get it by a registered letter, because the letter carriers might not deliver it, or he might not be home. But I agree with that, absolutely.

Q. Yes, but if the time for filing the defence starts with the date of the receipt of the letter, as shown by the signature?

A. Well, the date of the receipt of the letter—it must start from that date, of course.

MR. CONANT: What about allowing the plaintiff to make the service himself, if he wants to?

WITNESS: Well, I think that is rather a hardship on plaintiffs, that they should be called upon to serve a summons.

Q. No, no, make it optional.

A. Make it optional?

Q. Yes, if he wants to.

A. Oh well, yes, make it optional, but insist that he makes an affidavit of service.

Q. Yes.

A. Oh yes, there is no objection to that; there's no objection to the plaintiff serving it, if he wants to.

MR. FROST: In case of a registered letter service, too, judge, I suppose there is the possibility that if a debtor knows there is a registered letter waiting for him with bad news in it, he may not call for it at all?

WITNESS: And if he knew that—as he probably might hear -that that is what it is, that he is being served that way owing to a change in procedure, he might say: "Oh, a registered letter for me? No chance, I'm not going near the post office." That is a very good point, I agree with that.

MR. CONANT: Then, of course, the court would have to adopt some other means, but while we're on that point, Mr. Magone, perhaps His Honour -there is on our agenda later on, the question of service of summonses by mail, and perhaps His Honour might direct his attention to that, and he might express some opinion. I think the Committee knows what I mean, traffic summonses. The item is on our agenda, and I think it is due to the fact that representations have been made that in a great many summonses, for instance, traffic cases and minor offences, the costs are enhanced by the mileage that is involved in serving the summons. We have recommendations, I am sure, and will consider it at the proper time, as to permitting summonses to be served by mail, and perhaps His Honour ——

WITNESS: You mean summonses for traffic offences, for instance?

Q. Any minor offence, by-law summonses.

MR. MAGONE: By-laws, and minor infractions of the law, like traffic offences.

WITNESS: Well, I don't know that there is any procedure laid down for that, is there, in any Act?

MR. CONANT: Not now.

WITNESS: I am not aware of any procedure; they just go and leave the summons at the house of the defendant or the culprit, whoever he may be.

MR. MAGONE: Yes. The present procedure is that the summons must be served by a constable, either upon the accused personally, or by leaving it at his residence with someone, a party over the age of sixteen years.

WITNESS: Yes.

Q. The suggestion has been made, and we have it on our agenda, to deal with the question of sending summonses by registered mail.

A. Oh, of course; I don't see any objection to that, because I think it's fair to assume that the registered mail—the person to whom it is sent will get it, you know.

Q. That is a summons for a minor infraction.

A. You see, there is no particular time, I imagine, although there may be a date for appearing in court, I imagine.

Q. Yes.

A. But some people might take that objection, too, you know; I mean to say, some people think it's very important in that way, it's a pretty serious thing to put in the hands of officials like police, for instance, procedure which may result, probably, in a heavy fine, don't you see, without the culprit or the defendant, whoever he may be, having knowledge of that fact. Now, for instance, leaving it at the house—supposing he sticks it in the letter-box, and supposing the people are all away? May I—I am not familiar with it—ask, when a policeman serves it, what evidence is there of the service?

Q. An affidavit.

A. He makes an affidavit?

Q. An affidavit of service.

A. I see. Well, of course, that is proper, in a way, but then again, it's the same difficulty about serving these Division Court proceedings, he may be away, don't you see?

MR. CONANT: Yes, but, Your Honour, supposing we had a system that, in minor offences, where the fine, perhaps, ranges from $1 to $10, in minor offences, service could be arranged by registered mail, and with a return receipt signed by the person to whom it is addressed?

WITNESS: Oh, yes, I think that would be quite all right, Mr. Chairman.

Q. Yes.

A. Oh yes, I think so.

Q. Well, would it not cut down the costs that are ultimately levied against the defendant considerably?

A. Well, I have never been fined, I'm sorry to say, but I don't know how they fix the costs, I'm not aware of that procedure. I don't know just how it is arrived at.

MR. CONANT: Is not the mileage part of the costs in those prosecutions, Mr. Magone?

MR. MAGONE: Yes.

WITNESS: Is the mileage ——

Q. Yes, the mileage for service of the summons.

A. Yes, because from what I hear from people in Toronto here, who get fined, the fines are not all of the same amount.

Q. Yes.

A. They fine them $5, for instance, for parking five minutes in a row in a spot, or something of that sort; well, don't you see, the whole system, there, as I understand it, of fixing the amounts of the fines ——

MR. FROST: The costs are oftentimes more than the fine; that is another trouble.

WITNESS: Yes; of course, people who are committing offences have to pay the penalty, I suppose it is their own fault, in other words, but ——

MR. CONANT: Well, can you suggest any other way, Your Honour, of how we can reduce the expensive costs that are involved in the ordinary small claim that goes into the Division Court? You have had considerable experience.

WITNESS: Well, as I say, Mr. Chairman, I would fix, probably, in some proportion, the costs for a claim under a certain amount, for instance, a claim under $10 or $15 or $20, I would fix a small amount—say $2 or something like that; fix them in a graded scale, according to the amount.

Q. You mean a block system of costs?

A. Well, that's what you might call it. For instance, on a claim for $10, the costs should not be as on a claim for $100.

Q. Well, is it not a fact, judge, that sometimes it happens that the costs will exceed the amount that is involved in the claim?

A. Yes, exactly, that is why I am suggesting that you should fix it on a graded scale; certainly.

Q. Is there not, also, this difficulty, that when a merchant, or whoever it

may be, enters the claim in court, at the present time he has no way of knowing what those costs are going to amount to?

MR. LEDUC: Well, he is asked for a deposit.

MR. CONANT: Yes.

WITNESS: Well, that is just what I have been saying. You can fix it on a graded scale, the cost up to the trial; I would say for a claim of $10, $2, and on $25, probably $3, and so on; I mean, that is a matter for people who are more familiar with that thing, such as the clerks; they are more familiar with that, I suppose, and they would be the logical ones to be asked to give any advice on that, because it affects their department.

MR. LEDUC: Seeing we are talking of costs, Mr. Magone, have we a tariff of fees in this book?

MR. MAGONE: Mr. Polson, is the tariff of fees in Division Court set out in the pamphlet?

MR. POLSON: Yes.

MR. CONANT: At the present time, the costs of the Division Court are made up of various items: cost of issuing summonses, cost of entering judgment, 25c. for adjournment, so much for mileage, and so on, is that not so?

WITNESS: Yes.

Q. And when it's all over, there is an itemized statement made up by the clerk, and it consists of all the various items that go into the costs as set down in the tariff, and that is what somebody has to pay?

A. Yes.

Q. The plaintiff is primarily responsible for it?

A. Yes.

Q. He recovers it if he can, is that it?

A. Yes, he is the only one that can recover it.

MR. LEDUC: Well, I note here, in this tariff of fees payable to the clerk of the Division Court, I note the fees payable on the issuing of a summons, and I cannot help but notice this: if you issue a summons in a Division Court on a promissory note for $400, you pay $4; if you go to a County Court and issue a writ on a note for $800, you pay $3.

WITNESS: Yes, exactly.

Q. Then, if you go to the High Court, the Supreme Court of Ontario, and issue a writ on a note of $10,000, you pay $2.10.

A. Well, that all bears out what I say, that the costs of the Division Court are too high.

Q. Much too high.

A. As I am saying, yes.

MR. MAGONE: But, Mr. Leduc, the fees in the County Court, are on the block tariff system, and the fees in the Supreme Court are not, so the issuing of the writ in County Court involves four or five subsequent steps—at least the fee paid involves five or six steps.

MR. CONANT: Ten cents for this, and ten cents for that, and so on.

MR. MAGONE: Yes, so that in the Supreme Court, by the time you have taken the number of steps $3 pays for in County Court, you would have paid for more than in County Court.

MR. LEDUC: Yes, but the amount is much larger.

MR. FROST: Mr. Leduc's point is that the cost, in Division Court, for an amount, say, involving $400, is $4, while a litigant might be in Supreme Court for $1,000,000 and it would only be $2.

WITNESS: You've got to remember that that $4 is only the deposit; there may be other costs added to it afterwards. That is only to enter the action.

MR. LEDUC: Yes, then there is copy of summons, 25 cents.

WITNESS: Yes, you must remember that.

Q. Yes, receiving and entering bailiff's summons, 25 cents; then 25 cents for each affidavit.

A. Yes. Well, of course, that is how these amounts are made up.

MR. FROST: Well, on a $20 claim, I presume that the deposit asked by the court would be somewhere in the neighbourhood of $20?

MR. CONANT: Oh, no.

MR. LEDUC: On $20?

MR. FROST: I'm sorry, I meant on $400.

MR. LEDUC: They ask us about $10 or $12 in Ottawa.

MR. FROST: In view of that, it does seem to be a poor man's court.

WITNESS: That is another reason why the costs should be graded, sure.

MR. CONANT: Well now, Your Honour, if the Legislature were to change

the system to this extent: by putting into effect a block system whereby on, say, $25, the cost would amount to so-and-so, then for claims ranging from $25 to $50 it would be so-and-so, whatever the scale might be;

WITNESS: Yes?

Q. A definite fixed cost to cover everything in connection with that case, and then, added to that, the right to make service by registered mail with return receipts, or by the plaintiff himself ——

MR. FROST: With an affidavit of service.

MR. CONANT: —— with an affidavit of service as served by the plaintiff, or his employer, or, in other words, served by anybody—as in a County Court writ or a Supreme Court writ, where anybody can serve it—could you suggest anything more we could do to make more definite and to decrease the costs that are involved in Division Court actions? Is there anything else?

WITNESS: No. Well, it seems to me that if you had a definite amount for a definite judgment, say for $25, so-and-so, that you couldn't do anything any better than that. How else could you do it? On a claim for $25, the cost would be, say, $2, and on a claim for $50 it would be $3, and so on. You can't do it in any other way.

Q. Yes.

A. I don't see how you can do any different. That's the only way to do it.

MR. ARNOTT: Well, Mr. Chairman, under that block system fixing the costs in that way, what would those costs include, up to judgment, or ——

WITNESS: Everything.

MR. CONANT: Everything.

WITNESS: That would be for the whole thing.

MR. ARNOTT: Cost of execution and everything?

WITNESS: I think perhaps we ought to consider—it would be up to the judges in any event, as to what comes after that. For instance, the costs of an execution, you can't very well ——

MR. CONANT: I think perhaps that's right.

WITNESS: You can't very well fix those costs, I should think. Supposing, for example, the bailiff has to go away out, 50 miles, in order to execute?

MR. CONANT: Yes.

WITNESS: You see, you couldn't possibly fix those costs, and I think in fixing the costs, it should only be up to judgment.

Q. Yes.

A. I think I would limit it to that. That's a very good suggestion. You see what I mean?

Q. Yes.

A. Because no human being can tell what the costs would be afterwards, in enforcing that execution, and I think it would be rather hard on the clerks and bailiffs to fix the definite amount beforehand, which might not be anything likely to repay the costs of the execution, enforcing the execution.

MR. ARNOTT: In other words, it is up to the judgment creditor to find the assets out of which he can realize his judgment?

WITNESS: Well, you don't ——

Q. Well, I mean it boils down to that; as far as the costs after that are concerned, it's up to him?

A. Oh, yes; judgment No. 1, you see, covers that; he can be brought up and examined under oath, and you can find that out; that covers that point.

MR. CONANT: Yes.

MR. MAGONE: With respect to the jurisdiction of the court, Your Honour, some submission has been made that the jurisdiction be limited to claims of a $100 and that all the other jurisdictions be thrown into County Court.

WITNESS: Well, I touched on that at the outset, and I think I said that the objection to that is that it would increase the lists of the County Court, increase the costs, and the litigants and witnesses would have to come to the county town for the trial, and the one other serious objection to that is that there are only so many sittings in County Court, and the litigants would have to wait for a long time, which they would not have to do if it were in Division Court, because there the sittings are far more frequent and they get their cases disposed of.

MR. CONANT: Put it on the basis of cases that are not appealable.

WITNESS: Well, of course, all cases over a $100 are appealable, and then you would have to amend the statute on that and to fix the amount of the judgment which is appealable.

MR. MAGONE: Well judge, until a few years ago, the limited jurisdiction in the Division Court was $120, and then it was increased?

WITNESS: Yes, I think it was increased.

Q. From time to time?

A. And as a matter of fact, talking about that, I don't see any objection to increasing it another hundred; you might just as well make it $500 as $400, and

that would help to reduce the County Court lists, because, I hope the judge in Division Court has as much intelligence as he has when he is in the County Court—at least, I hope so!

MR. CONANT: Well, Mr. Magone, you have in your hands now a list of the deposits that prevail in Toronto; read that out, will you, please?

MR. MAGONE: This is the amount of the minimum deposit required by the clerk on the entering of the action in Division Court; amount of claim $1 to $10, minimum deposit required, $3.50; on claims of $10 to $20 deposit, $5; $20 to $60, deposit $6; $60 to a $100, deposit $7; $100 to $200, deposit $9; $200 to $300, deposit $11; $300 to $400, deposit $13.

WITNESS: Well, you see, one answer to that is that it does not necessarily follow that those amounts will be used up in the action.

MR. CONANT: No.

WITNESS: And if there is any balance left over, the plaintiff is entitled to get it back.

MR. LEDUC: But whatever he gets back is usually under a $1?

WITNESS: Well, I wouldn't say what he gets back.

Q. It is usually under a $1?

A. I would rather not express an opinion on that unless you force me to.

MR. MAGONE: Your opinion is the jurisdiction of the Division Courts might be increased?

WITNESS: Yes, I would say so; I think the judge could just as easily try a $400 case as a $500 case, and the advantage of that is, it would lessen the cases in county court, and the county court, of course, is more expensive than the Division Court, and to that extent it benefits the parties to the action.

MR. CONANT: Do you, at the same time, suggest that the jurisdiction of the Division Court might be increased and that there be no juries in Division Court?

WITNESS: Well, up to $500; oh, no, I don't say there are to be no juries, Mr. Chairman, remember, I didn't say that. I said that the juries can be asked for by counsel, and the judge can refuse him; there would be no juries unless the judge thought it a proper case for a jury. That is what I mean. Oh, I don't say that there should be no juries in the Division Court. I say only by order of the judge.

Q. Yes, I see.

MR. MAGONE: Well ——

WITNESS: Because the judge should be the proper one to say whether it is a

case for a jury or not, and as I said before, in the jurisdiction over a $100 and up to $400, if they bring an action where the amount is ascertained by the signature of the defendant, it is more a matter of law than a question of fact, and the jury, of course, can't deal with questions of law, and there could be very few facts, that is compared with a case where the amount is ascertained, such as under a contract, in which the defendant could not very well deny it.

MR. LEDUC: Are there many actions in the Division Court tried with a jury?

WITNESS: Well, as I told you a moment ago ——

Q. I am sorry, I wasn't there.

A. In my own experience, I don't think, in forty years on the bench —well, I didn't try Division Court cases all that time, of course, but in my experience, I don't think I have had more than twenty jury cases at the outside. That is in Toronto, of course; I am not speaking for outside of Toronto. I don't know about that.

MR. CONANT: Well, Your Honour, supposing we were to do this: just direct your thoughts to this suggestion: supposing we were to leave the Division Court as it is, with, perhaps, increased jurisdiction, or at any rate, as it stands, with or without increased jurisdiction, and we created a small claims part of that court procedure, for claims say, up to a $100, with a block system of costs and with every economy of form, procedure and expense that we could devise, and still with proper safeguards, what would you think of that?

WITNESS: Well, why can't you leave it as it is, except in cases under a $100 and fix the costs by a block system—I mean, leave the court as it is; why not?

Q. Well, do you or do you not feel this, Your Honour, that when you get up into the larger sums, something approaching the present maximum jurisdiction, that it would be a better safeguard to have the service effected by personal service?

A. Well, you mean serve the summons?

Q. Yes.

A. Oh, well, I told you what my view about the service of the summons is, and I think they should all be served by the bailiff, and with an affidavit of service. I would not serve any cases in Division Court by registered mail, or any other way than by someone, at all events, who must make an affidavit. I wouldn't say that is is necessarily confined to the bailiff.

Q. Yes, but would you not make a distinction, Your Honour, or would it not be reasonable to make a distinction in that connection between a claim, say, involving $25 and a claim, say, involving $200?

A. Well, I see what you mean.

Q. Yes.

A. You suggest that they can serve all claims under $100 by registered letter, and over that, it would have to be by the ordinary process of service?

Q. Yes.

A. Well, but then, Mr. Chairman, may I say to you that I think that a plaintiff who sues for $25 is just as entitled to the same consideration as a man in the case of $500. I mean, he is entitled, surely, to be sure that his claim is served properly—his summons is served properly, rather, and so on. I mean, why should the poor man, in other words, the poorer man be treated differently from what you might call the rich man, who has the big claim? You see, the root of the whole thing is, to my mind, that a defendant must have notice of the proceedings against him, I don't care whether it is $10 or $1,000.

Q. Yes, but Your Honour, what the Committee is particularly concerned with—I think I may speak for the Committee, is that the great mass of cases, and I think probably the majority of cases in Division Court are for less than $100, would that not be right?

A. I beg your pardon?

Q. Most cases in the Division Court would be for less than $100?

A. Yes, well the answer to that is, as I said before, the costs are too great, and if you fix the cost in cases under $100, that answer meets that point, it seems to me. In that way, don't you see, you fix the costs for small amounts, but not so for amounts over $100. I wouldn't suggest for a minute that you fix the costs in cases over $100.

Q. Well, that's what we're getting at.

A. That covers the costs in the small claims, by reducing the expenses, and it's the same judge who tries the smaller cases as well as the larger ones, so the only difference is that you fix the costs of the smaller claims.

Q. Is this your statement, Your Honour, then, that you would leave the court as it is, with, perhaps, some improvements to the machinery, but in small claims, up to $100, you would set up a block system of fees, graduated, and permit the service by the plaintiff or by registered mail, and make those smaller claims on a basis that the costs would be certain, and the costs would be the minimum, is that your view?

A. Yes, but you are saying again, service by registered mail. I'm afraid I can't agree with that. That's only my view, of course.

MR. FROST: Well, if there is a receipt for it?

WITNESS: Oh, that's a different thing.

Q. Well, supposing it were on that basis.

A. Well, you can provide for that.

Q. That, say, it is served by registered mail, and if there wasn't a return of receipt, or the letter was returned, then it would be referred to the judge for service in some other way, either by the plaintiff or ——

A. Well, don't you see, that is going to increase the trouble involved in the procedure, unnecessary trouble, I think.

MR. CONANT: But that wouldn't be difficult; you could have it so that it should be by registered mail or by a person.

WITNESS: But if it is put in by registered mail, Mr. Chairman, the person serving must produce a receipt from the defendant that he got the letter. I would be sure to include that, of course.

MR. MAGONE: Would not the receipt involve proof of signature?

MR. STRACHAN: But registered letters are not delivered in rural districts.

MR. ARNOTT: Mr. Chairman, under the Act as it stands ——

WITNESS: That is evidence.

MR. ARNOTT: Under the Act as it stands, where the amount of the claim exceeds $30, the service shall be personal, but where the amount does not exceed $30, the service may be on the defendant, his wife or servant, or on a grown-up person on the premises of the defendant's dwelling house or place of business; what would be your reaction to increasing that to the case of a claim of $100?

MR. FROST: That doesn't get around your mileage costs. You take, for instance, a $20 claim; the bailiff gets 60 cents plus mileage.

MR. ARNOTT: I think it does get around it.

MR. FROST: No, for the reason that, supposing a man is five miles from a Division Court.

MR. ARNOTT: Well, I can't see, frankly, under your registered letter system, how you are going to be sure that the defendant receives service.

WITNESS: That is my objection.

MR. LEDUC: Supposing there is a receipt for it.

MR. STRACHAN: Well, registered mail isn't delivered in rural districts; they have to call for it.

MR. ARNOTT: They would never call for that letter.

MR. STRACHAN: If he hears of a registered letter, and he knows there is a claim against him, he will just leave it there.

WITNESS: Yes, you've got to realize that it's tremendously important that

the defendant should be made aware of the proceedings against him, because it is unfair to him to take advantage of doing it behind his back, if I might use the term.

MR. CONANT: Your Honour, if you, in your advocacy of the increase of the Division Court jurisdiction ——

WITNESS: Well, I am only just making a suggestion.

MR. CONANT: Well, I know, that's what you are here for. Would you permit the examination for discovery?

A. Well, it's not usual now.

Q. No, but supposing you were increasing the jurisdiction another ——

A. —— hundred dollars? Well, as I say, that is really if substantial amounts are set, because you see, Mr. Chairman, the jurisdiction over $100 is only given by the fact that the defendant has acknowledged the debt in some form, by his signature, that is by a promissory note or a written contract, or lease or something of that sort, you see, and I wouldn't think you would want an examination for discovery.

Q. I see.

A. And I wouldn't suggest that at all, because I think, in a great many cases, there have been examinations when they weren't necessary—well, I wouldn't say what for; there are too many lawyers here!

MR. LEDUC: Well, there are no lawyers' fees in Division Courts; that wouldn't be the reason?

WITNESS: Oh yes, excuse me, I don't agree with you, in claims over $100.

Q. Oh, yes, in the discretion of the judge.

A. I know, but there are counsel fees. There are fees, not in the discretion of the judge. I am going to stand up for counsel now; they are entitled to counsel fees; the judge fixes the amount.

MR. CONANT: Your Honour, supposing you were increasing the jurisdiction of the Division Court all along the line, let us say, arbitrarily, by 50 percent, and you gave the court the right to determine whether examination for discovery were permissible or not.

WITNESS: Oh well, there's no harm in determining in cases of that kind, an examination for discovery, as they do in the County Court, if the judge thinks that it is proper; there is no objection to that.

Q. Well, Your Honour, throughout The Division Courts Act, which is rather a stupendous work, now ——

A. Well, may I just interrupt you at that point; I notice Mr. Barlow says that is one reason why there should be—the Division Court should go into the County Court, but he doesn't tell you that it deals with so many different things, such as duties of the clerks, the rules and regulations, and so on. That the actual procedure part is limited to a very small amount. The Division Courts Act has the duties of the bailiffs, duties of the clerks, and a dozen and one things that have nothing to do with what I call the litigation part of it. And that is, to a certain extent, misleading. I mean to persons who don't know; they say: "Oh, my goodness, this is a tremendous Act; 237 sections." Well, I will venture to say that not more than fifty of those sections cover actual Division Court work.

Q. Well now, coming to that, Your Honour, what would you say as to this: supposing the Act were revised, and so as to leave to the discretion of the judge a great many of the details and provisions that are now set out in the Act?

A. But what details?

Q. I beg your pardon?

A. Please, what details do you want to leave to him?

Q. Well, we have already mentioned two; the question of whether there should be a jury or not.

A. Yes, that is proper.

Q. And we have dealt with the hypothetical case of examination for discovery.

A. Yes, I agree with that.

Q. Then we had one here yesterday, what was the matter brought up here yesterday, Mr. Magone?

A. About the Division Courts?

Q. Yes.

A. I didn't see anything; there was nothing in the report in the paper about it.

Q. There was an item that came up, under the Act, and somebody remarked that it could be left to the discretion of the judge. Well, do you think that there are provisions in there that could be left to the discretion of the judge, rather than making them part of the Act?

A. Well, off-hand, I can't think of anything. But if you want me to look over the Act with that point in view, I might look over it and send Mr. Magone a memorandum as to what I thought.

MR. MAGONE: I think it was arbitration we referred to yesterday.

MR. CONANT: Yes. That's right.

WITNESS: Arbitration?

MR. MAGONE: Have you ever had a case of arbitration in Division Court?

WITNESS: Oh, goodness, as far as abritration, I would never agree to any case being referred to arbitration in Division Court; who would be the arbitrator?

MR. FROST: I would like to ask His Honour a question arising out of this jury business. I was very much struck, Your Honour, by what you said, as to the fact that you only had, I think, roughly, twenty-five jury cases in your long ——

WITNESS: Yes, about that.

Q. —— period on the bench, and I suppose, in that time, that you have tried thousands, perhaps tens of thousands of cases?

A. Well, may I say to you, in the latter twenty years, there were two courts, as you know, and there were over six thousand cases entered into each court, that would be twelve thousand cases in the two courts, in a year, and I think I always tried eight thousand cases a year, at the very least.

Q. Well, I just noticed this, that in the Division Courts Act there is a provision for paying a jury fee, and that jury fee is 25 cents on every claim over $100, and then it is graded below $100, and that jury fee is paid into the municipality, under section 137. Now, I suppose the Division Court suitors have, in that period of time that you have been on the bench, paid thousands and thousands of dollars into the court and, I suppose, into the municipalities to provide for a jury, and in your experience, you have had only some twenty-five juries?

A. Yes, but then they don't pay any money out until they demand a jury, surely?

Q. Yes, they do.

A. No, I don't think so.

Q. I may be wrong, Your Honour, but—

A. What does it say?

MR. CONANT: Mr. Polson knows all about that.

WITNESS: There may be all kinds of methods, but I think ——

MR. FROST: Is it not true, Mr. Polson, that in every case over $100 there is 25 cents levied as a jury fee?

MR. POLSON: Yes, that is collected every year and paid over to the municipality.

MR. FROST: And in the City of Toronto, Judge Morson says there have been tens of thousands of Division Court cases, and only twenty-five juries in all that time.

MR. POLSON: Yes.

MR. FROST: Well, the municipalities are supposed to set up a fund, I notice, under the name of Division Court Jury Fund; where does the money go, that must be substantial surplus.

MR. CONANT: They build sewers with it!

MR. POLSON: I think it goes into the other courts, towards the expenses of other courts.

MR. FROST: That is something like the Highway Improvement Fund!

MR. CONANT: Well now, Mr. Magone, if Judge Morson wants to look over the Act, we will have him back later.

WITNESS: I went over the Act carefully.

MR. MAGONE: You have been here for over an hour, now, do you feel you might continue? We felt you might be tired.

WITNESS: Me, tired?

MR. LEDUC: Judge, the reference to arbitration made by the Chairman is in respect to section 156 of the Act, which reads:

> "(1) The judge, with the consent of the parties or their agents, may order the action, with or without other matters in dispute between the parties, being within the jurisdiction of the court, to be referred to the arbitration of such person or persons, and in such manner and on such terms as he may deem just."

Have you had many cases of that kind?

WITNESS: Well, I always thought that I was capable of trying any case, and therefore I never sent it to any arbitration.

Q. I see. Do you think there is any useful purpose to be served by keeping this provision in the Act?

A. Oh, well, not in the Division Court, because the amount involved is at the most $400, and surely every judge is able to decide a case such as that, I don't care how technical it is, and if he can't he had better get off the bench. But I notice there, Mr. Barlow's suggestion with regard to the County Court cases, that they call in an assessor; of course, I think that is to be considered, in a way, because, while we are supposed to know everything, it is sometimes a very vital proposition, and speaking for myself, I have had cases involving for instance, electricity and electrical machines, where experts were called and talked about

things of which I don't know any more than the man in the moon, and all I could do was the best I could; it probably would not be worth while, in Division Court, to give the right to call in assessors. It is an added expense, and I don't think it would be a wise thing to do. In County Court, I am not expressing any opinion; that is a county matter.

MR. MAGONE: Judge, what is your opinion respecting the execution against lands; at the present time, there must be a *nulla bona* returned.

WITNESS: Oh, yes.

Q. Do you think the execution, in the Division Courts, should be against lands at once?

A. Oh no, oh dear no. I think it is quite right to exhaust the goods first. I don't think it right to go and put a lien on lands for a small amount, or any amount, before you have endeavoured to collect by the ordinary summons against goods; oh no, I would not approve of that.

MR. CONANT: Well, just on that point now, Your Honour, from the standpoint of economy and simplification of procedure ——

WITNESS: Yes?

Q. At the present time, when a judgment comes back unsatisfied, or *nulla bona*, then the clerk must issue a transcript, does he not?

A. Well, if he wants to go to some outside county, yes.

Q. What does he do when he wants to execute against lands in his own county?

A. He has to issue an execution against goods; when they are returned *nulla bona*, then he has to reissue against lands.

Q. Not the clerk of the Division Court?

MR. LEDUC: Yes.

WITNESS: Certainly; at least they did in my day. I think that's right.

MR. CONANT: Well, where does that writ go to then?

WITNESS: It goes to the sheriff.

Q. Oh yes, I see.

MR. LEDUC: What about judgment summonses, judge, are you in favour of keeping them?

WITNESS: No. 1—I think we discussed that—I am in favour of No. 1 only, and I would do away with No. 2, but give the right for examination by order of

the judge if he thought it wise to do so, but of course, no judge would give it unless he had reasonable evidence to suppose that there was something that could be realized upon it.

MR. CONANT: Yes. Were you sitting on the bench after the amendment was passed limiting the garnishees before judgment?

WITNESS: When was that?

MR. CONANT: What year was that, Mr. Magone?

MR. MAGONE: No, I think it was three or four years ago.

WITNESS: There was nothing that I recollect when I was on the bench. Talking about that, I think it is a good idea to limit the amount, for instance, that a garnishee can only be issued on an amount, we'll say, over $50, I should think, because, as I say, the poor devil who can't pay a judgment under that amount is pretty hard on him, and if he has a little money coming, and you should go and stop that money, which might deprive him and his family of their only means of support, I am opposed strongly to that. I think it's a hardship. As I say, we have to deal with these matters on the assumption that the people as a whole are honest.

MR. MAGONE: The present law on garnishee is that there is no garnishee before judgment on wages.

WITNESS: Oh, no.

Q. That was done when you were on the bench?

A. Oh yes, and that's very proper, too, and you know, in this age when so many people are on relief and there is so much unemployment, that garnishee system is rather a hardship.

Q. Well, are you in favour of continuing the garnishee before judgment in the Division Court?

A. Garnishee before judgment? I certainly would, except—well, I might limit that, I would say, over $100 might be all right, or over $200.

Q. That is, where the amount owing ——

A. Where the debt in the judgment owed is over $200.

MR. CONANT: That is not very clear; you mean the debt owing to the defendant?

WITNESS: I am talking about a garnishee after judgment; I think that you should not have any garnishee after judgment unless the judgment was $200 or over.

Q. What about the garnishee before judgment?

A. I would be opposed to that, I think.

Q. In all cases?

A. No, in cases under $100, because, as I say, Mr. Chairman, the garnishee ties up and prevents a man getting money.

Q. Yes, but we are not clear; are you referring to ——

A. I am talking about a garnishee before judgment.

Q. Yes?

A. Well, don't you see—

Q. Well, just a minute; when you speak of a limit, do you mean the amount owing to the defendant?

A. No, no, I mean the amount of the judgment on which he is to be garnisheed.

MR. LEDUC: You mean the amount owing the primary creditor?

WITNESS: Yes, the amount of the debt.

MR. CONANT: That wouldn't be the yardstick, the amount owing to the primary debtor?

WITNESS: No, no, I mean no garnishee should be issued on any judgment either before or after judgment, unless the amount is over $100.

MR. LEDUC: But, excuse me, judge, how would you collect that if you didn't have a garnishee? Take the case of a man ——

WITNESS: Well, my point is this; that is the very thing that I want to stop, that the poor man, who can't pay $100 on a judgment, we'll say, the only inference is he can't afford to pay it, and if he can't afford to pay it, isn't it a hardship on him and his family if you tie up what little money is due them? That is the way I look at it. You've got to consider them; look at the Government, how they consider people on relief.

Q. I know, but judge, you mentioned ——

A. I may misunderstand you, or perhaps I don't make myself clear.

Q. No, but you stated, if I understood you correctly, that when the amount of the judgment owing to the plaintiff or to the primary creditor ——

A. Yes.

Q. Is under $100 ——

A. Yes.

Q. There should be no garnishee?

A. Yes, absolutely.

Q. Now, you take the case of a man with all kinds of money, and earning ——

A. Well ——

Q. Excuse me, judge, let me finish my argument, will you? —— earning a fairly large salary, and owing his grocer $90; then if the grocer could not garnishee against that very rich man, he would have no way of collecting.

A. Then, I will add a clause, that no garnishee should be issued on claims under $100, unless by order of the judge, and you could show him those facts.

MR. CONANT: Well, with all deference, Your Honour, it seems to me you are using your own yardstick. We might provide that there is no garnishee unless the amount to be garnisheed was a certain amount, but the amount of it claimed by the defendant shouldn't be garnisheed.

WITNESS: Well, how are you going to know the amount that is owing?

MR. LEDUC: Well, judge, might I suggest this: I have reference to the garnishee of wages—that we should exempt a proportion of the wages.

MR. FROST: There is that provision now.

MR. LEDUC: There is, yes, but it's not very much.

WITNESS: I would increase it, and very probably, as you say, I would not allow garnishee, as a matter of fact, on claims under $100 unless with the consent of the judge, and then possibly a garnishee on an amount over a certain amount. Have I made that clear?

MR. LEDUC: What are the exemptions, Mr. Magone?

MR. MAGONE: The exemptions are: $2.50 a working day on $15 a week.

MR. LEDUC: Well, should we not adopt a sliding scale for exemptions?

MR. FROST: That's not too bad.

WITNESS: No, but if a man earns $40 a week ——

MR. FROST: He is exempt up to $15.

MR. LEDUC: That is, you can garnishee up to $15 of his salary?

MR. FROST: And under $15, you can garnishee nothing.

MR. LEDUC. No.

MR. MAGONE: That Act could be clarified; it is not very clear.

WITNESS: Oh yes, I don't think you would have any difficulty in that.

MR. CONANT: I doubt whether it would be very wise to interfere with the exemption system.

WITNESS: Well, it's so long ago since I have been dealing with it, but ——

MR. MAGONE: Then, judge, with respect to the Creditors Relief Act; the bailiff collects an amount of money in the Division Court, and there is no distribution—that is in the Division Court—among creditors?

MR. CONANT: Would you mind repeating your question, Mr. Magone?

MR. MAGONE: Well, under the Creditors Relief Act, if the sheriff realizes on the judgment, in the County Court or the Supreme Court, that amount is there to be distributed among all the creditors, if they want to come in; they are notified.

WITNESS: Certainly.

Q. Now, in the Division Court that is not so?

A. Oh no; why should it be; every creditor is entitled to prove his judgment, sure, without sharing it with anybody else. Oh, you can't interfere with that.

Q. Even though it is interfered with in County Court and in Supreme Court?

A. Well, one reason really is that there are larger amounts, probably, realized under those circumstances. I wouldn't approve of that at all.

Q. You don't think it should be interfered with?

A. Oh, no; there is no such provision in the Division Court; why add it?

Q. With respect to appeals, do you suggest that any change be made in the present system regarding appeals to the Court of Appeal?

A. For the Division Court?

Q. Yes.

A. Oh no, I don't think so.

Q. You don't think it requires any change?

A. Oh no. No occasion for appeals, you see, except in cases over $100.

Q. Yes. Well then, with respect to the new trial procedure, was it used extensively in application for a new trial?

A. Oh, very rarely; in a great many cases, as a matter of fact, it was simply made for purposes of delay. You ask me if there were many new trials; for what

reason, for default, or because I was wrong in my judgment? What reason? Let's get that, first.

Q. Well, applications for new trial because the plaintiff or the defendant thought you were wrong?

A. Well then, they were right to apply, but may I say now that you ask me, that, to my knowledge, I had no application for that reason while I was on the bench.

MR. FROSY: Mainly for default, I suppose?

WITNESS: Yes, mainly, but I don't want to ——

MR. CONANT: Well, it is invoked sometimes?

WITNESS: Yes.

MR. FROST: Mr. Chairman, how would it be if we asked His Honour to make some short recommendations in writing, for things that he would suggest it might be worth while having?

WITNESS: Well, I have some things here that I brought for that purpose, as a matter of fact. "Reduced costs of Division Court juries," "attachment orders;" we dealt with that, did we?

MR. MAGONE: We didn't deal with it very fully, judge, if you care to elaborate on it?

WITNESS: Only as to the amount; I think there should be no attachment order under a certain amount—I would say $25.

Q. Oh yes.

A. "Service by registered mail," I have dealt with that.

MR. CONANT: Your Honour, as one of the members of the Committee has suggested, if you would prepare a memorandum and file it with us through Mr. Magone, we would be very glad to have it, with any observations you may care to make.

WITNESS: Well, other than what I have made?

MR. CONANT: Or including what you have made. If you would.

WITNESS: Yes, I'll be only too glad to.

MR. CONANT: Thank you. I am very grateful to you, Your Honour, for your assistance in coming here to-day.

WITNESS: Not at all, Mr. Chairman, it's a great pleasure and a great honour, if I might say so, to be called.

MR. CONANT: Thank you very much.

F. J. Norman, Secretary, Ontario Association of Collection Agencies

Mr. Magone: Mr. Chairman, Mr. Norman is the Secretary of the Ontario Association of Collection Agencies. Mr. Norman, your members do a great deal of business in Division Court?

Witness: Yes.

Mr. Conant: How many members would there be in your association, Mr. Norman?

Witness: Well, we have 80 members, but there are a total of 120 agencies in the province.

Q. They are all licensed now, are they?

A. All licensed and controlled by the Ontario Securities Commission.

Mr. Magone: What do your fees amount to, that you pay to the Division Courts in the province in a year?

Witness: During the nine-month period since the agencies were licensed, according to the figures furnished to the Ontario Securities Commission, the collection agencies in the Province of Ontario paid to the Division Courts, for costs, $70,000; that is an average of $100,000 a year.

Q. That is for the nine-month period?

A. Yes.

Q. Now, you have given me certain recommendations; among them ——

Mr. Conant: May I ask, in that connection, is most of this work done with or without solicitors?

Witness: Well, I should say most of it is through solicitors; for the smaller amounts, such as doctors' bills, retailers' bills, and so on, the agencies act directly, but for the larger ones, household furniture, wholesalers, and so on, would be mostly through solicitors.

Q. Well, would the larger part be with solicitors or without solicitors?

A. Without solicitors.

Mr. Arnott: Solicitors would only be called in in cases of dispute?

Witness: Disputes, or examinations.

Mr. Magone: Have you any idea how these claims are divided, between the extended Division Court jurisdiction and the lower jurisdiction, that is under $100?

A. Well, that comes again under the heading of classification of accounts; if it were a doctor or a private person, or a retail store, or any business like that, of course, they would come under $100.

Q. Are most of your claims under $100? Could you say that?

A. Yes, they would be.

MR. LEDUC: How many claims would that represent, Mr. Norman, that $70,000?

WITNESS: Well, that I could not say, sir.

MR. CONANT: And you have been active in Division Court work yourself?

WITNESS: We have been using the courts for a number of years.

MR. MAGONE: What are your chief criticisms concerning the Division Courts?

WITNESS: Our chief criticism, in so far as the creditors and the debtors are concerned, is the cost, and we think that can be overcome by substitution of service by registered mail. On ordinary writs, and also on judgment summons proceedings, there is no substitution of service. In judgment summons, consequently, an evasive debtor can avoid service; there is no substitution of service on that.

MR. FROST: You would be running into difficulties, if you asked to commit a man for contempt and you were not absolutely sure he was served.

WITNESS: Well, they would be served with what would be called a return card, and the person who served the writ, his name would be on the return card, and the registered letter would prove that they were in touch with him, or that they could get in touch with him.

MR. ARNOTT: That doesn't prove it conclusively.

MR. FROST: I must admit I have some sympathy for serving a small claim by registered mail, but when you get down to serving judgment summons proceedings by registered mail, that is somewhat different.

WITNESS: Well, that would have considerable cost.

MR. MAGONE: That is not the only consideration.

MR. FROST: How about the liberty of the man? You are asking the court to commit a man to gaol for contempt on refusal to appear.

MR. LEDUC: Which is really gaoling him for debt.

MR. FROST: Yes.

MR. CONANT: At any rate, your organization feels that the cost of service is the objectionable feature of Division Court proceedings, is that it?

WITNESS: The biggest objection. We have given you instances of several cases of excessive costs.

MR. FROST: You mean pyramiding costs?

WITNESS: Yes.

MR. ARNOTT: Just before you come to that, Mr. Norman, can you tell us how many cases are represented by that $70,000 paid?

WITNESS: No, I don't know.

Q. And how many of those you were able to collect?

A. Well, they could be got, but they are not on file.

Q. We can't do very much without that information.

MR. MAGONE: What is your experience with respect to returns from execution?

WITNESS: Well, I would say are 60 percent realized.

Q. 60 percent?

A. Yes.

Q. So that you are fairly well satisfied with it?

A. With the service?

Q. With the service rendered by the bailiffs?

A. Yes, but we don't get the same service from the same courts, or different courts.

MR. CONANT: What is that?

WITNESS: We don't get the same service in all courts.

Q. The results are not uniform?

A. No, they are not uniform; some are better than others.

Q. Well now, would you say that is due to the difference in the ability or efficiency of bailiffs throughout the province?

A. Well, I should say it is due to the inefficiency or efficiency of bailiffs.

Q. Yes.

A. We have had clerks of courts write and tell us that they didn't know what to do, and ask us what procedure they should follow.

Q. One of our clerks in Ontario here?

A. Yes.

Q. I couldn't concede that; all our courts are entirely efficient.

A. Well, that can be produced. Consequently, the creditor, and the debtor, have to pay for all that.

Q. Well then, Mr. Norman, you say you object to the costs that are involved, and principally due to the present unalterable provision that the bailiff must serve process, is that it?

A. Well, to the service.

Q. Well, that is the present provision?

A. Well, every time the clerk of the court dips his pen in the ink he charges 25 cents.

MR. LEDUC: Do you know anything about the Quebec system of bailiffs, Mr. Norman?

WITNESS: No, sir.

MR. ARNOTT: Mr. Chairman, I would suggest, if Mr. Norman could break that down, and show us the number of cases put in and those that they were successful in collecting in, and those that they were not successful in collecting on ——

MR. CONANT: Could you do that, Mr. Norman?

WITNESS: Yes, sir.

MR. CONANT: And then let Mr. Magone have it, please.

MR. MAGONE: There is just one other item.

MR. CONANT: What about the block system? Let Mr. Norman discuss that; what does he think of that?

MR. ARNOTT: That would show, Mr. Norman, the number you obtained judgment in, and those that were settled before that?

WITNESS: Yes.

MR. MAGONE: You have a recommendation on page 1 of your brief, regarding a block system?

WITNESS: Yes, this is up to $100, because the jurisdiction now is $200 or $400.

MR. CONANT: What do you suggest, up to $100?

WITNESS: Well, that depends on the bailiff or the clerk of the court. I mean, there has to be sufficient charged to take care of their expenses.

Q. Yes, but what is your suggestion? What scale do you suggest?

A. Do you mean the amount, sir?

Q. Yes.

A. Well, that would have to be governed by the size of the account.

Q. Yes, but have you any scale that you are recommending?

A. No, we haven't any scale.

Q. Well, do you recommend a block system of fees?

A. Yes, up to $100.

Q. On claims up to $100?

A. Up to $100.

Q. But you don't make any suggestion as to what the fees should be?

A. No, we don't do that, sir.

MR. MAGONE: You have made a suggestion regarding service by registered mail. What about service by the parties?

WITNESS: Well, what do you mean by that? That the plaintiff, as in some cases they now do, serve judgment summonses when the identity of the debtor is not known?

MR. CONANT: Oh yes, but under the general practice—we don't need to take time on this—the bailiff serves all process, is that the general practice?

WITNESS: Yes.

Q. Do you think there should be any departure from that?

A. No, sir.

Q. You don't think the parties themselves should be allowed to serve?

A. Well, as I say, on the judgment summons.

Q. Oh yes, but that is the exceptional case.

A. Now I am just trying to explain, sir, that in the case of judgment summonses, sometimes the plaintiff is ——

Q. But that is only a small part of the work of the court; the big part of the work of the court is service of claims; what do you think of that, all claims to-day should be served by the bailiff; do you think there should be any departure from that practice?

A. Yes, I think in the small debts court, the plaintiffs or their agents should be allowed to make service.

MR. MAGONE: In addition to registered mail?

WITNESS: Yes.

MR. FROST: Is there anything in the written representations there that would be interesting?

MR. MAGONE: Yes, I have a copy of it and am filing it with the Committee. There is one more thing, with respect to the Creditors Relief Act; I see you do not agree with the recommendation of Mr. Barlow?

WITNESS: No, sir, I don't see how that could possibly work.

Q. You mean?

A. It wouldn't be fair. It wouldn't be fair to the creditors, because there would be all this delay, and notification to the clerk of the court.

Q. Well, what is your reason—why should this be different from the County Court?

A. Because the amounts of the claims and the number of claims there may be in the smaller court.

Q. What difference does that make? I mean, is there any difference in principle, between an account of $95 and one of 95 cents?

A. No, there is no difference in principle at all.

Q. Is there any real reason why the Creditors' Relief Act should be applied to one and not to the other?

A. Because the costs are far excessive in the larger courts.

MR. CONANT: Your organization does not want that extended to the Division Courts?

WITNESS: No, sir, it's not fair to think that one creditor should put up all the costs and these other creditors—these writs are published in Dun and Bradstreet's—should get the benefit of the other's expenses.

MR. FROST: He gets the preference.

WITNESS: Well, but if it's not realized, he doesn't get his costs; it's not fair.

MR. MAGONE: I think that is your submission, is it?

WITNESS: Yes.

MR. CONANT: Well now, Judge Morson suggested an alteration in the procedure of the judgment summons, did you hear his recommendation?

WITNESS: No, I didn't.

Q. He recommended that, after the first judgment summons, nothing further should be permitted, unless the plaintiff could establish there was reasonable grounds for believing that the man could pay.

A. Well, I hink that is practically the procedure now, sir; isn't it at the discretion of the judge, if there is another judgment summons?

MR. LEDUC: The judge can refuse to act, but you can get further judgment summonses.

MR. CONANT: It is a default summons, I think they call it; what do you think of that?

WITNESS: Well, the way it is now, I think, is fair.

Q. Yes, but the judge doesn't think it's fair. The judge takes this view, that the present practice shouldn't continue, because you are perhaps pursuing a man who has no means of paying, and you are adding costs unnecessarily; now he says that after the first summons, nothing further should follow, unless the plaintiff can come along and establish, to the satisfaction of the court, that there is really grounds for believing that the man can pay, and presumably is avoiding payment.

A. Well, I believe that is practically the procedure followed now.

MR. LEDUC: Oh, no.

MR. CONANT: Oh, no; what do you think about garnishees? You know the present practice of law, do you?

WITNESS: Yes, sir.

Q. What do you say as to that?

A. Well, I don't ——

Q. The present exemptions.

A. I think they are quite in order.

MR. LEDUC: You think they are enough?

WITNESS: Yes, sir.

MR. CONANT: I see.

WITNESS: There is only one thing more I would like to speak about, with reference to the County Court.

Q. Well, before you leave that, what do you think about juries in Division Court?

A. I think they should be abolished.

Q. You think they should be abolished?

A. Yes.

MR. FROST: Did you ever have a jury case?

WITNESS: Not in Division Court.

Q. In Division Court, the practice is, is it not, that the debts are paid in order of priority? Is that not it?

A. Yes, sir.

Q. Or in order of priority of going into court?

A. Into court.

Q. Supposing you were opposed to the Creditors' Relief Act provisions, which are applicable in other courts, and there are half a dozen summonses put into Division Court on the same day, say an hour apart, don't you think there should be some method of giving to the creditors rateably, rather than in order of priority?

A. No, sir, first come, first served, I think.

Q. I know. But it is a principle that we have not recognized in other courts; it does seem to me that perhaps there is room for improvement there.

A. Well, I don't see how it could be improved there, sir. I guess that would practically be the Creditors' Relief Act again.

MR. CONANT: You want to say something about the County Court, Mr. Norman?

WITNESS: Well, at the present time, we can have the debtor examined as a judgment debtor, but there is no order goes with that examination, so that I can quote a case ——

Q. That is what they call "examinations in aid of execution", is it not, Mr. Magone? Examination for discovery, I believe.

MR. CONANT: No.

MR. LEDUC: No, no, it's an examination after judgment.

MR. CONANT: Examination in aid of execution, I believe it is.

WITNESS: There is one specific case ——

Q. Well now, your objection to that is that it gets information, but gets no results, is that it?

A. It very rarely gets information, sir.

Q. What do you suggest?

A. In a specific case, a man borrowed $1,000 off a lady that could barely afford it; they had no intention of paying this money back. She put up $32 to issue a County Court writ; the man has a good job, he buys a new car every year, he lives on Lonsdale Road. They had him examined and didn't discover anything. Now, there is nothing further that can be done. That man is just switching everything to someone else's name.

Q. What do you suggest should be done?

A. That he be examined and ordered for monthly payments.

MR. FROST: On the same lines as the Division Court?

WITNESS: Same lines as the Division Court.

MR. FROST: Of course, that is one curious thing; I think that oftentimes creditors reduce their claims to get them in the Division Court, owing to the fact there are more collection facilities there.

WITNESS: That is very often a fact.

MR. LEDUC: Well, as I pointed out yesterday, it is unfair; a man who owes $50 goes to goal, and a man who owes $1,000 gets away with it.

MR. FROST: There's the point; a man owing a small claim, he can be brought up and badgered and orders issued against him, and so on, but the man that owes $1,000, he can go before the examining officer and give a lot of easy answers, and that is the end of it.

MR. CONANT: Well now, personally, I am interested in that, because I have had some sad experience along that line. Do you think that those cases are frequent?

WITNESS: Very frequent, sir.

MR. LEDUC: What do you think of the garnishment of wages, having to garnishee them every pay-day?

WITNESS: Well, I can only speak partially on that, but I am much against garnisheeing any man's salary.

MR. FROST: Well now, of course, there is an absolute exemption for $2.50 for a man making $15 a week, or 70 percent of his salary, which may, in the discretion of the court, be altered.

WITNESS: Yes, it's pretty well covered.

MR. LEDUC: Yes, but what I had in mind is the necessity of issuing a new garnishee on pay-day.

WITNESS: Well, that isn't necessary?

MR. FROST: It adds tremendously to the costs; there are many specific cases of small claims where garnishees are issued every pay-day, where the costs exceed the collections.

WITNESS: Yes.

MR. CONANT: Are you familiar with the system set up in Quebec to meet that?

WITNESS: No, sir.

Q. Well, coming back to your suggestion about your inability, in claims in the County Court—and it's the same in the Supreme Court ——

A. Yes.

Q. —— to enforce your judgment, have you anything to add to that?

A. No, sir.

Q. Other than that you think there should be some procedure?

A. Well, the same procedure as in the Division Court, order and show cause.

MR. CONANT: I see. To-day, we have no jurisdiction where that is in force, Mr. Magone?

MR. MAGONE: I don't know, off-hand.

MR. CONANT: Do you know of any jurisdiction where there is some procedure such as that?

WITNESS: No, sir.

MR. CONANT: Will you make a note of that, Mr. Magone, and see if there is anything that can be found on that?

MR. MAGONE: Yes. Only one more thing; you mentioned something about leaving the jurisdiction of Division Courts as is?

WITNESS: Yes.

Q. As far as your association is concerned, you are satisfied with it?

A. Yes, we are quite satisfied with it; not with the expenses, of course.

MR. FROST: Don't you think, Mr. Norman, that the present Division Court procedure is really something that has come down from the old days in England, and I suppose in this country, when you could put a man in gaol for debt? Actually, that is what Division Court procedure amounts to now?

MR. LEDUC: Judgment summons procedure.

WITNESS: Yes.

MR. FROST: Do you think that is just?

WITNESS: Well, it all depends on the cases.

MR. LEDUC: You said a moment ago, you were against garnisheeing a man's wages. Is it not worse to put him in gaol because he can't pay, or refuses to pay?

WITNESS: Oh, yes.

MR. FROST: I often wondered this: supposing a man owes some creditors, say, $50; the judge looks over the situation, and he says: "This man should pay $2.50 a month, and if he doesn't pay the $2.50 a month he goes to gaol." Do you think that's right?

WITNESS: Well, it doesn't go ——

Q. Well, that's the way it works.

A. Yes; of course, our consideration is for what we call "amounts debted". There are few of those; there more; there is "evading liability; obtaining credit under false pretences;" that is mostly where the Act works.

Q. Well, is this not true? That in County Courts and Supreme Courts, the procedure there is on the basis that you have the right to examine a man, and if you find that he has assets, then you can ——

A. —— issue an execution.

Q. Yes, issue an execution, and take those assets.

A. Yes.

Q. The Division Court, which is a small man's court, and a poor man's court, is operated on the basis that the judge can say: "You pay these moneys,

whether you have assets or not." In other words, "get out and work for it;" and if you can't earn enough money to pay the amount, then the judge directs you to gaol. Do you think that is correct?

A. Yes.

Q. Well, why should there be a difference between the little man's court and the big man's court, shall I say?

A. Well, there isn't any difference; that's why we are advocating—

Q. That is why you are advocating the same principles of the Division Court in the Supreme Court?

A. Yes, certainly.

MR. CONANT: I certainly agree, of course, that there is a discrimination against a little man to-day, but my experience has been that the provision about committing to gaol is very, very seldom used.

MR. STRACHAN: Never.

MR. CONANT: It is very seldom carried to its ultimate conclusion.

MR. FROST: I know one case in your county, in which a man did thirty days.

MR. ARNOTT: Was that for contempt, or refusal to pay?

MR. MAGONE: Well, they are all to be dealt with on the basis of contempt.

MR. FROST: Yes, on the basis of contempt because he didn't pay.

MR. CONANT: What happens is this: in the first place, a court won't make an order for committal to gaol unless the circumstances are exceptional, and you are showing that the man is able to pay, and holding the court in contempt. In the second place, ninety-nine times out of a hundred, when an order is made, the man will pay it; isn't that right?

WITNESS: Then he pays before his costs rise, and if he can give a good reason why he should not pay, it is stayed.

Q. Yes. I am not defending that system so much as pointing out and indicating my view that, good or bad as that system may be, it should apply to all courts.

A. Oh, yes.

MR. MAGONE: Well, there are jurisdictions where you can get an order, and others where you can't.

WITNESS: No, you can only get orders for commitment in Division Courts.

Q. But you know that some judges will give you an order, and some others will not.

A. We find, on an average, if a man is actually in contempt, then he is incarcerated.

Q. My reason for saying that is—I didn't ask Judge Morson about this, but I doubt whether he sent more than one or two men to gaol in his whole experience.

MR. LEDUC: I've known more than that to be sent up in the city of Ottawa in the last ten years.

MR. MAGONE: Yes, that is what I was asking Mr. Norman, whether in some jurisdictions it wasn't easier to get an order than in others.

MR. FROST: In other words, the threat, or power to send them to gaol has a tremendous effect?

WITNESS: It has a moral effect.

MR. MAGONE: Practically the only difference between Supreme Court and County Court and Division Court is, that while you can get an order of attachment in the Supreme Court and County Court ——

WITNESS: If there is anything to attach.

Q. You must first find there is something to attach.

A. Yes.

Q. —— you can't get an order of a judge directing him to make payments because of his ability to work.

A. That's the difficulty.

Q. It's the difficulty that arises in the collection of accounts from doctors, dentists and lawyers, who don't have to work if they don't want to. Well, I think that is all from Mr. Norman.

MR. FROST: Are there any instances that you have there of pyramiding costs?

WITNESS: Yes, there is one here, very recently, which was handled by our own solicitor. There was one concern which had two claims against two men, who were in the same work, in the same store, and lived in the same building; the claim was sent to Haileybury, but it was out of their jurisdiction, so it was sent down to North Bay.

MR. CONANT: How much was the amount of the claim?

WITNESS: One claim was for $20.27, and the other for $55.00; the total costs of service on those two claims was $37.01.

Q. For the service?

A. For the service of the writ only.

Q. That would be a grand total, of costs ——?

A. It hasn't gone any further.

Q. You will have exhausted it by that time.

A. Well ——

MR. LEDUC: Do you think—$37.01 for service fees in those two cases?

WITNESS: Yes, the total debt amounted to $75.00 and we paid the bailiff and clerk $37.01.

Q. That's an average of $18.50 on each claim?

A. Yes.

MR. ARNOTT: Where did these debtors reside?

WITNESS: Timagami.

MR. LEDUC: The bailiff is entitled to 60 cents for service, the rest would be mileage, I suppose?

WITNESS: Mileage and clerk's fees.

MR. CONANT: Just taking that case—could they have been served by registered mail?

WITNESS: Oh, yes, sir.

Q. You knew where they were?

A. Oh, yes.

Q. Where did they live?

A. They were operating a store in Timagami.

MR. FROST: Why would the service be so terrific?

WITNESS: Double service.

MR. LEDUC: And the mileage, both ways, was ——?

WITNESS: Seventy-two miles, I think.

MR. CONANT: Of course, that is a rank abuse, where a bailiff takes, perhaps, two or three claims and goes over the same mileage, and charges mileage in each case.

WITNESS: I had a similar case in Toronto, from the city hall to Parliament Street; two creditors, and the same man, a dry goods store, double service, $4 for each service. The debtor was sued under his name, operating such and such a business; they drew up two writs, made two services. When questioned as to how they could serve him, they couldn't tell us. They served one man with the two services.

Q. And charge double service?

A. Yes.

Q. Could you have served that man by registered mail?

A. Oh, yes.

MR. FROST: Well, you could have served him personally.

WITNESS: Certainly, anybody could have gone along and served him.

MR. LEDUC: $4 for service only?

WITNESS: Yes.

Q. $2 for each?

A. No, $4 each.

Q. $4 each?

A. Yes.

Q. Well, what is the distance between Parliament Street and the city hall?

A. About three miles, I would say.

Q. Well, that would be 60 cents for mileage; and what was the amount of the claim?

A. The claim was $200.

MR. ARNOTT: What happened in each of those actions, after service was effected?

WITNESS: They didn't go any further, because the man made an assignment of the papers.

MR. LEDUC: There is something wrong there, Mr. Norman, because if it's one or two miles, the service should be $2.

WITNESS: Well, I have been trying for years to figure out the tariff, but I have never been able to arrive at it.

MR. MAGONE: Well, what about taxation?

WITNESS: Well, we find that useless, because it just means more costs.

Q. You have attempted it, have you?

A. On occasions, and they just charge us 25 cents.

Q. Did you ever have the cost produced on taxation?

A. Never.

Q. You never have?

A. Never in my experience.

Q. Do you know how much you paid in taxation?

A. Very few.

MR. LEDUC: Oh, I don't think taxation is any use there; it's all on the tariff.

MR. MAGONE: But that is an instance where they might have reduced on taxation.

MR. LEDUC: Yes. I would like to get some explanation of that $4 service charge.

MR. MAGONE: Can you give us any explanation, Mr. McDonagh?

MR. MCDONAGH: The matter was never discussed with me, and if it was $4 for service, the charge was unquestionably excessive. I can't see how they can arrive at $4 for service. Parliament Street is at most, a mile and a quarter from the city hall.

MR. LEDUC: That would mean about $1.90.

MR. MCDONAGH: Not any more.

MR. CONANT: Is this claim from your court, Mr. McDonagh?

MR. MCDONAGH: I presume it is, and if he will give me the number, I will have it checked.

WITNESS Excused.

F. G. J. MCDONAGH, Clerk, First Division Court of the County of York.

MR. CONANT: Mr. McDonagh, how long have you been clerk?

WITNESS: Since 1934.

Q. Are you a lawyer?

A. I was, yes.

MR. MAGONE: And I suppose you are yet?

WITNESS: I am, yes. I submitted certain recommendations to Mr. Barlow, a copy of which I submitted to the Chairman, and my first recommendation was that the whole Act, Rules, Tariffs and Forms be reviewed, simplified and rewritten. And I have gone over Mr. Barlow's report carefully, and on January 22, I submitted my constructive criticism to Mr. Cadwell, which I presume has been discussed, and on January 9, I wrote Mr. Cadwell in regard to the matter of the Creditors' Relief Act, and the manner in which that would work out in a busy Division Court—

MR. CONANT: Have we copies of Mr. McDonagh's submissions?

MR. MAGONE: Yes.

MR. FROST: I wonder if Mr. McDonagh would go over his submissions.

MR. CONANT: Yes. It would help if we had them before us also; however, you may go over them.

WITNESS: I am still of the opinion that that solution is to simplify and rewrite the Act. As I said in my first paragraph to Mr. Barlow, the Act was originally drawn in "horse-and-buggy" days, and it appears to me from time to time sections have been added for the purpose of clearing up some point, without any attempt to consolidate the necessary suggestions in that section of the Act pertaining to the point in question, with the result that instead of having a simple Act, we now find it rather a complicated one, and impossible for a litigant to understand.

MR. CONANT: Well, may I suggest, Mr. McDonagh, with all deference, I think it would meet our convenience better if we could take a glance at each one of your paragraphs, and if you could summarize it to us. We can then read the report at our leisure.

WITNESS: Yes, sir. Well then, in my suggestions, of course, I had to take into consideration the criticisms that were levelled at the procedure, and the first one arises in regard to issuing a County Court writ for $3, and in the Supreme Court for $2.10, while the cost in Division Court was lost sight of. The payment to the clerk takes care of the issuance of the summons, making copies of same, transmission to the bailiff, the service, the return, the listing for trial, the calling in court, the trial, the judgment, the issuance of execution, return of same, and all entries incidental to these various items of procedure and interlocutory proceedings such as orders ——

MR. LEDUC: Have you got a special item on issuing writs of execution?

WITNESS: Yes, but the money is paid into the court ——

Q. Oh, quite.

A. It is paid into the Division Court when you issue a writ for $2.10.

Q. Oh, I beg your pardon. I thought you had a special amount.

A. No; that's not the way the litigant looks at it, but he has to pay the Division Court fees.

MR. CONANT: Well now, wait a minute, I don't quite understand your submission.

MR. LEDUC: Mr. McDonagh is speaking of the deposit that is paid to him when an action is brought to his court.

WITNESS: That is the claim I meet with most, that the deposit required is more than they have to pay in the Supreme Court. Of course, in the County or Supreme Courts, as you know, the solicitor issues the writ, and then he has to attend to the service; then some other solicitor enters the appearance, and there is the statement, and so on.

Q. And for each one they have to pay 10 cents?

A. They pay as they go along, and they have to do the work, whereas, in the Division Court, when you file a claims it's like starting a wheel, and it goes along until the conclusion of the action. In other courts, you have to start a wheel every time you want to take a separate proceeding. That was the point in the criticism.

Q. On claims from $300 to $400, your fee for issuing a summons is $4?

A. Yes, sir. In that connection, I prepared for the assistance of Committee, a hundred 1938 cases, picked at random out of the book and in succession, and show the average cost of that hundred cases. I gave it to Mr. Cadwell, who has it at present. Then I had that broken up into the different groups that the Division Court tariff provides—$1-$10, $10-$20, $20-$60, and so on. I also took my returns for last year, and the total amount of fees earned was $29,848.65, and the number of proceedings was 7,643, which gives an average cost of $3.09; over a period of years, if the returns of Division Courts are examined, the total fees divided by the number of proceedings in the year will bring the average cost very close to $4.

MR. CONANT: Now, are you including in that service, mileage and everything?

WITNESS: No, the clerk's fees.

Q. I beg your pardon?

A. That doesn't include the bailiff's fees.

MR. FROST: Could you give us any information on this bailiff end of it?

WITNESS: Well, the break-up of the hundred cases shows the clerk's fees and the Division Court costs.

MR. CONANT: Have we that break-down available now?

MR. FROST: Yes, I think it would be a good thing if Mr. McDonagh explained it.

WITNESS: While that is coming, possibly if I touched on the matter of judgment summonses—

MR. CONANT: Before you leave that,—I think it is proper to deal with it now—what do you think as to the feasibility of a block system? Let me explain, first, what I mean by that: a system whereby a man who entered a claim in court, let us say up to $50, knows that he is going to pay this certain definite, fixed, certain amount for the whole thing.

WITNESS: Yes.

Q. And then, up to $75, another certain amount; up to $100, another amount. Something of that nature; do you think that is feasible?

A. I think it is feasible, and that it would save a considerable amount of book-keeping, which is required to be done under the present system.

Q. Yes.

A. I think it would be very advantageous; as far as the larger courts are concerned, I have tried to frame my remarks with the experience of one who has practiced before the courts, and one who has been clerk of the court.

Q. You have been both on the outside looking in, and on the inside looking out.

A. Yes, and the situation which I must mention, of course, is that in regard to the courts outside of Toronto, or apart from mine, shall I say, where the only remuneration the clerk receives is that derived from his fees.

Q. Yes.

A. And in many cases, the clerk may make $100 or $200 a year out of his Division Court work, and a block system might cut down the remuneration which those clerks receive. And the only cost in connection with those courts, in so far as the government is concerned, is their inspection, and while the remuneration of the clerk outside might be cut in that manner, where the volume of business is great, as in the Toronto courts, I don't think it would make any appreciable difference.

Q. Well, from the standpoint of the public, would it, or would it not be more satisfactory, if, say, a doctor or a merchant, entering a claim for $50, knew at that time what he was going to be in for?

A. Yes, it would be of assistance to him. As it is now, when the summons

goes out to the debtor, on the summons is the amount of the claim, and in one corner, it gives the costs, exclusive of mileage, and then the bailiff, adds on the mileage, so that the debtor actually knows the amount of costs up to the time he is served with the summons, if he pays that money in court.

Q. Supposing we had a system, as has been suggested here, whereby, in claims up to $100, we had a block system, perhaps, in three jumps, or four, if you like, up to $50, $75 and $100, and in addition to that, we set up procedure for service by registered mail with a return receipt, or by the plaintiff himself if he wanted to make service himself, do you think that would be feasible?

A. I think that would have to be given considerable consideration, especially the service by registered mail. Quite frequently we have orders for substitution of service by registered mail, and the time for entering a dispute is not enlarged, and in many cases the post office returns the registered mail after a default judgment has been signed. And as far as the receipt is concerned, Mr. Arnott brought up the point that that is not conclusive of service, the signature that you get from registered mail receipt. I can give some instances in connection with that, in the case of wives dealing with stores without the knowledge of their husbands; they receive the mail while the husband is away at work, and the husband has no knowledge of it until the bailiff goes out. We have had that happen quite frequently.

MR. LEDUC: Mr. McDonagh, whenever anyone brings you a claim, you ask for a deposit of so much, which varies according to the amount involved?

WITNESS: Yes.

Q. So that the plaintiff knows pretty well, and it was my experience in Ottawa, that the amount deposited usually covered the costs; there might be a few cents returned or a few cents due.

A. Up to and including judgment.

Q. But don't you agree that a deposit of $30 for an action of from $300 to $400, which means a cost amount of approximately $13, is too high, as compared with the costs in Supreme Court, for instance, cost of recovering judgment?

A. At first blush it does seem too high, yes, but on the other hand, there is a substantial amount involved, and those are usually on notes.

Q. Exactly; you take a case in the Supreme Court of several thousands of dollars; I forget now what the actual court disbursements are, but I don't believe they are much above $13.

A. No, they are around that. In this list that Mr. Cadwell has, there is only one over $13, and I think that one is $25, but of course, there may have been several services in connection with that one, which brings the total up.

MR. STRACHAN: Mr. McDonagh, outside of Toronto, are the Division Courts self-supporting?

WITNESS: They are self-supporting in that they don't cost anything, but the inspection; but the Division Court clerk may be the butcher, or the baker.

Q. If his earnings are cut down appreciably, I suppose the loss will have to be made up by some person, or the Government?

MR. CONANT: Just a moment, they are self-supporting to this extent: nobody subsidizes the clerk or the bailiff, but they are subsidized for the expenses of the court in the municipality?

WITNESS: The municipality is required to pay them $4 for each sitting of the Division Court.

Q. Yes, where they earn less than $1,000 a year?

A. Yes.

Q. But coming back to that substitution of service, would it be feasible to set up a system of this nature, whereby you would permit of service by registered mail with a return receipt? Now in the first place, the majority of those people could be reached and would show up, would they not?

A. They would receive the papers.

Q. Yes, and most of them would show up, would they not?

A. Yes, because default judgments run about forty-five percent.

MR. LEDUC: I was going to ask you that; forty-five percent?

WITNESS: Yes.

MR. CONANT: Would it be feasible to set up this procedure; where a service has been made by registered mail, and the person does not show up, and no appearance is entered, then the plaintiff must prove his claim, and what you might call a judgment nisi would be signed, allowing, say, another fifteen days, within which time the defendant could come along, enter an appearance, or whatever you might call the document, and have the right to have his claim placed on the list. Would that not be feasible?

WITNESS: Except that you would be changing the procedure in this: that you would be depriving the plaintiff of the right of default judgment.

Q. Yes, but the plaintiff would adopt that procedure at his option.

MR. FROST: If you did that, do you think the average claimant could say ——

MR. LEDUC: "I've got fifteen days more!"

MR. FROST: Yes. "I'll just ask the bailiff to serve this and if I can collect it, why ——

MR. STRACHAN: Yes, otherwise he'd have to make two appearances in court, and our Division Courts here in Toronto are sometimes an all-day sitting.

WITNESS: It is now. We haven't Judge Morson any more!

MR. STRACHAN: And to ask the plaintiff to come up once, and then to open up again and go through the same procedure, it means two days off a man's time.

WITNESS: May I suggest this: that, in the case of service by registered mail, the time for entering a dispute be enlarged until the registration certificate has been obtained. Then, upon an order of the judge, default judgment may be signed, and you're not leaving it in the discretion of the clerk at all, but placing the responsibility on the judge. My experience with service by registered mail has not been satisfactory. And then, of course, you come to the question of service of judgment summonses by registered mail, which Mr. Norman mentioned.

MR. CONANT: But I don't think that I expressed myself clearly, perhaps. I have no intention of prefacing my remarks with the statement that registered mail service would be compulsory, or the only system of service, but if you allowed to the plaintiff that option, to adopt that practice if he wished to, or service by bailiff, or personal service, if he desired, allow the plaintiff the option of service by registered mail, with the knowledge beforehand that it would have the same subsequent effect as personal service, would it not be feasible, if he adopted that option, to allow the defendant an opportunity, after the judgment nisi, if you like to call it that, to come and defend himself, if he wants to?

WITNESS: Yes, that would be feasible, but of course, I suppose you should, as is done in divorce actions, give the defendant notice of the judgment nisi.

Q. Well, supposing that you provided also that notice of the judgment summons should, too, be sent to him by registered mail—you send out the registered notice, you send out the claim by registered mail, and the defendant doesn't show up at all, it is placed on the list, the plaintiff proves his claim, the judge delivers judgment nisi, and the defendant is advised of that by registered mail, he is advised that he has 15 days if he wants to move against his judgment, surely he has all the protection that he should have then?

A. Yes, he has the protection, but you are doing away with one of the effective steps in Division Court proceedings, and that is the quickness, the speed with which you can obtain a judgment and send your bailiff out.

Q. Oh yes, but you are overlooking the fact that this is an option that the plaintiff may or may not adopt.

A. Oh, at the plaintiff's risk?

Q. Entirely, yes. The plaintiff may say: "Now here is a gamble; I don't know whether I will ever get anything out of this claim or not, but I am going to sue, but I am going to keep my costs down." That is the way he would keep his costs down. He may say: "I don't care, I may get judgment or I may not, but I'll have it done by registered mail, because I don't know whether I'll get anything or not." There are a great many cases like that, are there not?

A. Yes.

Q. Is that not feasible?

A. Yes, it is feasible, but I have one thing in the back of my mind, dealing with the type of man that you want connected with the administration of justice, in the person of your bailiff. Bailiffs in outside Division Courts now make very little.

Q. Well, that is another problem.

A. That is the principle, I suppose.

Q. We have to struggle with that, but that doesn't affect your court so much, it affects outside courts?

A. Yes.

MR. FROST: Mr. McDonagh, have you any suggestions for reducing service costs?

WITNESS: No, I haven't, because I have had an opportunity to examine the returns of the bailiff in Toronto, that is in my own court, and they don't make very much money as it is now, because they have to employ extra help.

Q. Well, what I am coming at is this? Supposing the bailiff system is wrong; have you any alternative to suggest?

A. Supposing it was decided that the bailiff system was cumbersome, that the bailiffs were poorly paid, and that it leads to inefficiency, taking it as a whole, and actually, I think that is the case outside of Toronto, where one bailiff in every ten is efficient and the rest of them are not earning their living from bailiff work, and they are just taking a little gravy out of it—and in many cases, personal matters enter into it, and they don't want to seize on somebody because he is a friend of their wife, or something like that—the result is that we might come to the conclusion that the bailiff system was outgrown, now have you any alternative to suggest, any way that you might save money?

The only alternative would be to turn it over to the sheriff and let his deputy do it.

Q. Well, would there be any saving in costs there?

A. I don't see that there would be any saving, because the sheriff's man would have to be paid.

Q. Well, you heard that example Mr. Norman gave here a little while ago, regarding those claims that were served up around Timagami with service costs at around $37? Is there some reasonable way in which that might be overcome?

A. The only way that could be overcome would be by registered mail; your distances are so great that if you have to have a personal service, that is where your mileage costs are so great.

Q. Well, do you suppose you could send the summons to the closest county constable and let him serve it?

A. That could be done, but it cuts in on the clerk and the bailiff of that particular territorial jurisdiction.

Q. I recognize that, but the complaints are that people with small claims are paying too much money?

A. Yes, well where your mileage runs over five or six miles, your costs do seem out of proportion to the claim.

MR. MAGONE: Why should there be any mileage?

MR. FROST: This whole thing gets down to this: it isn't so much what the clerk's charges are, because, after all, I suppose the work he does for the little he gets out of those cases is quite substantial, and he takes the place of a solicitor or some one else who draws up the papers and charges; but the great difficulty in these Division Court matters arises in service costs, bailiff costs. Now is there any way of meeting that situation?

A. Not ——

Q. Now Mr. Barlow makes this suggestion: service by registered mail. Now at first glance, that seems to be a reasonable and practical suggestion. It is obvious, on consideration, that there are objections to it. Then there is the question of permitting the plaintiff to serve, and save costs. If that is objectionable, then there is this alternative, of giving the plaintiff the summons, and letting him have it served, and letting him produce an affidavit of service from someone who has properly served it.

MR. CONANT: Just as an ordinary writ.

WITNESS: Yes, just as an ordinary bill, tax bill, you can only tax the cost of service if it is served; you can't tax it otherwise.

MR. FROST: Would it assist you if you had that provision in Division Court?

WITNESS: Well, on a general rule, it might reduce the actual disbursements the litigant has to make, but it affects that principle.

MR. CONANT: Oh yes, but this becomes apparent, I think, to us, when we look over this, that under our present system, we are trying to keep alive officials by subsidizing them at the expense of the public, isn't that right?

MR. FROST: Absolutely.

MR. CONANT: Isn't that it, gentlemen?

MR. ARNOTT: Yes, I think so.

MR. FROST: Mr. McDonagh, I am not familiar with your situation in

Toronto, but take for instance, in some of the counties, particularly the larger ones, you have there, say, a dozen Division Courts; in some of those Division Courts there are very few cases in the course of a year?

WITNESS: Yes.

Q. The municipality bears the cost of the Division Court, and perhaps the municipality wants it because it's a public service to the community, even though there is little business done there; the clerk and the bailiff, they make a little bit of gravy out of it in addition to their other occupations—most of them have other occupations, and this is just a sideline.

A. Yes.

Q. Now, it becomes necessary to serve a summons in a territory of that kind, and this one bailiff who has to do it, he may live thirty miles from the man who is served; the result is service costs are out of proportion altogether. Now, is there not some method by which the plaintiff could be given the privilege of serving that summons in the same way that he does in the Supreme Court, or County Court, and make the service himself, or get a neighbour to do it, or the local policeman, and so save himself a lot of money?

A. Outside of the larger centres, I think that could be worked out. In the cities, I regret to say this, we are dealing with many people who haven't the knowledge of value, and I would hesitate very much, sitting as judge on some of the affidavits that are filed in service in this city.

Q. Well, of course, that is a very serious matter. They leave themselves open to severe punishment.

Committee rises for lunch recess.

AFTERNOON SESSION

HIS HONOUR JUDGE T. HERBERT BARTON, of the County of York.

MR. MAGONE: Judge Barton, you are one of the county judges of the County of York?

WITNESS: Yes.

Q. And you have been on the bench for how long?

A. Six years.

Q. In that time, you have taken a number of Division Courts?

A. Oh yes, thousands of them.

Q. Have you read the recommendations of Mr. Barlow, on page 33 of his report?

A. Yes.

Q. And in connection with those recommendations, can you say whether you agree or not with them?

A. Well, I decidedly do not agree with all of them.

Q. Dealing, then, with the first one, in connection with the consolidation of the Division Court, the County Court?

A. Well, I think that would be a great mistake, for the simple reason that if, as Mr. Barlow suggests, the cases over $100 were tried in County Court, it would mean the appointment of two or three more judges in the County of York, anyway, for this reason, that on a case being tried in County Court, the lawyers take their time, and it might last possibly a day or a day and a half; last week, I had a $216 claim suit in the County Court, and it took a day and a half. I mentioned to counsel in the case, that had we been in Division Court the case would have been through in an hour or an hour and a half at the outside. It means we would have to have seventy-five more cases a month put on the County Court list, and our list now runs about fifty to sixty cases a month, and we would have seventy-five more cases a month, so that you can see we would need one or two more judges to try them. And we are sitting continually every month in County Court non-jury, and we have fifty to sixty cases.

Then, as far as the small claims are concerned, I don't think they should go to County Court either. I think the Division Court Act should be left as it is, but claims under $100 should be—well, of course, there is no appeal on cases of $100, but I think the fees should be smaller; the fees are much to large in small cases. Last week I had a man before me on an attachment order, and the claim was $5 and the costs were $13.50.

MR. CONANT: What's that?

WITNESS: The claim was $5, the judgment against him was on a claim of $5, and the costs, up to last week, were $13.50.

MR. FROST: How would that be?

WITNESS: The cost of judgment would be two or three dollars, and then he had been up on a judgment summons, which would be perhaps five or six dollars more, and then there had been a garnishee, or something of that kind, an attaching order, which still runs the cost up; so in the end it came to $13.50 in addition to bailiff's fees, and bailiff's fees on realizing execution, if he could realize.

MR. MAGONE: Judge, before getting into the question of fees, and we will deal with that quite extensively later, would you have the same objection to cutting down the jurisdiction of the Division Court to claims of $100, and making it purely a small claims court?

WITNESS: Well, then the cases over $100 would go into County Court.

Q. You have the same criticism to offer?

A. Yes, for this reason; a man may sue for $110; you'd have to have statement of claim, defence, and pleading, and then there would be examination for discovery, and so on, and it wouldn't work; the costs would be so high it wouldn't work. I don't see any objection to leaving it just the way it is now, with the exception of lessening costs of less than $100.

MR. CONANT: In that connection, would you favour a block system in claims under $100?

WITNESS: Yes.

Q. On a graduating scale?

A. Yes.

Q. So much for $50, so much for $75, and so on?

A. Yes, I think Mr. Barlow had the right idea when he suggested the block scale; in cases up to $50, the fees would be $2—that is a little low; and in cases up to $100, $3—that's too low. But I think it should be on the boxed scale.

For instance, you have a case in Division Court, which is being defended, and for some reason or another, the parties can't go on; one week one man wants an adjournment, next week another man wants an adjournment, and for each adjournment it costs 50c. or 75c. On small claims, that is awfully high.

We are getting along awfully well the way we are. The cases are being tried quite properly, I think, and as far as the cases over $100 are concerned, we have the increased jurisdiction; we sit on Tuesdays, in Toronto, for small claims and anything under $100.

Q. They are all on one list?

A. One day, yes. Then on Wednesdays, we have cases over $100, increased jurisdiction cases, and there is a reporter that takes down the evidence, because they are appealable. Then on Thursday, all damage actions—there are quite a number of actions for damages, as the result of automobile accidents, and it is working out very well. We are sitting all the time, but we are getting through. We are not there after four or five o'clock in the afternoon.

Q. Well, I think this Committee, Your Honour, is concerned with simplifying and making the procedure as inexpensive and as simple as possible.

A. Well, it can't be any simpler than it is.

Q. Now for small claims, say up to $100, if we had the block system of fees, you would have certain fees; can you suggest any way in which we can minimize the costs of service of process?

A. Well, there have been some suggestions they should be served by registered mail. I think that would be a good idea, if you can get a receipt for the registered letter.

MR. MAGONE: Would you not require some evidence of signature in those cases?

WITNESS: Well, when you get the receipt, it has the man's name on it, and we assume that he gets it. I am issuing orders every day for substitution of service, if the bailiff can't get out.

MR. CONANT: By mail?

WITNESS: Yes.

Q. What is your experience with that?

A. Never have any trouble; never had any trouble at all. The man usually gets it right off the bat.

MR. MAGONE: Of course, if a man appears and defends it there couldn't be any objection.

WITNESS: No.

Q. It's only in cases of default judgment.

A. Even now, in actions up to $30, they serve by leaving it at the premises; they don't have to serve the person.

Q. Have there been objections to that?

A. No.

Q. If there is an objection after default judgment, the judge has power to ——

A. They can always move to have the judgment set aside.

Q. Is that often done?

A. Yes, quite often. Well, when I say quite often, I mean once a month or so.

Q. Well then, the principle objection you have is with respect to fees?

A. That's about the only thing.

Q. About the only thing.

A. And those fees could be minimized in this way; at the present time, a plaintiff could come along and issue a judgment summons; I think we should only have one judgment summons; if that is not obeyed ——

MR. CONANT: What do you mean, on one claim?

WITNESS: Yes. They have what they call a judgment summons; then if that is not obeyed, they issue what they call a show cause summons, for which there is no authority under the Act.

Q. Well then, what would you substitute for that?

A. Just have the one summons, one judgment summons, and then if it is not obeyed, have an application to the judge to commit the man for disobeying the order.

MR. MAGONE: If there is no provision for show cause in the Act, there is no provision for the fee?

WITNESS: It has always been chargeable, and that has been in vogue for about seventy years, I believe.

Q. Yes, I know it has been the practice.

A. Yes.

Q. Your idea coincides with that of Judge Morson.

MR. FROST: It is just like the thing we found this morning, in connection with that jury fee being paid into the municipalities; the municipalities don't apply it to the cost of the juries, but they use it for buying books, and so on.

WITNESS: I want to say something about that, too, if I may.

MR. CONANT: Well, then, we get it down to this, Your Honour; your view is, I take it, that the work, the procedure might be simplified, the costs decreased by dealing with claims below $100 in a specific category, by means of block fees ——

WITNESS: Yes.

Q. —— and by means of allowing service other than by the bailiff?

A. Yes.

Q. We discussed registered mail; what would you say to allowing the plaintiff himself to serve the process?

A. I am afraid that would be abused, because a great number of the plaintiffs are foreigners, and I think they would swear they served it, whereas they may not have.

Q. Well, outside of Toronto, then?

A. Well, that may work outside.

MR. FROST: Well, Your Honour, you have raised the point about service by registered mail, and I understood you to say that first of all, in connection with substitutional services made by registered mail, that you had no difficulty?

WITNESS: We have no difficulty.

Q. That has been found to work reasonably well, and furthermore, you have found that summonses which apply to claims of less than $30, where they are left at the residence of the person served, that you have found that satisfactory?

A. Yes.

Q. One of the witnesses here this morning raised this point: he said that he was afraid of service by registered mail, for the reason that there is always the possibility that that letter isn't handed to the person who it is intended to receive it, and he raises this point, that sometimes wives, for instance, run up bills ——

A. Yes.

Q. —— and they get the registered letter and don't turn it over to the old man. Now, do you think there is sufficient importance in that to justify throwing aside this suggestion of service by registered mail altogether?

A. I don't think so, for the reason that they can all move to set aside the judgment; and if the money is owing, and the wife knows it is owing, he should have judgment against her for the amount.

Q. You mean it's a question of equity and good conscience?

A. Yes, after all, the goods are goods the wife bought for the house, usually, and the husband is liable for it.

MR. MAGONE: Judge, that brings us to the question of the bailiff.

MR. CONANT: Just before leaving that, supposing we were to adopt this practice, briefly, allowing service by registered mail, with the receipt to be receipted and returned ——

A. Yes.

Q. And that, where the case was not defended, or where no one showed up, requiring proof of the claim, and then a notice to be sent to the defendant, to the effect that final judgment will be decided against him in this claim unless he intervenes within fifteen days, or something like that. Would that not cure it?

A. Yes, that would cure any defect; I should say that would be all right, or even if judgment has been signed, send him a notice to the effect that judgment has been signed against him for so much.

Q. Yes, and if he wants to move to set it aside ——

A. Yes, to come in within twenty or fifteen days.

Q. Yes, the form of it is not important now.

MR. FROST: Just a moment, on that point, what would you think of allowing the plaintiff, at his option, to serve the summons himself, subject, of course, to proof of service?

WITNESS: The Attorney-General just spoke about that a moment ago. I say it's all right, but proof ——

MR. CONANT: He said it was all right excepting in Toronto.

WITNESS: We have so many foreigners here who sue these claims themselves, and I doubt if, in every case, some of them would be served; they may put it in their pocket and then come back swearing they served it.

MR. CONANT: Yes, but Your Honour, we must take this into consideration: the same thing is possible in County Court actions and Supreme Court actions; they may be served by anybody.

WITNESS: Oh yes, that's true. Well, we have never had any trouble.

MR. FROST: Of course, on the other hand, your bailiff costs here in the city are not the serious matter that they are outside, in the province.

WITNESS: No, we haven't the mileage.

Q. I was just talking to Mr. McDonagh at noon, and their territory here is comparatively small, and therefore the huge mileage that piles up on services involving thirty or forty miles does not arise.

MR. MAGONE: That brings us, judge, to the question of the bailiff. If you provided for service by registered mail, his fees would be substantially reduced?

WITNESS: Oh yes, they would.

Q. And in the courts throughout the province, his income would practically vanish?

A. Yes, and I think it likely would in Toronto, to a great extent.

Q. Yes. Well now, would there be any objection to sending your process from the Division Court, to the sheriff?

A. Then how would the sheriff be paid?

Q. The sheriff would be paid under the fees of his office.

A. Yes, it would be paid by the plaintiff.

Q. In the same way.

A. In the same way. Well, that would still keep the costs up.

Q. Well, that would be costs after judgment.

A. Yes, costs after judgment.

Q. Yes, but my question was directed to this: that the fees of a bailiff for costs after judgment, would not justify an officer like the bailiff ——

A. Oh no, I see what you mean.

Q. —— continuing in office.

A. Yes, I see what you mean. You mean send the execution to the sheriff.

Q. Yes.

A. Oh yes, you might do that.

Q. And the sheriff could appoint agents, if necessary.

A. Oh, yes.

Q. Or deputies, throughout the county.

A. Yes.

Q. Is there any objection to that?

A. Well, except from the bailiffs' point of view, there might be; I don't think so, otherwise.

MR. CONANT: Your Honour, with all deference, I suppose your experience has been mostly in the city of Toronto?

WITNESS: Oh yes, and the County of York; we go up, about five or six months in the year, we go out as far as Sutton.

Q. But the difficulty in meeting the bailiff situation in the rural districts, perhaps, has not come within your experience?

A. No.

MR. MAGONE: We have heard something, judge, about the difficulty of realizing on judgment in Division Court, and the suggestion has been that it is, possibly, in a large number of cases, due to the inefficiency of the bailiff.

WITNESS: Well, I don't know about that.

Q. Have any applications been made to you, under the Act, because of the failure of the bailiff to realize?

A. No, none.

Q. This provision is in the Act?

A. Yes. Well, I hadn't heard of any. I thought they might write the Division Courts inspector.

Q. Well, we might have some complaints from him. Then we dealt with the matter of judgment summons.

A. Well, I think there are too many judgment summonses issued altogether. Last year, in Toronto alone, there were 837 judgment summonses issued.

MR. CONANT: For what period?

WITNESS: For one year, 1939, there were 837 judgment summonses issued. That is one Division Court.

MR. MAGONE: Then, judge, if the execution were issued and placed in the hands of the sheriff, then the provisions of the Creditors' Relief Act would apply to the Division Court judgments?

WITNESS: Yes.

Q. Would there be any objection to that?

A. There might be, because some of these small tradesmen have claims there for $25 or $30 against a man who may have a large number of judgments against him, and the bailiff can pretty often get that out of him without making a seizure.

Q. Yes. You think then, that some amendment should be made to provide for Division Court judgments?

A. You mean the Creditors' Relief Act?

Q. Yes, under the Creditors' Relief Act.

A. I should think so, because the amounts are all small; there could be an amendment as far as small claims are concerned.

Q. Yes.

MR. CONANT: I didn't get that clearly this morning, Mr. Magone; under the Division Court Act, in executions, it's the early bird that gets the worm, is it?

MR. MAGONE: Yes.

MR. CONANT: If he makes a seizure under a Division Court judgment, he can go on to a sale and get his money, while the other fellows look on as they like, is that it?

MR. MAGONE: Yes.

MR. CONANT: In the other courts, it is divided up?

MR. MAGONE: Yes, the sheriff must hold the money in his hands for thirty days, and must do certain things, and other creditors, even though they are not judgment creditors, have a chance to come in.

MR. CONANT: You think the present practice in Division Court is proper?

WITNESS: I think so, yes.

Q. Why?

A. Except on larger claims, of four or five hundred dollars; I think that should go into the sheriff's hands.

Q. Why is it proper in the Division Courts, when it is so contrary to the practice of other courts?

A. Well, you get a small grocer, who is keeping these people from starving, and they run up a bill, and he gets a judgment for $25 or $30, I think that should be paid.

MR. FROST: You think it would have the effect of cluttering up the courts with these small cases, if these small cases were placed in the sheriff's hands?

WITNESS: Oh yes.

Q. But you think there might be some provision for the larger claims?

A. Yes, they might go to the sheriff. But there have never been any complaints about the present workings, as far as I know.

MR. MAGONE: This report suggests the Creditors' Relief Act may be made to apply to Division Court judgments.

WITNESS: Yes, exactly.

Q. Then, have you ever used the provisions in section 157 of the Act, with respect to arbitration, judge? There is a provision there that on the application of the parties, the judge may refer the matter to arbitration.

A. No, I have never had one of those. I think they could do that even without these provisions.

Q. I think probably they could, under the arbitration ——

A. You see, this Act seems quite long; the first fifty sections of it deal with the duties of the court, formation of the court, and the bailiff, etc.; the Act could not be shortened very much there. It really is not very complicated.

MR. MAGONE: The operating sections of the Act are not long?

WITNESS: Oh no, they are not long.

Q. And the special procedure sections in the Act take up a good deal of space, such as interpleader, I think?

A. Yes.

MR. CONANT: What about the jurisdiction sections, from 53 on, would you say they are perfectly simple?

WITNESS: Yes, I think so. We don't seem to have much trouble.

MR. MAGONE: Then, with respect to juries.

WITNESS: Oh yes.

Q. What would you say with respect to juries in Division Courts?

A. I would certainly abolish the juries in Division Courts.

Q. In all cases?

A. Yes.

MR. FROST: Yes, you were going to mention something about the juries, judge.

WITNESS: I find that last year, we had four jury trials in Toronto.

MR. CONANT: Four jury trials?

WITNESS: Yes, at a cost of $583.28.

Q. That is the cost of the jurors?

A. The jurors were paid $75, and the jury fees paid to the county treasurer were $508.28.

Q. For four juries?

A. Yes.

Q. What was the amount involved?

A. Not more than $50 each, with only one or two cases in each jury.

MR. FROST: Actually, the amount paid to the juries was much less than the juries' fees?

A. Yes, the jury was paid $75 and the jury fees paid to the county treasurer were $508.28. Of course, if there were no juries in the Division Courts, there shouldn't be any fees paid to the county treasurer.

Q. The county treasurer made a substantial net profit on that section, apparently?

A. Yes.

MR. CONANT: From whom?

MR. FROST: Well, you see, under section 138, or 137 rather, there is an assessment made on every case in Division Court, whether there is a jury or not.

WITNESS: Yes.

Q. And that accumulation, of all those, amounted to nearly six hundred dollars in this last year, and of that you say only $75 was paid out to the juries?

A. $75 was paid out to the juries.

Q. With the result that the rest of it goes into what is known as the jury fund?

MR. CONANT: Yes. Would you abolish juries, Your Honour, in the increased jurisdiction cases?

WITNESS: Yes, I would.

Q. In the whole set-up?

A. Yes; there are so few of them, what is the use of having the juries? And most of these jury cases are usually automobile accident cases, which we can try as well as a jury.

Q. Supposing we didn't go quite that far? Supposing we were to apply, to our Division Courts, at any rate, the practice they have in Quebec and England, and many other jurisdictions, that in no case shall a case be tried by a jury unless by an order of the judge; how would that be?

A. That would be all right.

Q. You think that would meet it?

A. But then, you would still have all these juries fees to pay to the county treasurer, wouldn't you?

Q. Yes, you would be maintaining the skeleton.

A. Yes.

MR. FROST: And it is expensive.

WITNESS: I would abolish it entirely for this reason: any large case over $120 is not a damage action case, and it is not usually a jury case anyway; it would be a case in which a question of law would be involved; you can only issue up to $120 in damage actions in jury cases, but our Act applies to all cases. You can have a jury in any case; if a man gives you a promissory note for $300, and you sue on that, he can delay that case for three months by applying for a jury. I have had that done to me more than once when I was practicing.

MR. MAGONE: Then, judge, what has been your experience with respect to applications for a new trial?

WITNESS: Well, it's rather unsatisfactory, the way it works out at the present time; quite a number of applications are made, and they are filed with the clerk, and then they are left there until some of the solicitors come along and bring them before the judge. Well, there ought to be some other way of doing it; they ought to make their application direct to the judge, instead of filing them in the court, or else file it in the court and appear before the judge on a certain day, the day named in their application. They don't do that any more, they just put the paper on file, and the clerk brings them down.

Q. And that causes delay, too?

A. Oh yes, a great deal.

Q. Then with respect to subsection (3) of section 116?

A. Oh yes.

Q. That has been mentioned here, with respect to application made for a new trial within fourteen days.

A. Yes.

Q. Or where the summons has not been personally served.

A. Well, you see, subsection (2) says:

> "If reasonable excuse for the delay is shown to the satisfaction of the judge, the application may be made at any time within fourteen days after the expiration of the first mentioned fourteen days."

Well, then, subsection (3) says:

> "Where the summons has not been personally served, the application may be made at any time within fourteen days after the judgment has come to the knowledge of the defendant."

I think that should be struck out, because that must apply to a default judgment, otherwise, the man would know all about it. And if it doesn't apply to a default judgment, then he wants to set aside the judgment, so it wouldn't be a new trial he is asking for.

Q. Well, if it were a case of a judgment after hearing, it would come under subsection (1)?

A. Yes.

Q. That is whether it had been personally served or not?

A. Yes, of course.

MR. CONANT: Well, have you any other suggestions to offer us, Your Honour, other than what I tried to crystallize a moment ago, as to how to simplify and make less expensive the functions and the privileges of the Division Court?

WITNESS: Well, not to simplify it, but I would say to reduce the fees; that's about the only thing I can suggest, because the matter is very simple now. The layman can go to a Division Court and say: "I want to sue so-and-so for wages." He doesn't even have to prepare particulars for his claim; the clerk does that for him. It's very simple. He pays the summons cost of four or five dollars, and the summons is issued, and served. You couldn't have anything simpler.

MR. MAGONE: Your suggestion really amounts to this: that the block tariff, which is now fixed to claims under $10, be carried along farther, and right up?

WITNESS: Yes.

MR. MAGONE: It has not been mentioned before, Mr. Chairman, but there is a block system with respect to claims under $10.

MR. CONANT: Then you add to that your comment regarding means of service, other than by the bailiff?

WITNESS: Oh yes, I think service by registered mail, with a return receipt, should be quite sufficient.

MR. MAGONE: Judge, can you tell us why the cost of a judgment summons is so high, usually about $5 or so?

WITNESS: Usually six.

Q. Usually six dollars?

A. I don't know why it is so high. Mr. McDonagh might be able to tell you that. It is altogether too high, anyway.

MR. CONANT: Is that graded according to the amount, the cost of judgment summons?

MR. SILK: It's usually around six dollars.

MR. CONANT: Is it graded according to the amount involved?

MR. MCDONAGH: Yes, it is, and the costs are sometimes raised, due to the fact that you have to pay a debtor, say, $1.50 conduct money to attend the hearing.

MR. MAGONE: Are the present provisions with respect to appeal satisfactory in the extended jurisdiction court?

WITNESS: Oh yes, quite.

Q. You have no suggestion to make as to an alternative procedure?

A. No, there is no defect at all that I know of.

Q. I see. Or as to counsel fee?

A. Well, I think they are all right, with the counsel fee in cases over $100; we don't always grant it, but very often do, though not more than $10 or $15.

MR. FROST: What is your view, judge, in connection with this Division Court procedure, and the judgment summons procedure? I mean, what is your view of the fairness of it? It was brought out here this morning, that in County Court, and in Supreme Court, a man may have a judgment against him for $5,000, and $5,000,000, and ——

A. Yes, you can't put him in gaol.

Q. No, he is examined as to his assets, and examined under oath and that ends it. In Division Court, a poor man may have a judgment of $50 against him, and he is brought up in Division Court and an order is made, and if he doesn't pay a certain amount of money within a certain time, he goes to gaol. I think it is entirely wrong.

MR. CONANT: Which one is wrong?

WITNESS: Any judgment summons—I mean a committal order to send a man to gaol for not obeying an order on a judgment summons.

Q. But deal first with the order to pay.

A. Oh, that is all right, but if he doesn't pay, then I would move before the judge to commit him for contempt, that's what I would do, instead of the present practice. But I think that is wrong, too, I don't think a man should be committed for contempt for not paying.

Q. Well, how would you end it up?

A. You can't end it up, as far as I can see; they always have another step, and they always exercise it, and that is attaching the poor beggar's salary. We are signing, I think, a dozen attaching orders a day up there.

MR. FROST: I often question, myself, the grounds of our law as it stands at the present time, of sending a man to gaol for debt, anyway.

WITNESS: Yes, it doesn't seem right.

Q. It does seem to be a hang-over from the middle ages.

A. That's right. Twenty-one were committed last year.

MR. CONANT: Did they go to gaol?

WITNESS: They did go to gaol, but I let them out after a day or so.

MR. CONANT: We have an anomalous situation here, Your Honour; there

are apparently submissions here, that in our Division Court, the poor man's court, we have the rather elaborate and certainly drastic procedure of judgment summonses and committals.

A. Yes.

Q. And when you get out of the Division Court, into County and Supreme Court, there is nothing of that nature at all.

A. No, and you can't do a thing.

Q. A man may have an income of $10,000 a year, you can examine him as to that income, and that's as far as you can go?

A. Yes.

Q. The court doesn't make an order, or anything else. Which is right, or which is wrong?

A. I think the Division Court one is wrong.

Q. You think there should be no order?

A. Well, you might want the examination, but if you find the man has any assets, put the bailiff in, and seize these assets.

Q. You don't think there should be any judgment summons?

A. I think not.

Q. You would abolish all judgment summonses?

A. Yes, because they have a remedy by an attaching order, under section 114.

Q. So you would put the poor man on the same basis as the ——

A. I think so.

Q. —— as what you might call the rich man?

A. Yes.

MR. FROST: I must submit, I can't see what on a small claim a man should be subjected to imprisonment, and then have a totally different system, with no imprisonment, in connection with a larger claim.

WITNESS: No, I don't either.

MR. MAGONE: Are there many applications made to you for attaching orders? I am dealing with the attaching after a person's committal to jail, in which the claim is paid after the order is issued.

A. Oh, yes.

Q. I mean, doesn't it have the result of an effective remedy?

A. Yes, it is. I had a man in my office last year, and I knew the man could pay if he wanted to; well, I said: "You go down to gaol for ten days." He looked at me, and he said: "You don't mean that?" I said: "Of course I mean it." Well, he put his hand in his pocket and paid for the whole thing.

MR. CONANT: Yes, that's the other side of the picture.

WITNESS: Yes, but that happens very seldom.

MR. FROST: One in a thousand.

WITNESS: Yes.

MR. MAGONE: Is that not a matter for the discretion of the judge?

WITNESS: Well, if you abolish judgment summonses, there won't be any discretion.

Q. Well, my question is directed to, shouldn't there be?

MR. LEDUC: Mr. Magone, might I ask if this procedure of judgment summonses exists in any other province?

MR. MAGONE: Well, in some of the other provinces, the procedure is by way of summary conviction, and the provisions of the Summary Convictions Act.

MR. LEDUC: For the ordinary summons debt?

MR. MAGONE: Yes.

WITNESS: I thought they had the Lacombe law in Quebec.

MR. MAGONE: Yes, they have it there.

MR. LEDUC: The judge mentions the Lacombe Act.

MR. MAGONE: Yes, in Quebec; but not in the other provinces. In some of them they have a similar Act. In one of the other provinces, you may even get process by which a debtor may be arrested before a summons is issued for debts under $100.

WITNESS: Yes.

MR. LEDUC: Judge, you mentioned the Lacombe Law; are you familiar with it?

WITNESS: No, I am not. I was just told about it. I don't know very much about it.

MR. MAGONE: Well then, judge, I suppose it comes down to this, does it not, that if the judge exercises a reasonable discretion, there will be no abuse?

WITNESS: In what way?

Q. With respect to committals to gaol.

A. Oh, yes, there would be no abuse, but that system of issuing a second judgment summons, called a show-cause judgment summons, if a man does not appear, we have no alternative but to issue a committal.

MR. LEDUC: And you can go on issuing them forever, a third, and so on?

WITNESS: Yes.

MR. MAGONE: You say you have no alternative but to issue a committal?

WITNESS: What else can we do, if a man doesn't appear when he is served.

Q. Well, that is a committal for contempt of the order, or for not appearing?

A. Yes, it is, but why should he be committed for that? I mean, without being heard. There shouldn't be a motion to commit him for contempt.

Q. Well, is that not exactly on the same basis as the Supreme Court, if there is no attendance on the direction of the Court?

A. No, then ——

Q. They move for an attachment.

A. Yes, well that's what I say; they move, but here they get the order for committal without any motion. The man doesn't appear, you see, in answer to his summons, and they get the order for committal right there, instead of moving for it.

MR. CONANT: The examination is turned into a motion?

WITNESS: Yes.

MR. MAGONE: Moving for it would involve extra expense, I suppose?

WITNESS: Yes, I suppose it would.

MR. LEDUC: Yes, but after all, when you are dealing with the liberties of a subject, what are a few dollars more or less.

MR. MAGONE: Yes, but Mr. Leduc, I am getting back to that point, it rests with the discretion of the judge; and in the one case it is within the discretion of the Supreme Court judge, and in the other within the discretion of the Division Court judge. In one case he is brought up on a motion, and in the other on a summons.

WITNESS: Yes, without any motion.

Q. Yes.

A. But you see, in the Supreme Court, if he gets a subpoena to appear, say, on an examination for discovery, I can't issue a committal order for him right there, they have to make an application to the judge to get a committal order.

MR. CONANT: Judge, if you were to abolish all this procedure of judgment summonses, would it interfere substantially with the effectiveness of the court in collecting.

WITNESS: Yes, it might.

Q. It would.

A. Of course, I think it would be a good idea to retain the judgment summons provisions in claims over, say $50, or $100. Because those claims are large enough to warrant the plaintiff examining and looking to see what the man has, but on these little claims, these grocers' accounts, those are where they hold the club over the poor chap's head.

MR. FROST: Well, after all, the fear of possible imprisonment is a tremendous thing, for some people, is it not?

WITNESS: Oh, yes; they would go out and borrow the money rather than do that. Then they would have to pay that.

Q. Yes, it is oftentimes just a matter of robbing Peter to pay Paul, and giving Mr. Smith enough money to keep him out of gaol?

A. Yes.

MR. CONANT: You would retain the judgment summons for cases over $100?

WITNESS: I think it would be all right to retain it for cases over $50.

Q. And abolish it in other cases, under $50?

A. Yes.

Q. Let the small fish go?

A. I think so, just have the one judgment summons, not have any more than one, for after all, if you once have an examination, you know what the man has, and know if he is able to pay.

MR. LEDUC: You wouldn't abolish the examination?

WITNESS: Oh, no, that is the judgment summons, that I would abolish, in cases under $50.

Q. You would?

A. Yes, I think so, because they can always attach a man's salary under section 141.

MR. CONANT: Subject to all the exemptions there?

WITNESS: Yes, exactly.

MR. LEDUC: The man may not have a salary, but he may have a small income from investment, and yet not think it worth while to pay his grocer?

A. Yes, but that is the other side of it.

Q. Yes.

MR. CONANT: If you are going to retain it in the larger cases in the Division Court, do you think it should be extended to the County Court and Supreme Court?

WITNESS: Well, of course, we have the examination for judgment debtors.

Q. I know, but nothing results from that.

A. No.

Q. Other than literature or information, perhaps.

MR. LEDUC: Or else assimilate the examination in the Division Courts to what it is in the County and Supreme Court?

WITNESS: But we can't make an order in the County Court, for payment by summons.

Q. I know.

A. Well, the Attorney-General means to extend that to the County Court, and Supreme Court, the payment by summons.

Q. Yes, extend it so that in the County Court or Supreme Court a person could be examined and the judge could order him, for instance, to pay $25 a month.

A. Yes; I don't see why he shouldn't.

Q. And make an order to that effect.

A. I think that is a good solution.

Q. And yet, if a man doesn't pay, commit him, is that the idea?

A. That is the other side of it. That is getting back to imprisonment for debt.

Q. Exactly.

MR. FROST: Of course, that is just exactly what we have in Division Court. We have imprisonment for debt.

WITNESS: Yes, that's what you have.

MR. MAGONE: Are you in favour of the present system of garnishee, in which an order must be obtained every week, or every month?

WITNESS: Well, I don't know, the interpretation of garnishment proceedings by Mr. Justice Riddel is, the money has to be actually owing, not only when the garnishee summons is served, but the day it is issued; that is that Bridge-Hart, page 66, Ontario Lower Courts, and he said, after all, if the debtor can't sue for the money, why can a debtor's creditor, and of course, there is something in that. Well, that means that, if a man is being paid on Saturday morning, the creditor can't get an attaching order until Saturday morning. Then, when he goes to serve it it's too late.

Q. Well, we are coming back to the Lacombe law; I think the provision of that is, you may serve the employer with a notice, and as long as the employee is in his service, he must pay.

A. So much a month?

Q. So much a month or a week.

A. Yes, well, I think that's a good idea.

MR. LEDUC: Well, that's the general law in Quebec; it simply attaches the salary even though not due.

WITNESS: Well, of course, they cannot here, although the wording of the Act says, "due or accruing due," but that is not the interpretation Mr. Justice Riddell placed on it.

MR. FROST: Do you think that is a fair proposition? If a man is brought up before you on a judgment summons, and it appears he is getting a certain salary, do you think it reasonable that you should issue an order that his employer should pay in $5 a week, or $5 a month into the court, or whatever you find, and have just one summons, and one set of costs governing the whole thing?

WITNESS: Yes, I think that would be feasible, and very reasonable, too.

Q. On the other hand, do you think this: that is, to say to some man that comes up before you, now you are a big, able-bodied man, and I think that you are capable of earning $5 a month to pay on this claim, and if you don't do it, I am going to send you to gaol; you don't think that is right?

A. No.

Q. Well, I agree with that.

MR. ARNOTT: Don't you think there, if you tried to make the employer a collection agency, that the result would be that the man would lose his job?

MR. LEDUC: Oh, no, I think it is the opposite.

WITNESS: No, that procedure is adopted in some of the large places in Toronto, the Tip-Top Tailors, and one of the Government's own Commissions, the Hydro-Electric Power Commission, will take these attachment orders. I have given some against some of their employees, and I have said to the lawyers, these are no good, they are against the Government, and they said the Hydro-Electric Power Commission have some system of paying so much a week.

MR. LEDUC: I think there is more danger of the man being fired if his salary is attached every pay day.

WITNESS: Yes, it gets to be a nuisance that way.

Q. Yes.

A. Some firms used to have a rule that after two garnishees the man would be discharged, but I think they have sort of slackened up on that a bit now.

MR. MAGONE: Judge, some suggestion has been made here, that we have in the Division Court what amounts to imprisonment for debt. The judges of the Division Court have no power to imprison for not paying the debt?

WITNESS: Well, that is practically what it is. What they are really imprisoned for is contempt of the court in disobeying the judge's order.

Q. Well now, supposing you issued your judgment summons, and you hold your examination, and an order is made; then there is a show cause summons issued?

A. Yes.

Q. If the defendant appears in answer to the show cause summons; has the judge then power to commit him?

A. Well, what we do, we commit him for ten days ——

Q. Well, what I am getting at is this: have you power to commit him when he appears in answer to the show cause summons?

A. I don't know where we get it, but we always do. I have raised the point several times to the late Inspector of Legal Offices. I think Mr. Denison looked into it and he said, "this has been in force about seventy years, I think we had better continue it." But there is no provision for it.

MR. CONANT: Oh, yes, anything that has been in force for seventy years is the law, and customs, and the constitution enter into it there.

MR. MAGONE: It gets back to what Mr. Frost was suggesting, that it is for contempt of court in not obeying the order of the court to pay so much a month.

WITNESS: Yes.

MR. FROST: Of course, it amounts to the same thing, in effect; the power that the court has, of ordering imprisonment for non-payment, is really held over the heads of these people, and the result is that they go out and beg, borrow or steal the money.

WITNESS: Yes.

Q. In order to pay it on this particular debt.

A. Yes.

MR. CONANT: Yes, but haven't we got a very fundamental problem there, which is this: unless you have that threat in the background—when you bring a man up on a judgment summons, he is examined as to his earnings, and if he hasn't any earnings, you don't make any order?

WITNESS: Oh, no.

Q. Now then, if there is nothing further the man, by lying under a palm tree and fanning himself, escapes payment of the debt?

A. Yes.

MR. FROST: On the other hand, I say this: if you recognize that principle, then I think you should extend it to the big fellow.

MR. CONANT: I agree with that.

MR. FROST: The man who owes $5,000, say; and if you don't apply it to the big fellow, then it should be abolished.

MR. CONANT: I am not advertising it at the moment, but I think it should be uniform.

MR. FROST: Personally, I think it should be abolished; it is imprisonment for debt, directly or indirectly; it is a relic of the dark ages, and ought to be done away with.

WITNESS: That was my idea.

MR. MAGONE: Is the difficulty not this, with respect to Supreme Court and County Court Acts, that if you get a substantial judgment over a man in the Supreme Court, you've got a hold on him for the rest of his life, which is not true in Division Court?

MR. LEDUC: It's twenty years in Division Court, isn't it?

MR. MAGONE: Yes, then if he starts to pay, each time he pays you've got a fresh starting date. Take a man owing $10,000; in a judgment in Supreme Court, if he were ordered to pay $25 a month—well, I haven't figured it out, but it would probably keep him busy for fifty years.

MR. ARNOTT: It probably would be better to abolish it absolutely, and it would resolve itself in bringing before the public just what the situation is, and there would be no credit given at all; it would be all cash and carry.

MR. LEDUC: But I think it goes further than that; he can be examined as to his means, and also if there is any money owing to him, of course.

WITNESS: Oh yes, it includes everything; if he has any bank account, mortgages, or anything.

Q. Yes.

MR. CONANT: The size of his family, and everything; he will tell you who has been sick, and who has been in the hospital, and so on.

WITNESS: Yes.

MR. CONANT: Supposing we go into the consolidation of courts now, Mr. Magone?

MR. FROST: Just before you go into that; you handled, last year, I suppose, hundreds of judgment summonses?

WITNESS: Yes, about a hundred a month; about a thousand altogether.

Q. Well, what proportion of those judgment summonses did you find absolutely hopeless, and out of which you couldn't make anything?

A. Not more than 25%.

Q. You find that roughly a quarter of them are ——

A. Absolutely hopeless; the others obey the order; whether they can make the money or not, I don't know. Some, after examination, we just have to dismiss them. But very often the debtor himself will say: "Well, I'll start to pay so much on such and such a date," and we make an order for him to commence to pay on that date. And I don't think he pays, half of the time. Then they issue a show cause summons, another six dollars.

MR. CONANT: Having made the order, you have done your duty?

WITNESS: Yes.

MR. CONANT: That is a big problem.

MR. MAGONE: Judge, have you given any thought to the recommendation of Mr. Barlow, with respect to the consolidation of the courts? It is on page B29.

WITNESS: Oh, no, I have not.

Q. You have not considered that?

A. No, I haven't considered that, at all.

Q. Well, the recommendation is that these various courts mentioned here, be consolidated as one court, to be known as the County and Probate Court of the County of . . .

A. Oh, they couldn't do that. I don't think that would be feasible at all.

Q. You don't think it would be feasible?

A. Oh, no. I haven't given it any consideration, but from first blush, it seems to be out of the question entirely.

Q. Well, do any reasons occur to you why it would be unworkable?

A. Well, it works too well the way it is now; what would be the object? I'm sorry, but I haven't read this; I had better not say anything about it.

Q. I see. It was explained to us that it would eliminate a lot of bookkeeping; there would be only one set of books in the office of the County Court, and one set of officials, and you would have your work all concentrated in one set of offices instead of different parts of the building.

A. You would have to have a separate office; you couldn't possibly consolidate the Surrogate Court; that keeps two judges going all the time.

MR. CONANT: I think, Mr. Magone, we can qualify that in that there was a distinction made for the larger jurisdictions, was there not?

MR. MAGONE: Yes.

WITNESS: I think, if the Surrogate Court were left the way it was, the others could be consolidated, because they all go to the County Court now, anyway.

MR. CONANT: You are only speaking of your experience here?

WITNESS: Oh, yes.

Q. As a matter of fact, in most of the counties, there is one set of officials for all the work?

A. Well, we have one official for our Surrogate and County Court here, Mr. Winchester is the registrar, and the County Court Clerk, and they have two offices and two sets of clerks.

MR. LEDUC: You have a practical consolidation here, in that you have only one head?

WITNESS: Just one head, yes, but I think the Surrogate Court should be left the way it is.

MR. MAGONE: Well, we probably shouldn't bother Judge Barton any more, if he hasn't considered this phase of it.

MR. CONANT: No.

MR. MAGONE: Are there any other suggestions that you can think of, judge, in connection with Division Courts?

WITNESS: I don't think so. The question the Attorney-General was speaking of, that is about the attaching of the salaries, I think something should be done about those sections. Have the attaching order apply, not only to the present month's salary, but to the future months as well.

MR. LEDUC: Until the debt is paid.

WITNESS: Yes, but that should not be done with the examination of the employer; I should think he would have to tell us what he earned.

MR. CONANT: Or else a letter from him?

WITNESS: Oh, yes, that would be quite all right.

MR. CONANT: Yes. While His Honour is here, while this doesn't arise strictly out of the Barlow report, perhaps we could discuss item No. 14 with him, Mr. Magone, as to whether His Honour has any views on the matter.

MR. LEDUC: Interchanging of judges?

MR. CONANT: Yes.

WITNESS: That doesn't work in Toronto. You mean, where they have jurisdictional districts?

MR. MAGONE: Yes.

WITNESS: We haven't that here.

MR. CONANT: You never worked in a district?

WITNESS: I have never gone up to those districts to relieve the other judges I don't know why they do it, but there must be some reason for it, I suppose.

MR. MAGONE: Well, Toronto is in the district with Peel, and ——

WITNESS: Oh? Is it?

Q. Is it not?

A. Well, we didn't know that.

Q. I understood it was.

MR. CONANT: Do you know, Mr. Silk?

MR. SILK: No, it is not in any County Court district; it is separate.

MR. CONANT: Well, that doesn't arise here, then.

WITNESS: No, we had Judge Cochrane from Peel before the junior judges were appointed, Judge Cochrane from Peel for two weeks last fall, but I don't know why the system works or how it works, but I see the result of it.

Now, on the question of territorial jurisdiction, there is some suggestion of abolishing that territorial jurisdiction. I think that is wrong. We have too many courts here now, but I don't think the territorial jurisdiction should be abolished. We have a court at Woodbridge, and sit there four or five times a year, and one or two cases, at most, from Woodbridge, could be attached either to West Toronto, or there should be a court at Weston.

MR. LEDUC: You mean, the territory should be enlarged?

WITNESS: Yes, for some of those courts; for instance, there are so few cases, and Newmarket and Aurora are so close together, and we are never up there more than an hour or so each month, so one of those courts could be abolished if you think it wise.

Q. I'm sorry judge, I didn't quite get your point; what you had in mind was, that a certain number of Division Courts should be abolished, and their cases added to the other courts?

A. Yes, I think that would be quite easy.

MR. CONANT: But the question of jurisdiction, I think, was set upon the basis that in order to avoid this dividing of a county into jurisdictions for this court and that, each court would have county-wide jurisdiction.

WITNESS: Oh yes.

Q. Now just let me explain; you take the case of issuing a writ in County Court; the plaintiff has a pretty wide jurisdiction as to where he can issue. He can issue in Belleville, Toronto, or anywhere, can he not, almost?

A. Yes.

Q. You get over a great deal of the difficulty in territory, in that respect; why should not the same apply to Division Courts in a county?

A. For the reason that a man might sue in Toronto, a man in Sutton, fifty miles away, and he would have to come down to Toronto to defend a $10 action.

MR. FROST: That raises the old question that used to be used a great deal, that is providing that the venue should be at a certain place.

WITNESS: Precisely. I think the present Act, as far as the jurisdiction is concerned, protects those people.

MR. LEDUC: You mean territorial jurisdiction.

WITNESS: Yes, but as Mr. Barlow said, we have gone past the "horse and buggy days", and I think there could be fewer courts.

MR. LEDUC: I don't know whether you dealt with the jurisdiction of the court, as I arrived a little late, but don't you think the jurisdiction, as contained in section 54, could very well be simplified?

WITNESS: Well, there is one section there that could be explained. That is subsection (1), (d), (ii):

"the balance of the amount not exceeding $400, which amount is so ascertained";

What do they mean is so ascertained, the original amount, or the amount he is suing for, is $400?

MR. CONANT: You mean, whether the original amount was $400, or the balance was $400?

WITNESS: Yes, what amount do they want ascertained, the balance or the original amount?

Q. Oh, I imagine it refers to the original amount, does it not?

MR. LEDUC: Well, if you go up to (c), judge:

"an action . . . where the amount or balance claimed does not exceed $200".

Why the proviso there?

WITNESS: So the Division Court judge won't have to go into a long set of accounts; it might be a broker's account for $50,000, or $60,000, and the balance only $100, or $200.

Q. You might have the same trouble with the small accounts?

A. Oh yes, unquestionably.

MR. CONANT: But there is some dividing line.

WITNESS: Yes, there is a dividing line. I think that is what that was for.

MR. FROST: I agree with you, Your Honour, in connection with section 54, (d), (ii), if you take (d) there and read (ii) it doesn't add up.

WITNESS: It doesn't explain what it means.

Q. I mean, in subsection (d) "does not exceed $400", and then it goes on to say, "the balance of the amount not exceeding $400." Which amount is "so ascertained"?

MR. CONANT: Has there not been considerable amount of litigation through the years on this question of interpretation of those sections?

WITNESS: Oh yes, a great deal.

MR. LEDUC: There are hundreds of them.

MR. FROST: Bicknell & Segar.

WITNESS: Yes.

MR. CONANT: Well, without dealing with it in detail, it does seem to me that, from the litigation that has arisen from those sections, they would merit close attention, with a view to redrafting them, in order to clarify them?

WITNESS: I think so. I think we should.

Q. Through the years, they have been proven to be very difficult to construe and apply?

A. Oh yes, the question, for instance, of extrinsic evidence:

"an amount shall not be deemed to be so ascertained, where it is necessary for the plaintiff to give other and extrinsic evidence beyond the production of a document and proof of the signature to it;"

But what is extrinsic evidence?

Q. Yes, it seems to me we might arrive at more finality and simplicity, if in that case, as in other cases, the decision of a judge should be final.

A. Yes.

Q. For instance, supposing we revise this so that, in the final analysis, the trial judge shall have final jurisdiction as to whether it is within his jurisdiction or not? Would that not overcome a great deal of our trouble?

A. Oh yes, a great deal. That would avoid a great many appeals, because there are quite a number on that question of jurisdiction alone.

Q. Yes. Because, after all, it is purely an arbitrary application of the law?

A. Oh yes.

Q. And when the Appeal Court is through, they have only determined what the Legislature might have determined under the same circumstances?

A. Yes, exactly; quite right.

Q. I am very much disposed to that view that was expressed here yesterday, that a lot of these things we should leave to the Division Court judges to settle, because it is supposed to be a poor man's court, a court of simple procedure.

A. Yes, exactly.

Q. And if you are going to try to take care, in this Act, of every imaginable contingency, you're just simply building a pyramid of complications.

A. Yes, exactly. You just can't.

MR. CONANT: Well, thank you very much, judge, for your valuable assistance.

—— Witness excused.

MR. MAGONE: Mr. Chairman, I have Mr. Gerald Murphy here, from McMaster, Montgomery & Fleury.

GERALD MURPHY (of McMaster, Montgomery & Fleury).

MR. MAGONE: Mr. Murphy, you are with McMaster, Montgomery & Fleury, Collection Department?

WITNESS: Yes.

Q. You have charge of collections in the Division Courts?

A. Yes.

Q. You do a lot of business with them?

A. Quite a lot.

Q. How many cases a year, approximately?

A. That we have?

Q. Yes.

A. Well, for instance, this week alone, including judgment summonses, I have just come this morning from the East Toronto Court, that is the ninth Division Court—including judgment summonses, I think it was eleven cases I had. To-morrow morning I am going to the West Toronto Court, and they are easily the same number, roughly ten or twelve.

MR. CONANT: How many would you have in a year?

WITNESS: You mean actually in the court?

Q. No, altogether, the number of claims.

A. Number of claims, or claims placed in the Division Court?

Q. Claims entered in court.

A. Oh, I would say hundreds; I wouldn't say; it would be closer to a thousand than to hundreds.

Q. I see. Well, I think that qualifies you.

A. Yes.

MR. MAGONE: How many years have you been doing this kind of work?

WITNESS: Since 1918, with the same firm.

Q. Well now, Mr. Murphy, have you some suggestions to make to the Committee? Probably it would be easier if you made your suggestions or presented your criticisms to the Committee.

A. Yes. Well, I think possibly before this Committee actually sat, I did go into the question of Division Courts very thoroughly, and I sent a copy of my recommendations to Mr. Silk and Mr. Barlow. I won't go into it in detail to-day, as it is quite long, unless anyone feels they would like to ask me about it after going through it. Have you got it there?

Q. I have it here, yes. I thought you might just touch on the headings themselves, and deal with them.

A. You mean my headings or Mr. Barlow's headings?

Q. Well, now, with respect to the question of costs. Probably you might give us that first.

MR. FROST: He might follow his memorandum.

WITNESS: Well, I'll make it as brief as I can.

MR. CONANT: Yes, just summarize it.

WITNESS: Yes, the first suggestion I have here, as shown by Mr. Magone's copy, says that I thought, at the time they amalgamated the first and tenth Division Court in Toronto, they possibly made a mistake; I thought they should have moved one of the courts to North Toronto. There is a big section in North Toronto and it is growing steadily, and there is no Division Court reasonably handy in that section. In other words, the city limits, from the city hall, are, I believe, seven or eight miles. And my suggestion was they should have opened a court farther north, instead of closing one down.

The next suggestion is that, generally speaking, the Division Court costs are too high. I point out, here, for instance, that I might go into Division Court, and issue an execution against goods on a claim, we'll say, of $200, or $300; I have to pay the clerk for issuing execution against goods for $2 or $3; then that comes back; then I issue the same form against lands. In other words, I pay two sets of fees to the clerk to get an execution. In some cases that will run up to $5 or $6. Now I can get the same combined effect in the Supreme Court of Ontario, for $1,000,000, for $1.10.

MR. CONANT: You are referring to a writ of fiat?

WITNESS: Yes. In the Supreme Court I get one for $1.10, which binds both goods and lands. In Division Court I get one only against goods, for maybe a claim for $200.

MR. FROST: Just in that connection, who draws up the tariff of fees in Division Court?

MR. POLSON: Originally by the Board of County Judges.

MR. FROST: Well, tell me, is this tariff just another case of different rule and fee making bodies, operating separately, and the result being that there is nothing parallel to the course things take in the Supreme Court. I mean, we haven't studied the question of rules yet, but I understand that we have half a dozen rule-making bodies.

MR. CONANT: That is true.

MR. FROST: And I suppose that is true in connection with these tariffs?

MR. CONANT: Yes.

MR. FROST: It seems to me unbelievable that you should have such differences in connection with County and Supreme Court and Division Court. There should be something to make those uniform.

MR. CONANT: Well, I think, if I may say so, Mr. Frost, that when we come to the question of the Rules of Practice Committee, that will be developed, and I think it will be shown that we have several different systems or tribunals for setting up the rules in Surrogate, County, Supreme, and Division Courts, and Criminal Appeal Rules, and so on.

WITNESS: Might I answer Mr. Frost, there. Those figures in connection with Division Court that I mentioned are these; if the claim is only $60, it costs me 50 cents for my execution against goods, and another 50 cents for execution against lands; that is a $1.00 for a claim of $60, as compared to $1.10 for an enormous amount in the Supreme Court.

MR. LEDUC: In a matter of $400, it will cost you $4.00?

WITNESS: Yes, and it will cost me $1.10 in the Supreme Court, whether it be a matter of $400 or $4,000,000.

The next suggestion is one practically recommending that the block system be put in, including both bailiff and the clerk; it would take some working out.

MR. CONANT: And have that block system go through the entire jurisdiction, or for claims up to $100?

WITNESS: No, Mr. Conant. As you know, the present Division Court tariff deals with the question of claims not exceeding $20, then claims not exceeding $50, $200, $300, $400; well, I would get a sliding scale, for sake of argument, I would get a sliding scale; I would like to go to the Division Court

on a claim of $20 and pay $2.00, and have that cover everything, and on a claim of $200, I would like to pay in $6.00 to cover everything, or some such set amount. Under the present system, I think I know what it is going to cost me; I take a chance and tell my client it's going to cost about $5.00 or $6.00; I pay $6.00 to the clerk of the court; we then are ready to go on, and the costs to date are $6.00; then we go down to court, with our witnesses, you've got your witnesses, and we find our case isn't on the list; why? We go in and find that $6.00 was not enough; and they say: "You should have asked;" well, probably I should have; but in order to remedy that I have to get an order restoring it to the list, for which I am charged 50 cents or 75 cents or $1.00; and up go the costs; if, under my suggested system, we had paid $2.00 or $3.00 or $4.00, that wouldn't have occurred, that petty little thing, to hold us up. And careful consideration should be given, I think, towards getting a proper, equitable amount, so that nobody is going to beat anybody else. I think that would work out very, very satisfactorily; I have discussed this with the clerks of the West and East Toronto courts, and in fact, went into the matter quite thoroughly with them, and they are quite in accord with that. They don't think the court officials would have any objection to that, providing a certain amount of attention is given, first, to setting the amounts.

MR. CONANT: Now, arising out of that, Mr. Murphy, you will appreciate that one of the imponderables, or one of the items to anticipate, is the question of the mileage involved in service; how would you get over that?

WITNESS: Yes, I would get over that in this way, Mr. Conant: try and set a happy medium. No law or rule is going to be absolutely infallible. Take for instance, the bailiffs here in Toronto. I issue a summons at the city hall, to be served across the street; the bailiff walks a hundred yards, and serves it; that is a fraction of a mile; they get $0.20 for a fraction of a mile; but on the next one they may walk almost a mile. And so on. Now, if there were some consideration given to it, and then something definitely set. For instance, we might say he is to get $0.30 mileage on each one, whether it is a fraction of a mile on this one, or four miles on that one. Ordinarily, he would get 20 cents on one and 80 cents on the other; well, take off an average and fix an amount that he would get as mileage on each one. Now, possibly that wouldn't work up in the north, for instance, if you are sending your bailiff out from Port Arthur, where they travel longer distances.

MR. LEDUC: But it would work in the city?

WITNESS: It would work in the cities. And in the average centres, I think it would work in the districts also.

MR. MAGONE: Why should it not be actual travelling expenses?

WITNESS: Well, the only difficulty is this: if it is going to be actual travelling expenses, Mr. Magone, it gets away from what I was saying a moment ago. I can say to my client: "Are you prepared to gamble $6.00, $10.00, or $12.00?" In this way, I have to tell him it will be about so-and so. And he might say, "I'll take a chance." Perhaps he is a poor man; he pays up the $12.00, and we get started; then we find the mileage is $12.10.

MR. LEDUC: But Mr. Magone, there is another point; in some cases up North, the bailiff goes and makes the service, spends the whole day there, and then gets his travelling expenses.

WITNESS: I would like to see this considered from every angle. I don't want to see anything done to suggest that the bailiffs be done away with, or that they be asked to work for nothing, because nobody appreciates more than I do the difficulties the bailiffs have to meet. They have a pretty tough job. They may have to make a service, and they will go out and make five or six calls and not effect service; they don't get paid for the five or six calls. Finally they locate their man and serve him, three miles from the city hall, and he gets service costs for that, even though he spent a lot of time on it. My suggestion would be, if it could be worked out in some way, that a flat amount could be paid in each time, and included in that flat amount would be a flat amount of mileage for the bailiff. That would work out very satisfactorily, except for cases up north. I know of one case, I just forget whether it was Port Arthur or North Bay, where the bailiff, without saying a word to us, took the summons and away he went, and the actual service was $18.00. Well, of course, that does set you back.

MR. LEDUC: We had an example like that this morning.

MR. MAGONE: Before you leave that, what would you have the block tariff system cover?

WITNESS: I would have a block system covering all services, up to a judgment, whether it be a default judgment or judgment in court, up to and including that judgment, and the filing of execution with the bailiff. From then on, there would be no block system.

MR. CONANT: Well, what would you think of the possibility of meeting this mileage problem, in small claims up to $100, by registered mail?

WITNESS: I think for small claims you could have it somewhat the same as it is now. Now, on claims for $30, you have non-personal service, and it works out very well. Here is my only objection to service by registered mail: while it would certainly save a great deal of time in certain cases, but as Judge Barton or someone else mentioned here a while ago, if you could get a receipt showing that some member of the family—not necessarily of the household, because that might be anybody—but if you could get a receipt back by registered mail—here is the only difficulty: a man comes to your house to-morrow morning with a registered letter, and you say: "Oh, I'm not taking any registered letter in at all." Then where are you? The postman can't force him to take a registered letter.

MR. CONANT: Well, of course, I should have explained that that was only suggested as an optional method, not the only and compulsory method.

WITNESS: No. I mentioned that matter of registered mail, here, but I mentioned that very thing, that it might be overcome if it could be shown that that letter had actually been received by a member of the defendant's family, and I don't know whether I mentioned it, but I felt, and still do, that very

often—and you would be surprised how debtors suspect everybody walking around—a postman comes along and says: "I have a registered letter for you," and the answer would be: "Oh no, I'm not taking it." Then the difficulty would be, the postman would send it back with no service effected.

MR. CONANT: I know, but you're no worse off.

WITNESS: Well, how would you get around it then?

Q. You still have the other means of service, by the bailiff.

A. Yes, but would you have both ways of serving?

Q. Oh yes.

A. Oh, well ——

MR. FROST: What would you say of having the plaintiff serving it himself?

WITNESS: I heard Judge Barton making that remark, and there is a lot in it, but you'd be surprised how many people there are who—I shouldn't say you'd be surprised, perhaps—that don't have altogether the respect for a statutory declaration or an oath that they might have, and they might come back and say: "I served it." And then, six months later, you might have the other party coming along and saying: "I never got it." Then, where are you going to be?

MR. FROST: Well, you can do it in County Court and in Supreme Court, on larger claims?

WITNESS: Yes, but on larger claims, as a rule, you are dealing with more business-like people.

MR. CONANT: And a different degree of integrity applies, do you think?

WITNESS: I do, Mr. Conant, I don't think in that respect that a small claim, say of $25, is the same as a larger one of $500. I would have no objection to the plaintiff serving himself, subject to permission being given by the judge, or something like that. But to have it wide open, that the individual would serve all his own summonses if he wants to—another objection I might have is this: I am trying to cover all angles as I go along: the bailiff is going to be part of your Division Court, if he's there, and you're not going to get a bailiff to give an awful lot of attention to it, if he feels that on one case he is going to have 20 cents taken off, and somebody else is going to chisel him on something else, I don't think he is going to be whole-hearted; I think there might be a tendency towards that.

Q. Have you anything else now?

A. Well, there are several points; the next point is this: when this witness fee tariff was drawn up, the witnesses were allowed 75 cents. That is all right in certain cases, but take automobile cases: you and I have a crash; we each

have claims of $100; we each have a $200 interest in the case, and we get the very same witness fee as a witness who has no interest at all; he saw the accident, is called in off the street, and he takes all day off and gets 75 cents. I think that the independent witness, there should be a little attention given to him. You would get better results. Just as in Police Court, you know what happens there; "I never saw a thing."

Now, the next matter I mention is one of detail, and it would save a lot of running around, and save the judges and everybody else's time, and that is that all particulars of claims served and disputes entered be given in proper detail. At the present time, they say it's a poor man's court; I sue somebody; he writes a letter to the clerk of the court and says: "I dispute that claim." That, under the present rules, is sufficient to make me call all my witnesses and come to court. And I don't know who to call.

MR. CONANT: You don't know what you have to meet?

WITNESS: I don't know what I have to meet; I bring down my auditor, my book-keeper, clerk, and then, when I get down, I find he says: "I paid it." If I had only known that in the first place, but I am stuck with all those witnesses.

MR. LEDUC: And sometimes the defendant is not there.

WITNESS: Sometimes he's not there at all. He just writes a letter. If the clerk were instructed, as a matter of ordinary business routine, that a statement should be complete, and a defence should be complete—as Mr. Leduc says, I pay $5.00 to sue somebody, and he comes along and doesn't pay a five-cent piece, merely write a letter, whereas I am put to the expense of bringing my people down, wasting time, and he doesn't even appear; it has cost him nothing to delay matters, and it has put me to more expense.

Q. Yes, and it is still worse when a man travels 40 miles, and when he gets there, finds that the defendant is not even present.

A. Yes. Of course, I was speaking pretty well from the standpoint of Toronto, as was Judge Barton. I only experience the odd case, where I go outside of Toronto.

Now, the next thing here is ex-parte. In Toronto, the judges have tried to be very, very lenient with both plaintiffs and defendants, and especially a defendant can run an ex-parte and get the good nature of the judge and get the assistance. That is possible.

MR. CONANT: You think the ex-parte should be limited?

WITNESS: As long as he pays for it, but, as I said before, he gets some relief, that is taxed on the records against the plaintiff, although the defendant gets a relief, or gets a stay of execution and it doesn't cost him anything. If they were to pay these things forthwith, the persons applying would be forced to pay for what they get forthwith, just as in the County Court or Supreme Court. There would be no hardship worked there.

Now, the next point is under section 174. This, in my opinion, is rather a

foolish one. I know that a man has no goods at all, but I know that he has some land that I can realize on some day, and I want to file an execution against his land, but before I can file against his real estate, I must go to the expense of issuing an execution to the bailiff against goods, when I know he has no goods. Why can I not, after getting judgment, immediately file against his lands?

MR. MAGONE: On making an affidavit, or something of that kind?

WITNESS: Yes. Then I mentioned adjournments. They should not be granted without payment forthwith. That is the same thing.

Then I come down to the question of judgment debtors. Now, except in a very few cases, it is a very simple matter for judgment debtors to reach the court. Under the present circumstances, if the judgment debtor resides within three miles of where he is to appear for examination, he gets no conduct money, no mileage, or anything else. But if he is over three miles away, he must get 75 cents and 10 cents per mile. Well, to-day things have changed to what they were when the Act was drawn up, with cheap transportation, and so on.

MR. CONANT: Your suggestion is that the amount payable to a judgment debtor should be reduced?

WITNESS: And put on a set basis, a small amount. I say here:

> "In the larger cities, it is probably in every case possible for a judgment debtor to attend court and return at no greater expense than 25 cents."

It could be embodied in that section that that would not apply except in cities and towns over a certain size. But you take, for instance, Toronto; every year there are thousands of dollars paid out in conduct money for people to attend at the city hall, the East Toronto Court or the West Toronto Court, and yet they come down in street cars.

MR. MAGONE: Who takes your case off the list if you happen to be a little short?

MR. CONANT: The question is, who puts it on?

WITNESS: The clerk of the court assumes, under the tariff, that he shall be paid, and I suppose the strict interpretation allows the clerk to say that if he is not paid in advance, well—"no tickee, no washee."

MR. MAGONE: Your case might be on the list, but it's not called; yet it is on the calendar?

WITNESS: It is on the calendar, but it is not put on the list to come before the judge.

Q. Yes. But it is not on the calendar outside the Division Court?

A. Oh, no.

Q. It's not on that list?

A. No.

Q. I thought they sometimes put them on that calendar of cases outside the court room. You would bring your witnesses down and wouldn't know then, that you're not on?

A. No. I understand the practice is followed, by the First Division Court, which I don't use at the present time, I understand the practice there is that the list which is put up is made up of only the cases prepared to go on; all fees paid and ready to go on. Of course, I don't know, and shouldn't say, what the clerk's discretion is under those matters, at all.

Q. You said you didn't use the First Division Court?

A. No.

Q. Is that the First Division Court of the County of York?

A. Yes, I put most of my cases—I pretty well divide my cases in cases East of Yonge Street, which all go to the Ninth Division Court, and cases West of Yonge Street, which go to the Eighth Division Court, and I find it works very satisfactorily. And while I am on that point, I will say that those two clerks and bailiffs give wonderful service, both of them.

Q. Have you any reason for not going to the First?

A. Oh, no, I get better service in these other courts.

MR. LEDUC: Quicker service?

WITNESS: Quicker service, and good service; we have never had any question of these few odd cents we mentioned. It is possibly from the standpoint of convenience, very satisfactory.

Q. We have the same thing in Ottawa; a lot of people use the Seventh Division Court, because it's not so busy as the First one.

A. Of course, as I say, we do issue a lot of claims, and whether these two clerks thought it was worth their while to give us a little special attention, I don't know, but we do get wonderful service.

MR. CONANT: They may want your business.

WITNESS: And very sensibly, they are getting it, both of them are getting it.

MR. MAGONE: How do you avoid the question of jurisdiction?

WITNESS: If the question of jurisdiction is raised, Mr. Magone, by the defendant, when he is served with a summons he is entitled to move the proper jurisdiction, in which case, if his objection to my jurisdiction is correct it is

transferred—I just forget the rule now—it is transferred to the proper jurisdiction, which might be the First Division Court, and the terms of that transfer are that the defendant is put to no more expense than if the writ had been issued in the First Division Court originally. That is provided for, but in what rule, I have just forgotten.

Now, in the second part, Mr. Magone, I will just go over that very quickly, just taking the actual sections as they stand.

Now, referring to section 64, subsection 2, and to sections 72, 73, and 79 of the Division Court Act, as to where a case shall be tried. Now in respect to that, a peculiar situation came up in a case that I have before me. I haven't the name of the case here now, but the defendant resided in Quebec, and these sections all say that the action shall be tried where he resides. This man actually resided in the Province of Quebec, possibly a quarter of a mile over the boundary line, but he was possibly one mile from the office of the Division Court clerk, which was in Ontario, and the defendant was employed in the Ontario town in which the Division Court was situated, but a strict interpretation made it impossible for the bailiff to effect service under this section, as the defendant's abode, as defined by a recently reported case, was not in the jurisdiction. That should be enlarged to get over the difficulty at that point, that is that the point of employment is not his abode or place of business. I might have a wonderfully good job with Eaton's down here, and live a mile across the United States line, and I'm not subject to these sections. I'm not in business here, and I don't reside here.

MR. FROST: The section says "may" though.

WITNESS: Which are you looking at now, Mr. Frost?

Q. I was looking at section 64, subsection 2.

A Well, "the residence of the defendant." If he resides in Quebec, as in this instance?

Q. Well, you went from 64 to another section.

A. I went ahead, from 64 to 72, 73, and 79.

MR. LEDUC: You gave us the case of a defendant residing outside of the Province of Ontario. Is that not provided for in section 67?

> "(1) Where a claim is within the proper competence of a Division Court, the action may be brought, notwithstanding that the residence of the defendant is, at the time of bringing the action, out of Ontario, and the action may be brought in the court of the division in which the cause of action arose or partly arose, but the court may refuse to allow the action to proceed if it appears that the action is one which ought to be tried elsewhere.
>
> (2) The service of the summons may be made by a bailiff of the court out of which it issued or by any person who may, either before or after the service, be approved by the judge or by the clerk, but such summons shall be served at least fifteen days before the return day thereof.

(3) The affidavit of service, if not made in Ontario, may be sworn before any officer or person having authority to administer oaths under the Evidence Act.

I may not understand your point.

WITNESS: Well, I am anticipating the question of a judgment summons as well, under that section 67; would you think that that would apply to a judgment summons in examination that only applies to a claim ——

Q. But what is your jurisdiction to examine a judgment summons if the defendant resides outside of the province?

MR. MAGONE: If he is served while he is here, the courts have jurisdiction.

WITNESS: Well, that is a technicality; I don't know whether you gentlemen feel it is worth while to waste your time with it.

Q. Wouldn't you get an order for substitution?

A. You could. You certainly could, yes, for the service of the writ originally, but I don't think you could for the writ of judgment summons, because he must reside here.

MR. ARNOTT: Mr. Chairman, are we going to set this Committee up as a rule-making Committee?

MR. LEDUC: Well, this is not a matter of rules, this is a section of the Act.

WITNESS: Well, gentlemen, as far as I am concerned, I would just as soon answer any questions, but I was asked to run over this as quickly as I could, and I am doing that, as far as I can. But if you would care to ask me questions, it's all the same to me.

MR. MAGONE: Does this deal with amendments to the particular sections of the Act?

WITNESS: Yes.

MR. LEDUC: What is the next thing you suggest, Mr. Murphy?

WITNESS: Well, section 67, subsection 4, says:

"(4) Where service of the summons has been effected out of Ontario, the judge may allow, as costs in the action, a sum towards the expenses incurred in effecting service, not exceeding in the whole, $5.00."

Well, if you send any division court action to be served in California, by the time you send a Yankee solicitor out to a bailiff, you might find your $5.00 wouldn't cover it.

Q. You would suggest putting in the actual costs?

A. Yes. Now, sections 72 and 73 ——

Q. You are treading on dangerous ground there.

A. Yes, well, we'll take section 73 first, Mr. Leduc.

> "An action by or against a judge may be brought in any court of a county adjoining that in which he resides."

Well, my suggestion is there, why not have it in the county in which he resides? Is the judge bound to reside in the county in which he is judge?

Q. What do you want to change there?

A. Well, I would think it would be in a county adjoining that in which he is the judge.

Q. Well, he may live in the county adjoining that in which he is a judge.

A. Well, we won't waste time; these are technicalities.

MR. MAGONE: I think Mr. Murphy had in mind division court districts; that it should be brought in a court outside his division court district.

MR. STRACHAN: I don't think it occurs very often.

WITNESS: No, as I say, I went through this, Mr. Strachan, piece by piece.

Now, if you refer to sections 90 and 93. Under section 90, he may sign default judgment at any time within one month. Why restrict that to one month? Very frequently, by consent of both parties, the defence is not put in, or the judgment is not signed, and maybe after three or four weeks he'll say, "go ahead, put in your defence"; why should we go and have to pay a clerk an additional fee? And the same thing applies to section 93; the very same thing. I think the time limit should be cut, and there should be no fee for doing either of those. If the judgment hasn't been signed, I should be entitled to put in my defence.

MR. LEDUC: Well, in the other courts, they have so many days?

WITNESS: Exactly, there is one year; we can do it in one year. And why should it not be here? Why should the poor man's pocket be put to additional expense?

Now, I will go from there to something that was discussed very recently. I was asked to discuss it with some clerks and lawyers not very long ago, and the general feeling was pretty well that the block system, worked out properly, given some consideration, would work out very satisfactorily; also, to not abolish the Division Court at all; if anything, possibly, increase it to the jurisdiction which was suggested, two or three years ago, when it was amended, but did not come into force until a certain date. You will always have small cases, and if you are going to transfer them to the County Court, you are going to have more

cumbersome machinery for doing it. I don't see any advantage at all, of taking small cases to a County Court; if you put them in the County Court, they are going to come out as County Court trials. I don't see that anybody would benefit.

MR. FROST: You think you are only going to clutter up the County Court?

WITNESS: I think so, Mr. Frost. Now there is another thing; under the Division Court, now, you can have what they call an attachment order for garnishee after judgment. I can walk into any clerk and say, "I want a garnishee after judgment." And without any affidavit or anything else, he can issue a garnishee after judgment. But to get an attaching order, which serves practically the same purpose, I must go and disturb a judge. Why could not attaching orders be served on the order of a clerk, who has power to issue a garnishee after judgment? I don't see the necessity or the difference that one should require a judge's signature, and the other does not require a judge's signature. They are both served for the same purpose.

MR. FROST: Yes, that's correct.

WITNESS: In Toronto, I would say the judges must be called on 20 or 30 times a day to sign Division Court attachments, which could be just as well issued by the clerk, because they must be entered up in the clerk's books later on. Why could he not do the whole thing?

Q. Have you given Mr. Magone a copy of those submissions?

A. Yes, Mr. Magone has a copy, Mr. Frost.

Q. There are a lot of points in there that might tend to simplify things.

A. Yes, and they might have some effect. I am just jumping over them now; it wouldn't be fair to take the time of the Committee on a lot of little details, but I had, at that time, gone over the whole Act, section by section.

MR. MAGONE: Have you ever had a jury action in Division Court?

WITNESS: I, myself, no; once we served a jury trial notice, and I just forget what happened to it. We didn't go on with it. And I don't think, generally speaking, that juries are necessary in Division Court.

MR. LEDUC: Well, you say you have been with McMaster & Montgomery twenty-two years, since 1918?

A. Yes.

Q. You probably entered 20,000 claims in Division Court since that time?

A. I would say so.

Q. Out of which, probably 10,000 went to trial?

A. Yes.

Q. And you never had one jury trial?

A. No, and on that jury trial, I don't know whether you gentlemen understand, but under the section here, on every case entered in Division Court, there are a few cents collected ——

MR. STRACHAN: 25 cents.

WITNESS: Yes, and there might be 10,000 cases entered, all of which pay a fee. I forget the number of that section.

MR. STRACHAN: Mr. Magone, have you discussed judgment summonses with Mr. Murphy?

MR. MAGONE: What is your experience with respect to judgment summonses?

WITNESS: I agree thoroughly with what you gentlemen said; it does seem absurd, that in a small claims court, a man can be committed and sent to gaol, whereas, in a higher court you can't. I have one observation on that; it is a poor man's court, but there is a poor creditor very often, as well as a poor debtor, and if a man has $20 in salary coming to him, or wages, or some little thing, it is just as well to have some quick way of getting to it.

Now the committal order does seem very, very severe, but in my experience—and I don't want to be considered as being hard-boiled at all, and I think I can prove that if a man comes to me, he doesn't find me too hard to get along with—but it is surprising the number of committal cases that I know of, when a judge finally does send a man to gaol; I would say there is not one per centum of the committals actually enforced, where the man doesn't find the money, either before he is in gaol or after he has been there a few hours.

MR. LEDUC: But you were talking of a man earning some wages.

WITNESS: Yes.

Q. But if we had a better system of attaching wages, or garnisheeing wages, wouldn't you assume the same result ——

A. In anticipation of what you are going to say, I think something along the lines of the Lacombe law would be very satisfactory. But we haven't got that. I am in favour of it.

Q. You are in favour of it?

A. I think the Lacombe law should work out very satisfactorily.

Q. While Judge Barton was giving evidence this afternoon, we talked of making the garnishee served at any time, and not wait until the salary is due.

A. Yes.

Q. Do you agree with that?

A. I think if the Act were made to cover that, Mr. Leduc, but as it stands now, it wouldn't have that effect. I serve a garnishee summons on an employer, and it says, "any money that you owe John Jones are attached."

Q. That is the present form of the summons.

A. But if the Act were amended ——

Q. Yes.

A. —— that the service on an employer of the summons in proper form, would have that same effect as the Lacombe law, that as long as that man is there, a certain amount—whatever the court should decide—is taken out, that will cut out all the numerous attaching orders, judgment summonses, and everything else.

Q. Isn't that your experience, that you have to garnishee a man's wages week after week, and pay-day after pay-day, and it only results in profits for the bailiff and other officers?

A. Yes.

Q. But if we were to adopt the Lacombe law, wouldn't we then be able to do away with a judgment summons?

A. Well ——

MR. FROST: I don't suppose so much the judgment summons as the committal end of it.

MR. LEDUC: That's what I mean.

WITNESS: Yes, the committal end of it; there are, in this way, many, many people, I am speaking of debtors now, that, unless you have some way of extracting it, you just don't get it. The mere fact of having them come up and having an order issued ordering them to pay $5.00 a month is all right. But the moment they walk out, they just say: "I'm not going to pay that money."

Q. But if the salary could be attached?

A. That would do away with a lot of the committals.

Q. You would use the examination to find out what salary he earns, and so on.

A. Yes, I wouldn't abolish the examination, no matter what the size of the judgment.

Q. Right.

A. But the committal might very easily be done away with, if there were the Lacombe law or some other law to take its place.

MR. MAGONE: In how many cases in a year would you have to apply for a committal order, out of your thousand cases?

WITNESS: I suppose you are asking me in how many cases I have asked the judge to allow the committal to be enforced?

Q. Yes.

A. Well, you see, Mr. Magone, there are many, many cases in which the committal order is made as a matter of form; then we write the man and say: "At this morning's court you didn't appear, and the judge made such and such an order." I am not calling that a committal order, if you are asking of actual enforcement?

Q. Yes.

A. Well, in the last year, I would say there had been twenty-five or thirty cases in which the bailiff has been instructed to actually enforce the committal, and of that twenty-five or thirty, there is only one that I know of now, where it did not result in the whole thing being paid outright and this man came out on an order of Judge Lovering, and, through family reasons, we all felt that possibly the man, while he didn't show it, he did have a peculiar mental kink, and he was released without paying anything.

Q. What is done, the bailiff arrests the man and brings him before the judge again?

A. The practice is this, Mr. Magone. A man gets a summons to appear this morning, in which he receives a notice: "If you do not appear on such and such a date, you may be committed to the common gaol for ten days." Then if he doesn't appear, the judge will, as a matter of routine, make an order for committal for ten days in default of appearance. Then the bailiff of that court will get in touch with that judge in another week, and say: "Now, Your Honour, on what day will you give an extra appointment for the order you gave John Jones to appear on the morning of a week ago to-day?" Then the debtor will receive another notice pointing out that he didn't appear, but that the judge has granted him another appointment to appear and show why the committal order dated to-day should not be enforced. In other words, he gets two chances. Then, if he appears before the judge the second time, he purges his contempt very easily by saying: "I didn't understand it" and that's the end of it. But, if he doesn't appear the second time, the judges in Toronto are now allowing the order for committal to be issued. Then the bailiff goes out and gets him. Sometimes he does use discretion and talk to the fellow, but he is entitled, under that second order, to forthwith put the man in gaol.

MR. FROST: And is all that procedure set out in the Division Court Act and rules?

WITNESS: No.

Q. All that has happened is, that that system has been devised in Toronto to meet your situation?

A. Yes, to meet the situation, and to get the creditors their rights, and at the same time not strictly speaking, because, under section 183, every man against whom such an order is made, can be forthwith arrested, but the judges here thought that very drastic, and say we don't know what's in their mind and therefore we will give them another chance. Possibly that might be brought about by section 184, which says that he shall not be liable to be committed unless the judge is satisfied that his non-attendance was wilful. Well, if it is brought to his attention a second time and he still does not appear, then the judges are inclined to believe it is intentional, and that is how that came about.

MR. FROST: Do you think that that procedure is partly necessary, owing to the fact that the garnishee and attaching proceedings are clumsy, and so on?

WITNESS: Well, they are clumsy.

Q. And it is expensive?

A. It's expensive.

Q. Do you expect that if some system were introduced, such as the Labombe law, that some of these other provisions might be scrapped?

A. Yes, and I will go further; under the present system, there are a large number of employers who will assist their employees. Possibly we serve a garnishee summons on a man, and he says: "Oh, this fellow, I paid him in advance last week" or something like that. You have no way, you are in the hands of the employers, whereas, if we had something like the Lacombe law, if they wanted to pay him in advance, that's their own business, but they must satisfy his creditors, by setting something aside. But there is nothing to cover that to-day, and, as the judge pointed out here, if I want to attach a man's salary, I can't make my affidavit and take out my order until when it is due, that is, say, Saturday morning; well, I can't get a judge until ten o'clock; I get it signed, and by the time I get it done, two or three hours are gone, the place of business is closed and everybody has gone, and everything is lost, fees and all. Under the Lacombe law, I would say: "Too bad, Mr., but I'll see you next week."

MR. LEDUC: No, that's not the Lacombe law, that is the general law in Quebec.

WITNESS: Oh, I thought it was the Lacombe law.

Q. No. The Lacombe law gives you a chance to make a declaration to the court and deposit the money and all the creditors come in and share in the proceeds.

A. It's like—I understand that it is for this reason that it cuts out more than one similar order?

Q. Yes.

MR. FROST: Who makes the Division Court rules?

WITNESS: I understand they are made—well I think Mr. Polson might answer that better than I could.

MR. MAGONE: They are made by the Lieutenant-Governor-in-Council, since 1935. Before that, they were made by the Board of County Court Judges.

MR. FROST: Who prepares the tariff, the fees; is it the same body?

MR. MAGONE: Yes.

MR. FROST: Well, have you any improvement for that situation?

WITNESS: On the question of fees, you mean?

Q. No, no, on the question of rules and tariff.

A. Well, I don't know; I think maybe, I wouldn't say all the County Court judges, but I think a couple of County Court judges ——

Q. Well, Mr. Barlow suggested that, in connection with the consolidated rules, there should be certain judges appointed, and certain barristers appointed; do you think that would improve the working of the Division Court Act?

A. Well, I would almost think so. I don't just remember, whom did he suggest would be on that Committee for that, do you remember, Mr. Magone?

MR. STRACHAN: Four judges and four barristers.

WITNESS: I think it would be a good idea to have a County Court judge on there who is a Division Court judge, because the Supreme Court judges never have much practice in that respect, as a rule.

MR. FROST: There are many people who are not barristers or judges, who have a very intimate knowledge of the workings of the Act and can give very good suggestions?

WITNESS: That is why I suggested a County Court judge, because he knows the workings, naturally; I would think, somebody that is working with it; that is my opinion. A Supreme Court judge—I'm not trying to suggest anything there, but they don't touch the smaller things at all.

MR. FROST: It was suggested a moment ago that a very eminent counsel in Toronto didn't even know there was a Division Court Act; therefore he would not be, probably, as competent to make rules as someone who was not a solicitor at all, and with a more thorough knowledge of it?

WITNESS: Like everything else, there is a technical knowledge, and a practical knowledge.

MR. LEDUC: Well, thank you very much for coming, Mr. Murphy.

—— Witness excused.

Committee rises until ten o'clock following morning.

FOURTH SITTING

Parliament Buildings, Toronto,
April 4th, 1940.

MR. CONANT: Gentlemen, before resuming our hearing, may I say that Mr. Leduc has spoken to me about the advisability of bringing up some official from Quebec, or presumably a Montreal man, to explain the Quebec law concerning garnishees and attachments, and the Lacombe law. I have only this observation to make: the Government, naturally, would like to keep the expenses of this Committee down to a minimum, or at least down to reasonable proportions. I suppose in this case we would have to pay the expenses involved, and perhaps we should hear from Mr. Magone as to what he has to offer us in lieu of bringing this man to Toronto.

MR. MAGONE: Mr. Chairman, there is a report here from a lawyer, Chartron, of Ottawa, who forwarded a copy of the Act to Mr. Barlow in June, 1939. It isn't very long, and I think we could digest it and give it to the Committee, and you probably would get as much from that as you would by bringing someone up, with this exception, that you won't get the practical working out of the law.

MR. CONANT: The results.

MR. MAGONE: Yes.

MR. CONANT: Well, what do you think, gentlemen? It is important, and if we recommend a change, and our recommendations are carried out and put into practice, it would have far-reaching effects for some people. I am not at all settled in my view. What is the view of the Committee?

MR. FROST: I wonder if there is somebody here in the city, who has some knowledge of this?

MR. MAGONE: We might find out. The only man that I can suggest off-hand is Mr. Arthur Rogers, the secretary of the Canadian Bankers' Association, who spends alternately two years in Toronto and two years in Montreal, and he is just back from Montreal to start his two years in Toronto.

MR. FROST: I think it would be a good thing to see if we could get somebody around here that has a good working knowledge of this law, and that, together with the digest Mr. Magone or his staff would prepare, would probably save a lot of expense. On the other hand, if that can't be done, and we find that that is not satisfactory, then we might get somebody up from Montreal.

MR. STRACHAN: I think we should exhaust the possibilities of some person here first, before we decide on that.

MR. CONANT: Well, that is very proper. Then, Mr. Magone, will you get in touch with Mr. Rogers and see if he can offer the solution, and also go into Mr. Silk's suggestion that possibly some member of the Canadian Manufacturers' Association might be able to help us out. Also, let us have a digest of what you have to date.

MR. MAGONE: Very well.

MR. FROST: Some of these collection agency people might know something about it.

MR. CONANT: Well, the gentleman that was here yesterday was asked that, and he didn't know anything about it.

MR. MAGONE: It is my intention to call on Mr. McDonagh now.

F. G. J. McDONAGH, Clerk, First Division Court of the County of York, recalled.

MR. MAGONE: All right, Mr. McDonagh.

WITNESS: Mr. Chairman, yesterday, the representative of Norman and Company mentioned, as I understood him, two actions in which the costs of the bailiff's services were given as over $4. I went down to the office at noon yesterday, and obtained a copy of the detailed costs, and there is only one claim, not two claims, and the amount of the claim is $400, not $200, as he stated it, and there are two defendants, not one defendant, and the bailiff's costs are $4.40, which is provided for in the tariff.

I have the detailed statement here, if you care to look at it.

MR. MAGONE: Were they served at the same place, Mr. McDonagh?

WITNESS: At the same place, on Parliament Street.

Q. Was one or two mileages charged?

A. Two mileages.

Q. Two mileages?

A. Yes, 40 cents, yes, that is only one mileage, but at 20 cents a mile.

Q. That's what I meant. He didn't charge mileage for each of the two defendants?

A. No.

MR. CONANT: Just following that up, as it struck me, when it came up the other day, as being rather remarkable, if a bailiff goes out with half a dozen summonses, does he charge full mileage on each one of those?

WITNESS: Yes, sir.

Q. Even though he may travel one mile to serve one, and an additional mile, including the first mile, to serve the next one, and so on?

A. Yes, if he had six cases, in which all the defendants resided in the house, he would be entitled to charge his six mileages on that.

MR. STRACHAN: Well, of course, Mr. McDonagh, the bailiff does have to make half a dozen entries?

WITNESS: Oh yes.

Q. And they only charge the one mileage?

A. In Toronto, it is the frequent thing, rather than the infrequent thing that the bailiff may go three times to the house, and not find the defendant there, and he only gets paid for the one visit.

MR. CONANT: He has to deliver the goods before he gets paid.

WITNESS: Yes.

Q. I suppose there is that justice to it, that those lucky strikes, in a sense, level off the blanks they draw.

A. Yes. It averages up pretty well. Then there was one other point brought up by Mr. Leduc: I mentioned that the average costs received last year by the clerk of the Division Court were $3.89.

Q. That is extending over how many cases?

A. That is 7,643 proceedings, and the average costs of the clerk were $3.89. The average costs of the bailiff, $2.51.

Q. Which gives a total average cost of $6.40.

MR. LEDUC: Have you any information as to the number of cases you have, say, under $60 and under $100?

WITNESS: Yes, I have that here; possibly I may read it into the record?

Q. Yes.

A. Number of actions, for last year, from $1 to $10, 429; from $10 to $20, 2016; from $20 to $60, 2,624; from $60 to $100, 1,126; from $100 to $200, 1,173; from $200 to $300, 170; over $300, 105. Number of judgment summonses, 837. Number of transcripts, 142.

Q. That is transcripts sent to other courts?

A. Yes.

Q. Yes?

A. And then we have a group which is called, "other actions," which includes attaching orders issued from the Supreme Court, usually from the Masters, or from the County Court direct to the Division Court, 45. And then there is number of appeals, 1; that is an appeal under the Master and Servant Act; it's the only one, the only active appeal. It used to be, under the Summary Convictions, that certain cases in the Police Court got to the Division Court judge; that is changed to County Judges Criminal court now. If it is a conviction in the matter of wages in the Police Court, the appeal is to the Division Court judge. I may say that causes considerable confusion in the profession, because everything else goes to the County Judges Criminal Court judge, and this comes to the Division Court judge.

MR. CONANT: Most of your cases, at least your largest class, is from $20 to $60?

WITNESS: Yes.

MR. ARNOTT: Mr. McDonagh, you have 7,643 proceedings?

WITNESS: Yes.

Q. Tell me, how many of those went to judgment?

A. I haven't the number that went to judgment.

Q. Can you tell me the total amount involved in those proceedings?

A. Yes, $450,494.31.

Q. And how much was realized out of those proceedings?

A. Well, there was actually paid into court, $75,619.92. Of course, in a sense, that doesn't give a true picture, because it doesn't show the settled actions.

MR. CONANT: No. It would be impossible to get that?

WITNESS: Yes, it would be impossible, except from this list I have, of the selected hundred cases, I may be able to show the picture there.

Q. Yes.

A. In connection with that item of 837 judgment summonses, I have the number of committal orders issued, and the number of committal orders issued was 237, and the number actually committed, 21. In that connection, may I make an observation, from my experience.

MR. LEDUC: Excuse me, Mr. McDonagh, when you speak of judgment summonses being 837, that includes the show cause summons?

WITNESS: That includes the show cause summons.

Q. And further show cause?

A. Yes, which I have contended since I have been appointed, that there is no statutory authority for a show cause summons, but I can't get anywhere, apparently, in having it stopped. But the proceeding in Toronto is different to other counties, as far as I can ascertain. The debtor is served with a judgment summons, and it must be personal service, and he is given conduct money if he is over three miles away, and that summonses him to appear on a certain day. If he doesn't appear, the judges are satisfied that the non-appearance is wilful and they issue—they direct a committal. Then the bailiff takes out an appointment with that judge in chambers, and a registered letter is sent to the debtor in a plain envelope, rather than with the name of the Division Court on it, advising him to appear before the judge to explain to the judge why he wasn't at the appointment of the summons. If he doesn't appear, then, in most cases, the judge directs that the warrant be executed. Now my observation is this: that that man is not being committed to gaol because he failed to pay the debt, he is being committed to gaol because he did not obey the process of the court, and dealing with the population we have in Toronto, I feel that that is a most important part of the proceedings of the Division Court.

MR. FROST: There isn't any objection to that, though; there isn't any objection to imprisonment for failing to obey the summons of the court to appear and answer questions relating to the assets that the man has, and all the rest of it, but the point, I think, that was raised here yesterday, was the objection to the courts making an order and saying: "You must pay so much every week, and if you don't pay so much every week, then you go to gaol." There, I think is where the objection came in. It wasn't from the standpoint of contempt, but it was when you were carrying that further and making it actually an offence, a penal offence to fail to pay a debt. There is the point.

WITNESS: I see that point, but my experience has been, and I may say I have sat as deputy judge in summonses myself, that there have practically no persons committed to gaol in Toronto for failure to make payments.

Q. Yes, but nevertheless, the threat is there.

A. The sword is held over him, yes.

Q. Yes.

MR. CONANT: But your submission, as I understand it, is really that committing to gaol is punishment for contempt of court?

WITNESS: For contempt of the court, yes.

MR. LEDUC: Officially, that is what it is.

MR. FROST: Not officially, you mean in practice; officially, you go to gaol, under this Act, for failure to observe a judge's order.

MR. LEDUC: Yes, you're right.

MR. CONANT: Could we put it in another way, Mr. McDonagh? Isn't this correct, that if a person against whom a judgment summons has been taken out,

would obey each and every summons and come, at the appointed time, and make out anything like a reasonable case to the judge, whether it was all true or not, it is extremely unlikely, in fact I doubt if any judge would commit him to gaol?

WITNESS: In York County, they would not be committed to gaol.

Q. No?

MR. FROST: I know of a case here, recently, in which the judge looked into a certain man's affairs, and felt that he was able, with his earning powers, to pay so much on a debt, and he accordingly made his order. The judge, probably, was aware the man could pay it; he made his order, and the man was to pay so much money a month, whatever it was; the man didn't do it. After some further court proceedings, the man went to gaol for thirty days for failing to do that, and he served his thirty days, too. I can remember the case. Now the point is this: isn't that just going a bit too far in this thing? You say that that is the practice?

WITNESS: Yes.

Q. The practice is the alternative, the practice is to use these judgment summons proceedings as a basis of examination of judgment debtors; don't you think we might do better to make the practice the law, and do away with the practice of jailing a man for failing to pay any money?

A. Well, as far as my experience goes, the man is committed for contempt, and in the case that you have cited, that man was examined by the judge, and the judge didn't believe him, apparently. Now, that is contempt of the court, that is not failure to pay.

Q. Well, on the other hand, do you think that that principle, then, should be extended to other courts?

A. Well, the principle is in other courts, if you wish to examine a judgment debtor ——

Q. Yes?

A. —— before one of the examiners, and you served him with an appointment and he doesn't appear, then you move to commit him for failure to appear.

Q. I have no objection to that.

A. But that is what happens in this court, except that you haven't the other motion, and you have lessened your costs.

Q. But haven't you additionally, in this court, this right? The judge has the right to examine a man and to say: "Now your earning capabilities are so much money, I order that you pay the plaintiff so much money." And if he doesn't make that payment, then he can be sent to gaol, and some people are sent to gaol for that?

A. Yes, well that might be in other counties, I couldn't say.

Q. I know, but isn't that the law?

A. Yes, that is the law.

Q. Well, there is the point that I am making.

MR. STRACHAN: Mr. McDonagh, are not the large part of these small claims for bills incurred from small merchants and shop keepers?

WITNESS: That's what they are.

Q. And isn't the law to avoid the situation that, when a man hasn't any money, he goes to the grocery store, and the minute he can avoid it, he goes to the chain stores and the cash and carry?

A. Yes.

Q. And I would suggest this law is to protect the small shopkeeper.

MR. FROST: Yes, but this law has been there long before the chain stores came in.

MR. STRACHAN: It seems to me we are giving lots of sympathy to the debtor, but no person gives much regard to the poor man who has advanced the money.

WITNESS: Well, at the present time, with all deference to the members of the Bench, there does appear to be, shall I say, a debtor complex, and not a creditor complex. Protect the debtor, let the creditor spend his money.

MR. FROST: Well, I think we would do a lot better to revise our law to meet the present situation and to frame a reasonable attachment law, somewhat after the Lacombe law, and then abolish these things which can be injustices, and which are, in many cases, injustices.

WITNESS: Well, of course, one of the difficulties, in the Supreme and County Courts, on your examination of the judgment debtors, it is all taken down, and you take your own time examining the debtor, whereas, in the Division Court, in the larger centres, you have a list of thirty to forty judgment debtors to appear, and they appear at ten o'clock and are finished at half past eleven. Sometimes, even a little earlier than that, and there is no report of it at all, and very few of the debtors are sworn. I mean, I have sat in, I suppose, three or four thousand of them, anyway, and the examination is very cursory. The thing is to get through.

MR. LEDUC: Mr. McDonagh, I think you have given the best argument why the more important cases should be taken out of the Division Court and put in County Court.

WITNESS: Examination of the debtor?

Q. Not only that, but how many cases are heard during one day when the Division Court sits?

A. Well, our average lists will run about thirty-five cases.

Q. Thirty-five cases?

A. That is on Tuesday, on the cases under $100.

Q. Yes?

A. On Wednesday, that is increased jurisdiction, maybe seven or eight, at the present time.

Q. Not more than that?

A. Not more than that. Then, on the damage cases, you may run around forty to forty-five.

Q. In one day?

A. Yes, and included in that forty-five would be, possibly, another six or seven which are increased jurisdiction, over $100.

Q. Yes?

A. And they get pretty complete hearing; the counsel insist on it.

MR. CONANT: Forty-five hearings in a day?

WITNESS: Damage cases, yes.

Q. You say a complete hearing for forty-five cases in a day?

A. Well, of that forty-five, there are a lot of assessments of damages, and there is no provisions in the Division Court Act for no pleadings, and every damage case must go before the judge; you can't have default judgment, and I think that should be overcome in some way, in that a defendant may, in a damage case, appear at the trial and have his defence admitted, and take the plaintiff by surprise, and cause additional costs. I think there should be some way in which, as in the other courts, undefended damage action pleadings may be noticed closed, and upon affidavit, possibly, the clerk, in very small claims, might be allowed to sign a default judgment.

MR. CONANT: I am rather disturbed on this whole thing. I see some of my brother committee members don't, perhaps, share my view. Although I don't know exactly what their view is, you made a remark there, which is very pertinent. Let me ask you a question; supposing there were removed from the law, the ultimate provision to commit to gaol, to what extent would it effect the collection machinery of the Division Court?

WITNESS: I think it would destroy its effect, sir.

MR. LEDUC: But if you have a better law concerning attachment of salaries and garnishee proceedings, wouldn't that help?

WITNESS: You are referring to the Lacombe law?

Q. No, no, let us not confuse the Lacombe law and the general law of the Province of Quebec concerning attachment of salaries.

A. Oh, I thought the two went together.

Q. Oh no, because the law concerning the attachment of salaries was there before the Lacombe law was passed. The Lacombe law was passed to avoid costs, to avoid the necessity of securing judgments against a man more than was necessary; I think we will have a witness from Quebec to explain it better than I can, because I haven't applied it myself for a number of years, but I think the difficulty is caused by the law which says that a salary must be attached after June the 4th; that makes it practically impossible to attach a man's salary.

A. Yes, well of course, it was—that is, used by the judges as being the law; at the present time you have, in the Division Court, both the garnishee summons and the attachment order; the garnishee summons costs more than the attachment order, and I have known judges to dismiss garnishee claims because they should have taken out an attachment order.

MR. STRACHAN: What meaning is given by the judge in an attachment proceeding to the word "accruing"? I never could understand why a man who was paid in advance, it was held that you couldn't garnishee his wages.

WITNESS: Well, they have given no meaning to accruing; they just disregard it.

Q. Disregard it?

A. Yes.

MR. CONANT: Coming back to committal orders, Mr. McDonagh, what was it you said, that it would destroy ——

WITNESS: If committal orders were removed, it would destroy the effectiveness, as it is to-day.

Q. Yes.

A. Possibly Mr. Leduc's suggestion of attachment proceedings would help to keep its effectiveness.

Q. Yes, but isn't there this fundamental weakness in any machinery you may set up for garnishees or attachments, that, without the sword you have referred to, all a man has to do is to refrain or refuse to work and he is absolved from all responsibility?

A. Yes.

MR. LEDUC: If the man doesn't work, the judge won't make an order ordering him to pay.

WITNESS: May I just cite a case, to give you an example of how far these things go sometimes; in connection with the judgment summons of a gentleman who was born in Europe somewhere, and he owed a milk bill of $25, and it finally got to judgment summons, and he was, after all the proceedings, taken to gaol; his wife went up to the judge's house crying, and the judge directed that that man be released.

Q. He cried, did you say?

A. She cried. Then they proceeded, afterwards, with another judgment summons, and the committal order, and the costs had gone up, I think, to $40. The claim was only $25, but the costs had gone to $40. She appeared in chambers before a judge and swore that that man was out of town, and that he wouldn't be back for a month; the bailiff's man got the assistance of the Toronto Police Force and went up with a sergeant and a policeman, and one went to the front door and the other went to the back, and when the man at the front door tried to open it, this debtor jumped out the back door into the arms of the police sergeant. I mean, that is the type of stuff we're up against with these people who are confirmed debtors.

MR. STRACHAN: They are very well known to the clerk of the Division Court, a lot of them?

WITNESS: Yes.

Q. A professional debtor?

A. Yes, you see them on the judgment summons.

MR. CONANT: Isn't the desirability or the undesirability of the present law largely dependent upon the wisdom and the judgment with which it is applied by the judges?

WITNESS: Oh, there is no question about that.

Q. Yes, I remember in my own experience, when a judge in my own jurisdiction—the only committal I ever got from him was on a similar situation, when evidence was brought into court that this man was sick, and my client whispered to me that he wasn't, he had been seen on the street that morning; we hustled around and brought in evidence that he was loafing around the back streets of the city, and we committed him that day, because it was obvious deception and evasion. That is the only committal I ever got in twenty-five years of practice.

MR. FROST: In that case, that was a pure case of contempt.

MR. CONANT: Yes.

MR. FROST: I have no objection to that at all.

MR. CONANT: Where are you going to draw the line?

MR. FROST: I object to carrying it farther than that, and letting the judge investigate this man's affairs, and after a cursory examination—you take, for instance, your forty cases that come up in court on a judgment summons: he says, "Well, you are able to pay $5 a week, and you are to pay $5 a week, and if you don't, you go to gaol." Now I think that is going too far.

WITNESS: Well, Mr. Frost, may I say that the practice is not that.

MR. FROST: I know, in practice you don't do that.

WITNESS: It is the debtor who agrees; he comes before the ——

Q. But that is not what the Division Court Act says?

A. No, I agree that the Act says that ——

Q. The Act just says exactly what I am saying; the judge may investigate this man's affairs, order him to pay so much money, and if he doesn't pay that money, then he goes to gaol.

A. Yes, well I've never seen ——

Q. I know, but that is the point, and you mark my words, that is the trouble with a lot of these collection agencies, who are using as a club the threat of sending people to gaol.

MR. CONANT: Well, do you think we can accomplish much more in pursuing this any further?

MR. FROST: No, I don't think so.

MR. CONANT: I think we might make this observation; that even in the highest courts in our province, that all the members do not always agree.

MR. LEDUC: No, but I think I would make a suggestion at this point, Mr. Chairman; there has been a great deal said about the Lacombe law, and I have mentioned, myself, the method and procedure adopted in Quebec for the attachment of wages, and so on and so forth; would it not be in order to have someone from the Province of Quebec, either an official of the court or an official from the Attorney-General's Department, to tell us exactly what it is?

MR. CONANT: Well, unfortunately, we discussed that the first thing this morning, when you were not here, and the Committee left it this way; Mr. Magone has certain information on it, and he believes that he can unearth, in the city here, a man who has practiced under that law, and who can perhaps supply the information.

MR. MAGONE: Well I thought, Mr. Leduc, that I might get Mr. Arthur Rogers, the secretary of the Canadian Bankers' Association, who spends two years alternately in Montreal and in Toronto, and he might tell us how the law works.

MR. LEDUC: Well, it's not solely in the Lacombe law that I am interested, it is also the general procedure in the Province of Quebec concerning the garnishee and attachment of wages.

MR. CONANT: Well, I think it is agreed, and decided, Mr. Leduc, that from what Mr. Magone now has available—if we cannot get somebody here, who, along with the information available, can give sufficient evidence, we may bring somebody from Quebec. We will canvass those possibilities in the meantime; is that agreeable to you?

MR. LEDUC: Quite.

MR. CONANT: We can bring him down any day; say to-morrow, or the next day?

MR. LEDUC: Because I think, myself, that that system is a good one, and I would like this explained completely to the Committee. If Mr. Rogers does not feel that he can do it, and can give only incomplete information, I think we ought to have an official from the court in Quebec, or an official of the Quebec Attorney-General's Department.

MR. CONANT: Well, all right, Mr. Magone; you first exhaust your inquiry here, and see what you can get.

MR. MAGONE: Yes.

MR. CONANT: Mr. Magone quite properly pointed out that, while he can, without difficulty, produce before the Committee the law, we should have evidence as to its operation and practical results.

MR. LEDUC: Yes, certainly.

MR. CONANT: All right, Mr. Magone; you may proceed.

MR. MAGONE: Mr. McDonagh, in connection with judgment summons, what is the practice to get a show cause summons?

WITNESS: There must be an affidavit filed by the plaintiff's solicitor or agent, setting out that he believes that the debtor is able to pay the judgment.

Q. I see. Well that, apparently, is provided for in section 182, subsection (8), is it not?

A. Well, I think you could argue on that, Mr. Magone; I have gone into it quite thoroughly, and at the present time, in fact, Mr. Moore is making a research on it, and after I discussed it with the judges, we came to the opinion that the show cause summons, as such, is not authorized by statute, except that there is a form provided for in the forms which are authorized by statute.

It is a technicality, but I think when you are committing a person to gaol your technicality should be right.

MR. CONANT: Well, I was going to ask if there isn't any provision for that show cause summons, and if a committal is made for contempt of that summons?

WITNESS: Well, Mr. Chairman, with regard to that, I have discussed this with some of those who are most interested in it, and they say that the answer is that nothing will happen, because knowledge can't be shown on their part.

MR. CONANT: Well, you take it and shove it under the umbrella with the public authorities' protection?

WITNESS: That's the answer I got.

MR. CONANT: That is not very sound.

MR. MAGONE: Doesn't your objection boil down to this: instead of calling it a show cause summons, they call it a judgment summons No. 1 or No. 2?

WITNESS: Yes, I think that a simple act would clarify it. That's what happened; it was in there possibly fifty or sixty years ago, and in some revision, that section just happened to drop out.

Q. Well, is that your main objection, that they call it a show cause when they should call it a judgment summons?

A. That is the main objection, yes.

Q. I see.

A. That is, the form is there in the forms, but there is no provision in the Act to authorize the form.

MR. FROST: Is it shown in the forms of the Division Court?

WITNESS: Yes, I think it is form No. 24, or used to be.

MR. ARNOTT: Do you believe, Mr. McDonagh, we should have a show cause after judgment summons is issued, has been issued in the first place and been defaulted on?

WITNESS: Yes, I think we should, but I think the affidavit required to obtain that summons should be stronger than it is at the present time, because as it is now, a student in an office comes up and swears the debtor John Jones has means to pay the debt and he doesn't even know who John Jones is.

MR. MAGONE: Mr. Chairman, Mr. Silk has been up investigating the possibility of getting a Quebec lawyer, or someone to explain the Lacombe law to us, and he has been in touch with the Canadian Bankers' Association, the Canadian Manufacturers' Association, and the C.P.R., also the Law Society, and apparently there is no one here who can help us.

MR. CONANT: Well then, does the Committee wish to have someone brought up? What is your wish, gentlemen?

MR. FROST: Well, I certainly think that, if it does not involve too much expense, it is desirable for this reason, that if we are going to make recommendations to discard the present system and introduce one that is more effective and that is going to save the people money, and probably is going to save the province money, I think we should get the best advice we can.

MR. CONANT: Yes, it is rather far-reaching.

MR. FROST: You take the case that Mr. McDonagh just mentioned there, the case of a claim for $20, and by reason of judgment summons after judgment summons, that amount increased to pretty near double the amount. Now, it seems to me that if there is to be one application, and the judge is to investigate that man's affairs and make an order, that his employer, as long as he was employed in a certain position and getting so much money, might well pay so much money and end all this duplication and endless evasion. It seems to me that on something so full of possibilities for saving the people's money, we should get the best information we can.

MR. LEDUC: Well, I think we could get a man from Montreal, probably, which would be cheaper than getting him from Quebec, and if the Committee wishes, I can get in touch with the authorities, and by Monday we could probably get an official of the court.

MR. CONANT: I would suggest Mr. Magone get in touch with the Attorney-General of Quebec; he would probably recommend a man from Montreal, would he not?

MR. MAGONE: He may; if they have a salaried official there, we might get a salaried official, to come down by paying his expenses; if we get someone else, we would probably have to pay fees as well.

MR. LEDUC: I believe the clerk of the Circuit Court in Montreal would know all about it, because, if I am not mistaken, that is where these declarations are made, under the Lacombe law.

MR. CONANT: Well, Mr. Magone will look after it.

MR. LEDUC: Mr. Magone, you might ask that he be not only prepared to give evidence on the Lacombe law, but also on the general practice and procedure touching garnishee of wages and attachment and so on.

MR. CONANT: Very well, you will look after it, Mr. Magone, and have him here by Tuesday.

MR. MAGONE: Yes, sir. Well, Mr. McDonagh has a statement of statistics that I think would be interesting, showing what happened in a hundred typical cases.

WITNESS: Yes.

MR. LEDUC: Yes, I think that would be very interesting.

WITNESS: I didn't pick any particular hundred, I just asked one of the girls to take one of the books and take out a hundred cases, as it went along.

MR. LEDUC: Consecutive cases?

WITNESS: Yes, it shows all the details, amount of claim, bailiff's fees, clerk's fees, and so on. I took off the average, and the average amount of the claim is $65.70; the average amount of the clerk's fees, $3.83; average amount of bailiff's fees, $2.48; average amount of disbursements, $0.48, which gives an average total cost, including disbursements, of $6.79. The number of default judgments was percent. The number of judgments at the trial, 20 percent; the number of personal services, 99 percent; the number in which executions were issued, 32 percent; the number of settled actions, 24 percent; and the substitutional services, 1 percent. And then, I have had those fees broken up, into the average in the grouping under the present provisions, of $10 to $20, and so on, and the average costs in actions from $1 to $10, is $2.96; in actions from $10 to $20, $4.86.

MR. LEDUC: The first was cases of $1 to $10?

WITNESS: Yes. And from $20 to $60, $6.13; from $60 to $100, $7.17; and from $100 to $200, $9.28; from $200 to $300, $9.92; and from $300 to $400, $10.11. There was only one case in that group which would bring the average up a little higher, but I think it is a fair picture.

MR. LEDUC: Does that include the cost of execution?

WITNESS: As far as the proceedings taken in court.

MR. FROST: Bailiffs?

WITNESS: Bailiffs and disbursements, and so on.

MR. CONANT: Of course, it is unnecessary for me to make this comment, but I think it is pertinent at this time, that those figures would certainly, in my opinion, at any rate, not be a safe guide for the whole province, because your mileage here is low.

WITNESS: Yes, my mileage is low.

MR. LEDUC: But even so, Mr. Chairman, I notice that the cost is 86 cents of disbursements even in a case involving less than $20.

MR. CONANT: That's right; 25 percent of the amount involved.

MR. LEDUC: Then it rises sharply from $6.13 in cases from $20 to $60, then it rises, from cases of $100 to cases of $200, it rises by $2.

WITNESS: Yes. In connection with that, I will leave the report with you, because it shows the number of executions.

MR. LEDUC: I suppose, out of those hundred cases, you would have very few over $100?

WITNESS: We would have, in this hundred cases, twenty over $100.

Q. That is one-fifth?

A. Yes.

Q. But when you gave the earlier figures, Mr. McDonagh, I took the average, very roughly, of 6,513 cases that you have, excluding judgment summons and transcriptions, and so on, and I arrived at a conclusion that, roughly, the amount involved in each case was $75.

A. Yes.

Q. And that the costs were $6.40.

A. Yes, that is the way it works out. Now, I have also had twenty-five judgment summonses or show cause summonses taken from the books, to show the average costs there, including disbursements, and that runs at $7.14.

Q. That is the average cost?

A. Yes, of course, as Mr. Murphy pointed out yesterday, many of these debtors reside more than three miles from the courthouse, and they are handed 75 cents and ten cents a mile, and some of them get as much as $1.95, and they never think of applying a dollar on the judgment; they will come down and make $1.95 for the day.

MR. CONANT: Just at that point, I think these figures are very enlightening, at least they are to me, I should say, but my remarks of before still applies, that that is hardly an accurate or a safe picture for the province?

WITNESS: I quite agree, sir.

Q. And I wonder if the Committee would not favour the suggestion of picking out a Division Court clerk in a good rural district, and instructing him to compile similar figures, and have him come down and give evidence about the Committee? I think we should have that.

MR. LEDUC: Yes, and furthermore, I think we should have the Division Court clerk of Ottawa, because—of course, I haven't been in Division Court in Ottawa for some time, but it seems to me the number of cases there was nearly as great as it is in Toronto, although Ottawa is a much smaller city.

WITNESS: Of course, we have three courts here.

Q. Well, we have two in Ottawa.

A. Well, strictly speaking, they are not wholly within the municipality.

Q. But the people use them?

A. Yes.

Q. As they use the Seventh Division Court in Ottawa.

MR. CONANT: Well, I suggest again, as a matter of expense, that we bring the clerk from Hamilton, Mr. Leduc?

MR. LEDUC: All right.

MR. CONANT: How long has the clerk been in office in Hamilton?

MR. CADWELL: He has been there for many years. I think, if you are going to have a clerk from a rural district, that you should get one from Sudbury.

MR. CONANT: Oh, well, it doesn't make that much difference.

MR. CADWELL: They have special conditions of service, and so on.

MR. LEDUC: Why not have one from Barrie or Orillia, or Peterborough.

MR. FROST: I think you might get Smith, from Orillia, he is a good man.

MR. CADWELL: He is in the army now.

MR. CONANT: Well, I think Mr. Magone and Mr. Cadwell can pick out a man.

MR. FROST: I think we had better get a man from a reasonably large district.

MR. CADWELL: Well, the Division Court clerk in St. Catharines has a broader experience than any I know.

MR. CONANT: Would he have a large rural district?

MR. CADWELL: Yes, considerably large rural district.

MR. FROST: We have Mr. McDonagh, with a strictly urban area and a small district to travel; now, if you could get somebody that has a large rural district, you might get the other side of the picture, of a man having to travel many miles to attend court or serve summonses.

MR. CONANT: Well, gentlemen, may I suggest that Mr. Magone and Mr. Cadwell can work this out.

MR. CADWELL: If you will leave it to Mr. Magone and myself, we will endeavour to get a suitable man.

MR. CONANT: Is that agreeable?

MR. LEDUC; Yes. Might I suggest this: why not ask the Division Court clerks of the larger Division Courts—you mentioned Hamilton, for instance; why not have the Division Court clerks of Hamilton, London, Windsor, Ottawa, send you statements of the number of cases they have, together with the number of cases with judgment and executions, and so on. We don't need their evidence,

as we will have the evidence of the clerk from Hamilton, say, but we will have the figures.

MR. CONANT: Yes. Mr. Cadwell, you might follow Mr. Leduc's suggestion.

MR. LEDUC: You might include Sudbury.

MR. CONANT: Set up a questionnaire along the lines of Mr. McDonagh's evidence, and get the figures.

MR. CADWELL: I will do that.

MR. MAGONE: Now, Mr. McDonagh, you want to speak about the Creditors' Relief Act?

WITNESS: Yes. Mr. Barlow's suggestion is that the Division Court clerk be required to search the sheriff's office before making any claim. What might be good in theory might not be practicable, as far as the Division Court is concerned. For instance, in the First Division Court of the County of York, many judgments are paid at the rate of 50 cents a week, or $1.00 a week, or a month, and there would be at least five thousand payments in a year, and if I had to search every time in the sheriff's office, with five thousand payments out in a year, I would clog the sheriff's office as well as my own, and I would have to have a certificate of clearance; that is how it affects the busy court, and as far as the effect on the court which is removed from the sheriff's office, it would have to be done by mail, and new payments may be made while the mail is in transit, or new executions may be filed, and I think it would clog the machinery, rather than help the situation.

MR. FROST: Yes, it is hard to see how you could work in the Creditors' Relief in the Division Court, having regard to the numerous payments; do you think there might be—supposing there are several payments in the same court against the same man, do you think then, you could work out some system for creditors' relief, in a case like that?

MR. CONANT: You mean for the Division Court?

MR. FROST: Yes, it seems to me there is some injustice to this extent; A is a debtor, he is sued by B at one o'clock in the afternoon, by C at one-thirty, and so on, and the first man gets it.

WITNESS: The first execution does.

Q. Yes, the first execution; there isn't anything rateable about it.

MR. LEDUC: The debtor could protect one of his creditors by letting the case go through by default.

WITNESS: Yes, there is a provision in the Division Court Act regarding garnishees or persons who are interested in garnishee money; they may apply to the judge for direction.

MR. CONANT: But in cases of executions, the early bird gets the worm?

WITNESS: First come, first served, yes.

Q. That seems to be unfair.

A. They have to wait until the first one is paid off. What they do (and that is where fees mount up), they keep these executions renewed, and it costs 25 cents to renew for a six months' period, and they may have to keep their executions alive for a year, or a year and a half.

MR. CONANT: I think we understand that, yes.

MR. FROST: There might be something, perhaps in the individual Division Courts, where there are a number of suits against the one man, that under some conditions, the procedure might be applied rateably among those creditors after the style of the Creditors' Relief Act.

WITNESS: I think that would be very advisable, and would save the defendant's costs.

MR. LEDUC: Well, there is an instance of the Lacombe law, you see.

WITNESS: Yes.

MR. MAGONE: Then you would have some difficulty too, would you not, in connection with the Master and Servants Act, where a judgment is given in a Police Magistrate's Court for wages?

WITNESS: Yes.

Q. And that becomes a judgment of the Division Court, does it not?

A. It becomes a judgment of the Division Court. That doesn't bother us so much, because the Division Court clerk, I think, is relegated to Twenty-two Acts as well as his own Division Court Act.

Q. Yes?

A. It is the appeal from the decision of the magistrate that I think creates the confusion, as all other appeals are to the County Court judge.

Q. Did you say you only had one appeal last year?

A. There was only one appeal last year.

Q. That could be very easily corrected by providing that the appeal shall be in the same manner as under the Summary Convictions Act?

A. Yes.

Q. I see there is provision in the Master and Servants Act, that the appeal may be tried with a jury?

A. Yes.

Q. Well then, Mr. McDonagh, have you anything else?

A. I understand the members of the Committee are going to be supplied with a copy of my recommendations to Mr. Barlow before his report was made, and my constructive criticism to the inspector of legal offices, after his report. I don't think I need labour anything that is contained in that. I have endeavoured to make it as constructive and as clear as possible.

MR. FROST: Might it not be advisable, if Mr. McDonagh gave us briefly, his criticisms of the Barlow recommendations? That is, if it isn't too lengthy? After all, we are here to hear these things.

MR. CONANT: Well, that was the method we started with, was it not, Mr. Frost?

MR. FROST: Yes.

MR. MAGONE: Your observations on the Barlow report were given to Mr. Cadwell?

WITNESS: Yes.

MR. CONANT: Have we a copy of them here?

WITNESS: Well, I have my copy. To sum it up, practically, my observations are that the situation which exists in regard to Division Courts and its procedure, can be pretty well done away with if the Act, rules, tariff, and forms are reviewed, simplified and rewritten.

Q. What is that again?

A. That the Division Court Act, the rules, the tariff and the forms be reviewed, simplified, and rewritten. I mean that, while it may be perfectly clear to some of the judges sitting on the bench, what they think the law is, the Act, in my opinion, is not clear. I think it is one of the most complicated Acts we have.

MR. LEDUC: Agreed.

MR. CONANT: Well, you have lots of support for that statement.

WITNESS: Yes. For instance, section 54, subsection 2, which I mentioned in my report to Mr. Barlow, has been mentioned; in the first place, that is now before the Court of Appeal again on a motion of probation.

MR. CONANT: Mr. McDonagh, isn't it the case, that this Act, this court, was originally intended as a poor man's court, for the adjucation of claims with a minimum of expense?

WITNESS: Yes.

Q. And now we have an Act that involves a complicated procedure, it is

difficult to apply, in many cases, and, from your experience—and you appear to have made a successful study of this—don't you think it would be possible to revise the whole thing and cut out a lot of deadwood, and yet get something that is workable?

A. I think you could, so long as you have somebody doing the work who is familiar with what the Division Court is supposed to be. I mean, it has to be governed by the practical viewpoint, so far as the drafting is concerned.

MR. MAGONE: Could the number of sections be materially reduced, do you think?

WITNESS: Well, I don't know that I would say materially. I think possibly you could cut out 30 percent of it; for instance, if you look at section 87, dealing with service on partnerships.

MR. CONANT: Yes.

WITNESS: You have nine subsections to it, and when you read them all through, you don't know where you are at. Incidentally, sir, in that connection, may I make one observation with regard to The Partnership Registration Act; it may not be pertinent, but we have run into it; there is nothing in this Act which requires a person to be over twenty-one years of age, and we have had instances of some people having their children, their girls, registered as the proprietor of the partnership.

Q. Yes.

A. And when they are sued, they are minors. I mean, the father and mother are working the store, and they are doing the business, and the girl is along with them, and it is a fairly tight defence in law. I think the Act should be amended to say that it must contain a declaration that they are over twenty-one.

MR. CONANT: Well, I don't think that we can hope, gentlemen, to explore all the details of the Division Court Act; we can only touch what might involve the high spots. There is just one thing I want to ask you there, and I want to have it clearly on the record. The present practice for setting up Division Court Rules, let us get that clearly.

MR. MAGONE: Well, I think the present practice is under section 65, that the Lieutenant-Governor in Council has power ——

WITNESS: Yes.

MR. MAGONE: To set up the rules.

MR. CONANT: That is the present law?

MR. MAGONE: Yes, and also fix the tariff.

MR. LEDUC: Under section 65.

MR. CONANT: What is the practice? There has been nothing done since I've been in office.

MR. MAGONE: That's right, there hasn't been.

MR. CONANT: It would come, naturally, under my department, I should imagine. When were they last revised, does anyone know?

WITNESS: Section 217, and it reads:

> "The Lieutenant-Governor in Council may make rules for regulating any matter relating to the practice and procedure of the courts, or to the duties of the officers thereof, or to the costs of proceedings therein, and every other matter deemed expedient for better attaining the ends of justice, advancing the remedies of suitors, and carrying into effect the provisions of this Act and of all other Acts now or hereafter in force respecting such courts."

MR. CONANT: Well, we will take the practical application of that; since I have been in office, there hasn't ever arisen; I suppose if there were revisions to be made now, certainly the officers of the Attorney-General's department would not make the revisions, because none of our staff practice in that court.

MR. SILK: No. That section was new in 1935.

MR. LEDUC: I just came across something in that section; it says:

> "The Lieutenant-Governor in Council may make rules for regulating any matter relating to the practice and procedure of the courts . . ."

WITNESS: Yes.

Q. Now, if you go back to the interpretation section, there is no interpretation of the word "courts"; could that mean all courts, or only the Division Courts?

MR. SILK: Oh, it is contained in the Division Court Act, so I don't see ——

MR. LEDUC: Yes, but it says "the courts".

MR. CONANT: That is bad.

WITNESS: In another section it says, "the Division Courts existing at the time of this Act being passed shall continue."

MR. CONANT: While the law is perfectly clear that it is done by an Order-in-Council, we know as a matter of practice, that it is all based upon preliminary work done by somebody?

WITNESS: Yes.

Q. Now, what should be the machinery for preparing and propounding these rules?

MR. LEDUC: I think, Mr. Chairman, if I may say this, the Lieutenant-Governor in Council is empowered to make rules, and as you state, these rules could be brought to the Council by the Attorney-General, and I suppose the Attorney-General could get his information from the clerks and judges of the courts, and so on.

MR. FROST: Well, as regards the other rules, there is a rule-making body of judges?

MR. CONANT: That is just what I am coming to, Mr. Frost.

MR. FROST: Do you think that there might not be some method of having these rules kept up to date from time to time, and to have some sort of a committee of Division Court officials and judges, who would keep this Act up to date? Now, there are some things in here that, as you or Mr. Barlow mentioned, go back to 1850. They are antiquated and out of date, and there are some things such as you mentioned, like the show cause summons, on which a rule-making body could sit periodically and make recommendations, and then submit them to the Attorney-General.

MR. LEDUC: It would be an advisory committee?

MR. FROST: Yes, it would be an advisory committee, I agree; we should not give them power to legislate.

MR. CONANT: That would work out in this way, Mr. Frost; we have quite a few bodies that set up rules, chiropractors, and other such people—I mention them particularly, because they are always wanting rules passed or made, and in most of those cases it is provided that they make rules for the conduct of the business organization, subject to the approval of the Lieutenant-Governor in Council; they set up these rules, they bring them in, and the Attorney-General looks them over, he takes advice, if he thinks it is necessary, and then they are put through by Order-in-Council.

MR. LEDUC: But may I interject this; these are independent bodies.

MR. CONANT: Oh, yes.

MR. LEDUC: It is a different set-up or organization from these which are provincial courts and part of the machinery of this province.

MR. CONANT: What I had in mind was this: if, at a later stage, this Committee were to consider them and recommend the reconstitution of the Rules and Practice Committee, I am not sure, at this moment, that that should cover or include the Division Courts, because it would have to be—you would have to bring in division court clerks, and I don't think it would jibe.

MR. LEDUC: No.

MR. CONANT: But I am not, also, so sure whether we shouldn't set up a similar organization dealing only with division court rules, and call it the Rules of Practice Committee of the Division Court, so that it would be the rule-making

body, and subject to the ruling of the Lieutenant-Governor. What would you say as to that, Mr. McDonagh?

WITNESS: I think that the division court rules should be drawn by a body separate from that of the Supreme and County Courts, and that it should consist of those who are familiar with the Division Courts. I would have, possibly, if I may suggest it, a judge from Toronto, a municipal division court clerk, a rural division court clerk, a representative of the young lawyers' club, and a representative of the collection agencies, to sit under the direction of the inspector of Division Courts.

MR. CONANT: Yes. Well, I think that is a thing the Committee might consider in due course.

MR. MAGONE: Well, with respect to that, I might point out, and Mr. Silk has brought it to my attention, that there was a Board of County Judges, whose duty it was to revise these rules. They sat from time to time, usually once a year, and they came down to Toronto, usually, to hold their sittings. That was found to be expensive and inefficient, and that is the reason this amendment was passed. Now, if the section were left as it is, the Attorney-General then could constitute his own committee?

WITNESS: Yes.

Q. At any time?

A. Yes.

Q. When he thought it necessary, and not when the judges thought they wanted to come to Toronto, but when the Attorney-General thought the rules should be revised.

MR. LEDUC: I agree with that point. I would much rather have it that way.

WITNESS: May I say, sir, I wouldn't have the judges constitute your committee, because I ran into this ——

MR. CONANT: You wouldn't have what?

WITNESS: The county judges constitute your committee.

Q. None of them on it?

A. I would have one, but as it was previously, it was the judges alone, and at their annual meeting, they are supposed to go into these things, and when I inquired about certain rules, and so on, when I was first appointed, I was told the judges committee had changed the 1914 regulations, and when I asked for a copy of them, it wasn't possible to get it. So that there were no records kept of the proceedings, or if they were kept they were not available to the inspector of Division Courts.

MR. LEDUC: I am inclined to agree with Mr. Magone; the Attorney-General could form his own advisory committee.

MR. FROST: I agree with that, too. I suggest you might do it in this way; if you just made it a rule that each year the inspector of Division Courts was to convene a committee, which would be named by yourself, to consider the provisions of this Act, changing of rules, and so on, or if one year is too often, make it every two years, but I think that would correct a lot of difficulties you are having with this Act.

MR. CONANT: That brings to mind, am I right, that there was some suggestion of expense being inordinately high in connection with that?

MR. MAGONE: Oh, yes, that was one of the objections to it. I might say that it wasn't all the county judges, but a committee of five of them appointed by themselves.

MR. CONANT: Well, I think it is clear to the Committee. All right, Mr. Magone.

MR. MAGONE: Mr. McDonagh, you were dealing generally, I think, with your observations on Mr. Barlow's report. Have you completed those observations?

WITNESS: No, all I said was my whole suggestion really boiled down to reviewing, simplifying and rewriting the Act.

Q. Yes.

A. I wouldn't want to belabour the Committee with details of how sections 61, or 5, should be amended; I don't think that is what you want me for.

Q. No. Well, we dealt with the suggestion that was made, that the judgment of the Division Court might be made a judgment of the County Court, or that the execution might be issued directly by the division court clerk to the sheriff of the county.

A. I heard that. As far as Toronto and the cities are concerned, I don't think it would be effective. The costs, I think you would find, would be the equal of what the costs are now, because you would have to reduce the sheriff's tariff to meet that condition. I can see where it might be effective in places where you have to travel fifty or sixty miles, by having deputy sheriffs to do that particular type of work.

Q. Well, following that, supposing the Act were amended to provide for service of summonses by registered mail or by the plaintiff himself, would that materially reduce the income of the bailiff in Toronto?

A. Well, as I understood it, the Attorney-General's idea on that was that it was to be optional.

MR. CONANT: Oh, yes.

MR. MAGONE: Yes.

WITNESS: That would reduce the income of the bailiffs in Toronto, there is no question about it.

MR. CONANT: Well, isn't the answer to that, Mr. McDonagh, that you have a number of bailiffs in this work?

WITNESS: Well, I have two official bailiffs to my court.

Q. Yes. Well, both here and throughout the province, it would ultimately reduce the number of bailiffs, isn't that true?

A. Yes, it would reduce the number of bailiffs.

MR. MAGONE: But, in so far as the courts in Toronto are concerned, it wouldn't reduce the income to such an extent that they couldn't carry on?

MR. CONANT: I think the way to put that question is this, to the extent that you couldn't maintain the bailiffs' service.

MR. MAGONE: Yes, that is better.

WITNESS: No, you could maintain a bailiff's service; it would mean a reduction in his staff, and the bailiff himself might well have to work himself, out on some of it, because you put a man in the position ——

MR. CONANT: Well, I think we understand that problem fairly well, Mr. Magone. Is there anything else, Mr. McDonagh?

WITNESS: No, I think the whole thing boils down to the rewriting of the Act.

Q. Yes. Well, I think if we were to rewrite the Act, whoever is in charge of it should get in touch with Mr. McDonagh.

A. Is there anything else you would like me to give you now, sir?

MR. MAGONE: I think that is all from Mr. McDonagh, Mr. Chairman.

MR. CONANT: Thank you very much for your assistance, Mr. McDonagh.

—— Witness excused.

J. ROY CADWELL, Inspector of Legal Offices.

WITNESS: First of all, Mr. Chairman, I have the copy of these expenses, which you asked me to prepare.

MR. MAGONE: That is a break-down of the costs, is it?

WITNESS: No, the general expenses of the municipalities and counties. It was covered the other day, and this just summarizes what was ultimately decided.

MR. LEDUC: Taking No. 1 first, Mr. Cadwell:

"In each municipality in which a Division Court is held, the municipality is required to furnish a proper court room and other necessary accommodation."

Does that apply also to the districts?

WITNESS: Yes, that applies to the districts. They don't require to supply an office or office accommodation in the counties, but they must provide court accommodation.

MR. CONANT: Well, but in the districts, what does that mean, that it comes back to the province?

WITNESS: Yes.

Q. Well, that is what we want to know.

A. Yes, it comes back to the province eventually, in the districts, because the province looks after the district courts.

Q. Yes, all right. Now this item 2—were you going to examine Mr. Cadwell on this, Mr. Magone?

MR. FROST: Have you anything in particular in there about the cost of juries?

WITNESS: No, I haven't anything in connection with the expenses regarding costs of juries.

Q. Well, the counties, I presume, are saddled with the costs of juries, are they not?

A. They are, yes, they receive, I believe, 25 cents for each case.

Q. Well, what rather interested me in asking that question was this: that each division court case contributed so much towards the cost of juries, and apparently the cost of juries in the province is very much less than the municipalities receive from this jury fund, and I understand that, just by way of practice, and unofficially, they apply that to the cost of the books, is that right?

A. I imagine that is the practice, Mr. Frost.

Q. Actually speaking, they should set up a separate fund for this jury fund, and it should be used for that purpose only?

A. As a matter of strictness, it should be kept in a separate fund for that purpose.

MR. MAGONE: Is there anything in the Act which says it should be kept separate?

A. No.

MR. FROST: Other than that it should be kept in a separate fund, called the jury fund.

MR. LEDUC: Going down to No. 2, there, Mr. Cadwell:

> "Where the fees and emoluments earned by a clerk or bailiff are less than $1,000 a year, the local municipality in which the Division Court is held shall pay to the clerk and bailiff respectively, the sum of $4 for attending each sitting of the court."

WITNESS: That's right.

Q. Now, outside of the cities and towns, how many local municipalities are there where a clerk and bailiff earn $1,000 or more?

A. Very few.

Q. Very few?

A. Yes.

MR. CONANT: What is that?

WITNESS: Very few.

MR. LEDUC: In rural municipalities, there are very few where the earnings of the bailiff and clerk amount to $1,000 a year.

MR. CONANT: Oh, well, in the vast majority of our courts it wouldn't amount to half of that.

WITNESS: That's right.

Q. Are you following that up? On that point, Mr. Cadwell, although it is, perhaps, not immediately relevant, you have been compiling figures from time to time within the last year?

WITNESS: Yes, sir.

Q. Regarding a number of cases?

A. Yes.

Q. Following my indication of policy, where the number of cases in the court was down below fifty, and where there was a vacancy, we would do all we could to close the court, is that right?

A. Yes.

Q. Yes. Now, can you give the Committee some idea of the number of cases that are tried by some of these small courts?

A. Well, we have some courts that have as few as eight cases a year.

Q. Eight cases a year.

A. I could tell you of one right away. We have four courts in Victoria County that, at the present time, average about nine cases a year.

MR. FROST: Where would they be?

A. Bobcaygeon with ten cases, Woodville with about nine cases, and there is Omemee with a similar number of cases.

Q. That is largely due to the fact that, in the case of Omemee, Lindsay Division Court is quite a big one and most of the cases are tried there?

A. I was going to refer to that when I went over my opinion of the Barlow report, to indicate that, as far as the territorial jurisdiction is concerned, if that were increased to a county jurisdiction, it would tend to eliminate the smaller courts.

MR. CONANT: That is the answer, yes. But I want to pursue that, if I may, because I think there is a popular misconception; Mr. Cadwell can confirm this observation or otherwise, that in our effort to abandon these very small courts is frequently met with the objection, "Well, they don't cost anybody anything." Isn't that right, Mr. Cadwell?

WITNESS: Yes.

Q. Now, that is not correct, is it?

A. No, that is not correct, because the municipality, or somebody has to pay. It's true that we don't pay ——

Q. Quite.

A. —— the division court clerk or bailiff any salary, but whether it is the municipality or the county or the federal government, somebody must pay for the operation of the court.

Q. Well, when the judge goes out to one of those small courts, or any of them, where their earnings are less than $1,000 a year, what happens?

A. The county has to pay for a court reporter.

Q. Yes?

A. The municipality has to pay for the attendance of the bailiff and clerk.

Q. Yes?

A. And the federal government would have to pay the expenses of the judge.

Q. Yes. Now while, of course, the expense is divided between three jurisdictions, yet the tax-payers, in the final analysis, have to pay the expenses.

MR. LEDUC: Absolutely.

MR. FROST: Of course, it is fair to say that, for some of those small courts, many of the judges—and I can say this for the judge of the County Court of the County of Victoria—are very reasonable about that; if there isn't a case there, he always ascertains that and he doesn't appear, and therefore there is no court, and there are no charges.

WITNESS: Well, that is the recommended procedure, but I have information on file which indicates that in some counties the judge instructs the clerk of the court not to notify him if there isn't any case.

MR. CONANT: What is that? Just a minute, I think that is a statement of the utmost importance; pardon me, Mr. Frost, will you repeat that, Mr. Cadwell?

WITNESS: I have information that, in some of the counties, a judge has given instructions to the clerk of the court not to notify him if there aren't any cases, because, otherwise, he goes, and receives the expense account for attending.

Q. Well now, what does the judge get from that, what does he make out of it?

MR. FROST: His $6 a day and his mileage.

MR. CONANT: I want it on the record; tell us what he gets?

WITNESS: He receives his $6 a day and his expenses.

MR. MAGONE: The expenses or mileage, in the case of the judge?

WITNESS: No, it's expenses.

Q. Yes, I don't think the Dominion pay mileage, do they?

A. Not to my knowledge.

MR. CONANT: But there must be some yardstick where he drives a motor car?

MR. ARNOTT: I understood he got mileage.

MR. CONANT: The Dominion must set something.

WITNESS: And now, I was going to go through the Barlow report.

MR. CONANT: Well, just on that last observation of yours, that some judges do not allow advice to be given to them so that they would go out, ostensibly to get their fee and mileage, how can that be overcome?

WITNESS: Well, I don't want to put the onus on our division court clerks, because they are necessarily under the jurisdiction of the judge, and the judge can make it rather difficult for a clerk if he wants to. If anybody is to be responsible for it, I think it would be the government that pays the expenses.

MR. MAGONE: Would not a direction from the Inspector of Legal Offices get over that?

WITNESS: Well, the county judges do not come under the jurisdiction of the Inspector of Legal Offices.

MR. CONANT: Under whose jurisdiction do they come?

WITNESS: The Deputy Minister, at Ottawa.

Q. And what jurisdiction does the Deputy Minister at Ottawa exercise, in practice, I mean?

A. Well, in practice, I doubt if he exercises any supervisory jurisdiction.

MR. MAGONE: Well Mr. Cadwell, I don't find myself in agreement with that last statement. If the judge is acting as division court judge, he is our judge?

WITNESS: Yes.

Q. We pay him $1,000 a year?

MR. LEDUC: What for?

MR. MAGONE: We pay the county judges $1,000 a year for carrying on ——

MR. CONANT: All professional services.

MR. MAGONE: —— any duties imposed upon them.

MR. CONANT: Yes.

MR. MAGONE: By any provisions in our statutes.

WITNESS: They are appointed, as I understand it, under the Surrogate Courts Act, and paid for doing that work.

MR. LEDUC: I thought that was the understanding.

MR. FROST: How is it some judges don't receive anything, they receive no provincial salary at all; I thought it was only on the appointment as ——

MR. LEDUC: I think what you say, Mr. Magone, applies to Supreme Court judges.

MR. MAGONE: Oh, no.

MR. SILK: The Supreme Court judges get it under the extra-judicial proceedings.

MR. CONANT: I had in my hands yesterday, a list, Mr. Magone, of the compensation of all county judges; have you it here?

MR. MAGONE: No, I haven't it here.

MR. CONANT: If you had it here, it could be put on record; it was compiled at the request of Mr. Frost. I sent him a copy and we should have a copy here.

MR. FROST: They all get provincial salaries, that's right, Mr. Chairman.

MR. CONANT: Yes.

MR. LEDUC: I thought they were paid that as surrogate court judges.

MR. MAGONE: No.

MR. CONANT: That list should be placed on record, Mr. Magone.

MR. LEDUC: Would that be in the public accounts?

MR. MAGONE: Yes, I might give a very short history of this thing. Formerly, the county judges were appointed surrogate court judges by the province, under its power to appoint surrogate court judges. The senior judge was usually appointed surrogate judge, and his fees were commuted at $1,000 per annum for his surrogate work. In counties where there was a junior judge, he did not receive the $1,000 per annum.

MR. CONANT: That is, the junior judge didn't?

MR. MAGONE: Yes. But where the fees earned by the surrogate judge were over $1,000, the junior judge received the surplus fees over $1,000, up to $666; why that amount was set I don't know. And in a number of counties, at the end of each year, we would get an account, I think through the Inspector of Legal Offices, from the junior judge, and pay him that amount. About 1919 the Act was amended to provide that every county judge in the province would receive, for any services he performed under the provisions of any provincial statutes, the sum of $1,000, except in the County of York, Middlesex, and Wentworth, where the senior judge was paid $1,600.

MR. CONANT: Yes, those figures are there.

MR. MAGONE: That was afterwards amended, in so far as the County of York was concerned, to provide that every county judge and junior judge in York would receive $1,600. The result is that now in York, all the judges receive $1,600 and all the judges and junior judges throughout the province receive $1,000.

MR. LEDUC: Has the $1,600 been abolished in Middlesex and Wentworth?

MR. MAGONE: Yes.

MR. MAGONE: As the judge receiving that salary vacated office, the amount reverted to $1,000.

MR. FROST: Well, why should there be a per diem allowance at all, in connection with division courts?

MR. MAGONE: It is supposed to take care of his hotel expenses. It is a living allowance.

MR. FROST: Yes, but he receives expenses though, does he not; he gets his expenses?

MR. MAGONE: I don't think so, Mr. Frost. My understanding is that the $6 is a living allowance. It says so in the Dominion Judges Act, and anything he gets in addition to that is a travel expense.

MR. FROST: Well, according to the Dominion Act, he then receives something every time he leaves the county town, is that it?

MR. MAGONE: Yes. It is in section 21 of the Dominion Judges Act.

MR. LEDUC: I think it is $10 for high court judges and $6 for county court judges.

MR. MAGONE: Section 21 reads as follows:

> "There shall be paid for travelling allowances to each judge, whether of a superior or county court, and to each local judge in Admiralty of the Exchequer court, except as in this section otherwise provided, in addition to his moving or transportation expenses, the sum of $10 for each day, including necessary days of travel going and returning, during which he is attending as such judge in court or chambers at any place other than that at which he is by law obliged to reside, if such attendance has been in any place which is a city, otherwise he shall be paid the sum of $6 for each day he has so attended."

MR. LEDUC: Oh yes, you're right.

MR. CONANT: This whole question, of course, gentlemen, is proper to our inquiry, but it is a little remote in this respect, that, after all, it is a federal matter. This Committee might properly, I think, if it saw fit, formulate and submit to the federal authorities its recommendations.

MR. FROST: Well, in what way would that account that was referred here the other day, of a judge down in eastern Ontario, who got $1,000 for travelling expenses, how in the world would that ever be compiled?

MR. MAGONE: That could only result, I think, from a judge from one remote part of the district attending Division Court in some other remote part of the district, so that his moving expenses would be heavy.

MR. CONANT: Well, I am not sure, gentlemen, whether we could or could not properly make any submissions to the federal authorities.

MR. LEDUC: I think we might just as well stick to our own ——

MR. CONANT: I don't know whether we could or not, but I would like more particularly to examine, Mr. Magone, any provincial legislation that might affect this situation.

MR. MAGONE: Well, I was going to ask Mr. Cadwell if the Inspector of Legal Offices might not direct the clerk to advise the judge if there were no cases?

MR. LEDUC: The best thing would be, when we amend the Act, to put it in the Act.

WITNESS: I would prefer it to be in the Act, because, as I say, I wouldn't want to have the clerk in the position of depriving the judge of anything he thinks he is entitled to receive.

MR. CONANT: You are not suggesting a conspiracy of any kind, are you?

WITNESS: Not at all.

MR. LEDUC: There is another point that must be remembered also, that a judge will travel to a court where there is one case, he will get there, find the plaintiff, and find that the defendant does not deem it advisable to appear. And in that case, you can't blame the judge or the clerk, or anyone.

MR. CONANT: No. Well, is there anything else from Mr. Cadwell, Mr. Magone?

MR. MAGONE: Yes. Were you going to deal, Mr. Cadwell, with the recommendations of Mr. Barlow?

WITNESS: Yes, I was going through the recommendations. The first recommendation, in relation to amount of jurisdiction, I would like to leave that for a later period. The second recommendation, that the procedure be simplified, I think that is essential, that there be some simplification of the Division Court Act, the forms and rules.

MR. CONANT: You mean a revision of them?

WITNESS: I think they will have to be revised and simplified.

MR. FROST: You heard the suggestion this morning, of a Committee sitting periodically, in connection with division court rules; do you think that would be advisable?

WITNESS: Well, I think you will have to go further than that, if you are going to simplify the procedure generally, because the Act itself is one of the most complicated documents we have; it has been amended, in substance, by the rules and by the number of cases that affect the Act, and as far as being capable of ordinary interpretation by the layman, it can't be done, and I think, if you are going to have a division court Act that is supposed to satisfy the poor man and his claims, the Act should be simplified.

MR. FROST: You heard what Judge Barton said here yesterday? He thought it was quite simple, perfectly simple.

WITNESS: It is perfectly simple to him, to a judge that has been on the bench as long as Judge Barton, and has made a special study of it.

MR. STRACHAN: As a matter of fact, it isn't simple to the judges; there is a great difference of opinion, even in the higher courts, as to the meaning of some of the sections.

WITNESS: You only have to look at Bickell and Segar to see that the Act certainly is not simple.

MR. STRACHAN: There are more decisions on that Act than on the Mechanics' Lien Act.

MR. MAGONE: Do you think we might abolish Bickell and Segar if we amend the Act, Mr. Cadwell?

WITNESS: Well, I was going to suggest that either the Small Claims Court be made a Small Claims Court and to eliminate The Division Court Act, or the present Division Court Act be simplified. When the matter was first discussed, and Mr. Barlow brought out his report, our department drafted a small type of court, and if you would like to receive parts of that, it might be very helpful.

The first suggestion we had would tend to redistribute the 304 Division Courts in the province on the basis of population and service rendered, and reduce the number of courts to not more than 138, without territorial restriction.

MR. MAGONE: How many are there now?

MR. FROST: If you do that, without territorial restrictions, you would get into the old difficulty of a poor man who lives down by Ottawa being sued by a thrashing machine company down in Sarnia.

WITNESS: Well, I am thinking of territorial jurisdiction in the county.

MR. MAGONE: Yes.

WITNESS: The only problem that is attached to that is, that the bailiff's fees are greater under the present system, the greater the distance the defendant is from the Division Court in mileage, because the bailiff receives 20 cents a mile for services. Incidentally, the highest service we have to pay our sheriff is 15 cents a mile, and why the bailiff receives 20 cents a mile, I don't know.

MR. MAGONE: Are they both one-way payments?

WITNESS: Yes.

MR. FROST: It's another example of things not being carried out in a parallel manner.

MR. CONANT: Well, they are working that out now.

WITNESS: Another reason I recommend that, is, if that were done, you would get a better calibre of clerk and bailiff. If you only pay a man $250 a year, and some of our clerks and bailiffs receive much less than that, the work must necessarily be part-time work, and with the complicated Act that you now

have for them to study, the average clerk either won't take the time to study it, because it isn't worth while, or he hasn't any background to study it, even if he would take the time. And if we are going to have a more efficient court, it would seem that you would have to have a more efficient personnel in the operation of that court. Now, this simplified procedure, if you accept it, would be simply that the plaintiff would file a notice of claim with the division court clerk, accompanied by an itemized account of the debt, and then, the second thing, the clerk would receive the claim and make an entry in the procedure book, and then the clerk attaches to the notice of claim, a blank form for the use of the defendant in entering a dispute, and both of these are sent, by registered mail, to the defendant.

MR. CONANT: I don't know, Mr. Magone, that we should take time with that detail. I don't think this Committee can settle more than general principles.

MR. MAGONE: Yes.

MR. CONANT: Don't you think so, Mr. Frost.

MR. FROST: I agree with you, Mr. Chairman.

MR. ARNOTT: Mr. Cadwell, you recommend the reduction of the number of Division Courts, and you considered diminishing the number of sittings, for instance, in the small towns?

WITNESS: Yes. Well, your section 9 of The Division Courts Act sets the number of sittings.

MR. ARNOTT: Well, it says:

> "(1) A sittings of the court shall be held in each division once in every two months, or oftener in the discretion of the judge who presides over the division courts of the county, and the judge may appoint from time to time; alter the times and places for holding such courts, subject, however, to any discretion which may be made by the Lieutenant-Governor in Council and shall notify the clerk, thereof."

WITNESS: The problem under the present Act, if you delay the number of sittings, is that so many of the workings of the court are relative to the sittings, that they might be delayed a matter of six months or a year in relation to a claim that you want to collect. That is the problem.

MR. CONANT: May I interject this: it does suggest itself to me, that that section 9, and I thought of it before, should be under some control by the Inspector of Legal Offices.

MR. ARNOTT: That is my point.

MR. CONANT: Because you have the possibility of the same abuse creeping up that has been at least suggested here, and then I don't consider, for my part, a court every two months as practical; three or four courts a year would be plenty.

What would you say, Mr. Cadwell, from your experience, if that section 9 were made the final disposition of something under the control of the Inspector of Legal Offices, or the Attorney-General, or something of that kind?

WITNESS: Well, that would help, provided you leave the Act as it is. But it is difficult for me to think of improving the Act and simplifying it by simply changing one section of the Act.

Q. Yes.

A. It needs a complete overhauling.

Q. Yes.

A. If you are going to gain any results as far as the convenience and service to the public generally as concerned.

MR. CONANT: Well, I think the Committee have that consideration in mind. Is there anything further, Mr. Magone?

MR. MAGONE: Yes, I wanted to ask Mr. Cadwell about surplus fees; have you a statement with respect to the surplus fees that are paid over to the municipalities?

WITNESS: I don't understand that, "paid over to the municipalities".

MR. FROST: Juries' fees?

MR. MAGONE: No. Oh, they are paid over to the province, are they?

WITNESS: Yes, the surplus fees are paid to the province.

Q. Probably you had better just tell the Committee how this surplus fee fund is made up, first.

A. Well, under The Division Courts Act, there is a percentage of a certain amount, whereby the clerk, after paying the expenses of the court, and so on, pays a percentage to the province.

MR. CONANT: Yes.

WITNESS: Part to himself, and part to the province. And the same is true of the bailiff. I can give you the exact divisions; perhaps I have them here.

MR. CONANT: Of course, that only affects comparatively few courts?

WITNESS: Yes, there are only perhaps about fifteen or twenty courts in the province that that affects.

Q. Yes.

A. That amount is tending to increase, not because there is greater business

in the courts, but the courts are operating more efficiently now in that percentages have been commuted on salary basis.

Q. Yes.

A. Which means there is greater surplus to the province.

Q. Well, you don't suggest any revision of that?

A. I don't think it would be advisable to make any change in that at the present time, because the Act provides that it can be changed by Order-in-Council by commuting the officer in question.

Q. Yes, it is a matter of reconciling provincial revenues with reasonable compensation to the officials of the county involved, isn't that it?

A. Yes.

MR. MAGONE: As Inspector of Division Courts, Mr. Cadwell, what is the principle complaint you get about Division Courts?

WITNESS: Well, the principal complaint is that the bailiff is not prompt enough in following the procedure of the Act, that there is a delay and that the costs are excessive. Those are the general ones.

Q. In connection with the fee that the clerk requires to be deposited with him in court, on entering a claim, are large surpluses built up by the clerk, unearned fees?

A. Over the province generally, I would think that there would be very little. There are some surpluses, but my experience, outside of the larger cities, is that, although the Act says that a deposit should be made, in many cases it is on the credit basis, with the result that our division court clerks and bailiffs, in several instances, are not receiving the money that they should receive.

Q. But, in some of the larger centres, there is some cause for complaint, is there not?

A. I haven't received any.

Q. Probably I might recall to your mind the case, Attorney-General versus Howard, I don't know whether you are familiar with that case?

A. Yes, I am.

Q. That was a case where a large surplus was built up by a former clerk of the Division Court.

A. Well, over a period of time, in a court like we have in Toronto, with the number of claims we have, if there is an overpayment of 50 cents on each claim, you can see how high it would become in a year, and that was evidently what happened in relation to the Howard case.

Q. And there is no duty upon the bailiff to inform the plaintiff or his solicitor that there is a surplus there?

A. No.

Q. With the result ——

MR. CONANT: Why shouldn't there be a duty on the clerk to inform them?

WITNESS: I presume the reason is that the plaintiff is expected to look after his case.

MR. MAGONE: Wasn't it quite a large surplus built up? Do you remember the amount, or the approximate amount?

MR. CONANT: Six thousand dollars, wasn't it?

MR. MAGONE: Something like that.

MR. FROST: I thought it was thirteen thousand dollars.

WITNESS: I don't remember the amount, but I think it was something like that.

MR. MAGONE: I am informed it was over ten thousand dollars in four years, in this particular case.

WITNESS: Yes.

Q. Have you any knowledge of that?

A. No, I haven't.

Q. And it was held, I understand, that the clerk was in the position of a trustee, personally responsible for that money?

A. That was the judgment, I believe.

Q. It wasn't money that was paid to the court, it was paid to the clerk.

A. That's right.

Q. Yes, so that when the clerk died, in that case, it was impossible to collect it from his estate?

A. That's what I understand.

MR. FROST: In other words, each individual suitor should go to him and say: "I want my 50 cents back."

MR. MAGONE: Yes.

MR. FROST: That's peculiar.

MR. MAGONE: And in this particular case, the Attorney-General brought an action, suing on behalf of all the suitors who had paid money in, and the court held that it was in trusteeship, and each individual suitor would have to bring an action by himself.

MR. FROST: That's a peculiar situation.

MR. CONANT: Yes. Wouldn't the situation be met if, at the close of each year, these clerks were obliged to forward to the province, the Treasurer or the Attorney-General, surplus money in hand, and a statement on how they were derived, and then the province hold those funds, and they would be available for anybody who came along and claimed them.

MR. MAGONE: Yes, some scheme could be worked out, Mr. Chairman. That is my reason for bringing it up, so that it might be worked out.

MR. CONANT: Well, I think it's very proper to bring it up at this time.

WITNESS: Well, I don't know what the former practice was, but it couldn't occur under the present practice, because we require the clerks to deposit all moneys in the clerk's trust account, and at the end of the month, the amount for his fees and the amount for bailiff's fees is deducted and the amount that is properly payable to the suitor's trust fund is paid out and there isn't any surplus.

MR. ARNOTT: That's right.

MR. CONANT: Is it audited?

WITNESS: Yes.

Q. By competent officials?

A. Yes, by two auditors under my department.

Q. They are chartered accountants, are they?

A. They are accountants.

Q. How long has that practice been in force?

A. Well ——

Q. It's since I came here, is it not, that that practice was started?

A. Yes, I think it was started in 1937, after you took office.

MR. MAGONE: So that if a clerk now dies, his successor in office takes over that fund?

WITNESS: That's right.

MR. CONANT: I think, in all our outside services, Mr. Cadwell, not only

do we periodically audit, but when one official dies and another takes over, there is an audit for the transfer, and it is taken over on an audited statement basis?

WITNESS: That's right. And another change too; formerly the account was in the personal name of the clerk of the court, whereas at the present time, all the accounts are in the name of the court.

Q. Yes.

A. And not in the name of the clerk.

MR. MAGONE: In your opinion, should a provision not be inserted in the Act, instead of making it merely a departmental regulation?

WITNESS: I think it should be in the Act, yes.

Q. Did you have a copy of a block system of tariffs that you wanted to submit to the Committee?

A. Yes, I have. On first considering the Barlow report, I indicated there was a very simplified method of procedure that you use if you wished. That is set out in this memorandum, and it can be filed, if you wish.

MR. CONANT: That can be filed, Mr. Magone, that is Mr. Cadwell's suggestions for simplified procedure.

WITNESS: That is if you are taking into consideration limiting the jurisdiction of the court to $100.

Q. Yes.

A. If you are going to leave the court in its present form, I see no point in limiting the jurisdiction of the court to $100. In fact, I would be in favour of increasing the jurisdicton of the court, in that, if you have the costs of the court constant, and you increase the jurisdiction, you reduce the costs, and under the simplified method such as outlined here, with the assistance of some of the division court clerks, we have worked out a block system of costs, and they are as follows: (and this is for all services from entering action or issuing a judgment or interpleader summons up to and including judgment and issuing execution or transcript. That is, it doesn't go all the way, but it goes up to judgment, including execution).

Q. Yes. Does it include the cost of service?

A. Yes.

Q. Bailiff's fees?

A. Including everything up to that time. Where there is one defendant, where the claim does not exceed $10, that is up to $10, the complete charge would be $2. From $10 to $20, the complete charge would be $4, and if there is an additional defendant added, 80 cents. From $20 to $60, the complete charge

would be $5, and for each additional defendant, $1. Between $60 and up to $100, the complete charge would be $6, and for each added defendant, $1.25. From $100 up to $300, complete charge, $9.50 and for each added defendant, $1.50. Where the claim exceeds $300, the complete charge will be $12.50, and for each added defendant, $2.25. And then I have added a note, after two adjournments, if there are more than two adjournments, 75 cents for each adjournment.

MR. FROST: How does that compare with Mr. McDonagh's schedule? In the first place, under $10, it is $2, as compared with $2.09. From $10 to $20, it is $4, as compared with $4.86. From $20 to $60, $5, as compared with $6.13. From $60 to $100, it is $6, as compared with $7.17. From $100 to $300, it is $9.50, as compared with $9.92. And for the maximum claim it is $12.50 as compared with $20.11.

MR. CONANT: Well, it is a little lower all the way down the line.

WITNESS: Well, it can be done for less, because you haven't the book-keeping. Under the present system, you have to keep track of all the individual fee items, and there is probably twenty-five or thirty for the clerk and about ten or twelve for the bailiff, and it doesn't cost so much to have the book-keeping done, and another thing, I think this would increase the business of the Division Court.

MR. ARNOTT: There is a tendency not to use the court now, on account of those costs?

WITNESS: Exactly.

MR. CONANT: Well, if I may interject, I am strongly of this opinion, that it is not only the amount involved, but also the uncertainty of the amount involved. I think that is the primary factor. Under our present system, if you enter a claim in a Division Court, and particularly in the country, you can only guess what the costs are going to be before you get through with it; is that not right, Mr. Cadwell?

WITNESS: That is right, sir.

MR. MAGONE: Yes, and that is the reason this surplus is built up in this court.

MR. FROST: In connection with the block system, that includes up to what, execution?

WITNESS. Up to and including judgment, execution or transfer.

Q. Well, supposing a claim is entered in court, and it is settled, who gets the refund?

A. Well, that would be one of the cases where it would be to the advantage of the clerk. There are other cases where it would not be to the advantage of the clerk.

MR. CONANT: It would average up?

WITNESS: Yes, it would average up.

Q. Just following that for a moment, should there be any difference in what you might call the strictly urban courts and the rural courts? For instance, there are courts in the province where the total mileage possible would not exceed, perhaps, five miles, and then you have courts in the province where the mileage might run to fifty miles.

A. Well, that is one of the big problems in dealing with the Division Court, that it ranges from a small mileage to a great mileage.

Q. Yes.

A. And it ranges from a small number of cases to a large number of cases. If it were practical and possible, there should be some difference between the suburban municipalities and the rural municipalities. That is a matter of legislation.

Q. Well, there is also this other anomalous situation, that if you had one block system for the province, you would be enriching the urban courts and perhaps impoverishing the rural courts, when what we require is the very opposite, we need to enrich the rural courts and perhaps deduct something from the revenues of the large urban courts, isn't that correct?

A. Well, the only reason that the large urban courts have a surplus is not because of the difference in fees, it is in the volume of business.

Q. Yes.

A. But in approaching this problem, you can't make any progress in dealing only with one aspect; you have to consider the total Act and the total number of changes that you are making, and then apply your block system and you will arrive at the result that you want to arrive at.

MR. CONANT: Is there anything further from Mr. Cadwell, Mr. Magone?

MR. MAGONE: I don't think so, unless Mr. Cadwell has something further.

WITNESS: This only takes you up to execution. Now then, for judgment summonses, which is a separate case, under the present Act, where the claim does not exceed $10, the charge would be $2, between $10 and $20, the charge would be $3.25, and between $20 and $60, the charge would be $4, between $60 and up to $100, $4.75, and from $100 up to $300, $7, while for claims over $300 the charge would be $10. Now that is keeping in mind that under the present Act there is not only one action, but there are several actions that may go on at the same time, in a Division Court, relative to the same case, and the proposal ——

MR. CONANT: You mean the same defendant? You said case.

WITNESS: I meant the same defendant, yes, and the proposal would be that you would have only one action and you would eliminate the additional types of actions that we have at the present time; that is, you would eliminate show cause actions, and you would only have a judgment summons. You would eliminate garnishee types of actions, and only have attachments, and so on.

Q. How would you break down—for instance, in your block system, with a charge of $4 for claims between $10 and $20, how would you break that down between the clerk and the bailiff? I don't want the details, but would you break it down as a matter of legislation, or a matter of departmental regulation, or what?

A. Oh I think it could be looked after better by departmental regulation or by Order-in-Council.

Q. By means of a percentage, sliding scale arrangement, or something of that nature?

A. Yes, it could be worked out on the basis of percentage; it would run roughly, perhaps, 40 per cent. to the bailiff and 60 per cent. to the clerk.

MR. MAGONE: Mr. Cadwell, in connection with the number of cases in the Division Courts of the province, what was the total number of cases in 1939?

WITNESS: The total number of cases in 1939 was 78,011 cases.

Q. And of those how many were under $100?

A. Of those there were 54,785 under $100.

Q. That is, roughly, 25,000 over $100?

A. That's right.

MR. CONANT: Well, that rather justifies our concern as a Committee with cases up to $100, does it not, as they constitute two thirds of the total number?

MR. MAGONE: Yes.

WITNESS: Well, they constitute two-thirds of the volume of work, but they don't constitute that same proportion of the fees, because the fees are much larger on the larger cases.

MR. CONANT: Yes, but I think the Committee has approached that aspect of it from the standpoint of the citizens involved, and you are dealing with two-thirds of the citizens that invoke the Division Court when you deal with cases up to $100, isn't that so, Mr. Cadwell?

WITNESS: That is right, yes.

MR. MAGONE: You would have, roughly, 25,000 cases thrown into the County Courts?

WITNESS: That's right.

MR. MAGONE: Only one other thing; you might touch on this; your suggested tariff is based on the assumption that summonses be served by registered mail?

A. Summonses be served by registered mail on claims up to $30, which, at the present time, don't require personal service.

Q. Your suggested tariff is based on that?

A. Yes.

Q. And over that amount, what?

A. Over that amount, it would be the ordinary procedure of serving them personally.

MR. FROST: Have you used that in estimating these costs? That would reduce those costs in those small cases again, would it not?

WITNESS: No, I have taken that into consideration, in that if they were served by registered mail, the bailiff would have to pay 12 cents for the registration, and do the work of sending the registration out, and he would gain on the cases below $30.

MR. CONANT: Well then, your block system, as you have outlined it, is based on the present system of service throughout, is that right?

WITNESS: No, service up to $30 claims by registered mail.

MR. ARNOTT: After that, personal service?

WITNESS: Yes.

MR. MAGONE: By the bailiff?

WITNESS: Yes.

Q. Well, does this fee include bailiff's fees?

A. It includes the bailiff's fees.

Q. But not his mileage?

A. His mileage, yes.

Q. Plus his mileage?

A. And his mileage, yes.

MR. ARNOTT: It covers everything.

MR. CONANT: Yes, that's what I understood.

MR. MAGONE: Isn't it conceivable that in the north country, the amount of travelling expenses the bailiff would have to pay would exceed the amount of the fees?

WITNESS: Well, I think the same procedure would have to be followed as is followed now; specific instructions are given to the bailiff, and he is allowed his expenses for that particular work.

MR. CONANT: Yes, we have a different scale in the province now for travelling expenses for the north country, as compared with the counties, for instance?

WITNESS: Yes.

Q. For instance, with our provincial police, our agricultural representatives, our coroners, and so on, they are on a different mileage basis in the districts than they are in the counties?

A. That's right, but there is no provision for making a difference under the present Division Court Act, but in practice there is a difference made.

Q. Well, if you were setting up a block system, of course, the mileage system they have is a fairly generous one, and the mileage calculations take care of themselves, but you would have to make a distinction for the districts?

A. I think you would, yes.

MR. FROST: Supposing you have your block system apply to the claims up to $100, that means two-thirds of all the cases, and allow service on those by registered mail, instead of only on claims up to $30?

WITNESS: Well, there is this problem in relation to registered mail, and you can allow it up to $100 if you wish, but it sometimes is difficult to serve by registered mail, because people sign for it, and you may get judgment against a man for $100 and he has never seen the papers.

MR. CONANT: Oh yes, we would have to consider that.

WITNESS: That is the problem.

MR. FROST: What impressed me about that was what Judge Barton said yesterday; he said he had found substitutional services by registered mail had been quite satisfactory.

WITNESS: Well, there have been very few substutional services; that may be the reason.

MR. CONANT: There seems to be a suggestion here that different methods should apply in Toronto to what applies in the rest of the province?

WITNESS: Well, we have a peculiar type of debtor in Toronto, I believe.

MR. FROST: Well, Mr. Cadwell, obviously the bailiff situation in Toronto is not as serious as it is outside of Toronto, do you think that you could do this: supposing in Toronto you had the whole thing under this block system, because the bailiffs are, say, all within an area of ten miles, a radius of ten miles, rather, and supposing outside of Toronto, where you are dealing apparently, from what these judges think, with more honest people, supposing that there would be a block system, say, up to $100, and after that, that the summonses might be served by the plaintiff or some other person, that is, he might get the local constable, for instance, to serve the summons, or something of that sort, with an affidavit of service, what would you think of that?

WITNESS: I don't think there would be any objection to that; it is the practice, as you know, followed in the County and Supreme Courts, of allowing the plaintiff, if he wishes, to serve the summonses. I do know that the judges recommend that the sheriff serve them, even in the Supreme Court, but the plaintiff at least has the right to serve them.

MR. CONANT: Well, I think it boils down to this, does it not, gentlemen, that the block system, where it was applied generally to the whole Division Courts Act, would have to be subject to some modification for the districts, and perhaps some distinction made between rural areas and purely urban areas in the province?

MR. FROST: I think so.

MR. CONANT: I think you might direct your attention to that, Mr. Cadwell; anything further, Mr. Magone?

MR. FROST: Just one other point, Mr. Cadwell: we mentioned here previously, the fact that we have good bailiffs and bad bailiffs; that condition exists in every county. Where you have bad bailiffs, the business of a particular Division Court is affected, no doubt?

WITNESS: Yes.

Q. On the other hand, there is this to it, that in the poorer courts, the bailiffs are usually not good, I mean, they are more or less men that are put in to fill the position, and they haven't any qualifications, any particular interest in it. What would you think of the suggestion, take Victoria County as an example, of giving your bailiff jurisdiction all over the county, that is, that he could make seizures and services over the whole county, provided that, in connection with his services, if they were not on the block system, that for his services he should not receive any more fees for services or seizures than the bailiff would in the particular jurisdiction that he goes into. For instance, the bailiff in Lindsay, if he goes up to make a seizure in the jurisdiction of the Fenelon Falls Court, he wouldn't receive any more money than the Fenelon Falls man would if he made it. In other words, he wouldn't be adding on mileage; what would you think of that?

A. Well, I think that that would be a satisfactory arrangement. The same effect can be arrived at by giving the court a county jurisdiction.

Q. Yes, I suppose so.

A. And having a block system for the bailiff fees.

MR. CONANT: Yes. It seems to me the Committee might very well consider that, because it may be that in economizing jurisdiction, it would mean great difficulty for our courts that are too small, and they might die a natural death.

MR. FROST: Quite.

Witness excused.

Committee rises for lunch recess.

AFTERNOON SESSION

C. L. SNYDER, K.C., Deputy Attorney-General for Ontario.

MR. MAGONE: Mr. Snyder, you have certain information with respect to the complaints regarding judges' travelling expenses?

WITNESS: Yes.

Q. And have you a list there of the amount of expenses incurred by certain judges?

A. Yes, I have. Since I was before you the other day, I have been able to compile a list of expenses entailed by district and county judges of the province for the year ending March 31st, 1939. These figures are submitted by the Auditor-General of Canada. I might point out that the amounts set out in these schedules are described in the Auditor-General's report as travelling expenses, and answering Mr. Frost in particular, they include mileage at 8 cents per mile, a per diem allowance of $10 a day when the judge is sitting in an outside city, and $6 per day when he is sitting in something less than a city. Now, I understand that the Committee has been concerning itself particularly with division court matters. I am going to take the liberty, just for a moment, of expressing my own personal view, that that doesn't go far enough to meet the situation.

MR. CONANT: Well, please don't leave that statement that way, to say, "that doesn't go far enough."

WITNESS: Division court matter only, in my opinion, would not sufficiently cover the situation to cause the complaints to cease.

MR. CONANT: That isn't clear enough; isn't this what you mean: if the interchange is purely optional in other than division court matters only, that wouldn't cover that situation?

WITNESS: That is what I hoped to say.

Q. All right. Now go ahead.

A. Now I can give certain examples. I have been looking into this matter for many months, and I have had an interchange of correspondence with the Department of Justice.

I know of one part of the province where the local judge rarely, if ever, sits on a criminal matter, and frequently, in fact almost always, a judge comes a distance of 112 miles to sit on even a trivial criminal case. That is in the western part of the province. Now, the same thing happens, I know, in the eastern part of the province, and to a much greater extent, the figures reveal. And most of the complaints come from the eastern part of the province. I can give you two examples of something that happened this very week.

MR. CONANT: I suggest to the Committee that perhaps our purpose can be served by eliminating names?

MR. FROST: Oh, yes.

MR. CONANT: Yes. I don't think it wise to use the names.

WITNESS: Is it all right to mention municipalities? I can get over it without doing so.

MR. CONANT: Well, I will leave that to your judgment.

WITNESS: All right. In a county town near Toronto, a number of summary appeals were heard the day before yesterday, that is appeals to the county court judge from a magistrate's decision. In one case, heard in a town not far from Toronto, a judge was brought in from away up in the Georgian Bay area, and brought to within twelve miles of Toronto to sit on a summary matter.

MR. CONANT: Have you any idea of the distance involved?

WITNESS: Not as to exact mileage, but the distance was from fifteen miles from Toronto to the Georgian Bay.

Q. Yes?

A. This particular judge, of course, in that case, would be allowed mileage at 8 cents per mile each way, and a per diem allowance of $6 per day. Yet I notice that he is quoted in the press, when he allowed the appeal, as saying:

> "If there were some way of making the province pay for it, I would do it; the counties are being saddled with enough of the cost of criminal justice now."

MR. MAGONE: That is costs to the defendant he is speaking about?

WITNESS: He allowed the appeal in this case.

Q. Yes.

A. And did not allow costs to the successful appellant, but stated if he could make the province pay he would gladly allow the costs. Those are the remarks from the judge who, in addition to his salary, gets the mileage and a per diem allowance.

MR. CONANT: Well, with regard to that remark, I think the Committee will bear with me when I say this: that it is pertinent to make the observation now, that that is an entirely gratuitous remark, and had nothing to do with the merits of the case, and I rather resent the implications involved. I think that should be placed on the record at this time.

WITNESS: Now, in the very town from which this particular county judge came, another serious matter was being heard. A very well-to-do citizen of that community had appealed to the County Court, following his conviction for driving while intoxicated. Now, the judge in the town which was being supplied by the judge whom I have just quoted, didn't go up there, but they got another judge from another part of the country, and he goes in and hears this appeal, and the Crown Attorney writes me as follows:

> "In my opinion, Judge ———— gave the most discouraging judgment a judge could possibly give. The community is up in arms about the whole matter."

A man is supposed to have escaped justice because he had money, and because a strange judge is brought in to hear the case at 8 cents a mile, plus $6 a day per diem.

MR. MAGONE: Does the Crown Attorney indicate by his letter that that was deliberately done?

WITNESS: That is the innuendo.

Q. That is the innuendo. Yes.

A. And the Crown Attorney asks to carry the appeal to the Court of Appeal. Of course, there is no jurisdiction to do so.

I believe, Mr. Chairman, that the letter of Mr. Stewart Edwards, Deputy Minister of Justice, has been filed?

MR. CONANT: It was indicated for that purpose, yes.

WITNESS: In which he states the fault is not of the Dominion, but of the province, and it may be that this Committee might consider removing from The County and District Judges' Act, the sections which cause this interchange of judges.

Q. How old is that section?

A. Some are from 1919, and some 1909. Mr. Edwards says complaints

come from the Province of Ontario only, and that the procedure followed in all the other provinces is not followed by the Department of Justice in Ontario because of the Ontario Act, and he points out, and I think he points out most correctly, that if it wasn't for those sections in the Ontario Act, we would follow the procedure of the other provinces, and then the Department of Justice would pay the expenses of a judge interchanging with another judge only on the written approval of the Attorney-General of the province, and I am concerned ——

Q. Well, now may I interrupt, because I think it is proper, at this time, how would they have jurisdiction? Is there another section there that gives them jurisdiction?

A. The Dominion ——

Q. No, a judge officiating outside of his own county town.

A. Oh yes, in fact it says here that "they shall rotate".

Q. Yes, I know, but is there a section there giving them jurisdiction in other counties than their own?

MR. MAGONE: If that section were removed, you mean?

MR. CONANT: Yes.

WITNESS: Oh no.

Q. Then how would you give them jurisdiction?

A. Under the Dominion Act, whereby, under subsequent circumstances and approval forthcoming from the Attorney-General, they may go to another county and sit. That is arising out of emergencies in the administration of justice, such as illness, or something of that sort.

Q. Well, how would you meet it in civil matters? How would they get jurisdiction in civil matters?

MR. FROST: Well, the same thing would apply.

MR. CONANT: I think I know the answer, I am only asking it to get it cleared up.

WITNESS: I haven't concerned myself with civil matters, only criminal administration; the Attorneys-General of the other provinces, when the thing comes up, certify that the attendance of the judge at the above court was approved and necessary.

Q. Well, then, that would work out in this way, would it not, Mr. Snyder, if those sections were removed, every judge would stay in his own back yard?

A. Yes.

Q. Excepting in cases of illness, or where the nature of the case was such that the judge couldn't properly try it?

A. Yes, it is set out in the Dominion Act.

Q. Yes. Then, in that case, is a direction issued by the Department of Justice or the Attorney-General?

A. No, the Statute says:

> "The Judge of any county court may, without any such order . . . perform any judicial duties in any county or district in the province on being requested so to do by the county court judge to whom the duty for any reason belongs."

But then the judge must be careful, because unless he is going to have your approval, his expenses won't be paid.

Q. I see. So before it was undertaken, if expenses were expected, they would get in touch with the Attorney-General?

A. Yes.

Q. And get his previous approval as a foundation for his subsequent approval of their expenses?

A. Yes, unless it was an emergency matter, and we had to o. k. it afterwards, if it was done in good faith.

Q. That's right, yes.

MR. FROST: Mr. Snyder, there was some suggestion here the other day that Mr. Barlow, in his report, or his recommendations, was drawing the line a little bit too fine; the suggestion was this: that those sections that were passed in 1919 should be limited only to County Courts, Courts of General Sessions of the Peace, and County Judges' Criminal Courts, but that in all cases involving assessment appeals, Division Court cases, cases arising under any other statutes or any other cases, that in all of those cases the judge should stay in his own county, except where authorized by the Attorney-General. In other words, that the provisions for rotation would still apply as regards County Courts, General Sessions of the Peace, and County Judges' Criminal Courts. Now the purpose of that was ——

MR. CONANT: While you are looking that up, with regard to this list that Mr. Snyder has filed, I don't want the names used by the press; the gentlemen of the press will please keep that in mind.

MR. FROST: What would you think of that, Mr. Snyder, a limitation along those lines?

WITNESS: Well, I don't think that meets the bill at all, Mr. Frost.

Q. Well, doesn't your main abuse occur in so far as Division Court cases, and cases of that kind, are concerned?

A. And County Court Judges' Criminal Court also.

Q. I see the point.

A. That is, if there is a case coming up non-jury, and there is no excuse at all, the judge seems to come from the next county to hear the case.

Q. Here are the reasons Mr. Barlow gave in his report:

> "Under this Act certain counties have been formed into districts and the county judge is given jurisdiction anywhere within the district. This was originally conceived to relieve county court judges from the embarrassment of trying cases of which they might have a more or less personal knowledge within their own county and also relieve them from what is sometimes embarrassing, namely, the same counsel appearing before them continuously."

Now, personally, I feel that there is some merit in the rotation system, provided it isn't carried to ridiculous extremes. And I just wonder whether you couldn't keep some of the good points of this, namely, the rotation of the judge in other districts, where he meets other lawyers, where he perhaps faces just a little different system of circumstances, and which keep him, and will keep any other judge, from getting in a rut, you see, and at the same time to cut off the things which are now, I believe, causing the difficulties to which Mr. Barlow refers.

Now, I have run into this: I know that some judges refuse to go into other districts, or to permit other judges to come into their districts to try division court cases on account of the expenses; I know there are some judges that are very, very honest in that regard, and are trying to protect the public.

WITNESS: York County is an outstanding example of that.

MR. MAGONE: York County is not in a district.

MR. FROST: I just wondered, Mr. Snyder, if we could not keep the good points of the system and at the same time, either cut down or eliminate the bad points?

WITNESS: Well, I have heard some of the solicitors from the western part of the older part of Ontario say, that if they appeared in a county town before one judge one week, they didn't know where he would be the next week; they might have to go to any one of three county towns, if a matter was to be continued, or an order decided. Most of the protests from lawyers come from the western part of the province, and from Crown Attorneys, from the eastern part of the province, and from citizens.

MR. CONANT: Following that, Mr. Snyder, do you think it would go far enough in correcting the situation to limit it to leaving the County Court, the

Court of General Sessions of the Peace and the County Court Judges' Criminal Court, in their present state?

WITNESS: No, I don't think it would, sir.

MR. MAGONE: Would it help, Mr. Snyder, if the sizes of the districts were reduced? For instance, you will now find a county court district embracing five or six counties; would it help to reduce that to two or three counties?

WITNESS: Well, personally, I don't think it should be more than two, that is so far as the older part of Ontario is concerned; as it is now, in a district with which I am very familiar, the choice exchange is between two cities that are 112 miles apart; they skip the city in between!

Q. Yes.

A. That is the two at each end of the district.

MR. CONANT: Well then, in order to more or less summarize that ——

WITNESS: And going further than that, sir, in answer to your question, it isn't so bad, in that part of the province, in Division Courts, as it is in County Court Judges' Criminal Courts. That is, if a man has been committed for trial in one city, elects speedy trial, it seems to me, for no reason at all, the judge at the other end of the district will go all the way down to hear that one case and come back. And there are city expenses there, throughout. In the eastern part of the province, the big complaint is about the Division Courts.

Q. There is no co-ordinating, or central authority, in each one of these districts? The judges of that district just ——

A. The senior judge of the district arranges the schedule.

Q. Is that the arrangement?

A. Yes.

MR. MAGONE: He is required to call a meeting?

WITNESS: An annual meeting, and he presides.

MR. CONANT: But then, he doesn't deal, and that meeting doesn't deal, with the day-to-day, and the week-to-week shifting that is going on?

WITNESS: No, it does not.

Q. Well then, that is done just by an arrangement of the moment between the judges, I suppose?

A. Quite.

Q. The senior judge, Mr. Snyder, hasn't any real control?

A. No control; he is really a chairman, to arrange things.

Q. Yes.

A. If you notice the schedule that I have given you, you will see that the travelling expenses for the County of York, where about 70 percent of the criminal work of the province is carried out, is approximately $250.00 out of a total of $34,000.00; that shows the unfairness of the thing. That is, you can take all the judges of York County, with about $250.00, and compare that to the judge of the smallest county of the province, where it is about $1,500.

Q. Well, we have a rather strange mixture here; we are told that when it comes to personal services, we can't trust the people of Toronto; now we are told the judges in this district are the examples of probity and decorum.

A. The senior judge of the county didn't charge the government for one cent for travelling expenses last year.

Q. Well now, your recommendation is what? You think those sections should be removed, setting up the districts and the interchanging of judges in the districts?

A. Yes. In other words, I think we should have the same rule in Ontario as in the other provinces.

Q. Leaving the interchanges, where necessary and desirable, to be approved by the Attorney-General, and the expenses to be passed by the Attorney-General?

A. Yes.

Q. And the federal authorities to pay it on his approval?

A. That's right.

MR. MAGONE: Would it correct a great deal of the abuse, Mr. Snyder, if your suggestion were followed out in that not more than two counties be included in one district?

MR. CONANT: What sections are those, Mr. Snyder?

WITNESS: From 20 on, sir; 20, 21, 22, Chapter 102, R.S.O. Answering Mr. Magone's question, I think that depends; Ontario is such a large province, that in some parts of the province, I would say yes, in other parts, no.

MR. MAGONE: That is particularly true of the districts, I suppose?

WITNESS: Yes, take Thunder Bay; they have two judges there: a senior and a junior judge, and it is a long way from Port Arthur to Kenora.

MR. CONANT: Dealing specifically with the Attorney-General's Depart-

ment, if that arrangement were in effect, would you consider the office of Inspector of Legal Offices the proper medium to deal with it, subject to the Attorney-General's review, and so forth?

WITNESS: Yes, I would say yes. Mr. Edwards, the Deputy Minister, says that they will accept the approval of the Attorney-General or the Deputy Attorney-General, and it might be that, in the case of Ontario, they might accept the approval of the Inspector of Legal Offices.

Q. No, but you wouldn't suggest that the Attorney-General, whoever he may be, should look after details?

A. Not at all.

Q. But in his department, the Inspector of Legal Offices would be the proper branch to keep these things in hand?

A. Personally, sir, I would say the Inspector of Legal Offices and his deputy.

MR. MAGONE: Mr. Snyder, I notice that in the Judges Act, "each judge of a District Court of Ontario shall receive a travelling allowance of $500.00 per annum."

WITNESS: Yes, you find quite a few of those in the districts. You see, Rainy River, Cochrane, and so on.

MR. FROST: Those are in districts, are they?

WITNESS: Yes.

MR. CONANT: From the Dominion?

MR. MAGONE: From the Dominion. It doesn't look as if, in the districts, there was very much interchange?

WITNESS: No, I have only known of one interchange in the past year, and I arranged that myself because of the sudden resignation of the judge at Cochrane.

MR. CONANT: Yes

MR. MAGONE: Who do the complaints come from, with respect to judges' travelling expenses generally, from municipalities, or ——

WITNESS: From municipalities, from Crown Attorneys, and particularly from legal firms and barristers.

Q. And have complaints come to your notice, where a judge travels to hear Division Court cases, and no cases were there?

A. I have had cases of that kind brought to my attention, yes, sir. Travelled some distance, I might say.

MR. MAGONE: I think that is all, Mr. Snyder, unless you have anything you wish to volunteer.

MR. CONANT: Thank you, Mr. Snyder.

——Witness excused.

MR. MAGONE: We will now hear Mr. Gibson, Postmaster of Toronto, regarding registered mail.

A. M. GIBSON, Postmaster, City of Toronto.

MR. MAGONE: Mr. Gibson, we have had certain suggestions to the effect that summonses might be served by registered post.

WITNESS: Yes.

Q. Is it possible to get back a receipt from the person to whom the letter is addressed?

A. Yes, there is such a thing as what they call a return card. You pay 10 cents extra; it is about the size of a postcard, and the man to whom the letter is addressed signs that card and they return it to you.

MR. CONANT: That is by way of a receipt?

WITNESS: Yes, but you get a receipt at the Post Office when you mail that letter; this is a receipt from the man himself who got the letter.

MR. MAGONE: What is the practice with respect to registered post, if the person is not at the address?

WITNESS: Well, there probably is a forwarding address.

Q. If there is none?

A. You mean they haven't found him?

Q. Yes.

A. We hold that from ten to fifteen days.

Q. From ten to fifteen days, the letter is held?

A. Unless it is stated on the envelope "return in five days" or whatever the case may be.

Q. Do the post office authorities pay attention to those notices on letters, "return forthwith", or "return in five days"?

A. They should; that's their business.

Q. Do you know, in practice, whether they do?

A. Well, in our case, it goes through the departments.

Q. There is no difficulty here?

A. No difficulty here.

Q. Well, do you know what the practice is in a rural section, where there is rural mail delivery?

A. If a person gets a registered letter, the carrier leaves a card in the box, stating there is a registered letter, or a parcel; and they are to be at that box the next day to receive that and sign for it. If they are not there, it is returned to the post office, and they've got to call for it personally.

Q. Do you know how long they keep it in the post office under those circumstances?

A. Well, they'll keep it there for ten or fifteen days.

Q. And then would return it to the addressor?

A. Yes.

Q. I see. Well, is that all you can tell us about it?

MR. CONANT: Well now, just a minute; that card that the recipients or addressees sign, that goes back to the post office?

WITNESS: No. For instance, if you send me a registered letter with an A.R. card, I sign that, and you get that card back.

Q. I get it back?

A. You get it back.

Q. I see. Thank you very much, Mr. Gibson.

—— Witness excused.

MR. MAGONE: Now we have come to a point, Mr. Chairman, where I should like to synopsize or read the various recommendations that have been made to us.

MR. CONANT: On the points we are considering?

MR. MAGONE: On the points we are considering, namely Division Courts, by law associations and other associations.

MR. CONANT: I discussed this matter with Mr. Magone, gentlemen; there is quite a lot of these, and I make this suggestion, that Mr. Magone go over these submissions, summarizing them and indicating them to be included in the record. To read them all would take a long while, but if they go in the record they are

always available, and I think we could get what we need out of them for our present purposes. What do you think, Mr. Frost? Are you agreeable to that?

MR. FROST: Quite.

MR. CONANT: Are we all agreeable to that, gentlemen?

Carried.

MR. CONANT: Very well, Mr. Magone, you may go over the submissions and indicate, quite briefly, as to what they are to the reporter, so that he may include them in his report.

MR. MAGONE: The first of these is from the Report of the Judges of the Supreme Court. A copy of it is before us.

MR. CONANT: There should be someone available to make a list as you go along, so that, without waiting for the extension of the notes, we can turn them up. I will do the best I can.

MR. MAGONE: In the Report of the Judges of the Supreme Court, page 13, they agree that there are too many Division Courts in the counties, but they do not think that

> ". . . the proposed curtailment of the jurisdiction of the Division Courts is desirable, or in the public interest. Beyond question, the recommendation would involve a substantial increase in costs to litigants in any except small cases. There is no general complaint that the Division Court procedure is not adequate for all the cases within its present jurisdiction, and it would be a reversion to the practice long since abolished, to adopt the recommendation."

They also suggest that

> "While doubtless, litigants would appreciate a reduction in the fees of the clerk and bailiff in the Division Court, that is a matter of government policy."

MR. CONANT: Yes.

MR. MAGONE: Now, I will deal first with the observations that have been made on Mr. Barlow's report by the County and District Judges' Association. I think I should read this, as it is rather important. It is on page 2 of their submission.

MR. CONANT: All right.

MR. MAGONE:

> "We are thoroughly in agreement that the number of Division Courts in some counties could be reduced, and that the Division Court should be made a branch of the County Court. We do not agree that the

jurisdiction of the Division Court be reduced to not more than $100.00. We are of the opinion that the public, generally, would not endorse such a drastic reduction, and we believe that the convenience of the public, especially in counties of large area, necessitates courts sitting in different parts of the county.

On page 26 of his report, Mr. Barlow, in discussing the reduction of the number of Division Courts, refers to an instance which was brought to his attention, where a judge attended a Division Court, and there was not a case to be heard, resulting in the expense of $25, including clerk's and bailiff's fees, judges' and stenographers' fees and travelling expenses. We cannot understand how such a thing could arise, unless there were cases to be tried which were settled at a time too close to the hour of the opening of the court to prevent the attendance of the judge and stenographer. The practice followed in most counties is, that some few days before the sitting of the court, the clerk sends the list of cases to the judge, and if there is a claim exceeding $100.00, the judge notifies his stenographer, who goes with him to the court. In the event there are no cases to be tried, or if those on the list are settled prior to court day, the clerk notifies the judge by telephone, and there is no attendance by the judge. The stenographer should never attend unless there is a case of more than $100.00 to be tried."

Then, the Elgin County Law Association, in a letter from Mr. McClurg, the Secretary, recommends that:

"The Division Courts, as they are now, be retained, except that there be a single court for each county, with the office of the clerk located at the county seat. That the sittings of the court be held regularly throughout the county, to be selected by the resident county judge, with the bailiff of such court resident at each such place of sitting, so that the process may be forwarded to the bailiff of the court for service there.

The Association opposes the establishment of a small claims court as recommended by Mr. Barlow, in view of the fact that those members of the Association who have had experience with such courts in the United States and in certain western provinces, have found it most unsatisfactory."

Then, the Board of Trade of the City of Toronto, on page 1 of their submission, recommends that there should be established, within the Division Court, an optional simplified procedure for the collection of small debts, coupled with lowered costs. The Master has recommended that the Division Court be abolished, with claims coming under division court jurisdiction not exceeding $100.00, placed in a small debts court set up as part of the county court system, the Small Debts Court to have a simplified procedure of lowered costs; he then recommends that the remainder of the county court jurisdiction and division court jurisdiction in claims exceeding $100.00, be transferred to the County Court. The Board is of the opinion that, if claims from $100.00 to $200.00 are placed under an even modified form of county court practice, it would be found that they cannot be handled as expeditiously as they can under the present system.

They recommend that the Small Claims Court proposed by the Master be increased to $200.00, or, alternatively, if the jurisdiction has not been increased with respect to the division court jurisdiction, be transferred to the county court practice and procedure, and there should be written into The County Courts Act the supplementary procedure now in The Division Courts Act, relating to orders for payment and contempt proceedings on failure of observance.

That is what we were dealing with this morning, when we were reviewing the judgment summons process.

Then there are submissions from several county law associations.

The Lindsay Law Association recommends that:

> "The amendment to The Division Courts Act, increasing jurisdiction in cases of tort from $120.00 to $200.00 be assented to, and that a suitable tariff be created and counsel fees be increased in cases of such increased jurisdiction."

The Southwestern Ontario Bar Council, recommends that:

> "The costs in Division Court be reduced, that they are too high, as at present.

That association represents the following counties: Oxford, Middlesex, Kent and Lambton.

MR. CONANT: And what is their recommendation?

MR. MAGONE: That the costs are too high in division court actions. They recommend a basis which will keep the amount of court costs proportionate to the amount involved.

There is a recommendation from the—a separate recommendation from the Oxford Law Association, which is that

> "The Division Courts Act and Rules be amended to provide that no person be entitled to commence proceedings in the Division Court other than a solicitor or the litigant person."

That is to cut out the agent.

MR. FROST: Well, what merit could there be in such a proposal?

MR. MAGONE: Well ——

MR. CONANT: You mean, for the lawyers, or the public?

MR. FROST: Well, I mean for both.

MR. MAGONE: I suppose their objection is that a number of collection agencies send in an agent rather than a solicitor to do the collecting for them.

MR. FROST: I don't see any particular objection to that. A lot of lawyers wouldn't be bothered with collections anyway.

MR. MAGONE: The Kirkland Lake Bar Association makes a submission to provide that

> "The Division Courts Act be amended for the payment of counsel fees in actions which involve less than $100.00, such fees to be at the discretion of the judge, but not to be less than $5."

The Waterloo County Law Association, recommmends that

> "The number of courts should be reduced drastically, so as to confine the courts only to the larger centres. And that the Division Courts be given judgment summons jurisdiction in respect to judgments in any court up to some set figure, which should be at least as high as the maximum limit of the division court jurisdiction."

The County of York Law Association recommends that the Division Courts in the City of Toronto should be amalgamated, but does not favour a reduction in the number of Division Courts in the County of York outside of Toronto. The Board does not feel that there is sufficient evidence to justify the forming of this conclusion with regard to Division Courts in other counties. With respect to registered mail, the Board is opposed to the adoption of this proposal, and recommends that the division court bailiff should be put on a salary basis, and that the present fee system be abolished. It also recommends that the Act be amended to permit the plaintiffs to serve summonses if they so desire. With respect to the 1937 amendment, they say:

> "At the time this legislation was introduced into the Legislature, the Board recommended that it should not be proclaimed until further consideration should be given to it."

The Board is of the opinion that, unless there is a preponderance of public opinion in favour of the change, and a decided expression from members of the profession, the Act should not be proclaimed. As to the suggestion that all small claims be tried by magistrates, the Board is strongly opposed to this proposal. It, however, recommends that all magistrates should be chosen from the legal profession. With respect to attaching orders in the Division Courts, they recommend that the Act be amended to provide that an attaching order would bind any money owing at the date of service of an attaching order, provided in all cases, that the order must be served within ten days of its date. It also recommends that consideration be given to some enactment, whereby garnishee proceedings in respect of salary or wages would be more in the nature of the appointment of a receiver. It is suggested that the garnishee should apply to the judge for directions, with the judge having discretion, as at present, in respect to the proportion of wages which are exempt.

Then there is a Supplementary Memorandum from the County of York Law Association in which they say:

> "The Board's investigation indicates there are a number of undesirable

features in the present practice in the First Division Court of the County of York, which leads to inconvenience for the public and for the legal profession as well. Considerable evidence has been obtained by the Board to indicate there is widespread dissatisfaction with the present practice. The following specific recommendations are suggested by the Board:"

MR. CONANT: Who is "the Board"?

MR. MAGONE: The Board of the County of York Law Association.

MR. CONANT: All right.

MR. MAGONE:

"The office hours are now from ten to four, and the sittings of the court commence at ten a.m. There is no opportunity for a party or his solicitor to transact business in the Division Court with respect to a case on that day's list before court opens. The closing hour of four o'clock is considered too early."

They recommended:

"That the office hours be increased from nine-thirty to four-thirty.

Before the amalgamation of the Division Courts I and X, there were two division court offices in the city hall, and division court trials were held on four succeeding days in each week. Trials now only take place on three days in the week, and this has resulted in long lists and delays, with resulting inconvenience to the public and the legal profession. The Board recommends that the Division Court should sit for trial purposes on five days of the week.

The notice on a division court summons now states that if the dispute is not filed within eight days, the plaintiff may recover judgment. In certain types of actions, judgment may be signed forthwith, upon default. In other words, for example, actions in which damages are claimed must go to trial, but the defendant is not permitted to enter a dispute after the time limit of the judge's order ——

MR. CONANT: It seems to me that is a detail, something in the category of what Mr. Cadwell started on this morning. I don't think we can hope to deal with details like that.

MR. MAGONE: This is a matter of substance, that is that you can't enter a dispute after the eight days have elapsed, unless you get an order from the judge, and the payment of the fees, and they recommend that a defendant be permitted to enter a dispute on payment of the fee. They also speak of the present practice of the clerk requiring a deposit, and they recommend that, where the amount of the deposit is not all used in cases, that the clerk be required to notify the plaintiff that there is an amount there that has not been used.

They also state that the present practice is that, here there is a long list of cases for trial, and they cannot be disposed of before adjournment, they are placed on the list for trial at the next court, and that a fee is charged by reason of the adjournment, through no fault of the litigant himself, and an extra fee is charged. They recommend that that be changed.

Then there is a recommendation from the Associated Credit Bureaus of Canada.

MR. ARNOTT: Who are they?

MR. MAGONE: They are a bureau of collection agencies, with a long list of members.

In these recommendations, they agree that a number of small division courts might be eliminated or consolidated with other courts, and that service by registered mail should be permitted.

It is generally an approval of the Barlow Report.

Then Mr. Rogers, secretary of the Canadian Bankers' Association, submits that the banks feel that the scale of charges in Division Court, except for claims below $50, is too high.

> "Either the maximum amount which can be sued for in the Division court should be lowered, so that actions may be taken in the County Court for claims in excess of $50, or the costs of the former court should be scaled down to compare favourably with County Court costs. It is possible to sue, obtain judgment, and examine in the County Court on a claim for $2,000 at less total expense than it costs to get judgment in the Division Court on a $400 claim."

He submits also, that there should be procedure in the Division Court for obtaining an examination before a special examiner, not for the purpose of obtaining an order, but to discover assets. The present procedure regarding the examination before a judge should not be disturbed, but under the present judgment summons proceedings, there is neither time nor facility to examine the debtor adequately.

He also suggests that:

> "that the procedure with respect to Division Court executions be amended so that they—as in the case of County Courts and Supreme Court—shall rank ahead of subsequent chattel mortgages and bills of sale."

MR. CONANT: That could only be done, of course, by being recorded in the office of the clerk of the County Court?

MR. MAGONE: Yes.

MR. FROST: Is there any provision for placing a division court judgment in the sheriff's hands?

MR. MAGONE: No. The present practice is that the execution is handed to the bailiff for execution against goods, and after a *nulla bona* is returned, a special execution is filed against lands.

MR. CONANT: Yes. Now, the question I asked yesterday, about execution against lands going to the County Court—it is the writ that goes to the sheriff after it is issued by the clerk of the court?

MR. MAGONE: Yes. The practice in Division Court would be that the first writ of execution that is issued is against goods only, and it isn't until *nulla bona* is returned that you get your execution against lands, and then it is filed in the county sheriff's office.

It is also suggested that there should be third-party proceedings in Division Court. Apparently there is no provision now, and you must bring separate action.

MR. FROST: Well, there is power for a judge to add on such other persons as may be necessary; I think he can add a defendant where it isn't added by way of ordinary procedure.

MR. CONANT: Yes. I wonder if that arises often?

MR. FROST: I think it does.

MR. CONANT: I don't recall ever having it arise.

MR. MAGONE: The North Bay Board of Trade agrees with the Barlow report, that the costs of Division Courts are too high for small accounts.

The Windsor Chamber of Commerce recommends that all garnishees against wages be handled through a small claims court, recommended to be set up by the Barlow report, regardless of the court in which the judgment has been obtained. They also recommend the pooling arrangement and the pro-rata distribution to creditors of amounts realized by the bailiffs.

MR. CONANT: I suppose that would involve considerable machinery?

MR. ARNOTT: I am afraid some of these things, such as that, would complicate the Act more than it is at the present time.

MR. CONANT: That is the principal objection I see to that.

MR. MAGONE: Then they also recommend thst no plaintiff should be represented in court, except personally or by his solicitor.

MR. CONANT: That is the Windsor Chamber of Commerce submission?

MR. MAGONE: Yes, that is the plaintiff they are talking about.

MR. CONANT: They must have a lot of lawyers on the Board of Directors.

MR. MAGONE: None of the officers is a lawyer.

And they agree with the report about service by registered mail.

With respect to service by registered mail, it might be interesting to the Committee to point to an Act of the Imperial Parliament in 1933, Chapter 42, which provides for the service of process issuing out of a justice's court by registered mail.

MR. CONANT: What kind of claims would that involve?

MR. MAGONE: Summonses for violation of traffic laws, and so forth.

MR. CONANT: How do they work it there?

MR. MAGONE: In some cases, justices hold a small, simple jurisdiction, in this way:

> "Provided that, notwithstanding that a summons has been sent by post in the manner authorized by this subsection, service shall be deemed not to have been effected unless the defendant appears either in person or by counsel, or his solicitor, or it is proved, to the satisfaction of the justices, that the summons came to the knowledge of the defendant; for the purposes of the foregoing paragraph B, the production of a letter or other communication which purports to be written by or on behalf of the defendant, in such terms as reasonably to justify the inference that the summons came to the knowledge of the defendant, shall be *prima facie* evidence that the summons came to his knowledge."

An then there is a provision, saying:

> "Where, by reason of the proviso in subsection 1 the service of the summons is deemed not to have been effected, the justice may issue another summons on the same information and direct that it be served."

MR. CONANT: Well now, our post office return receipt would be the equivalent to that letter they refer to?

MR. MAGONE: Yes. They probably have that procedure over in England.

MR. ARNOTT: It's the same idea, the same principle.

MR. MAGONE: The same principle is involved, yes. This Act came into operation on the 1st of January, 1934. I haven't heard any comments on its operation.

MR. CONANT: That is a rather valuable guide.

MR. MAGONE: Yes, and I think the safeguards set out in that Act are probably ample, if it has been found to work there, because they haven't any amendments to that.

MR. CONANT: No amendments.

MR. FROST: What Act is that?

MR. MAGONE: An Act of the Imperial Parliament, 1933, Chapter 41.

Judge McKinnon, of Guelph, says that there are obviously too many division courts in his county, and that in Wellington County, it takes about one-quarter of the judge's time for division court duties, and that about 20 percent of the days set aside for division courts are wasted, due to the fact that there are no cases to be tried.

He suggests that the Act be amended to permit the judge to determine the number of sittings of the court in each county, according to the extent of business. He suggests four sittings a year would be ample for division courts outside of county towns.

MR. CONANT: Yes, I think that section is due for an overhauling.

MR. MAGONE: One of his reasons for suggesting the consolidation of division courts is, that the place provided for holding court throughout the county is entirely unsuited for the holding of any court. The room is one that is not used except at rare intervals, and its condition is often filthy and lacking any reasonable provision for heating or ventilation.

Another reason he suggests is, that in these places, there is no accommodation for witnesses, and that is particularly true in cases of extended jurisdiction involving motor car accidents, where there may be a number of witnesses on both sides. If a jury is demanded, there is no jury room.

He suggests that the jury sections might be eliminated from the Act.

MR. CONANT: That the jury sections might be eliminated?

MR. MAGONE: Yes.

MR. CONANT: We have not any submissions yet from anybody, that thinks the jury should be continued, have we?

MR. FROST: No. In fact, we asked, the other day, the Law Society if they had any objection, but ——

MR. H. P. EDGE: I don't recall, sir. Mr. McCarthy did say he was entirely in accord with the representation of the Chairman, and the report, if I may, so far as the benchers are concerned, is that the Division Court be retained, but the number of division courts should be reduced, and that the court and bailiff and clerk fees be reduced and made simple in cases under $100, and that the procedure be simplified. I don't believe it is amplified beyond that. I think Mr. McCarthy did say he was in accord with the statement as made by the Chairman, but I have heard nothing with regard to the matter of juries.

MR. MAGONE: I am just looking at a number of recommendations of judges and lawyers.

MR. FROST: I think it would be a good thing to give a copy of those recommendations to the Inspector of Legal Offices, in order that departmental

officials may go over them, and they may suggest many good points in the matter of procedure and so forth, that may be brought up later on.

MR. CONANT: Yes.

MR. FROST: After all, there are some very good ideas there.

MR. ARNOTT: Is it the intention to incorporate those in a letter?

MR. CONANT: Oh yes, the references are being summarized and will go into the record in due course; is that not the intention, Mr. Magone?

MR. MAGONE: Yes.

MR. CONANT: Of course, there is this further observation: that if, resulting from a report of this Committee, a redrafting of the Act were undertaken, those submissions, particularly some of the detail that is set out there, might be matters for consideration at that time.

MR. FROST: Yes.

MR. MAGONE: Then there is a recommendation from the General Counsel of the Toronto Transportation Commission, in which he says that they are not only legal advisers for the Transportation Commission, but they are also brought in contact with the domestic problems of their employees, and he says:

> "The costs for institution of actions in the Division Courts for small claims are, as a matter of fact, higher in proportion than in the higher courts, whereas the reverse should be the case; they should be substantially lower. I see no reason why most services should not be done by registered mail."

He also suggests that the amount of time taken out of a workingman's day to press a small claim makes it almost impossible for him to proceed with same. Further:

> "I suggest that a real small claims court be set up for the larger cities, where the fee for entering an action would be nominal, and where the session for the same would be held in the evening."

MR. CONANT: Did Mr. Flaherty sign that?

MR. MAGONE: Yes.

> "I am sure the services of a junior member of the bar, to act as judge in such courts, could be secured for a very reasonable amount, and those taking such work would receive an invaluable training. This would also relieve the present intolerant congestion in Division Courts in the larger cities."

There is provision, as you know, in The Division Courts Act at the present time, for the appointment of a member of the bar by the judge.

MR. CONANT: Yes.

MR. MAGONE: There is a suggestion, also, regarding third-party procedure.

MR. CONANT: I might say, that the usefulness of that third-party procedure would seem, to me, to be out of proportion to the extent to which it would add to and clutter up the Act.

MR. FROST: Of course, there could be, in Division Court, a very simple method of adding third parties. I think there is this difficulty, that I am not just quite sure now, under what section is it, but there is no third-party procedure, but the judge has power to add them, in order to bring all matters and all parties before him.

MR. ARNOTT: Section 89:

> "The judge may, at any stage of the proceedings, upon such terms as may appear to him to be just, order that the name of the plaintiff, defendant, or garnishee improperly joined be struck out, and that any person who ought to have been joined or whose presence is necessary, in order to enable the judge effectually and completely to adjudicate upon the questions involved in the action, be added as plaintiff, defendant, or garnishee."

MR. CONANT: Yes.

MR. ARNOTT: And then, subsection 4:

> "A person who is added as a defendant or garnishee shall be served with a copy of the summons, the original summons being first amended, and the proceedings against him shall be deemed to have commenced from the date of the order making him a party; but if the application to add any person as a party defendant or garnishee be made at the trial, the judge may make the order in a summary manner, upon such terms as to him may seem just, and may dispense with the service of a copy of the summons if such person or his agent consents thereto."

MR. CONANT: Yes.

MR. FROST: I think one of your difficulties is this: the judge may add, for instance, a defendant to the case, but the difficulty is that, under this procedure, I don't think that he can make any finding as between defendants.

MR. CONANT: No. But what I had in mind was: from my experience in third-party procedure, it is pretty difficult and pretty involved. You have been through it, I presume?

MR. FROST: I agree with that. I think this section 89 might be made a little broader.

MR. MAGONE: If that suggestion were to be followed in Division Courts only, you would have contribution between joint tort-feasers coming up too,

and you would find, where a judgment for two hundred dollars was given, with 50 per cent. contribution, that probably you would have—in the Division Courts perhaps more than in any other court—that only one of the defendants is insured, or has any money. So that is a problem that would have to be dealt with at the same time, and I think probably it should be dealt with by this Committee, in any case not only in connection with Division Court claims, but in connection with all claims where there is contribution between tort-feasers, so that, if a man were found to be only 50 per cent. liable, as between the defendants, or as between tort-feasers, then only 50 per cent. of the amount of judgment should be collected from him, and not 100 per cent. and then allow him to sue his joint tort-feaser and recover from him, if he can.

MR. FROST: That raises a big question. You will find a great deal of disagreement on that.

MR. MAGONE: I have no doubt but what you would, Mr. Frost.

MR. FROST: Take, for instance, the case where two men are each 50 percent liable for causing an accident. Well, as it stands now, the person who is injured can collect from either or both of these parties, isn't that right, I mean for the amount of his damages?

MR. MAGONE: Yes.

MR. FROST: If one man has the money, or if one man is insured, he can collect the whole thing from him. What you suggest is that, if they are 50 percent liable, that the injured man collects 50 percent from one and 50 percent from the other?

MR. MAGONE: Yes.

MR. FROST: Well, on the other hand the argument might be advanced that the man who was injured would not have been injured unless one man had contributed 50 percent to the injury, so that, in all equity, he should be entitled to the amount from the people who caused the trouble, and let them settle the matter between themselves.

MR. MAGONE: Yes, I suppose that is the argument that is advanced in connection with it.

MR. CONANT: Have we anything further on this group, Mr. Magone?

MR. MAGONE: Yes.

MR. FROST: However, on that question, I wouldn't say to add a lot of involved third party procedure to this Act, but I think perhaps this section 88 might be strengthened by giving the judge the right to apportion the damages or the claim as between defendants. I don't think that is provided in the Act at the present time.

MR. CONANT: There is no provision for contribution.

MR. FROST: No, and there might be, just in a general way, the judge might be given the summary power to do that.

MR. CONANT: Well, I think that is worthy of consideration. What is there next, Mr. Magone?

MR. MAGONE: The county judges, in the submission they made to the Committee, referred to their submissions of 1934, which were sent to the judges of the Supreme Court and they replied to it.

MR. CONANT: This is on jurisdiction, I suppose, is it?

MR. MAGONE: Yes. And on page 2 of the submission of the county judges, dated December 31st, 1934, they suggest that:

> "The Division Court is already, in effect, a branch of the County Court, although not legally so, the only statutory link being the judge. In the event of consolidation it could be designated, as in other provinces, 'the small debts division'. The proposed absorption of this court into a consolidated court would facilitate the placing on record with the sheriff or some other central officer in each county, information with aspect to executions against goods issued out of the lower branch of the consolidated court. Under the present system, it is difficult for interested parties to learn of such executions, since they are solely dealt with for the most part by the various bailiffs throughout the county in separate, unrelated courts."

Then the judges of the Supreme Court, replying to that recommendation, say:

> "The increase in the jurisdiction of the Division Courts has been accompanied by some increase in the jurisdiction of the County Courts, and it may be expedient to increase the latter jurisdiction still further, but not, we venture to think, to the extent suggested by the County Court judges."
>
> . . . . . .

then, further:

> "The consolidation of the Division Court and County Court, if that meant the abolishing of all the local County Court offices throughout the province, would probably be met by a popular outcry. The present system of Division Courts meets the popular need and has the popular sympathy. If all that is meant to be done is that the Division Court offices should be constituted local offices of the new court situated everywhere throughout the province, it will not be long before every town that is now the proud possessor of a Division Court office, when it finds that the Division Court office is the local office of the Superior Court of Ontario, will wonder why it may not be in truth treated as the local office of that court."

I should explain that in their recommendation, the county judges asked that the name of their court be changed to "Superior Court of Ontario".

MR. CONANT: Well, just on that point, the county judges in 1934 wanted their court called the Superior Court of Ontario?

MR. MAGONE: Yes.

MR. CONANT: That, presumably, would be somewhat in line with the Quebec system, would it not?

MR. MAGONE: Not entirely.

MR. CONANT: Mr. Leduc?

MR. LEDUC: No, there is only one court, really, in Quebec, that corresponds to the Supreme and County Courts here, and that is called the Superior Court. It has jurisdiction from $100 to any amount.

MR. CONANT: That's what I mean.

MR. LEDUC: Then the court corresponding to the Division Court here is called the Magistrate's Court, or, in the City of Montreal, the Circuit Court. The Circuit Court and the Magistrate's Court have the same jurisdiction, up to $100, with the exceptions that we find here in our Act. But I don't see any reason for changing their name.

MR. FROST: Why would there be any necessity for any change?

MR. CONANT: What was their justification for wanting to call it the Superior Court?

MR. MAGONE: Their recommendations at that time went a great deal further than they did lately; they wanted a Board of County Judges set up as a Court of Appeal, to hear appeals from division courts and county court judges, with another appeal to the Court of Appeal.

MR. LEDUC: Oh well, they had in Quebec, formerly, a Court of Revision, which was composed of three judges of the Superior Court sitting on appeal from judgments of other judges of the Superior Court, and then there was an appeal to the Court of King's Bench, but that was some twelve or thirteen years ago, and they have cut it down, and I think it would be a retrograde step in this province to create another court like that.

MR. MAGONE: Oh yes, we had it here some years ago, Mr. Leduc, in a separate division of the Supreme Court; the Divisional Court was composed of three judges and the Court of Appeal of five.

MR. FROST: When was that submission made? Is that a recent submission?

MR. MAGONE: 1934. But there was a compromise arrived at, as the jurisdiction of the County Court was increased to $1,000.

MR. FROST: But that has never been proclaimed?

MR. MAGONE: No.

MR. FROST: So actually, the compromise didn't amount to anything?

MR. MAGONE: They compromised on paper.

MR. LEDUC: Oh no, I would be strongly against creating a court of appeal.

MR. CONANT: I think, generally speaking, we want fewer courts, rather than more courts.

MR. LEDUC: Yes.

MR. MAGONE: May I say for your benefit, Mr. Leduc, I read the recommendations of the county court judges, and I am now reading the comments of the supreme court judges on those recommendations.

MR. LEDUC: Go ahead.

MR. MAGONE:

> "Undoubtedly it is true that, if the Division Court goes out of existence as a separate entity, the right of the province to appoint the judges of that court is automatically surrendered or suspended. That right, however, is more academic than real, since it has never been exercised."

Those are the observations of the supreme court judges on that, and this is the reply of the county court judges:

> "The objection that the advantages and conveniences of the present Small Debts Court would be lost if it became part of the County Court, is based upon an entire misconception of what is contemplated. It's actual effect will, in practice, be slight and there will be preserved to the litigants and the general public, all the advantages now enjoyed by them. All the trials, as at present, will be heard at sittings held in various parts of the district to deal with actions now within the competence of the Division Court, and there will be no more danger of the intermingling of other cases than under the present system. The local division court offices throughout the province will neither be abolished nor will their character be changed."

That is practically all the submissions with respect to division courts.

MR. LEDUC: I was going to say this: I don't know whether it has been touched on while I was away, but we have had some most interesting submissions from Judge Morson and Judge Barton, but they are both in the position where all their lives have been spent here in the City of Toronto. Their conditions are totally different from what they are in the rest of the province; is it the intention of the Committee to call other county judges?

MR. MAGONE: Well, as I understood it, Mr. Leduc, we had no authority to call judges from other parts of the province, because of the expense involved; but we have submissions from all over the province, and we thought by calling judges, we were merely implementing the submissions we already have.

MR. LEDUC: Well, there may be some points which are not covered by the submissions, and which we might like to discuss with them.

MR. MAGONE: Yes, no doubt.

MR. LEDUC: After all, the report made by this Committee may have very far-reaching effects, and although I am not very keen on spending money myself, if we spent a few dollars to get submissions from judges in rural and semi-rural districts, it might be an advantage to us.

MR. STRACHAN: I agree with Mr. Leduc, Mr. Chairman, I think the picture in Toronto is entirely different from that of the remainder of the province. I wouldn't want to see us just get the picture from this particular city, and, speaking for myself, I would like to hear from a very busy County Court judge.

MR. LEDUC: I would like to hear from a purely rural district, and from another district having a fairly large city, and then from one of the northern districts. Then I think you would have the complete picture.

MR. STRACHAN: I don't know whether the Federal Government would pay his travelling expenses or not.

MR. MAGONE: I think they would if the Attorney-General signed the account.

MR. CONANT: We have, of course, this difficulty: that most of our verbal submissions have been, and will, to some extent be, limited to the city of Toronto and this district. I am very glad to arrange for one of the outside judges to come, if he would be of any help to you, gentlemen.

MR. MAGONE: And there is this difficulty, sir, if I might bring it to the attention of the Committee: that we are only dealing with one subdivision, that of Division Courts, and if we start calling someone from outside of the city to give you his submissions with respect to Division Courts, we might be expected to do it with respect to every item on the agenda.

MR. LEDUC: Not necessarily. Take the Rules of Practice, for instance; they are the same in Toronto as they are in every other part of the province; but conditions are certainly different, ——

MR. MAGONE: Undoubtedly.

MR. LEDUC: —— in Toronto from what they are in the rest of Ontario, and we don't get the proper picture if we get the Toronto side only.

MR. CONANT: I think we are all agreed on that, Mr. Magone; you can arrange to bring in a judge. That is a matter which might probably be determined by the Committee, if you like, as to which judge to bring in.

MY. LEDUC: I think it should be; that is not in the same category as the matter we discussed this morning, and which was left to you, Mr. Magone.

MR. MAGONE: No, I think it should be determined by the Committee. I have only one suggestion, which I am not submitting dogmatically at all, but Judge O'Connor of Cobourg is a very able outside judge.

MR. FROST: Well, you couldn't do better than take Judge O'Connor's opinion; after all, he has been a judge, now, for twelve or more years, and for years before that he was quite outstanding as a practicing counsel.

MR. LEDUC: That would take care of a semi-rural district.

MR. CONANT: Well, that is practically a rural district.

MR. FROST: Yes.

MR. CONANT: Is that agreeable, gentlemen?

MR. ARNOTT: Yes.

Carried.

MR. CONANT: Well then, Mr. Magone, you will arrange with Judge O'Connor to suit his convenience.

MR. MAGONE: Yes.

MR. LEDUC: What about the judge from the north? There is a man we could get; he is an ex-judge, but he was on the bench in Cochrane for a good many years, Judge Caron.

MR. FROST: It wouldn't necessarily have to be an active judge.

MR. CONANT: I think that is a good idea.

MR. LEDUC: He lives in Ottawa now, and was retired last October or September. Then if you could get a man from Wentworth county, or Middlesex, for a semi-rural area.

MR. CONANT: Well both those counties have new appointees.

MR. LEDUC: What about Essex?

MR. MAGONE: I think Judge O'Connor of Cobourg sits in quite a number of large towns.

MR. CONANT: I think, with all deference to your views, we have, immediately available, a number of city or urban judges right here in Toronto. I don't think there is anything to be gained from bringing a man from Windsor or Ottawa.

MR. LEDUC: No. Then, if you have a judge from a rural district, who has had experience with the north ——

MR. CONANT: Well, I think if we can get Judge O'Connor and Judge Caron we have covered the field pretty well.

I may say this, that I am not at all clear in my mind, as to the possibility of consolidating the courts, as recommended by Mr. Barlow, under the one name. Still, I suppose we should get all there is available on that point.

MR. MAGONE: You are referring to the consolidation of the Division Court with the County Court?

MR. CONANT: No, no, county judges criminal court. The difficulty that occurs to me, at least the point on which I am not clear—I can quite understand it in the county in which I practiced, where it would be very easy, but I am not quite sure whether that arrangement would work in the larger centres, and no witness, as yet, has clearly indicated that.

MR. LEDUC: That's why these people coming from outside will be useful. I am sure that, in Oshawa, you have a man who could do the surrogate court and county court work at the same time? We have the same situation in Ottawa.

MR. STRACHAN: We haven't in Toronto.

MR. LEDUC: Well, here they have two distinct offices.

MR. STRACHAN: Well, we are handicapped, in the City of Toronto, by the lack of space in the city hall.

MR. CONANT: Well, so far as I am concerned, gentlemen, and Mr. Magone, I would like a little clearer explanation of the situation in Toronto here, on how that consolidation would affect the City of Toronto.

MR. MAGONE: I have Mr. Winchester down for to-morrow, sir.

MR. CONANT: That may cover the point, but I haven't got it clear in my mind yet. At the present time, I can see a very considerable advantage and value of it in outside counties, but I want to see how it would apply in Toronto.

MR. LEDUC: But you have at present, here in Toronto, if I understand the situation, one official, Mr. Winchester, who is at the same time, clerk of the County Court and registrar of the Surrogate Court, and he has under him two separate sets of officials, one set doing surrogate court work and the other set doing county court work; even if you had all the consolidation in the world, in a place like Toronto you will find you will have, in the same office, some people doing one type of work and other people doing another type of work.

MR. MAGONE: Quite.

MR. LEDUC: That is no obstacle to consolidation. In other counties, people can keep on doing what they are; now, one stenographer will be doing county court work, and in five minutes will be turning to some other work. That takes place all the time in Oshawa, I suppose, and in all outside districts.

MR. MAGONE: Well, Mr. Barlow, in his recommendation suggested probably the only effect it would have would be to reduce book-keeping. I don't see how that could happen.

MR. STRACHAN: I don't see how it could happen in the City of Toronto.

MR. MAGONE: They would have to keep separate books for surrogate court and county court work.

MR. LEDUC: I think the only practical effect would be to have one name for the courts.

MR. MAGONE: I think so.

MR. FROST: But in the end, your saving would be negligible.

MR. MAGONE: I don't think there would be any saving. Mr. Winchester might be able to show that there would be if there were consolidation, but I can't see how you would save book-keeping, except possibly in connection with the general sessions and the County Court Judges' Criminal Courts. The only difference is, you have a jury in one and none in the other.

MR. CONANT: Well now, I would make this suggestion. You are going to have Mr. Winchester. He is an inside man. Now, one of the best local registrars that I know of, is Dr. Bascom, of Whitby; he has been there a long time, and I think he is thoroughly competent. That is my own view, and my officials confirm it. I think he would give you the country office viewpoint.

MR. FROST: Yes, he is a good man.

MR. CONANT: I think you had better bring him down to Toronto to appear before the Committee, Mr. Magone.

MR. FROST: I think that savings in the machinery and methods of the various courts could largely be effected, over a period of time, by, for instance, the Inspector of Legal Offices, just gradually eliminating certain duplications, and suggesting changes, and bringing in amendments from time to time. Your difficulty at the present time is that you have a great mass of statutes, some referring to Surrogate Court, some to County Court, and so on. If you try to make any radical alterations without a general revision of those statutes, you are certainly going to run into difficulties.

MR. MAGONE: Yes.

MR. FROST: As far as consolidation is concerned, I think that you could probably suggest, at the moment, a preliminary consolidation of County Judges' Criminal Court, for instance, and County Court.

MR. CONANT: Yes.

MR. FROST: Now that, I should think, would be something that would avoid duplication.

MR. CONANT: And is most logical, too.

MR. FROST: It is logical and sensible, but were you to, for instance, at the

moment, join the Surrogate Court with them, the saving would probably not amount to anything as compared with the confusion that it would cause. On the other hand, with the County Judges' Criminal Court and the General Sessions and the County Court, they are naturally together anyway.

MR. MAGONE: Yes.

MR. FROST: The fact is, I believe, that most people now think they are together.

MR. MAGONE: Yes, I think so.

MR. CONANT: Gentlemen, I am not, at present, disposed to dismiss the matter as peremptorily as that, because I am impressed with this fact, in the province, up until the early eighties, we had the King's Bench, and the Chancery, and so on, and so forth. Now that situation is at least comparable with the situation that exists in our County Court and Surrogate Court and Sessions and County Judges' Criminal Court, and as it was accomplished by merging them all in one court, so it may reapply to the present situation. I am impressed with that aspect of it, gentlemen, and I can't dismiss it from my mind without more information. You will deal with that, then, Mr. Magone.

MR. MAGONE: Yes.

MR. CONANT: I think that on the other points, we have a great deal of very pertinent and very valuable data available. Now, what do you intend to go on with?

MR. MAGONE: Mr. Winchester and Dr. Bascom for to-morrow; that is all I have at the moment.

MR. CONANT: Very well. Then it was suggested by one of the members of the Committee that we might, perhaps to-morrow afternoon, and as a Committee only, discuss the submissions up to date, and perhaps arrive at some interim agreement on our views. I can see the value of that, because it is now fresh in our minds, and we will be saved the labour of reading a lot of evidence that we will have to read, perhaps, months from now. But the only difficulty I see is that, our views as formed, say to-morrow afternoon, might be altered by subsequent submissions.

MR. FROST: That is true; on the other hand, if we do, as we go along and every few days, make findings, interim finding on matters as they stand then, if necessary, we can review these findings, and we will avoid getting into a hopeless tangle at the end and having to sort it all out.

MR. CONANT: Yes. Well, are we agreed on that, gentlemen?

MR. LEDUC: Yes.

Carried.

Committee rises until following morning.

FIFTH SITTING

Parliament Buildings, Toronto.
April 5th, 1940.

MR. CONANT: Very well, Mr. Magone, you may proceed.

MR. MAGONE: Mr. Chairman, this morning we are dealing with the question of consolidation of the courts, and first I would like to call Mr. Buckley, Assistant Inspector of Legal Offices.

R. C. BUCKLEY, Assistant Inspector of Legal Offices.

MR. CONANT: Mr. Buckley, how long have you occupied that position?

WITNESS: About two years.

Q. And you travelled to all outside courts, auditing and so on?

A. Yes, throughout the entire province.

Q. Yes, I think you should be able to tell us something about it.

MR. MAGONE: Mr. Buckley, the suggestion has been made by Mr. Barlow in his report that the County Court, the Surrogate Court, the Court of General Sessions of the Peace, and the County Court Judges' Criminal Court be amalgamated into one court, to be known as the County and Probate Court. Can you see that any economies would be effected by making that move?

A. Yes, there would be economy.

MR. CONANT: The way you framed that question, Mr. Magone, might suggest that you were against it. I would say, what economy would there be, if any?

WITNESS: There would be a saving in the administration and possibly a benefit to the public through attending one office.

MR. LEDUC: You mean, Mr. Buckley, saving in the administration in the local offices?

WITNESS: In the local offices. We have one example in a provincial district now, where not the general sessions, but we have practically all other offices combined under one official. One official holds several different titles: division court clerk, surrogate court clerk, and so forth, and it has proved that it can be done.

MR. CONANT: Was that economical in that case?

WITNESS: It's a very small district, but one assistant or deputy handles all the work of the combined offices. In the majority of other offices, you must have not only the official, but a deputy or possibly some additional clerks.

MR. MAGONE: Mr. Buckley, in most of the counties of the province the offices have been combined in so far as the clerk is concerned, have they not?

WITNESS: In so far as the Surrogate and County Court clerks and the sheriff.

MR. CONANT: And the local registrar also, in many cases?

WITNESS: Yes.

MR. MAGONE: Of the Supreme Court?

WITNESS: Yes.

Q. But, in so far as the County Court Judges Criminal Court and the General Sessions of the Peace are concerned, the clerk of the peace is the clerk of that court?

A. Yes.

Q. There is no instance in the province where he also holds the office of county court clerk?

A. No.

MR. CONANT: Take one of those offices where there is a present *de facto* merging in one individual of these offices; physically, how would that work out? Is there a different set of books for each court?

WITNESS: Yes.

Q. Well, explain it to us; that is what I don't understand, and perhaps some of the other members of the Committee don't understand; what would be accomplished by this amalgamation?

A. In the book-keeping system, it would have to be an internal arrangement there, so far as the book-keeping is concerned, because there is a different type of book required for the different work.

Q. Yes.

A. Your county court clerk would still have to maintain his register, and so on and so forth.

MR. LEDUC: You would have to have all the same books for each court?

WITNESS: Practically, there would be a saving probably by combining a few books, such as cash books, but records would still be kept entirely separate, but they could be kept by the one system of bookkeeping.

MR. ARNOTT: Isn't it done at the present time in that way?

WITNESS: No, they are all kept separate.

Q. No, but one deputy looks after them, does he not?

A. Well, in a great many counties there will be a deputy surrogate registrar and a deputy county court clerk.

MR. CONANT: Would this consolidation do away with that?

WITNESS: It should.

MR. LEDUC: In how many counties have you found that condition, Mr. Buckley? I have in mind Ottawa, which is a most important county.

MR. CONANT: The most important, I would say.

MR. LEDUC: Well, for me it is. We have there the county court clerk, who is also registrar of the Surrogate Court; he has three stenographers, who do the county court and surrogate court work. Could you effect any saving there?

WITNESS: None. I don't believe you could effect any saving in that particular instance, because it is a very, very busy court, and all the clerks are very busy throughout the year.

MR. CONANT: Well, going over the whole province and taking the general picture.

WITNESS: I don't believe there would be a great saving.

MR. MAGONE: What would the saving, if any, be? At least, it would be in connection with what?

WITNESS: In connection with the clerical staff.

MR. LEDUC: And very little there?

WITNESS: And very little there.

MR. MAGONE: In the smaller counties, where the clerk has an assistant in his surrogate office and an assistant in his county court office, there might possibly be a saving in those instances?

WITNESS: There might be.

MR. LEDUC: But, are there a great many or few of these counties in the province, where there is a different room for a surrogate court office and another room again for the county court office?

WITNESS: Yes, there are.

Q. There are?

A. Yes, and a different room for the sheriff.

Q. Take for instance, Victoria County; would they have a different room for the county court work, and another room for the Surrogate Court, and another room for the sheriff?

A. In quite a few, sir.

MR. FROST: In Victoria they have changed that; the sheriff had a different room, and so on, but they consolidated them in the one office.

WITNESS: In the past two years we have had quite a few of them consolidated, that is, they maintained entirely separate offices and physical set-ups, and we tried to get them to work together, as it were, under the one heading.

MR. LEDUC: I don't see it couldn't be done without consolidating the courts, because it is done in Ottawa, and it is very satisfactory, and after all, Ottawa is an important district.

WITNESS: Very.

MR. MAGONE: Would there be a saving, Mr. Buckley, in the number of books that would be required in the offices if they were combined?

WITNESS: The number of books is required, I believe, by the Statutes.

Q. Well, the Committee might change the Statutes.

A. Well, then they would not require as many books. There are a great number of books that are required in offices, that are used very, very seldom.

MR. CONANT: Very little?

WITNESS: Very seldom.

Q. Very little?

A. Very little, sir.

MR. MAGONE: Well for instance, in the County Court and in the Surrogate Court, you have a procedure book?

WITNESS: Yes.

Q. You could carry on your book-keeping with one procedure book, if there was an amalgamation?

A. I doubt if you could.

MR. LEDUC: Oh no.

WITNESS: I don't think you could.

MR. MAGONE: You don't?

WITNESS: I think you would require a separate procedure book for each type of office.

MR. LEDUC: The work is so different.

MR. MAGONE: In Surrogate Court you have a procedure book for contentious and non-contentious matters?

WITNESS: Yes.

Q. So that, in the combined offices, you have three books, one procedure book for the County Court, and two for the Surrogate Court?

A. The procedure books, yes.

Q. Well, it would be possible to get rid of one of those, would it not?

MR. LEDUC: What would be the ultimate saving? Instead of using one page in one book, we would use one in the other. You would use the same amount of paper ultimately.

WITNESS: The surrogate registrars, with whom I have discussed that matter previously, have all maintained that they do require the separate procedure books; one for contentious and one for non-contentious matters.

MR. MAGONE: Yes, that is one of the reasons advanced by those in favour, that it would save in the number of books required for the offices.

WITNESS: Well, in books of that nature, most all offices now have them, and they use them so seldom that the same book they now have will remain good for at least another twenty or thirty years before it is filled up.

MR. FROST: Well, taking another view, from the standpoint of simplification and cutting out deadwood and useless names and what not, might there not be something gained by consolidation from that angle?

WITNESS: Unquestionably. Unquestionably. In my opinion it would be better to consolidate them, for the public going to one office, where they could have their entire matter placed before the one official who would look after the whole thing.

MR. LEDUC. But that is a situation *de facto* in Surrogate Courts, leaving aside the Criminal Courts?

WITNESS. Yes.

Q. But as a matter of fact, this situation exists now in every county in the province?

A. Yes, towards consolidation.

Q. Yes. I mean the clerk of the County Court is in most cases also registrar of the Division Court?

A. Yes, I think that in the majority of counties the sheriff of the Surrogate Court is also local registrar of the Supreme Court and sheriff.

Q. Yes.

MR. CONANT. Well, Mr. Buckley, I suppose in the two years you were working at your present position, you were in every court of the province?

WITNESS. Not quite.

Q. Well, most of them?

A. Most of them.

Q. Ninety percent of them, I suppose?

A. Yes.

Q. Now, from your experience—by the way, are you a chartered accountant?

A. No, sir.

Q. You are an accountant?

A. Yes, sir.

Q. From your experience, have you any suggestion whereby you think we could simplify or eliminate waste motions, or waste of any form, from your two years' experience?

A. In the legal offices that I was in, the present trend is that we have been eliminating waste very rapidly in the last two years.

Q. Yes.

A. I do not know of any further loopholes.

Q. Well, that has been our definite policy?

A. Yes.

Q. During the last two years, to lop off the unnecessary expenses?

A. Yes.

Q. But I may say, there are two angles to this: one you might call the internal economy of the thing, and then there is the convenience and economy to the public, is that not correct?

A. Yes.

Q. Now, so far as the convenience and accommodation to the public, have you had any experience to express any opinon on that?

A. Well, there is not a great deal of inconvenience to the public, as all the offices are in the one building. They may have to go from one floor to another.

MR. FROST: There isn't so much inconvenience as there is complete mistification as to what it all means, don't you think that is so?

WITNESS: Quite a bit of that, sir.

MR. MAGONE: It's good for the lawyers.

MR. FROST: I think it's got to the point now, where it's not good for the lawyers either, because all they can do is look wise.

MR. CONANT: Is there not this angle, if we had a consolidated court you could put on the lists for the sessions, every kind of case that came within that court, county court cases, surrogate court cases, and so on, am I right?

MR. MAGONE: Yes.

MR. CONANT: At the present time, you have to constitute separate courts for these various classes of cases, County Courts, Surrogate Courts, and so on.

MR. MAGONE: Yes.

MR. LEDUC: Well, is it not the practice of the county court judge to sit out of term and hear surrogate court matters?

MR. MAGONE: Yes, I understand that is so. Mr. Winchester will tell us about that.

MR. MAGONE: Mr. Buckley, can you tell us, if this consolidation were made, what the effect of it would be?

WITNESS: The effect would be to help the Crown attorney, who acts as a clerk of the peace and then turns around, in criminal cases, to act for the Crown; that would be taken away from him, and then the clerk of the court's duties would properly be under a clerk appointed by the government entirely away from the Crown attorney.

MR. CONANT: Yes.

MR. MAGONE: As far as the public are concerned, now, Mr. Buckley, have you had any experience with this, that they think they are being tried in the County Court in criminal cases?

WITNESS: No.

Q. When they are in the general sessions?

A. I have had no experience with that.

Q. You have had no experience with that.

MR. CONANT: I would like to ask you if you can express an opinion as to this; under our present system, as you know, the clerk of the peace is the clerk of the County Judges' Criminal Court and clerk of the sessions, as far as it affects criminal cases?

WITNESS: Yes.

Q. Do you think that their records are as well kept as the records of the clerks of the County Court and of the registrars?

A. Their records have been well kept in practically all offices, sir.

Q. The clerk of the peace?

A. The clerk of the peace.

Q. You mean the crown attorneys throughout the province?

A. The Crown attorneys' records as to the court cases. That's what you mean, sir, the records as to court cases?

Q. The records of that court.

A. Well, the records of that court have always been well kept.

Q. I see. Well, I am surprised to hear you say that, although I am glad to hear you say it.

A. Yes, their records have been well kept. That is entirely separate from the records as to the operation of fees.

Q. Yes.

MR. MAGONE: Apart from the inconvenience to the Crown attorney, Mr. Buckley, would it not require an extra clerk to attend the general sessions in County Court Judges' Criminal Court?

WITNESS: Well, I don't think it would require an extra clerk.

MR. LEDUC: The clerk of the County Court would act?

WITNESS: Yes.

MR. MAGONE: You think he could act?

WITNESS: Oh yes, I think so.

MR. LEDUC: Would that apply also to the larger districts, Mr. Buckley? Take Hamilton, Windsor, London, Ottawa; could the clerk of the County Court have sufficient time to act also as clerk of the peace?

WITNESS: I would think so. Other than Toronto, of course; there is a

separate clerk of the peace, due to the enormous number of courts here; you would still have to carry that; I am speaking in general, throughout the province. I am quite certain one man could look after it.

MR. CONANT: That is the present clerk of the County Court?

WITNESS: Yes.

MR. MAGONE: I think that is all from Mr. Buckley.

MR. CONANT: Thank you very much Mr. Buckley.

Witness excused.

ARTHUR S. WINCHESTER, Clerk of the County Court and Surrogate Court for the County of York.

MR. MAGONE: Mr. Winchester, you are the clerk of the County Court and registrar of the Surrogate Court in the county of York?

WITNESS: I am.

MR. CONANT: How long have you been on that work?

WITNESS: About four and a half years, sir; five and a half years rather.

MR. MAGONE: Before that you were clerk of the County Court?

WITNESS: Well, I was appointed clerk of the County Court in the latter part of October, 1934, and registrar of the Surrogate Court in the latter part of December—about the 26th of each month, I think it was.

MR. LEDUC: December of the same year?

WITNESS: December of the same year, sir.

MR. MAGONE: Mr. Winchester, how does the amalgamation, or practical amalgamation, work out in your case?

WITNESS: It works out very satisfactorily.

Q. You, of course, have a fairly large staff in both offices?

A. Yes, I have a staff of seven in the Surrogate Court and a staff of eight in the County Court.

Q. Well, have you separate offices for those two courts?

A. Separate offices. Yes.

Q. In different parts of the City Hall?

A. Yes, it's on the West wing, room 109 for the County Court office, and room 111 for the Surrogate Court office. Between them, room 110 is occupied by Mr. McWhinney, who is registrar of the Admiralty Court and Special Examiner.

Q. You are in the same wing of the building?

A. Same wing of the building. There is no access between the offices except by way of the main corridor of the City Hall.

Q. Mr. Winchester, if the offices of the Surrogate Court—or at least if the courts were amalgamated, can you tell the Committee how that would work out in your opinion?

A. Well, so far as we are concerned, there would be no difference that I can figure; we are practically amalgamated now. You can't have the same rules of practice that would apply to both courts, you must have your rules of practice that apply to Surrogate Court work, because it's entirely different in its nature from County Court work. You would still have to have your rules applicable to each of the branches.

Q. That is, different rules?

A. Oh yes, they would be quite different.

Q. You mean, in all cases?

A. Well, I don't know ——

MR. STRACHAN: He is referring to the amalgamation of the County Court and Surrogate Court.

MR. MAGONE: Yes, only the two so far.

WITNESS: Yes, the same rules in the County Court would not apply to Surrogate Court work. You could draw up a County Court rules, and then have an appendix, or something or another division and put Surrogate Court rules in there.

Q. Have a separate part dealing with it?

A. Have a separate part. You could do that, yes. I mean that the practice in the County Court is entirely different from the practice in the Surrogate Court.

Q. You mean one couldn't ——

A. One set of rules would apply to both functions.

Q. Would there be any objection to amalgamating the two offices and putting your clerks all together for the two?

A. Yes, in the City of Toronto that wouldn't be feasible. In the County of

York, rather, that wouldn't be feasible. We do, I would say, between 40 and 50 per cent of the work that is done in the entire province, and there is such a volume of work there that it wouldn't be feasible. I would be strongly against two sets of rules in the one office, because it would lead to endless confusion and it wouldn't advance the administration of justice at all in my opinion.

MR. LEDUC: Well, suppose the two courts were amalgamated; wouldn't you keep on having certain employees that would specialize in surrogate work, and others who would specialize in County Court work?

WITNESS: Exactly, sir. In the County of York, you would have to have a deputy who knew his surrogate work from A to Z and the same in the County Court.

Q. And you wouldn't, of course, have enough room in 109 to put all your employees?

A. We haven't enough room in either room at the present time, sir, for the employees that are there. Our County Court office is too crowded as it is at the present time, both for our own purposes and for the public.

Q. So that even if the courts were amalgamated, so far as York is concerned, it would mean exactly the same number of employes and would occupy exactly the same space?

A. Quite so, sir.

MR. MAGONE: Mr. Winchester, in Toronto, is one judge assigned to Surrogate Court work?

WITNESS: No, they work in rotation. Some years ago I made the suggestion that two judges be assigned to surrogate work only, and one judge could take contentious matters one month and the other judge could take non-contentious matters. That would work out ideally so far as our Surrogate Court is concerned, and it wouldn't affect the County Court and Civil Courts at all.

But that suggestion wasn't considered very strongly, but I still think that that would be a great help to us, because in the surrogate court work to-day, we are absolutely lost when a judge will take something else on and forget all about his surrogate court appointments, and we have people running around the hall and don't know where to go.

Q. I see. And then, in connection with the sittings of the Surrogate Court, they sit out of county court session do they not, or in between?

A. Just what do you mean?

Q. I mean, is there any fixed session for the sittings of the Surrogate Court?

A. Well, the judges take them in rotation. For instance, one judge will take the Surrogate Court in January, another will take the Surrogate Court in February, and another will take the Surrogate Court in March, and so on,

throughout the year. And in the Civil Courts, we have one judge who will take the non-jury one month, and possibly take a jury court the next month, and possibly take Chambers the following month.

MR. LEDUC: Your judges sit practically every day in the year, don't they?

WITNESS: Yes, I would say that the six judges sit on an average of six days—six juridical days a week. Each one of the six judges would be occupied throughout the whole year. I would say the six judges would be occupied every day.

Q. Well, you see, that is a unique situation in Toronto. You haven't that in the rest of the province.

MR. MAGONE: You have nine judges here.

WITNESS: We have nine judges now, yes.

Q. Well then, Mr. Winchester, dealing with the general sessions and the County Court Judges Criminal Court, could that, in your opinion, be made part of the County Court?

A. Well, I think it could be done, the same way as the Surrogate Court and the County Court were united. I haven't had much experience in the Court of General Sessions. It would mean that the same staff would have to be kept on there. There would have to be a deputy in charge, and it would have to be, so far as the County of York is concerned, confined to the same room as that is in now, or other space found for it.

Q. The effect would be the same, would it not, as now exists in Supreme Court, of having a civil branch and a criminal branch in the County Court?

A. Exactly.

Q. Well, it apparently works all right in the Supreme Court?

A. There again, you would have to have your set of rules that would apply to the criminal branch only; you couldn't have the same set of rules applying to civil actions as you would have applying to criminal actions, and you would have to have a staff that is conversant with criminal procedure. You couldn't expect the same staff that looks after civil work to look after the criminal work. That is just my opinion.

Q. And speaking, I suppose, only with respect to your own office?

A. Yes.

MR. LEDUC: There is a separate official as clerk of the peace in Toronto?

WITNESS: Yes.

Q. Has he got a considerable staff in Toronto?

A. He has a staff, I believe, of three ladies and two gentlemen, who are clerks of the court.

Q. I see.

MR. CONANT: You don't think there would be any internal economy?

WITNESS: Not very much, sir.

Q. What about economy or convenience of the public?

A. I don't think it would be advanced at all, sir.

MR. MAGONE: Could you reduce the number of books in your office?

WITNESS: There is one book I have been trying to get rid of in the surrogate court office for some time, but without success; that is the book in which the bonds are copied. It's quite useless and takes up a lot of time, and costs about $36 per book. We are about eighteen months behind, I guess, in the copying out of bonds in the surrogate office, and some of these bonds have been cancelled before they have been entered in the bond book.

It is a useless book, a fifth wheel, and can be easily done away with by the filing of the duplicate bond, which would be a very simple thing. But that is the only book that I know of that could be dispensed with.

Q. That is a book required by the rules?

A. It is a book required by the rules, yes.

Q. Mr. Winchester, were you called by Mr. Barlow to give your views before he made his report?

A. No, I wasn't.

Q. In connection with the jurisdiction of county judges as *persona designata*, could any improvement be made with respect to that?

A. Well, I have suggested an improvement in regard to The Change of Name Act, if that is what you mean, whereby a judge who gave the appointment has to hear the application, and it has been changed so that any judge, in case of illness, or if the judge can't appear for some other reason, may hear it.

MR. CONANT: I think Mr. Magone had reference to the records, though.

MR. LEDUC: The keeping of records, yes.

MR. MAGONE: Yes, I understand from Mr. Silk that that was amended last session, to take care of that.

WITNESS: So far as the change of name is concerned, it might go into the County Judges' Act.

MR. CONANT: What he had reference to was *persona designata* cases. According to the law at the present time, there is no requirement as to the functions of the county court clerk.

WITNESS: Yes.

Q. And those papers sometimes, if not usually, are simply left with the judge, and he acts as clerk, and judge, and everything else, is that right?

A. That's right, yes. We very seldom hear of it, but—in The Adoption Act, The Landlord and Tenant Act, we have adopted a procedure down there that the judges have approved, that everything comes through us first.

MR. MAGONE: So that in practice it is a matter in the court?

WITNESS: All but, I guess, in a few instances. I don't know of any cases off-hand where it isn't, but so far as our court is concerned now, we insist upon all the papers coming through our office first.

MR. CONANT: Would it not be better to require, in all the *persona designata* cases, that the records should go through you and be kept by your court?

WITNESS: I think so, sir.

MR. MAGONE: You are talking about Unmarried Parents Act cases, Adoption Act cases, and cases of that kind, where the jurisdiction is given to the judge and not to the court?

WITNESS: Yes.

Q. You have adopted that?

A. We have.

Q. You have adopted a procedure of having them come to the court?

A. We have adopted the procedure; we have spoken to the judge and we have had the judges insist that all documents be filed in our office before the application was made Any new judges appointed, we can convey that information to them and they adopt that practice There was a time there, that we would get an order filed in our office and we wouldn't know what it was all about, and we would trace it down and find that some person had gone directly to a judge, had his order signed, and we had no trace of anything in the office until that order was given to us, and so we put a stop to it in that way.

Q. What do you do with respect to fees in those cases, Mr. Winchester?

A. The fees are provided for in the rules of practice and procedure.

Q. That is the general filing fee?

A. We have no filing fees with us, it's a fee on an application before a judge.

Q. I see.

A. And that fee is one dollar where there is no evidence taken, or two dollars where there is evidence taken. But we presume that there will be evidence taken in all cases, so we charge the two-dollar fee.

Q. That is, you adopt the tariff of the County Court?

A. We adopt the tariff of the County Court.

Q. Even though the matter is not in the County Court?

A. It may, technically, not be within that tariff.

Q. I see.

A. But we put it in.

Q. Well, that is something which should be cleared up, should it not?

A. Yes, that is something that should be cleared up.

MR. LEDUC: Perhaps I might ask this, Mr. Winchester, how many writs are issued in your office, the county court office?

WITNESS: I thought you were going to ask that, sir, so I went down and got the information. Last year, there were 1,630, in 1939.

Q. 1,630 writs issued out of the County Court?

A. That is about 80 or 90 less than the year before, in 1938, when I think there were 1,720.

Q. These are writs of summons?

A. Writs of summons, yes.

Q. Now, what about applications for probate?

A. I'm sorry, I haven't the surrogate statement with me.

Q. Approximately, have you any idea?

A. Approximately? Oh, I think approximately 3,000 applications. I could get it for you.

Q. Now, you said that you have 1,630 writs issued in the County Court; that is an average, I suppose, from 1,600 to 1,700?

A. That is about the average.

Q. What is the proportion of those cases that go up for trial?

Actions entered for trial with a jury were 107, and actions entered for trial without a jury, 276.

Q. So that is about one case out of four that goes to trial?

A. Yes, sir.

Q. I see.

A. Well, that is one case out of four that is entered for trial, but then, some of those are settled.

Q. Well, would it be fair to say that one case out of five actually goes to trial?

A. That would be about right.

Q. Yes.

A. There are more settlements in trials with a jury than there are in trials without a jury.

Q. Now, we were discussing, yesterday, fees in the Division Court. In County Court, for an action, say, for $500, where judgment is given by default, what would be the fees payable to the court?

A. $6.00.

Q. That is $3.00 on issuing the writ?

A. Yes.

Q. And $3.00 on judgment?

A. Three dollars on judgment, yes.

Q. And we must add to that, of course, the sheriff's fee for serving?

A. Well, if they issue execution, that will be another dollar in our office.

Q. I'm not speaking of that.

MR. CONANT: Service.

WITNESS: Oh, service, about $3.00, I believe it is, sheriff charges are about $3.00 I believe.

MR. LEDUC: Yes.

WITNESS: Two dollars in the County Court.

Q. Two dollars?

A. Two dollars in the County Court plus mileage.

Q. So the total, we will say the man lives five miles away from the sheriff's office ——

A. That would be $2.50.

Q. $3.50?

A. $2.50.

MR. CONANT: So you have $8.50 altogether?

WITNESS: Yes.

MR. LEDUC: You see, the average, in an action from $200 to $300 is $9.92.

MR. CONANT: Yes.

MR. MAGONE: Mr. Winchester, the only jurisdiction in County Court now is with respect to appeals?

WITNESS: Yes, that is all, appeals from Magistrates Courts in certain matters.

Q. Yes, well, are there many in the County of York?

A. Oh, we will have about ten this month, I believe they run about ten a month.

Q. And do you keep separate books for appeals in criminal cases?

A. We don't keep—well, yes, we do, now, we have a matters index file and we keep all our papers in there, but we don't keep separate books of account; it goes into the general account as an application before a judge on which we charge $2.00.

Q. You assimilate the civil tariff to the criminal appeal?

A. Yes, we had seventy-two in 1939; we had seventy-two criminal appeals in 1939.

Q. Yes, in your experience as clerk of the court, can you tell the Committee whether the trial *de novo* takes longer than an appeal under The Liquor Control Act on the record?

A. Well, I don't know; I never attend these trials, and I don't know just how long they would take. They would take longer.

MR. CONANT: The *de novo?*

WITNESS: *De novo*, yes, they would take longer.

Q. Well, they are all *de novo*, excepting the liquor appeals?

A. Yes.

MR. MAGONE: Then, in Mr. Barlow's report, he deals with the question of county court procedure, at page B31, and makes a recommendation there.

WITNESS: Yes.

Q. That is the county court procedure, and the recommendation is on page B32, and reads:

> "At the present time all orders in the County Court are signed by the county court judge. As it often happens that a county court judge, by reason of being engaged elsewhere, is not to sign an order made, it is suggested that the judge should be required to endorse his decision upon the notice of motion, and that the order itself should be signed by the clerk of the court."

A. Yes, I would be in favour of that, very strongly. We had a case here just a short time ago, when the judge gave an order about the 26th of the month, and he was not there for the following month, and a new application had to be made before another judge, whereas, if it had been endorsed on the notice of motion, we could have signed it in our office, and there would have been no delay.

Q. That is the practice in the Supreme Court now, is it not?

A. I couldn't say.

Q. You don't know?

A. I don't know, no.

MR. CONANT: Are all orders in your court signed by the judge himself?

WITNESS: Yes, sir, all orders are signed by him. I sign the judgments in the office, but the judges sign all the orders. I don't know, but I think the judgment is rather more important than an order, and why a clerk should be allowed to sign a judgment and not an order is strange to me.

MR. CONANT: Mr. Winchester, why do the county judges sign these orders?

MR. CONANT: That would be a matter of rule amendment, would it not, Mr. Magone?

MR. MAGONE: I think it would, but I am just asking; why do the judges sign the orders in the County Court?

WITNESS: Well, in so far as I know, it has been the practice before I went in there, and it has been the practice since, and I believe it is, because there is no provision for the clerk to sign an order.

Q. I see.

A. Well, at any rate, the clerk has no knowledge of what the order should be, at any rate. We have no knowledge of what order a judge makes.

MR. CONANT: Oh yes, but if a judge were to endorse it on the notice of motion, a brief summary of his judgment would be on it and you could sign the order all right?

WITNESS: That would be all right, yes.

Q. The solicitors would work it out for you.

A. Yes.

MR. LEDUC: If there is any doubt as to the order conforming with the decision ——

WITNESS: That is what we do at the present time; if a judge will endorse on the back of a record his judgment, if a judgment is presented to us, we compare the wording of the judgment on the endorsement with the record and if they are similar we sign the judgment; if there is any variation, we refer them to the judge, and the judge must amend the endorsement on the record.

Q. To sum it up, the suggestion would be to assimilate orders to judgments?

MR. CONANT: Yes.

WITNESS: Yes, that would be a good thing.

MR. MAGONE: You don't attend in Chambers?

WITNESS: No, I have been trying to get that through down there. We have a system that I don't like, and Judge Barton has spoken to me about it, he doesn't like it either. But they don't do anything to remedy the situation. That is, when the judge is sitting in Chambers, he might want a file, and he will send the solicitor down for that file; we give the solicitor the file and take a receipt for it, but there is no guarantee that all the papers that are in that file will reach the judge, nor is there any guarantee they will reach us in the same condition as they went out, and we can't afford to have a clerk running up and down all the time, and I made the suggestion to the judges that I would provide them with a clerk, provided that they held their Chambers in chamber hours, where a clerk could take all the papers in there and present them to the judge and keep them under his control.

MR. CONANT: Yes.

WITNESS: But we can't afford to let a clerk run around the hall, up with one file, and down again, and then up with another file, and so on.

MR. STRACHAN: That would involve the filing of notice of motion, the same as they do in the Supreme Court?

WITNESS: Same as in the Supreme Court, and I don't see any objection to it. Some file their notice of motion, but the majority don't.

Q. Chambers are very informal matters?

A. Too informal, in my opinion.

Q. And that is a very important matter?

A. That is my opinion again.

Q. I agree with you.

A. Well, I took issue with one of the judges very strongly a short time ago, in which case there was no chamber judge, and some person came into the office and wanted to know where he would appear, before what judge he would appear, and he said, "well, find out what judge is hearing the application." "Well", I said, "do you expect this man, or one of us to run around and find out which judge is hearing the application?" You appoint a judge to sit in Chambers and have him sitting in Chambers, and we will send a man up to that judge; but if we don't know who is sitting in Chambers, what's the use of having a Chambers?

MR. CONANT: Well, that is really a matter for the judges to arrange?

WITNESS: Yes.

Q. I should think the senior judge ought to arrange that.

A. That is the irregularity of these Chambers proceedings that is causing us quite a lot of trouble, but that would have to ——

MR. STRACHAN: You have no record of the order made? There is no book that you have that tells you what the judge is?

WITNESS: We have no record of chamber work at all. No record at all.

MR. MAGONE: Mr. Winchester, who sits in court as clerk, down in your court? Is it a permanent official of your office?

WITNESS: Well, I have assigned a specific duty to each of the clerks in the office, and this clerk is the junior clerk in the office and it is his duty to be in court—when there is one court sitting, it is his duty to be in court at that court, and if there are two courts sitting, I assign another one of the staff to the court.

Q. Of the permanent staff?

A. Of the permanent staff.

Q. Well, what do you do when there are three or four courts sitting?

A. We have had as many as five courts sitting at one time, and there are two men who have sat occasionally in court, oh, possibly about ten times in a year, and if they are available, why, we call for them, and get them on the telephone to come and sit in the court.

Q. Well, what authority have they to sit as clerks of the court?

A. None that I know of.

Q. None that you know?

A. None that I know of.

Q. Does that apply to your regular staff down there?

A. That applies to the regular staff; that applies to the clerk that is in the court all the time.

Q. Do they swear witnesses?

A. Yes, they swear witnesses.

MR. CONANT: Well, that works all right; that is the best answer?

WITNESS: Well ——

MR. LEDUC: But isn't that a matter to be remedied? Can't these people get deputy clerks?

MR. MAGONE: Is there provision for a deputy clerk?

WITNESS: There is provision for just one deputy, and he can't leave the office; he has to be in the office.

MR. LEDUC: No provision for appointing a clerk of the County Court?

WITNESS: There is no provision for appointing more than one deputy.

MR. MAGONE: Or more than one clerk.

MR. CONANT: Like the British Constitution, these things grow, just as, the other day, we had the case of show cause summonses; there is quite a mystery there, about the issuing of those.

MR. MAGONE: Doesn't the judge swear the witnesses when there is a part-time clerk?

WITNESS: I think there is a case in regard to that; we looked it up here a short time ago, in which the Court of Appeal has held that it is the judge who swears the witness, although it is the clerk who utters the words; the clerk hands the bible to the witness, and repeats the oath, and I think the Court of Appeal held that that was the judge who swore the witness.

MR. LEDUC: The clerk is only "his master's voice"?

WITNESS: That's it, sir.

MR. LEDUC: Mr. Winchester, before you go, you gave me the number of writs issued in the County Court. Well, outside of that, of course, the judges do a lot of civil work?

WITNESS: Oh, a lot of chamber work.

Q. What about mechanics' liens?

A. We have nothing to do with mechanics' liens.

Q. You haven't?

A. No, that is in the Supreme Court only.

Q. What about applications for matters coming up under Surrogate Court?

A. Well, there are contentious cases in the Surrogate Court that are taken by the judge, who is assigned to the Surrogate Court for that month, such as true bills and solvent forms, and where a will is being attacked for lack of mental capacity, or something like that.

Q. You have a judge sitting in Surrogate Court all the time, I understand, or practically all the time?

A. Yes, we have practically two judges doing surrogate court work every month; Judge Barton has been assigned by Judge Parker to do the contentious matter in Surrogate Court; he looks after practically all the contentious matters.

Q. You have nine county court judges here, and between the county court work and the surrogate court work, and the criminal work, I suppose they are busy all the time?

A. They are kept busy most of the time, sir.

Q. Now, the suggestion has been made that the jurisdiction of the Division Court be diminished, and that certain actions be transferred to the County Court; if this were done an additional judge or additional judges would be required to handle that work?

A. I don't think so; they are handling it now, sir.

Q. Of course, yes; you're right.

MR. FROST: On the other hand, once you take a case from Division Court and put it in County Court, there are more formalities?

MR. STRACHAN: It takes longer to try.

MR. FROST: I mean, it takes longer to try?

WITNESS: Yes, well, I don't know that it takes longer, it takes longer to get to trial; I don't think it should take any longer to try it.

MR. FROST: Well, of course, I may be wrong.

MR. ARNOTT: As a matter of practice, Mr. Winchester, doesn't it take longer to try?

WITNESS: Well, I don't see why it should, as it is the same set of facts.

MR. STRACHAN: They go through seventy cases a day in Division Court.

WITNESS: Not now. Those days are gone; they went out with Judge Morson.

Q. They have a bigger list.

A. Well ——

Q. You have put six cases a day on your non-jury, isn't that right?

A. Five or six cases a day, that's right.

MR. LEDUC: In County Court?

WITNESS: Yes.

MR. STRACHAN: And you don't get through your list?

WITNESS: We get through our list; there are no cases left over at the end of the month.

Q. No, but I mean, they don't average six cases a day to try?

A. No, that would not be the average; I'm sorry, I might have brought our list for this week. Judge Jackson was on the non-jury this month, and I don't know how many cases he disposed, of, but he was through before 11 o'clock on Monday, and he was through before 12 o'clock on Tuesday, but of course, that is the first week, and the first week is a washout, so far as the County Court is concerned.

MR. LEDUC: No, the figures given by Mr. McDonagh were, thirty-five cases, approximately, under $100.00, and seven to eight cases over $100.00.

MR. CONANT: That is a day?

MR. LEDUC: Yes.

MR. CONANT: What do you think, Mr. Winchester, have you any views on the increased jurisdiction in the County Courts?

WITNESS: That is to increase the jurisdiction of the County Court, and take it away from the Supreme Court?

Q. Well, obviously?

A. Well, I didn't know just whether it was from the Division Court to the County Court or from the County Court to the Supreme Court.

Q. Well, I am dealing with the other angle at the moment; you know the provisions of the Statutes, which say that an Order-in-Council must be made out increasing the jurisdiction; have you any views on that?

MR. FROST: Or would it be better to leave it just up to consent, as it is now?

WITNESS: Well, at the present time, they go through, there is a tacit consent if they don't dispute the jurisdiction, and it goes ahead.

MR. CONANT: Quite.

WITNESS: I don't know, sir; I did have some views on that at one time, when the Statute was first passed, but I haven't paid any attention to it since. I really have forgotten. But I don't think it would make much difference, so far as we are concerned.

MR. MAGONE: That is all I intended to ask Mr. Winchester, sir.

MR. CONANT: All right, thank you very much, Mr. Winchester.

Witnessed excused.

DR. HORACE BASCOM, Local Registrar, Whitby.

MR. MAGONE: Dr. Bascom, what offices do you hold?

WITNESS: Local registrar of the Supreme Court, clerk of the County Court, sheriff, and registrar of the Surrogate Court.

Q. Well, Doctor, before we get into the question of amalgamation of the courts, will you tell the Committee how the amalgamation of the offices that you hold works out in practice?

A. It has worked out very well so far. The only objection I see to it is that the sheriff's office is down at one end of the hall and the office for my other three offices is at the other end of the hall.

Q. Well, that is a matter of geography?

A. Yes, it's a matter of geography, but if they were all in one office, the consolidation of the offices is quite satisfactory.

Q. Yes. You don't have any difficulty about the Supreme Court sitting at the same time as the County Court?

A. No. No, we haven't had any difficulty. Well, we had one clash, I think, in the last six or seven years, that's all.

MR. FROST: But it can always be arranged?

WITNESS: Oh yes, we have the County Council Chambers for the County Court; we take that in case they do conflict.

MR. MAGONE: Well, you heard Mr. Winchester's evidence with regard to his offices?

WITNESS: Yes.

Q. Can you see any reduction, or any economy in amalgamating the four courts?

A. For a matter of convenience, I think it would be a very good thing, but as far as the financial end of it is concerned, I can't see that there would be very much saving. I think there are only two offices in the province, and that is Barrie and Ottawa, where the one official doesn't run them all.

Q. You say that as a matter of convenience, it would be a good thing?

A. Yes.

Q. Convenience to whom?

A. Convenience to everybody, because you would have all the records in the one office.

Q. Yes.

A. As it is now, the Crown attorney and clerk of the peace practically runs the court; he has to swear the witnesses, and keep his own minutes, and he has no clerk, whereas, if the courts were amalgamated ——

MR. CONANT: Well, that refers particularly to the General Sessions and the County Judges' Criminal Court?

WITNESS: Oh yes, that is the only one I am speaking of.

Q. Yes.

A. In that case, he would have a county court clerk who would take down the minutes and keep his records, and have all the documents in his file.

Q. Open court, and swear the witnesses?

A. Yes.

Q. And all the rest of it?

A. Yes, I can see a great advantage in it in that way, but I think, financially, as far as most of the counties are concerned, there wouldn't be any saving.

MR. MAGONE: Well, would it be any great increase for the county court clerk to make him clerk of the general sessions?

WITNESS: No, not in our county, it wouldn't be very much. It's additional work.

Q. Well, your county is fairly typical, is it not, of the province?

A. Outside of the cities.

Q. Of older Ontario, that is?

A. Outside of the cities, yes.

Q. And you think it would work out very well there?

A. I think so. I think it would be quite all right.

MR. FROST: The fact is amalgamation, and the elimination of different systems, is desirable, is it not?

WITNESS: Yes, I would think so. At the present time, we have really no book of rules that applies to everything. The Surrogate Court is entirely different from some of the others, and it is more or less indefinite about the charges and fees.

MR. LEDUC: Dr. Bascom, how many employees have you?

WITNESS: Three.

Q. Three, and you have one, I suppose, in the sheriff's office?

A. Yes.

Q. Who does exclusively sheriff's work?

A. Yes.

Q. And would the other two do surrogate court work?

MR. CONANT: One is deputy sheriff.

WITNESS: Yes, one is deputy sheriff, does outside work, and the other, a lady, she runs the sheriff's office, keeps the books, and in my own office as local registrar, I have a deputy.

MR. LEDUC: You have a deputy?

WITNESS: Yes.

Q. Those are the three mentioned?

A. Yes.

Q. Now, if you were made clerk of the peace in addition to all your other offices, would you require any additional staff, or could you get along with the staff you have.

A. I hadn't considered that, but I really don't know how much work the clerk of the peace has to do; that's the point.

MR. MAGONE: Well, the amalgamation of the courts, as I see it, wouldn't mean that you would become clerk of the peace.

WITNESS: Oh.

Q. That is, you wouldn't carry out all the duties the clerk of the peace now carries out.

MR. LEDUC: That's what I mean.

MR. CONANT: You would be clerk of the court.

MR. MAGONE: Yes.

MR. CONANT: I have been through this, and I have always felt that the functions of the clerk of the peace, that is the, keeping of the records of the County Judges' Criminal Court and the Court of General Sessions, and the work of the court, that is the clerk's work in the court, should be performed by the county court clerk.

WITNESS: I quite agree with you.

Q. Then the clerk of the peace still would have some functions to perform, such as the voters' lists, and so on.

A. Well, he has a lot to do with the selection of juries, too.

Q. Yes, I don't think that would need to be disturbed. My recollection of the clerk of the peace's office is that most of the duties consist in signing things, is that it?

A. The clerk of the peace? Well now, I don't know much about the clerk of the peace, but there is a lot of clerical work, you know, in the clerk of the peace's office.

Q. Yes.

MR. LEDUC: That is what I had in mind.

MR. MAGONE: I think, Doctor, it comes to this: there are certain duties he performs as clerk of the general sessions of the peace?

WITNESS: Yes.

Q. And certain other duties that he performs under Statutes?

A. Yes.

Q. That are simply given to him because he is an official in the county, and naturalization is given to him under a Dominion Act?

A. Yes.

Q. I don't think we can get closer than that to it.

MR. LEDUC: Well Mr. Magone, I am afraid I misunderstood you. I understand that your idea would be to assign to the clerk of the County Court, the court duties performed by the clerk of the peace?

MR. MAGONE: Yes.

MR. LEDUC: And leave the other duties to the Crown attorney?

MR. MAGONE: Yes.

MR. FROST: For the moment, anyway?

MR. LEDUC: Yes.

MR. MAGONE: Doctor, Mr. Winchester mentioned the bond book kept in Surrogate Court, and suggested it be done away with.

WITNESS: I think that would be a good idea, to do away with it, because we have the bonds.

Q. Yes. It's just a question of copying them?

A. Yes, and we have to copy them; I've got one book there that I just got, a new one; the other one is full.

Q. Well, that is a matter for the Rules Committee.

A. I never refer to it at all.

Q. Then, what do you do in your court in connection with *persona designata* matters, Unmarried Parents' Act cases, and so forth?

A. How do you mean?

Q. Do you keep records of it, as clerk of the County Court?

A. Oh yes.

Q. And do you charge the fees prescribed in similar cases in the county court tariff?

A. Yes. There is a regular scale of fees that apply to those Unmarried Parents' Act proceedings.

Q. They are set by Order-in-Council?

A. Yes.

Q. But in other *persona designato* cases, you simply assimilate the fees in other county court matters to these cases?

A. Yes, landlords and tenants, for instance, we charge $2.00.

Q. Yes, I see. Have you had any experience in connection with summary conviction appeals?

A. Oh yes.

Q. Can you say whether it takes longer, more of the court's time to hear *de novo* appeals than it does to hear Liquor Control Act appeals?

A. In Liquor Control Act appeals, you mean?

Q. Yes. Liquor Control Act appeals are on the record.

A. They are trials *de novo* are they not?

Q. No, under the Liquor Control Act, the appeal is on the typewritten record before the Magistrate, and the others are trials *de novo*.

A. Yes.

Q. Which usually takes the longest time?

A. Well, the *de novo* trial.

Q. Do you have many *de novo* trials in your county?

A. Well, quite a few.

Q. They take up a good deal of time?

A. Oh, I wouldn't say that; I suppose we would have five or six in a year, that's all.

Q. I see. What is the practice, in your county, with respect to signing orders; does the judge sign the orders himself?

A. Yes.

Q. Do you attend in Chambers on these cases?

A. Yes.

Q. Well then, if you attend in Chambers on those cases, haven't you authority, under the rules, to sign orders?

A. I don't think I have.

Q. You don't think you have?

A. No. I think it would be a good—Mr. Barlow's suggestion that the judge give his decision on the notice of motion, and the let clerk sign the order would be a good thing.

Q. Rule 531 says:

> "Every judgment shall be signed by the registrar and the proper officer in whose office the action was commenced; every judgment order pronounced by the court or by a judge in Chambers shall be settled and signed by the registrar or the officer attending court in Chambers at which the same is pronounced, but the judge pronouncing such order may himself settle or sign the same."

A. Well, we don't attend in all chamber matters. Sometimes there is a motion there that we don't know anything about.

Q. Yes, I was just wondering if it wasn't because you weren't present that you hadn't signed the order.

A. No.

Q. You don't do it in any case?

A. No.

Q. I see. You don't do it in any case?

A. No.

Q. Well, do you think the suggestion of Mr. Barlow is a good one?

A. Yes, I do. I would endorse that, definitely.

Q. You can obviously attend as clerk in all the courts, can you, Doctor?

A. Yes, I do.

Q. You sit in all of them as clerk?

A. Oh yes.

Q. You don't have the difficulty that Mr. Winchester has?

A. Oh no, we don't have so many courts.

MR. CONANT: Dr. Bascom, Ontario county is grouped with Victoria County, Peterborough and Northumberland, as what you might call a judicial district, isn't it?

WITNESS: Yes.

Q. And is there much interchange of judges in that district?

A. Yes, there has been a good deal.

MR. FROST: That is in County Court matters?

A. Yes, County Court and Division Court.

MR. CONANT: Criminal?

WITNESS: Yes, criminal cases, too.

Q. On what circumstances was the occasion for these interchanges usually based?

A. Well, now, I couldn't tell you. I suppose it is a matter the judges arrange themselves. I don't know the reason for it. I think sometimes there is a little too much pressure of business in one county, and they seek relief in that way, by getting another judge to come in and take a case for them.

Q. Well, take your general sessions of the peace. You have four a year, have you not?

A. Two. General sessions of the peace twice a year.

Q. Yes, but you have a non-jury too?

A. Oh yes, non-jury.

Q. What do they call that?

MR. MAGONE: County Court Judges' Criminal Court?

WITNESS: No, non-jury sittings of the County Court.

MR. CONANT: In April and October?

WITNESS: Yes.

Q. And then you have the general sessions in June and December?

A. Yes.

Q. Now are those usually manned by your own judge or by an outside judge?

A. Well, I have in mind the last three years, when the general sessions of the peace have been taken by two judges from the district. We had lengthy sessions of the peace two years ago, and Judge Cochrane came down from Peel and took three weeks.

Q. Yes, but that was because another outside judge who was allotted to your court took sick?

A. Yes.

Q. Your own judge wasn't scheduled to take that court anyway, was he?

A. No, I think not. And I think the judge, as you say, that was allotted to us took sick and Judge Cochrane came down from Peel.

Q. Yes.

MR. FROST: Well, Dr. Bascom, within reasonable limitations, do you—would you be prepared to say as to whether or not you think that there is some merit in an exchange of judges within a limited area? Now, Mr. Barlow mentions in his report that judges, for instance, carrying on their courts with the same counsel invariably appearing before them, with local interests involved in the cases, and a number of things of that sort—that that provided the background whereby these exchanges came about.

WITNESS Well, I think the original intention was good, but ——

Q. Well, the original intention, Doctor, was more or less confined to County Court sittings, and things of that court, but not Division Court, isn't that right?

A. Yes, that is my opinion.

Q. I mean now it has got to be extended to cover assessment appeals, and Division Court cases, Unmarried Parent's Act cases, and a whole lot of things of that sort?

A. Yes.

Q. But the original idea was that they would more or less exchange the general County Court sessions among themselves?

A. Yes. I think it would work out all right if it were to apply to County Court matters particularly.

MR. LEDUC: Dr. Bascom, I don't know if you have the figures here, but could you tell me how many writs were issued from your County Court last year?

WITNESS: I couldn't tell you.

Q. Approximately?

A. About fifty.

Q. And how many of these fifty would go to trial? How many cases?

A. Oh, less than ten.

Q. Yes?

A. I presume.

Q. About ten?

A. Eight or ten.

Q. That would be a conservative figure?

A. Yes.

MR. CONANT: Just on that interchange, one more question, Doctor, as you you know, the present system arises out of an amendment to the Act allowing interchanges *ad lib?*

WITNESS: Yes.

Q. Supposing we were to repeal these sections, putting it back to the previous system, and that is a system that is fairly general throughout the Dominion, that the interchanges would only take place where there was a requirement by the Attorney-General, and the account were certified by the Attorney-General, do you think that would meet all the reasonable requirements of your district?

A. Undoubtedly.

Q. Yes?

A. Undoubtedly it would. Taking Ontario county, which is a pretty busy county, I can quite conceive of a judge having too much work.

Q. Yes?

A. And wanting some assistance. I don't see any disadvantage in affording him that assistance.

Q. Yes, but wouldn't that work out this way, taking that very case; you've got too much work in your county, and the judge, presumably, would go to you and say: "Dr. Bascom, I wish you would get me some assistance." And you would call up the Attorney-General's office, and so on.

A. Yes.

Q. And you would explain that you want to run two courts next week, as the case may be; that wouldn't hold matters up very much, would it?

A. Oh no; no, it wouldn't.

MR. FROST: On the other hand, I think that there is a good deal to be gained; you take, for instance, a district such as Northumberland, Victoria, Ontario and Peterborough; take for instance Judge O'Connor; I think that it is a good thing generally to have Judge O'Connor come into one of the other county towns, and perhaps Judge Smoke go down to Cobourg, and so on; I think it has a good effect on the judges themselves, it keeps them out of a rut. They see new faces, they are faced with new conditions, new methods—I wouldn't say new methods—but perhaps a little different procedure, and, perhaps, if you lop

off some of the things that are objectionable now, such as these interchanges of Division Courts, and so on, that you will cure the main trouble.

MR. CONANT: Well, we are leaving a pretty wide doorway, I am afraid, Mr. Frost.

MR. MAGONE: Is there any inconvenience to it, arising from the present system, from the judges being away, Doctor?

WITNESS: From the judges being away on these interchanges?

Q. Yes.

A. No, I don't think that makes any difference, because they can apply to the judge that is there.

Q. I see. Doctor, what about the increased jurisdiction of the County Court? The amendment of 1937 increasing the jurisdiction, have you any remarks with respect to that?

A. Well, as far as increased jurisdiction is concerned, I suppose sometimes you would have to consider the judge that is going to try the case.

MR. CONANT: What's that?

WITNESS: Sometimes you would have to consider the calibre of the judge who is going to try the case, whether you think the jurisdiction should be increased.

Q. I remind you that justice is equal in all respect.

A. It should be.

MR. MAGONE: There is only one other question I would like to ask you while you are here, Doctor; I think we should ask you about this: there is a recommendation by Mr. Barlow, that the office of the court crier could be abolished. What are the duties of the court crier at the present time?

WITNESS: Well, he opens the court and he collects 20 cents for each witness.

MR. MAGONE: For swearing the witness?

WITNESS: No, he doesn't swear the witness.

Q. He doesn't swear the witness? For calling the witness?

A. Yes.

Q. That isn't provided for in any Statute, is it?

A. That twenty cents fee?

Q. No, the fee is, but the duties of the court crier?

A. I don't know that it is.

Q. It is a relic of the ages?

A. Yes, I think it is.

Q. Yes. The fee is provided in the Administration of Justice Expenses Act,

A. Yes.

MR. CONANT: Well, Doctor, could or couldn't that be done by some other official?

WITNESS: Oh yes.

Q. Pardon?

A. Oh yes, you could do away with the twenty cents fee and let a sheriff's officer or constable do it.

Q. Well, of course, it always seems to me that the twenty cent fee is more irritating than important.

A. Yes. Because you will find that, as soon as the case is over, you will find the crier goes over and approaches the solicitor for a fee.

Q. And sometimes the solicitor hasn't got the money. I've been that way.

A. And if he forgets to do it and sends him a bill, the solicitor is out that much.

MR. MAGONE: He swears the Grand Jury, does he not?

MR. CONANT: Oh no, that is the constable.

MR. MAGONE: Well, the tariff provides for the crier swearing the witness and the jury; in practice he doesn't do it?

WITNESS: Oh no, he never swears the jury.

MR. CONANT: Well, as a matter of common sense, in our courts down there, couldn't you perfectly well call the witness and do the nominal things that are now done by the crier without adding anything that you could appreciate to your work?

WITNESS: Certainly.

Q. Yes.

MR. MAGONE: Usually counsel calls out the name of his witness loud enough for the witness to hear?

WITNESS: Yes.

MR. CONANT: Yes, there is no doubt about that.

MR. MAGONE: Then he gets a fee of, I think, $3 from the county for attendance, doesn't he?

WITNESS: Yes.

Q. $3 a day?

A. Yes.

Q. The crier is appointed by whom?

A. Well, I think the sheriff appoints the crier, doesn't he?

Q. I think so; I think that is the practice.

A. Yes.

MR. CONANT: Well, you are the sheriff; you ought to know.

WITNESS: Well, I have never had to appoint one yet.

MR. MAGONE: Is there any difficulty about getting a judge for Chambers work in your county?

WITNESS: Sometimes.

Q. There is difficulty sometimes?

A. Yes.

Q. What does that arise out of?

A. The judge is not there.

Q. He is away in some other county?

A. No, he may not be away in some other county, but he is not in the building.

MR. CONANT: That usually happens about the 1st of May, doesn't it?

WITNESS: Fishing season, yes.

Q. Well, in that court crier matter, if we were making a change, we would have to vest somewhat of the same powers in the sheriff or the sheriff's officer, would we not, because the clerk of the court might be out when a witness is to be called?

A. Well, the clerk could have his deputy in the court room.

Q. Yes, but wouldn't it prevent any possibility of a gap if the sheriff or the sheriff's officer were vested with the powers of the crier?

A. Oh, you mean for the crier's duties?

Q. Yes.

A. Oh yes, the sheriff's officer could do that.

Q. Yes.

A. Oh yes, I thought you had reference to the clerk of the court.

Q. Oh, no.

MR. MAGONE: That's all, Dr. Bascom.

MR. CONANT: Thank you very much, Dr. Bascom.

Witness excused.

GEORGE T. INCH, Local Registrar and County Court Clerk, County of Wentworth.

MR. MAGONE: Mr. Inch, what offices do you hold?

WITNESS: Local Registrar of the Supreme Court, Clerk of the County Court, and Registrar of the Surrogate Court.

Q. There is a sheriff?

A. Yes.

Q. And that is in Hamilton?

A. Yes.

MR. CONANT: Supreme Court, County Court, and Surrogate Court?

WITNESS: Yes, sir.

MR. MAGONE: What is your set-up in Hamilton, with respect to the offices of clerk of the County Court and Surrogate Court? Are you in different offices?

A. No, we are in the same offices, and I have a deputy and three girls, and they all wait on the counter and each girl has her own particular books to enter. But if one girl gets behind, then the others go over and help.

Q. In your office there is a real amalgamation then?

A. Yes.

MR. CONANT: An amalgamation *de facto* if not *de jure*, is that not so?

WITNESS: I am not so good on my Latin, sir.

MR. MAGONE: Does it work out well, in your county?

A. We have had no trouble at all. It works out very smoothly.

Q. What is your reaction to the suggestion of Mr. Barlow that there should be consolidation of the courts, including the Court of General Sessions of the Peace?

A. I can't see that there would be very much saving. If I were given the records, of course—we have a fairly large county—if I were given the records of the clerk of the peace and the Crown Attorney, who is a permanent official there and has an office in the courthouse, I would need at least another girl to look after the entering and keeping of the records, and so on.

Q. How many clerks has the Crown Attorney?

MR. CONANT: Well, does the clerk of the peace employ a girl now for that purpose?

WITNESS: He has a girl in his office.

Q. Well, that wouldn't add to the total, to the aggregate?

MR. FROST: Well, I think, Mr. Inch, that the question was just of the County Court clerk taking over the duties of the clerk of the peace in relation to the County Judges' Criminal Court, that was about all that was suggested.

MR. CONANT: Well, the actual sittings of Criminal Courts by county judges, put it that way.

WITNESS: In our county, and I have been in office 13½ years—14 years this coming July—and ever since I have been there, during the jury sittings, of which the clerk of the peace would be clerk, I have always, or my deputy has always acted as clerk; but we do not pay as much or as close attention to that court as we would do where it is a jury sittings in a civil matter. We attend and call to roll the jury in the morning, and we are there for the opening of the court, the Crown Attorney passes over the indictment and we keep the records, just the same as we do for a civil action. We call the jury and enter it up in our book, and when the sittings are over, we then send the book up to his office, which is in the courthouse, and his girl takes the full particulars of the trial out of that.

Q. Well, then, you are again doing *de facto* what might be accomplished *de jure?*

A. Yes.

Q. Well, that is exactly what I have in mind, that the clerk of the County Court should do all those things.

A. Well, Mr. Ballard and I felt that it didn't look very good, and the

county never objected to paying the $4 fee; we just put it in the bill for the sittings and it looked much better to have a different man swear the witnesses. It doesn't look good to have a Crown Attorney pull a man's card out of a jury box and then say "challenged"; that's what we felt.

Q. Yes.

A. That's why we do it.

Q. What do you do with County Judges Criminal Courts?

A. We do not attend.

Q. He looks after that himself?

A. Yes.

Q. Couldn't you take that on?

A. What with the surrogate contentious matters, and the passing of accounts in surrogate matters, and the courts that we now have, I think that we are about two hundred days of the year in court now. They used to hold it every Tuesday, but what they do now, I don't know, sir.

Q. Of course, in actual practice, the sittings isn't quite as bad in County Court and Criminal Court as it is in the sessions, because, as you say, in the sessions, the clerk of the peace has to run the ballot box, and all the rest of it; that's not the same, of course, as the County Court Judges' Criminal Court?

A. There is one objection I saw to it; if we kept all the records of the County Court Judges Criminal Court in our particular county, Mr. Ballard's office, the Crown Attorney's office, is upstairs at the opposite end of the building from us, and if he were preparing for trial and had to interview the witnesses and so on, the records and exhibits would have to be sent up to his office for him to have, and then brought back to our office.

MR. MAGONE: That, of course, happens in the county of York, where the clerk of the peace and Crown Attorney are a separate official?

WITNESS: Yes, if they were amalgamated, I would like a Committee of your staff, sir, to lay down definitely the duties which we would have to perform, and the duties which the Crown Attorney and clerk of the peace would still continue, so that we wouldn't have any friction between officials; I don't think there would be, but that is one thing that came up at the executive meeting of the County Court Clerks' Association, that if the amalgamation did take place, we would like specifically laid down what out duties were.

Q. Do you get many inquiries, in your office, about criminal cases that are in the general sessions?

A. Oh, occasionally we get calls; more so now that we have appeals from the Magistrate's Court.

Q. Yes.

A. You see, a man elects trial by a higher court; the people know he has gone above the police court, and they will call up and ask when so-and-so's trial takes place.

Q. Yes.

A. And what is the matter, it wasn't in the Police Court, and sometimes, after looking it up and expecting that it is an appeal, we then find that it is a matter that is in Mr. Ballard's office.

Q. Well, that is just the point I had in mind; the general public are inclined to think that it is a matter in the County Court once it leaves the Police Court?

A. Yes, they are.

MR. CONANT: Well, it does seem to me that, excepting perhaps the larger jurisdictions, your office should be the clearing house for all those courts.

MR. MAGONE: What is your experience in connection with these summary conviction appeals, Mr. Inch, do the appeals in *de novo* trials take longer than the others?

WITNESS: Yes, they do. Last year, I think we had 20; I saw a list of them that was gathered by one of the girls, I think it was 19 or 21, and I think half of them were argued, by consent of the Crown Attorney and the solicitor in the case on the evidence that was taken in the Police Court.

MR. CONANT: Half of them on the evidence?

WITNESS: Yes, sir, that's where the attending solicitor, sir, ordered a copy of the evidence and the reporter ran off a copy for the Crown Attorney, and when they got in, they said: "We might just as well argue on the evidence that was taken."

MR. CONANT: Dr. Bascom, in your county are there many cases of summary appeals disposed of in that way?

DR. BASCOM: Yes.

MR. CONANT: Counsel agree to take the evidence of the trial?

DR. BASCOM: Yes.

MR. CONANT: What proportion, would you say?

DR. BASCOM: I should think half of them.

MR. CONANT: I see. That's important.

WITNESS: I couldn't vouch for the percentage, sir.

MR. CONANT: Oh no, that's quite all right.

MR. MAGONE: Have you had any experience with this, Mr. Inch, or would you know, that there are very often more witnesses called on the trial *de novo* than in the original trial before the magistrate?

WITNESS: I have known it to happen, yes.

Q. You don't know how often that happened?

A. No. Well, just in the cross-examination of the witnesses, I have heard the Crown Attorney say: "Well, were you at the original trial? Why weren't you called then?"

Q. They were weak on that point, I suppose. What is the practice in your court with respect to signing judgment? Does the judge sign or do you sign?

A. We sign all the judgments, but we have an endorsement; we have authority to sign, but if there is no endorsement on anything, we haven't any authority to sign.

Q. Well, Chambers?

A. Well, we don't attend Chambers; we have two judges and there is only the deputy and myself, and as I say, we are about two hundred days of the year in court, and that doesn't include the passing of accounts; it is a big County Court, and there seems to be in our county an awful lot of audits, to which my deputy attends, mostly.

Q. I see.

A. But we have no authority. Of course, if we were in Chambers, and we had the book and wrote down what the judge said, we would have authority under the rule which you quoted a moment ago, but we would have to have an endorsement in an official book to do so.

MR. CONANT: Would it help you if you had authority to sign both judgments and orders?

WITNESS: It would save the solicitor's time, and save everyone's time, because quite often you get a motion, and when you come back to get your order signed, the judge is tied up in some other matter and you can't go breaking in, where if the judge endorsed it and put his conditions on it and signed it, we have authority to sign the order.

MR. MAGONE: Mr. Inch, in County Judges Criminal Court, the sheriff or deputy sheriff attend?

WITNESS: Yes, of course, they are responsible for the prisoner, you see.

Q. Yes, well, could he act as your deputy, as deputy county court clerk?

A. Yes, he could.

A. Well, we have nothing to do with the opening of the court.

MR. FROST: Is there any statutory authority for that now?

WITNESS: No.

Q. I understood a moment ago that there was no statutory authority for the employing of a deputy where you are loaded up with work.

A. Of course I never tried to appoint more than one deputy.

Q. Well, you have one deputy, but that one, I suppose, is appointed by the Government?

A. Yes, sometimes, when we have the Supreme Court and County Court sittings, what will happen is that Mr. Caldwell, he is the deputy sheriff, goes over and sits in my seat and takes over for me, and he also is a notary public and has authority to swear witnesses. I always said that a person who wasn't a notary public or a commissioner for taking affidavits hadn't authority to swear a witness, but under this case that Mr. Winchester cited, I believe anyone has, if that is the law.

Q. Well then, you can always get around that point, if you find you are loaded up with courts and you can't be in two or three places at once, you can get somebody else to act for you?

A. Oh yes. But I haven't done it; I've just said to the deputy sheriff: "Would you mind looking after the exhibits and swearing the witnesses?" And he has the books there, with the entries.

MR. CONANT: What about the crier? Do you think you could possibly get along without a court crier?

WITNESS: Oh yes, we have an old gentleman there, he is about 80—I had to smile when you remarked on how long they live—he is an old gentleman about 80, and he was sheriff's officer for 40 years, and then he was sheriff's bailiff for 20 years, and then he was appointed crier and has been there ever since.

Q. Well, as a matter of common sense, to put it briefly?

A. Oh, yes.

Q. That could easily be done by somebody else, could it not?

A. Yes. But you asked the question of Dr. Bascom about swearing the jury; the crier is authorized, I don't know where it is, but he is supposed to hand the book to the juryman when he is sworn.

MR. MAGONE: Yes, I think the only place you will find it is in the Administration of Justice Expenses Act.

WITNESS: He always has, anyway, in our county.

Q. Mr. Inch, would the amalgamation of the courts suggested by Mr. Barlow save book-keeping?

A. I don't think so.

Q. You can't see where it would?

A. I don't think so. I think it would be the same. The only thing, we would have to have some more columns in our own book, but I think Mr. Cadwell could work that out to give us more columns in our book to show it.

Q. To save the number of books?

A. Yes.

MR. LEDUC: Which would mean purchasing a new book immediately?

WITNESS: No, it would just mean we might be able to use some of the columns that are in the book already; when we report each year, we have to break down all the money we take in under the five headings that you know of.

MR. CONANT: You were a lawyer when you were appointed, Mr. Inch?

WITNESS: Yes.

MR. FROST: Mr. Inch, in connection with the amalgamation of these various courts, you have read what Mr. Barlow said in his report, aside from the mere question of expense, because I rather agree with you in that I don't think that would make very much difference, do you think, as a matter of convenience and simplification, and so on, it is advisable?

WITNESS: The detail in our office now is tremendous. There are so many different things, you see, and it's just putting so much more in it; Mr. Winchester objected to having two sets of rules of practice in the one office; well now, we have two, we have the surrogate and the consolidated rules, and then we are affected by the criminal rules, with respect to criminal trials in the Supreme Court.

Q. Yes?

A. And then you have these additional rules, and the additional filing and additional detail in the other court—but everything is possible, Mr. Frost, the only thing is ——

Q. The point is this: as Mr. Conant said, 20 or 30 years ago, we had the Court of King's Bench, which was consolidated ——

MR. CONANT: In the 80's.

MR. FROST: Is it that long ago?

MR. MAGONE: Yes.

MR. FROST: Wasn't there something else much later?

MR. LEDUC: Justice Latchford couldn't have been Chief Justice in those days?

MR. STRACHAN: No, I think he was Chief Justice of the Second Divisional Court of Appeal.

MR. CONANT: But it was in the 80's when they abolished the King's Bench.

WITNESS: They did in law, but not in fact; where there were any officials they carried on, and as those officials died, the amalgamation came about, and while it was in effect in law, it was not in fact until those officials died.

MR. FROST: Was that not the case with Chief Justice Meredith?

MR. CONANT: Yes, the Court of Common Pleas.

MR. FROST: Wasn't that office really virtually abolished in 1910?

MR. STRACHAN: He was appointed to it just before the office was abolished.

MR. FROST: In 1883; it's surely not that long ago? But aside from the question of when it took place, it did take place and was an improvement?

WITNESS: Very much so.

Q. And are we not just faced with about the same situation now, in that we have a multiplicity of courts, and that sooner or later common sense calls for an amalgamation?

A. Yes, but then you are amalgamating the civil and the criminal; in that case it was merely all civil, you see.

MR. CONANT: Oh no, you have the Supreme Court.

WITNESS: But then you see, sir, in practice all we get in Supreme Court, we get the indictment, the jury returns a true bill, and after they get rid of the grand jury on follows the trial. As soon as the trial is completed and the man is sentenced, or the man discharged, we forward the exhibits back to the clerk of the peace, and we send the indictment under the criminal rules to the central office and we have no record left at all, excepting the record of the trial in the book.

MR. FROST: Why would that necessarily be interfered with by this?

WITNESS: That wouldn't be interfered with, but then the record is in the County Judges' Criminal Court. Oh, it is possible, and I think it would work out. I think Mr. Barlow has gone to a lot of trouble in the recommendation he made, and in addition to that, when he came into the county clerk's office, whatever the title the man would have then, he could search everything with respect to personal property.

MR. CONANT: Yes.

WITNESS: That was along the same lines, you know, having everything with respect to personal property in the County Court office, excepting executions, which would be in the sheriff's office, and if they were amalgamated, then everything would be in there, but I don't think it would be feasible to amalgamate in the larger counties.

MR. STRACHAN: But the work of the County Courts has been increased tremendously in recent years by Statutes referring matters to the county judge, don't you find that?

WITNESS: Well, you have your Children of Unmarried Parents Act, and now your Dependant's Relief Act.

MR. CONANT: The Change of Name Act.

WITNESS: Yes, there are all things just mounting up.

MR. FROST: On the other hand, aren't you up against this aren't you up against the continual piling up of deadwood, and at various times, you've got to have a clearing of those things, you've got to consolidate or add, as the case may be?

WITNESS: Oh, I quite agree with you, Mr. Frost.

Q. I mean Mr. Barlow was appointed, I suppose, by Mr. Conant with the idea of making suggestions to simplify things, and to get away with the tremendous amount of detail that we have now, such as rules that are not parallel, and so on. Now we have to start somewhere; don't you think that, perhaps, this is one step that could be taken without putting things too much out of joint?

A. Oh yes, I don't think it would put the place out of joint, and I was just thinking of a thing that you mentioned to me, sir, shortly after you were appointed, that is with regards to outside places, where the Crown Attorney's office is out in some building that isn't even fire proof, whereas, if the law were passed, they would all come into the central office. But if you do make a recommendation of that kind, I would keep my hands off Toronto, because I think I have the largest combined office outside of Toronto, and it's just about all one man wants to look after.

MR. FROST: Well, of course, that is exceptional.

MR. CONANT: Well, we have found Toronto to be exceptional in many respects since we started this hearing.

WITNESS: Well, you see, they have such a tremendous amount of work. Take our county, for instance; we have over 10,000 additional sale agreements a year; they will have four times as many here, they will have over 40,000 The chattel mortgages are about 20,000 a year; and, I think, in outside counties, taking all things by and large, you would have all the records in one place, where there would be a vault provided by the county, and the people would know

that all the records were there if they wanted to search. It would be more convenient.

MR. CONANT: Of course, this doesn't concern us particularly, but the matter that we have to consider is that it would hardly be logical or feasible to have, throughout the province, a court known as the County and Probate Court, and then, in the county of York, have an entirely different set-up. That is one of the difficulties that presents itself.

WITNESS: Oh yes.

MR. FROST: You would be jumping out of the frying pan into the fire by doing that.

WITNESS: Yes.

MR. CONANT: It would mean further complications.

MR. FROST. Yes. Of course, in Toronto, I think part of their difficulty is due to overcrowding.

WITNESS. They haven't sufficient space.

Q. Yes, they are all working on top of each other.

A. We have the same trouble in our vault We were very fortunate in that the Inspector of Legal Offices made a suggestion that helped me out very much, and arranged with the registrar of deeds to get rid of a lot of my old documents in the registry office; that helped us out immensely.

MR. MAGONE: You have no authority to destroy any court records?

WITNESS: No, but the Inspector of Legal Offices made arrangements with the registrar of deeds, and that relieved me.

MR. FROST: Yes, that would relieve your difficulty, if they had a central place to send records after a certain number of years.

WITNESS: Yes.

MR. CONANT: You have no experience with judges interchanging, have you?

WITNESS: Yes, we used to have a lot of it, sir, but since Judge Schwenger has been appointed, we have had practically none. We have had the odd case, but before Judge Schwenger was appointed, together with Judge Lazier—and they were both appointed the same month two years ago last January—up to that time, Judge Boles of Norfolk and Judge Cowan of Brant did a tremendous amount of work in our county.

Q. Well, your judges were ill then?

A. Yes, one was old and the other was ill, sir.

Q. Yes, but you get along now with your own judges?

A. Yes, and when we have pressure of work, and there are these outside Division Courts in small places, they get a lawyer of ten years' standing, or five years' standing, to go out. There is one thing that does help the judges, and I think it is a good thing, and would be especially good in small places; where a very prominent citizen is coming up for trial, they get a judge from the district; our district is Brant, Norfolk, Lincoln, Haldimand, Welland and Wentworth. It's a great convenience to a judge to be able to do it.

Q. Well, that could be met equally well by ——

A. By the suggestion that you made; all they would have to do would be to write in to your department.

Q. Yes. Or telephone.

A. And state the reason and ask for an outside judge.

MR. MAGONE: Is there anything else you wanted to bring before the Committee, Mr. Inch?

WITNESS: No, sir, not unless there is any question you want to ask.

MR. CONANT: Thank you very much for your assistance, Mr. Inch.

Witness excused.

MR. CONANT: Is there anything further for this morning, Mr. Magone?

MR. MAGONE: Well, I have some submissions from organizations, in connection with consolidation. I can read or summarize them now, or this afternoon, just as you wish.

MR. FROST: Well, we have Dr. Bascom and Col. Inch here now, it might be a good thing if you read some of these suggestions, as they might have something to say about them.

MR. INCH: May I bring up a matter? I was asked to by the President of our Association; it is the matter of superannuation of County Court clerks. We are not civil servants, and do not have the advantage of superannuation when we get to the end of the road, and the sheriffs got that right in 1921. The trouble is quite a number of them, when they are appointed, are too old, and our members have been fighting for years to become civil servants, and have the right to pay into the superannuation fund, and become civil servants, just as people working in the building here, and just as the sheriffs.

MR. CONANT: As far as the sheriffs are concerned, it applies to those who were below the age of 55 at the time of appointment, I think, or the time of it coming into force?

MR. SILK: At the time of the appointment.

MR. MAGONE: There is power now, under the Public Service Act, to bring in any class of public servants by order of the Lieutenant-Governor in Council, and it does not require an amendment. It is really a matter for the government of the day; "the Lieutenant-Governor in Council, upon the recommendation of the Superannuation Board, may extend the operation of this part to any other class of public officer employed in connection with the administration of justice, whether such officers are paid by fees or salary, or partly by fees or partly by salary."

MR. INCH: Well, we pointed that out when we were put on salary, three years ago, or four years ago now, and we were promised that we would be allowed to come in under that but nothing was ever done about it, and our Association, every year, have made application; two or three times it looked as if we were going to get the right, and then we didn't. But there is nothing like security to keep a man strictly on the narrow path, and to make him feel that at the end of the day he is not going to be turned out with nothing. Because, I don't know what the experience of the gentlemen of the Committee is, but no matter how much we get, we live up to it; that is only human nature, apparently. And whereas we carry insurance, superannuation is far better and cheaper than insurance, and if you can see your way clear to recommend that, I am sure the County Court clerks would certainly be very much obliged.

MR. CONANT: Well, I presume it has always been a matter of the cost involved.

MR. INCH: At one time the County Court clerks could have had it for the asking, and they wouldn't ask for it.

MR. FROST: Colonel, do you think this superannuation should be on some contributory basis?

MR. INCH: Oh yes, on the same basis as that of the other civil servants.

MR. FROST: How would you get around the question of age in some cases?

MR. INCH: Well, if he is over age, a man can't get insurance, and if he is over age, he can't get superannuation, that's all; it is just his misfortune; it wouldn't be fair to load up the superannuation fund to which the others have contributed by putting on a lot of men who are too old.

MR. CONANT: No. All right, Colonel, thank you.

Do you want to deal with these written submissions now, Mr. Magone?

MR. MAGONE: Yes. They are very, very short. I have read most of the submissions that have been made on the question of consolidation at a previous session. But there is one submission from the County Court Judges Association which was made very recently.

MR. FROST: Well, Mr. Magone, I think Mr. Conant asked this question yesterday, in connection with the amalgamation of the courts; so far, we have had no one who has expressed opposition to that, other than the fact that they

have stated that they didn't think it would make very much difference in the matter of expense; do you know of any real objection, or any objection that has been expressed to amalgamation other than that?

MR. MAGONE: No, I don't think there have been any.

MR. FROST: I mean, there is always the opposition to getting away from an old procedure, and old customs, and so on, and I suppose that will apply to this, too.

MR. MAGONE: Well, it hasn't been expressed.

MR. FROST: Well, go ahead with your submissions.

MR. CONANT: Just outline them briefly.

MR. MAGONE: Their recommendation is, that, in connection with the *persona designata* proceedings, that the jurisdiction be conferred upon the court itself, and not upon the judge.

MR. FROST: Would that make any particular change?

MR. MAGONE: Not in practice.

MR. CONANT: That takes care of the question of records, and so on?

MR. MAGONE: Yes. Not in practice, but I would doubt whether there is any real right to charge fees, unless fees are provided for in the Act giving the judge jurisdiction. The practice, as we have heard this morning, is to charge the fees set out in the rules of practice for proceedings in the County Court, whereas, the proceedings are not in the County Court at all, but rather a proceeding before a *persona designata*.

The county judges, on page 3 of their submissions, say:

> "It is felt that some action should be taken to consolidate the courts, in the same way as the Superior Courts were consolidated in 1881 under the Judicature Act. It will be noted that the high court judges did not agree with our recommendations towards consolidation of the lower courts. However, we respectfully submit that they do not actually oppose such a consolidation, but only dealt largely with details."

Now, I have already read the submission of the judges of the Supreme Court, and I will just remind the members of the Committee, that the judges of the Supreme Court say:

> "It is doubtful whether any advantage is to be obtained by consolidating local civil courts with local criminal courts. That would appear to involve the already overburdened officer who commonly acts as local registrar, clerk of the County Court and registrar of the Surrogate Court, also taking over the duties of the clerk of the peace. Consolidation of these offices has already reached a point where the efficiency of the local officers has become gravely impaired."

MR. FROST: I question that very much, with all due respect to the judiciary.

MR. CONANT: We have had one witness here this morning who rather refutes that, and that is Dr. Bascom.

MR. FROST: I think that any impairment there may be, has largely been here in Toronto, and perhaps with Colonel Inch in Hamilton, but that is largely a question of organization and space in their offices.

MR. CONANT: And personnel.

MR. FROST: Yes.

MR. LEDUC: But to be perfectly frank, I don't myself, see any particular advantage to be gained. I have an absolutely open mind on consolidation, but I don't think it will change anything.

MR. MAGONE: The other recommendations and observations on the Barlow report I have already read, and there is no disagreement with his suggestion.

MR. CONANT: Well then, I suggest we adjourn until 2.15 this afternoon, and then proceed as has been indicated.

Committee rises until 10.30 Monday, April 9th, 1940.

Parliament Buildings, Toronto,
April 9th, 1940.

SIXTH SITTING

MORNING SESSION

MR. CONANT: Gentlemen, before we proceed, I would call your attention to the fact that the results of our interim discussion last Friday afternoon have been typed and revised, and appear at pages 70 and 71 of your books, and having gone over it with counsel, I think it expresses the interim opinion of the Committee, subject, of course, to the items which were left at that time.

Now, at that time, in order to keep our agenda more or less straight, we did not discuss, and have not made any interim recommendation regarding item 12, Consolidation, or 13, County Court Jurisdiction, or 14, County Court Districts. I make the suggestion, subject to whatever the Committee may wish, that, perhaps, we may feel that on Friday of this week, or when we reach the conclusion of some particular branch or branches, we might deal similarly with these other items. Items, 12, 13, and 14, and perhaps 15, may develop this week. Is that agreeable to the Committee?

Carried.

I think it will help to keep our record clear. And now, Mr. Magone, will you proceed, please.

MR. H. P. EDGE: Mr. Chairman, just before you proceed, may I ask, in view of the request that has been made by the benchers, that when they appear, they would like the opportunity of making certain representations on the current matters which have been before the Committee, would you consider, sir, that a copy of your interim finding of Friday, might in fairness, be presented to the benchers?

MR. CONANT: Well now, Mr. Edge, I think it is the view of the Committee, and they will correct me if I am wrong, that their interim decisions are matters only for themselves. For this reason, that it is just possible, and probably, that even on items to which they have directed their attention, there may be more submissions made, and before we are through, they might materially revise their interim opinions.

That was only done in order to keep the facts clear in our minds, in view of the fact that there had been such a mass of material, that we might forget what took place during the first week, and for that reason, I don't think it would be advisable.

MR. EDGE: I think I understand, sir.

MR. CONANT: Because you might be shooting at something that might topple itself over before we got through; is that not the view of the Committee?

MR. FROST: Yes.

MR. EDGE: It was only the possibility that the benchers might be a little more direct in their observations, if they saw which way the vane was pointing, that I asked, and I didn't want to appear too inquisitive.

MR. CONANT: Oh no, that's quite all right, Mr. Edge.

MR. EDGE: Thank you very much, sir.

MR. CONANT: All right, Mr. Magone.

MR. MAGONE: I was instructed, last week, to get in touch with two county judges; Judge O'Connor, of Cobourg, and former Judge Caron, of Ottawa. Judge O'Connor has stated that he will be here on Thursday, in the afternoon. Judge Caron says he is very sorry, but that he can't come; he is very ill.

MR. CONANT: I see.

MR. MAGONE: If you wish to instruct me to get some other Northern Ontario judge, I will do so.

MR. LEDUC: Did Judge Plouffe make any recommendations?

MR. F. H. BARLOW, K.C.: Yes, Plouffe made some recommendations. I just forget what they were now, but I think some recommendations came from him and also from the Law Association through him. Judge Plouffe is at North Bay.

MR. CONANT: Then we can decide on Judge Plouffe, gentlemen; is that agreeable, Mr. Frost?

MR. FROST: Yes.

MR. CONANT: Mr. Strachan?

MR. STRACHAN: Yes.

MR. CONANT: Then there is another matter, I understood that, arising out of our discussion regarding expenses in connection with the interchanging of judges, that some of the judges wish to be heard.

MR. MAGONE: Yes, the County Court Judges' Association, through their secretary, Judge Owen, has communicated with me, they are holding a meeting in Toronto on Wednesday, and they desire to be heard on Thursday.

MR. CONANT: Very well; make arrangements with them.

MR. MAGONE: Then, too, Mr. Chairman, I was instructed to communicate with the deputy attorney general of the Province of Quebec, and Mr. Silk had a wire from him, saying that he would designate an officer of his department to appear before the Committee at their expense, a Mr. Juneau, and Mr. Silk has arranged that he come on Wednesday morning.

MR. CONANT: Very well.

MR. MAGONE: Now, Mr. Chairman, we were going to proceed with the rest of the recommendations in Mr. Barlow's report.

MR. CONANT: Yes.

F. H. BARLOW, K.C., Master of the Supreme Court, Toronto, Ontario.

MR. CONANT: Well, are you not dealing primarily with items 19 and 27, Mr. Magone? The Rules of Practice?

MR. MAGONE: Yes, with that first.

MR. CONANT: Yes, well then, gentlemen, Mr. Magone is going to deal with the Rules of Practice Committee. You will find, on page 19 and following of your book, reference to those items. During the week-end, in studying that, I asked counsel to set up a different summary of the different rule-making bodies in the province at the present time, and those are set forth on pages 18 and 18C, and you see there, more or less at a glance, the different rule-making bodies there are now, for the different Statutes requiring rules to be formulated, I suggest the Committee might want to be aware of that, so that, in hearing the evidence, they might have a reference to it. All right, Mr. Magone.

MR. MAGONE: Then on pages 66 to 71 of the book, there is a reference to the rule-making bodies in the other provinces.

MR. LEDUC: The power to make rules in Alberta is vested equally in the

judges of the Supreme Court and the Lieutenant-Governor in council; have they powers to make rules dealing with the same matters?

MR. MAGONE: Yes.

MR. CONANT: Concurrent jurisdiction.

MR. MAGONE: Yes.

MR. LEDUC: So, if Mr. Aberhart doesn't like the way the judges are doing, he can pass his own set of rules?

MR. MAGONE: Apparently, but in practice, they have left the rule-making with the judges of the Supreme Court. And in Manitoba, the power is vested in the judges themselves.

In New Brunswick, the rules are made by the Lieutenant-Governor in council upon a recommendation of the majority of the judges.

MR. LEDUC: Or upon the recommendation of the Council of the Barristers' Society; there again, you may have conflicting recommendations?

MR. CONANT: Well, I don't favour concurrent jurisdiction. It seems to me there should be somebody making the rules.

MR. LEDUC: Yes.

MR. MAGONE: There is a note there; when recommendations are made by the Barristers' Society, they are passed to the judges, and when they are made by the judges, they are passed to the Barristers' Society.

WITNESS: That is in New Brunswick; but isn't the ultimate power in New Brunswick by Order-in-Council?

MR. MAGONE: Lieutenant-Governor in Council, yes.

In Nova Scotia, the rules are made by the judges.

And in Saskatchewan, they are also made by the judges.

MR. CONANT: Are they confirmed by Order-in-Council in those jurisdictions?

MR. MAGONE: Apparently not.

MR. CONANT: Well, then we can, at the same time, turn to the Barlow report and summarize the English procedure. Perhaps we can let Mr. Barlow do that. It is on the very last page of his report.

MR. MAGONE: Mr. Barlow, will you just summarize what the jurisdiction is in England?

WITNESS: The rules of court, in England, are made by the Lord Chancellor,

together with any four or more of the following persons, namely, the Lord Chief Justice, the Master of the Rolls, the President of the Probate Division, and four other judges of the Supreme Court, two practicing barristers being members of the General Council of the Bar, and two practicing solicitors, of whom one shall be a member of the Council of the Law Society, and the other a member of the Law Society and also of a provincial Law Society. And the four other judges and the barristers and solicitors are appointed by the Lord Chancellor in writing under his hand, and shall hold office for the time specified in the appointment.

MR. CONANT: Well then, it's a mixed Committee, there, is it not?

WITNESS: It is a mixed committee, of course; the Bar and the solicitors are separate in England, and in order that representation may be had from both bodies, there are two barristers and two solicitors who are members of this Committee, which is composed as I have said.

MR. LEDUC: It is composed of eleven people, really.

WITNESS: Yes, the heads of the different courts.

Q. No, but outside of the Lord Chancellor there are eleven members?

A. Yes.

Q. And it is sufficient to have four of them in addition to the Lord Chancellor, for them to be approved?

A. Oh, no.

Q. Yes. "The rules of court may be made by the Lord Chancellor together with any four or more . . ."

A. Oh yes, you're quite right, I see what you mean. The Lord Chancellor and any four of them may make the rules.

MR. CONANT: Yes. Well, are those rules effective by promulgation, or ——

WITNESS: By promulgation, with Order-in-Council, as I understand it, yes.

Q. What do you think yourself, Mr. Barlow, dealing first with that angle of the thing, as to whether rules of court, no matter what the tribunal is making such rules, should have the force of law without any governmental or parliamentary sanction, having this in mind, to which you may agree or otherwise, namely, that the rules of practice may affect the rights of the subject, almost to an equal extent as a great many Statutes passed by Parliament. Is that not the case?

WITNESS: I think that is exactly the case. The rules of practice do affect the public, because they are made in order that the public may assert rights which they may have, and have them determined by the courts, and it is only by these rules that that is carried out.

Q. And certainly, at any rate, I think perhaps you will perhaps agree, that

the simplicity or the complexity of the rules might materially affect the burden upon any person invoking the courts, is that not correct?

A. There is no question about it.

Q. Yes. Well, what would be your view as to whether rules, regardless of who the formulating body may be, should be subject to sanction of Parliament, or the Lieutenant-Governor in Council, or some governmental agency?

A. In my opinion, they should be subject to sanction of an Order-in-Council or the Lieutenant-Governor in Council. I think it doesn't want to be too cumbersome.

Q. No.

A. Nor does it want to be something that has to wait until Parliament sits, necessarily.

Q. Well, supposing you had procedure of this kind, and I think there are precedents for it: that the Rules of Practice could be approved by Order-in-Council, and tabled in the Legislature within so many days of the Legislature sitting, or within so many days after commencement of the Legislature; if the Legislature is not sitting; what would be your view of that?

A. It is a practice that has been followed in certain types of regulations, shall I call them, and it is certainly protective and in line with our system of government.

Q. The democratic system?

A. The democratic system of government.

Q. Yes. There is another angle to that, Mr. Barlow; perhaps Mr. Magone and Mr. Silk can help us out on this: there is set up in the Rules of Practice, the tariff of disbursements, as they call it; what is the present position in regard to those tariffs? Those tariffs, first of all, affect the Crown revenues, do they not, Mr. Barlow?

A. They do; they are the moneys that go to the Crown, and assist in the maintenance of the courts and the administration of justice.

Q. Yes, for which the province is responsible?

A. Yes, the province is responsible for it.

Q. Whether there is a dollar or a million dollars of disbursements?

A. Quite right.

Q. And, Mr. Magone, I would like you to place before the Committee, subject to the Committee's wishes, because I think it is important, as to the present system with regard to those disbursements, whether the committee of

judges has the power to fix those disbursements with or without governmental approval or what the situation is. Is the Committee agreed?

MR. LEDUC: Yes, quite; we would like to have that.

MR. CONANT: Because that directly goes to Crown revenue.

MR. LEDUC: Yes.

MR. MAGONE: Well yes, under the Judicature Act, section 106:

> "The Rules of Practice and Procedure, including the tariffs of fees and costs proclaimed by the Lieutenant-Governor in Council under the authority of the Judicature Act, being Chapter 19 of the Statutes of 1913, and all amendments made to such rules by the judges, are confirmed and declared to have the same force and effect as if they were embodied in this Act, but the judges may, nevertheless, from time to time pass rules repealing, amending or varying the same."

MR. CONANT: But that doesn't use the word "disbursement" there.

MR. LEDUC: Oh yes.

MR. MAGONE: Yes, it says "fees and costs."

MR. CONANT: Well now, is that disbursements?

MR. MAGONE: Well, that is the cost of proceeding in court, I think that is wide enough to include the tariffs in the Act.

MR. LEDUC: Mr. Magone, let me get this right; in 1913 there was an Order-in-Council passed approving those rules and the tariffs, equally the tariffs?

MR. MAGONE: Yes.

MR. LEDUC: But since that time, the government has no power to amend them by Order-in-Council? The sole power is in the judges?

MR. MAGONE: Yes, that is the situation.

MR. MAGONE: Well, Mr. Barlow, what do you construe that to mean, do you construe that as giving the judges the power ——

MR. CONANT: Do you construe that as giving the judges power to alter the disbursements, or where does that power rest?

WITNESS: I always thought the power rested with the judges, but it would appear that there may be some question about that. I haven't been referred to any change that has been made, unless something has been done by Order-in-Council.

MR. LEDUC: Well, Mr. Barlow, I think the tariff of fees was changed during the last war.

MR. CONANT: What do you mean by fees, Mr. Leduc?

MR. LEDUC: Fees to solicitors and counsel, as distinguished from disbursements. I think that some time during the last war, there was an increase of 20 percent granted on taxable fees. Now, was that done by Order-in-Council or by the judges?

WITNESS: I don't know.

MR. CONANT: Well, Mr. Leduc, it doesn't appear to me that there is any difficulty or doubt about fees, they have jurisdiction over the fees, but I would like to straighten out this question of disbursements, because the words that are used in the rule book are not the same as in the Statute; the rule book refers to tariff fees; tariff fees are not disbursements; and the Statute uses the words "fees and costs," does it not, Mr. Magone?

MR. MAGONE: Well, I can't see any particular difference between disbursements and costs.

MR. FROST: You mean a disbursement is a cost?

MR. MAGONE: Yes, a disbursements is a cost, and the rules fixing the tariff of fees and costs ——

MR. FROST: Let me get this straight; I was of the opinion that the Rules of Practice were made by a committee of judges, and it wasn't necessary that they should be confirmed by Order-in-Council, and apparently that is not correct; according to the Judicature Act, section 106, the Rules of Practice and Procedure, including the tariff of fees and costs, are proclaimed by the Lieutenant-Governor in Council under the Judicature Act, and all the amendments made to the rules by the judges are confirmed.

MR. CONANT: Well, the explanation of that is, that at that time, they gave the force of law to subsisting conditions, and under subsection 2, they go on to say:

> "The judges of the Supreme Court may, at any time, amend or repeal any of the rules and may make any further or additional rules for carrying this Act into effect;

MR. MAGONE: Yes, and I think, if you look at subsection (h), that will clear the matter up; it says:

> "subject to the approval of the Lieutenant-Governor in Council, for making rules from time to time, regulating all fees payable to the Crown, in respect of proceedings in any court.

WITNESS: My recollection is this: that in 1913, the Hon. Mr. Justice Middleton was especially deputized, whether by Order-in-Council or not, I don't know, but I think so—it is in the front of the rule book, I think—by Order-in-Council to revise the rules. He did so, and then there was an Order-in-Council passed, confirming and giving force of law to the rules which he had made. And that is the reason for subsection (1) of section 106 of the Judicature Act reading as it does.

"The Rules of Practice and Procedure, including tariffs of fees and costs proclaimed by the Lieutenant-Governor in Council under the authority of the Judicature Act, being chapter 19 of the Statutes of 1913, and all amendments made to such rules by the judges, are confirmed and declared to have the same force and effect as if they were embodied in this Act, but the judges may, nevertheless, from time to time pass rules repealing, amending or varying the same."

MR. CONANT: Yes.

WITNESS: And in the next subsection:

"The judges of the Supreme Court may, at any time, amend or repeal any of the rules and may make any further or additional rules for carrying this Act into effect, and in particular, and so on.

MR. CONANT: Yes.

WITNESS: Now, that is the practice at the present time. Now, I would like to have before me the 1927 revision of the Statutes, and also the 1914 Statutes, because there was an amendment made in 1927 with reference to the rule-making body.

MR. LEDUC: Well, look at section 108 of the Judicature Act; is that it?

WITNESS: No. There was a section of the Judicature Act that was repealed in 1927.

MR. CONANT: What was the effect of that section?

WITNESS: In the revised Statutes of 1914, chapter 56, section 110, provision was made there for the making of rules, subject to the passing of them by Order-in-Council, by the Chief Justices, including the Chancellor, and any one or more of the other judges of the Supreme Court, and the treasurer of the Law Society, and any two barristers. That was repealed in 1927, George V.

MR. FROST: But that was the provision in the 1914 rules and it continued until 1927, when it was repealed, and this present section 106 was passed. If we had that section here ——

MR. MAGONE: We have sent for it.

MR. CONANT: Was that procedure invoked indirectly in that interval?

WITNESS: No, I don't think it was; so far as I recollect, there were no changes in the rules from 1913 until 1927 or 1928, when this subsection 106 was passed, and the section that I speak of was repealed, and this new section 106 was passed, and under that there were amendments made to the rules in 1928, when the Rules of Practice were reprinted, and those Rules of Practice of 1928 were made under the present section 106 of the Judicature Act.

MR. CONANT: I see. And then ——

WITNESS: And then I might just go back a little farther, if you care to hear a little history on this, gentlemen.

MR. CONANT: Just let me interrupt you there for a moment; in that revision of 1928, was there any change made in the disbursements?

WITNESS: I can't tell you that without comparing it with the previous book; that is easily found out.

Q. Well, during my practicing days, there were certainly changes made in the disbursements?

A. There were some changes made, Mr. Chairman, and I think, if we had a copy of the rules prior to 1928, we would be able to compare them.

MR. FROST: What about letting Mr. Barlow go ahead with his history of this thing, and its background?

MR. CONANT: All right.

WITNESS: Previous to 1913, there was a revision of the rules in 1897. That revision of the rules was made by a Commission, and I don't think I could do better than to read from the frontispiece of the rules of 1897, which reads as follows:

> "The present consolidation of the Rules of Practice of the Supreme Court of Judicature for Ontario has been prepared by a Commission, issued on the 23rd day of May, 1895, under the Statute of Ontario, 58 Victoria, c. 13, s. 42, appointing the following Commissioners: The Hon. J. A. Boyd, Chancellor of Ontario; The Hon. W. R. Meredith (now Sir William R. Meredith), Chief Justice of the Common Pleas; The Hon. Thomas Ferguson and The Hon. John E. Rose, Justices of the High Court of Justice; The Hon. Sir Oliver Mowatt, Attorney-General of Ontario (now Minister of Justice of Canada); The Hon. A. S. Hardy, Commissioner of Crown Lands (now Attorney-General of Ontario); The Hon. J. M. Gibson, Provincial Secretary of Ontario (now Commissioner of Crown Lands for Ontario); The Hon. Richard Harcourt, Treasurer of Ontario; Charles Moss, Q.C. (now one of the Justices of the Court of Appeal); N. W. Hoyles, Esq., Q.C., Principal of the Law School of Ontario; John Hoskins, Esq., Q.C.; G. H. Watson, Esq., Q.C.; George F. Shelpley, Esq., Q.C.; Charles H. Ritchie, Esq., Q.C.; Thomas Langton, Esq., Q.C.; and James Fleming, Esq., Inspector of Legal Offices."

And that is dated the 22nd of July, 1897, when these rules came into force.

MR. LEDUC: On which Commission, the Government was very well represented?

WITNESS: Very well represented, yes, probably a majority of representation, I might say.

Then, I would like to refer to the Statutes of 1897, if we could get those

also, so that I can build the thing up from there, and in that way I can probably give you a better picture of it.

MR. MAGONE: While we are waiting, Mr. Chairman, Mr. Silk has been in communication with North Bay, and Judge Plouffe is not available; he is in Montreal to-day, and then he is going to Ottawa, and North Bay on Saturday. If we want to get this matter cleaned up this week, we should get in touch with someone else.

There is Judge Stone, for instance, at Sault Ste. Marie. Then there is Cochrane.

MR. FROST: How about Judge Stone?

MR. CONANT: How long has he been there?

MR. SILK: Just a short time.

MR. CONANT: Judge Stone?

MR. SILK: Oh no, Judge Stone has been there for a long time. I mean Judge Dennis, in Cochrane, has only been there five or six months.

MR. MAGONE: Yes, Judge Wright of Muskoka is also a fairly recent appointment; then there is Judge Proulx, of Sudbury, and Judge Hayward, of Temiskaming.

MR. CONANT: I would think that perhaps Judge Hayward is the best one.

MR. MAGONE: Yes, he has been on the bench longer than any of the other judges, in all about twenty-five years, I believe.

MR. CONANT: Is that agreeable, gentlemen?

Carried.

WITNESS: Well now, gentlemen, the Revised Statutes of Ontario, 1897, chapter 51, section 122, provide that:

> "The Supreme Court may at any time, with the concurrence of a majority of the judges thereof present at any meeting held for that purpose, alter and annul any Rules of Practice for the time being in force, and may make any further or additional Rules of Court for carrying this Act into effect, and in particular, for all or any of the following matters:

And then it proceeds to enumerate them; for regulating sittings of the High Court, regulating pleadings, practice procedure in the High Court of Justice, and Court of Appeal, and so on, very similar to the present section 106. But there is also, in this revision, section 125, which no longer appears in our Statutes:

> "The Lieutenant-Governor in Council may, from time to time, authorize the following persons, namely, Chief Justice of Ontario, the Chancellor,

the Chief Justice of the Queen's Bench, the Chief Justice of the Court of Common Pleas, and any one or more of the other justices of the Supreme Court, to make Rules of Court under this Act, every such appointment to continue for such time as shall be specified by Order-in-Council, and the judges so appointed, or any three of them, may make such rules, and the same shall have the same effect as if made by all the judges of the Supreme Court under section 122."

MR. CONANT: That is a peculiar thing.

WITNESS: Well, it would appear that that section is for the purpose of making a, shall I say, more severe revision of the rules, whereas section 122 would be made use of for altering and amending the rules from time to time, as may appear necessary for making the practice consistent, and so on.

MR. CONANT: In minor respects?

WITNESS: More or less minor respects, I would think.

MR. FROST: Was that section 125 really made for the appointment of a Commission similar to the 1897 Commission?

MR. CONANT: Well, I was just going to ask Mr. Barlow, will you look at that section you have just read and see where it comes from? That is the section allowing the Lieutenant-Governor in Council, etc., what is the reference at the end of it?

WITNESS: 53 Victoria, chapter 12.

Q. 58 Victoria, chapter 12?

A. Yes.

Q. Now this Commission, the 1897 Commission is 58 Victoria, chapter 13, section 42?

A. Well, that would be a special ——

Q. A special Act?

A. A special Act; that is a special Act, apparently.

Q. Yes.

A. I think it is a special Act. Now then, those sections remained in the Judicature Act of Ontario, until 34, George V, 1913, section 103.

Q. What chapter?

A. Chapter 19, section 103, there appears the provision under which our 1913 rules were made by the Hon. Mr. Justice Middleton. It reads as follows:

"If and when the Rules of Practice and Procedure, which are being

prepared by the Hon. Mr. Justice Middleton under instructions from the Attorney-General, are approved by the Lieutenant-Governor in Council, the same and the tariffs of costs and tariffs of fees payable to the Crown and the officers of the court contained therein shall, on a day to be named by the Lieutenant-Governor in Council by proclamation, have the same force and effect as if they had been embodied in this Act, and shall supersede the existing rules, and tariffs in section 102 shall, after that date, no longer remain or be in force."

Now section 102 referred to, there is a section dealing with fees on certain proceddings. Then,

"In addition to the . . . which is payable in the proceedings of the Supreme Court, the following fees shall be paid to the Crown":

MR. LEDUC: There you are.

WITNESS: There is the section with reference to it. But that only remains in force until such time as Mr. Justice Middleton had completed his revision, which revision included a revision of the tariffs of costs and tariffs of fees payable to the Crown. And then in the 1914 ——

MR. CONANT: Are you referring to the Revised Statutes of 1914?

WITNESS: The Judicature Act in the revised Statutes of 1914, chapter 56, section 109, is the same as 3 and 4, George the V, chapter 19, that I referred to a moment ago; that is, the 1913 Statutes, and section 110 is also the same as section 125 of the 1897 Judicature Act, chapter 51, which I gave you. And that was carried through until the Ontario Statutes of 17, George V, 1927, when it ——

MR. CONANT: What is the chapter?

WITNESS: Chapter 29, section 38 of which repealed section 110.

MR. LEDUC: What is that, again?

WITNESS: Section 38 of this chapter 29 in the 1927 Statutes repealed section 110, which is the section giving the right to the Lieutenant-Governor in Council, the Chief Justice, and so on--that was repealed, and section 109 was also repealed, and a new section 109 was passed, and with the purpose, I gather from reading it, of giving the judges full power to make rules:

"The judges of the Supreme Court may, at any time, amend or repeal any of the rules and may make any further or additional rules for carrying this Act into effect."

And so on. And it was under that section that the revision of rules was made in 1927.

MR. CONANT: What is the new section?

A. It is section 109, and that section was carried, of course, into the 1927 rules, and then carried into the 1937 rules, where it is 106.

MR. LEDUC: You mean Statutes, I presume?

WITNESS: I beg your pardon, not rules, but Statutes, carried into the revised Statutes of 1937, under chapter 100, section 106, and that is the statutory provision to-day.

Q. Well then, Mr. Barlow, we may take it for granted that the Judges of the Supreme Court have full power to establish tariffs and disbursements?

A. Well, it looks like it, to me.

MR. MAGONE: Well, for fees payable to the Crown, with the approval of the Lieutenant-Governor in Council.

MR. LEDUC: Well, let us be clear on this.

WITNESS: That is subsection (h), yes. Yes, subject to the Lieutenant-Governor in Council regulating the fees payable to the Crown, and that section, of course, requires any change made in any fees payable to the Crown being approved of by the Lieutenant-Governor in Council.

MR. CONANT: I would like to interject this here, for the benefit of the Committee; there was a search made to find, if there were any, the Orders-in-Council approving of such things, and none could be found. Did you make that search, Mr. Silk?

MR. SILK: No, I did not, sir.

MR. CONANT: Well, some one did, I understand. I was in doubt, but in discussing it with some of the judges of the Supreme Court, they felt that an Order-in-Council was not necessary, although they added, quite properly, that the judges would never amend the disbursements, because they represented Crown revenue, without the concurrence of the Government. So that there certainly has been a misunderstanding over the years,and I am definitely of the impression that those disbursements have been amended without the necessary Order-in-Council, if an Order-in-Council is necessary.

MR. LEDUC: Well, we have several tariffs at the end of the rules; we have, first of all, tariffs of fees payable to solicitors in County Court and Supreme Court, and then we have a tariff of disbursements payable where an officer is not paid by salary, or his fees are not commuted, unless especially authorized; I suppose these would be fees payable to the Crown. But then, later on, you have fees payable to county court clerks, and fees payable to sheriffs.

MR. CONANT: Which are all Crown revenue.

MR. LEDUC: Well, they are and they are not.

MR. CONANT: Well, they are now-a-days.

MR. LEDUC: Yes, but according to the tariffs you have, these fees are payable for serving persons, but not to the Crown; but, as you state, in these days, most of these fees are commuted, and become Crown revenue.

MR. CONANT: That's right.

MR. LEDUC: I believe that all these disbursements should be set by Order-in-Council.

MR. CONANT: Or approved by Order-in-Council.

MR. LEDUC: Well, I don't know, after all, it is an indirect form of taxation.

MR. CONANT: Yes, it probably is.

MR. FROST: Well, Mr. Barlow, in the suggestion that you make here, on page B75, there isn't any really radical departure from what we have previously done. It's true that, at the moment, it appears that the judges alone have the right to amend the rules and make new rules, but after 1897, they recognized the fact that judges, representatives of the government, and practicing barristers made the revision of 1897, and it does seem to be common sense that that old practice should be revised and brought up to date. And that is what your suggestion is?

WITNESS: And there was provision for the matter being taken care of in that way up until 1927, when it was amended by repealing the provision.

I was just going to say this, gentlemen: that I have been comparing the tariff of disbursements in the 1913, and in the 1928 rules, that is fees payable to the Crown, and apparently there was practically no change in it at all. I believe the only changes I see are in witness fees, and they are not payable to the Crown.

MR. MAGONE: Apparently from this 1913 Act, then, where certain fees are given to the Crown by Statute, there was a departure, then, for the first time from the principle that fees payable to the Crown should be fixed otherwise than by Statute?

WITNESS: Yes, apparently.

MR. MAGONE: Yes, that would appear to be so from reading it.

MR. CONANT: I don't quite understand.

MR. MAGONE: In 1913, Mr. Chairman, there is provision in the Judicature Act setting out certain fees payable.

WITNESS: Additional fees.

MR. MAGONE: Additional fees payable on the issue of the writ, to go to the Crown.

MR. CONANT: Yes?

MR. MAGONE: By that section 102 the tariff of fees set out in Mr. Justice Middleton's Rules of Practice were approved.

MR. CONANT: By Statute.

MR. MAGONE: Yes, on coming into force, by Statute, and thereafter the fees were fixed by the judges.

WITNESS: It would appear to me, without going ——

MR. CONANT: But just let me interrupt there, Mr. Barlow; you say thereafter those fees, and I prefer the word disbursements, those disbursements were fixed by the judges?

MR. MAGONE: By the judges?

MR. CONANT: I would like you to make a note of it and have somebody search again and see if there have been any Orders-in-Council approving the amendments to the tariff of disbursements since 1913.

WITNESS: I don't think there has been any change in the disbursements since 1913, Mr. Chairman. I have been comparing the disbursements of the 1913 rules with those of the 1928 rules, and I can't see any change in the fees payable to the Crown. And under the provisions of the Judicature Act of 1913, under which Mr. Justice Middleton made the rules, it says:

> ". . . the tariffs of costs and tariffs of fees payable to the Crown and the officers of the court contained therein shall, on a day to be named by the Lieutenant-Governor in Council by proclamation, have the same force and effect as if they had been embodied in this Act, and shall supersede the existing rules, and tariffs, and section 102, shall, after that date, no longer remain or be in force."

Now, section 102 was apparently merely a stop-gap in order to increase the fees for a short time, until such time as the change had been made by the new rules, because it says:

"In addition to the fees otherwise payable on proceedings in the Supreme Court, the following fees shall be payable":

And then it goes on to say, "on every writ, 50c, every judgment, entered," and so on. This is an increase, you see.

MR. CONANT: Yes.

WITNESS: And it was only to take care of it until such time as the change occurred.

Q. Which was taken care of in consolidation?

A. Well, it was taken care of in the tariff of fees and costs, and so on, as set out along with the rules made in 1913.

Q. That's right, with the revision?

A. Yes.

MR. LEDUC: Mr. Magone, talking of these disbursements, have you any

information as to the disbursements paid in other provinces as compared with those in our courts?

MR. MAGONE: No, I don't think we have, not in the Supreme Court. Mr. Barlow, you didn't collect that information, did you?

WITNESS: I didn't directly collect that information. It is all to be found in the same sections with the rules of court in the different provinces, and in some places it is higher, in other places not so high; in some places it is on the block system, which we have here, and I think in the Maritime provinces it is still on the old system of so much for each step taken, copying, engrossing, and so on.

MR. CONANT: Well, I think that is an item that might very well go on our agenda, Mr. Magone. It is not entirely relevant to our present discussion, but it is important, because I think this Committee might very well consider a revision of these disbursements, but I don't think that we should interject it in this question of the rule-making body, any more than to apprise this Committee sufficiently so that it may form a conclusion, as it may very well do, that the fixing of disbursements should be a matter for the Executive, as it affects Crown revenues.

MR. MAGONE: Yes; you will remember, Mr. Chairman, that you instructed certain groups to form themselves into a Committee some time ago for the purpose of going over the rules of practice.

MR. CONANT: Yes.

MR. MAGONE: And at that time, a block system of fees was prepared.

MR. CONANT: Yes. I have in mind that before we conclude—and you might put it on your agenda so that you won't forget—that the Committee might be asked to take that proposed list and consider it. That would be the best way to approach it, I would think. Well, how do you intend to proceed next Mr Magone? I think the historical background has been fairly well outlined.

MR. MAGONE: Yes. Now, Mr. Barlow, on page B76 of your report, you made a recommendation that a rule-making body be set up?

WITNESS: Yes.

MR. MAGONE: Probably I had better read it.

> "Rules of Practice and Procedure may be made by the Chief Justice of Ontario, together with the Chief Justice of the High Court and four other judges of the Supreme Court and four practicing barristers. The four other judges and the barristers to act as aforesaid shall be appointed by the Chief Justice of Ontario in writing under his hand and shall hold office for the time specified in the appointment."

Now, is there a similar body in any of the other jurisdictions you investigated?

WITNESS: Well, I followed there exactly the same practice that is followed in England, by which the Lord Chancellor names the members of his committee, and as the Chief Justice of Ontario really occupies the same position, so far as Ontario is concerned, as the Lord Chancellor, it would seem to me that he should exercise the same functions.

MR. CONANT: Don't you arrive at a tribunal that is entirely the creature of the judiciary in that way?

WITNESS: That may be. It is true that it was departed from in the rules of 1897 and even in the Statutes by which provision was made for the appointment of a committee.

MR. CONANT: Isn't it also the case, Mr. Barlow, that the government of the day must provide the machinery for the courts. That is correct, is it not?

WITNESS: Quite right.

Q. Yes. Why shouldn't the Attorney-General, who has these matters under his department all the time, the machinery of the courts and all the facilities, and so on, why should he not be represented on that committee?

A. It seemed very reasonable that he should be represented, and I notice he was a member of the 1897 committee.

MR. LEDUC: Well, there must have been another reason there, because I remember that the Commissioner of Crown Lands was also a member of the committee. It looked, in that case, as if the Government wanted to be represented, and well represented.

WITNESS: And they were well represented, yes. Of course, I do say this, gentlemen, that too large a committee, in any matter, doesn't work as well as a smaller committee.

MR. LEDUC: Right, but this is also to be remembered, Mr. Barlow: in England, the Lord Chancellor is a member of the Government?

WITNESS: Quite true, he is.

MR. CONANT: Yes?

WITNESS: That's quite true.

MR. FROST: Not really a political member of the Government?

WITNESS: No, but he is a member of the House.

MR. CONANT: The only position we have here that is at all analogous is that of the Attorney-General?

WITNESS: Yes, I suppose that is quite right, Mr. Chairman, that the Attorney-General is, although I really hadn't thought of that, analagous to the Lord Chancellor.

Q. Yes?

A. And might I say, also, that in the War Measures that were passed last September, the Lord Chancellor was given much wider powers with reference to the amendment of the rules than appears here.

MR. FROST: Of course, in Canada we really haven't anybody that is like the Lord Chancellor?

WITNESS: No, not exactly the same.

Q. Neither any of the provincial or the Dominion governments?

A. No.

MR. CONANT: But is this not the case in England, when the Lord Chancellor exercises the functions that are his under that rule-making body or commission, he is representing, of course, the judicial aspect of it, but he is also representing the executive aspect?

WITNESS: Quite true.

Q. And doesn't it occur to you, Mr. Barlow, that while here perhaps he isn't judicial, as he is in England, that while perhaps he should not be given the position of first importance that he has in England, he should at least be a part of the organization?

A. The Attorney-General?

Q. Yes.

A. Well, it is a well recognized fact that the Attorney-General is the head of the Administration of Justice in the province and is responsible for it.

Q. And has to provide the machinery for it?

A. Yes, and that being so, it would appear to me that it would be quite illogical that he should not be a member of that Committee.

MR. FROST: Of course, on the other hand, if the rules have to be confirmed by Order-in-Council, he has the last word anyway, has he not?

WITNESS: I presume he has, Mr. Frost, but ——

Q. I mean there is this merit to the proposal, that these rules are really a highly technical matter, and I suppose the Chief Justice of Ontario, in choosing four barristers, would choose four barristers who are particularly adapted in training and work and so on, to do that kind of work.

A. I don't think there would be any question about that.

Q. And then, if the Attorney-General were represented on the committee,

and in addition to that, subsequently had to pass upon these and to advise the Lieutenant-Governor in Council in connection with the Order-in-Council to be passed confirming them, it seems to me it would be pretty well a check on the whole thing.

MR. CONANT: Is it not a question, Mr. Barlow, as to whether the rule-making committee should be predominantly judicial or predominantly representative of the Parliament of Ontario?

WITNESS: Well, so long as the Parliament of Ontario has the last say, as Mr. Frost has mentioned, by Order-in-Council, they are always protected against anything that might not seem quite right and proper.

Q. Well, put it this way: I suggest this to you, Mr. Barlow: I don't think that we need to differentiate between the Parliament, through its Executive, constituting the rules, and the Parliament, through its Executive, approving the rules, because you arrive at the same thing, but it is a question that this Committee, I think, might properly consider, and I think I would, at any rate, like your view as to whether that rule-making body should be predominantly representative of Parliament or its Executive, or predominantly representative of the judiciary. I think that is the point on which the Committee will eventually have to agree. Do you not agree with that, gentlemen? What do you think, Mr. Leduc?

MR. LEDUC: Well, there is a third alternative that neither should be predominant.

MR. CONANT: Have them "even Stephen"?

MR. LEDUC: Well, that is another alternative.

MR. CONANT: I didn't expect you to give an opinion at the moment, but I wanted Mr. Barlow to direct his remarks to that question.

MR. FROST: Well, surely, after all, it is really a supremely judicial matter, and these judicial men are, or are presumed to be, experts; I certainly think that they should have a predominant part in drawing up those rules, although I agree that in our democratic system, that the government of the day has got to have the last word on it, and I think the Committee being predominantly judicial, on the other hand, the Government of Ontario has the last say as to whether these rules should go into effect or not.

MR. STRACHAN: Just the same, as although the judges being the law-making body, the Legislature may not agree with their interpretation and make an amendment.

MR. FROST: Yes, that's always true.

MR. CONANT: What is your view, Mr. Barlow, as to the rule-making body, whether it should be predominantly judicial or predominantly otherwise, or, as Mr. Leduc suggests as an alternative, all even?

WITNESS: Well, I would think, Mr. Chairman, that it should be pre-

dominantly judicial, that is the judiciary should hold the balance of power on the committee. They have more experience than anybody else with the actual operation of the rules, they see them in operation in the courts every day, and as the practicing barrister sees them from the standpoint of the client, in my opinion he should be represented on there and have the opportunity of making his representations. But in the last analysis, I think that the judiciary should be predominant, because, after all, they are the judges, they are impartial and they are not going to make rules that are not going to be workable and that are not going to, so far as they in their judgment can see, do justice to the case.

Q. Have you in mind, in that statement, that these rules would be finally validated by Order-in-Council or otherwise?

A. Oh yes, finally validated by Order-in-Council.

Q. Then we have as your view, that you think the rule-making body should be predominantly judicial and the rules should be validated by Order-in-Council?

A. And quite properly so, because in a democratic system of government, the Parliament should have the final say.

Q. Yes, but do you express the opinion here that there should be gentlemen of the bar included in the rule-making body?

A. Oh, by all means, I certainly do, that the Attorney-General and members of the Bar should be included in that rule-making committee.

Q. Have you any opinion to express as to how those members of the Bar should be selected, whether they should be ex-officio, or simply selected at large? Perhaps I can make it clearer in this way; whether you think that they should be nominated as, for instance, and I am only using an example, as for instance the Treasurer of the Law Society, the President of the Ontario Branch of the Canadian Bar Association, or some such designation as that?

A. I fear that ——

MR. FROST: The Chief Justice?

MR. CONANT: No, I didn't have in mind the Chief Justice nominating them, because it would be entirely judiciary then.

WITNESS: I would fear, Mr. Chairman, that if you merely designated certain men by reason of their position as ex-officio members, you might not always get men most skilled in practice, and if you are going to have members of the Bar on that committee, they should be men handling matters of practice day by day.

MR. CONANT: Well, then, how would you have them chosen?

WITNESS: Well, if it is felt by the Committee that it should not be left to the Chief Justice, then ——

Q. Well, do you think it should be left to the Chief Justice?

A. Well, that is a real question, Mr. Chairman. When it is considered that the Attorney-General is responsible for the administration of the law throughout the entire province, and, as I say, is the head of the Administration of Justice, it would appear to me that he stands more in the position of the Lord Chancellor in England than any other official that we have here, and that being so, I would think that he would be the proper person to name the members of the Bar that should serve.

Q. Well, that would come down to the government of the day naming them.

A. Well, perhaps so, yes.

MR. FROST: I think, Mr. Chairman, that would be a mistake.

MR. STRACHAN: I do too.

MR. FROST: I am just looking at it in this way: supposing you laid that burden on the government of the day; now, it doesn't make any difference of what political stripe that particular government is, but aways there may be some political debt to pay, or something of that sort, and I think it is a mistake to do it, and the further you can keep rule making, and that part of the courts, away from politics, the better, I think.

MR. CONANT: Oh, there is no doubt about that, there should not even be any opportunity for political interference.

WITNESS: There should be none whatever.

MR. MAGONE: There might, though.

MR. CONANT: That is why I asked you, Mr. Barlow. It occurs to me that that there are two ways of avoiding any interference in constituting this committee. One would be by having the Chief Justice nominate them, and another would be by designating ex-officio members. You see my point?

WITNESS: Yes.

Q. Those are the only two ways that I can see that you could avoid the political aspect of it.

MR. STRACHAN: Or by the Treasurer of the Law Society.

MR. CONANT: I mentioned that.

WITNESS: You mean the Treasurer of the Law Society name them?

MR. CONANT: Well, that is another suggestion, or the Benchers of the Law Society name them.

WITNESS: Personally I think, Mr. Chairman, that my recommendation that the Chief Justice of the province should name them would work out in practice.

Q. Well, I think you will, perhaps, agree with this remark, Mr. Barlow, that the right to appoint is the right to control, is it not?

A. I suppose so.

Q. I beg your pardon?

A. I suppose so.

Q. Yes. Let me say frankly to the members of the Committee, I have given this considerable thought, and while I have been for some time of the opinion that the Bar should be represented, I have never yet been able to arrive at any definite conclusion as to how those members of the Bar should be selected. That is the difficulty that I have always found insurmountable, at least up to now, and that is why I have taken the liberty of dwelling upon it in your examination, thinking perhaps you had some method that would meet it, first of all asserting definitely that it must be removed from the sphere of politics. That is of the utmost importance.

A. That is the reason that I made the recommendation that I did in my report, that they should be appointed by the Chief Justice, because I felt that it should be entirely removed from politics, and I couldn't, at the time at least, conceive of any other means of thus removing it entirely from politics. But I appreciate the point that you have raised and the weakness of it.

Q. Yes, that is that the appointing jurisdiction is also a controlling jurisdiction?

A. Yes.

Q. Yes, and I may say to the Committee, that if the Committee is going to consider a rule-making body, consisting partly of barristers, that that will be perhaps the most important problem that we will be confronted with, that is as to how they ought to be selected.

MR. MAGONE: Mr. Barlow, do you think you would get the desirable members of the Bar on a committee of this kind without fee?

WITNESS: Well, I would hope that we have enough public-spirited members of the Bar who desire to do something for the profession that they would be glad to serve without fee, but it may not be; I don't know.

Q. Well, do you know what the present practice is with respect to the rule-making body?

MR. CONANT: Take England, for instance.

MR. MAGONE: No, I meant in the Supreme Court here. I understand they set up a committee of the judges?

A. Yes; but as I read it, the rules are made by all the judges.

Q. By all the judges?

A. Yes.

Q. But I mean in practice?

A. In practice I believe they set up a committee.

MR. CONANT: Mr. Magone, I have discussed this with the gentlemen of the judiciary to some length and they appoint, and did appoint, a year or so ago, a subcommittee to make some amendments. That committee reported about the 1st of January this year to the whole body of judges, and the whole body of judges considered and perhaps revised them; in the final analysis the rules are formulated by the committee and promulgated by all the judges.

MR. MAGONE: Yes, I knew that was done, Mr. Chairman. I just wondered if the other members of the Committee knew how it was in actual practice.

MR. FROST: How would it be if the Chief Justice were to appoint one barrister, the Treasurer of the Upper Canada Law Society two, and the County Judges' Association one. You have it spread out pretty widely there. And the Attorney-General of Ontario to be represented on the committee, and, furthermore, the Attorney-General of Ontario would naturally have the final say, because the rules would have to be confirmed by Order-in-council.

MR. CONANT: Is the County Judges' Association a sufficiently definite and tangible organization to function in that way?

WITNESS: I don't know, Mr. Chairman, I am not sufficiently familiar with it.

MR. MAGONE: I think it is. Mr. Barlow, had you considered the appointment of a county judge on this body?

MR. FROST: That is another point.

WITNESS: I had not considered that sufficiently to give an opinion on it, Mr. Magone.

MR. CONANT: Doesn't it come to this, Mr. Magone, from your notes it appears to me, I may be wrong, but all boiled down, the making of the rules, as the law stands at present in County Courts, is vested with the Lieutenant-Governor in Council? Mr. Silk, you analyzed that; what do you say? When you get it all boiled down, is not the present law for the rules of the County Court vested in the Lieutenant-Governor in Council?

MR. SILK: Yes, I think that is right, sir.

MR. CONANT: I am speaking of law, I'm not sure whether it is so in practice.

MR. SILK: I think the answer to that is that the section passed in 1935 has not been used, but that section commences: "Notwithstanding the provisions of any other Act, etc."

MR. CONANT: Yes. Well, I introduced that for this reason, Mr. Magone,

because I think this Committee should consider one rule-making body and the various aspects of the rules that could or should be entrusted to that body; that is to say, whether it should be entrusted with County Court rules, Surrogate Court rules, Division Court rules, what should be the scope of that committee, so that when you asked the question whether a County Court judge should be appointed to it, I think Mr. Barlow is entitled to preface his remarks on the assumption that this organization would make the County Court rules, or would not make the County Court rules. Is that not so, Mr. Barlow?

WITNESS: Quite true.

Q. Yes. Because we have an anomalous situation at the present time; we have the situation where the judges make the Supreme Court rules, and the Government of the day makes the County Court rules, is that right, Mr. Silk?

MR. SILK: Yes.

MR. CONANT: Is that not peculiar?

MR. STRACHAN: Yes.

MR. SILK: Then there is a list of rules, on pages 18B and 18C, a good many of which are made by the judges, and some by the Lieutenant-Governor in Council.

MR. MAGONE: Let us examine those for a minute.

MR. FROST: That raises quite an interesting point there, Mr. Chairman. We have such a variety of rules, the question arises as to whether we might not simplify things by having one committee look into the whole rule situation. I know that there may be difficulties in the way, but ——

MR. CONANT: And from that remark follows, Mr. Frost, if I may add this to your comment, that if that policy were to be adopted, you would probably have to that committee judges and others practicing in the County Court, in the Surrogate Court, and so on, would you not? What do you think, Mr. Barlow?

WITNESS: There is no question about it; you would have to ask those who are best qualified and who have the first hand knowledge of them by reason of their experience.

MR. CONANT: Now take those first three items there, items 3, 4 and 5; Judicature Act, County Courts, Surrogate Courts; now our counsel boil it down in this way: the Judicature Act, the rules are made by the judges of the Supreme Court; in County Court, the rules are made by the Government Executive, and in Surrogate Court, the rules are made by the Executive of the Government also.

MR. LEDUC: Yes, in the County Court the Lieutenant-Governor makes the rules, and the tariffs are made by the judges with the approval of the judges of the Supreme Court.

MR. CONANT: Well, I don't know that that commends it any further, does it, Mr. Leduc?

MR. LEDUC: No, it does not.

MR. SILK: Well, Mr. Leduc, I'm sorry, that bracket should go right down to the end. The law as you stated it is what it was before 1935.

MR. LEDUC: Well, who makes the rules, the Lieutenant-Governor in Council?

MR. SILK: Yes.

MR. MAGONE: And the fees.

MR. SILK: Yes.

MR. CONANT: And the fees?

MR. SILK: Yes, under number 18 there is a very special situation. There it is the judges of the District Courts.

MR. LEDUC: Yes, or a majority of them.

WITNESS: Did they ever make any?

MR. MAGONE: No, I don't think so.

MR. CONANT: Mr. Barlow, would there be any practical difficulty—just let us have your views on this—would there be any practical difficulty about setting up one rule-making body to cover, say the rules of the Supreme Court, the rules of the County Court, the rules of the Surrogate Court? Do you think that that would present any difficulty, and if it doesn't, how would you suggest it would be best to meet it, or how would you suggest it could best be done?

WITNESS: As it appears to me, Mr. Chairman, one rule-making body, with proper representation from the different courts, could perhaps best deal with all the rules, because it should be as simple as possible, and without overlapping, and also easily understood and interpreted. If you have two or three rule-making bodies, they are not likely to work in conjunction the one with the other, whereas if you have the one rule-making body to canvas the whole field, you will have a uniform and proper set of rules to govern everything.

MR. CONANT: Wouldn't you have to enlarge your personnel in that case?

WITNESS: Yes, you would have to enlarge your personnel.

MR. STRACHAN: Take your Surrogate Court rules, Mr. Barlow; it has been so long since the judges have practiced in Surrogate Court that the Supreme Court judges wouldn't be as familiar with these rules as with the Supreme Court rules, naturally?

WITNESS: That is quite true, Mr. Strachan.

Q. Wouldn't it involve a fairly large committee?

A. It might involve a fairly large committee.

Q. And senior counsel wouldn't be of much help in drafting the Surrogate Court rules?

A. But you must remember this, that appeals go from the Surrogate Court from time to time.

Q. Oh yes.

A. And in that way, our Supreme Court judges are familiar with the practice in Surrogate Court, perhaps not to the same extent in connection with certain detail; on the other hand, there are certain practices in the Surrogate Court that are similar or should be similar so far as they can be, to the practice in the Supreme Court, and I am thinking of uniformity throughout all the courts.

MR. CONANT: Yes, certain underlying principles.

WITNESS: Certain underlying principles that should follow on through. For the benefit of everybody, it should be uniform as much as possible.

Q. Do you think it would be feasible to extend that to Division Courts?

MR. FROST: That would be difficult.

WITNESS: Oh, I don't think so. No. I wouldn't think so. I think that is something apart, and by itself.

MR. CONANT: Well then, what would be your suggestion as regards Division Court rules?

WITNESS: You mean how they should be made, Mr. Chairman?

Q. Yes.

A. How are they made now, Mr. Magone?

MR. MAGONE: By the Lieutenant-Governor in Council.

WITNESS: I dont see why they can't be taken care of in the same way that they have been taken care of up to now.

MR. MAGONE: That is since 1935.

MR. FROST: If the Attorney-General wants a committee, then, it would be a special committee?

MR. LEDUC: Yes.

WITNESS: Yes.

MR. FROST: I think so, too; it would eliminate complications.

MR. CONANT: Yes, and there is also available the Inspector of Legal Offices, and his assistant, who are constantly dealing with the matter.

WITNESS: Quite true.

Q. But taking all those on pages 18B and 18C, Mr. Barlow, you expressed the opinion that all the rules there might be taken care of by one rule-making body, except for the Division Court proceedings?

MR. LEDUC: Oh heavens, what about the Interpretation Act, for instance?

WITNESS: Yes.

MR. MAGONE: Some of them are purely administrative Acts, such as the Administration of Justice Expenses Act, for instance.

MR. LEDUC: Yes.

MR. MAGONE: And there is a Juvenile and Family Court Act.

MR. CONANT: Well, the Controverted Elections Act, now, where do you think the rule-making body for that should lie?

WITNESS: That should go to the rule-making body, I would think, the same as it does now.

MR. LEDUC: What about number 7, Mr. Magone, the Arbitration Act?

MR. MAGONE: The authority is now divided, Mr. Leduc, between the Supreme Court judges under the Judicature Act, and the Lieutenant-Governor in Council under the County Courts Act.

MR. CONANT: You mean there is a conflict of jurisdiction?

MR. MAGONE: Well, when the Act was passed the rules were made by the judges of the Supreme Court, and the Board of County Judges.

MR. CONANT: Yes. How do you think that should be taken care of, Mr. Barlow, with regard to that conflict?

MR. LEDUC: It is beautifully indefinite: "rules of court for the purpose of carrying out the provisions of this Act may be made by the authority to whom is committed the power of making rules of court."

MR. MAGONE: I don't know what it means; it might mean anything.

MR. LEDUC: As I say, it's beautifully indefinite.

WITNESS: Probably intended to be.

MR. LEDUC: Maybe.

MR. CONANT: Have rules been set up under it?

MR. MAGONE: I don't know of any.

MR. LEDUC: Well, let us not disturb it then; it might give somebody the idea of making rules.

MR. MAGONE: Mr. Silk points out that in item 17, the Land Titles, the Lieutenant-Governor in Council or the judges of the Supreme Court have the power to make rules.

WITNESS: Were there any rules made there?

MR. MAGONE: Oh yes, the rules were made by the Lieutenant-Governor.

MR. CONANT: Well, those conflicts could be cleared up, it seems to me.

WITNESS: Oh yes.

MR. LEDUC: I notice in most of these cases relating to courts, the power to make rules is vested in the judges of the Supreme Court.

MR. MAGONE: Most of them, yes. With regard to the Controverted Elections, rules were made in 1903. I think they were never changed since?

WITNESS: No.

MR. CONANT: Well, there is certainly no uniformity here.

WITNESS: No uniformity at all.

Q. In some cases, it is by the judges of the Supreme Court, in others by the Lieutenant-Governor in Council, and so on.

MR. LEDUC: Well, would it be wise and practical to have uniformity, if one rule making body had power to make rules in all these matters?

MR. FROST: Of course in many of these cases, take number 10 for instance, the judges are now authorized to make the rules.

MR. LEDUC: Yes.

MR. FROST: It would take all those cases out; well, then ——

WITNESS: There are not so many left.

MR. FROST: No.

WITNESS: But all I am thinking of is uniformity, and if you are going to have uniformity, you should have one rule-making body; but so far as any of these Acts merely being administrative Acts, they could very well be excepted from that rule-making body.

MR. LEDUC: I think so.

MR. CONANT: Mr. Silk, perhaps you can enlighten the Committee; I don't quite understand how we arrived at the position where the rules of the Supreme Court are made by the judges, and the rules of the County Court are made by the Government.

MR. LEDUC: Have you the rules of the County Court here?

MR. SILK: No.

MR. MAGONE: Well, the rules of practice of the Supreme Court?

MR. STRACHAN: There are no separate rules, are there?

WITNESS: No, there are no separate rules.

MR. CONANT: No, and I would like that cleared up, Mr. Magone; it seems to me we have arrived at the anomalous position ——

WITNESS: It says here, Chapter 31 of the 1928 rules:

> "All writs answerable in County Court shall be issued by the clerk and shall be under the seal of the court,"

and so on.

> "The judges of the County Court shall have power to act and sit and at any time to transact any part of the business of such courts . . ."

and so on.

And then:

"The practice and procedure in actions in the Supreme Court shall, as far as the same can be applied, apply and extend to actions in the County Court."

MR. CONANT: Well, how do you reconcile that with your statutory provision?

WITNESS: The statutory provision was passed subsequent to this.

MR. MALONE: In 1935.

WITNESS: Yes, it was passed in 1935.

MR. MAGONE: There was, formerly, a board of five county judges; they made rules under the Division Courts Act, and under the County Courts Act, and the Surrogate Courts Act. It was found, for some reason, to be unworkable, I think, expensive and unworkable. The judges used to come to Toronto to hold their meetings, and they would probably take a good deal of time considering matters of this kind, and it would take them away from their districts,

and in 1935 they amended the Division Courts Act and the County Courts Act, abolished the Board of County Judges, and provided the rules be made by the Lieutenant-Governor in Council.

MR. FROST: Well, then, where did these rules come from? It mentions County Court; by what authority?

MR. MAGONE: Well, that is older than mine is.

WITNESS: That is an old authority.

MR. FROST: Perhaps that doesn't exist any longer, then.

MR. CONANT: Well, wouldn't it boil down to this, Mr. Barlow, that as it stands it is all right, but if you are going to change the rules, it would have to be done by Order-in-Council?

WITNESS: Yes, you're quite right, since 1935.

MR. MAGONE: Mr. Silk points out that there is a conflict between the Judicature Act and the County Courts Act. Section 106 of the Judicature Act provides that the judges of the Supreme Court may make rules of practice regulating the practice and procedure in the County Court and Surrogate Court and Supreme Court, and then the County Courts Act provides that the rules of court shall be made by the Lieutenant-Governor in Council.

WITNESS: That is since 1935?

MR. MAGONE: Yes.

MR. FROST: There is a direct conflict now.

MR. MAGONE: Yes.

MR. FROST: Not a conflict, but at least here are two bodies of jurisdiction at the moment.

MR. MAGONE: Yes.

MR. CONANT: What else were you going to take up with Mr. Barlow, Mr. Magone?

WITNESS: Yes, County and Surrogate Courts.

MR. MAGONE: That is in the old statute of 1914?

WITNESS: Yes, it goes back to 1914 and prior to that.

Q. I think you will find it in the 1897 Statutes too.

A. Yes.

MR. MAGONE: Well then, a question was raised by Mr. Leduc at the in-

augural meeting, as to whether our so-called rules of practice don't go too far, that is whether they don't deal with substance of law, and the suggestion was made that those rules dealing with substance of law might be incorporated in the Statutes, and merely the rules of practice, and those properly so called might be left to the body. Was not that your suggestion, Mr. Leduc?

MR. LEDUC: Yes.

WITNESS: I have often wondered where they drew the line between the rules and the Judicature Act, because certain things appear to be in the Judicature Act that might have been in the rules, and certain other things which are in the rules might well have been in the Judicature Act. But that is a matter of study. I think you are quite right, Mr. Leduc, rules of practice should deal only with practice.

MR. MAGONE: If they dealt with practice only, Mr. Barlow, there wouldn't be the same objection to the judges making the rules?

WITNESS: No.

Q. As it is, particularly in mortgage actions, they deal with the rights of the parties?

A. Well, I don't know, I don't think I see anything wrong with the mortgage rules.

MR. LEDUC: Well, just opening the rule book, rule 79 states:

> "A residuary legatee, or next of kin, may have a judgment for the administration of the personal estate of a deceased person without serving the other residuary legatees or next of kin."

Isn't that interfering with the rights of others?

MR. MAGONE: I would think so, and you will find a good many rules, I think, of that kind.

MR. LEDUC: And the next one:

> "A legatee interested in a legacy charged upon real estate, or a person interested in the proceeds of real estate directed to be sold, may have a judgment for the administration of the estate of a deceased person without serving any other legatee or person interested in the proceeds."

This seems to be interfering with the rights of citizens.

WITNESS: That doesn't mean that no notice will be given to them, Mr. Leduc, it means he may get a judgment for administration, but in the administration by the court everybody must be notified. I think that is the intention.

Q. "May have a judgment for the administration of the estate of a deceased person without serving any other legatee or person interested in the proceeds."

That is, that he can obtain judgment for administration of the estate without serving notice?

A. No, no.

Q. No?

A. No, I don't think so.

Q. Well, I just happened to open the rule book at random, and I found these, and I dare say if you look carefully you might find other instances.

A. Well, it is administration by the court, though it is a judgment for administration by the court.

Q. Yes?

A. And when the Court comes to administer, the notice would be given.

Q. Yes, you're right about that, that's right.

A. It's only to make it easier, that's all.

MR. MAGONE: Mr. Barlow, you mentioned other rules in your report; there are criminal appeal rules, of course, and we can't interfere with that rule-making power.

MR. CONANT: That is constituted by the Federal authorities?

MR. MAGONE: Yes. And *certiorari*, is the same, I think.

WITNESS: Yes.

Q. Constituted by the Federal authorities?

A. Yes.

Q. There is one other, that is the rules respecting matrimonial causes; I suppose they would fall into the same category as the rules of practice?

A. All in the same category, yes.

MR. MAGONE: Now, if the members of the Committee are agreeable, we can go to another subject.

MR. CONANT: Well now, Mr. Barlow, in your report here, you have dealt with quite a few rules that you think should be amended. In your suggested amendments, do you suggest that you have exhausted the possibilities of simplification and expedition and economy in the practice of our courts?

WITNESS: I wouldn't say that it was exhausted by any means, Mr. Chairman. The rules that I have dealt with there are entirely those rules that I

myself have come into contact with in practice, where I thought that some change might be made, or rules to which my attention has been drawn by submissions that I received, and after discussing the matter with the various members of the Bar.

Q. But supposing a new rule-making body were set up, disregarding for the moment the exact constitution of it, and Parliament, or the Government, were to say: "Now, we would like the rules of practice completely revised to bring them up to date and in order to simplify and expedite the procedure as much as possible," do you think that there is much that could be accomplished by a thorough examination and study of the rules?

A. I do, I think there is a very considerable amount could be accomplished and they could be simplified in many ways, with the addition of the ones that I have specifically mentioned there.

Q. With benefit to the people, you mean?

A. Benefit to the public generally; it is the public I am thinking of.

Q. And with any economies?

A. Yes, I would say economies in both time and money.

Q. Yes, and would that be a difficult or a lengthy job for a rule-making body?

A. It shouldn't be so very difficult, and when you say lengthy, that all depends upon the body.

Q. Yes. But you think there is a great deal could be accomplished in the way of simplification?

A. Oh yes, I do, definitely.

Q. We have some excess baggage in our rules, have we not, Mr. Barlow?

A. We certainly have.

Q. Yes. And in other jurisdictions, have they made any better progress in that respect than we have?

A. They have just within the last—I think it was the beginning of the year, devised a new set of rules for the Province of Manitoba, in which they have simplified matters very considerably.

Q. Well now, that was a joint tribunal that did that, was it not?

A. That was a committee, so I am told, composed entirely of members of the Bar.

Q. I see.

A. But their Act out there provides, that is the Judicature Act, provides that the rules should be made by the judges, and when they were prepared by that committee, they were taken to the judges and the judges approved of them.

MR. MAGONE: The total number of rules has been reduced from 1,020 to 706. The arrangement and grouping of the new rules is based very largely on the 1928 Ontario rules.

Mr. Silk has a report from the Legislative Counsel in Manitoba in connection with the new rules. "Perusal of these sections will show that in the Court of Appeal Act and the King's Bench Act, the power to make rules is given to the judges of the respective courts. The only requirement being that the rules must be published in the *Manitoba Gazette*. In the Surrogate and County Courts Act the rules are also made by the judges, but in addition to publication in the *Gazette*, they must be approved by the Lieutenant-Governor in Council before coming into force. In actual practice, the rules which were made under the Court of Appeal Act and the King's Bench Act were largely the work of a special committee of the Law Society, under the chairmanship of Mr. E. K. Williams, K.C., and the rules which were made under the County Courts Act were largely the work of a committee of the Manitoba Bar Association."

MR. CONANT: But they have gone quite a long way in simplification, have they?

WITNESS: This perhaps may answer a question that was raised by Mr. Leduc as well as by you, Mr. Chairman: In the preface to the Manitoba rules, I find, stating the attempt which has been made in connection with the revision, among other things, they mention:

> "To eliminate provisions which are essentially matters of substance of law, and to incorporate them in the appropriate statute; to discard provisions which are obsolete, unnecessary and undesirable; to eliminate general references to the former practice, and to substitute therefor specific and clearly expressed provisions prescribing the practice; to bring about uniformity of language throughout the rules; to simplify the procedure."

And since they have completed these rules, they are now working in Manitoba on a set of divorce rules.

MR. CONANT: Well, coming back to that question of personnel, I meant to ask you at the time, and I think it is important to ask you and I want you to deal with it quite impersonally, would you not think it was proper and a good idea for the Master to be a member of the rule-making body or committee?

WITNESS: Of course that—you embarrass me there, Mr. Chairman.

Q. Well, do not deal with the subject personally.

MR. FROST: That would be most desirable, I think, Mr. Chairman. I don't think any man in the province knows more about it than Mr. Barlow.

MR. CONANT: You see, in England, they have the Master of the Rolls; how does that correspond to the Master here?

WITNESS: Well, the Master of the Rolls in England is a judge, of course, and he doesn't do the Master's work in the same way that ——

Q. Well, are there any of these officials in the English system that correspond with our Master?

A. No, I don't think there is any person that corresponds with the Master here.

Q. Well, in any of the jurisdictions, do they have the Master as a member of the committee?

A. Not that I know of.

Q. It strikes me as rather peculiar. You deal with the rules every day?

A. I deal with the rules every day, as a Master's office does, probably, I would say, more than any of the judges do, because, as you know, our judges sit in rotation in weekly court.

Q. Yes?

A. And for the period from January until June, a judge will not sit more than two weeks, and some of them only one, and that is really the only contact that they have with practice, with the exception of what they may have at trials, which is comparatively little. So that, in that way, the Master's Office is dealing with the rules every day, and in that way, speaking frankly, he should be more familiar with the majority of the rules than what the judges are.

Q. Well, if the Master were made a member of the rule-making body, do you know of any difficulty or embarrassment or inconsistencies that would arise from it?

A. I don't know of any, Mr. Chairman.

Q. Just one more question, Mr. Barlow; do you think it would be a benefit, or if it would add anything, if we gave the rule-making body a permanent secretary? For instance, supposing we were to provide that the registrar of the Supreme Court would be the permanent secretary of the rule-making body, would it not give it more continuity, better continuity and better organization?

A. It would make for uniformity, so that there would always be a reference back to the minutes of the various meetings held, and it would be, I think, advantageous in that way.

Q. Well, wouldn't the registrar be the logical man for that position?

A. I would think so. I don't know of anybody else, unless you appointed one of the judges, and I don't think he would want to take that on.

Q. Well, the registrar has a fairly good staff?

A. Yes.

Q. And an office?

A. Yes.

Q. And an organization?

A. Yes, and he is the head of the administrative branch at Osgoode Hall.

Q. Yes, and directly and constantly in touch with all these possible or probably officials, probable members of the committee?

A. Quite true.

MR. MAGONE: Should there be statutory meetings, Mr. Barlow? More than one a year, or two a year?

WITNESS: I would think that perhaps two statutory meetings a year would be sufficient. But I notice in the English *Weekly Notes* that there is hardly a month goes by that you don't find some change having been made in their rules, some amendment having been made in their rules, for purposes of simplification, and so on, going on continually.

Q. Much more than we have been doing?

A. Oh yes, and everything that they do looks towards simplification and ease in practice.

Q. Would you fix the term of the appointment of the barristers so that there would be rotation?

A. Oh, I suppose that might be done, Mr. Magone. I would think that they might, perhaps, fix a three-year term. Sufficiently long that they may become familiar with what they are doing, and yet not too long that they would not have something new to bring forward, because everybody that comes into that rule-making committee should have something to contribute.

Q. Do you think, Mr. Barlow, that anything is gained by having the whole bench available for the discussion of the rules? We have nineteen judges on our Supreme Court bench.

MR. LEDUC: Twenty-one.

MR. MAGONE: Twenty-one, is it?

WITNESS: Well, the only point is that if you have too large a committee, you won't get matters done expeditiously. I can see no reason why we wouldn't get exactly the same benefits, with your smaller committee, with the opportunity that would naturally be given to enable all the judges, in fact to request them,

to come to the committee and take part in the discussion and make representations.

MR. MAGONE: Yes; and now, gentlemen, I think the natural sequence would be to go to the Law Revision Committee, on page 74 of Mr. Barlow's report.

—— Witnessed excused.

Committee rises for lunch recess.

AFTERNOON SESSION

Parliament Buildings, Toronto,
April 9th, 1940.

MR. CONANT: Very well, Mr. Magone; you may proceed. What did you intend dealing with next?

MR. MAGONE: Well, with the concurrence of the members of the Committee, I thought we could go on with the Statute Revision Committee.

MR. CONANT: Well, before you do that, is it your intention to deal with everything that you want Mr. Barlow to discuss at this one time?

MR. MAGONE: Yes, but if he cannot, we will leave it until another day, and go as far as we can with him to-day. To-morrow morning we have Mr. Juneau.

I might say, too, that I have spoken to the chief justice of Ontario and the chief justice of the High Court, and they can't get up this week, but they will set aside a date for some subsequent sitting. Mr. Justice Middleton will then also be available; he has not been available to date, as he has been away ill. I think probably the three of them will be up together.

MR. CONANT. That will be after adjournment?

MR. MAGONE. Yes, after adjournment next Friday.

MR. CONANT: Is that agreeable to the Committee? We are stepping a little bit out of our sequence as outlined. Mr. Magone wants go go on to No. 26, Law Revision Committee; is that agreeable to the Committee?

Carried.

MR. MAGONE: I think it is a natural sequence after having dealt with the Rules of Practice Committee.

MR. CONANT: Yes, it has some relation to it.

F. H. BARLOW, K.C., Master, Supreme Court of Ontario.

MR. MAGONE: Mr. Barlow, did you make an investigation with respect to a Law Revision Committee in England? And in the State of New York?

WITNESS: Yes.

Q. Would you just tell the Committee what the practice is in those two jurisdictions?

A. Well, in England ——

MR. CONANT: Pardon me for interupting, but I think I might say, if the Committee do not already appreciate it—and I think they do—the Law Revision Committee that you are discussing now is an entirely different tribunal, exercising an entirely different function from the Rules of Practice Committee?

WITNESS: Quite right.

Q. Yes, and I think, Mr. Magone, that we had better, before you go into the constitution or methods, to have Mr. Barlow outline the functions of such a committee.

MR. MAGONE: Yes, if Mr. Barlow will do that.

WITNESS: Well, Mr. Chairman, the thought that I had, from my investigation with reference to what has been called here the "report on the Law Revision Committee, is that from time to time, over the years, there are changed conditions, changed social conditions, changed business conditions, and so on, all of which bring you to a time when changes should be made to bring the law which governs throughout the province, into line with these modern conditions. In certain other jurisdictions, such committees have been set up in various different ways, with that purpose in mind. As an example of that, take the doctrine of consideration, which has come down through the years. That has been interpreted differently in different jurisdictions from early times, and that is one of the matters that has been dealt with in England by their Law Revision Committee. Another angle in connection with it, and which is referred to continually by the late Justice Cardoza in his judgments and in his writings, that by reason of changed business conditions and changed social conditions, you find certain decided cases which have laid down certain formulae which have been followed, and which the courts feel themselves bound to follow, no longer are applicable, and that whole matter should be canvassed, and the late Justice Cardoza of the Supreme Court of the United States had no hesitation, where he found that position arising, in reversing an earlier decision of the Supreme Court, perhaps given many years before and which was followed throughout all the other courts, and stating the law anew. Out of that attitude, I believe, of Justice Cardoza, a committee was formed in New York State for the purpose of what they call a "restatement of the law," and they have done a very considerable work along those lines. It is true that their restatement of the law doesn't have the force of a decision so far as being binding upon the courts, at least, not as yet.

MR. CONANT: Unless it is implemented.

WITNESS: Unless it is implemented by legislation, and as far as I know, it

hasn't been implemented up to the present time, but the Superior Court jurisdiction, or, in the U.S.A., the Supreme Court of the U.S.A. has not hesitated to follow the restatement in certain cases. And, without going over it all in detail, unless there is something the Committee want to ask about, that is generally, the idea that I had in mind, that some committee of that kind should be set up here for the purpose of studying these various questions.

Q. They have gone into it quite extensively, have they?

A. Well, in England they have what is known as the Lord Chancellor's Committee—I have forgotten when that committee first started functioning; it must be eight or ten years ago.

MR. LEDUC: 1934.

WITNESS: 1934, was it?

MR. CONANT: Yes.

WITNESS: And I have set out in my report some six matters that they have already dealt with, and they have laid down their findings in connection with it, and in England certain of these findings have been implemented by legislation.

Q. Most of them?

A. Take the first one, the doctrine of non-contribution between joint tort-feasers; we have gone a certain way in our Legislature here with reference to our Negligence Act in that very matter, which has changed from what the old common law had laid down.

Q. Yes, but generally speaking, there is no contribution in Ontario unless there is statutory authority.

A. No contribution between joint tort-feasers except under the Negligence Act, except by Statute.

Q. That is what I am trying to say, excepting in special statutory instances, there is no contribution.

A. Oh yes, that's true.

Q. Yes.

A. And then, the second one that is mentioned here, the legal maxim that personal action dies with the person; that is true here except under the Fatal Accidents Act, and also under the ——

Q. Trustee Act?

A. No, that was done away with here. No, under the Liquor Control Act. I think it is section 100 of The Liquor Control Act, which gives a right of action where a person dies as a result of injuries sustained on hotel premises where he

has been given liquor. I think that is the way you could put it, that there is a right of action there, specifically given, but other than that, the old maxim applied. They have extended it somewhat in England, in dealing with this very matter. And then there are some three others here: The Statutes of Limitation, The Statute of Frauds, and, as I said before, the doctrine of consideration. But there are, from time to time, various matters that arise, that are entirely non-controversial ——

Q. You mean from a political standpoint?

A. From a political standpoint, non-controversial, yet are such that the attorney general and his staff as constituted, haven't neither the time nor the means of properly studying, and it is for that purpose that I suggested this Law Revision Committee.

MR. MAGONE: The recent one was the question that arose out of the decision of Rose and Ford.

MR. STRACHAN: Well, I know something about that decision, because I introduced the amendment to our Trustee Act, and with great respect to Mr. Barlow, the judges in England are very far from being satisfied with their present state of the law, which doesn't involve our law since the amendment I brought down.

WITNESS: Oh no, their law doesn't follow ours. There is still, in England, that right of action.

Q. Well, my amendment changed that under The Public Trustee Act.

A. Quite true.

Q. And now that they have the ruling of Rose vs. Ford, it is very far from having the acclaim of the trial judges.

A. That's true.

Q. And South Africa, and, I think, Australia, have followed our amendment in The Trustee Act.

A. Quite true.

MR. MAGONE: However, the committee would be able to deal with situations of that kind?

WITNESS: Yes.

MR. CONANT: To put it briefly, a committee of that kind would deal with what might be called "lawyers' law", as distinguished from ordinary operating statutes, abstruse or profound questions of law; their finding might then be implemented by legislation or otherwise, as the province might see fit?

WITNESS: Quite true.

MR. STRACHAN: Which would affect large classes of the community, however, one way or another?

WITNESS: Yes.

MR. LEDUC: Now in England, if I understand this memorandum, the Lord Chancellor refers to the committee some questions to be considered?

WITNESS: It is called the Lord Chancellor's Committee, and he refers these questions to the Committee for study.

Q. They don't act of their own initiative?

A. No.

Q. What about the State of New York, is it the same system?

A. I can't tell you in detail. I have read it, but I have forgotten the details.

MR. MAGONE: I think you will get the difference, Mr. Leduc, on page 49 of your ring book, which sets out the purpose of the English committee; this committee is to consider "how far, having regard to the Statute Law and to judicial decisions, such legal maxims and doctrines as the Lord Chancellor may from time to time refer to the committee, require revision in modern conditions."

And then, going to page 54 of the ring book, you will see the purposes of the committee set up in New York. They have apparently very broad powers to examine into the common law and the Statutes of the state.

MR. LEDUC: Yes, "to receive and consider proposed changes, to receive and consider suggestions from justices, to comment from time to time on such interpretations of the law as it deems necessary." I think we ought to have the English system, if we are going to have one here.

WITNESS: Quite right.

MR. MAGONE: If you look at page 66, you will see the comparison; the one, that is the English one, reports on matters referred to it by the Lord Chancellor, whose references are restricted by the terms of the original appointment, while the other is free to study and report on practically any matter which it may determine.

MR. CONANT: Yes, it is pretty wide.

WITNESS: Yes, the American committee is a pretty wide committee, for studying the set up of the laws.

MR. LEDUC: I think that is the work which would be done by the Legislature here.

MR. CONANT: This situation does arise in the administration of justice, that new questions do arise which are tossed around from port to port, and you have conflicting opinions, and nobody is sure what the law is.

WITNESS: Quite true.

Q. That happens not infrequently.

A. That is quite true, it does happen.

Q. And from the standpoint of the people of our province, some definite and final provision should be made to settle that point; now such a committee as this would make their study and their submissions, and the Legislature could deal with it in the light of their finding, isn't that about the size of it?

A. That is the very thought that I had in connection with such a committee.

MR. CONANT: I may say, gentlemen, I asked Mr. Silk to prepare, during the week-end recess, a memorandum as to the problems that might be proper for such a committee to deal with; will you deal with that now, Mr. Silk?

MR. SILK: Do you wish me to read the memorandum?

MR. CONANT: Just that second part of it.

MR. SILK: Well, I suggest that one matter that might very well be referred to such a committee is the law relating to actions for breach of promise of marriage, alienation of affections ——

MR. CONANT: Well, just a minute; I might point out that there is a difference between the law here and in England, and where that is the case, point it out.

MR. LEDUC: By "this Committee," you mean a committee on law revision?

MR. SILK: I mean, the committee that is being dealt with now For instance, in the case of an action for any alienation of affections brought by a wife, we have no such action here, although they have it in England. The same is the case in the case of an action for judicial separation, either by the husband or the wife, and an action for restitution of conjugal rights.

MR. CONANT: Well, what is the case?

MR. SILK: The case is that there is no such action in Ontario, although there is in England. Well then, the reverse is the case for an action of criminal conversation brought by the husband. We have such an action here, but they have not in England. And I understand that in various states of the Union they have abolished—in the State of Michigan, I believe, for example—they have abolished all such actions; I refer to breach of promise of marriage, alienation of affection, and a good many of the actions between husband and wife, or between wife and husband. Now that is the first rider, I suggest in this memorandum, that might be referred to such a committee. Do you wish me to go on with the other matters, Mr. Chairman.

MR. CONANT: Just summarizing them, yes.

MR. SILK: The second matter was some of the offences that were formerly

offences under our Highway Traffic Act, which have recently been transferred to the Criminal Code. The offence of reckless driving, for instance. Mr. Andrew Smith, legislative counsel for Alberta, wrote me not long ago suggesting that, as the offence of reckless driving is now a criminal offence, the question might be raised that no civil consequences would flow from it, and that accordingly we should complement the legislation in the Code with provincial legislation, making it clear that civil consequences do flow from reckless driving, as was formerly prohibited by our Statutes and is now prohibited by the Code. The other matter is that it was your thought, at one time I think, sir, that the type of actions in which a person would be entitled to trial by jury, might very properly be referred to such a committee. The law is rather complicated in that respect now.

MR. CONANT: That reference is only to those statutory provisions ——

MR. SILK: As contained in The Judicature Act, section 105.

MR. CONANT: Yes, we have discussed those actions, either the extension of them or the limitation of them.

MR. SILK: Yes. Then the question of procedure on appeals from summary conviction matters, it occurred to me that that might be a matter to be entirely reviewed by such a committee. Certain portions of The Evidence Act warrant study, and might very well be studied by such a committee, and I have listed, last of all here, the matters which Mr. Barlow has mentioned as having been reviewed by the English committee.

MR. CONANT: Yes. Well, in England, apparently, Mr. Barlow, the committee is entirely an honorary organization?

WITNESS: Yes, I have reason to believe that it is.

MR. MAGONE: With this one exception, sir, that apparently they have a secretary who receives a very small honorarium, a partial honorarium. The situation, I think, Mr. Barlow, is different in the State of New York?

WITNESS: In New York State, to my recollection, there is an endowment there, a fund that was set up for the purpose of providing the cost.

MR. CONANT: Fifty thousand dollars.

MR. MAGONE: Yes, the members are appointed by the governor and each receives five thousand dollars a year.

WITNESS: Wasn't the fund set up by some organization, though?

MR. SILK: No. Fifty thousand dollars was appropriated.

WITNESS: Oh.

MR. SILK: No, that is the fund that was set up for the Legislative committee by Mr. Chamberlain, who is professor of law at Columbia University.

WITNESS: Oh, I see.

MR. CONANT: What personnel have they in England?

MR. MAGONE: It's on page 56 of your ring book, No. 2. The English committee is composed of fourteen members.

WITNESS: Five judges and nine barristers and solicitors?

MR. CONANT: But you have the names, haven't you?

MR. SILK: They are on page 51.

MR. CONANT: Yes, well what do you think, Mr. Barlow, comparing conditions in England and here, geographic, and so on, do you think the committee would function here with the same effect as it would in England?

WITNESS: I don't see why it should not, Mr. Chairman. It is true that we are a smaller jurisdiction, that is smaller in the way of population, of course; we are only one province in the Dominion. But, and while the work might not be as extensive as in England, I can't see why it couldn't be a real advantage to us to have such a committee.

Q. Well now, wasn't there a time—perhaps you can enlighten the Committee on this, Mr. Barlow, or you and counsel combined; we have a system here now, where the province pays each member of the Supreme Court $1,000 a year. That is a relic of the long ago, is it not?

A. Yes, that goes back—I haven't a memorandum with reference to it here, but it goes back to a time when there was a committee appointed ——

MR. CONANT: We had that outlined at one time, Mr. Barlow. What form was that in, that of an honorarium from the province to the members of the Supreme Court? Didn't you have it developed, Mr. Magone?

MR. MAGONE: No, I don't remember having seen it.

MR. SILK: The contribution of the county court judges was dealt with the other day, but it has an entirely different history.

MR. CONANT: I know, but what I am coming at, what I want particularly, Mr. Barlow, is this; I am under the impression, and it is yours, that that contribution was supposed to be for services to the Legislature of the province?

MR. MAGONE: Yes, and it is so expressed now in The Extra-judicial Services Act.

WITNESS: There was originally an Act in the 1897 revision of the Statutes, and under that Act, chapter 29, section 2, commissioners were appointed having a certain remuneration.

MR. CONANT: Well, that was for a specific purpose, was it not, Mr. Barlow?

WITNESS: The commission was issued to the judges in Ontario and to such other persons as they might see fit, and provision was made for the payment, to each of these commissioners, of the sum of $1,000 a year, payable quarterly. And that goes as far back as 1897.

Q. But that only applied to those judges who became commissioners for that particular thing?

A. Yes, that applied only to those judges who became commissioners, and afterwards it applied ——

Q. To all of them?

A. Well, it eventually applied to all the judges, then the judges of the Court of Appeal, and then, finally, about 1912, as I recollect it ——

MR. MAGONE: 1910.

WITNESS: Yes, 1910, an Act was passed called The Extra-judicial Services Act, which provided that every judge should be paid the sum of $1,000 for services which he was called to render by any Act of this Legislature, in addition to his ordinary duties. And under that provision, from time to time, matters have been referred to the judges to report upon, mostly, in recent years, I believe, private Acts.

MR. CONANT: But that is not the only function in recent years. Under the rule of the Legislature, where a Bill has to do with an estate—what do they call that, Mr. Silk?

MR. SILK: Committee on Estates.

MR. CONANT: Yes, where a Bill has to do with an estate and it is a matter of alteration of a Bill, or to construe a Bill by legislation, before that Bill is given its second reading, is that it?

MR. SILK: Yes.

MR. STRACHAN: Yes.

MR. CONANT: It goes to a Committee of Judges?

MR. STRACHAN: Yes, we have had it a couple of times here.

MR. CONANT: Yes, that is the only function that I know that continues at the present time, is it not?

WITNESS: Well, I don't know, Mr. Chairman.

MR. MAGONE: That is about the only one that I can recall.

MR. CONANT: Well, do you know of any other function, Mr. Barlow?

WITNESS: No, I don't know of any other function.

MR. STRACHAN: Making the Rules of Practice.

MR. CONANT: Well, there hasn't been any of that done since 1913, we have been told.

WITNESS: 1928.

Q. 1938? Well, the reason I am directing my remarks to this is this, whether the functions of the Law Revision Committee should or could be performed by the judges of the Supreme Court themselves.

WITNESS: I would think the judges of the Supreme Court would welcome the opportunity to be of service on a committee of that kind, and certainly it would be within their very active field.

MR. STRACHAN: To define the active legislation, too?

WITNESS: No, to report on the necessity for change.

MR. CONANT: And to indicate the nature of changes?

WITNESS: Yes, to indicate the nature of changes.

Q. Well, I have been told, or I have read, Mr. Barlow—perhaps you know whether this is correct or not, but back in the days of Sir James Whitney, I can't give an actual date, the executive used to make much greater use of the judiciary in framing legislation and deciding the construction of legislation than they do to-day.

A. That is what I understand, though I don't know any details of it.

MR. STRACHAN: The Workmen's Compensation Act is an example, by Sir William Meredith.

WITNESS: Yes, that's true.

MR. CONANT: I doubt, Mr. Barlow, if that is the case—I want to make it clear, by way of criticism, that we have this peculiar situation to-day; that, while we pay to the Supreme Court judges $1,000 a year out of provincial revenues, so far as I know, and I would like you to correct me if it is not the case, the only service that the province asks for is on these Estate Bills. And that is indicated also by the fact that when a judge of the Supreme Court is appointed and serves as a commissioner, he is compensated quite above his statutory allowance.

MR. LEDUC: Pardon me, Mr. Chairman, but Mr. Barlow, before you answer that question, on pages 18B and 18C we have twenty-six Statutes, and in a great many of these Statutes the power to make rules is given to the Supreme Court; I suppose that whatever work they accomplish on these rules, or in the revision thereof, would be covered by that $1,000 compensation?

WITNESS: Oh, it would, no doubt it would. As to the actual services which they render, Mr. Chairman, I haven't the information as to that.

MR. CONANT: I see.

WITNESS: Your department, or other departments, would have much more information as to that than anything I have, because I haven't given any specific study to it, nor made any specific investigation as to this matter.

Q. Well, I had to ask these questions because, since reading your report and being aware of the statutory allowance to judges, I have questioned, in my mind, whether the judges themselves wouldn't be quite willing, and whether the Legislature wouldn't be amply justified, in making greater use of the judges. In cold facts, to justify the allowance that is made to them by the province.

A. I am sure that the judges would welcome the opportunity to perform any service of that kind.

Q. The province pays to the judges of the Supreme Court bench in the neighbourhood of $20,000 a year, is that right?

A. Quite right.

MR. MAGONE: Do you know if it is paid by any other province in Canada to-day, to the Supreme Court judges?

WITNESS: I don't know, Mr. Magone. I haven't investigated that.

Q. My reason for asking is, that I think this is the only province that makes such an allowance.

A. You have made an investigation?

Q. No, I think that is so, I am not sure.

A. Well, I'm not sure about it, I can't speak with any degree of authority as to that, because I haven't looked it up.

MR. CONANT: What advantage, if any, would there be in a mixed committee, such as you suggest, and such as they have in England, as compared with the judges themselves dealing with the problem, if you like, submitted by the Attorney-General, or formulated in any way you want to formulate it? It really comes down to that, it seems to me.

WITNESS: Oh, it almost seems to me, Mr. Chairman, that so far as the Law Revision Committee is concerned, that the judges themselves could very well form a committee among themselves to deal with that.

MR. MAGONE: Would they function, do you think, Mr. Barlow, without the assistance of a barrister to do their delving for them?

WITNESS: Well, I don't know, they could speak as to that better than I could. That brings up a point that I learned recently. They have a practice, in the State of Michigan, and perhaps some of the other states, in which each of their appeal court judges, I believe, has assigned to him, each year, a student to

do his delving for him. It is in the nature of a year's post-graduate work for that law student who is assigned to that judge. He can only be assigned for one year, and no more. He is paid an honorarium for the year—I don't recollect now what it is, although I believe I have it somewhere, and it is a marvelous opportunity for that student, and it also is a great advantage for the judge. That is something that this committee, perhaps, cannot give special thought to, but it is something that is worth while considering in the future by some organization.

MR. MAGONE: It is in the nature of a scholarship?

WITNESS: That is what it amounts to, yes.

Q. Mr. Silk tells me that is the practice in the Supreme Court of the United States.

A. The same practice there?

Q. Yes.

A. Well, I presume it applies in other jurisdictions, but I obtained this information with reference to Michigan when I was down in Windsor in January.

MR. CONANT: Well, if you wanted to set up a practice here of referring such problems as Mr. Silk has dealt with, to the judges for their recommendation, no statutory revision would be necessary for that?

WITNESS: None at all.

Q. It could be done?

A. It could be done merely by request by the Attorney-General.

Q. And the feasibility of it would depend entirely upon the willingness of the judges to co-operate?

A. Quite true.

Q. Their response, is that it?

A. Quite true.

Q. Yes. That has never been done in this province, has it?

A. Which, the Revision Committee?

Q. No reference to the judges in the manner that I indicated?

A. Well, unless it may have been done back in the time of Sir James Whitney. I am of the impression that something of that kind was done in those days, but that is something that would have to be investigated.

MR. MAGONE: I have here a copy of an address of John W. McDonald,

professor of law at Cornell, dealing with the Law Revision Committee, in which he expresses this opinion about the assistance; he says:

> "The best man we can get is a young law graduate of high standing, preferably a member of a Law Review Board, because he is familiar with this kind of work, who usually has no fixed opinion to express, and we do not want opinions from it. It is the commission that is to take the responsibility, the subcommittee that is therefore to make the study."

I am just wondering if it wouldn't be necessary to make some arrangement of that kind if a Law Revision Committee were set up among the judges.

WITNESS: Well, it might be, Mr. Magone. I would think that the judges could speak best as to that, though.

MR. CONANT: Well, it occurs to me in that case, that, supposing you were using the judges of the Supreme Court for a Law Revision Committee; the Attorney-General submits a briefed case of statute law on the question; what more would they require that might not be done by counsel of the Legislature, or any other way you might determine? If the brief of the statutory and case law were submitted to them, it seems to me that that would be all that is necessary.

MR. STRACHAN: To do what, Mr. Chairman, to prepare ——

MR. CONANT: To formulate a recommendation as to what statutory action should be taken, if any.

MR. STRACHAN: I can see certain disadvantages in having the same body not only preparing the law, but also interpreting the law; that was the complaint that was made away back in the old days, when that was the common practice, when the judges not only interpreted the law, but also, in many cases, drew up the law.

MR. CONANT: Well, wouldn't that be overcome, to some extent, if you had a committee with some barristers on it?

MR. STRACHAN: Well, I think that the judges have one function, and that is to interpret the laws that are made. The law-making body, in the last analysis, rests in the Legislature.

MR. FROST: Well, for instance, take the Ontario section of the Canadian Bar Association; from time to time, in their meetings, they consider subjects such as some of these subjects that you have mentioned, do they not, Mr. Barlow?

WITNESS: Yes, they do, but the commissioners on uniformity of legislation, under the Canadian Bar Association, deals with very much the same problems in the same way, because their function largely is to bring about a uniform Act, which can be made part of the statute law of each and every province, so that there will be a uniformity of legislation; that is really their function.

Q. Well, what do they do in their organization, they discuss these things, and arrive at certain opinions, or a certain decision, and do they then submit that to the various attorney-generals?

A. They actually draft the Act, and it goes to the various attorney-generals in the Dominion, and they may or may not adopt it.

MR. STRACHAN: Since you have been a member, Mr. Frost, we have passed some legislation along the recommendation of the uniformity commissioners.

MR. CONANT: Oh yes, during this last session.

MR. FROST: Well, wouldn't that be, perhaps, the natural place for suggested law revisions, Mr. Chairman?

MR. CONANT: Well, I don't think it is of that kind ——

WITNESS: No, it is not really of that kind of revision that we are thinking of here, Mr. Frost. As I say, that is a question largely of uniformity throughout the various provinces of the Dominion, and that is a little different.

MR. SILK: The uniformity commission tries to steer clear of matters of policy.

WITNESS: Yes.

MR. SILK: And confines itself rather to matters of uniformity.

MR. FROST: Well, the suggestion here was that the committee should consist of both judges and members of the Bar.

WITNESS: Yes, that was following the practice that they follow in England.

MR. CONANT: You may proceed, Mr. Magone.

MR. MAGONE: Mr. Chairman, I thought that now we might start at No. 1 and go through our agenda. That is, start with grand juries and deal with the subjects in their order.

On page B1 of his report, Mr. Barlow deals with grand juries. Without reading the short historical sketch that is there, I think I might start about half way down the page and read part of this preface to Mr. Barlow's recommendation.

> "In earlier times, many of our magistrates by whom an accused was committed for trial on a preliminary hearing, were laymen with no training in the law and oftentimes, with little or no experience, and the grand jury then was a real safeguard to the accused. Now, our magistrates are full-time officials, with an experience from daily presiding in the Magistrates' Courts, which well fits them to decide whether the evidence is sufficient to put the accused on his trial. Furthermore, the grand jury is expensive. It has been estimated that the cost of grand juries in the Province of Ontario exceeds $50,000 annually.

When one considers that in the County of York alone, seven grand juries are empanelled ——

Just to stop there for a moment, Mr. Barlow, that figure of $50,000 is purely an arbitrary figure, as I take it? There is no way, I suppose, of arriving at an accurate figure?

WITNESS: It is very difficult to arrive at an accurate figure, Mr. Magone, because of the fact that you have attendance of witnesses.

MR. CONANT: Well, isn't there also this: that that may be the direct cost, but we have the question of the hold-up in court procedure, the time of counsel and the time of the witnesses?

WITNESS: Yes.

MR. CONANT: Yes.

MR. MAGONE: It is pretty difficult, if not impossible, to evaluate that.

"When one considers that in the County of York alone, seven grand juries are empanelled each year, and when one considers the cost of attendance of Crown counsel and the sheriff and his officials, and of all the witnesses in each criminal case on the first day of the sittings, the expense attendant thereto is self-evident. Furthermore, a witness in a criminal action must, of necessity, attend a preliminary hearing before the magistrate and at the trial itself. In addition thereto, he must attend on the first day of the sittings, and until such time as the case in which he is a witness, has been heard by the grand jury. It thus results in a hardship and inconvenience to witnesses."

Then you go on to point out that in the provinces of Manitoba, Saskatchewan, Alberta, and British Columbia, the grand jury is dispensed with or never existed, in some cases. And your recommendation, Mr. Barlow, as it appears, starts on page 3, and is that the Criminal Code and our provincial statutes be amended for the purpose of dispensing with the grand jury, and that such amendments embody the same machinery as has been set up in the western provinces and British Columbia. That is for the purpose of inspection of buildings, and so forth?

WITNESS: Oh no.

MR. CONANT: The laying of charges.

WITNESS: The laying of charges, yes.

MR. MAGONE: Oh, I see.

WITNESS: That is the Criminal Code.

Q. Yes, that is the Criminal Code you are speaking about now?

A. Yes.

Q. Now, Mr. Barlow, in coming to that conclusion, you made a study of the laws in other jurisdictions, did you not?

A. In some of them, yes.

Q. Will you just, if you can, outline to the Committee what you found?

A. With reference to what?

Q. With reference to jurisdictions where grand juries have been dispensed with.

A. Well, there has never been a grand jury in Scotland. The grand jury was dispensed with in Ireland in either 1927 or 1928. The grand jury was abolished in England in 1933. There has been no grand jury in South Africa since 1885. There is no grand jury in Australia or New Zealand, no grand jury in our provinces of Quebec, Manitoba, Saskatchewan, Alberta, British Columbia. So really it resolves itself down to the fact that our own jurisdiction, and the Maritimes, are the only places left within the British Empire that have a grand jury. As far as England is concerned, a committee was appointed in 1912 which made a recommendation that the grand jury should be abolished. In 1917, as a war measure, the grand jury was dispensed with, and it was not used until 1928, when it was restored. In 1933, another committee was appointed, and this committee again recommended the abolishing of the grand jury as no longer performing a useful function, and legislation was then passed abolishing it.

MR. FROST: That is in England, Mr. Barlow?

WITNESS: In England.

MR. FROST: There are no other grand juries in England?

MR. MAGONE: With the exceptions that Mr. Barlow will point out.

WITNESS: Yes.

Q. In the ordinary criminal trial there is no grand jury?

A. Not in the ordinary criminal trial, no, it is only in special cases. The Act itself sets out these various exceptions, but I haven't the Act here.

Q. I think you can summarize them by saying that they are more or less offences against the State?

A. Yes, offences against the Crown or the State.

Q. Yes.

A. That is really all, yes, under certain old charges.

Q. Yes.

A. Other than that there is no grand jury.

MR. CONANT: I think the problem, Mr. Magone, in some respects, may be narrowed down to these two aspects; that is, the aspect of inspections, which includes those functions which are now being performed by the grand jury, and the other aspect is what safeguards, if any, are needed to bridge the gap that is created in a case where the Attorney-General lays an indictment.

MR. MAGONE: Well, I thought before getting to that ——

MR. CONANT: Are those not the two main problems, gentlemen, confronting the Committee?

MR. FROST: I think they are. That is one thing that has worried me a little bit, Mr. Barlow. I recognize the fact that we have now a magistrate who is supposed to be a competent man, to review the evidence before a person is committed for trial—and, after all, these grand jury cases are nearly all serious cases?

A. Yes.

Q. Yes, most of them are, and in that case a man appears before a magistrate, there is an investigation into the evidence, the witnesses are seen and heard by the magistrate, if he makes a finding and sends the accused up for trial, I think that we may perhaps reasonably feel that there is sufficient evidence there to reasonably justify a man sending him up for trial; the difficulty comes in in this: supposing the Attorney-General prefers an indictment against man—the word prefers is wrong, but supposing he has an indictment prepared and laid against a certain individual.

MR. CONANT: I think the word is he directs an indictment to be laid, isn't it, Mr. Magone?

MR. MAGONE: Yes, well, preferred is perfectly all right.

MR. FROST: Whatever the word is, the result is a man may be sent up on trial for his life without any previous investigation or inquiry. Now it is on that point that I have had some doubts myself as to whether, if the Legislature, in its wisdom, saw fit to abolish the grand jury, whether there should not be some procedure to make it that a man should have a preliminary hearing.

WITNESS: There may be considerable in what you say, Mr. Frost. I took occasion, this past year, to discuss this very point with the legislative counsel of the other provinces, that is the three western provinces and British Columbia, and also in Quebec, where they have no grand juries and where they operate under the section of the Criminal Code as it now appears set out, and they told me they never had any difficulty at all, and there had never been any question raised. But I would go so far as to say this: that if there is any feeling that any question might arise, that that can be obviated by providing that a county judge shall perform the same functions, if it is thought necessary that it should be done, as the grand jury now performs, and I would think that he would be in a much better position to perform that function than any of the grand juries that we have. And I submit that that would be complete protection.

Q. I have felt for some time that a great many grand juries just reflect the opinion of the Crown counsel who usually goes in with them.

A. You know that from experience.

Q. I found that from experience.

A. Yes.

Q. On the other hand, I was rather struck at some figures that Mr. Conant gave in the Legislature, which rather indicated that about 10 percent, if I remember rightly, that in about 10 percent of the cases No Bill had been returned, which rather indicated to me that perhaps my experience wasn't a true reflection of what was taking place.

MR. CONANT: Of course we could make this observation: whether the percentage is 9 percent or 10 percent you would have to go a little bit farther and have to analyze in what percentage of the cases the Crown was actually pressing the True Bill.

WITNESS: I was just going to say, Mr. Chairman, that I know, and you probably know, that in certain cases the Crown counsel does say to the grand jury that in his opinion a True Bill should not be brought.

MR. FROST: Well, how would a case like that get past a magistrate?

WITNESS: Well, that is very questionable, Mr. Frost, but I would presume that this might very likely be expected, that if we had no grand jury, that our magistrates would be very much more careful than some of them now are.

MR. FROST: In connection with the abolishment of grand juries, there is this other difficulty.

MR. CONANT: May I interject there, I think this is pertinent at this stage—Mr. Magone, you have been in the Attorney-General's Department here for how many years?

MR. MAGONE: More than 25 years.

MR. CONANT: From your experience, how often, and in what classes of cases, has the Attorney-General directed or preferred an indictment? I think that is important, and I think you will agree with me that it is at this stage, because Mr. Magone's experience is broader than that of any of us here, and I think he can indicate that it is an exceptional and peculiar situation that arises.

MR. MAGONE: Well yes, my experience has been that it isn't done, certainly not as a matter of course in any case, nor is it done merely for the purpose of bringing to trial someone whom it is thought might not otherwise get to trial; it is done in cases in which, in one jurisdiction, a person has been committed for trial, and a crime of a similar nature has been committed by the same man in another jurisdiction; then, instead of going to the expense of having preliminaries in two jurisdictions, after a committal or trial in one, they will prefer a grand

jury bill in another. I recall, too, probably only one case in which it was done because of the length of time that might have been taken up by a preliminary, and that is the Home Bank prosecution.

MR. FROST: I was just going to say if that wasn't the Home Bank case.

MR. MAGONE: Yes, that is where the preliminary would have taken up the time of the trial, and where very high-priced accountants were employed.

MR. CONANT: Yes.

MR. FROST: Well, just on that point, in some of these serious cases, I often wonder if it isn't fair that the accused should have at least some indication of the nature of the evidence that he has to meet. Take, for instance, a man who is on trial for his life; why shouldn't there be some form of discovery for that man, in order that he might know what he is going to be up against?

MR. MAGONE: Well, possibly I have a Crown complex, but I think there are enough safeguards surrounding an accused person now.

MR. CONANT: Isn't one answer to that, Mr. Magone, that it is inconceivable that the Attorney-General would lay a charge, or lay an indictment of murder? It has never been done that I ever knew.

MR. MAGONE: No, I never remember of it being done. Of course up till quite recently we were overloaded with procedure; as you know, there was a coroner's inquest, where the witnesses had to attend; after the inquest comes the preliminary hearing before the magistrate, where the witnesses are required to attend again; then there is a hearing before the grand jury, and then there is the trial before the petit jury. We have managed to cut out the coroner's inquest in recent years, by means of an amendment to the Coroner's Act.

MR. CONANT: Where a charge is laid.

MR. MAGONE: Where someone is arrested.

MR. CONANT: Yes.

MR. MAGONE: And the preliminary is something that arose after a coroner's inquest, because in England, now, a coroner's jury may commit for trial, which cuts out the preliminary before a magistrate, and then following that the trial goes on, without an indictment before the grand jury. I never remember a charge of murder, getting back to your question, sir, I never remember a charge of murder being preferred.

MR. FROST: Mr. Magone raises a rather interesting point; he says that he has the Crown complex. Well now, I think, myself, that the Crown complex, with Mr. Magone, would be a very, very fair one. I think that he would be fair, and I think that he would lean backwards if anything, but the difficulty is that there are many Crown counsels who, by temperament, are not that way. I think it is fair to say that the proper Crown complex is this: that the Crown never wins or the Crown never loses.

MR. CONANT: Absolutely.

MR. FROST: But the difficulty is there are many Crown counsel who make it a personal matter; if they lose it, it's a black mark against them. That is one of the difficulties we meet with, and I think that, to get around that human element, that you have to have a safeguard.

MR. CONANT: Well, Mr. Frost, I would like to interject this at this point; by way of an interrogation of Mr. Magone, you made a remark regarding the affording, to an accused person, of an opportunity of learning what his case is and so on. Now, the abolition of the grand jury and the substitution of a judge wouldn't alter that situation in the least.

MR. FROST: No.

MR. CONANT: Because it is all part of our procedure, that the Attorney-General can lay an indictment and to-day he can lay an indictment and it goes before the grand jury and the first the accused knows of all the evidence is when it is on file, am I not right, Mr. Magone?

MR. MAGONE: Yes, and that is exactly what I was going to say to Mr. Frost, that the abolishing of the grand jury has really nothing to do with discovery, such as you suggest, because the proceedings are in private.

MR. FROST: Except this: the names of the witnesses are on the back of the indictment and it gives the accused person the right to have those witnesses placed in the box, and gives him the right of cross-examination. Now that, off-hand, may not appear to be very much, but on the other hand it is a very great deal. I remember I won one case a number of years ago, when I was in Sudbury; Mr. Justice Gagnon was the judge then, and in order to obtain a True Bill, it wasn't necessary to call very many witnesses. Actually, I think there were only a couple of names on the indictment. That is my recollection. But in this particular situation, I remember there had been a large number of witnesses called at the preliminary hearing, and the Crown's case was completed upon calling two or three witnesses. Well, the accused's lawyer pointed this out to the court and claimed that these actually were Crown witnesses, and that they hadn't had the opportunity of speaking to them, owing to the fact they were called to the preliminary hearing. And after I thought it over, I think he was correct. Well, the judge directed they be put in the box and subjected to cross-examination by the accused. Now those are little things that are protection to an accused person.

MR. CONANT: Yes, but if the Bill preferred by the Attorney-General went before a county judge, you would have all of that.

MR. FROST: Yes.

MR. CONANT: You would still have all of that. May I ask this, Mr. Magone, can you think of any better safeguard than the proposal that the Attorney-General's bill should go before a county judge, who would perform the same functions as a grand jury, can you think of any other or better safeguards?

MR. MAGONE: No, sir, I can't think of any, if some such safeguard were thought necessary. I can't think of a better one. But I should say this, that I don't see, from my past experience in the Department, and from the state of the law as it is, why any such safeguard should be considered necessary, for this reason, that as the law stands at present, the Attorney-General may commence a prosecution for very serious offences now, without a preliminary, and without taking a bill before a grand jury, and I refer to a practice that has fallen into disuse but might still be used, if anybody cared to use it; the Attorney-General may file an information in the King's Bench, in the Supreme Court, for anything that was a misdemeanor prior to 1892, incest, blasphemous libel, perjury, and may, by filing an information in the Supreme Court, start a prosecution without any preliminary hearing and without any bill of indictment, and without the intervention of a grand jury, and while he still can do that, I don't see that any safeguards should be required with respect to the other offences that fall under the heading of felonies.

MR. FROST: Of course, the fact that that hasn't been used is some evidence, I think, of the fact that it hasn't been considered to be just the proper procedure.

MR. CONANT: Well, of course I think the Committee is justified in taking this view, if I may make this observation: that, while, since the beginning of time in this province, it is doubtful if there ever has been an Attorney-General who would abuse the right that the Code gives him, we have to guard against the possibility—and I am bold enough even to include the present one in that category—we nevertheless have to guard against the possibility that, at some time, an Attorney-General might be in office who wouldn't be subject to the same restraints that they have been subject to over the years passed. I think that is right. What do you think, Mr. Magone?

MR. MAGONE: Well, I was wondering, Mr. Chairman, we are developing now into more of a discussion than a hearing of evidence, and I wondered if the Committee shouldn't hear some of the report of the English committee and possibly some of the evidence. There are short paragraphs of evidence set out in the report. Doesn't Lord Romer give some of his observations in connection with his practice at the Bar?

WITNESS: You are perhaps more familiar with it than I am, Mr. Magone.

MR. MAGONE: Apparently the English committee brought their report in after hearing the evidence of some of the prominent members of the English Bar.

WITNESS: Well, do you want me to proceed, Mr. Magone?

Q. Yes, if you will, Mr. Barlow.

A. In referring to the report of the Business of the Courts Committee, that is the English Committee which sat in 1933 and made the report on the grand juries, I might refer to certain evidence that was given before them, and which appears in this report.

First, an opinion of Sir Sidney Rollate, then Mr. Justice Rollate, who, when the expiry of the Act suspending grand juries was approaching, that is in

1922, he wrote a pamphlet drawing attention to the purpose and value of grand juries. And he recognizes that grand juries are wasteful in time and money, owing to the necessity of the attendance of witnesses, and they may have to be abolished. And that is borne out in the recommendation that was made as long ago as 1913, when the opinion that grand juries should be abolished was supported by the unanimous authority of the Commission, which included members of both Houses of Parliament, the present Lord Darling, and other members of the legal profession.

Then Sir Archibald Bodkin, who has unrivalled experience of the criminal law, both at the Bar, which he was for twelve years senior prosecuting counsel, and for ten years Director of Public Prosecutions and at the time of this report, Chairman, of the Quarter Sessions at Exeter, also gave evidence. He said that for all Quarter Sessions and Assizes, he would be ready to forego grand juries. He had heard it argued that grand juries were necessary, lest some case should occur in which the government of the day was oppressing some person or persons by the means of the criminal law, but that argument left him unmoved. Immense publicity was given nowadays to any important proceedings, and he himself would be quite as willing to trust to the good feeling of a petit jury, if there should be any case of oppression, as to rely upon the grand jury.

And then a further reference is made to the opinion given at that time in evidence by Mr. Cecil Whitely, who was Chairman of the Surrey Court of Sessions for a number of years and afterwards Chairman of the London Quarter Sessions, and he expressed the opinion also that grand juries served no useful purpose.

And then, proceeding with the report itself:

> "We have endeavoured to consider the merits of grand juries, and have not failed to appreciate that an accused person may rightly value the rejection of a bill of indictment against him without having to stand a trial. Yet we have to balance these advantages against the cost, both in time and money, and the burden of service involved by their retention. We have come to the unanimous opinion, as had the Commission in 1913, that they ought to be abolished, both at Assizes and Quarter Sessions, subject to the impositions and safeguards hereinafter suggested."

And those safeguards are with reference to the Middlesex Grand Jury, which stands on a different basis. Then it goes on to state the cases in which the grand jury is preserved. "Whenever a Governor is charged." That is one case where it is preserved. Or where there is a charge to be tried at Bar in the High Court, the case would be brought before the grand jury of Middlesex. This was in fact the course adopted in the case of Mr. J. E. Ayr, Governor of Jamaica.

MR. MAGONE: I think Sir Roger Casement, in the last war, was tried at Bar by three judges and a jury?

WITNESS: Yes.

Q. Mr. Barlow, can you summarize shortly the advantages that are put forward for the retention of the grand jury?

A. The main advantage that has been put forward in any submission that I have received is that it brings the public in closer contact with the courts by virtue of the opportunity that is given to them, from time to time, to serve upon grand juries, and that they see the court in operation in a way that they might not otherwise have the opportunity to do. And while that may have been the case in time gone by, it seems to me that that is largely past at the present time, with the newspapers, and other means of disseminating information and so on, and the fact that people generally are familiar with all these matters in a way that they were not in earlier times.

Q. You are not overlooking the radio, are you, Mr. Barlow?

A. No; well, we'll put the radio in too.

MR. FROST: In connection with the abolishing of grand juries, supposing the Legislature passed a Bill abolishing grand juries, would it then be necessary to have certain other legislation from the Dominion Government?

WITNESS: The Criminal Code must be amended, Mr. Frost.

Q. That is the purpose of that petition, then?

A. Yes, that is the purpose of it, because the Criminal Code must be amended.

Q. Well, in that matter of the county judge passing upon the evidence in a Bill preferred or laid by the Attorney-General, that would have to be a matter of Dominion legislation too?

A. Yes, that would have to be a matter for Dominion legislation too, yes. At the present time, so far as the other provinces are concerned, section 873 of the Code, subsection 6, covers it, and that would apply.

MR. CONANT: I mentioned a few minutes ago two items that arise out of the question of grand juries; one is safeguards against indictments by the Attorney-General, the other one was inspections by grand juries; now there is another item, Mr. Magone, that I think we should deal with, and that is the question of special juries.

MR. FROST: The matter of inspection of public buildings, that, surely, is not really an important function of the grand jury, is it? Mr. Justice Green used to receive the elaborate reports of grand juries and suggest that they be pigeon-holed with all other reports of grand juries; that is apparently what is done with them.

WITNESS: Mr. Frost, from such investigation as I made, and from information that came to me, I formed the opinion that, in the first place, so far as the County of York is concerned, there have been altogether too many inspections by grand juries. On the other hand, these are public institutions, and so far as the public are concerned, and as a proper safeguard to the public, and so on, I am of the opinion that some inspection body should be appointed, or provision be made for some inspecting body that would inspect, say, not more than twice

a year at most. But so long as you have an inspecting body appointed from the public, you will have a protection there that you otherwise would not have.

MR. FROST: What would you suggest by way of inspecting body.

WITNESS: I would suggest that, from the petit jury panel, some six or seven men be named, say, one or twice a year, whatever is deemed advisable, and that they make the inspection of these buildings, that is now being made by the grand jury, and make their report. And that acts as a protection.

MR. CONANT: When you speak of protection, you mean protection against beaurocratic administration?

WITNESS: Exactly, sir.

Q. Yes, well I think that's right. Well then, there is the special jury, Mr. Magone.

MR. MAGONE: Yes. Mr. Barlow, did you consider the question of special juries in criminal cases?

MR. CONANT: Not only in criminal cases, in all cases.

WITNESS: In all cases, I suppose.

MR. MAGONE: Yes, not only in criminal cases.

MR. CONANT: No, no, most in civil cases.

WITNESS: You practically never hear of grand special juries in criminal cases. I think you had one in Kingston, but other than that I can't remember a special jury in a criminal case.

MR. FROST: How is that brought, under what procedure?

MR. CONANT: Well, we spent many hours and much midnight oil to solve that problem in the first place. I think our figures showed about one a year throughout the province. That is in ten years. Have you those figures here?

MR. MAGONE: I haven't these figures, no. That is in all cases; there hasn't been a special jury in criminal case in my experience in this province until this one at Kingston.

MR. FROST: Under what conditions does a special jury come about?

MR. CONANT: Well, the practice, I think, briefly, is this: that a litigant can have a special jury selected from the grand jury list by paying the cost of the jurymen and all the rest, and there is elaborate machinery set up for the method of impanelling or selecting that special jury.

WITNESS: That's right.

Q. I have always been in some doubt as to whether it should be continued or not, principally because of the fact that it is a tremendously long and involved procedure for selecting it, and it is made use of so very, very seldom. Will you get those figures for to-morrow, Mr. Magone?

MR. MAGONE: Yes.

MR. CONANT: They are available in the department somewhere; I think the Inspector of Legal Offices has them in detail. But it is for this Committee to consider this question of special juries. About the only thing to be said in favour of them is, in my opinion, that the party pays the cost of them. When a special jury is selected, I think they usually deposit two hundred dollars.

WITNESS: I think they deposit two hundred dollars, and if the cost exceeds that, they also pay that.

MR. FROST: In the Kingston case, did the Crown ask for it?

MR. CONANT: No, the accused.

MR. MAGONE: The provision goes back to 1820, in a pre-Confederation Statute, and it is carried on almost exactly in the same words into our present Jurors Act, and the provision is that "in every case whatever, whether civil or criminal trial by a jury, excepting only indictments for treason or felony, His Majesty, or any prosecutor or relator or plaintiff or any defendant, may have an issue joined to be tried by a special jury," and the case at Kingston was a case not of treason or felony, but of reckless driving, dangerous driving, and they asked for a special jury there.

MR. CONANT: We won't get many more requests from the outcome of that case, I suppose.

MR. MAGONE: It isn't likely, no. The question then was there was provision in the Code for a special jury, and we came to the decision that it had never been abolished, and that there probably was the right to a special jury.

MR. CONANT: The Crown, in that case, didn't seriously challenge the right, anyway.

MR. MAGONE: No, he didn't, because our own Statute says there is a right to a special jury, except for treason or felony, and going back to our Interpretation Act, misdemeanour or felony is defined to mean those crimes which were misdemeanours or felonies before the Criminal Code was enacted in 1892. So that the right probably does exist in this province in all cases that were former misdemeanours or that have become statutory crimes since 1892.

MR. CONANT: Of course I think you should add, Mr. Magone, because I think it would be the case, if I were to abolish the special juries, then it would be abolished as far as the Code is concerned?

MR. MAGONE: I think that is probably true, except for this reason, that there is a section in the Criminal Code—I think it is section 102, that mentions special juries.

MR. STRACHAN: Isn't it in cases of difficulty or importance that the sheriff has to hand pick them, instead of picking them at random, pick a special type?

MR. MAGONE: Well, I have never known of that having been done, Mr. Strachan.

WITNESS: Do you mean in a criminal case? I don't remember any.

MR. CONANT: Read us your jury law there, Mr. Magone, at the present time. It defines the type of people who may serve on special juries, doesn't it?

MR. MAGONE: Yes.

MR. CONANT: Well, that is what Mr. Strachan is referring to, are you not?

WITNESS: They are the grand jury panel, though.

MR. STRACHAN: I think in cases of importance or difficulty, the sheriff is asked to try and pick the highest type of jury, and he can't just going down at random; he has to handpick them.

MR. CONANT: You mean a particular jury? How can you do that when the names are drawn out of the box?

MR. STRACHAN: Well, the whole panel would be handpicked?

MR. CONANT: But that panel is set up years before.

MR. MAGONE: I don't know how it could be done.

MR. STRACHAN: I was asking.

MR. MAGONE: No, I don't know how it could be done. I don't know of any case in which it has been attempted. But, Mr. Chairman, you were asking, if by repealing the sections of our Juries Act, it would do away with special juries. There is one section of the Criminal Code that mentions special juries, and only one, the only section that I can find, and that section is consistent with other provisions of the Criminal Code with respect to challenges. That is the general provisions of the Code give a right of challenge in criminal cases, varying in number, and the provisions of our Act dealing with special juries do not allow challenges. So that there is some doubt. I think that is about as far as you can go, to say that there is some doubt as to the right of a special jury in criminal cases, but, to clear it up, I think it would require legislation both here and in Ottawa.

MR. FROST: What would happen, for instance, in the provinces, where they have no grand juries, how do they get around the special jury provisions?

MR. CONANT: They don't have any.

MR. FROST: Do they have any?

MR. MAGONE. The provision regarding the special jury from the grand

jury panel is in our own Juror's Act, and I have no doubt that if they have it in the provisions of the Statutes of the different provinces, they provide that the special jury be drawn from the petit jury panel. Mr. Silk tells me that in Manitoba they name different classes of persons to form special juries, such as bankers, merchants, and so forth.

MR. CONANT: Well, what we would like to have, Mr. Magone, is evidence as to the need or the desirability of continuing the special jury provisions, in whatever form that may be necessary to fit the law to the abolishing of the grand jury, if the grand jury is abolished; is that not right, Mr. Frost?

MR. FROST: Yes.

MR. MAGONE: I will get some information on that point. The section of the Criminal Code which I have referred to is coming back to me piecemeal, and it provides that no motion shall be made to quash a panel of a special jury or a petit jury.

MR. CONANT: That is the only case it is mentioned?

MR. MAGONE: That is the only case in which it is mentioned.

MR. CONANT: That is not a very operative clause though, is it?

MR. MAGONE: No, and that special jury referred to there may be a special jury to hear a murder trial, it may not refer to the same special jury that is referred to in our Jurors Act.

MR. CONANT: That's right, a jury to determine insanity or any other matter of similar nature.

MR. MAGONE: That's right.

MR. CONANT: What do you think about a special jury? Do you think it is necessary or desirable, Mr. Barlow?

WITNESS: The machinery is used so seldom that it seems to me that it is hardly worth while retaining. Furthermore, it is legislation for a special class, in that it is a class that can afford to pay for it.

MR. CONANT: Yes.

WITNESS: And if the principle is to be that there shall be no class legislation, well then, on that ground, it should not be retained.

Q. Well, there is this difficulty, is there not, Mr. Barlow, in reconciling the abolishing of the grand jury with the continuance of the special jury?

A. There is great difficulty in setting up machinery for a special jury if you abolish the grand jury, because the grand jury is a special panel, and a special jury is taken from that grand jury panel, which is composed of a special type of citizen.

Q. Well, don't use the word special.

A. Well, when I say special I mean that it comes within certain classes.

Q. Yes.

A. Certain employment classes.

Q. That is the difficulty, of reconciling the two classes, isn't it?

A. Yes.

MR. CONANT: Anything further on that point, about the reconciling the abolishment of the grand jury with the continuance of the special jury system, Mr. Magone?

MR. MAGONE: I don't think so. I was going to pass to petit jury, if it is all right.

MR. FROST: Do I understand that the Canadian Bar Association, at Windsor, passed some resolution against the abolishing of the grand jury? If so, do you know of any reasons that were given?

WITNESS: No, the Ontario Section of the Canadian Bar Association at Hamilton, a year ago last January, passed a resolution against the abolishing of grand juries. But it was not properly considered, or properly discussed.

MR. CONANT: You were there?

WITNESS: I was there and heard the discussion, and the whole sum and substance of the discussion was you were taking away from the people the opportunity to partake in the administration of justice; that is the very question I raised, and it is the only question that ever has been raised, as far as I know.

MR. FROST: Well, I would like to know, from anyone who feels that grand juries shouldn't be abolished, I would like to know something, or any reasons that they may have that would show the position of an accused person as prejudiced, that's what I would like.

A. Yes, I have not made any suggestion, at any time, that the accused person was prejudiced.

MR. CONANT: Well, will you have some evidence along that line, Mr. Magone?

MR. MAGONE: Yes, we have something along that line. The Lincoln County Bar Association, for instance, they recommend that it be retained.

MR. FROST: Apparently there are lots of resolutions asking that they be retained, but I wonder if we could get some of the reasons behind them. Now, Mr. Barlow has pointed here, in the average case, the fact is in 99 percent of the cases that come up for jury trial, there is a preliminary hearing before a

magistrate, who is supposed to be competent. Then the question arises as to protecting the public in the matter of indictments which might be laid by the Attorney-General, and which might put a man on trial without any investigation of his case beforehand, or without any knowledge of what the evidence might be, and the suggestion is there should be a preliminary hearing conducted by a county judge in a case of that kind. I presume a hearing of that sort would take the place of a preliminary hearing, and it would be a hearing where he could be represented?

WITNESS: No, my thought was that the judge would take the same place and fulfill the same function that the grand jury now fulfills.

Q. Well, would you be prepared to go this far, and say that the investigation by a county judge should be in the form of a preliminary hearing, at which both parties might be represented, just the same as in the magistrate's court at a preliminary hearing? The point I am coming to is this, Mr. Barlow; it seems to me that a preliminary hearing in a serious case, is something which is very fair, and very proper as far as an accused person is concerned. I have a good deal of hesitation in suggesting that an accused person should be put on trial without a preliminary hearing, for the reason that I can't see the fairness of taking a man, for instance, and placing him on trial for murder, say. He knows nothing of the nature of the evidence that may come up; he doesn't know as to whether there are confessions that might be submitted, statements that might be submitted, and so on, and it does seem to me that a fair opportunity should be given to the accused person of knowing the nature of the evidence to be used against him.

WITNESS: Well, I would say this, Mr. Frost, that if it is felt that such a practice as that was necessary, then why not do away with the present practice of allowing the Attorney-General the right to proceed by way of indictment?

MR. CONANT: You might just as well.

MR. FROST: In connection with that, I think it is probably proper to give the Attorney-General, as the chief law officer of the Crown, the right to prefer an indictment, but with certain safeguards.

WITNESS: Well, I know, but if you make that safeguard such that there shall be a preliminary hearing before a county judge ——

MR. CONANT: Then it doesn't mean anything.

WITNESS: It doesn't mean anything at all.

MR. CONANT: No.

MR. FROST: Well, what is the purpose, then, of giving the Attorney-General that right, is it to avoid expenses, as, for instance, in the Home Bank case?

WITNESS: To avoid expense, I presume, and, as Mr. Magone says ——

Q. Well, tell me; I have a hazy recollection of the Home Bank case; didn't the court order that certain particulars should be given to the accused?

A. Oh, Mr. Frost, that is always so; take the present prosecution that is going on, the Paper Box Companies; some 80 or 90 pages of particulars were given there, a regular brief, and that is always the right of the accused, and the Crown must give those particulars.

MR. CONANT: Your percentage, Mr. Frost, if I may interject, in suggesting that one percent of cases are indictments by the Attorney-General is far too high.

WITNESS: Well, I would say one out of a thousand.

MR. CONANT: I doubt whether there would be over one or two a year, would there, Mr. Magone?

MR. MAGONE: I don't think there would be any more than that.

MR. CONANT: I may say I tried to get figures on that, but it is impossible.

MR. MAGONE: It's the question of recollection by someone; that's the only way you can get it.

MR. FROST: In connection with the particulars which are required to be given to an accused, that provision is not used a very great deal, at least in my experience, is it?

WITNESS: Well, Mr. Magone can probably tell better than I can with reference to that.

MR. MAGONE: It is used a good deal.

MR. FROST: Well, in what form, for instance, give me an example.

MR. MAGONE: Particularly in charges of conspiracy, conspiracy to defraud. They want to know what the form of the fraud was, who were the parties defrauded, and so on.

MR. CONANT: When and where.

MR. MAGONE: Yes, well that is generally in the particulars, that is as to time and place.

MR. CONANT: Yes.

MR. MAGONE: And there is provision in the Code, as you know, for obtaining an order for particulars if they are not forthcoming on notice. But in the Home Bank case, the case to which you refer, whereat the Attorney-General commenced prosecution by indictment, I think you probably remember that there was an application made to the County Court Judges' Criminal Court on that case.

MR. FROST: Yes.

MR. MAGONE: And Mr. Justice Middleton granted a mandamus to Judge O'Connel, or Judge Coatsworth, to try it, and it went to the Privy Council on that point, and they upheld the right of a person even who was indicted directly by the Attorney-General to go to the County Court Judges' Criminal Court.

MR. FROST: Well, in that case there was no grand jury required at all.

MR. MAGONE: Oh yes. It wasn't until a True Bill was found that they had a right to go to the County Court Judges' Criminal Court.

MR. CONANT: That's right.

MR. FROST: I see the point. Well now, under this present procedure, a True Bill wouldn't be required? If a grand jury wouldn't be required there would be no True Bill, and they would go directly to trial?

MR. MAGONE: Yes.

MR. FROST: The suggestion is a county judge could be constituted for that, to investigate and see if there is sufficient evidence to place those people on trial.

MR. CONANT: That's right, and after he found a True Bill, if he found a True Bill, the accused would still have the right to elect.

WITNESS: Still the right to particulars also.

Q. In proper cases?

A. Yes.

Q. He couldn't in burglary cases, of course?

A. Oh no.

Q. But in the same cases that he can now, he could.

MR. MAGONE: I might say that, dealing with Mr. Barlow's recommendation regarding grand juries on page 4 of the report of the judges of the Supreme Court, they deal with that question and they say:

> "As was recently stated in the London, England, labour newspaper, *The Daily Herald*, in an article in praise of the British Jury system, and to paraphrase the newspaper in words to this effect: 'No man can be taken from his home without the intervention and protection of a jury of his fellow citizens.' It should be also borne in mind that the Grand Jury in many cases is the means of saving both the public and the accused individual the heavy expense of a petit jury trial.
>
> In the opinion of the committee, it might also be pointed out that the more the rank and file of the citizens are called together to assist in the administration of justice, either as Grand Jurors or Petit Jurors, the better it is for the more complete understanding of our democratic

institutions by the people at large. It is considered to be of great educational value that the citizens come together from time to time and function as Grand Jurors."

MR. CONANT: Of course those observations didn't prevail in practically all the jurisdictions of the British Empire.

MR. FROST: Well, just ——

WITNESS: Yes.

MR. CONANT: Isn't that correct, Mr. Barlow?

MR. FROST: Just one other question in connection with it; if we have one case out of ten, or approximately one case out of ten in which the grand jury brings in a No Bill, does that percentage, do you think, in any way justify the retention of the grand jury? In other words, apparently one case in ten the country is saved the expense of a petit jury, and the accused is saved the expense of a trial, and also, I suppose, the accused is saved the risks that attend any trial, so that it is a protection to the subject—if one case in ten is thrown out by a grand jury. Now when I say one case in ten, I am just using those figures, Mr. Conant, from memory, as you used them in the Legislature last year.

MR. CONANT: Yes, well it was nine decimal something.

WITNESS: Well, of course that is questionable.

MR. CONANT: May I take that up, Mr. Frost?

MR. FROST: Yes.

MR. CONANT: Mr. Barlow, if you have no grand jury, is it not the fact that you would have two additional safeguards that would, in some measure replace the present one? The one is the greater care and caution of committing magistrates and Crown counsel, and also against the present situation is the fact that the present percentage may reflect, in part, the action of the Crown counsel before trying it?

WITNESS: Quite true.

Q. Don't you think that the greater concern of committing magistrates and Crown counsel would, to some extent, offset the percentage that is offered?

A. If there is grand jury, then the magistrate and Crown counsel will exercise much greater care than they now do, because at the present time they say: "Oh well, this man has to go before the grand jury," and they throw the responsibility on the grand jury, and do not accept the responsibility that they would otherwise themselves.

MR. STRACHAN: There is another point that concerns me; the suggestion of the County Court judge taking the place of the grand jury; then, if a True Bill is found by him, the accused under certain cases may elect to go before the County Judges' Criminal Court for speedy trial; isn't there a danger there of one judge finding a True Bill and talking it over with a judge of the same rank,

the man the accused man is being tried by, and even judges are human, and trying to persuade the trial judge to the effect that: "Well, I was right, and your thoughts were wrong on that?"

WITNESS: No, Mr. Strachan, I don't think so, for this reason, that the first investigation is only a preliminary investigation in which you only have certain of the witnesses called, a sufficient number, perhaps, to show and to enable the judge to come to the conclusion that the accused should be put upon his trial. In the other case, you have a full and complete investigation of the whole matter, and may I illustrate that in this way: I have coming before me certain motions, such as, for instance, an application for leave to issue a writ or order out of the jurisdiction, that can only be granted on certain evidence which brings it within Rule 25, and that order is an ex-parte application, and is so made. Then, when the defendant has been served, if he thinks that he should not have been served, that the matter does not come within Rule 25, a motion then comes before me to set it aside, and when that motion comes before me to set it aside, I deal with the thing as a subsequent application, as though it had never been before me, and I must say that it never affects my judgment one way or the other, because I have in the first application only the evidence of the plaintiff by affidavit. In the second application I have the evidence by affidavit of both the defendant and the plaintiff, and an additional evidence by the plaintiff, if he so wishes, and the whole matter is dealt with as though it had never been before me. I think that is very much the same situation.

MR. FROST: I suppose, further, too, the county judge's function would not be to find guilty or innocent, but merely to find if there was sufficient evidence to put him on his trial.

WITNESS: That's all.

MR. STRACHAN: But the difficulty that would appear to me is, with the judicial type of mind that you get in the judge as compared to the grand jury, he may apply entirely different consideration. After all, the idea of the grand jury and the petit jury is not to bring the specialist's point of view to a criminal or civil case, but to get the general cross-cut ——

MR. FROST: Common sense.

MR. STRACHAN: —— and common sense of the community, and I feel a little bit afraid that a common County Court judge sitting instead of a grand jury would really be pre-trying a case before it is tried.

WITNESS: I would think, Mr. Strachan, that in actual experience there would be few, if any, that ever went before the judge to perform the functions of the grand jury.

MR. FROST: There is another point, too, Mr. Barlow, that of those cases, I suppose, here is a very, very small percentage of criminal cases that ever come to a grand jury in any event?

MR. CONANT: Oh yes, most of them, in fact.

MR. MAGONE: Ninety percent of them.

MR. CONANT: Have you those figures?

MR. MAGONE: We have them but—roughly ninety percent, I would say from my recollection.

MR. FROST: Would there be ten percent of criminal cases that come before a grand jury?

MR. MAGONE: Hardly, but ——

MR. FROST: On the other hand, to offset that is the fact that the cases that do come before a grand jury are invariably very serious cases?

WITNESS: Oh yes.

MR. MAGONE: That is hardly so, Mr. Frost.

MR. FROST: Well, for instance, murder and manslaughter.

MR. MAGONE: The general sessions of the peace have exactly the same jurisdiction as a magistrate.

MR. FROST: Oh yes, I see the point.

MR. CONANT: Mr. Magone, there is this other angle to it, and I am propounding this as a question of proposal: should or should we not also add to our procedure, if the grand juries were abolished, a provision allowing the Attorney-General to require any case which had been committed by a magistrate to be submitted to a county judge before it be placed on trial? The idea back of that being that it does occasionally happen that, even after committal, something develops to raise a little doubt as to whether there should be a committal. Would it be necessary, or a proper safeguard, to give the Attorney-General the right to provide that, notwithstanding the fact that the magistrate has committed, to require it to go before a county judge for review?

MR. MAGONE: Yes, I think it would. I think so.

WITNESS: I think it would be very proper.

MR. MAGONE: I have had cases, and I am sure Mr. Frost has had too, when he was acting as Crown counsel, cases in which you feel, in reading the evidence at the preliminary, you feel there shouldn't have been a committal at all, and after preparing your indictment and having ten names on your indictment, and knowing you can't get a No Bill before the grand jury without hearing all the witnesses.

MR. STRACHAN: I think that, Mr. Chairman, so far as the county of York is concerned, would add very many more duties to our county judges, who are pretty well worked as it is. What I have great difficulty in finding now, in these judges, is the time to hear anything.

MR. CONANT: Oh well ——

MR. STRACHAN: That is the point.

MR. CONANT: —— I wouldn't expect it to happen more than once in a thousand cases.

WITNESS: It very seldom happens, Mr. Strachan.

MR. CONANT: Isn't this correct, Mr. Barlow, that at the present time, where a case has once been committed, there is no way of disposing of it excepting a No Bill through a grand jury, or a not guilty by a petit jury, or by a judge, or by *nolle prosequi* by the Attorney-General; isn't that right?

WITNESS: Quite right, yes.

Q. Yes. Now, the procedure of the Attorney-General in requiring that to go before a county judge, might that not be desirable rather than placing upon the Attorney-General the responsibility of *nolle prosequi?*

A. Yes, that would be in his discretion, I suppose, Mr. Chairman?

MR. MAGONE: I was hoping, sir, that we would have Mr. Justice Martin with us, but I don't know when he will be available. He was attorney-general in Saskatchewan, and I had a conversation with him, in which he indicated to me that he often wished that he had some such safeguard when he was attorney-general there, someone to take the responsibility away from him as an administrative officer.

MR. CONANT: I think it is proper for me to say, both as a member of the Committee and as one trying to offer some help, that the procedure of *nolle prosequi* is so sparsely used, and I think that goes down through the years, Mr. Magone?

MR. MAGONE: Yes.

MR. CONANT: Yes, I only remember a few in my time; one of them, I recall, was a case where a man had been recalled three times, retried, technically he was still under charge; we had tried him three times, and it was obviously a waste of time to put him on trial again, and we exercised our power there. I may tell you, although I don't want the name mentioned by the press, it was the Sweetman case. But it does seem to me that a case might arise, not in that category, where facts might come up and evidence might develop, and circumstances might become apparent, where you have a real doubt, and the Crown attorney might say: "Well, I don't think we had better go ahead." And he certainly wouldn't *nolle* an indictment on what you might call merits; we don't do it on merits, we only do it where you have reached a stalemate, or something of that kind.

MR. MAGONE: Yes, the practice has been, as you know, very well defined that, after two disagreements by the petit juries at a trial, it is usually the practice to *nolle prosequi.*

MR. CONANT: Yes, don't you think that that possible safeguard available, of disposition by the Attorney-General, would be valuable, Mr. Barlow?

WITNESS: It would be very valuable, because it relieves the Attorney-General of a responsibility that he ought not to exercise.

Q. And doesn't want to exercise?

A. And doesn't want to exercise, and furthermore, it gives the accused the privilege, in that case, of having his case passed upon by a county judge, who, in my opinion, can perform the functions that now are performed by the grand jury, and better than the grand jury can perform them, because he is accustomed to knowing what evidence should be sufficient to put a man upon his trial, even better than a grand jury can do, as grand juries so often are now by the Crown counsel.

Q. And infinitely at less expense?

A. And at much less expense, yes.

MR. CONANT: Well, what do you intend to go on with next, Mr. Magone?

MR. MAGONE: Petit juries, sir, which is quite a large subject.

MR. FROST: Mr. Magone, have you had any other persons who have given any indication of wanting to say something about this grand jury question?

MR.MAGONE: I have certain reports that I was going to read into the record, some in favour of abolition, others in favour of retention. I was going to ask Mr. McFadden, the Crown attorney, whose views I do not know on the subject, to come up. He is Crown attorney in Toronto and has been for some time, and also Judge O'Connell, in Toronto, who has been on the bench for a long time, and whose views likewise I do not know.

MR. CONANT: May I suggest, if it is convenient, to ask Mr. Ballard of Hamilton. I don't know his views either, but they are Crown attorneys of two large jurisdictions. Don't you think they might help us, Mr. Frost?

MR. FROST: I think so.

MR. MAGONE: I can give you Mr. Ballard's views; he has expressed them in a report.

WITNESS: I discussed the matter with Mr. McFadden on three or four different occasions; there is nothing written, of course, in the case of Mr. McFadden, because of the opportunity to discuss it with him personally.

MR. CONANT: And Mr. Ballard's is in writing.

WITNESS: I think it would be very helpful to have Mr. McFadden.

MR. MAGONE: I think we might ask the chief justice of the High Court trial division, when he is here, about his views on this subject.

MR. CONANT: Well, what are you proceeding with in the morning?

MR. MAGONE: Mr. Juneau, from the department of the attorney-general of Quebec.

Witnessed excused.

Committee rises until following morning.

SEVENTH SITTING

Parliament Buildings, Toronto,
April 10th, 1940.

MR. CONANT: Before the Committee proceeds, gentlemen, I want to call attention to an erroneous impression which might arise from the report in to-day's issue of the *Globe and Mail*, purporting to have to do with my remarks regarding the supreme court judges. I don't want to dwell on the habit that I have seen in other Committees, that use part of every morning in correcting newspaper reports, but I think this is important enough that I may ask the indulgence of the Committee to refer to it. The report reads:

> "Attorney-General Conant said the province pays an honorarium of $1,000 to each justice of the Supreme Court of Canada. 'Executives of the Government used to make more use of the judiciary than they do to-day,' said Mr. Conant, referring to the assistance of the supreme court judges, in the framing of The Ontario Compensation Act. He suggested the province now receives no service in return for the honorarium and said: 'I wonder whether the Legislature would not wish to make more use of the justices and thereby justify the allowance paid.' I think the judges would be, etc. . . . "

Well now, in the first place, the reporter is quite in error, in that he mentions honorarium to the supreme court justices of Canada. There was no mention of them at all. This question had only to do with the justices of the supreme court of Ontario, and the report might give the impression that I was questioning whether the allowance to the justices was justified, or should be continued. Now there is nothing further from my mind. I don't think anything I said could properly be construed in that way. The Committee was discussing it, and questions were directed to the practice, over the years, having to do with the use made of supreme court justices in advising regarding legislation, and it seems to be the opinion of all parties that in former years, the justices of the Supreme Court did advise and make recommendations to the government of the day on matters of legislation, to a much greater extent than they do now, and, in fact, about the only function that they have in connection with that at the present time is in connection with estate bills.

Now that whole discussion, as I recall, and the members may correct me if I am wrong, arose out of the recommendation of Mr. Barlow's report, for the constitution of the Law Revision Committee, similar to what they have in England, and I raised the question as to whether, instead of constituting such a committee as a new and separate organization, the same might not be accom-

plished by referring such legal matters which might be discussed, to the justices of the Supreme Court. The matter of honorarium paid by the province to the justices of the Supreme Court was only incidental to this discussion, and it was by no means suggested or intended as a reason for such an arrangement. I understood, and it was quite generally agreed, and I thought the witness, Mr. Barlow, expressed the same views, that the justices of the Supreme Court would probably welcome the opportunity of further service to the Government and Legislature along these lines. I think it is proper to correct that item, because it has so many inaccuracies, definite inaccuracies, and because the inference that might reasonably follow from it is so entirely foreign to what was in my mind, and I think, also foreign to the discussion with the witness before the Committee.

All right, you may proceed, Mr. Magone.

MR. CONANT: If the Committee care to confirm my remarks regarding that item, I would be very glad to have them do so.

MR. STRACHAN: Well, I agree completely with the remarks of the chairman. The honorarium is not under discussion at all, it was simply incidental and arose, as the chairman put it, out of the suggestion of Mr. Barlow, who intimated that he was sure the judges would be glad to give any service to the government of the day in framing legislation.

MR. CONANT: All right, Mr. Magone.

MR. MAGONE: Mr. Chairman, I have a wire from Judge Hayward, of Haileybury, saying he will try to be with us on Friday, to give us his assistance with respect to Division Courts.

Then, yesterday I was asked to obtain, from the inspector of legal offices, a copy of the report which he made regarding the number of cases in which special juries were called. His report is that, in the last ten years, the number of special juries called in Toronto was as follows: 1933, one, ——

MR. CONANT: Just a moment, can't you shorten that and give it for the whole province?

MR. MAGONE: Well, in the last ten years, in the city of Toronto, twelve special juries; in the city of Hamilton, one special jury was summoned, and not used, and over the rest of the province, in the last ten years, no special juries. The result is that there were thirteen special juries called in the Province of Ontario in the last ten years, all of them that were used being in the city of Toronto.

MR. CONANT: Yes.

MR. MAGONE: Then, with respect to the grand jury, there was a discussion yesterday as to the number of cases in which no bills had been returned by grand juries, and in the year 1939, there were 109—or 119 rather, bills presented to grand juries at the assizes.

MR. CONANT: In Ontario?

MR. MAGONE: Yes.

MR. FROST: Let me see, that was in ——

MR. MAGONE: In 1939, there were 119 bills presented to assize court juries, 109 true bills returned, and 10 no bills.

MR. CONANT: Out of 119?

MR. MAGONE: Yes, 109 true bills, 10 no bills; just under 10 percent. And in the general sessions of the peace, 160 bills presented, 147 true bills, and 13 no bills. The percentage is about the same in each case, sir.

MR. LEDUC: About 10 percent?

MR. FROST: Just in that regard, I might say this, Mr. Chairman, that is one matter that worried me somewhat in connection with the discussion that took place here yesterday. Mr. Barlow, according to my recollection, said that he felt that if grand juries were abolished, that the magistrates and Crown attorneys would be more careful in connection with preliminary hearings. Now what worries me is this: just as to whether they will or not, as to why they shouldn't be careful as it is, despite the fact that there are grand juries. And the fact that we have, here, roughly speaking, 10 percent of the cases, both in Assize Courts and in general sessions of the peace, returning no bills, it might be an indication that the Magistrates Courts, in making these preliminary inquiries, were not as careful as they might be.

MR. CONANT: May I suggest—I don't want to interrupt, Mr. Frost, unnecessarily, but we have Mr. Juneau here and it is along another line; are you disposed to hear Mr. Juneau?

MR. FROST: Yes, I am, I just want to make that reference in connection with this matter, and I would like to say, too, that as far as this grand jury business is concerned, I want to view it with an open mind.

MR. CONANT: Yes.

MR. FROST: To be frank with you, for many years I have not been opposed to the abolishing of grand juries; at the same time, there are arguments against it, and I do want to get to the bottom of it. That point impressed me yesterday.

MR. CONANT: Well, you have more evidence on grand juries, Mr. Magone?

MR. MAGONE: Oh yes, we will have, Mr. Chairman.

Now, the attorney-general of the Province of Quebec has kindly sent Mr. Juneau here for the purpose of giving evidence to the Committee. Mr. Juneau is a King's Counsel, and is special law officer in the attorney-general's department in the Province of Quebec. Mr. Silk saw him this morning, and he is going to take him over the Lacombe law, and the Code of Special Procedure dealing with attachment.

MR. JUNEAU, K.C., Special Law Officer, Department of Attorney-General, P.Q.

MR. CONANT: How long have you been in that work, Mr. Juneau?

WITNESS: Twenty-one years in the attorney-general's department of Quebec.

MR. LEDUC: I might suggest we take attachments first, because it existed in the Code of Procedure before the Lacombe law came into effect.

MR. SILK: I was going to take the jurisdictions of the courts first.

MR. CONANT: Is there not a copy of the law that we can have before us?

MR. SILK: I have one copy here. The law as you find it there being, 697A to 697H of the Code of Civil Procedure, was passed only in 1939, replacing the former law, which was article 1143 of the same Code?

WITNESS: Yes.

Q. Then, Mr. Juneau, I think we will first describe the jurisdiction of the various courts in the Province of Quebec.

A. Very well.

Q. First of all, would you describe, briefly, the jurisdiction of the Superior Court, which, I think, corresponds to our Supreme Court in Ontario.

MR. CONANT: Well, first of all, how many courts have you?

WITNESS: We have the Superior Court, the Circuit Court, and the District Magistrate's Court, besides Courts of King's Bench, of course.

MR. LEDUC: Which is a Court of Appeal?

WITNESS: Yes, in civil matters, and the Court of King's Bench, which sits in criminal affairs, presided over by a judge of the Superior Court.

Q. Now, Mr. Juneau, the Circuit Court exists only, I believe, in the city of Montreal, practically?

A. Practically; it is all over the province, but in the district of Montreal we have no District Magistrate's Court, so it is the Circuit Court, presided over by judges of the Circuit Court appointed by the Federal Government, and in the other districts we have District Magistrates' Courts, established by a proclamation.

Q. Which have jurisdiction in civil matters?

A. Yes, and the same jurisdiction as the Circuit Court, practically; it does away, as a matter of fact, with the Circuit Court. There is, I think, just one question, that of municipal affairs ——

Q. Which is reserved to the Circuit Court?

A. Yes.

Q. But briefly speaking, you might say, Mr. Juneau, that the jurisdiction of the Superior Court embraces all actions from $100 upwards?

A. Yes.

Q. With a few exceptions, as set out in the Code?

A. Yes.

Q. And that the Circuit and Magistrates' Court take care of all civil actions under $100?

A. Exactly.

Q. Right.

MR. SILK: Well then, I think we are now prepared to ——

MR. CONANT: Well, just following that, where do they go from the Magistrates' and Circuit Court, is there an appeal from them?

WITNESS: In certain cases; it is a case of vote, or transfer, if you like, when the case requires it.

MR. LEDUC: But those are special cases?

WITNESS: Yes.

Q. Broadly speaking, there are no appeals from the District Magistrates' Court or Circuit Courts?

A. No.

Q. But there is appeal from the Superior Court to the Court of King's Bench?

A. Yes.

Q. Which is the Court of Appeal?

A. Yes.

MR. FROST: The Circuit Court and Magistrates' Court are civilly like our Division Court with a smaller jurisdiction?

WITNESS: Yes.

Q. And the Superior Court, then, really takes the place of both our County Court and our Supreme Court?

A. Yes.

Q. And the Court of King's Bench is a Court of Appeal which really takes the place of our Court of Appeal?

A. Yes.

MR. CONANT: You have no Appeal Court superior to the Court of King's Bench?

WITNESS: Well, from the appeal to the Court of King's Bench is the appeal to the Supreme Court.

Q. Well, I mean in the province.

A. Not in the province, no.

MR. LEDUC: Some years ago, you had a Court of Revision?

WITNESS: Yes.

Q. Which was composed by the Superior Court?

A. Yes.

Q. And this was abolished?

A. Yes, about ten or fifteen years ago.

MR. CONANT: Can you go directly from the King's Bench to the Privy Council in certain cases?

WITNESS: I believe so, with special leave, special notification.

Q. Yes, I see.

A. And the Lacombe law, of course, is dealt with in the Circuit Court or Magistrates' Court.

Q. I see. All right, Mr. Silk.

WITNESS: And I thought, perhaps, to give you an idea of the importance of this Lacombe law ——

MR. LEDUC: Well, Mr. Juneau, before you go into the Lacombe law, I think Mr. Silk had better deal with the general law as it existed before the Lacombe law, and still exists, regarding garnishment of wages and attachments.

MR. SILK: By the way, Mr. Juneau, how long is it since article 1143, which is the old Lacombe law, was passed in Quebec?

WITNESS: I think you will find the source here.

Q. Just in a general way.

A. It was originally passed by Statute III, chapter 57, 1904.

Q. And would you explain to us what was the law in regard to the garnishment or attachment of wages prior to the passing of the Lacombe law?

A. Well, any plaintiff having a judgment against a debtor, could ask the clerk of the court to issue a writ of garnishee in order to seize the seizable portion of the wages.

MR. LEDUC: Which is set out in the Code, is it?

WITNESS: Yes, under article 599, the wages under $100 are not seizable, no portion is seizable, and from $1 per day ——

Q. You mean under $1 per diem?

A. Yes.

MR. CONANT: That is exempt?

WITNESS: Yes, exempt from seizure, and from $1 to $3 per day, one-fifth is seizable, from $3 to $6 per day, not exceeding $6 per day, one-quarter is seizable, and over $6 per day one-third is seizable, and of course, if a debtor had a judgment against him or five or six or seven judgments, any plaintiff could take a garnishee, so he was liable to two, three or four, or more garnishees on his wages, and the garnishee had to file a declaration and the costs.

MR. LEDUC: Well, let's not go too fast, Mr. Juneau; you said that you would go to the clerk of the court and you would issue ——

MR. CONANT: May I get this clear, pardon me, do you speak of the procedure before the Lacombe law?

WITNESS: Yes, and it is still in existence, because the Lacombe law prevents seizures being taken provided the debtor fulfills certain obligations.

MR. LEDUC: In other words, Mr. Juneau is giving the law as it existed before the Lacombe law, and as it still exists, because it is not in every case that a man whose wages are garnisheed takes advantage of the Lacombe Act; if he has only one creditor, he has no advantage in taking advantage of the Lacombe Act, but Mr. Juneau, you go to the clerk of the court and he gives you a writ of garnishee?

WITNESS: Yes.

Q. You serve this writ upon the defendant and he garnishee? ——

A. Yes.

Q. Is it necessary that the salary be due and actually owing when you serve the writ?

A. Oh, no.

Q. It isn't?

A. No.

Q. Now you serve this writ and the garnishee has to appear in court on a certain day?

A. Yes.

Q. After the issuance or service of the writ?

A. Yes.

Q. And make a declaration as to wages, or salary that he pays to the defendant?

A. Yes, as to the dealings between the two.

Q. Yes. Now, after he has made this declaration ——

MR. CONANT: Then, pardon me, if he is invoking the Lacombe law ——

MR. LEDUC: We are not in the Lacombe law as yet, Mr. Chairman; that is the general law of the Province of Quebec; that is what I want to make clear.

MR. FROST: Well then, Mr. Leduc, the employer, once he is served with a garnishee, must he make a declaration and say how much he makes?

MR. LEDUC: Yes, that is the general law of Quebec. He gives a declaration to the Court just as here in Ontario, stating: "I pay so much to the defendant." Now, when he has made his declaration, I understand you have some kind of procedure, under which the seizure is declared to be tenant?

WITNESS: Yes.

Q. That is, to attach the salary?

A. The future salary.

Q. All future payments of salary?

A. Yes, or anything else.

Q. Yes, but I mean—let us deal with the wages.

A. Yes, the future wages.

Q. The seizure attaches all future wages, until the full debt is paid?

A. Exactly.

Q. That is the general law of the province?

A. Yes.

Q. Now the Lacombe law comes in when a man has several creditors, when he owes money to a lot of people?

A. Yes, and after judgment has been rendered against him, at least one judgment.

Q. Yes.

A. And if, before the expiration of the delay for the issuing of the seizure, or before a garnishee is taken, if he files a declaration with the clerk of the court stating his salary and the date of the payment, and the name of his employer, and other details, and he deposits with the clerk of the court within three days of the date of the payment of his wages, the seizable portion, nobody can take out a garnishee against his wages, from the moment he makes his deposits regularly with the clerk of the court.

Q. Now, Mr. Juneau, first of all, you must go to the clerk of the court and file a declaration?

A. Yes.

Q. That he wants to take advantage of the Lacombe law?

A. Exactly.

Q. He gives the name of his employer?

A. Yes.

Q. The date on which his wages are paid?

A. Yes.

Q. The amount of his wages?

A. Yes.

Q. And agrees to pay the seizable portion on pay day to the hands of the clerk of the court?

A. Surely.

Q. And he also has, I believe, to give a notice to all his creditors that he has taken advantage of the Lacombe law, or has that been changed?

A. I think that was done away with.

Q. It was?

A. I think it was. Personally, I think a debtor should give notice.

Q. But what is the law at present, Mr. Juneau?

MR. SILK: He is not required to give notice.

WITNESS: No, unless we find it in reading the law, but I dind't find any provision concerning the obligation to give notice.

MR. LEDUC: But wasn't that in the old law, Mr. Juneau, that he had to notify his creditors?

WITNESS: Well, no, it was not mentioned in the old law. But the practice is that the debtor gave notice.

Q. That was the practice?

A. Yes, and I think the same practice is followed, but there is no obligation on his part to give notice; but personally, I think the debtor should be obliged to give these notices.

MR. CONANT: The debtor or the clerk, Mr. Juneau?

WITNESS: The debtor. Well, sometimes it is done by the clerk, but at the expense of the debtor. If notice has been given and it has to be served or mailed, then the debtor pays for the notice.

MR. MAGONE: I think it would be well to get these sections in the record, the sections of the Lacombe law in point.

MR. CONANT: Go ahead, Mr. Silk.

WITNESS: Before you proceed, sir, would you like to know the figures for the district of Montreal, and the district of Quebec?

MR. CONANT: Yes.

WITNESS: In the district of Montreal, last year, there were $300,000 paid by debtors for the benefit of their creditors in Montreal only, and these amounts were deposited by 4,500 debtors. And the number of new depositors for the district of Montreal for the year 1939 was 1691. In Quebec, $100,000 was deposited, and we have 2,612 depositors, and I have a note here that last year, 78 of these debtors eliminated their obligations.

MR. SILK: Mr. Juneau, can you give us the population of the district of Montreal and that of the district of Quebec to which you refer? I think that is the judicial district rather than the city.

WITNESS: No, I can't give you that.

MR. LEDUC: Montreal is nearly a million and a quarter.

WITNESS: In the city?

MR. LEDUC: No, that takes in the city, the Island of Montreal, other islands and some counties.

WITNESS: Yes, it takes quite a few districts outside.

MR. SILK: And there were 1691 new debtors in 1939?

WITNESS: Yes. And 4,500 which have been keeping up their payments during the year, in 1939.

Q. Yes, well then, suppose we start with Section 697a, which reads:

"No creditor may seize the remuneration, salary or wages of the debtor who, (a) within seven days from the judgment or from the resumption of work after a period of unemployment, or at any time before the said remuneration, salary or wages are seized, produces a declaration under oath setting forth amount and due dates of such remuneration, salary or wages, and the name, occupation and address of his employer or employers,

"(b) deposits the seizable portion of such remuneration, salary or wages within the three days following the payment thereof, and

"(c) continues thereafter until the extinction of the judgment and claims filed under article 697c, to deposit at each payment, and within the same delay, the seizable portion of such remuneration, salary or wages."

Well, then, it is the debtor, rather than the employer who is required to make the payment into court, is it?

A. Oh, yes, the debtor himself.

Q. The balance of that section seems reasonably clear.

MR. FROST: Mr. Juneau, how long would the immunity last? Supposing a man files a declaration stating what his salary is, and so on, how long would that last? What I am coming at is this: supposing A takes advantage of this Lacombe law, and on the 1st of January he gets so much in wages, and he files a statement accordingly; supposing three months afterwards ——.

WITNESS: He receives an increase?

Q. A very large increase, or an increase in salary; what then?

A. As stated in the next section, he has to file a new declaration; if he does not file a new declaration, he is liable to seizure, and the party who has the judgment against him has the right to issue a garnishee.

Q. The immunity last so long as he is receiving that amount of wages and is paying the proper percentage into court?

A. And so long as he files a declaration, according to any change in salary.

MR. SILK: I think we will find these sections are fairly complete. They deal with all these details. Section 697b:

> "Such declaration and deposit shall be made, if the debtor has his domicile in the city of Montreal, in the office of the Circuit Court of that district, and if his domicile is elsewhere, in the office of the Magistrates' Court of the district or county where he resides. The declaration and the deposit shall be entered under the title of the record of the court rendering the judgment which the debtor seeks to satisfy. Such judgment may issue from another court than that where the debtor makes his declaration and deposits."

WITNESS: If you will permit me, I will give an explanation here. The debtor has to file his declaration in the Circuit Court of the Magistrates' Court, but he may file his declaration upon the judgment in the Superior Court, or in another court.

MR. LEDUC: In other words, the Circuit Court as it used to be, or the Magistrates' Court now, is only a convenient place where to make a declaration?

A. Absolutely. A judgment may be rendered against a party, for instance, for ten thousand dollars in Superior Court, and after judgment is rendered, if the debtor goes into the Circuit Court and files a declaration about his wages, his judgment cannot be executed through a garnishee. It can be executed through another writ, though, if he has movables that can be seized.

MR. SILK: Well, Mr. Juneau there is only one Magistrates' Court for each county or district throughout the Province of Quebec?

WITNESS: We have only one Circuit Court, in the whole district of Montreal, but in the other districts, we have what they call District Magistrate Courts, and County Magistrate Courts.

Q. Yes, but there would only be one section?

A. But their jurisdiction is the same.

Q. But there would be only one Magistrate Court in each district or county?

A. No, there may be more than one.

MR. LEDUC: But Mr. Silk has in mind a situation here in Ontario concerning the Division Court. You have for, instance, the district of Hull?

WITNESS: Yes.

Q. You would have one Magistrate Court for the district of Hull?

A. Yes.

Q. Not more than one?

A. No.

Q. And the same thing would apply to other districts?

A. Yes.

Q. But in one county?

A. Yes, forming part of the district, you could have one or two or three district Magistrate Courts, which have jurisdiction only within the county?

Q. Yes.

A. Not in the whole district.

Q. Have you many of these County Magistrate Courts?

A. About eight.

Q. And how many district Magistrate Courts?

A. Twenty-six.

Q. Twenty-six, one in each district outside of Montreal, approximately?

A. Yes.

MR. SILK: Well, Mr. Juneau, if there are apt to be two or three Magistrate Courts in one county, it is possible that a creditor might have to make a search of two or three court offices, is it?

A. No.

Q. To find out ——

A. Oh, the creditor; well, the debtor will file his declaration in the County Court where his domicile is.

Q. Yes, he is required to file it in the Magistrates' Court of the district or county where he is domiciled?

A. Yes.

Q. But I thought you said a moment ago that there might be two or three Magistrate Courts in the one county?

A. Yes, but not at the same place, you see; you may have—suppose you have a Magistrates' Court—I don't know your divisions around Toronto here, but take Hull for instance.

MR. LEDUC: Well no, let me put it this way, Mr. Juneau; does that section mean that he has to make his declaration at the office of the court in which area he has his domicile?

WITNESS: Yes, but it might be ——

Q. Might be more than one?

A. It might be district Magistrates' Court for the district or one Magistrates' Court for one county, for the county where he has his domicile.

MR. CONANT: Either one?

WITNESS: Either one; he has his choice.

MR. SILK: It couldn't be more than two, though, apparently, so there is no difficulty?

WITNESS: No.

Q. Then going on,

> "A debtor who changes his employment, or whose conditions of engagement are altered must, within seven days, file a declaration under oath with the clerk of the court testifying to such changes."

I presume that would cover an increase in wages, would it?

WITNESS: Yes, sir.

MR. LEDUC: Or a decrease.

MR. SILK: Yes, I refer to the words, "whose conditions or engagement are altered" which would cover either one.

WITNESS: Yes.

Q. Proceeding,

> "If the debtor ceases to work, he must file with the clerk and with the same delay, a declaration to that effect; when he resumes work, he must also, within seven days, file with the clerk another declaration in the manner contemplated in sub-paragraph a of article 697, and comply with the provisions of sub-paragraphs b and c of the same article."

There is nothing to explain there.

WITNESS: No.

Q. 697c:

> "Any creditor other than the plaintiff may file his claim in the record; the plaintiff may also file therein any claim not already included in the judgment."

So that while the first claim must have been reduced to judgment, not so as to the various other claims that may be filed?

A. No.

Q. It must only be a debt?

A. An ordinary account, or a promissory note, or even a claim under a marriage contract, any claim.

Q. Yes. Continuing:

"Each claim must state the nature and the amount of the debt and be accompanied by the documents invoked in its support, and be attested under oath. If the claim be an account, the matter must be produced in detail with the claim. In default of a finding of the documents or of the detailed account in support of the claim, as the case may be, the debtor may, at any time, on a motion certified and proved according to the ordinary rules of procedure, obtain from a judge or magistrate sitting in the court where the debtor makes his deposit, the dismissal of the said claim, until the creditor establish the impossibility for any reason deemed sufficient by the judge or magistrate, of filing such account or such documents, and unless he adduce other proof to the satisfaction of the judge or of the magistrate that his claim is well founded."

MR. LEDUC: Well, that is to avoid fraud and collusion. I mean a friend of the debtor could file a big claim and get back most of the money.

WITNESS: Yes.

MR. SILK: On a *pro-rata* division.

WITNESS: Yes.

Q. It is not unheard of in this province.

MR. LEDUC: Oh no.

MR. CONANT: Well, now, take creditor's judgment, or anything more, where is the issue tried there?

MR. SILK: It is tried before the judge or magistrate of the court in which the original declaration is filed.

WITNESS: But there is another section concerning the contestation of a claim, if it is outside the jurisdiction of the magistrates' court.

MR. SILK: I think we will find out more about that in 697e.

Now, 697d:

"A claimant must, under penalty of annulment of his claim, give notice thereof to the plaintiff and the debtor prior to or within three days following such filing. Such notice must state the name of the claim and the nature and amount of the debt. The documents, or, as the case may be, the account filed in support thereof, and the date of filing the

claim. The service in either of the ways contemplated in the following paragraph, of a copy of the claim, with notice of the date of the filing, may take the place of the above mentioned notice, such notice may be served either by a bailiff or by sending it by registered mail to the last address of the plaintiff or debtor known to the clerk of the court where the debtor makes his deposits. Proof of the service of such notice must be filed in the office of the court with the claim, if the notice is given before the finding of the later and within six days of the filing of the claim; if the notice is given after the filing of the claim, such proof is made by filing the return of the service by the bailiff or, as the case may be, of the registered letter certificate attached to a copy of the notice given with an affidavit that it is a true copy of such notice."

WITNESS: Mr. Chairman, if you will permit me, this law as we read it now may be amended at the present session of the Legislature, and I have been working on a few amendments. If you will permit me, I will read them to you, as my personal opinion, because I cannot say that they will pass.

MR. LEDUC: You cannot foresee what the Legislature will do.

WITNESS: No. 697d says the claimant must file a notice, give a notice to the plaintiff and the debtor, and the cost of this notice, and the serving of the notice, is charged to the debtor, and may be two or three dollars for each claim. So I suggested as to the first paragraph:

"Claimant to file his claim in the record within the 30 days following the first declaration of the debtor, is not bound to give notice thereof either to the plaintiff or to the debtor who are considered as taking communication thereof in the office of the court."

This is suggested so as to save the trouble of giving the notice for the creditors who have received a notice from the debtor. The debtor giving the notice is supposed to acknowledge their claim, so if the creditor files his claim within 30 days, well, the debtor and the plaintiff would be supposed to look at the claim, or to examine it in the record and afterwards the claimant, who files his claim after 30 days, is obliged to give notice. Whether this amendment will be received or not, I don't know, but I think it is worth while considering it, if you have the intention of following this law, because if a debtor has twenty or thirty creditors, well, three times 30 is $90 cost that he will have to pay in the end.

MR. SILK: So that if there are several claims filed, it is substantially the same, there would be no fee for notices?

WITNESS: No, because they would know that within the thirty days, they would have the right to go and examine the claims in the record, and afterwards no claim can be filed unless they receive notice.

Q. Well then, the next section 697e, deals with contesting a declaration.

"The first and any of the subsequent declarations by the debtor may be contested by any interested party in the same manner and with the same

delay as the declaration of a garnishee before the court where such a declaration was made."

Would you just explain that? That refers back to the garnishee proceedings.

MR. LEDUC: Well, it is simply the case where the creditor doubts that the debtor has been right as to his wages. That right is given, of course, to attack his declaration. Do you want Mr. Juneau to give you the procedure showing how it is done in Quebec?

MR. SILK: I thought it might be well to have that before the Committee.

MR. CONANT: You mean, how he examines on his declaration?

MR. LEDUC: How he attacks the declaration.

MR. SILK: The procedure, yes.

WITNESS: There they mention that the declaration of the debtor is contested. Here, also, I would suggest an amendment. I think the debtor can be called, according to our procedure, the debtor can be subpoenaed by the court, to give details concerning his employment or his wages. I mean, before he has made a declaration under the Lacombe law. Under the Lacombe law, the judgment is rendered against a debtor, and we don't know the creditor doesn't know what to do for the judgment.

MR. LEDUC: He examines after judgment.

WITNESS: Examination after judgment, yes. I think the right should be given to the plaintiff or to any creditor to call the debtor to examine him.

MR. SILK: Yes.

WITNESS: Before filing a contestation. If you file a contestation, well, the costs are pretty high, and if you doubt the declaration, and if you have the right to examine the debtor, you may be satisfied with his explanation without a contestation.

Q. Yes.

MR. LEDUC: May I interrupt at that point. Do you know, Mr. Juneau, if there are many contestations of the declarations made by debtors?

WITNESS: No.

Q. Few of them?

A. Of course, I don't know of any, but I understand, there are very, very few.

Q. Well, the Lacombe law has been in existence in Quebec for about thirty-five or thirty-six years?

A. Yes.

Q. And everybody understands it pretty well now, and they know how it functions?

A. Oh yes, and even our clerks will help the debtors to prepare their declarations. Sometimes we think that they go too far and take away too much.

MR. LEDUC: Mr. Juneau, from your own experience, from what is heard of the experience of others, would you say that the debtors are behaving honestly towards their creditors, when they take advantage of the Act? Do you find many cases of fraud or intent to deceive their creditors?

MR. CONANT: And evasion?

WITNESS: No.

MR. LEDUC: You don't?

WITNESS: No, the majority of the debtors take advantage of it in order to try and pay their debts.

MR. FROST: I suppose that would all depend on how far the law was evasion proof? I suppose—because after all, debtors could easily find a way to evade a law, if there are sufficient loopholes in it that they can.

WITNESS: Those who are trying to evade the law will sign a promissory note, for instance, in favour of a relative, and this relative will file his claim, and how to contest that is pretty hard. So, if the claim is for a large amount, well, a relation will receive the largest portion of the deposit and then ——

MR. LEDUC: It has been tried, of course.

WITNESS: Oh yes.

Q. But Mr. Juneau, did you have more contestations and more litigations in the first years of the Lacombe law than you have now, could you say that?

A. No, I have no knowledge of any contestations. Just hearsay.

Q. Well, the law works very smoothly and very well, from the very first?

A. Oh yes.

MR. FROST: Do you find your people who are normally creditors are satisfied with this law? I mean grocers, butchers, and so on?

WITNESS: They are satisfied, but where they complain, where their complaint comes is when the clerk charges them a fee for filing their claim. They don't know whether the debtor will make two or three deposits and stop. That is where the complaint comes in.

MR. LEDUC: That doesn't attach the principle of the law.

WITNESS: No, but I will further, later on, I will give you some suggestions on that.

MR. FROST: How much does it cost to file a claim, roughly speaking?

WITNESS: I think, just filing the claim—it depends on the amount of the claim, it starts from 50 cents to $2.50. If the claim is $4,000, I think it costs the creditor $2.50.

Q. Mr. Juneau, have you ever heard anything of our judgment summons proceedings in this province? Do you know anything about that at all?

A. Just the principle outline.

Q. Have you anything that is comparable in the Province of Quebec?

A. That is?

Q. Well now, for instance, in Ontario, generally speaking, there is a provision that a creditor may bring a debtor up before a judge and examine him—I am referring to the Division Court now. You might say that that is our Small Claims Court. The debtor may be brought up before a judge and examined as to his assets and as to his earnings, and so on, as to his capabilities of earning. Have you anything comparable to that in the Quebec law?

A. Oh yes, after judgment is rendered against a debtor, the creditor may bring—serve a subpoena on him and oblige him to answer that subpoena and give evidence as to his assets.

MR. LEDUC: The evidence is not taken before a judge, though?

WITNESS: No, generally the debtor is sworn before a clerk of the court, and then the affidavit for the plaintiff sometimes is before a stenographer, sometimes just verbally, and he gets all the information he can Of course, if there is trouble during the inquiry, there is pressure brought in to force the debtor to give the exact answer.

MR. CONANT: Well, but of course, the important part of that, may I add—does the court make an order following that examination, as they do here? You see, Mr. Juneau, in our courts here, the Division Courts, a man on whom judgment has been obtained, may be brought up and examined as to his ability to pay, putting it broadly.

WITNESS: Yes.

Q. Following that examination, the judge may order him to pay $5 a month, or whatever it may be. Have you any orders?

A. No, we haven't, but if the debtor states that he has a bank account, for instance, he has to say in which bank, and then a garnishee may be issued.

Q. Yes, but that is only examination, that is only discovery in aid of execution, but you have no order provisions?

A. No order provisions.

Q. Well then, it is unnecessary to ask you whether you have any practice of committing to jail following judgment?

A. No, we haven't got that.

Q. You haven't?

A. No.

MR. FROST: We have in this province, just generally speaking, this provision, that a debtor may be brought up before a judge and examined, and if the judge hearing the evidence thinks that the debtor is capable of earning so much money and, say, paying $5 a month, he may make an order, and if the debtor fails in that, then the judge, if he finds that there isn't a reasonable explanation for that, may send him to jail. He may make out a committal order.

A. Years ago we had imprisonment for debt, but it was before my time.

MR. CONANT: You have no provision like that now?

WITNESS: No.

Q. Now, let me ask you this question, I don't know whether you care to express an opinion or not; without those mandatory powers of the court, that is the right to order payment and without that power to commit to jail, is the machinery for collecting debts impaired?

A. No, I don't think so. Of course, if after the examination of the debtor we find that he has committed fraud ——

MR. LEDUC: Oh yes, that's different.

MR. CONANT: Then what?

WITNESS: Then we might apply the provisions of the criminal code, or if the contract—if he has made a contract which we think is fraudulent, we will take action to set it aside and annul it.

MR. LEDUC: But the judge cannot commit the man to jail?

WITNESS: For non-payment of debt? No. Or if he is trying to do his best to evade the amount, he is not supposed to be sent to jail.

MR. CONANT: Well then, the only definite or positive means of collecting that you have under your law is by attachment?

WITNESS: Attachment, yes.

Q. That is the only definite means?

MR. FROST: Or by execution.

WITNESS: Yes.

MR. CONANT: Well, of course.

WITNESS: Yes, attachment of wages and movable property.

MR. CONANT: By execution or attachment?

WITNESS: Yes.

MR. FROST: This Lacombe law applies only to wages?

WITNESS: Yes.

Q. It doesn't apply to any other assets?

A. Oh, no, no.

Q. That is wages or money?

A. If he has automobile, and he is a depositor under the Lacombe law, this Act is not operative.

MR. CONANT: Your Circuit or Magistrate Court procedure is exactly like that in our County and Supreme Courts here, that is with respect to examination after judgment?

WITNESS: Yes, I think so.

Q. Isn't that a fact?

MR. STRACHAN: Yes.

MR. FROST: On that point, Mr. Juneau, supposing a claim or a judgment is obtained against a debtor, and the debtor is earning, say, $6 a day, which would mean that a quarter of that would be attachable, which would be $1.50, if that debtor doesn't take advantage of the Lacombe provisions, the judge then may order that $1.50 a day be withheld from that man's wages?

WITNESS: That is, the clerk will issue a writ into the hands of the employer and the employer will make a declaration before the court, or before the clerk, that he pays a salary of $6 per day, then an order will issue ordering the garnishee to retain that $1.50 and to deposit it in court at the dates of payment.

Q. Is there any priority as between creditors? Supposing one man files his claim against a debtor, and a debtor doesn't take advantage of the provisions of the Lacombe law, well then, supposing it turns out that there are other people who have debts to attach, and they do attach, is there priority as among them, or ——.

A. There is at least priority for the costs on the first garnishee, and I think the cost of the second garnishee comes after, but I am not positive. I will look that up.

MR. ARNOTT: Just before you go on, Mr. Silk, Mr. Juneau, the collection is then left to the employer?

WITNESS: Upon a garnishee, yes.

Q. Do you find any difficulty there, any objection on the part of the employer?

A. Oh yes, some employers will dismiss their employee.

Q. Dismiss their employee?

A. Oh, yes. And when they don't, they do their best to get settlement, to oblige their men, even big firms.

MR. LEDUC: But in the case of the Lacombe law, the employer isn't brought into the picture at all?

WITNESS: Not at all.

MR. SILK: Well, Mr. Juneau, where a creditor files a claim under the Lacombe law, is he precluded from taking any other steps to enforce his judgment? Could he proceed to issue execution on the same judgment?

WITNESS: Oh, yes, he can.

Q. I see.

A. This just prevents the seizing of the wages.

Q. Of the wages only?

A. Nothing else.

MR. ARNOTT: I must have misunderstood you, then, Mr. Juneau, because I understood, under the Lacombe law, the employer has to retain his percentage of the wages and pay it in.

WITNESS: No, no, you see, the obligation is upon the debtor to file the declaration and make his deposits regularly, within three days after the date of payment.

MR. CONANT: Failure to do which constitutes default on his part?

WITNESS: Yes. And this is one thing, though, after the three days, the creditors who have judgment will go to the court and ask the clerk if such a man has made his payment. This is quite a job for the clerk of the court. We have—a little later, I will make a suggestion on that, because our offices are crowded, upon certain dates, and the clerks and deputy clerks have to answer these questions.

MR. FROST: There is one point, Mr. Juneau, that perhaps you can give us

some information on. Oftentimes, in a garnishee or attachment proceedings, perhaps there is a sum of money, wages, coming to the debtor, and perhaps it is the only opportunity that the creditor has of getting that money, that is to go and attach it, and tie it up. Supposing a dishonest debtor knew that he had, say, $100 coming to him, and he knew that his term of employment was over, and that this hundred dollars might be the last hundred dollars that he would be receiving, supposing he took advantage of this Lacombe law and he filed a statement, and under the provisions of that, he is supposed to, within three days of the receiving of his wages, to pay a certain proportion of that into the court. Now supposing that debtor is a dishonest man, and he files his declaration for the purposes of staving off his creditors, and he receives the money, and he doesn't pay it into the court. Is there any way of meeting that situation under your law?

A. No. But generally speaking, the amount of wages to be paid does not reach the amount of $100.

Q. Yes, of course, I can see that. I think there is much to be said for the case of the man who is receiving steady employment, and who finds himself in difficulties, he makes this arrangement, and it helps him to meet his creditors in a fair, reasonable way. But the difficulty is, and what is the undoing of these laws is, that you run across the dishonest man who wants to beat you.

A. Yes.

Q. And in this case, I wondered about that situation, which so often arises, of the man who has a sum of money coming to him, and it possibly may be the only opportunity that the creditor has had for months, and it may be the only opportunity he will have for many, many more months.

Mr. Leduc: Well, may I interject this: in all likelihood, in the case you mention of $100—I am speaking of the Province of Quebec, the cost of garnisheeing would probably eat up all of the seizable portion of the wages.

Witness: Yes, and this would happen, of course, when a man leaves his employment. Of course, on his last payment he may fail to make his deposit, but if he is continued in his employment he, generally speaking, continues to make his deposits.

Mr. Conant: Well, the only advantage, is this right—I am not quite clear on this yet—the only advantage in this is, as I see it, to avoid multiplicity of proceedings, and to reduce costs by making one proceeding apply to past, present and future receipts, so that they don't have to go on garnisheeing time after time.

Witness: And to stop annoying the garnishees also.

Mr. Leduc: The second advantage of that is you have no execution, once a debtor ownes money to ten or fifteen people, all with judgments against him, if he gets under the Lacombe law, they don't have to execute, it simplifies it.

Mr. Conant: But the claim must be adjudicated, if it is contested?

Mr. Leduc: But take the case of judgment, you take a man who has ten

claims against him, all on judgments, and in this province, every single judgment creditor would have to take an execution for a garnishee. In Quebec that is not necessary. If the man gets under the Lacombe law, he avoids all these executions. If a man has a promissory note, he can file his claim.

MR. CONANT: And if it is contested he comes in?

WITNESS: Yes.

MR. LEDUC: Yes, another advantage is this: according to the Lacombe Act, the debtor makes the payment, his employer needn't know anything about it. He will not fear him, because he is bothered making payments every day.

MR. CONANT: The only advantage appears, so far, to rise out of Mr. Frost's very pertinent question that it is a matter of putting confidence in the debtor. If he violates that confidence, why, nobody gets anything.

MR. LEDUC: That is a disadvantage, but comparing it with the disadvantages under our own law, where you have to seize the salary which is due before it is paid, why ——

MR. FROST: Supposing we changed our law to this extent, that a garnishee should attach to moneys which are due or which will accrue due, then haven't you met the situation?

MR. LEDUC: Oh yes, but I would also like to have the Lacombe law proper brought into this province, to eliminate the multiplicity of costs.

MR. FROST: I agree with that, but supposing you had this, supposing instead of making it the duty of a debtor to pay the money in, supposing there were some provision whereby the employer would pay the money in?

MR. LEDUC: Well, then you have the objection that he may fire the man.

WITNESS: Yes, you take a man working for the C.P.R., for instance, or the C.N.R., or some of those big firms, they hate to send their employees to make a declaration, and then the accounting of this thing means a whole lot of work for them.

MR. SILK: I think we could take care of your point, Mr. Frost, by providing a penalty for such a violation.

MR. FROST: Yes.

MR. LEDUC: Do these cases happen very often?

WITNESS: Of course it happens, but they are followed by garnishees. If the man is a regular employee, then there is a garnishee, and generally, the one who takes the garnishee accepts the amount of the costs and the back payments with the clerk of the court, and it is settled that way, because he knows that if he has more garnishees coming into the employer's hands the man may be fired and he will lose out.

Q. It would be only in the case of a very last payment, and you've got to admit that doesn't happen very often, and the amount in most cases would be very, very small.

MR. FROST: Well, I think you might be surprised at the number of cases where garnishee proceedings are taken where the creditor feels it may be the last opportunity of getting the money.

MR. LEDUC: Yes, but you take in the case of weekly or fortnightly wage earners, there would be perhaps $20 or $40 coming to the man and the seizable portion would be so small that the costs would eat it up.

MR. CONANT: Well, Mr. Silk, will you continue please.

MR. SILK: Yes. There are three further sections, and then Mr. Juneau has some observations after that. Section 697E, dealing with liability for acting in bad faith.

> "Every person who in bad faith, or through inexcusable carelessness, or neglect to properly inform himself seizes the remuneration, salary or wages of a debtor who has complied with the requirements of articles 697a and b, or, who after such seizure refuses to give the debtor a release therefrom, when it has been sufficiently demonstrated to him that the debtor has complied with the provisions of the said articles, is liable to the debtor for all the damages which may be caused to him through the effecting of such seizure, or, as the case may be, the creditor's refusal to grant such release."

So that if that occurs, Mr. Juneau, the debtor would have to sue in court to recover any damages that he had suffered?

WITNESS: Yes.

Q. Then 697g:

> "Any interested party may contest a claim filed in the record, such contestation must be served upon the claimant, the debtor and the clerk of the court where the contested claim is filed, and it must be brought before the court having jurisdiction for the amount in dispute, ——

I will just continue reading it:

> "in the district in which the claim was filed, and the record, if need be, must be transmitted to the office of such court."

Do you wish to explain that?

A. If it were for four hundred dollars, for instance, it could not be contested before the magistrates' court, which has jurisdiction just as far as $99.99, so the contestation would have to be filed in the Superior Court.

MR. LEDUC: But don't you think, Mr. Juneau—I am asking for your

opinion now—don't you think that the magistrates' court could very well deal with the claim if it is over $100?

WITNESS: Oh yes.

MR. CONANT: What is that point, Mr. Leduc?

MR. LEDUC: Well, you see, the magistrates' court has jurisdiction of $100, then if a man files a claim for four hundred dollars, the claim is contested, then the contestation has to be heard by the Superior Court, which has jurisdiction in actions of four hundred dollars. It is simply a matter of establishing whether or not a claim is valid, and the magistrates' court might very well act.

WITNESS: If the law gives him the jurisdiction, it's all right.

MR. CONANT: Are you not hereby enlarging tremendously the jurisdiction of the magistrates' court?

WITNESS: Oh yes, there is that objection, of course.

MR. LEDUC: And there is the case of damages claimed for a motor accident, for instance, where the court of competent jurisdiction would have to pass upon the claim.

MR. SILK: Continuing:

> "From and after the filing of such contestation, the claim remains suspended, and is not to be collocated in the distribution of the moneys deposited by the debtor prior to the final decision upon such contestation, but the clerk must, pending such contestation, retain at the time of the distribution, the sums to which the claimant would be entitled, if his claim had not been contested in order to pay them to the claimant or distribute them among the creditors according to their rights after the final adjudication on the contestation.
>
> "Any interested party may intervene in a contestation to protect his rights or to hasten the proceedings, and the trial of the case when the parties are not proceeding with reasonable diligence.

MR. LEDUC: Do you get many of these cases, Mr. Juneau?

WITNESS: Of course this was passed only last year, so I didn't hear that there was any contestation.

MR. FROST: Mr. Juneau, could you give us any information as to the number of cases in Circuit Courts that you have in the Montreal district?

WITNESS: Yes, I think it is ——

Q. I mean of course the total cases—I think the jurisdiction is $100?

A. Yes, I think it is over 30,000 a year in Montreal.

Q. Well, that might be some indication as to whether, or why, rather, in the county of York, there are 10,600 cases.

MR. LEDUC: One third.

MR. FROST: Yes, one third. And in your case there are 30,000 cases?

A. A year, yes.

Q. For Montreal district?

A. Yes, and the debtors who took advantage of the Act last year were 1,691.

MR. LEDUC: Of course, there may be ten actions taken against the same man?

WITNESS: Oh yes.

MR. FROST: Last year, in the county of York there were ——

MR. LEDUC: I think we might put on the record the fact that the county of York has a population of 850,000.

MR. FROST: Yes, and you have a million and a quarter population?

MR. LEDUC: Easily that.

MR. FROST: And you say that in the Montreal district you had about 30,000 cases?

WITNESS: Yes. Of course, the amount is from, say, $1 to $100; in your courts here, it is what?

MR. FROST: Well, it goes up to $120 in personal actions, but in certain other cases, where it is ascertained by signature, and so on, or by a contract, it varies from $200 up to $400, so that, actually, the total jurisdiction under our Division Court Act is much higher than your jurisdiction.

WITNESS: I guess your lawyers are less active than the lawyers in Montreal.

Q. It may come from that, or it may come from several things, that business might be better, but it also might come from the fact that our Division Court Act is not as efficient as this Act, and the people do not use it, that may be the case.

MR. LEDUC: When you say 30,000 writs issued, you mean writs of summons?

WITNESS: Oh yes, that doesn't mean judgments. Sometimes you can settle before the hearing.

Q. But that doesn't include the writs of execution?

A. No, just summons.

MR. CONANT: May I ask you this one question, because this is what disturbs me, in your Lacombe law, that it is a matter of faith, a matter of putting confidence in the debtor, now, having invoked that law, which puts the debtor on his honour that he will, each pay day, pay into court $2 or $3 or whatever it may be, can the claimant, or the plaintiff, at a subsequent time, if he loses confidence in the debtor, resort to his garnishee remedy?

WITNESS: Not while he is following this law.

MR. LEDUC: But if he doesn't?

WITNESS: Oh yes, then he can.

Q. Suppose that a man pays $3 on a pay day, or within three days and the creditor believes that the man should pay $5, what remedy has he?

WITNESS: He can bring him ——

MR. LEDUC: Oh yes, 697e.

WITNESS: He has a judgment against the debtor, he has the right to bring him before the clerk of the court and examine him, because this is not a garnishee, the Lacombe law stops the garnishee only, but he has the right to bring him before a court every week to find out if he really pays the seizable portion of his wages, and whether he makes more money which he hasn't declared to.

MR. CONANT: Yes. And I want to get this clear: under certain circumstances this can be invoked for judgments of all your courts, including the magistrates' and Superior Courts?

WITNESS: Oh yes.

MR. LEDUC: The examination, that is, yes.

MR. CONANT: No, but the scheme of paying in can apply to all the judgments.

MR. LEDUC: Oh yes, but it is always under the magistrates for service, but it applies also in all the claims against a debtor within the jurisdiction of these courts.

MR. SILK: Yes. Now there is only one section left, and I think your suggestion is that this section is not proper and should be replaced?

WITNESS: Yes, but perhaps it would be well to read it.

MR. SILK: Yes, well it now reads in this way: 697h:

> "The clerk of the court where the debtor makes his deposits collocates in the first place to the plaintiff for his costs of suit, and every quarter fixes summarily, rateably and without cost, the amount coming to each creditor and he remits such amount to the last address which the creditor

has furnished to him, unless the creditor or person authorized by him has claimed it at the office of the clerk within fifteen days of distribution."

WITNESS: This distribution is supposed to be made every quarter, every three months. This has not been put in practice, and it is impractical.

Q. Why?

A. Because the clerk, with all these deposits, if he were to follow that, would have to do all this work within a few days of every quarter.

MR. CONANT: Well, what are you going to substitute for it?

WITNESS: Well, I have here—these, of course, are personal suggestions for an amendment:

"The clerk of the court where the debtor makes his deposit shall collocate, in the first place collocate to the plaintiff for the costs of suit, and shall comply with the by-laws enacted by the Attorney-General."

It may be Lieutenant-Governor in Council, but I'm not sure, to determine the method and the dates of payment. I would have first, the collocations not amounting to $1—we have collocations for amounts as low as 15 cents—and of course it is quite a job to make a cheque for 15 cents, then I would have, the collocations amount to $1 and more, the collocations attributed to one creditor having several claims against various debtors. This happens very often in the district of Montreal, and the amounts are credited to the various collocations will be credited to him in the ledger and he will receive only one cheque for various dividends.

"To determine the method of accountancy and the dates of payments, so as to permit, as far as possible, of the creditors receiving the collocations for a uniform amount based *pro rata* on the amount of their respective claims and the time of their filing."

"To determine what documents are required to justify a clerk in remitting or transmitting any cheque to a person other than the creditor himself."

"To assure the effective carrying of the provisions of section 697a to g, inclusively."

This would give the right to the Attorney-General to do what he thinks is necessary.

MR. LEDUC: To make regulations?

WITNESS: Yes, to help the carrying out of the law.

MR. CONANT: Are your clerks bonded?

WITNESS: Yes.

MR. LEDUC: Now there is just ——

WITNESS: But they are not, however, bonded for a sufficient amount, it happens that we lose once in a while.

MR. LEDUC: I was going to ask you this: it is the practice, I believe, in Quebec, for the clerk of the Circuit Court and the clerk of the magistrates' court to have a list of individuals who are under the Lacombe law?

WITNESS: Yes.

Q. Now this notice is posted, I believe?

A. No, I will explain that. It used to be, but in large offices, like Montreal and Quebec, they exhibit it to anybody who wants the information.

Q. They have a register?

A. A register where they enter the payments that are made, and all the book-keeping, as a matter of fact, it is a bad thing.

Q. What I have in mind is this, Mr. Juneau: You have section 697f, "Every person who, in bad faith or through inexcusable carelessness or neglecting to properly inform himself, seizes . . ." and so on.

A. Yes.

Q. What is the practice in Montreal now? It may not be in the law, but what is the practice in the province of Quebec when a lawyer is handed a claim against a client? Doesn't he go first of all to the clerk's office to find out if a man has taken advantage of the Lacombe law?

A. Yes, that is what he does.

Q. Yes.

A. But it may happen that this man, the man who is living in Montreal to-day is under the Lacombe law in Sherbrooke, and he does not have any way of finding out unless he brings the debtor before the clerk under subpoena.

Q. Yes, but I mean in that case, if he goes to the clerk of the court where the defendant has his domicile?

A. Yes.

Q. Then he has taken all due precautions to find out?

A. Yes, but at the same time he is not liable for damages, but he loses his costs on the garnishee.

Q. Yes.

MR. CONANT: Mr. Juneau, do you have garnishee before judgment there at all?

WITNESS: Yes.

MR. LEDUC: But explain in what cases, though.

WITNESS: These writs issue upon affidavits, when the plaintiff can swear that the debtor intends to defraud his creditors, or intends to leave the province.

Q. Very much like our Absconding Debtors provisions?

A. Yes, exactly.

MR. CONANT: Well, now I want to understand this, see if I get this right: your Lacombe law provides that, where a man is sued, and within a certain time, he may take advantage of this law in such a manner that, without garnishee of present or future wages, he, in effect promises to pay into court the amount that is subject to attachment and the clerk from thereon distributes it between those who have filed their claims?

WITNESS: Yes.

A. Of course, this amounts to the same thing as if the garnishee proceedings was served on the garnishee.

Q. Yes, well now let me say this: that is distinguished from our practice in this respect, that the subsequent moneys or wages due to the defendant would only be made available if a subsequent garnishee or attachment was taken out for each subsequent payment.

MR. LEDUC: That is Ontario?

MR. CONANT: Yes. Isn't that briefly the situation? Of course, there is a lot more to it, but is that the contrast, Mr. Silk?

MR. SILK: Yes.

MR. LEDUC: Yes, it devoids the necessity for a creditor to garnishee every payment, and it devoids the necessity for all the creditors to issue garnishees.

MR. CONANT: Yes, it is a form of Creditors' Relief.

MR. LEDUC: Thirdly, the employer need not know anything about it?

MR. CONANT: That's right. Well now, answer this for me:

WITNESS: And supposing there is one garnishee in the hands of the employer, and the employer deposits the money into court, all the other creditors, even those who have no judgment, have the right to file their claim in this record. It amounts to the same thing as our Lacombe law, under our general law of the province.

MR. CONANT: Well now, answer this for me, Mr. Juneau: Supposing the defendant, having availed himself of the Lacombe law, and the claimants then seeking to enforce their claims, file their claims, and so on, and the man commences to make his payments, and he continues for some six months, and in six months another claimant comes along.

WITNESS: Yes?

Q. Perhaps the debt has subsequently developed, can he get in the same boat?

A. Exactly.

Q. I see.

A. And this happens: a man, under the Lacombe law—some of them will make other debts, and will continue making debts.

MR. LEDUC: But that is a point you developed a moment ago, a lawyer, befor sueing a man, can go to the court, to the clerk of the district or circuit court where the debtor lives and find out if he is under the Lacombe Act?

WITNESS: Absolutely.

Q. Now a grocer, or a merchant, may also go to the clerk of the court and find out if John Smith is under the Act?

A. Yes.

Q. And if he finds that he is under the Act, he may refuse to give him credit?

A. Exactly, that is the practice, and there are some magazines published giving news from the court, they publish the names of the debtors who have filed their declaration under the Act.

Q. And I suppose Dunn's and Bradstreet's would also publish it in their bulletins?

A. No, I don't think they do, but they have other weekly papers publishing these names.

MR. CONANT: Well now, do the costs mount up, Mr. Juneau? You have quite a lot of machinery here, haven't you?

WITNESS: In Montreal the administration of the Lacombe law costs the government actually over $15,000 a year. Besides the fees they collect.

Q. Yes, but the costs to the defendant, the man from whom they are all trying to recover, don't they mount up, with these filing claims, and contestations?

A. Well, a claim may be increased by $1 or $2 or $3.

MR. LEDUC: Let me put it this way, Mr. Juneau: suppose a claimant files a claim for $500; how much does that cost?

WITNESS: About $2.

MR. CONANT: Including service?

WITNESS: Including service, at least including the mailing to the debtor.

MR. LEDUC: Supposing the judgment is taken against the debtor?

WITNESS: That would be $25 for $100.

Q. And a writ of execution, and the service?

A. About $12.

MR. FROST: Well, that is much higher than our court.

MR. LEDUC: I know, because they have lawyers' fees there.

MR. CONANT: Did I understand you to say that when judgment is taken his costs would be up to $25?

WITNESS: For $100, yes.

MR. LEDUC: How much does the lawyer get out of that?

WITNESS: $16 and something.

Q. As a matter of fact, when the Lacombe law was passed, the lawyers were entitled to a fee even for an action under $25, and they kept on issuing writs of execution and garnishee proceedings practically at every pay day, or every chance they had, so that the debtor was always behind. He made no progress.

A. Yes, he was paying costs all the time.

MR. FROST: Well, Mr. Juneau, just to give you an idea of things here, you take the county of York last year, including the increased jurisdiction, the figures that were given to us here the other day were these: in the county of York, in cases under $10, the average cost was $2.96; now there is no counsel fee, or lawyers' fee in any case under $100; over $100 there is the discretionary power of the judge, in contested cases only. From $10 to $20, the total cost was $4.86; $20 to $60, $6.13; $60 to $100, $7.17; and, according to these figures, included in this statement I have here, out of 10,680 cases in the county of York the average costs, regardless of the size of the case, that is $10, $1 or $400, was $7.15. Now where we run into difficulty is this: that many people have complained of the amount of costs involved.

WITNESS: They would complain if they were in the province of Quebec.

MR. LEDUC: They complain in the province of Quebec also?

WITNESS: Oh yes.

MR. FROST: Of course, one of our difficulties here is that in garnishee proceedings it is necessary to garnishee the salaries time and time again; the one attachment only covers the amount which is on hand at the time that it is served.

WITNESS: Our garnishee can last five years, if necessary.

Q. Yes, and that has meant, in many cases, that there has been a piling up of costs here.

A. Yes.

MR. CONANT: Mr. Juneau, did I understand you to remark that it was necessary to allow solicitors' costs in order to induce invoking the Lacombe law?

WITNESS: No.

Q. That is what I gathered from you.

A. No, what I mentioned was this: supposing a debtor stops making his payment, and the garnishee is taken against his wages; well, sometimes the lawyer, who took the garnishee, will receive settlement of his costs on a garnishee, so as to give the debtor a chance to resume his payments under the Lacombe law.

Q. Well, I gathered from you that unless you allowed the costs to the solicitors, this Lacombe law wasn't very often invoked?

A. No.

MR. LEDUC: Oh no, no, but what Mr. Juneau had in mind was this: the case of a man who quits making his payments; then he is liable to have his wages garnisheed; but very often the person who has had his wages garnisheed will withdraw and let him go ahead making his payments, providing he pays the costs; that is what you had in mind?

WITNESS: Yes.

MR. ARNOTT: With the system of costs that you have down there, Mr. Juneau, it is a great inducement to the debtors to be under the Lacombe law?

WITNESS: Well, I don't know if it is an inducement for the debtor, it prevents many creditors from taking judgments against him. In the end I think the lawyer loses some work. In Ontario the costs are smaller, but the creditors would proceed more often before a court.

MR. CONANT: Well, generally speaking, what is your observation about this question?

WITNESS: About the Lacombe law? I think in the majority of cases it helps both the debtor and the creditor.

Q. It helps both of them?

A. Both of them, because take in Quebec last year, there were 78 debtors who finished paying their debts.

MR. LEDUC: That is in the city of Quebec?

WITNESS: Yes, perhaps they had been paying for three or four or five years.

MR. CONANT: Of course, that is a small percentage of your total, 78 debtors?

WITNESS: Yes, but in some cases, debtors will never pay; in some cases they may have a judgment against them for $10,000, and those who have been selling bonds, for instance, since 1928 or 1929, why ——

MR. LEDUC: They never can hope to finish paying?

WITNESS: No, but at the same time, the seizable portion goes to their creditors.

Q. It doesn't go to the lawyers in payments?

A. No.

Q. Would you mind repeating the figures again? You have given us some figures at the beginning of your evidence, about the amount collected in Montreal and Quebec?

A. In Montreal, in 1939, new depositors, 1,691; depositors who made payments during 1939, 4,500; number of deposits made, 55,000; total of deposits, $307,000; this amount has been paid to creditors, and the amount paid has been paid by 30,000 cheques.

Q. That is for Montreal?

A. Yes.

Q. What about Quebec?

A. In the city of Quebec the amount deposited was, in 1939, $101,909; $98,000 in 1938. The number of depositors, 2,812; and last year about 300 new debtors.

Q. I have here in my notes, in the evidence given by Mr. McDonagh, paid into court, approximately $75,600; would that be payments made by the debtors, or payments made on filing actions?

MR. CONANT: Those would be garnishee payments, would they not?

MR. SILK: We can check that with the statement that you have covering York County.

MR. LEDUC: That looks very much like the amount paid into the court.

Have you anything to show how much money was paid into the Division Courts here following executions or garnishees or anything like that?

MR. SILK: I will see if I can get it from Mr. McDonagh.

MR. LEDUC: I would like to get it to see how it compares with the sums paid in Montreal and Quebec.

MR. CONANT: You remarked that the administration of this law, I think you said in Montreal, costs the government or the province, rather, $15,000 a year?

WITNESS: Yes.

MR. LEDUC: That is Montreal only, or the province?

WITNESS: Only in Montreal, but it costs that amount for many reasons that could be removed. The accounting is too complicated. For instance, you are a creditor, and file a claim for $50 against a man, and three months after you receive a dividend of 2 percent, and will pay you a dividend of $1, and in the next quarter will calculate your dividends on $49, and not on $50, so by some method it could be stated that the dividends would be paid prorated to the amount of the claim at the time of the filing. The result would be ——

Q. At the time of what?

A. At the time of the filing of the claim.

Q. Yes?

A. I understand they have followed this practice because claims would be filed one or two or three years afterwards, and they didn't want the judgment to be paid in full before the claim. As the law stands now, the debtor can continue his payment whether the judgment is paid on that, the moment there are claims.

MR. SILK: The smaller claim would receive less each time, and the larger claim would receive more?

WITNESS: Yes, but I think it would be fair if the original amount was always taken into consideration for further dividends, because the interest of the creditor is always $50, if his original claim was $50. If it was a debt contracted afterwards, his should be the last one to be paid, and it would save a lot of accounting, because the first list of distribution being prepared, if it is kept and if the next one is paid the same dividend, you don't have to do the work over again.

MR. SILK: I see Mr. Juneau has another page or so of proposed amendments to the Lacombe law, does the Committee wish to hear them?

MR. CONANT: Well, he could summarize them, I don't know that we need all the details.

MR. SILK: They are mostly matters of administration.

MR. CONANT: I suggest this, gentlemen, if the Committee are going to recommend the adoption of this principle, there is a lot of detail that would have to be worked out that we couldn't attempt to construct now.

MR. SILK: I think these are mostly matters of detail and administration?

WITNESS: Absolutely.

MR. CONANT: What impresses me, and someone of my colleagues mentioned it, this must develop into a tremendous amount of book-keeping and accounting, doesn't it, Mr. Juneau?

WITNESS: Well, if they were limited to the strict accounting it would be easy. The depositor, for instance, receives a kind of bank book.

Q. A bank book?

A. It looks like a bank book, and when he comes in, the amount he pays is credited in his book. That is his book-keeping, and for the office of the clerk, if a man pays three dollars a week, say, for three months, well these are entered to his credit, and the full amount is divided amongst his creditors, but sometimes every quarter is too often for small claims.

Q. But in the aggregate, as a general observation, doesn't it involve a tremendous amount of detail in book-keeping records?

MR. LEDUC: What about the clerk of the Division Court here, when a man pays so much a week or so much a month, if the man is under garnishee, and there are $4.50 paid in ——

MR. SILK: If they are paid in or paid out, it requires a certain amount of book-keeping.

MR. LEDUC: We have always had that, there would be an increase of it, of course.

WITNESS: The active book-keeping should not be more than the actual book-keeping of a bank.

MR. CONANT: But you have said, Mr. Juneau, dealing with your scale of fees, which is higher than ours, that it costs the province $15,000.

WITNESS: Yes, but on the Lacombe law, practically everything is done without cost, I think, besides the fee for filing.

Q. What is that?

A. Without cost; the fee for filing the claim is about, sometimes, 50 cents or one dollar, but when the amount is paid over the clerk charges 2 percent. But the whole administration should not cost more than 4 percent or 5 percent.

Q. Yes, but you say it costs your province $15,000?

A. Because we accept practically only 2 percent, and because our accounting is too complicated; it should be reduced.

Q. Oh yes.

A. For one of the reasons that I mentioned there.

MR. LEDUC: In your opinion then, Mr. Juneau, with the small fee which you mentioned for filing claims and the 2 percent fee on distribution, the court should be self-supporting?

WITNESS: Not altogether.

Q. What percentage would you require?

A. I would suggest 5 percent, half payable by the debtor and half by the claimant, but I would permit the debtor to file his declaration without charge, and the creditor to file his claims without charge.

Q. That is, you would charge only where there was money available to be charged?

A. Yes, and according to this, if there was, if we had $100,000 in Quebec, it would give us $5,000; we have five employees to work out the administration, and I think they could do it with three, easily.

MR. SILK: I see in your proposed article there, that "the clerk shall not claim the fees provided for certain tariffs."

WITNESS: Yes, this is practically a second Lacombe law; that is one of my suggestions; instead of charging for any declaration and charging for filing any claim, I would suggest that when the debtor has deposited $50, before the distribution of his $50, we would charge $2.50, 5 percent, and in the end $1.25 would be charged to him and the other $1.25 would be charged to the creditor.

MR. CONANT: It would make the province partners in the undertaking of the enterprise.

WITNESS: Yes, I would suggest that the clerk do a little more than he does, actually; according to this draft here, I suggest that the clerk give notice to the creditor for the claim, and when the debtor has delayed his payment for say ten or fifteen days, so that the creditor would not have to come to the court to find out.

MR. LEDUC: You mean to give notice to all the creditors, or only the original one?

WITNESS: To all the creditors who have filed their claim. Of course, this notice could be sent out at the same time as the cheque, you see, and the cost of sending the notice would not be heavy, and it would justify the increase in percentage charge, and moreover, we find debtors who stop making their deposits in one district, and they move to another district, and they file a new declaration

there, because it is the place of their domicile, and the creditors who have already filed their claims, and paid for the filing of the claim, have to go all over that again.

Q. So you would abolish the fee for filing the claim?

A. Yes, in those cases, I would suggest that the clerk be authorized to file one claim in his capacity of clerk in the second record, and he would receive his share, and this share would be paid over to the creditors who have filed their claim in the first place.

Q. Yes?

A. So it would help the creditors. I have seen a case, lately, where a man or a debtor in Montreal stopped paying because he was out of work; he went to Athabasca and, according to the law, he had to file a declaration at his place of domicile, and the clerk of Montreal could not send the claims to Athabasca. So I think that would correct that situation.

Q. You said a moment ago, Mr. Juneau, that there was no obligation on the clerk to have a list of the debtors who were under the Lacombe law; as a matter of fact, they do?

A. They do.

Q. Or a register?

A. Because if the debtor does not make his deposit within three days, it is the only way in which the creditors may find out.

Q. Are these registers kept in alphabetical order?

A. Yes.

Q. So it is quite easy, and it doesn't take very long to find out whether a man has taken advantage of the Act?

A. Oh no, everything is kept in alphabetical order; in Montreal I believe they have two books for just the one letter. It is very easy.

MR. SILK: I was just going to ask you about the time occupied by the officials; for instance, take the Circuit Court of the district of Montreal, would the administration of the Lacombe law take up the full time of one clerk?

WITNESS: Oh yes, we might have ten or twelve employees.

MR. CONANT: Ten clerks?

WITNESS: Yes, there are too many, and there is too much red tape; the amendments and regulations that I suggest will save a lot of this red tape.

MR. LEDUC: You must remember, gentlemen, there is much more litigation

in Quebec than there is in Ontario. You gave us the number of writs issued in the Circuit Court in Montreal as being 30,000; how many writs would be issued in the Superior Court office in Montreal in one year?

WITNESS: About 12,000.

MR. SILK: Well, just to clear up that other point, Mr. Juneau, would those ten clerks all be working full time in connection with the work on the Lacombe law?

WITNESS: Oh yes. Yes, but I don't like their way of proceedings. We have six clerks whose work is to make the entries in the book, always in the same books, and I call them the "six churches"; they manage their small affairs, and my intention is to do away with this, because sometimes one creditor will come to them and ask them to prepare a dividend and he will make it one or two months ahead of time. I would like the clerk himself to have more authority in this question.

Q. I was just going to end by saying there is no doubt a good deal of book-keeping involved in that particular office.

A. We have more book-keeping than in a bank, and it should not be.

MR. LEDUC: It could be simplified?

WITNESS: Very much.

Q. Now, Mr. Juneau, has there been any movement, in Quebec, or demand for the repeal of the law?

A. Oh no, only demands to improve it.

MR. CONANT: But you have, in Quebec you have no peremptory procedure for the collection of debts; there is no order to be made by a court, there is no committal to jail? It all comes down to a matter of seizure or attachment?

WITNESS: Yes, absolutely.

Q. Yes. Has it always been that way?

A. No, many years ago they had imprisonment for debts.

MR. LEDUC: That is over forty years ago?

WITNESS: Yes, because when I studied law, it was done away with.

MR. CONANT: You see, this is rather an exceptional matter; if Mr. Edge or Mr. Gale feel they can add anything by asking Mr. Juneau questions, we shall be glad to have them do so.

MR. EDGE: It is very good of you, sir, but it seems to me Mr. Juneau has cleared any questions that have been asked, and made the operation perfectly

clear as far as I am concerned. I appreciate there are details, but the principle of it seems to me is made perfectly clear by Mr. Juneau. I think we recognize here, that our Division Courts have practically fallen into disuse so far as the profession is concerned. The fact is that it is almost impossible to recover there, and anything that may be done for garnishee purposes to improve our present situation would certainly be very worth while, and the procedure as outlined by Mr. Juneau seems to be very simple, I would think, and very effective. There is just one thing, that a man must have a judgment, as I understand it?

WITNESS: Yes.

Q. If a man is indebted for $100 and he is working for the C.P.R., with the C.P.R. having the rule that they would probably dismiss on a garnishee, the creditor sues for his $100 and takes his judgment, and then, having obtained the judgment, the debtor, as I understand it, immediately files his declaration?

A. Yes.

Q. And the Lacombe law applies?

A. Yes. And he has eight days in which to do it, because the writ of garnishee cannot be issued before eight days after the date of judgment.

Q. After the judgment?

A. Yes, eight days in summary matters and fifteen in others, so he has a delay of eight days or fifteen days in which to file his declaration.

Q. And, therefore, it never comes to the attention of the C.P.R.?

A. No, or his employer, whoever he may be.

MR. CONANT: Yes, that is one advantage, no doubt about that.

MR. EDGE: Very much obliged to you, sir.

MR. CONANT: Mr. Gale?

MR. SOWARD: Soward is my name. I am appearing for Mr. Gale this morning. There is one question; I wondered about this: in our Division Courts, now, a good deal of the work in the case of debtors is done by the debtors themselves; that is, they don't employ a solicitor in either the defence or for the plaintiff; now is this Lacombe law sufficiently simple that it is not necessary for the debtor to employ assistance?

MR. CONANT: You mean the debtor or the creditor?

MR. SOWARD: No, the debtor, I am wondering what change that would make?

WITNESS: Well, many debtors go to a lawyer in order to arrange things for them, you know.

MR. LEDUC: As a rule, don't they go themselves to the clerk of the court?

WITNESS: Oh, about 50 percent, I guess, will go themselves.

MR. SOWARD: The procedure is sufficiently simple that the clerk can assist them, as he does under our procedure?

WITNESS: Oh yes, even now, the clerks of the court, who receive a salary from the government, furnish the forms and fill them in for the debtor. They arrange that for them, in fact, they sometimes help so much that the lawyers complained.

MR. MAGONE: Mr. Leduc was asking about the money paid into the Division Courts in Toronto. Taking the three Division Courts in Toronto, the I, the VIII, and the IX, there is $116,218.

MR. LEDUC: Does that include only garnishee proceedings or also executions?

MR. MAGONE: That is all the money paid in.

MR. FROST: And in the city of Montreal, under the Lacombe proceedings, it is $300,000?

MR. LEDUC: Well, the district of Quebec has a population of roughly one third, we'll say 45 percent, of that of the county of York, and they collected $98,000 under the Lacombe law alone, as against $116,000 altogether in the county of York.

MR. STRACHAN: What about the I Division Court?

MR. MAGONE: It had $75,619; the eighth Division Court, in West Toronto, had $27,595, and the ninth Division Court, in East Toronto, had $12,992.83.

MR. CONANT: Mr. Juneau, are your proposed amendments and regulations sufficiently formulated that they are likely to be considered by your Legislature?

WITNESS: Yes.

MR. LEDUC: At this present session?

WITNESS: Yes; of course, it was not presented to the attorney-general yet. The Legislature is sitting now, but this has not been placed before the attorney-general yet.

MR. CONANT: Will it be before your Legislature this session?

WITNESS: Very likely.

Q. So that, in the course of a month or so, we will know what has evolved out of your recommendations?

A. Oh yes, very likely.

MR. LEDUC: But I notice that in those amendments, you give power to the attorney-general or Lieutenant-Governor in council to make regulations concerning the law, so the implication is that the book-keeping, and fees and so on, would be looked after by regulations?

A. Yes. I think the more simple we make regulations, especially in matters of administration, the better. As I said before, when a debtor goes under the Lacombe law, generally he has only one debt, and I suggest that the clerk accept his declaration free of charge, and if the creditors have to file their claim—well, if they are filed free of charge, they won't complain, they won't turn around and say: "Well, will this man make two or three deposits and then stop, and are we going to pay this money for nothing?" It means a lot of time for the clerks and for the employees; so if we were to accept the claims and declarations free of charge, and have the cost of administration paid by a percentage, say four or five percent, it would cover our costs and eliminate those complaints.

MR. CONANT: It all comes down to this; the government or province becomes a collection agency on a percentage basis.

MR. LEDUC: Yes. Well, free of charge, at no cost.

MR. CONANT: Well, if there is money, they get five percent, if there is no money, they get nothing; so the province then is a collection agency on a collection basis.

WITNESS: Well, we are doing the same thing now and we are losing money on it. At the same time, I don't think the lawyers have lost any business through the Lacombe law.

MR. MAGONE: I wondered, if, while Mr. Juneau is here, we might get some information regarding the working of the grand jury system lacking down in the Province of Quebec.

Probably you would like some time to consider what I am going to ask you, and then come back?

MR. LEDUC: Mr. Magone, if you tell the witness what you want on the subject, then he can prepare himself.

MR. MAGONE: Very well.

Witness excused.

Committee rises for lunch recess.

AFTERNOON SESSION

Parliament Buildings, Toronto,
April 10th, 1940.

MR. CONANT: Before proceeding, Mr. Magone, Mr. Juneau, this morning, developed some figures regarding the amounts paid into the courts, and others having to do with the Magistrates' District Courts. I would like you, while Mr. Juneau is here, to reduce that into memorandum form and let us have it, that we might use it along with these others during our interim discussion, before the notes are extended.

Now, what are we proceeding with, Mr. Magone?

MR. MAGONE: We have invited the benchers of the Law Society and representatives of the Lawyers' Club, and of the Canadian Bar Association to be here. Mr. McCarthy, treasurer of the Law Society, is here with some of the benchers, and I think probably Mr. McCarthy would like to be heard at this time.

D. L. McCARTHY, K.C., Treasurer, Upper Canada Law Society.

WITNESS: Well, I don't know, Mr. Chairman, whether there are any particular subjects on which you would like me to convey the feeling of the Benchers of the Law Society. I may say that we went through Mr. Barlow's report very carefully; not only did the committee go through it, but Convocation as a whole went through it, clause by clause, and we had the benefit of the comments that the judges of the High Court had made, so that we had the memorandum of the judges and Mr. Barlow's report side by side, and we took these different matters up as they appeared, and in the order in which they appeared in Mr. Barlow's report, and if I may take up the different matters which you considered one by one and give your Committee, sir, you may have the benefit of the views of the Benchers on those different subjects.

MR. CONANT: Yes.

WITNESS: The first question that was discussed was the question of abolishing of grand juries. That is the first item in Mr. Barlow's report, and there is a division of opinion among the Benchers of the profession, and here is also a divergence of views among the Benchers of Convocation.

Q. Yes?

A. And I may tell you, sir, that in circumstances of that kind, where the Benchers felt that the profession were divided in their views, we thought it wiser not to make any recommendations at all, and so we have made no recommendations.

Q. Well, before leaving that point, because it is of importance—I, at any rate, and I think I express the views of the Committee, although they may speak otherwise for themselves, have been rather impressed with the situation that necessarily arises from the abolishment of grand juries in the case where an indictment or a charge is laid by the Attorney-General. As you are aware,

of course, from long practice, a right that is sparingly and very seldom used by the Attorney-General, has always been in existence, whereby an Attorney-General can lay a charge; under our present practice, Mr. McCarthy, as you know, that indictment goes before the grand jury, and then, if a bill is found, goes to the county judge, or to the petit jury, and some anxiety has been expressed, and I don't think it was intended as a reflection upon the present Attorney-General, that at some time that situation, or that right, might be abused by the Attorney-General. And the Committee has discussed the possibility of preventing that abuse, or of offering a safeguard by way of having such an indictment placed before a county judge who would function as a grand jury, and from whom a true bill would be necessary before any other proceedings could be taken. Would you care to express any opinion on that?

WITNESS: The opinion the Benchers had is very much in line with what you just now said, sir, and what Convocation recommended is that, if the grand jury is abolished, there should be some method of review of an order of a magistrate committing for trial, and that the Attorney-General should not have power to prefer an indictment except with the consent of a judge presiding at the sitting at which the accused would be arraigned. Now, that is the way we framed our recommendation.

Q. I see.

A. There are other members of Convocation who are opposed to the abolishment of the grand jury because it has other functions to perform.

Q. Well, now, will that view be expressed here, Mr. Magone?

MR. MAGONE: I think so; yes, we have other recommendations here.

MR. CONANT: All right, Mr. McCarthy.

WITNESS: Notably, one of the functions of the grand jury is to see that there are no prisoners in jail awaiting trial. Many of the members of the Bench thought that if for that reason alone, the grand jury should be preserved.

Q. Well, now, just dealing with that; that is a new point; I don't think we had considered that point.

MR. FROST: That is a very important point.

MR. CONANT: Yes, but isn't that more of a theory than an actuality these days? Isn't it the invariable practice that any person who is in jail when an Assize comes along, must be tried and disposed of at that Assizes? Isn't that the practice?

A. I think that is the practice. I think it is the theory of the law, but anyway one of the functions of the grand jury is to visit the jail and see there are no prisoners awaiting trial, and for that purpose they interview the jailer and I suppose they meet and interview the prisoners as to how long they had been there, and to see that they hadn't been kept for an unreasonable time without being properly tried.

MR. FROST: I have heard judges ask grand juries definitely for a report on that.

WITNESS: Yes.

MR. CONANT: Of course there are many factors arise there, and one of them is, of course, that we don't have inspections as a matter of course at every Assize.

WITNESS: No. However, Mr. Attorney-General, the recommendation of Convocation was reduced to writing, and the way we have put it is that:

> "Convocation recommends that if the grand jury is to be abolished, and as to whether it is or not we express no definite opinion because we know the opinions of the profession are not all as one, that there should be some method of review of an order of a magistrate committing for trial, and that the Attorney-General should not have the power to prefer an indictment except with the consent of a judge presiding at the sittings at which the accused should be arraigned."

Now as a matter of fact, you know, sir, even when the Attorney-General has preferred an indictment, as a matter of courtesy, it has always been presented to the trial judge.

Q. Well, I was going to observe, Mr. McCarthy, that I have acted as Crown counsel myself, and have some little knowledge of these matters, and with all respect to the opinion of your Association, the safeguard that I outlined seems to me a far greater safeguard than the one you have proposed for this reason, that, while the concurrences of the trial judge is necessary, that concurrence, I think, I might say, would almost as a matter of course be given if the Attorney-General had signed the indictment, or directed the indictment, and without going into the merits of the case, I cannot think that a trial judge at that stage would enter into an examination to any extent to which a county judge would if he were directed to find whether a man should be put on trial or not.

A. I think, Mr. Attorney, what we had in mind was this: that if this power were in the hands of an unscrupulous Attorney-General, and we hope such a thing will never happen, an indictment might be laid and the man would have no means of protecting himself in any way.

MR. FROST: In other words, he might be put on trial for his life without any preliminary inquiry whatsoever?

WITNESS: Exactly, sir.

Q. Or without any indication of the nature of the evidence against him?

A. Exactly.

MR. CONANT: I make this observation: I would be entirely agreeable to the safeguard that you and your Association set up, but I would go further myself, and I would require that an indictment made by the Attorney-General

should be considered on its merits by the county judge to the extent of seeing whether there was a *prima facie* case.

WITNESS: We are not very far apart, sir.

Q. Not very far apart?

MR. LEDUC: You didn't consider that, Mr. McCarthy?

WITNESS: I think that we did not consider that, Mr. Leduc, but I think perhaps it might be a better safeguard than we suggest. All we had in mind, as Mr. Frost put it, is that there should be some safeguard, that a man should not be thrown into jail and tried without knowing anything of the evidence adduced against him without having a preliminary hearing, and without having any knowledge of the conditions under which he was tried or why he was tried.

MR. CONANT: Yes, well then, dealing with the other aspect, Mr. McCarthy, your Association, or those who formulated this report, at any rate, expressed the view that after committal by magistrate, there should be a further review, and without defining it, perhaps, we might suggest that that would be satisfied by a review by a county judge in a similar way. Did your Convocation give its consideration to this fact, that in practically all the jurisdictions of the British Empire now, and with very few exceptions, of which Ontario is one of the largest and most important, in practically all the jurisdictions of the British Empire they go from magistrates' commital to trial without the intervention that you suggest?

WITNESS: I have no doubt, and I am quite sure that a great many of my fellow-benchers knew more about this practice than I did, and if there are any of them here—I see Mr. McRuer here—perhaps Mr. McRuer would be in a better position to answer your questions. I also see Mr. Peter White here, and they have both had much more experience than I have.

Q. I was asking in passing; am I not right in my statement of facts, Mr. Magone?

MR. MAGONE: Yes, that is the situation, except that when they made the change in the law in England, they provided the safeguard that the Benchers asked for here.

MR. CONANT: In what respect?

MR. MAGONE: That in an indictment preferred by the Attorney-General ——

MR. CONANT: Oh, no, no, we are dealing with committals by magistrates.

MR. LEDUC: Mr. McCarthy, I understand you said, I believe, that there should be some method of reviewing the committal by the magistrate.

WITNESS: Yes.

Q. Is it the opinion of the Benchers that in each case there should be

review of the magistrate's committal, or only at the request of the accused, or at the option of the Attorney-General? I mean would that be compulsory, or would it be optional?

A. Well, to be quite frank, Mr. Leduc, I don't think that question was discussed. I think it was just put down that way because we felt we weren't going to express an opinion as to the abolishment of the grand jury, but all we said is that if it is going to be abolished, we would like to see the necessary safeguards provided, and the safeguard which we suggest either at the instance of the Attorney-General or the accused ——.

MR. PETER WHITE, K.C.: If you will allow me, Mr. Chairman, I would like to say that Mr. McCarthy hasn't in mind the fact that that matter was discussed, and the way in which it was brought up in Convocation, it was regarded as a safeguard for the accused, so that it would be at his request, that a review would take place, but not as a matter of course.

MR. CONANT: Perhaps we should leave it this way, in order to keep our procedure as regular as possible; perhaps some of the other gentlemen present would deal with that more specifically, Mr. McCarthy?

WITNESS: Yes, they are better qualified to do it, Mr. Attorney-General.

Q. Yes.

A. That is all I have to say in regard to the grand jury. Others may have to say more.

Q. I want to ask one question, if I may.

A. Please do.

Q. One of the problems that confronts us, or any jurisdiction that has abolished grand juries, is this question of special juries; as you are aware, the present provision for special juries arises out of the grand juries system, in the sense that a special jury to-day is chosen from the grand jury lists or panel.

A. Yes.

Q. And if the grand jury were abolished, and we were going to continue the special jury provisions, then we would have to set up new machinery, presumably for selecting special juries from the petit jury panel, and I think my colleagues and I would like to hear you express an opinion if you would do so, as to whether you think the special jury provisions should be continued, having in mind this fact, that in the last ten years, in Ontario, we have had how many special juries?

MR. LEDUC: Thirteen.

MR. CONANT: Yes, thirteen special juries, twelve of which arose in Toronto and one in Hamilton, and none in the rest of the province. Would you care to express an opinion on that, Mr. McCarthy?

WITNESS: Well, I can only say this, Mr. Attorney, I have, perhaps, been in three cases in Toronto in which there had been special juries, and I think the result was eminently satisfactory. They were cases in which an effort had been made to get rid of the jury, but the court ruled against it. They were cases in which, obviously, the man of ordinary education, perhaps, wouldn't understand, and I remember on one jury we had the manager of the Dominion Bank, for instance. It was a highly complicated case, and we had men of that caliber on the jury. They were willing to give their services.

Of course, in England they use them a great deal. One looks in the *Times Law Reports*, and you will see hundreds of cases set down every term, for trial by special juries.

Q. I take it you would favour their continuation?

A. I would favour their continuation, sir.

Q. Yes. Well, that is quite proper.

A. But I am only speaking for myself, I am not expressing the opinion of the benchers.

Q. Oh yes.

A. May I go on to the discussion of the next matter in Mr. Barlow's report? That is the petit jury.

Q. Yes.

A. First, as to the qualification of the petit juries, and exemptions from jury duty. Now, the recommendation of convocation, Mr. Attorney, is that the assessors

> "be asked to obtain more complete information as to the qualifications of those whom they assess as qualified for jury service, and Convocation is in favour of getting the best class of juryman possible."

That is as far as we saw fit to go.

Q. Well, arising out of that, may I ask this, Mr. McCarthy, and as to these questions, while we are glad to have your observation, if you don't care to answer them, it's quite all right. That proposal has given myself and my officers some thought, as it probably has others before us. Can you suggest any practical way in which an assessor could, by designations, indicate to the selectors the qualifications of the men he is selecting?

A. You mean any rule that could be laid down?

Q. Well, for instance, would it be practical that an assessor would indicate on his assessment roll, "this man has a public school education, high school education" or "college education", or any formula for his academic attainments?

A. Well, that was discussed, Mr. Attorney, and I think those members of Convocation who had a very vast experience in jury cases, were of the opinion that perhaps the question of education wasn't everything in the selection of a jury.

Q. No, well I quite agree with that.

A. One goes into the country, and you will find a good jury of common sense farmers, that perhaps would be eminently better able to try the average case than perhaps people who had passed certain examinations in high or public schools.

MR. LEDUC: Who spent four years in learning to split hairs.

WITNESS: Yes.

MR. CONANT: Mind you, personally, I am entirely in favour of the principle laid down, but I have never yet been able to formulate any definitely practical scheme for giving effect to it.

A. Well, in Hamilton, I know, Judge Thompson spent a great deal of time in going over the jury lists, and from my own experience, and I think the experience of others, the juries in Hamilton, for many years, have been eminently satisfactory. And I think, in the average county town, from what I have seen of them, although I haven't seen much of them in recent years, but from experience long ago, I would say the average jury in the county town is a mighty fine jury.

Q. Yes.

A. I personally haven't got the same opinion of the juries in Toronto as I have of those in the county towns.

Q. Yes, Toronto is suffering an eclipse in this investigation; we have had so many reflections on Toronto that I feel sorry for it.

A. Well, I think perhaps that arises from the fact that you have the long, long, sittings here, and men coming from the country, and they become almost professional jurymen. There is too much gossiping and too much discussion around the city hall in Toronto in regard to what is done, and what can be done, and what can't be done. And I think it was a good move when, instead of letting them stay here for a month or six weeks, they changed them every two weeks. At one time, I know, it had got almost to be a scandal. The people began to know from the experience of others in other cases who to take on a jury, and who to leave off a jury.

Q. Well, Mr. Magone, I would like you to make a note of it, and, if you can, present us with any evidence or suggestions as to how Mr. McCarthy's submission could be dealt with in a practical way. I think the Committee would be glad to hear it. Is that right, gentlemen?

MR. LEDUC: Yes.

WITNESS: I have no doubt that members of Convocation who have had more experience than I have with juries can be of more assistance.

Then, the next matter is that of the number of jurors in criminal actions.

The recommendation of Convocation is:

"That a jury of twelve men should be retained in criminal cases."

MR. CONANT: Yes.

WITNESS: Then, as to whether juries should be dispensed with in Division Courts, there being a divergence of opinion both in Convocation and among the profession, we decided not to make any recommendation.

The next point, "should juries be dispensed with in county court civil actions?" And Convocation recommends that no action be taken on Mr. Barlow's recommendation. Mr. Barlow's recommendation in regard to county civil court cases was, that the number of jurymen should be reduced to six in all civil actions.

Q. What do you say to that, Mr. McCarthy?

A. Well, Convocation felt that the same reasons for retaining twelve men in high court actions should prevail so far as county court actions are concerned. It is true, the amount involved may not be as great, but the litigants, the persons themselves, are just as much concerned in a litigation for $500, and $500 means just as much to the poor man as $5,000 means to the man who can afford to take a high court action, and we felt that the poor man's rights should be protected just as well as the rich man's rights, and if it is a poor man's court, and he can only afford to go to the County Court, we didn't see that justice should be dispensed differently in his case from any other case. In other words, if the idea of keeping a twelve-man jury is to get a cross-section view of the community, the man who had to sue in the County Court was, in our opinion, as much entitled to it as the man in the higher court.

Q. Well, did Convocation have regard for the fact that in many other jurisdictions, actions are tried by six men?

A. Yes, I made inquiries myself, Mr. Attorney, when I met some members of the Bar from Manitoba, Alberta and Saskatchewan at the mid-winter meeting of the Canadian Bar Association.

Q. Yes?

A. I asked them how the six-man jury worked out. Well, as a matter of fact, I didn't get a satisfactory answer from anyone, because they said, as a matter of fact, the result of introducing the six-man jury has been to almost get rid of the jury system altogether. They said there are very few jury actions tried in Manitoba, Saskatchewan or Alberta to-day; nearly every action is tried by a judge, but, he said, in so far as a criminal trial is concerned, the accused person of course, objects to the six-man jury and wants a twelve-man jury. That is anybody who is on trial, wants to get every possible opportunity of

disagreement he can, and the chance of disagreement is probably better with a jury of twelve than it is with a jury of six.

Q. But I don't think it is improper, Mr. McCarthy, to observe, with reference to the information that you get, that none of the jurisdictions have made any move, apparently, to alter the six-man jury arrangement?

A. No, they have not, but what they told me ——

Q. And we are also aware that in England, quite recently, since the war broke out, they enacted that a jury might consist of not more than seven, was it?

A. I think so.

Q. I don't know why the seven, I can't understand that.

A. Now, I don't want to put their opinion forward as carrying very much weight, because there were only two or three men from each province, and they were probably men who were not familiar with this class of litigation at all.

Q. Yes.

A. And all they said to me is that; as far as we know, the six-man jury has worked out pretty well, but the effect has been that there are very few jury actions tried in these provinces at all.

Q. Well, of course, that might not be an unmitigated evil, you know.

A. No. Then in regard to the next question in Mr. Barlow's report, as to whether juries should be dispensed with in Division Courts, Convocation, under the circumstances, and in view of the divergence of opinion in the profession, decided to make no recommendation of any kind.

Then the next question in Mr. Barlow's report is, as to whether juries should be dispensed with in county court civil actions, and the recommendation of Convocation was that no action be taken on Mr. Barlow's recommendation. Then, as to whether the number of juries should be reduced in civil actions, Convocation recommends that no action be taken on Mr. Barlow's recommendation.

Then, as to whether the private litigant should bear the expenses of a trial by jury, Convocation were very strongly of the opinion that no change should be made as to that.

Then, as to what the right is of a civil litigant to a trial by a jury, Convocation decided to make no recommendation, as there seemed to be a very distinct difference of opinion as to that.

Q. Well, may I ask, that item No. 7, on page B7, starting at the foot of the page, that is a recommendation along the lines of that adopted in several other jurisdictions, including England, itself, is it not, Mr. McCarthy?

A. The right of a civil litigant to a trial by jury?

Q. Yes.

A. I think there have been some changes, but we made no recommendation as to that, because there is a very distinct feeling in the profession, some think that a change should be made, others thinking that a change should not be made.

Q. Well, Mr. Barlow says here, at the middle of page 9, that under the English practice, whether or not the action is to be tried by a jury depends upon the material presented to the court, which of course is the opposite to our practice, is it not?

A. Yes.

Q. Yes, we serve a jury notice, and the opposite party can move to strike it out, the onus being, in our case, upon the man who challenges the right to the jury, and in England, the responsibility being on the man to assert his right to a jury?

A. Yes, well as I say, there are members of the profession who are in favour of Mr. Barlow's recommendation and members opposed, and under those conditions we didn't think Convocation had any authority to make any recommendation whatsoever.

Q. Well, would I be transgressing if I were to ask your own view?

A. Well, having had so little experience, I would rather not express an opinion.

Q. I see. All right, that is quite all right.

A. On that point, Mr. Attorney, you know, I often feel ——

Q. No, Mr. McCarthy, I didn't mean to be at all ——

A. No, no, I don't mind; I think you are entitled to my opinion for what it is worth. I think it is really the abuses of the system that have really called for the change. There is no doubt that I have in mind, and a great many other people have in mind what we would regard as abuses of the system of bringing in juries in some cases. There are also people who think that actions would never be brought if the jury system didn't exist, but as along as the plaintiff has a right to a jury, then he can always say to his client: "Oh, well now, we have a right to a jury in this case, it's worth your while taking a chance, come along, let's go to it." There are a lot of people who think that is wrong; perhaps it is. On the other hand, if a man knows that he hasn't got the right to a jury, but he can only get a jury by asking for it, he is not going to be so liable to plunge his client into litigation. But of course, I have also this in mind, that a great many members of the profession practice before juries, and practice successfully before juries, and if they were deprived of the right to the jury, or the right to the jury notice, it would be regarded as a great wrong as far as they are concerned.

Q. Wrong to whom?

A. To the profession.

Q. The profession?

A. Oh, yes, there is a very strong feeling in that regard.

Q. Oh, but surely, Mr. McCarthy, you don't regard the administration of justice as being entirely and solely for the benefit of the profession?

A. Oh, no, I don't think that by any means, but there are people who think that their clients have a right to have their case tried by a jury, and I don't mean that because they actually make their living out of it, but there is a very strong feeling in the profession that the jury is a right which exists, which the people recognize as a right, and which the profession recognizes as a right.

Q. Well, how do you account for the fact, taking the other position, that in England, in a far larger jurisdiction, with the background for centuries for this sort of thing, they were undoubtedly seized of all these considerations, ——.

A. Oh, I am only telling you, Mr. Attorney, what the feeling is.

Q. Quite.

A. In the profession.

Q. I see.

A. That a great many people feel very, very strongly that there is a right to a jury which should not be taken away from the people.

Q. Well, perhaps we will be able to get some of those expressions.

MR. FROST: Of course there is this to it, Mr. McCarthy, that, aside from what the profession may think, the jury system is a great safety valve for our democratic system, and particularly in these times when we have so many dictators and infringements on the jury system are apt to be looked upon with suspicion by the people generally.

WITNESS: Well, that is quite true, Mr. Frost.

Q. I mean as a matter of public policy.

A. And you have expressed the feeling of some members of Convocation better than I have; they feel that it is perhaps one of the bulwarks of democracy, that the jury system has been in existence for a great many years, and the public have come to recognize it, just as they recognize the Division Courts and to deprive the public of the jury system is, in the opinion of the members of the profession, something that should not be done.

Q. And the man in the street looks upon that as something that guarantees him a square deal?

A. I think there is a great deal in what you say, sir.

Q. Even if it doesn't?

A. Yes.

Q. Even if it is cumbersome and clumsy, and in some ways expensive, it is a matter of public policy to guarantee the man in the street the feeling that he is entitled to a square deal from 12 of his fellow-citizens, something that you can't very lightly interfere with?

A. No, I suppose it is the same in a criminal trial. A man is entitled to have his rights determined by a jury. I suppose it is the same in a civil case; a man feels "Well, I'll get a square deal from 12 of my fellow-citizens." Whether he does or not is another question, but there is that feeling, and as I say, some members of the profession feel very strongly that in a democratic country, a man ought to have the right to have his rights, whether they are civil or criminal, determined by 12 of his fellow men.

MR. CONANT: Well, I think that again, is subject to the observation, and I don't quarrel with that viewpoint, but the same background and the same jealousy of the rights of the individual exists in England, as they do here.

WITNESS: Undoubtedly.

Q. And yet they have taken this very advanced step.

A. They have indeed; I don't know whether it is unanimous. It has been done, I know, but—however, as I say, we make no recommendation.

Q. All right.

A. Then, the next matter is the additional or alternative jurymen in criminal actions. In regard to that Convocation recommends there be no change. That appears on page B11 of Mr. Barlow's report. He says:

> "Every possible provision should be made to avoid interruption and mistrial through the illness or inability of any juryman to fully perform his duty."

And he thinks that some amendment should be made to provide for a change in the procedure, and he suggests that two extra jurymen should sit with the jury throughout the trial, in the event of a juryman being incapacitated, to act in his place. Convocation didn't think that was necessary, to have two extra men sitting around in every criminal trial. To have two extra men sitting there, they thought, was an objectionable feature, and after all, there is no record of any great injustice ever having been done by the fact that any man has had to drop out during a criminal trial, and we thought that might lead to all kinds of complications, if you had two extra men sitting in every trial that came about.

Q. Well, without taking advantage of you, Mr. McCarthy, is it not the practice at the present time in a civil action? The parties may agree to continue with the remaining jury?

A. Oh yes.

Q. Well, where do we stand in the criminal trial?

MR. MAGONE: You would have to commence *de novo*, with a new jury.

MR. CONANT: You can't even continue with consent?

MR. MAGONE: No, it doesn't happen very often; Mr. McCarthy, in your experience, have you ever encountered it?

WITNESS: Yes, I only know of one case where it happened; but there may have been others that I wouldn't know about.

Then, "should the Court of Appeal be given wider powers on appeals from a verdict of a jury in a civil action." Now as to that, Convocation didn't think that they should make any recommendations.

MR. CONANT: That is a rather large question, isn't it?

WITNESS: It is a pretty large question.

MR. MAGONE: It is tied up with the question of abolishing juries except with consent of the judge.

WITNESS: Yes, well, I have always felt myself, if I may express my own opinion in regard to that—we have a rule which gives us the right of appeal.

MR. CONANT: Yes.

WITNESS: And on occasions, when we exercise that right and appeal, we are told by the Appellate Court: "Now, we cannot interfere with the finding of a jury." Well then, the obvious thing is, why not abolish the rule? If the rule says that there is a right of appeal from a jury's verdict, and we get before a Court of Appeal and they simply hold up their hands and say: "Well, the jury have decided." "What right have we to interfere," it seems to me an incongruous state of affairs.

Q. I am not challenging the remark, because you know better than I do, but are you correct when you say, the Court of Appeal says you can't interfere under any circumstances with a jury's verdict?

A. Oh, on a finding of fact.

Q. Oh yes.

A. Of course, then we are complicated by this: the Court of Appeal d'd undertake to interfere with the findings of fact in certain cases, and the injured party went to the Supreme Court in Ottawa, and the Supreme Court in Ottawa promptly restored the jury's verdict. Then you get this situation; you go back to the Court of Appeal, and they say: "Well, we may think the jury is wrong, but the Supreme Court of Ottawa have said to us, 'you have no right to interfere with the jury's verdict,' therefore your appeal is dismissed." I mean, it is an unsatisfactory situation, which I think requires consideration, or a remedy of some kind. It is very much the same with a trial judge in a finding of fact, although the rule is not applied so severely as it is in a jury's finding, but one is

met time and time again by the Appellate Court saying: "Oh well, Mr. Justice so and so saw this witess, he saw his demeanour, and he was in a better position to judge as to his veracity than we are; why should you ask us to interfere?" Well, let us abolish the appeal under those conditions, because people certainly appeal thinking they have a right to appeal, but we are met time and time again with that situation.

MR. FROST: What do you recommend, Mr. McCarthy, to meet that situation?

WITNESS: Well, I am not in a position, sir, to recommend anything. I have heard a great many suggestions. Mr. Barlow has a possible remedy for it, but the profession are not in agreement by any means, as to whether anything should be done, but it has always seemed to me to be an absurd state of affairs, when the rules provide granting you the right of appeal, you exercise that right, and you are told "you might as well not be here".

Q. On a question of fact, you are actually precluded from any appeal.

A. Practically, that is the point.

MR. MAGONE: "If there is a scintilla of evidence, we can interfere; if there is no evidence, we can't interfere."

MR. CONANT: Don't you run into this difficulty or danger, if you enlarge the jurisdiction of the Court of Appeal, that you are more or less nullifying or duplicating the functions of the jury?

WITNESS: Oh, that is the argument, Mr. Chairman.

Q. Yes.

A. Of course, a jury of twelve men are appointed to try the facts, and that being so, what right have we to interfere.

Q. Yes.

MR. MAGONE: It is a jurisdiction, I might say, Mr. McCarthy, that the Court of Appeal constantly exercises in criminal cases?

WITNESS: Oh yes.

Q. By saying there has been a miscarriage of justice, and they interfere with a finding of fact by a jury under their power?

A. Yes.

MR. CONANT: Well, disassociating the problem—because I think this is an important item, they are all important, as a matter of fact—it has taken us some time to get the law settled as to what it is now, has it not?

WITNESS: Oh yes.

Q. That is to say, judicially settled as it is now?

A. Yes.

Q. Taking this from the standpoint of the public alone, as distinguished from the lawyers' and the judges' standpoint, would it be in the best interests of the public, the people, to enlarge those powers, or is it in their best interests to leave it the way it is now, judicially established?

A. Well, the profession are divided in their opinion as to that, Mr. Attorney; that is why Convocation saw fit not to make any recommendation.

Q. Well, that is quite all right.

A. There is a divided opinion, undoubtedly.

Q. I suppose it would encourage appeals if the powers were enlarged, would it, Mr. McCarthy?

A. I suppose it would; there is no doubt if a man—but as Mr. Magone says, I think the rule is that if there is evidence, which, if believed, would justify the verdict or the finding, we wouldn't interfere. Now if that rule were otherwise, then no doubt there would be more appeals.

Q. Yes.

A. Then the next question was the question of pre-trial procedure in civil actions. Convocation is very much opposed to the suggestion.

MR. MAGONE: Were there any reasons advanced for that opposition, Mr. McCarthy?

WITNESS: Well, I can only give you what some members of Convocation have felt in regard to it. In the first place, the only place that it could be made applicable at all, would be practically in Toronto, or perhaps the larger towns. But how are you going to pre-try a case that is going to be tried in Barrie in two months' time? What judge is going to pre-try it? And to what extent is he going to interfere with the rulings of the trial judge who ultimately comes to try that case?

MR. CONANT: Well, of course, may I interrupt with this observation: I think that it is proper to say that such a system would be most useful in the larger jurisdictions, such as Toronto, Hamilton, Windsor, and London.

WITNESS: Well, the only way that I see it could be made useful would be ——

Q. I might say that the usefulness of such a system might apply more to those jurisdictions than the other jurisdictions. However, I am not expressing any opinion.

A. No, quite so. But you see, they did try it to a certain extent in England

some years ago, and those of us who were present at a bar meeting of the Canadian Bar Association in Ottawa, where Lord Roach spoke, will remember that he told us then of a system, that he was very much in favour of then, which was something in the nature of a pre-trial system. But it only applied to what he called commercial cases, and the system which he had in mind, and which they have endeavoured to work out in England was this: they have in England what they call a commercial list, and a judge is appointed a judge of that commercial list. And the idea was that all interlocutory motions in those particular actions, which came before him for trial should be made before that judge, and that all interrogatories, which is the English word for discovery, should be settled by him, and that as many admissions as could properly be made, should be made before him before trial. Well now, the last time I saw Lord Roach was two years ago, and I asked him how that had worked out, and he said it hadn't been satisfactory, and had been practically abandoned; the reason was that, for instance, counsel change, judges change, some judges object to the procedure adopted by other judges in what you might call pre-trial. Then, you might have one counsel who is engaged this Monday, but on the pre-trial procedure, he might not be available when the action came to trial later on, and the feeling was that it really was an impractical thing and could not be worked out.

Q. Well, we are very glad to have your views, I'm sure.

A. Then the next point was the question of assessors and experts. Convocation is opposed to making any change at present, but recommends a further study of the subject.

Now, as you know, Mr. Attorney-General, the present rule in regard to experts is, that a judge has the power to call in an expert to advise the court. But Mr. Barlow's suggestion is, that the whole question of expert evidence be determined by an expert employed by the court. Now I have been in two cases—and I think, perhaps, they are the only two cases I know of—one, quite recently, in which Mr. Magone and I were engaged, and in which Mr. Justice Roach called in an expert on electrical matters which he couldn't understand, but with the assistance of the expert, when the expert evidence was offered by either side, the expert who sat beside the judge was able to tell him exactly what this meant and what that meant, and if he was in any doubt as to what the experts meant, they used to retire to the judge's room so that the judge would understand, with the assistance of the expert, exactly what the two experts meant, and what the application of the expert evidence was. I remember years ago, another case in which Mr. Rowell was on the other side, a case in jury, which was tried in Toronto, too, and I remember Mr. Justice Middleton was presiding, and he got a Mr. McRae, I think his name is, an expert from Montreal, to come and sit in and advise on a question of process patent. Those are the only experiences I have had, but they both worked out extremely well, because each side presented its expert evidence, and the judge, being in doubt as to the evidence, and not being perhaps, able to understand the technicalities, had this man sitting beside him who acted as an assessor does in England, and so was able to keep it straight and was able to understand the evidence as it was put in. But we think it is a subject that might be studied further. I had a little experience once, in England, not as counsel, but sitting in an admiralty case in the privy council, on an appeal from Montreal, in a collision between two boats. And the learned members of the committee not being able to understand nautical

terms, they sent for two assessors from the admiralty, who came over and sat in the privy council, so that when different subjects were discussed which the councillors didn't understand, they would beckon to these gentlemen to come over and would say, "what does this mean, what does that mean," and they were able to advise them and help them in understanding the argument. That is the only experience I have had with assessors, but we thought it was a subject that might well be discussed and studied further.

Q. Mr. McCarthy, doesn't it perhaps, not often but sometimes, happen that litigation goes on interminably, as a battle between experts? Let's see, how many can you call on each side?

A. Only three without permission of the court.

Q. Yes.

A. No, I think the judges have been very loathe to extend the number of experts. Of course, in medical cases, may I say this, I happened, the last time I was there, I happened to go into an English court, a jury court, where they were trying a case, I remember quite well in which a man was taking a trip on the boat to the Isle of Wight, and being in the bar, a bell fell off the top shelf and hit him on the head, and he brought an action against the steamship company; this case was being tried, and I noticed that no medical evidence was given by either side, and apparently the practice was for the court to appoint an assessor or expert, call him what you like. He conferred with the two medical men called by either side, but who didn't give evidence, and then, as a result of the conference between those five men, a report was handed in as to the man's condition, which was accepted as a finding of fact, and that is as far as it went; the judge read it to the jury.

Q. But doesn't our present system here, where you have a right to three experts, doesn't it result in two things: one is the prolongation of trials, and the other one is the very serious disadvantage of the poor man, because, under our present system, is it not the case that the wealthy litigant can employ experts, with his means, that are denied to the poor man?

A. Yes, but it is always a question as to the weight which a judge may attach to the evidence, and if the judge has the advantage of having an expert sit with him, if he thinks it is necessary, that is if he can't fathom the situation himself ——

Q. Oh yes, but the present system does nothing more than to augment the judges' scope; the proposed system would simplify proceedings; I mean, as I understand it, instead of having three experts on each side, an expert would be appointed to hear all the facts and all the scientific formulae, and data, and would advise the judge independently as to the result thereof.

A. Well, try and apply that to an accident case. Would the man, the doctor who had attended the injured man from the time he was injured to the time of the trial, would he not be able to give evidence?

Q. Yes, on the facts, as to what he found.

A. As to what he found, what treatment there was?

Q. What treatment there was, yes.

A. Well, that is what he does.

Q. But, as to whether from those facts, the man would be laid up for a year or ten years or for life—you might have your three experts on each side, and still it might be left to the judge to decide, and to substitute for those three conflicting figures on either side you would have an expert.

A. You are substituting a medical man for the judge?

Q. On those points, yes.

A. On those points. Well, of course, I would think it would be a very dangerous precedent, because, when you find the number of medical men who can't agree on a case, even on a simple case, well ——

Q. Yes, but you have now the situation where you have often three experts on this side and three experts on that side, with diametrically opposed opinions; wouldn't an independent medical man, or a scientific man, no matter whatever the branch might be, wouldn't an independent scientific man advising the judge, arrive at better justice than those conflicting experts?

A. Well, you are substituting the judgment of one medical man, really, for the judge.

Q. On medical points.

A. On medical points. Well, take the jury; after all, the jury are entitled to hear the evidence, both medical evidence and evidence as to facts, and to make up their minds. If you substitute the opinion of one medical man for the opinion of the judge or jury, I think it would lead to a chaotic situation.

Q. Well, you have said that it merits further study, I think?

A. Yes. Then, as to the practice and procedure in mortgage actions, convocation made no recommendation.

Q. Well now, on that point, Mr. McCarthy, it seems to me, and I think it will appear so to the Committee, it comes in the category of a great many of the recommendations here regarding rules of practice.

A. That is what we thought.

Q. Yes, and I think it is the view of the Committee that when the Committee will consider the question of the constitution of the Rules of Practice Committee, the matter of revision of our rules of practice would be a matter for such a reconstituted committee; that is our view, is it not, gentlemen?

MR. LEDUC: Quite.

MR. FROST: Yes.

MR. CONANT: But I think it would be pertinent, Mr. McCarthy, now, or before you leave us, to restate, if you will, either in the same form or in any other form, the views of convocation regarding the Rules of Practice Committee.

WITNESS: The opinion of Convocation, Mr. Attorney, is that the profession should be represented on that committee.

MR. CONANT: Yes.

MR. LEDUC: Well, that is the last item in the report; would it be just as well, Mr. McCarthy, to wait and let you follow your own line there?

WITNESS: Well, as a matter of fact, we make no recommendation in regard to practice and procedure in mortgage actions, or to the final report or to the supplement to the interim report on juries, and we make no recommendation on the question of the coroner's inquest or the coroner's jury. We thought those were matters which, perhaps, we had no right to pass on. Then, we opposed the forming of judicial districts for criminal assizes. We thought, under our system, that that would be almost impossible, and as to poor prisoner's defence we made no recommendation. But then, we also state that we do not know enough about it to take any definite stand, but we recommend the human view, having regard to local conditions as differing from those in England.

MR. FROST: Mr. McCarthy, by that, just what was meant? At the present time, if a prisoner is without defence, the court can appoint some lawyer to look after his defence, is that right?

WITNESS: Well, I think what happens—Mr. Magone will correct me if I am wrong—but I think there is a list, which I think the registrar of the High Court has, in which young men put down their names, or the names of young men are put down, and from time to time, those young men are called to undertake the defence of criminals. In cases of appeals, now, I don't know what happens to the trial. We have felt that on human grounds something should be done, also in regard to the trial, although there are usually a number of applicants for the jobs in trials, but not so much in appeals, but I do know in the Court of Appeal, and the chief justice himself, they take a very live interest in the subject.

But there are a number of young men whose names appear on the list and they are called upon, and some of them, I am told, make very excellent arguments on behalf of criminals, and they are allowed a small amount, are they not, Mr. Magone?

MR. MAGONE: Nothing.

WITNESS: Nothing? I thought perhaps they were allowed a small amount.

MR. MAGONE: I might amplify that a bit; I am glad Mr. McCarthy mentioned this; the young lawyers whose names are on the list, and are appointed by the court, give a great deal of their time, and very often pay out of their own

pocket, fees for transcripts of evidence, or for having transcripts made, and use the time of their stenographers, and they do it all without fee, either from the government or from anyone else. In the trial division, I don't know of any such list as Mr. McCarthy mentions.

WITNESS: I don't think there is any.

MR. MAGONE: But there doesn't seem to be any dearth of applicants; and they do conduct very well the difficult cases in the assizes, in the general session, the County Court Judges' Criminal Court, and I think the system works very well as it is. The young lawyers recognize their duty to defend the prisoner at the request of the judge.

MR. CONANT: Have we not these two angles to reconcile? One is that, under our present system, the accused person who has the means, and can employ what might be called high-powered or high-class counsel, may succeed in having a different result than a person who is without maintenance; as against that, you have this, it seems to me, that any system that you might set up, whereby the state would provide the defence, would be subject to abuse, just as in cases that I could easily mention, where, for instance, the state takes a certain responsibility, in the case of the indigent person; that is not without abuse, as we in the government circles know to our sorrow. I think Mr. Leduc would subscribe to that view, would you not?

MR. LEDUC: Sometimes.

MR. FROST: Well, the circle keeps growing, and it might be amazing the number of poor prisoners that would apply.

WITNESS: Of course, Mr. Pritt, one of the leading counsel in England, advocates the Russian system, that a fee should be regulated by the government, and that no one should be allowed to charge more than a certain amount.

MR. CONANT: That would make the government popular, wouldn't it?

WITNESS: Wouldn't it?

MR. LEDUC: Does Convocation wish to make any recommendation on the Russian system?

WITNESS: Oh no. The next point ——

MR. FROST: Just in connection with that poor prisoner's defence, isn't this the situation, that if a man is accused now of a serious crime, such as murder, that if the Attorney-General feels that he is without defence, the defence is provided? I've known cases of that.

MR. MAGONE: I think probably I can answer that the system has grown up, there is no legislative authority for it, but only in murder cases; if a prisoner writes to the Attorney-General and says that he is without funds to insure his proper defence, the Attorney-General puts him in funds. Does not appoint a lawyer for him, but permits this man to appoint his own lawyer.

MR. LEDUC: Only in murder cases?

MR. MAGONE: Only in murder cases, and only if the prisoner writes first and asks to be put in funds. We don't pay lawyers' uncollectible bills after the defence has been accomplished.

MR. ARNOTT: How many applications of those have you got?

MR. CONANT: Too many of them.

MR. MAGONE: We get far too many, and many applications after the defence is over.

MR. LEDUC: How many would you get in a year, Mr. Magone?

MR. CONANT: We have had quite a few lately.

MR. MAGONE: You see, unfortunately, the persons charged with murder are always impecunious.

MR. CONANT: That is an embarrassing situation for any Attorney-General to be in, because, if representations are made that the man is impecunious, your opportunities for establishing that are not by any means completely satisfactory; at the same time, you don't want to see a man go undefended.

WITNESS: I remember one instance—I can't remember the nature of the case now, when, sitting in Court of Appeal—perhaps you can tell me the nature of the case; years ago, it was, Chief Justice Meredith said: "Well, we have the right to appoint counsel." And I happened to be sitting there, and he said: "We'll appoint Mr. McCarthy." I don't remember the nature of the case, but it was something of a criminal nature, and he fixed the fee afterwards; the account had to be sent in to him and he had to O.K. it, and it was returned to some officer for payment. I can't remember the nature of the case, but I do remember the incident.

MR. CONANT: What about this central place for capital punishment?

WITNESS: Well, we didn't think that is a matter in which we didn't think we should express any opinion.

Q. All right.

A. Now we come down to these final reports, and we dealt with them.

Q. Did we deal with summary convictions, Mr. McCarthy, title No. 6?

A. Well, my note, Mr. Attorney, is that Convocation recommends opposing the proposed change. Now, there may be other members of Convocation who are here, other benchers, who can speak to this matter better than I can, because I am not sufficiently familiar with the procedure.

Then, the next one is appeal from a motion to quash an indictment. We

made no recommendation as to that. That suggestion may, possibly, have emanated from myself, because, in talking to Mr. Barlow, I recently had occasion to go into the question of appeals from indictments, where a motion had been made to quash an indictment which was refused. The trial proceeded and went through all the courts in Ontario, and finally landed in Ottawa, and as the result in Ottawa, the indictment was quashed. It did seem to me that after having a trial and two appeals, to quash the indictment at that stage was rather an expensive way of quashing the indictment, and I wrote to Mr. Barlow; Mr. Magone has just handed me my letter, in which I referred him to the case of Rex and Brody, and another more recent one also, Rex and Brainbridge, also Rex and Goodfellow, and Rex and Buck, all reported cases, in which they all went to the Supreme Court of Canada before the indictment was quashed. Now my thought was, why not allow one appeal from a motion to quash an indictment so that, at least, before going to the expense of a trial and two appeals, we could have the opinion of a Court of Appeal on the question, before all that expense was gone to. But Convocation made no recommendation in regard to it.

MR. MAGONE: It wouldn't have helped in those cases, Mr. McCarthy.

WITNESS: No, there is another case in which it would have helped; it went on to Ottawa and the conviction was quashed.

Q. Oh yes.

A. Now the next one is the designation of judges for commercial causes. We made no recommendation in regard to that. As I pointed out to you, Mr. Attorney, when one looks in the *Law Times*, which comes out every week in England, you will see there is a commercial list in London; of course, there is a commercial list for certain cases here, designated commercial cases are put down on the list and certain judge or judges are designated as the judges for that list. Convocation didn't see fit to make any recommendation, because they thought perhaps it wasn't practical in this country.

MR. CONANT: Of course, there wouldn't be the volume here that there would be there.

WITNESS: No, you would have a lot of trouble in deciding what was a commercial case, and with our non-jury system, where it is hard enough to get a case on anyway, there would be the same jockeying for judges, unless one judge was designated as the commercial judge, and you would have to get some one to say what is a commercial case.

Then the next item, consolidation of the County Court of General Sessions of the Peace and the County Court Judges' Criminal Court and the Surrogate Court. As to that, there being a great difference of opinion, Convocation did not think any recommendation should be made, and the same applies to the county court procedure.

Now that brings me, now, to the Division Courts, and as to that, Convocation recommended that the Division Court be retained. But we thought that the number of Division Courts should be reduced, where practical. We thought that the court and the bailiff fees should be reduced, and made certain in cases under $100, and we thought that the procedure ——

Q. Would you mind just repeating that?

A. Yes.

Q. Retain the Division Courts?

A. Yes, we thought the Division Courts should be retained.

Q. Yes?

A. We thought the number should be reduced where practical.

Q. Yes?

A. And we thought that the court and bailiff fees should be reduced, and made certain in cases under $100.00 And we thought that the procedure should be simplified.

Q. Yes.

A. Now the reason we thought the courts should be retained is, it is a court which has been in existence for over a hundred years; everybody knows that Division Court, and to abolish division courts and set up some new claims court would only mystify people, and we are all in agreement that the costs, the expenses of suing a claim in division court are utterly absurd.

Q. Would you care to express a view on this proposition, Mr. McCarthy; supposing we were to revise The Division Courts Act procedure, simplify it to make the costs certain, perhaps giving it the one horizontal jurisdiction of say, $200, and letting everything else go into the County Court, with perhaps a revision of the county court tariffs so that in cases from $200 to perhaps $500, there would be a different tariff than that otherwise prevailing, would you care to express an opinion as to whether there would be any resultant congestion in the County Court that would present any serious difficulty?

A. I am afraid, sir, I am not in a position to express an opinion, because we haven't really studied the thing from that angle, and we haven't the figures before us in regard to the actions or the number of actions in the County Court, or how that would complicate the county court procedure.

MR. LEDUC: Well, in the First Division Court of the county of York, the number of cases over $200, I mean writs issued, was four percent of the whole.

WITNESS: I see. Then, Mr. Attorney, in regard to the surrogate court appeals, we made no recommendation in regard to that. There is a division of opinion there, and we didn't feel that we could express the feeling of the profession as a whole, and as to the tariff of fees we made no recommendation, but we agreed with Mr. Barlow that if necessary, the whole situation should be clarified.

Q. You mean, the whole surrogate situation?

A. Yes, that is the tariff of fees. We can't make any recommendation as

to tariff of fees, but we thought that the whole matter should be clarified. Then, as to procedure in the sheriff's office, which is divided into sections, that is execution of writs, Creditors' Relief Act, execution and sale of land under a writ of execution, and the seizure and sale of book debts, Convocation respectfully draws attention to the views of the judges on this matter and adopts them.

MR. CONANT: What is that view, Mr. McCarthy?

WITNESS: The view of the judges is this; what the judges said in their report, Mr. Attorney, was this; first, in regard to writs of execution against the goods of judgment debtors, that:

> "we gravely doubt both the practicability of this recommendation, and the practicableness of a suggested change which would involve an amendment of both dominion and provincial statutes. If the changes were made, what would be done as to the great number of registrations heretofore made in the various offices? It would not appear that either the registering or searching public ought to be put to any great inconvenience. Under the present practice, such a multiplicity of searches as the commissioner supposes are rarely if every required, in any one case;"

And then, in dealing with The Creditors' Relief Act, the judges say:

> "It is important ——

MR. CONANT: Just on that point, does Convocation subscribe to that view?

WITNESS: Yes.

Q. Paragraph 1 on page 14 of the judges' memorandum?

A. Well, I don't know the page; it is under the procedure in the sheriff's office.

Q. I see.

A. It is No. 13 in Mr. Barlow's report, under the heading, "Procedure in the Sheriff's Office." And as to The Creditors' Relief Act, we also subscribe to the judges' views as to that, in which they say:

> "It is important that the efficiency of the Act should not be destroyed by adding to the expense of administering it; complaints are now often made that far too large a share of the money to be distributed goes for costs and expenses. As to requiring the division court clerk, who has money realized under execution, to notify the sheriff before distribution, this would seriously impair the process of collecting the debts of modest amounts promptly, with little advantage to anyone. It was no doubt in the exercise of a wise discretion that the Division Courts were not included in the legislation."

Then, I don't think I need read you the judges' recommendation as to the

Execution Act, and as to the sale of land under a writ of execution, and also as to the seizure and sale of company shares.

Q. Revision of exemptions under The Execution Act, do you subscribe to that?

A. The judges say as regards that:

> "This might well receive considerable study, with a view to revising the list of exemptions provided."

Convocation agrees that that should be done.

Q. Do we take it from that, that Convocation feels there should be some revision of exemptions?

A. Yes.

MR. FROST: Of course, the exemptions are out of date.

MR. MAGONE: Oh yes, they are beehives in one hole.

WITNESS: The most serious objection, of course, is as to the seizure and sale of company shares.

MR. CONANT: Well, in that writ of execution against lands, Convocation thinks the time should be cut down?

WITNESS: It says:

> "The year now prescribed by the rule originated in a Statute, and is not considered excessive time; it might be pointed out that the commissioner's comment, namely, foreclosure may be completed in six months, is not quite correct. A period of six months under foreclosure actions is now the period provided for redemption and the interim judgment before the final order of foreclosure. In addition to this, the action requires the time for the issue of the writ, the appearance, the usual pleadings, if any, and the taking of the action."

Q. Well, on that point may I ask, Mr. McCarthy, what is the origin of that one-year period; is there anything on that?

A. I couldn't tell you; I don't know.

Q. It appears to have been there for a long time.

A. Yes, but its origin, I couldn't tell you, sir. Then, the most objectionable feature in the commissioner's recommendation was as to the seizure and sale of company shares, and what the judges said is that this is a matter for legislation, although,

> "The committee felt it should be pointed out that amendments proposed

by the commissioner are very far-reaching indeed, and might have a most injurious effect on existing banking and commercial practice."

"To give one example, share certificates endorsed in blank may be deposited at the bank as security; if the proposed amendment is made, then, unless the bank, which has no information as to the seizure, causes shares to be registered in the bank's name before the notice under section 12 is given to the company, the bank security would be entirely destroyed, or again, if shares are so pledged, the bank could only protect itself by always registering all shares in its name as soon as pledged. This would not be at all desirable from the standpoint of the banks or from the standpoint of the borrowing public. A further example of the undesirability of this change proposed by the commissioner, also would be found in the business of stock exchanges, where business is largely carried on in street certificates."

Now we entirely agreed with what the learned judges suggested then, and for that reason, we adopted the views of the judges, which we thought should prevail.

Then in regard to No. 14, The Evidence Act, Convocation agrees with both Mr. Barlow and the judges.

MR. CONANT: That is splendid.

MR. MAGONE: We are unanimous at last.

WITNESS: The judges say:

"While certain changes may be worth while in the Act, the commissioner suggests that nothing should be done until such time as The Draft Uniform Act has been prepared by the Commissioners on Uniformity of Legislation, at which time the proposed changes can be studied further, and this suggestion might well be followed."

There is, as you know, at the present time, before the Commissioners on Uniformity of Legislation, the question of the new Evidence Act, and we thought that it might well stand in the meantime, until that committee has performed its complete functions.

MR. CONANT: Well, why is that, Mr. McCarthy, a matter particularly of uniformity of the provinces?

WITNESS: Well, it has been a matter under discussion for some very considerable time, by the Commissioners on Uniformity of Legislation, which committee meets either once or twice every year, and it was thought desirable that there should be an Evidence Act which was applicable to all the provinces.

MR. MAGONE: And the Dominion.

WITNESS: And the Dominion, of course.

MR. CONANT: But are we not considerably behind other jurisdictions in our Evidence law?

WITNESS: Yes, but we are trying to bring that up to date, at the present time, as I understand it. We have had the new Evidence Act recently introduced in England, and that is all being considered now by the Committee on Uniformity.

MR. CONANT: Perhaps Mr. Silk can tell us about that; I just don't see that this is in the same category as a great deal of other matters that are dealt with as uniformity legislation.

MR. SILK: Well, it was considered by the Commissioners two or three years ago, sir, to be a proper subject for consideration by that body, and a first draft was prepared by one of the western provinces, I think, and it was referred last year to the Commissioners on Uniformity for the Dominion, because the probability is that when the uniform Act is prepared, it will be adopted by the various provinces and by the Dominion; I think that perhaps, not next year, but in 1941, the Act should be in completed form.

MR. LEDUC: What about the next one, Mr. McCarthy?

WITNESS: No. 15, Expense of Trial, etc. Again Convocation agreed with the views of the judges as to that.

MR. CONANT: And what is that view again?

MR. MAGONE:

> "If there is a demand for this change by the municipality, footing the bill, there would seem to be no apparent objection to the proposed recommendation."

MR. LEDUC: It is a matter of legislation.

MR. MAGONE: Yes.

WITNESS: Then, as to No. 16, that is one text for all the rules of practice and procedure, Convocation agreed with Mr. Barlow.

Then, in the next few items, from 17 to 29, Convocation didn't consider these matters, because they thought that the Rules of Practice and Procedure, etc., should stand for consideration to a later date, when the Committee of the Legislature has made some recommendation as to the constitution of the Rules of Practice Committee, or to a time determined by Convocation, and as I have already said, Convocation advocates that members of the profession should be included on the Rules of Practice Committee, and we went further and thought that the selection of the members of the profession to function on that Committee should be determined by Convocation, both as to who they were and as to the time that they should serve on that committee.

MR. CONANT: And any views as to the numbers, or proportion, Mr. McCarthy?

WITNESS: No, Convocation didn't express any opinion as to that at all, Mr. Attorney, but we thought that we should have representation on the committee.

Q. Yes. You didn't discuss—your recommendation contains no mention of any other representation other than the members of the Bar?

A. Other than members of the Bar.

Q. Have you any opinion to express yourself, as to whether the Attorney-General should be part of that committee? From the standpoint, I call your attention to the fact, that the Executive always must provide the machinery that is required for carrying out the rules?

A. What is the practice in England now? Does Mr. Barlow mention that in his report?

Q. Well, the Lord Chancellor there, is a member of the rule-making body. Of course, we haven't any officer here who corresponds to the Lord Chancellor.

A. Personally, I think the Attorney-General should be represented on that committee.

Q. The Attorney-General's is the office that comes nearest to that of the Lord Chancellor?

A. That would be my own view.

Q. Although, admittedly, it is not by any means the same.

A. No.

Q. What would you think, Mr. McCarthy, of the Master being a member of the committee, who deals with the rules all the time?

A. Well, I hadn't really thought about it.

Q. Well, he is one judicial officer in the province is he not, who probably is more constantly and actively associated with the rules, is he not?

A. I presume he is; as a man in practice, I suppose he is brought into more intimate contact with them than the judges, who only see them in weekly court occasionally. Now there may be some other members of the Bench who would like to speak on these different points. I have only expressed the view of Convocation generally, and my own view only when I have been asked to.

MR. MAGONE: Mr. McCarthy, before we leave it, on page B74, there is a Law Revision Committee; did the bench consider that item?

WITNESS: Well, if they did, I have no note of it.

Q. The recommendation of Mr. Barlow is that:

"The Judicature Act be amended to provide for the establishment of a Law Revision Committee, to be composed of the Chief Justice of Ontario, the Chief Justice of the High Court, together with four Supreme Court judges and four members of the Bar, to be appointed by the Chief Justice of Ontario."

A. Well, I have no note of it, and I have no recollection. Perhaps other members of the Bench may recollect it. I have no note of it. Do you remember, Mr. McRuer?

MR. J. C. MCRUER, K.C.: I was there when they dealt with that. Yes, we dealt with that, and our recommendation was a resolution passed covering that, and that was that the committee should be composed, or there should be representation on the committee, of the Bar, and that they should be appointed by Convocation.

WITNESS: Oh no, that is the Rule Revision Committee.

MR. MCRUER: Oh no, that's right, we didn't deal with the Law Revision Committee.

MR. CONANT: Mr. McCarthy, in England, they have what might be called an unofficial committee, constituted by the Lord Chancellor, to advise regarding points of law which might be the subject of legislation. Are you familiar with that committee?

WITNESS: No, I am not.

Now I notice that the judges, in reference to that, say:

"These matters dealt with in the two sections of the Commissioner's report, have already been under advisement by the Chief Justice of Ontario and the Chief Justice of the High Court, who have been in consultation, and correspondence with the Attorney-General. Thereafter, following a meeting with the Attorney-General and his Deputy, a letter was written, etc. . . . "

That only deals with what the judges did.

MR. MAGONE: Mr. McCarthy, there is just one other matter. In 1937, amendments were made to the County Courts Act, increasing the jurisdiction, to be brought into force by proclamation. Have you anything to say with respect to bringing that into force? I mean, on behalf of the benchers?

WITNESS: Nothing, the matter wasn't dealt with at our recent meeting, but it was the subject of discussion, I think, about two years ago, Mr. Magone, and I only succeeded in obtaining the file to-day, and I have not had an opportunity of going through it. I know that at that time Convocation was opposed to it, and a report was prepared by the then treasurer, and the present Chief Justice, which, I think, was presented to the Attorney-General. There was also a report of Mr. Justice Middleton. He is, unfortunately, away at the present time, and I have not been able to get that report from him, but I know that at the time

Convocation was opposed to it on several grounds, which are all set forth in the report prepared by the then treasurer, and by Mr. Justice Middleton. I can recollect some of the grounds; one, I know, was while we expressed no opinion ourselves, representations which came to us from the outside Bar, intimated that perhaps some of the county judges weren't of the necessary calibre to adjudicate on cases beyond their present jurisdiction, perhaps not up to their present jurisdiction. That necessarily doesn't apply to them all, but I know representations were made to Convocation to that effect, although Convocation themselves expressed no opinion. Then there was the other situation that arose, that some years ago, when litigants or solicitors could agree to try a high court case before a county judge, a good many cases were tried before county judges; that was before the provision was made with regard to their high court fees. In those days, if they tried them before a county judge, they still got the high court fees. The county judges were very proud of that, and said: "Oh, look, they're trying their high court cases before us." But I am told that immediately the rule changed, and they only got county court fees, the cases fell off at once, which rather indicates that the litigants appreciate the cheapness of the litigation rather than the efficiency of the judge. It may be the wrong conclusion that I have reached, but that is my observation. Then there are other suggestions made to us by the outside Bar, because they have more to do with it probably than we have, and they said the county judges have all they can do at the present time to look after their present work, and to increase their work wouldn't increase their efficiency. It hasn't recently been considered, but I know it was at that time.

Q. Does that also apply to the increased jurisdiction of the Division Courts?

A. I don't think that was considered, Mr. Magone.

MR. LEDUC: Mr. McCarthy, you just mentioned a report prepared by Mr. Justice Middleton; have you a copy of that report, Mr. Magone?

MR. MAGONE: No, I haven't.

WITNESS: I went to the Chief Justice, knowing I was coming up here, and he told me he thought Justice Middleton still had a copy of that report, and I will undertake to get it and hand it to Mr. Magone.

Well now, there may be some other members of Convocation that you would like to hear from, that would like to express their views on any particular topic. I have dealt generally with the matters, and very briefly, Mr. Magone.

MR. MAGONE: Yes, thank you very much. We will be glad to hear from them, and I suppose, Mr. McCarthy, that they will be expressing their own views?

WITNESS: Well, some of them may think that I haven't expressed the views of Convocation; otherwise, they may like to express their own views.

MR. MAGONE: Yes, well then they may indicate it to us.

MR. PETER WHITE, K.C.: There are just one or two observations that I would like to make.

MR. MAGONE: Very well, Mr. White.

Witness excused.

MR. PETER WHITE, K.C., Bencher, Law Society.

WITNESS: I am unfortunately one of those persons who have very strong views in regard to juries, and there are one or two things which I would like to point out in connection with the discussion that has taken place in regard to them. Perhaps I had better put it in this way: it may be taken as fairly the view, I think, of the majority of the people of this province, that the grand jury must be abolished. I deprecate that very much, but it seems to me that I am in a pretty hopeless minority on a good many questions these days, particularly public questions. But, however, there is another feature besides the one that Mr. McCarthy has pointed out in regard to why a grand jury should be retained, and that is the educational feature. If, however, the grand jury is to go, then I see no reason why the same class of men can't be selected for our petit jurors as are now selected for our grand jurors. That would solve a great deal of the difficulty, and it is suggested that another way of helping that would be—that is by way of getting a better class of men—would be to have the juries selected by men who know the locality and know the actual men who are going on the jury panel. I remember myself, as a Warden of a county, one of the selectors of the jury, and I found that we got a pretty good class of jurors because the sheriff and myself—the county judge was a new man—but the sheriff and myself knew pretty nearly everybody in the county, and we were able to tell how the men were and what kind of men they were.

MR. CONANT: But just on that point, doesn't really come back to local selectors?

WITNESS: To some extent, and I was going to say, in that connection, that while merely an academic certificate is not necessarily a qualification for a good juror, yet the fact that he has a certain amount of education is one of the elements that helps out. Then we don't want deaf men. A man shouldn't be on the jury if he is blind, if he is a delicate man, a man who is obviously not able to stand up to the duties of a jury, shouldn't have a j behind his name in the voters' list. These things could all be done, and with great effect, I should think to bring out the character of the jury.

Q. Well, don't let's leave that for a minute; specifically how would you improve, if it were thought desirable, the quality of the juries?

A. Well, it is pretty difficult to answer that off hand, but ——

Q. Well, give us the best you can.

A. Well, one thought that occurs to me is this, Mr. Attorney, that the local assessor should be asked to give some kind of indication, in the assessment rolls, as to the qualification of a juror from the standpoint of education, experience, and physical fitness. Instructions could be given as to what constituted these three things, and they could be graded, the jurors that is could be graded so that when he found a certain percentage of qualification, then he could mark the man as a juror.

Q. He might be an "A", "B", or "C" man?

A. Yes, that might not be a very welcome job for the assessor, but that wasn't in my mind; what was in my mind was that if he came up to a certain standard, he should go down as a qualified juror, and that the assessor should receive those instructions; perhaps we ought to get better assessors too. Now that is all I had to say about that.

In regard to the alternative jurymen, it occurs to me, Mr. Attorney, that it might be possible to avoid any such necessity. It has never occurred, I think, in the long criminal court experience that I have had, that a juror failed to be able to sit throughout, and that is a great many cases. Mr. McRuer tells me of one case he had, and in this case counsel for the defence agreed to abide by the jury of eleven jurors. Now I should think that it might be possible to frame an enactment that would cover that situation and allow the jury of eleven to bring in a verdict, if any one juryman should fall out during the proceedings, and be so certified by some physician appointed by the court.

As to having these jurymen sit by as an alternative, obviously, the expense of that is far greater than the expense of a retrial, because it occurs so rarely that they don't seem comparable at all.

Then as to assessors and experts, the real difficulty, as I see it, about leaving the determination of a question of fact—because it gets down to that—to an assessor, is that the litigant would be at the mercy of an expert who might hold to one school of thought, as opposed to an expert who might be just as honestly and just as conscientiously and just as effectively of the other view, so that there must be some referee, and it seems to me that a judge, sitting and listening to experts with an assessor or expert to advise him, where that becomes necessary, as illustrated by my friend Mr. McCarthy, it seems to me that you get a judicial determination.

There is another difficulty there, that I suppose Mr. McRuer won't mind my mentioning—it was his idea—that you run into a nice constitutional question there; that is, here is a man making a judicial determination, who is not appointed by the Governor-General in Council, and he is in fact a judicial officer.

But the real difficulty ——

Q. It is ultimately, if his views are accepted by the Court, it is ultimately the view of the Court.

A. Well, that may be; there may be ways around it, but I am just pointing that out. But the real factual difficulty is that, for instance, take a case that I heard the other day argued in Court of Appeal; a man was said to have, as a result of an accident, contracted an obscure kind of disease; there was an absolute, and apparently, an honest difference of opinion between the experts as to whether he had that or not, and that was the result of two schools of thought in the medical profession. Now, if you had appointed one man of one school of thought, the plaintiff would have won; if you had appointed the man from the other school of thought, the other man would have won.

Q. I don't know whether your thinking and mine is on the same ground; this proposal, as I understand it, of Mr. Barlow, was an optional proposal, a proposal whereby litigants could agree upon the appointment of an expert to take the place of experts on both sides.

A. You could always do that now, Mr. Chairman.

Q. Well, the practice doesn't provide that?

A. Well, it isn't necessary that it should; in a great many cases that I have acted on, where I knew a certain medical man was called by the plaintiff, I said: "All right, we'll take his opinion." I have frequently done that. I mean if it is a case of agreeing, why, you can agree now, without any changes at all.

Then as to this extension of the jurisdiction of the Court of Appeal on questions coming from a trial verdict of a jury, the law is not that the Court of Appeal cannot reverse the finding of fact; the farthest they can go is to say that no twelve reasonable men could come to the conclusion which the jury has come to, and that they must have proceeded on a false principle.

Q. Or perversity.

A. Or perversity, which is a false principle, too.

Q. Well, I think the Court sometimes puts it that way.

A. Yes, perversity. Then on the question of damages the Court, in my personal view, and I am only expressing a personal view, not having seen the injured person, if it is the case of an injured person, and not having been in the position to size the situation up the way a jury can, who had seen the party, is not in as good a position to assess damages as a jury, who did; and there was a case not long ago, a farmer was killed and left a wife and child, and the question was whether the verdict was excessive. There were eleven farmers and one chauffeur on that jury; surely eleven farmers would know more about the amount of money which would compensate a woman for the loss of her farmer husband than any number of judges could possibly do, having regard to the fact that they simply take the dry bones, the skeleton, you might say, of the trial, without any atmosphere or any of the surrounding circumstances and seek to determine, from a cold, typewritten document, what the damages should be?

MR. LEDUC: In this case you mention, the jury was composed of eleven farmers and a chauffeur, and the victim was a farmer; supposing the victim had been a lawyer?

WITNESS: Well, I don't know anything much about lawyers these days; I used to think they were pretty respectable members of society; when I hear what is said about them these days, or what it is attempted to do to them, I begin to wonder.

Q. But you don't think there should be any enlargement of the Court of Appeal jurisdiction?

A. I personally do not. I am only giving you my personal opinion. I had the option, the other day, of having the court fix damages and going back to another jury, and I took the new trial in preference. That is the best illustration of what my personal view is.

There is the further thing, on the question of fact, if the Court of Appeal can, because they disagree with the finding of a jury, where there has been evidence from which twelve reasonable men could come to the conclusion to which the jury came, can reverse that finding of fact, they are doing so without hearing the witnesses, and, as was pointed out in this room this afternoon, a witness can say a thing in a way in which no twelve reasonable men would believe a word he said, and then it is up to the Court of Appeal; and there it is in black and white. That is all I have to say.

Q. Well, just a minute, we have this question of grand juries yet, you know.

A. Well, personally I realize that, as I say, I am a pretty bad minority on that question. Of course minorities are all right, I understand that.

Q. Well, they are entitled to consideration.

MR. LEDUC: Mr. White said he was in favour of retaining them.

MR. CONANT: But I would like you to direct your remarks, if you will, to this particular question, as to the safeguard that has been discussed and mentioned here in connection with indictments preferred by the Attorney-General.

WITNESS: Yes; of course, without going over the ground, it has been brought out this afternoon that the Attorney-General may prefer an indictment, or may direct Crown counsel to prefer an indictment for any offence, and in fact the Crown counsel can himself do it, with the consent of the trial judge, or the presiding judge, I should say, but that, of course, now goes to the grand jury.

Q. Yes.

A. Now, I should think, if I were Attorney-General, which I never expect to be, that I would not want to have the duty cast upon me of saying that a man should or should not be prosecuted for a certain offence. I can see great trouble ahead for the Attorney-General's department if that situation obtains.

Q. Yes, but if you were a little more specific, and if under the present system, if the Attorney-General directs an indictment to be laid, that goes before the grand jury; if the grand jury were abolished, it would be abolished for that purpose as for all others; now wouldn't there be sufficient safeguard against the abuse of that right by the Attorney-General if that indictment, instead of being taken before the grand jury, were taken before the judge? Having in mind, Mr. White, that as you know, and as I do, that very seldom does the Attorney-General exercise that right?

A. That is quite so, but I have frequently done it at the direction of the Attorney-General, but it only means one step backwards, back to the Attorney-General, if he is to do it himself, because he takes the responsibility in any event, whether it is through himself or his counsel.

Q. Did you ever have a no bill returned where you had been directed by the Attorney-General to prefer an indictment?

A. I can't ever recollect that there ever was such a thing.

Q. In your experience as Crown counsel, Mr. White, did you find that you usually got a bill in cases in which you thought a bill should be returned?

A. Yes, and sometimes they have been thrown out when I didn't think they should have been.

Q. Yes.

A. That is sometimes the grand jury found no bill, where I thought there should have been a bill, and sometimes they found bills which I was very doubtful about.

Q. Generally speaking, the result was usually in accordance with your own views?

A. Oh, taking it by and large, yes.

Q. Yes.

A. What I don't like about abolishing the grand jury is that it is an institution that was inaugurated for a specific reason, and for a specific purpose, and while our civilization has advanced to a point where that doesn't appear to be frequently necessary, I can easily see situations where it is entirely necessary.

Q. But Mr. White, are you not in the need of reconciling that view with the practice that has been adopted almost uniformly throughout the British Empire?

A. Quite so, quite so; I realize that, and I still hold it, notwithstanding.

Q. Just one more remark, if I may; I don't want to keep you unnecessarily, but it has been mentioned here; that is the question of special juries. Have you any views on that? Whether they should be retained?

A. Oh, I think, in certain cases, they are a very good institution.

Q. You think they should be continued?

A. Oh yes.

MR. MAGONE: Have you any views on the question of appeals from motions to quash indictment, Mr. White?

WITNESS. Well, I heard what Mr. McCarthy said about that, and what he said would be my view entirely.

Q. Do you think that in practice it might be used?

A. He mentioned the case of Rex and Bainbridge in that letter, and it happened to be my own case, so that is my experience.

Q. Do you not think it would be used unduly in cases for the purpose of delay only?

A. The delay couldn't be very great, because our Court of Appeal now is very well up on its list, and they can hear these things, or the appeal might be to a judge of the Court of Appeal.

Q. Yes, that might be a way out; of course, in Toronto the Assizes and the General Sessions sit for some time.

A. Almost continuously.

Q. But in the counties, the Assizes are usually over in a week?

A. Yes.

Q. So it would mean at least six months' delay in those cases?

A. Yes, well you wouldn't have so many motions to quash indictments if people had to stay in jail for six months.

MR. CONANT: One more observation, because I think it is quite vital to our own system; what is your own view about the onus of a jury?

WITNESS: That is as to whether it should be ——

Q. A matter of course or of application?

A. I would leave as it is, sir. My reason for that is this: when you get charging the litigant substantial fees to start with for the privilege of having his case tried you are getting back to the arbitration point, to which, in my practice, at least, I have been very much opposed; I never have an arbitration if I can avoid it. I never put an arbitration clause in a contract if I can avoid it, because there are courts set up by the country to determine questions arising under contract, and it is to them that I think the dispute, if any, should be handed. They are different in England, where they have the Board of Trade, which is accustomed to handling that sort of thing. They have such institutions. Now once you start having a man make out a case for a jury, then you start a new process of jurisprudence, you start a new series of precedents, what cases should be tried by a jury and what shouldn't, and what cases the jury should be allowed to try, and you get into a pretty hopelessly confused situation there for some time at least, until the matter could be clarified. Then, on top of that, I wonder if it is not so—I think it is—that a great many more cases, proportionately, are tried in England under their present system than are tried in Ontario.

Q. You mean a great many more cases tried by jury?

A. In England, and a great many questions are tried by juries in England

which are not tried by juries here, and in which under the practice, our judges would strike a jury notice out. I think you will find that that is the correct statement of the situation.

Q. I don't wish to challenge your statement, but I would doubt that.

A. Well, I think that is the situation. I know I have been surprised in reading the reports, and so on, to find that certain classes of commercial cases are tried by juries, which you would never think of trying here with a jury.

MR. STRACHAN: Very common practice.

MR. MAGONE: I think Mr. White is speaking of the practice before the recent amendment.

MR. FROST: Another very eminent lawer told me that too in private conversation, that that was the fact. I was very surprised.

MR. MAGONE: Whether or not this Act has been proclaimed or not I don't know; it is to be brought into force by proclamation, and it is to go out of force by Order-in-Council. I understand from Mr. Silk that it is now in force; and the section in question reads:

> "No question arising in any civil proceedings in the High Court or in any inferior court of civil jurisdiction shall be tried with a jury, and not writ of inquiry for the assessment of damages or other claim by a jury shall issue unless the court or a judge is of the opinion that the question ought to be tried with a jury or, as the case may be, the assessment ought to be made by a jury and makes an order to that effect."

So it is only where an order is made.

WITNESS: Quite so, but I say, notwithstanding that practice, and an application of some sort has been heretofore necessary, notwithstanding that, they try many more cases, I am satisfied, than we do.

MR. MAGONE: I think the Committee would like to have further evidence on that point.

WITNESS: Well, I am sorry I cannot give it to you; I am not challenging your statement.

MR. MCCARTHY: If you would let me send you, sir, a copy of *English Weekly Notes*, at the beginning of each it gives a complete list of cases tried by special and common juries and before judges, and I think it will bear Mr. White out.

MR. CONANT: But we are directing our attention, at the moment, to this fact; I understand Mr. White suggests that, with this reversal of the onus they try more cases by jury than before.

WITNESS: I don't say it is because of that, Mr. Attorney, I say it is notwithstanding that.

MR. LEDUC: They try more cases than we try here?

WITNESS: Yes, and a different class of case.

MR. CONANT: Well, that wouldn't get us anywhere; it's a question as to whether they tried more cases than they tried under the previous system.

WITNESS: Well, it is important, it seems to me, Mr. Attorney, for this reason, that under the present disposition of our judges, I don't believe you would get an order for a trial by jury in a lot of cases which are tried by jury in England.

MR. LEDUC: Mr. Magone, this Act was put into force very recently?

MR. MAGONE: Yes.

MR. LEDUC: Well, there is no way of getting any comparison then.

WITNESS: Except there was some such form of procedure before.

MR. MAGONE: Yes.

MR. CONANT: Mr. White, Mr. McCarthy rather suggested, outside of stating definitely, that the present system perhaps increased the litigation to the extent that cases where juries were available as a matter of right were not otherwise instituted or taken to trial.

WITNESS: Well, I suppose a great deal depends, Mr. Chairman, on whose ox is gored.

MR. CONANT: Yes. Well, thank you very much, Mr. White, for your assistance.

Witness excused.

MR. J. C. MCRUER, K.C., Bencher, Law Society.

WITNESS: Well, it is very kind of you to hear me, gentlemen; I shall not be very long. I will just try to take a few minutes. There are some things that I want to endorse, that Mr. White has said.

As you see, the Benchers were not unanimous in regard to some representations, and for that reason, no representations were made.

In regard to doing away with, or cutting down the functions of the jury in civil cases, I feel rather strongly that at this time, when all over the world there are inroads being made on democratic institutions, that we ought to go very slowly in cutting down any functions of the ordinary citizen to perform his duties in the system of government that we have. And, after all, the judicial system is just a part of the government, and at the present time I think it is a good thing for jurors to take part in the administration of justice, and go back to their homes and feel that they have had a part in administering the laws of the country. I think that is a very good thing. I happen to come from the

country, as I think perhaps most of the commissioners here at some time did, and when my father served on a jury, he came back and talked about it for a long time, and he felt that he had been performing a real function, doing his part in that county, and I think to take that away from the citizens would be a very serious thing just now.

As to the number of jurors in certain classes of cases, while the same principle applies to a certain extent, I don't believe that it would be a serious thing to cut down a County Court jury to six men. I can't see that that is going to be any very serious inroad on the democratic rights of the citizens. As to grand juries ——

MR. LEDUC: Before you leave the juries in civil cases, what about Division Courts?

WITNESS: Division Courts? It is not a practical necessity; it's so small, and after all these things have got to be looked at in the proper perspective, and when you sit down and have a jury trying a Division Court case, it's out of proportion altogether.

Q. There would be no harm done in abolishing juries in Division Courts?

A. No, I should think not, Mr. Leduc.

Q. Thank you.

A. Then in regard to the grand juries; again we come to the practical question, and looking at it in its proper perspective, if you have a man committed for trial and sent on, it does seem to be ultimately tried by a jury, that is ultimately tried by the citizens.

MR. CONANT: Or he may have a right to be tried otherwise.

WITNESS: No, he shall be tried by them; he may have a right to elect to be tried otherwise, but the law is that he shall be tried by the citizens.

A. Yes.

A. I can't see that there is any great inroad on fundamental democratic rights, if the grand jury is abolished. On the other hand, in respect to the protection against a vicious Attorney-General who might start out indicting people irresponsibly, I don't believe that is a very practical idea. But an Attorney-General that does that sort of thing probably wouldn't be Attorney-General very long. So that if he has to go to a judge and get a consent, it may be a safeguard, but really, should the Attorney-General have to have safeguards thrown around him that he can't prefer an indictment against a man? As far as I am concerned, if they feel it ought to be done, that there ought to be a judge consent first, why ——

MR. FROST: One point that bothers me just a bit there, is this, Mr. McRuer: in connection with grand jury procedure, there is a disclosure, to an extent, to an accused person, where the witnesses give evidence against him, there are cer-

tain rights that the accused has of calling witnesses or asking that a witness be placed in the box and sworn, and these are usually Crown witnesses, and the rights of cross-examination apply, and so on. It seems to me that, if you abolish grand juries, and you give the Attorney-General the right to prefer, if that is the correct expression, an indictment against an accused, that you may have sent a person to trial on a very serious offence, an offence which may involve the death penalty, without, as it were, any disclosure of the nature of the case against him, the names of the witnesses, or anything of the sort. Now it seems to me that, in our criminal procedure, that that is one place that an accused person is entitled to a certain amount of protection. It seems to me that an accused person is entitled to know the nature of the case against him, and to have rights of cross-examination. For instance, a person may be a Crown witness, and an accused person is really precluded from going to that witness and finding out what the evidence is. I am just a little afraid on that particular point.

WITNESS: Well, Mr. Frost, if we take first the procedure that we have now ——

MR. CONANT: Yes, that's right.

WITNESS: The Attorney-General may prefer a bill of indictment; any person, with the consent of the trial judge, may prefer a bill of indictment; I can go down and, with consent of the trial judge, without being employed by the Attorney-General at all, and prefer an indictment; any person may do so.

Q. That's right.

A. And with the consent of the trial judge, prefer a bill of indictment against a man. Then if a grand jury finds a true bill, that man goes on his trial, and there is no disclosure of any evidence that was given before the grand jury. True, a list of the witnesses heard before the grand jury goes on the indictment, but that doesn't mean that he's got to put all his witnesses on the indictment; he may call any number of people, whose names are never disclosed to anyone, to give evidence at the trial. Now I think the only thing say that an accused must have the right to cross-examine the Crown witnesses, and have the nature of the case, you must do away with the right to the Attorney-General to prefer a true bill.

MR. FROST: Well, that's just the point. I rather think the right of the Attorney-General should be done away with.

MR. CONANT: Oh no.

WITNESS: Oh, well, I think that would be a very serious inroad on the rights of the Attorney-General to administer the law.

MR. FROST: Well, on the other hand ——

WITNESS: If a magistrate refuses to commit the man for trial, is the Attorney-General never to have a right to bring that man to trial? Because he may be a friend of the magistrate's? Why, you would have to start up a new

criminal procedure altogether, because the right of the Attorney-General to prefer an indictment existed long before we had any rights of preliminary hearing, or anything of that sort.

MR. FROST: But let me get this straight; supposing a man is brought up on a preliminary hearing before a magistrate.

WITNESS: Yes?

Q. The magistrate refuses to commit.

A. Yes.

Q. The Attorney-General then exercising his rights, prefers an indictment and it goes before the grand jury.

A. Yes.

Q. And either a true bill is found, and he goes on for trial, or a no bill is found and he is dismissed.

A. Yes.

Q. After all, that accused person has a lot of protection; he knows the nature of the case against him. In the preliminary hearing, witnesses are heard, and so on, and if they are wrong the case is dismissed; if the Attorney-General is wrong in his judgment, the man is in jeopardy, but he goes before the grand jury, a considerable number of witnesses are heard, and all told there is a considerable amount of protection there. One of the great arguments that I hear in connection with the abolishment of grand juries is this: that grand juries have become sort of a fifth wheel on the cart. But take the fact that we have now an elaborate system whereby a man is brought up on preliminary hearing, witnesses are heard, and the magistrate, if sufficient evidence is there, sends him on for trial. But if you permit the Attorney-General to lay the indictment directly, then he doesn't have the protection of a preliminary hearing, and the grand jury is done away with and he may be thrown on trial for his life without anybody going over the matter at all. Now it seems to me that if you are going to do away with grand juries and if you are going to be consistent about it, if you say grand juries have become a fifth wheel on the cart, then the Attorney-General should be put in the same position as everybody else and go back to a preliminary hearing.

WITNESS: Well, I think that, at any rate, would be very dangerous, that the Attorney-General had no immediate right of procedure unless there was a committal for trial.

Committee rises until following morning.

EIGHTH SITTING

Parliament Buildings, Toronto,
April 11th, 1940.

MORNING SESSION

MR. CONANT: All right, Mr. Magone.

J. C. McRUER, K.C. (recalled).

MR. LEDUC: I believe you had reached the stage where you were speaking about grand juries?

WITNESS: Yes, Mr. Frost raised a question at adjournment with respect to grand juries that he asked me to give some thought to.

MR. CONANT: Is there any other aspect that you would like to touch on before Mr. Frost comes?

WITNESS: Yes, I can probably do that later when he's here. In respect to putting the onus on the party that applies for a jury—the civil litigant—to pay the cost of the jury, or putting it as a matter of a cost of the trial by jury, I don't believe that this, again, is the time to put that financial responsibility on a man to pay for the tribunal that tries his case. If it's right that his case should be tried by a jury, it seems to me that the State should provide the jury judges in the same way as it provides the judge, and that, after all, could be and would no doubt be interpreted as class legislation.

The wealthy man or wealthy organization that wants to have a jury can have one, but to ask the litigant to put up a $100 or so to provide for the costs of the jury is a pretty heavy hardship on him. I know that that is the rules in the province of Quebec to a certain extent.

Q. That's the rule, that they do pay in the province of Quebec.

A. That they do pay in the province of Quebec, yes.

Q. Yes, and are there not some other jurisdictions on record, Mr. Magone, that follow that?

MR. LEDUC: Well, there are very few jury trials anyhow.

MR. CONANT: Well, never mind, we have them on record anyhow.

WITNESS: My opinion is that it would be rather unfair to the poor man.

Q. May I make this observation with which you can deal as you see fit: have we not a semblance of that discrimination at the present time when we allow a man with means to have a select jury, a special jury, and the man without means takes the jury as it comes?

A. There is a semblance of it, and if you could have a jury selected with the same wisdom as a special jury is I'd be in favour of pursuing that course and doing away with the special jury. I listened with great interest to the discussion that took place yesterday as to how you could improve the selection of jurors, how you could get a better type of juror.

Q. Well, we'd be glad to have your views on that.

A. Well, I can't say that I can contribute much on that, except to say this: that you do get a better type of juror for the grand jury panel than you do for the petit jury panel.

Q. Let me see, in the statutory provisions re grand jury selections the terms are rather broad.

A. Yes, your special jury is selected from the grand jury panel.

Q. Yes.

A. Now, you get on that panel, as Mr. White said yesterday, or Mr. McCarthy, men who are bank managers, men who are holding very high responsible positions. Why shouldn't they serve on petit jury? After all a petit juror isn't required to serve probably more than two weeks. Here in Toronto they change the panel every two weeks; surely a man occupying any position in the province can give two weeks of his time, probably once in his life time, to take part in the administration of justice.

Q. Well, following the discussion which took place yesterday, Mr. McRuer, I would like to make this observation and have your reaction on it: supposing the grand jury were abolished and that we made part of the petit jury system the qualifications that are now set up, or might be revised to some extent for the petit jury, what would you think of that observation?

A. Well, I presume the qualifications that are now set up for grand jurors ——

Q. Well ——

A. Well, my own view on that would be not to make them as highly restrictive as the qualifications for grand jurors but raise them, at any rate, and you could do away with your special jury. After all, your special jury is used very few times; I have only had one special jury.

Q. I think that the present phrasing to designate who shall constitute special jurors is pretty broad and rather indefinite and is nothing more than a guide to selectors ——

A. Yes.

Q. —— according to the statutory provision.

A. Well, you have even that on your guide to the selectors for petit jurors.

MR. STRACHAN: It may follow that from the occupations that are given for the petit jury you would have a pretty good idea of the calibre of a man, would you not, Mr. McRuer?

WITNESS: Yes, I think so, and there are certain municipalities in which they have greatly improved the selection of the petit jurors by just careful supervision by the county judge.

MR. CONANT: I think we have to bear this in mind, gentlemen, and Mr. McRuer, that unless by statute we are setting out some formula or some yardstick you can't expect any different system to that which we have now. The question is, what is that formula, what is that yardstick, is it a formula now applied to grand juries, or is it some other formula or yardstick?

WITNESS: You make make it something less—the formula applied to grand jurors seems to work fairly satisfactorily, you're getting a pretty fine type of men for grand jurors.

Q. Yes.

A. Now, couldn't you apply a similar formula, but probably not as restrictive, to petit juries?

Q. Well, of course the Legislature is supreme and can apply any formula, but we are still groping for the formula.

A. Well, I don't know that I can help you very much on it.

Q. All right.

A. But if you read strictly the formula applied for petit jurors you'd find that it's not a bad formula if it was carried out. I've forgotten the exact wording, but men who, from their "reputation, integrity and ability", or words of that sort, would make good jurors. Now, I think it comes back to this, that probably the man who selects the juror, in the first instance, isn't as carefully supervised as he might be.

Q. You see, this is evidently not new to me because for years I have given some thought to it and I have been able to discover a formula. In some of the western provinces—I think this is true, Mr. Magone, you have the data on it—they set out definite avocations applying to accountants, bankers, real estate agents and so on, is that not right, Mr. Magone?

MR. MAGONE: Yes.

MR. CONANT: Looking it over myself I doubt very much whether setting out definite avocations of that kind would be a proper formula.

WITNESS: There was a time here in Toronto, a number of years ago, I think, when really the number of unemployed that were on the special juries was out of all proportion to what it should be. You'd pick up a panel and you could hardly choose a jury without getting six or seven unemployed men on it. Well, that could be corrected, surely, because after all ——

Q. Well, do you think it would be proper and feasible for us to apply qualifications, according to their vocations, for jury men?

A. I don't think so without creating an awful lot of dissatisfaction.

Q. I didn't think so.

A. And, also, discrimination and that sort of thing.

MR. FROST: Well, actually, if the present system were really conventionally carried out there isn't very much that we can suggest beyond the fact that perhaps the exceptions are very broad.

WITNESS: Well, as I was saying before, I don't see why you couldn't get the standard of petit jurors almost up to the standard of grand jurors by pursuing the same course you pursue with grand jurors. That is the reason in England ——

MR. CONANT: When you said "pursuing the same course" you meant applying the same formula?

WITNESS: Not exactly the same formula. That is the reason why some of these English involved commercial cases are tried by grand jurors because up to the time they have had a very much higher standard of jurors than we have.

Now, Mr. Frost, I gave some consideration to the question you raised last night and asked me to consider over-night. In respect to the safeguard that might be given to an accused person from prosecution by the Attorney-General on a bill of indictment or on a charge, it would be to supplant the indictment presented by the Attorney-General without any other body intervening. It does seem to me that if the consent of a judge was required, then it would cover that whole situation. Surely a judge is capable of consenting or withholding his consent just as much as a grand jury. The judge has power to try a man and send him to jail for life and so on, if it is necessary to have any such consent, but I don't know ——

Q. I want to interrupt you for a minute. Are you referring to the proper form, a consent as it prevails or a consent along the lines that was discussed; that is to say, after examination by a judge in much the same manner that the grand jury does now?

A. Oh, I would think that there would be no occasion for prescribing by a statute what sort of an examination the judge is to hold.

Q. H'm, h'm.

A. Because, after all, if the judge is required to give his consent he has a judicial authority and he should inform himself properly before he gives a consent. I don't think we need anticipate that judges are going to give their consent in cases like that without giving it in a good case.

MR. FROST: Well, Mr. McRuer, what has bothered me about this thing is

this, that any references to the Attorney-General doesn't mean that we think Mr. Conant is unfair because I don't think that there is a man who would be fairer to an accused person than Mr. Conant, and I think that that is true of past attorneys as well. I think that they have all tried to administer the law well, and I don't think that they have ever had the slightest intention of being unfair—and probably they haven't been. But it seems to me that there is this difficulty that you have to meet.

First of all there are the safeguards to an accused person. Now, Mr. Magone and I just don't see eye to eye in this; he says that perhaps he has the Crown-attorney complex and perhaps I have the other complex. But you have certain safeguards which have been given in the course of law, and these safeguards really amount to what the man on the street calls "British Justice". For instance, he is entitled to know the nature of the charges against him.

WITNESS: That's in the statutes.

Q. Yes, and he should know—I think that it is fair and proper that he should know, despite what the other opinion may be, the nature of the evidence as it were, and have some form of discovery. I fear that we must be careful, particularly in the administration of criminal law, not to allow the man on the street to think that justice is merely limited to judges and lawyers. I will agree with you, I think there are a lot of useless things about grand juries, and I think that if the grand jury system were continued it should be revised entirely; but, nevertheless, there is this to it, that it has the intervention of twelve men who protect a subject against unjust prosecution and give that feeling to the man in the street. That is very important in these days when we are faced with the difficulties that we are and, furthermore, you do give him certain rights that have been in the past important rights.

Now, take the matter of calling—that little matter of his right to take the witnesses who are named in the indictment and put them in the box and make them subject to cross-examination. To a Crown counsel that may not appear important, but to an evidence lawyer and actually from the standpoint of the subject who is being accused that is something of much importance.

First of all I have often thought that in our criminal law we haven't too much discovery at that. Now, Mr. McRuer, you have been a Crown counsel and you have been a very fair one, and I think myself that an accused person should have all the protection possible against, for instance, Crown counsels who take cases as from a personal standpoint.

WITNESS: Well, Mr. Frost, I entirely agree, in principle, with everything you have said in respect to the rights of an accused person, and we ought to, at this time, protect those rights as judicially as we can. In doing so we never want to put the prosecution of criminal cases in this position, that you have thrown out so many things for the accused person that will be counteracted and must necessarily be counteracted by a different attitude in the respect of the Crown, and that the Crown must never be removed from a semi-judicial position.

MR. CONANT: Hear, hear!

WITNESS: That is, that the Crown has the duty to protect the rights of an accused person. Now, if you're going to, by statute, protect those rights as against suggestions that the Crown is going to be capricious and vindictive and go after people as they may do in some other jurisdictions, then you're going to, by statute, recognize that the Crown has no longer ——

Q. Yes.

A. —— a semi-judicial position to fill and in itself has to protect the rights of the accused person. Now, that's the fear I have, of recognizing that an Attorney-General should ever act on any other principle than that he is an authority who must be very careful in protecting the rights of an accused person, because once you do that, then you're going to put the accused person in this position, that he has his rights, the Crown will quote their rights, and they will fight it out each, say, in a civil case. That would be very unfortunate in our administration of British justice.

MR. CONANT. Yes.

MR. FROST: Of course I entirely agree with that; I agree that the Crown has a great function to perform, and I agree that furthermore while we are recognizing the rights of an accused person we shouldn't fail to recognize that the public have rights and the administration of justice is paramount. But do you think that at the present time there are too many safeguards for an accused person?

WITNESS: Oh, no.

Q. Well, the point is this: why abolish it, why do away with it? It may be that grand juries are now the fifth wheel to the cart, but, nevertheless, if there are safeguards there couldn't we, in substituting something for that, protect the accused on that point?

A. Well, the only thing I suggest, if it is necessary, is that you do it by the consent of the judge. But you've got this, that the judges have a different attitude of mind toward a prosecution that is launched by indictment rather than by preliminary hearing.

MR. CONANT: Yes.

WITNESS: If you apply for particulars the judge will order particulars every time where there has been no preliminary hearing, and they will order rather voluminous particulars on that very ground. Any accused has a right to demand particulars, and the whole attitude is that the Crown must be fair to the accused in letting him have full knowledge of what he's standing trial for, but even now the Crown isn't required to disclose all the witnesses to the accused. If you're going to put the Crown in that position you're going to have a demand that the accused is going to have to disclose all his evidence, so you'll have an examination for discovery on both sides. I think that after all the soundest way is to leave it that the Crown is a semi-judicial officer that must seek to do justice fairly and justly and not anticipate by statute that he's not going to do so.

MR. MAGONE: A pure fountain of justice, Mr. McRuer.

WITNESS: He should be, and I think that in this province, in my experience over a number of years in both prosecuting and defending, I have found the Attorney-General to proceed most conscientiously in that way.

MR. FROST: Well, of course other people may say that grand juries have other important functions that are just as important as that one, but that is the one that appeals to me ——

WITNESS: Yes.

Q. —— as being a safeguard. Mr. White, for instance, who was here yesterday, talked about the grand jury and his feelings were that that is something which has been handed down over a great period of time. What I would like to do is this: I would like to see something devised that would save the various protections which have grown up over years and which we do count as being valuable, and which members of our profession count as being valuable, and discard the expense and cumbersome and useless parts of the system.

Now, that's the only reason that I suggested that there should be something to take the place of, something to stand between. There was a suggestion made—I don't know just who made it, perhaps it was Mr. Conant himself—that in cases which are normally grand jury cases if there is, for instance, a preliminary hearing that the accused must have the right, in the case of the abolishment of the grand jury, to ask that there should be a rehearing, say, before a county judge.

MR. CONANT: No, that wasn't my suggestion.

MR. FROST: Well, somebody made that suggestion.

MR. LEDUC: Mr. McCarthy.

MR. FROST: Oh, yes. Well, that should be if he felt that the preliminary hearing was just a matter of form and that the magistrate had committed him on what he felt to be proper evidence, then there should be in effect a form of appeal from that to a county judge or to a Supreme Court judge. Now, I haven't considered that angle in the matter of the ordinary case where there's a preliminary hearing, but I do think this, that in cases where an indictment is preferred directly by the Crown and you're abolishing the grand jury, there should be some intervening person, judge or body of some sort that would review the evidence and give the accused person the benefit of the protection that we now have.

WITNESS: Well, I think I probably have given all the assistance I can from my own view. I know it can be argued from both sides.

MR. CONANT: Mr. McRuer doesn't think that the review of the evidence such as we have discussed might take place before a county judge would be necessary, that a formal order of the court would be sufficient; that is your view?

WITNESS: Oh, yes. Well, I really think that, after all, you wouldn't be gaining anything by abolishing grand juries and then providing any mode of appeal from a committal for trial.

Q. Oh well, personally I have no notion of that.

A. No.

Q. But it does impress me that where the Attorney-General has an indictment it would be, perhaps, a desirable safeguard that those cases, which are very rare, should go before a judge and that he should review them.

A. Well, he should give his consent to the indictment and the charge. After all, I don't think the judges would like ——

Q. Oh no.

A. —— the disregard of the duty under the statute.

MR. FROST: I would like to say this in regard to Mr. Conant. Mr. Conant, the session before last, introduced certain amendments to the Coroner's Act which I thought were very fair and reasonable; I thought they improved the Coroner's Act considerably from a standpoint of fairness. So that any reference I make to that isn't any reflection on his fairness.

MR. CONANT: I think we understand that, Mr. Frost, thank you.

MR. FROST: But five years or ten years might make a big difference.

MR. CONANT: Anything else, Mr. Magone?

MR. MAGONE: I just wanted to ask Mr. McRuer a question arising out of this discussion. If the Attorney-General preferred a charge and that charge had to go before a county judge, then the Attorney-General would be in a different position from that of the ordinary man in the street, wouldn't he?

MR. CONANT: Yes.

WITNESS: Oh, yes.

MR. MAGONE: The ordinary man in the street can prefer a charge before the grand jury with the consent of the judge.

WITNESS: Yes.

MR. FROST: Well, of course that would apply to everybody; I mean any indictment that is preferred that way.

MR. CONANT: We have almost boxed the compass on the discussion of that item. Then you read Section 73 there, Mr. Magone; I think it would throw some light.

MR. MAGONE: Reads Sec. 73:

> "The Attorney-General or anyone by his direction or anyone with a written consent of a judge of any court or with a written consent from

the Attorney-General may prefer a bill of indictment for any offence. Any person may prefer a bill of indictment by order of the Court."

MR. FROST: That goes before a grand jury and then on to the other, the Criminal Court.

MR. MAGONE: Yes. And with respect to, Mr. McRuer, Mr. Frost's inquiry where someone has been committed for trial without sufficient evidence, a motion to quash the committal may now be brought?

WITNESS: Yes, if there's any evidence to support the committal, of course the motion to quash wouldn't be successful.

Q. Yes.

A. But if he just capriciously sent him on to trial without any evidence at all, it may be quashed.

MR. CONANT: Well, just before we leave that—I don't want to prolong that discussion, I'd like to have your view on this angle: supposing grand juries were abolished and, in an entirely different situation from what we discussed, cases are committed, then, by the magistrates and go direct to the petit jury, what would be your views of the provision enabling the Attorney-General, in any case after committal, to direct that the bill should go before a county judge, having in mind this fact, that there are always possibilities of error, always possibilities of situations or evidence developing after committal that might alter the situation?

WITNESS: That is, that the Attorney-General would direct the county judge, we'll say, to review the committal for trial and hear new evidence?

Q. That the Attorney-General would have the right, in cases of committal, to direct the bill of indictment to go before a county judge who would function exactly the same as a grand jury.

A. As a grand jury?

Q. Yes.

A. Well, it might be an additional safeguard to the accused person.

Q. Does it not occur to you, Mr. McRuer, that without that the only way of disposing of a case which the Attorney-General might fear shouldn't go to trial is by *nolle prosequi?*

A. Yes, and that is an unfair position to put the Attorney-General in.

Q. That's a very undesirable position to be in?

A. Yes.

Q. And it's a position, or it's a procedure that is very rarely exercised at the present time.

A. I had thought of an alternative procedure that I just throw out for the consideration of the Committee, and that's all: that grand juries be abolished, except the Attorney-General or an accused person may apply to a judge to convene a grand jury, and if he shows a case why a grand jury should be convened, and the matter should go before a grand jury, then they may subpoena a grand jury and have the grand jury hearing.

Q. I point out this difficulty: the grand jury lists are made years before, there's a tremendous amount of preliminary work.

A. Well, that might be simplified in some way by statute, it's quite true, but then, if that course were followed, it would meet Mr. Frost's criticism, and would still leave it to the Attorney-General to have a grand jury empanelled to hear an indictment preferred by himself. If he wanted to start without a preliminary hearing held apply for a grand jury to be empanelled. It's quite true, that under our present statutory set-up for subpoenaing grand juries and striking panels, that would be very cumbersome, but a simplified method might be devised for subpoenaing men of a certain standing. The sheriff subpeonaed twelve men of certain standing in the community to act as grand jurors at the present time. That's a very loose sort of suggestion, but it's one of compromise, at any rate.

MR. CONANT: Yes.

MR. FROST: Well, I wouldn't want you or the Committee to feel that I'm just raising a point which is a mere technicality, and in which there isn't any force, but I am impressed by this. First of all, in the administration of our criminal laws, and particularly these laws that relate to indictments, in many cases you're dealing with matters of life and death, and a death penalty, once it is imposed, is irrevocable and there's nothing that can be done to make amends for it at all. I do feel, therefore, that as long as we retain the death penalty we ought to, in the criminal matters, exercise the greatest possible care and caution.

I think it is part of our sense of justice that that should be done. In other cases, I agree that it isn't so important. I know of a case, not long ago, in which a man was convicted wrongly, as appeared by evidence that subsequently came out, and in that case my good friend, here, exercised his good offices to obtain the pardon through the Administrator of Justice in Ottawa. Well, in that case the damage may have been something that was of great inconvenience and very unpleasant to the accused, but it wasn't irrevocable.

Now, in the case of a death penalty, that is just the situation.

MR. CONANT: Well, it seems to me we have covered that pretty well with Mr. McRuer.

WITNESS: I think I've done all I can.

Q. All right, Mr. McRuer, have you anything else?

A. In regard to the alternative jurymen in criminal trials, of course, if it's only to be applied occasionally, where there's going to be a long trial, or something

like that, there might be advantages in it. Mr. White said yesterday: "I have only had an occasion once where a juryman took ill, and in that case the defence counsel consented to have the case proceed with eleven jurors." Of course, he had no authority to do it at all, and he stuck by his consent and accepted the verdict of the jury, but I think that a statute might give them the right to consent.

Now, the question of appeals from motions to quash indictments, came up yesterday for discussion. There are one or two cases in our courts, very few go back over the last five years, where a trial has been set aside in the Court of Appeal on the ground of defective indictment, and I think, as time goes on, that there will be less. I think it's rather a pity to provide an entirely new procedure of appeals in criminal cases of one or two cases. We don't want our law to get into a mass of technicality in regard to the administration of the criminal law and, as was pointed out yesterday, having an appeal taken of a motion to quash an indictment at the assizes sitting at Whitby, a motion to quash an indictment and then an appeal from it, and the whole thing is thrown over for another four or five or six months, with the possibility of losing witnesses and parties dying, and so on. That's getting rather to the American procedure of appeals. I don't believe that there's any great need for it at the present time.

As to assessors and experts, I think, is about the only other one that I have any desire to comment on, unless there's something the Committee wishes to speak to me about.

MR. MAGONE: Mr. McRuer, owing to your experience, we'd like to have your view on the question of appeals in summary conviction matters, whether it should be on the record for the magistrate or a trial *de novo* as at present.

WITNESS: Well there, again, your trial *de novo* is a protection to the accused person, but just why there should be that much more protection in a small matter, and why, in a case of murder, there isn't that, is a little hard to justify, I think.

MR. CONANT: Don't you think that substantial justice would be done if the appeal were already on the record?

WITNESS: I would think so.

Q. We do it in liquor cases now.

A. Well, why greater rights on the small cases than you have on the large cases?

Q. Yes, you appeal on a murder trial ——

A. The reason that you have that right is this: years ago, as you well know, there very seldom was a court reporter in the court in summary convictions.

Q. That's all changed.

A. But if the evidence is taken down by a competent court reporter, I think there can be an appeal on your records. If, however, there's a trial, as they do occur yet—take a case of common assault out in the country tried by a Justice

of the Peace; he will take it down in long-hand and probably will only take some parts down and not others.

MR. FROST: The part that impresses him.

WITNESS: Yes. It would be very unfortunate to have an appeal restricted to his notes.

MR. CONANT: But adopting your suggestion, supposing the practice were that where there has been a stenographic report that appeal should be taken on the evidence; would that be sufficient?

WITNESS: Perfectly sufficient.

Q. Yes.

A. Now, in respect to employing experts to sit with the judge on the basis recommended in the Master's report at page B71; there are two or three aspects in connection with this. In the admiralty cases, we know that there is the right to appoint an assessor who is an expert in seamanship and nautical matters, and who sits with the judge and advises the judge. They don't call experts in respect to the matters they deal with.

Mr. Justice Davies, in a judgment, regretted that the Supreme Court had not the right to appoint experts to sit with them. That case is Tordens Kyold vs. T. A. Euphemia, 41 Supreme Court, report page 154. There, of course, the appeal was on the record, they had no expert to advise the court and the judges evidently felt that they ought to have that.

In another case in the English court, the function of the nautical assessors is set out in these words:

> "The English practice as to the effect of evidence, as to matters of nautical skill and practice, and as to the deduction to be drawn from nautical facts, is inadmissible and will not be allowed to be given. The function of the assessors is not to decide questions of facts arising in the case, but to advise the court upon nautical matters. The decision of the case rests entirely with the judge. The reason why expert evidence is not admitted is that the court would be inundated with the opinions of nautical men on the one side and opposite opinions on the other, to the great expense of suitors, and the great delay in the hearing of the case, and with no benefit whatever."

That is Harbour Commissioners of Montreal vs. Universe 1906, 10 Exchequer Court, reports 305. Now, that is layed down in principle, and one obviously says: "Well, why couldn't that same principle be adopted in many of our civil cases?" If the legislation was very carefully worded, it might be that the Rules of Practice as we have them now, might be extended, but I only point out to the Committee that our Canada Evidence Act and our Ontario Evidence Act, which deal with opinion evidence, are broad; they don't deal with expert evidence, it's opinion evidence, and anyone who offers an opinion on any matter, and whose opinion is accepted as evidence, comes within those statutes.

You'll get, in some cases, men who will give expert, or opinion evidence, on four or five different matters. In the ordinary automobile case, you'll have men who qualify as experts to give medical opinion. You'll have, in the same case, an automotive engineer, as they call them now, who qualifies to give an opinion as to how the cars came together; he's an expert, having examined cars for many years. You'll have a police officer who gives an opinion as to in what distance a car was stopped. You'll have, also, the police officer who will give an opinion as to whether the man was drunk or not, qualifying himself from his experience in seeing men who are drunk, and his opinion is accepted.

Well, I was just thinking what you're going to do. If you're going to have experts on the bench, you're going to have experts in drunkenness, experts in automobile cases, and medical experts, a whole row of them. I don't suggest it as an objection to the principle, and that the problem can't be solved. The problem that is desired to be met is this, that you'll have a free medical expert saying one thing and a free medical expert saying another thing, and the judge wondering what to do about it. You get very complicated questions in engineering and electrical matters, and so on.

But in passing any legislation in respect to it, you'll have to be very careful that you don't tie up the court in such a way to make it very difficult to practice in the ordinary way. They won't do it. If you put it past this, that the parties may agree on the appointment of an expert by the judge, who will sit with him, and who will be the expert on any particular subject matter, but not the expert in respect to all matters involving expert evidence ——

MR. CONANT: But I didn't understand that the recommendation went any further than that.

WITNESS: Well, it's not just clear how broad it is.

> "I recommend that the Supeme Court Rules of Practice be so amended, as to provide the necessary procedure for the appointment of assessors or experts to assist the trial judge."

Now, is that to be appointed by him as of right, so that he may appoint a man without the consent of one of the parties, who will just be the expert in the case? After all, you know, even in getting an expert to assist you at a trial, the length of time you'll have to spend with him getting him conversant with the facts.

Q. And yourself conversant with the answers, too.

A. Well, that's more important still.

Q. I wasn't referring to you in that case.

A. No, but you have to train the lawyer, to a certain extent, on what questions to ask.

Q. But Mr. McRuer, it seems to me that on this issue there's considerable confusion; what if we limited it to this: supposing we had a practice, that upon the application of either party, the court could appoint an expert who would sit

with the judge and advise the judge on whatever you like, the branch of scientific or specialized information that is to come out, and that upon the appointment of that man expert testimony would not be abused, that the witness would then deal with their observations and facts, it seems to me that would be tremendously helpful.

MR. FROST: How would you get around Mr. White's suggestion of yesterday? Did you hear, Mr. McRuer, what he said about that? The difficulty was to get the expert who has an open and judicial mind; some experts are convinced that a certain attitude is right, whereas, that may be the very contention in connection with the expert evidence.

WITNESS: Well, that's an obvious objection, but, of course, they do manage to get over it in the admiralty cases.

MR. CONANT: Oh yes.

WITNESS: But, I wonder if it should go further than at the present time, at any rate, to see how it would be tried out, to have the parties agree that that should be done. For instance, we know that in our courts, the judges get to know certain people, and they have fancies for those certain people who are in expert positions—positions to give expert evidence. The judges get to know them pretty well, and if you applied for an expert accountant, I have a pretty good idea who the judges would appoint in nine cases out of ten, and I don't know that to give them the arbitrary power to select anybody they wished would ——

Q. If you take the present Rule 268, "The court may obtain the assistance of merchants . . . " so on and so on, "in such ways that they see fit to better enable them to determine any matter of fact in question in any case of . . . ", etc., etc. Well, that rule is all right so far as it goes, but it doesn't in any way count the amount of expert testimony that is hurled around in the court.

A. Not a bit.

Q. Well now, if you enlarge that to this extent; adopting your suggestion, that instead of both parties the court could appoint an expert, either concurred in by both parties or selected by the court, and that the appointment of that expert would terminate the matter of expert testimony as on that issue ——

A. I think it would be a very fine start in the right direction.

Q. Wouldn't that be a start in the right direction?

A. Yes, I think so.

MR. FROST: We are all agreed no injustice would be done, and we'd see how it would work out.

WITNESS: Yes, and you would get a practice worked out that would meet with the approval of anyone.

MR. CONANT: It couldn't possibly be a hardship if both parties agreed there's

opportunity for unlimited testimony—my man isn't too wealthy, but yours is, so let us agree on one expert to sum up the actual evidence that is given, and tell the judge what the scientific conclusion is. It seems to me that would be a real step.

WITNESS: Yes; of course, I thoroughly feel that in framing any such legislation you must be careful—no doubt Mr. Magone would see that you were—that he would not be a finder of facts.

Q. Oh, no.

A. And that the judge would not be compelled to accept his facts; that he merely be an adviser to the judge, because otherwise you would be making him a Supreme Court judge, and you have no constitutional power to do that. Well, I think I have covered everything I had.

Q. Well, I don't know that you have touched on this—and I think it's important—the question of onus in juries. You didn't discuss that with us, did you?

A. Oh, my suggestion was that that shouldn't be altered; I agreed with what was said, that this should not be altered. At the present time, juries really are restricted to common law actions, and then if they are too involved, they would strike out the jury notice. There's getting to be a greater tendency all along, I think, to take cases without a jury, especially in the criminal courts in Toronto, more elections for trial without a jury than before, and I think that to introduce the British practice, which looks to me like a war measure, at the present time isn't ——

Q. Well, we're at war too, Mr. McRuer, you know.

A. Yes, I know, but I don't think that we have the same call yet for the introduction of that. If it is introduced, it should only be introduced as a war measure. But I think the judge can decide that it's not a proper case to be tried by a jury.

Q. Oh, yes, but the onus is upon the person challenging.

A. Yes. Well, I think it still should be; that's my own view, Mr. Attorney.

Q. I'd like your views on this, because it has been discussed here, and I think that it is important too: at the present time the appeals from Division Courts, say it's $150.00, goes to the Court of Appeal; don't you think substantial justice would be rendered if they went to the single judges of the Supreme Court?

A. Well, personally, I don't see any reason in the world why they shouldn't go to a single judge, the same as the motions to quash convictions and things of that sort go to a single judge.

Q. Even more important.

A. Much more important than an appeal in respect to $150.00.

Q. Doesn't the present system add a lot of procedure and expense? You have to have how many copies of the evidence, five?

MR. MAGONE: Seven copies, and only three of them used.

MR. CONANT: Yes.

MR. FROST: What court is that?

MR. CONANT: Division Court.

WITNESS: I think I'm quite agreed that Division Court procedure should be simplified to the greatest degree, and made as inexpensive as possible; that any means that will simplify Division Court procedure is very, very important.

MR. CONANT: Have you any view as to six-men juries in County Courts?

WITNESS: Yes, I expressed the view that I thought that six men could handle a county court case as well as twelve.

Q. Oh!

MR. LEDUC: I thik you said that it might not be a serious thing if it were done.

WITNESS: No.

MR. MAGONE: That's all I have.

MR. CONANT: Yes. Thank you very much Mr. McRuer.

Witness excused.

G. T. WALSH, K.C.

WITNESS: Mr. Chairman, gentlemen, while I am a bencher of the Law Society, of course, I can only talk as an individual member of that, and not on behalf of the society. Mr. McCarthy, the treasurer, very fully, yesterday, I think, stated, and quite frankly, too, what step the Convocation authorized to be taken, but I wish, as a practising lawyer and as a bencher, and from what I know of the public, to just add a word on behalf of juries. I would say that the public that I know and that I represent believe in juries.

MR. CONANT: What are you referring to, petit or grand juries?

WITNESS: I refer to all juries. My opinion is that this report is an attack upon the fundamental jury system. In my opinion it is an attack upon a man's fundamental rights, the rights that he has had, since the days of Magna Charta, to have his case tried by his fellow men, and as long as he has that right, why should that right be taken away from him, unless there's a real good reason shown? Now, when this matter has come up for discussion—we have had several at Convocation—I have always asked: "Who is asking for this change,

and why? Why is this change asked for?" Mr. McRuer said that he thought a six-man jury would be all right, that was his personal view. Well, if it's a six-man jury, why not a three-man jury? Why do you need a twelve-man jury in a Supreme Court in a criminal jury? If cases are to be tried, in my opinion, they should be tried right; if a case is worth going to court a man is entitled to have his case tried and tried properly.

There are a great number of people in this province who don't want their cases tried by a judge, they want their cased tried by a jury, and I submit that they should still have this right: the right to have that done. There have been a lot of reasons advanced and, as a matter of fact, the reasons go right to the very foundation of the jury system; they may be old reasons, but I submit that every one of them are sound reasons. When a man says: "I want my case decided on that evidence by men of practical experience," why shouldn't he have it tried that way? That's the question. Perhaps I shouldn't be putting the question to you, gentlemen, but that is the question I have always asked, and I have never heard a satisfactory reply to that.

Now, this report, in my opinion, is a direct attack on that fundamental jury system; it is the thin end of the wedge, and just the beginning of an agitation to take away a man's fundamental right to have his case tried by a jury; and that is my objection to the clauses in that report dealing with juries. Before mentioning grand juries, let me say that lawyers may have different views, and I think, Mr. Attorney-General, you quite properly made the remark, yesterday, that the profession is not their view, it's the public's view. I think you're quite right, there may be divided opinion among the lawyers, but what of the public?

MR. CONANT: Well, we'll have to take an open poll, is that what they call it?

WITNESS: Last night as I was talking with a lawyer, we met a man, and I said: "Let's stop this man and ask him a question." I said to this man: "If you were in an accident, who would you want your case tried by?" The man said: "I want justice and I'll have it tried by a jury." Exactly, and as a matter of fact, that's just what the judges say.

Mr. McCarthy, yesterday, referred to the report of the judges of the Supreme Court. Now, I don't know whether you notice they are very, very strong on the question of these juries, and I believe that that is an unanimous report. I don't know whether I'm at liberty to refer to that report at all, but I understand, sir, that a copy was delivered to you, and the reason I mention that at this stage is this: you're all lawyers, you may have your own individual views on the jury, one day you'll have a real victory by a jury and you think they're fine, the next day you may not, and you don't think very much of those juries, but the judge sitting on the bench, who is far removed from one side or the other, who has no financial interest in the matter whatsoever, who knows not only the juries in Toronto, in Ottawa, but in Whitby and Belleville, after having been on the bench for twenty-five years, right down from the senior judge to the judges that have just been appointed, you'll find, from their unanimous report, that they see no reason for the change of that jury system.

Now, I consider that a judge who hears all the evidence hasn't got the same vote that the lawyers got, not at all, and when they, after years of trial of that

system, say that they are in favour, as I am, of the retention of that system, I'd like to know one good reason for the change of it.

MR. CONANT: Well, Mr. Walsh, how do you reconcile that with the fact that in every other substantial jurisdiction of the British Empire, they have reduced the size of juries, and in some of them they have reduced the jury onus? How do you reconcile your observations as to the reference you made for that fact?

WITNESS: Well, for the simple reason that what suits one person may not suit another.

Q. Are we a peculiar part of the British Empire, that what would prevail in South Africa, Australia, England and the western provinces, practically all the provinces, wouldn't prevail here?

A. Let's take some place near home first, Mr. Attorney-General. You mentioned the western provinces; well, how much of their legislation do we want to copy? What do we want to do with Mr. Aberhart's legislation?

Q. Oh, it would be fair to say that that was in existence long before Mr. Aberhart thought of it.

A. Well, perhaps those conditions brought on Aberhart.

Q. They never established grand juries, they never even thought of it.

A. I know, but that may have been the view of those people, they believed in cutting out a lot of the fundamental rights. Look what Mr. Hanson, former Attorney-General of British Columbia, said the other day in a very fine speech he made, warning the public of the rights that have been taken away from them, and, with the assistance of the press, the government passed measures that were taking away the very fundamental rights of the people. Of course, we may have different views on that.

Q. Well, we'll go to England; how do you account for this attitude in English juries?

A. Well, they want to abolish them, and if they want to abolish them that's no reason why we ought to. They may have found, under this system of administration of justice over there, that they didn't want a grand jury. They may feel that way, but simply because somebody else wants to do something, that's no reason why we ought to do it, unless it's needed here. That's my opinion of it.

However, the grand jury question, perhaps, is a different matter from that of the petit juries, but even the grand jury is an institution we have had for years, and if it has, why the agitation, at the present time, to take it away? Is it the expense?

Q. Oh, Mr. Walsh! It would be fair to say, at the present time, that it has been a matter of discussion for years in this province.

A. Oh, yes.

Q. There has been a bill introduced in the Legislature in 1933 for the same reason.

A. Yes, and it didn't pass, it was dropped. What is the real reason for abolishing it now? What good is it going to do to abolish it? I mean, there are both sides of the case counter-balancing this; which is going to do the greatest good to the public? All the public will save will be a certain amount of expense, isn't it? That's all the saving the public will do.

Q. That isn't of any importance, of course?

A. Yes, it's of a very substantial importance; that is, it all depends upon what saving it's going to bring about, and is it going to outweigh, on the other hand, the disadvantages of abolishing it? That's the way I look at it, because it's a question of a man's rights to be determined. The expense, true, is an element to be considered, but it shouldn't be a deciding factor. At the present time under the grand jury system, he has his rights safeguarded, or at least he thinks he has, anyway, and why should that be taken away from him unless he is given a safeguard that is required?

Now, I don't know what the views of the other members may be in regard to the grand jury, but it seems to me that they discharge important duties. Apart from the fact that a judge goes to assize, there's a representative, generally, from each section of the locality represented on the grand jury, and he no doubt talks about this at the centre of the locality from which he comes, and he believes that he has an important part in the administration of justice. I believe that that is a good thing, especially in these days of unrest and uncertainty, when everybody is crying for reform. It would be a good thing if these institutions, which are created for their safeguard, would remain. What right is an accused going to have after there has been a perfunctory committal by a magistrate?

Now, you have all acted for an accused. When he comes before the magistrate, the magistrate only hears certain evidence, and perhaps the Crown counsel submits one or two witnesses on an unimportant point. If you take away the grand jury, what safeguard has that accused person got? I have never had an answer to that. I'd like to know, if you're going to take away a grand jury, mustn't there be a substitution whereby an accused is entitled to have a full investigation before a magistrate, that is, not a perfunctory one, but a full investigation, which is going to get right to the substance of the case that is going to be presented against him?

Q. Are you suggesting that the hearing before a grand jury is always a full investigation?

A. Well, you see, there's a witness on that indictment, and the accused has the benefit of that and, if I understand the law, the grand jury can hear as many of those witnesses as they want.

Q. Quite right.

A. I think I have acted as Crown counsel long enough to know that, and in my experience as Crown counsel, I found that grand juries rendered a very

important service. I know that on one occasion they showed more sense than I did.

MR. CONANT: Mr. Walsh, you do jury practice to a considerable extent?

WITNESS: No, I have a fair amount of each, Mr. Attorney-General.

Q. You do a considerable amount of jury practice don't you?

A. Yes, I would say it's pretty even.

Q. Well, we had an observation from one gentleman who appeared before us, and expressed the thought that the jury system had a tendency to enlarge litigation, that some cases went to trial when the jury was available that wouldn't go to trial when the jury was not available. Any comments to make on that observation?

A. I would say it has the reverse effect. I would say that the jury case settles litigation, that when a finding of a jury is interpreted by the decision of the Court of Appeal and a Supreme Court of Canada, there are less appeals.

Q. It wasn't directed to that, it was directed to cases going to trial.

A. It's the same thing.

Q. Oh, no, it's entirely different.

A. As a matter of fact, I wouldn't bring a case before a jury that I wouldn't think of bringing before a judge. I would say, as far as it's concerned, that I wouldn't bring the case into court at all, unless it has some merit and the client wants his case tried by jury.

MR. STRACHAN: Mr. Walsh, if you were representing a great corporation such as the T.T.C. or the C.P.R., you'd rather have a jury?

WITNESS: I don't know, it just depends on the facts of that particular case and the wishes of my client.

MR. FROST: Mr. Walsh, in connection with this grand jury matter, as you have said, it's a debatable point?

WITNESS: Yes.

Q. There's a good deal of opinion for abolishment of grand jury and a good deal of opinion against it?

A. Yes.

Q. In the event of abolishment of grand juries, what would you recommend by way of safeguards for accused persons?

MR. CONANT: You mean in all cases, Mr. Frost?

MR. LEDUC: Take the committal case first.

MR. FROST: For instance, there are two classes of cases, one of which, where a man has been committed in a normal way before a magistrate. His case comes before the grand jury, and then a true bill is brought in and he goes before the trial jury. The second case is that which Mr. Magone mentioned in that section he read a few minutes ago, of cases which are preferred by the Attorney-General or by an individual with the consent of a judge, in which case the matter goes to a grand jury, and then to the trial jury.

WITNESS: Yes.

Q. There have been certain safeguards discussed, what would you suggest there?

A. Well, I would suggest that before an indictment could be preferred there ought to be a preliminary investigation. There should be the right, on the part of the accused, to demand an investigation, either, as has been suggested by the Attorney-General, by a county judge, or that the assize judge hear a *prima facie* himself. That is not a light matter. I think there ought to be some safeguard in that.

Q. The same assize judge that might try the case, you mean?

A. Well, I suppose there might be occasions when you'd want to have it done that way, and not go over to the next assizes. Either by the judge trying at the assizes or by a county judge; there ought to be some system.

MR. CONANT: Some of the members of the Committee are worried by the situation that arises where the Attorney-General prefers an indictment, as he always had the right to do.

MR. FROST: Well, perhaps, Mr. Conant, it would be fairer to put, in cases where indictment is preferred without preliminary hearing. That is not applying only to you, but it might apply to citizens.

MR. CONANT: Yes, that's broad enough. I think the Committee is concerned with this aspect, that having abolished the grand jury, what safeguards should be interposed to prevent the abuse, whether it should be a judge dealing with it as a grand jury now deals with it, or whether it should be with the consent of a judge, more or less *pro forma*, as it is now in the case of a private individual.

WITNESS: Well, I would say that I would go by a county judge as you suggested, or by a judge himself, but no *pro forma* business, because, why should the Attorney-General or a private person ask the judge to O.K., if I may use that word, an indictment or allow it to be presented without any investigation by an accused? Why shouldn't that accused be notified, so that he or his counsel can be prepared to have an investigation of that charge before he is actually put on trial?

MR. FROST: To see if there's sufficient evidence?

WITNESS: To see if there's sufficient evidence. After all, we may have an

excellent administration of justice in this province, you never know, because any legislation that is passed now is passed for the future; we don't know what changes may come. When you're taking away a man's fundamental right to have his case first investigated by the police magistrate, secondly by the grand jury, there should be some system whereby he got a thorough investigation in the beginning by a magistrate, or in the alternative, he ought to have some system, whereby, if he is indicted without a preliminary investigation, to demand one. I mean, not leave the optional to the judge, to give him one, because the Crown may come down and oppose it. I think it has been suggested that upon application to the judge, an investigation could be made. The accused then, in nearly all cases, would be opposed by the Crown. I don't think I am saying anything wrong, when I say that the Crown would say: "Why, you'll know soon enough what's there."

Why shouldn't that accused person be given the right to demand it? Perhaps I have spoken too long on that, Mr. Attorney-General, but you have asked me about it. I was just going to suggest, also, that at the present time, there is no way for a man to have any appeal, is there, from a committal?

Q. From a what?

A. Committal.

MR. MAGONE: Yes, on a motion to quash.

WITNESS: Well, I mean in an effective way, because on a motion to quash the judge will say: "Well, now, this will be all sifted out by the grand jury; you needn't worry, there will be lots of evidence there, and that grand jury of twelve good men will protect you." You're told that in comforting words. If the trial jury and the grand jury are taken away from them, shouldn't there be some substitution, whereby you can appeal from that committal order to a judge in chambers to have him review the case? We all know that Crown counsel don't put all their case in at a preliminary hearing, and the magistrates, they just use their own discretion, and you know what takes place; an accused hears very little of it, and he hears the most damaging part of it, and the whole meat of the case when he gets to another court.

MR. CONANT: Well, I think perhaps we understand your views, you are against it, whatever it is.

WITNESS: No, I am in favour of what there is, but if we take away what we have, I am in favour of getting something that will protect me. There is no person who believes in reform more than I do, but a man believes in reform without taking away his rights. I think, if you are taking away what a man has, he should have a say about it.

Q. Is there any other angle you wanted to deal with in the matters we were considering?

A. Well, I was just going to say, in connection with the grand jury, that is pretty well covered; in connection with petit juries, I would say that the matter has been covered.

Q. I would be glad to have your remarks on this aspect, if you care to make them; there has been a suggestion here that an effort might be made to improve—although I don't like the word—the quality of the petit jurors; you heard that discussion, did you?

A. Yes.

Q. Have you any observations to make on that aspect?

A. I would just like to say that, from my experience, the little that I have had in this city, Mr. Attorney-General and gentlemen, I have found the juries very satisfactory, and I have found the judges very satisfactory. I have no apology to offer for the administration of justice in this county. Some people, perhaps, have made remarks, and I have read in the newspapers that this county of York, including the city of Toronto, perhaps, haven't as good juries as some other counties. I think they have had excellent juries in this county, and I tell you, I say this after getting some good sound lickings from them, too, those were cases in which I was decidedly wrong, and the juries were absolutely right. There are some lawyers, perhaps, that after an unfavourable verdict, take the view that the jury should be abolished. I don't. The juries are there to take a common sense view, and if you are going to have them, why, a man may not be well educated, but he may have a lot of common sense, he has a good public school education, and quite a lot of experience.

Q. Do you think our jury qualifications, as they work out in practice to-day, are quite all right?

A. Well, I think it could stand improvement.

Q. Well, have you any formula to suggest that might improve it?

A. Well, there could be perhaps on the selection of these jurymen. You can tell by their occupations. At the present time, the jurymen are selected by a board of four, aren't they? The sheriff, the county judge, and so on; couldn't there perhaps, be more—I don't mean pass legislation, but couldn't there be instructions given that in selecting juries, that there be greater care taken in the selection, so that there would be an all-representative jury?

Q. Well now, do you really think it starts, Mr. Walsh, from the local selectors, from the municipalities?

A. Yes.

Q. And the chain of events starts with them, and of course is terminated w th the county selectors. I was wondering if you had any definition or formula that you could suggest, that would accomplish what you apparently had in mind as a desirable improvement of the juries.

A. Well, I would say if the county judge and the sheriff and the other members of the committee gave more time perhaps ——

Q. Well, that is more a matter of machinery, you see.

A. Yes, well I would say if that were done, and if they needed any help, they could call it in. After all, I agree with what you say, to pass a law that certain men should be on a jury would be a bad thing, wouldn't it?

Q. Yes.

A. Because you might keep off the very type of men that show a lot of good common sense, and I would say that if the county judge looking over the lists, along with the sheriff, and if necessary, they could call in advice on the matter ——

Q. Well, that is practically the present machinery.

A. Well, why shouldn't it be carried out?

Q. Well, I have been just asking, groping to find somebody that would suggest a formula, improving what procedure we have. We are generally agreed it is desirable to improve the jury lists; I was wondering if you had any formula.

A. Well, I think the law as laid down there is all that is necessary.

MR. FROST: You mean to say if the jury selection is properly carried out.

MR. CONANT: Well, I would like to clear it up; read out the present passage covering juror's qualifications; have you it handy there? I may say to the gentlemen of the Committee that the law on jury qualifications now is very general, and very sketchy. Have you got it there, Mr. Magone?

MR. FROST: Of course your big difficulty is substituting educational requirements for common sense requirements. Mr. Barlow suggests that there should be certain educational qualifications. The difficulty is to give effect to that.

MR. SILK: Section 211 of the present Jurors' Act says:

> ". . . such persons as, in their opinion, or in the opinion of a majority of them, are, from the integrity of their character, and the soundness of their judgment and the extent of their information, the most discreet and competent for the performance of the duty of jurors."

That is section 16.

Then 211:

> "When the local selectors have completed the selection, they shall, for the purpose of the record thereof, distribute the names of the persons so selected into four divisions, and shall make such distribution according to the best of their judgment with a view to the relative competency of the persons to discharge duties required of them respectively."

MR. CONANT: Well, that is all the law there is to-day, is it not, Mr. Silk?

MR. SILK: Yes.

MR. CONANT: That is all the law there is on the qualification of jurors.

WITNESS: Well, I was impressed not only of the beauty of that language, but by the reference to the criterion used by the selectors; "for their judgment" and "select them for their experience". What better qualifications can you suggest that could ever be had by a juryman than that? I would say that all the law they need is right there. But what they want to do is to carry out the law, in order to improve the juries.

MR. CONANT: Isn't that in the same category as the word "reasonable" that the courts have struggled with?

WITNESS: Yes, but that is a good qualification for a jury; that is a good qualification for anybody that is administering justice.

Q. Well, you can't suggest any improvement?

A. I would suggest that that be carried out. You couldn't get anything better than that.

MR. FROST: Under the present procedure, there are selectors by townships, and that is the measure of the qualification of the men they are to select?

MR. CONANT: Yes.

MR. FROST: Then the various municipalities and townships send their selections to the county officials, and then they make a selection of the ones which the municipalities and townships have made?

MR. CONANT: Of course, with all deference to your very generous endorsement of that legislation, I have sat on boards of selectors, both local and county, and not uncommonly it happens that, well, a man is selected because he isn't working, and he can serve all right, and so on and so on.

MR. CONANT: Of course the selector isn't actually doing his duty if he does that.

WITNESS: That is just it, Mr. Attorney-General.

MR. CONANT: Well, I was never put in jail for it, and I think there are lots of others doing the same thing.

WITNESS: Well now, say you passed a law to improve it in the way that you think it ought to be improved, wouldn't the selectors do the very same thing on that law?

Q. Well, do you realize, in this county of York, there are something like 1,500 names selected every year, 1,500 or 2,000?

MR. SILK: I think, from what Colonel Denison told us, there are two or three thousand names selected each year.

MR. CONANT: Two or three thousand names selected each year, and do you think it is possible to apply as general a formula as that to a selection of two or three thousand names?

WITNESS: Couldn't they, Mr. Attorney, take perhaps a little more time and select the names—they would have to go over the names in not a perfunctory manner, but go over the lists and perhaps get some information on some. Say they are going to select eighty jurymen for the first two weeks and eighty jurymen for the next, couldn't they spend a little more time, and perhaps make inquiries of the jurymen they are going to select? Would not the extra expense involved justify the selection?

MR. CONANT: Well, I don't want to take up the time of the Committee, but I think it is important. You see, you have two or three thousand names, your duty with these two or three thousand names is from the standpoint of their integrity and soundness of judgment, the extent of their information, and if they are discreet and competent of the performance of the duties of jurors; now those are all more or less abstract qualifications, are they not?

A. They are, sir.

Q. I don't know whether abstract is the word, but you know what I mean.

A. Quite, I know.

Q. Well, how can the body of selectors, without any designation on the records, without any indication, tell whether a man came within that formula?

A. Well, the list shows his address, his full name, his age, his occupation, wouldn't it?

Q. Yes.

A. And they look down the list, and they see the word "manager". There, couldn't they perhaps take a little time and perhaps appoint a man that would get a little money for doing it, if it is important, look up in the telephone directory, look up in the city directory what he is a manager of. Another man is down as a clerk; he could be a clerk of anything; couldn't they use a little time and find out what he is a clerk of? I don't see, myself, where they need any more legislation than that. I don't know what fees are provided for doing that work; that may just be part of a lot of duties, and they just say: "Well, that's done." But this is an important matter. They could easily provide a reasonable fee for the selection of a satisfactory jury, and, as I say, they don't need more legislation, but more time. That's all. Because where could you get better words, abstract or not, than those words in the Jurors' Act. The lawyers on both sides go down the jury lists carefully, and note the men's occupations, addresses, and other general data, and if they can do it after the jurors are picked, why can't the selectors do it before the lists are made up. I believe it was in the judges' report, that I heard where there had been a decided improvement in one particular locality when the judge made an investigation of the jurymen. I think possibly Mr. McCarthy referred to it yesterday, also.

MR. FROST: That was in Hamilton, was it not?

MR. LEDUC: It is in the judges' report, page 5.

WITNESS: Anyway, I saw it some place, Mr. Leduc.

MR. LEDUC: Yes, the suggestion is that the county judge, as was stated in evidence here by a witness with regards to a judge in Hamilton, I believe, should very carefully go over the lists of jurors.

WITNESS: That is a very good suggestion.

MR. FROST: I think probably therein lies the crux of the whole situation; I think more co-operation is required from the selectors and there should be some effort made to impress them with the importance of their duty; if you do that with the present machinery, surely we can improve our juries.

MR. CONANT: Very well, Mr. Walsh; is there anything else?

WITNESS: I was just going to mention in connection with the six-man jury.

Q. County Court six-man jury?

A. Six-man jury; I don't see any reason for that change, Mr. Attorney-General.

Q. Well, it is a matter of economy, that's all.

A. Well then, why not make it three? I consider that a man who has a case, whether he is an accused, or it is a civil matter, if he has a case he is entitled to have his case tried properly.

MR. LEDUC: Why couldn't six men try a case as properly as twelve? Is twelve a sacramental number that cannot be changed without changing the fundamental principles?

A. No, I think you are right, I think the answer to that is just what the Commissioner himself said about criminal cases; why can't six-men juries try an ordinary case involving a thousand dollars? The Master says no, they couldn't, because they are a good cross-section of the community in that, and you also run the risk of a jury being tampered with if you only have six. Now, I say that the reason that he gives for one applies equally to the other.

MR. CONANT: Mr. Walsh, haven't we got the anomalous situation that not infrequently we have County Court civil actions tried by the twelve-men juries when the amount is less than the expense of the trial?

WITNESS: Well, that might happen in a $500 case, you might have that happen in a $200 case.

Q. Yes.

A. It's quite conceivable that that may happen, Mr. Attorney-General. But what I look at is this; isn't the man entitled to have his case tried? The remedy lies in shortening up the trial, doesn't it? Some members of the Bench would say: "That case involves $200; we're not going to spend more than a day on that case." You get your evidence in and it hasn't cost anything, for that jury, like the amount involved. I don't think the remedy lies in taking away

the jury, or cutting down the number; I think if there's difficulty in that that's up to the judges directly. I was going to say, also, aren't the expenses, well, I would say, on the present trial system and on the question of having experts, adding to the expense instead of reducing the expense? You get a judge to lay down some rules in advance of what evidence there is, or what course the case is going to take; you're going to have more expense incurred in that than you are in the trial itself. The same with the experts, I think, because, after all, Mr. Attorney-General, aren't the experts paid for by the litigant himself, not by the province or by the court. That litigant, say he's in an accident case, wants his own doctor and, in all probability, the doctor has a surgeon, and he wants the doctor and surgeon to tell the court how his injuries are.

Now, how are you going to cut down expenses by having an independent doctor appointed? That independent doctor has to be paid, and he'll have to come day after day; I don't see where there's going to be cut in expenses that way.

Q. I'm afraid I can't agree with you there.

A. Well, that's only my view, sir.

MR. FROST: We'll take the case of the Workmen's Compensation Board. Their doctor may say that a man has no disability; on the other hand they say: "If you submit to us evidence that there is a disability we'll reconsider your case." Well, the injured man goes and gets his own medical expert, and sometimes, as a result of that, an award is made, so that difficulty is cleared up.

WITNESS: The man is being deprived of his right.

Q. Mr. Walsh, in order to give some opportunity to work this matter out that legislation should be introduced to provide that if the parties agree, then nobody's rights could be interfered with. If they agree that an assessor may be appointed, or the court may appoint one, then nobody's rights could be interfered with. Now, if the parties don't agree, of course that provision won't apply. Do you think it would be doing any harm if that provision were introduced?

A. No, I would say that was just making a rule of what prevails.

MR. CONANT: The present rule doesn't shut out expert testimony.

WITNESS: There's nothing wrong with that; I mean, that's an actual practice, all right.

Q. Yes.

A. That's all right, I would say. Now, the only other matter I wanted to speak about was the question of expense in jury cases. May I say, sir, with deference to the report of the Master, I don't see why litigants should be called upon to pay the expense of the jury. What right has a litigant to be asked to pay any part of the court expenses? Why should he be asked to pay for the jury expense?

MR. CONANT: Do you think the special jury should be continued?

WITNESS: I see no harm in that because they are paid for by the litigant.

Q. I think you can take this as a settled fact, that this Committee is not disposed to recommend the requirement that litigants should pay the costs of juries, so we don't need to spend time on that.

A. I'm sorry; if you had the idea that I was against any reform I can tell you that I'm not.

Q. Oh, no.

A. I'm a conservative reformist, but I'm not against reform.

Witness excused.

G. W. MASON, K.C.

MR. CONANT: All right, Mr. Mason.

WITNESS: Mr. Attorney-General, gentlemen: there are very few things that I desire to add, but first, in my capacity of Chairman of the Special Committee of Convocation, may I mention these matters because I was not able to be here while the treasurer was giving his statement yesterday. First, with regard to the constitution of the Rules of Practice Committee; I understand that that was mentioned by the treasurer, and it is deferred for future consideration. In the second place, with respect to the approval of rules by order-in-council.

Q. Well, you said "for future consideration". I understood Mr. McCarthy to say that Convocation favoured the idea of adding to the committee members of the Bar.

A. Yes.

Q. And your recommendation was that those members should be selected by the Benchers; wasn't that it?

A. I understand that is the opinion of Convocation, which I am bound to adhere to, yes.

Q. Yes, responsible government.

A. I didn't know whether it was desired to have further evidence added to that or not at a later time.

Q. I don't think so.

A. I understood there would be some representation, perhaps, by the judges.

Q. Yes.

A. Then the second matter was as to the approval of rules by order-in-council. I understand that has not been mentioned here yet. It was a matter

that received very careful consideration, I am told, by a committee consisting of the Hon. Mr. Ellsworth and Mr. Tilley some years ago, in 1932, and, I think, again in 1934. There must be a good deal of evidence available with regard to it, and if the matter is to be considered by the Committee, I should ask that we be given permission to deal with that after having had an opportunity to look up that evidence.

MR. MAGONE: What rules are you referring to, Mr. Mason, Rules of Court, of Practice?

WITNESS: Yes, there were certain amendments made in 1934, chapter 54, sec. 3, chapter 54, sec. 19, and in 1932, chapter 53, sec. 19.

Q. To the Judicature Act?

A. No, rules, regulations, and so on, affecting the admission of students at law, and things of that sort.

Q. Oh, this is the Law Society Act?

A. Yes.

Q. I don't know whether that matter was brought up here.

A. Oh, no, no.

MR. LEDUC: Oh, no, it's the Rules of Practice.

MR. CONANT: The specific practice, Mr. Mason, was to whether the Rules of Practice, after being formulated by a Rules of Practice committee, should be made effective by order-in-council or simply by promulgation by the committee.

WITNESS: Yes. Well, that's a matter that has not been considered by our particular committee, and I should like to have the opportunity—we're having the meeting to-morrow—of considering that further with the Committee and making any further suggestion to our committee.

MR. MAGONE: That is, the question may come up, Mr. Mason, of having all rules approved by order-in-council?

WITNESS: Yes. The third matter was mentioned by the treasurer yesterday, and that was the matter of proposals that were made at an earlier time for the increase of County Court jurisdiction, and I understand Mr. McCarthy said there was a good deal of information available on that that could be put before the Committee later. These are the only matters that I wish to speak of in my capacity as chairman.

MR. CONANT: That was in the form of some observations of the Supreme Court Justice, was it not?

WITNESS: There was a great deal of data gathered with respect to trials in County Courts and so on; I can't recall it very closely, but I remember having

seen it and I know it was very valuable. Now, that's all I want to say in my capacity as chairman; anything else I may say I am saying purely as a private member of the Bar and without any authorization or instructions from Convocation. As to the qualifications of petit jurors I am unable to add anything. I have heard the questions that you have addressed, Mr. Attorney, to previous witnesses and I can't add anything new, except to say that one is anxious, indeed, to have the character of the jury increased to the best possible extent. As to the means with which that can be done I'm afraid I can't help you.

Q. Well, could you subscribe to the view that it would be desirable to improve the calibre of juries?

A. Absolutely, if we are going to retain the jury system as to the extent to which it is now used.

MR. MAGONE: I suppose it goes without saying the educational qualifications of jurors have vastly improved in the last few years?

WITNESS: Quite so.

Q. It must be due to our educational system?

A. Quite so. And I can't subcribe to the views that the educational qualification is a matter of no significance. I'm quite ready to subscribe to the views that many of the wisest and sanest men I have met have had very little school education, but they have educated themselves, and I can't subscribe to the views that a man's educational attainment is of no significance as a qualification to act as juror.

MR. FROST: I suppose you would not want to go as far as to say that the man who didn't have the necessary educational qualifications should be barred from being a juror?

WITNESS: By no means. Now, as to the juries being dispensed with in Division Courts. My private opinion is that there's no reason for the maintenance of expense of juries in the limited jurisdiction of Division Courts. As to the reduction of the number of jurors in civil actions ——

MR. CONANT: County Court?

WITNESS: County Court. I have no practical experience, all the information I have is gathered from friends who practice in other jurisdictions where they have a lesser number, and all I can say is, as far as I can ascertain, there's been no complaint. I have had some doubt in my mind as to whether six is the appropriate number, because, after all, a jury of six is not as representative as a larger one, one has to admit that, and I wonder if eight is not a preferable number. But I don't find any great difference between eight and six, except that in the odd case it might be easier to approach a jury of six. I think that's a very rare thing, though.

Q. Isn't there this angle, that you have, perhaps, the same relative proportion. In the twelve-man jury you have a verdict by ten, in a six-man jury

ostensibly you'd have a verdict by five. I don't know how you'd work it out any other way.

MR. FROST: Your observations apply to juries altogether?

WITNESS: I was addressing myself to the question which I thought was mostly on County Courts.

MR. CONANT: In the West they try murder with six-men juries.

WITNESS: I am told the work out West is quite satisfactory with six men in civil cases. As to the trial by jury, I think you have arrived at a conclusion on that; the only thing I would have said is that there are many nuisance actions brought.

MR. CONANT: What's that?

WITNESS: There are many nuisance actions brought.

Q. I don't know that we would know what that means.

A. A man brings an action without any feeling that he has a real cause of action, but if he can bring the action and hold the threat of a trial by jury without all the expense on a defendant who knows he can't recover any damages or any costs from the unsuccessful proof, then it is held over the head of a defendant; that is what I call an action having a nuisance value. A defendant says: "I'd rather pay something than be exposed to the hazard of this litigation." I don't believe in the litigants being assessed with the cost of juries generally speaking, but if you had a small fee of $25 or something of that kind, it would prevent a great many of those actions from ever seeing the light of day.

Q. This is an angle we haven't had, and I think it's worthy of consideration by the Committee. At the present time in sending a jury action to trial the fee is five dollars.

MR. MAGONE: Four.

MR. CONANT: Do you think there would be merit in making that a substantial amount of, say, $25?

WITNESS: Well, I feel that it wouldn't affect the majority of the cases. I couldn't give a concrete answer here, but I could give many cases, from experience, where, I think, that would have satisfactorily solved the situation. Now, as to the right of a civil litigant to a trial by jury. I want to be quite frank with the Committee, Mr. Chairman, because my experience of these matters is that your attitude is governed largely by the class of practice that you have had, and whether you have been acting for a plaintiff or defendant. Certain gentlemen are engaged a great deal in jury actions and are successful with juries, and they believe in the maintenance of that method of trial. In practically all civil cases in our law we have had a great deal of cutting down of the number of civil cases that may be tried with a jury. For instance, actions against a municipal corporation. Why are they not tried with a jury? Because, by experience, a

municipal corporation was found liable, in many cases, where it should not have been, and the Legislature stepped in and said this wouldn't be tolerated. In other branches of cases as well that right has been cut down.

Now, speaking from my own experience, and I can speak only from that, I think every practicing lawyer knows that there are certain difficulties in the ordinary prosecution of civil litigation who don't get a fair chance in the ordinary jury action because they may have a name that indicates that they have wealth behind them, or they may be associated with some corporation that, in the minds of the public, doesn't merit getting the full consideration that others must get. I don't want to particularize. That might happen. If you have the word "Co." or the word "Ltd." after the name of the defendant, too many jurymen think that there's wealth associated with the defendant.

Q. In other words, the word limited means unlimited.

A. Yes. Now, I'm saying what is known, I think, to every practicing lawyer. I don't want to accuse instances, but one could give hundreds of them in the history of this province over the last twenty-five years. That is so. I am told, for instance, that there's one company in this Dominion that has been successful in one action in fifty-five years. I can't conceive that it has been wrong in every case but one, but we know that is a matter of fact.

MR. MAGONE: The same principle, Mr. Mason, if I might interrupt, is involved in not permitting the question of insurance to be mentioned before a jury?

WITNESS: Yes.

MR. STRACHAN: The jury spends the time figuring out which of the parties is insured.

WITNESS: In fact, I know of one case recently, if I might just illustrate the point, where a defendant, who had been found liable to pay $8,000 to a plaintiff, said to the foreman of the jury (they were personal friends before that happened): "Why are you taking this attitude toward me? Why did you do this to me?" And the foreman said: "Weren't you insured? We were sure you were insured." The defendant said: "No, I haven't an insurance." In one case I actually asked this question of a defendant. I said: "Have you any means of getting compensation or indemnity from anyone if you're found liable to pay this plaintiff in this action?" I knew, if I didn't say that, that man, on the view that the jury had that he probably was insured, might be found liable in heavy damages, and although it was a case in which he should have paid damages, the jury found the defendant free from liability.

MR. CONANT: Well, now, Mr. Mason, I think we all agree with those observations. What is the remedy?

WITNESS: We can't get any adequate remedy in our present state, but the real remedy at present, as far as it can be gotten, is to be found in the adoption of the practice which has, I understand, become law in England in September, and that is, to put the onus as to the litigation the other way. Nowadays the

plaintiff gives jury notice and if the defendant thinks it is not a proper case to be tried by a jury he must move and our judges have a practice of referring it to the trial judge, and when he gets before the trial judge, the jury is there, and the man goes up and moves to take it away from the jury, with the jury panel sitting there and his chances are immediately impaired. It is a very unfortunate provision. In these other jurisdictions, what they do is this: you don't proceed in that way, but if you wish to have a jury, you are not going to have a jury unless you apply for it.

Q. That is in force in England now?

A. Yes, since September; if you wish to have a jury, you may make application for your jury to a judge who has enough latitude to determine whether it is the kind of a case that can be better tried with the assistance of a jury than with a judge alone, and I submit that is about as far as we can go now in our practice. Personally, I would be very much prepared to go further, because I think that we ought to get away from the American practice.

MR. STRACHAN: Mr. Mason, the Court of Appeal has very seldom been found to reverse the finding of a jury?

MR. CONANT: In other words, Mr. Barlow's suggestion would have the effect of enlarging the jurisdiction of the Court of Appeal.

WITNESS: But my submission is that that would not take care of the initial trouble. My submission is that there should be, prior to the hearing, a determination as to whether there should or should not be a jury, by the judge.

MR. STRACHAN: Do you think the fact that the defendant was a large corporation would have any weight in determining or making up the judge's mind whether or not there should be a jury? Wouldn't the easiest thing be, say in a negligence case, to say, "Oh well, this is a case that should be tried by a jury." Isn't that what would result?

WITNESS: Well, I should think that in the ordinary negligence case, arising out of a motor vehicle collision, the easiest thing would be to say "yes, we'll try that case with a jury, that is the way most of these cases are tried now."

Q. But don't you think it would help solve the problem of what we call the wealthy defendant if we could enlarge in some way the power of our Court of Appeal in reviewing the finding of fact?

A. Well, I think it would assist, but I should like to get nearer the base of the trouble than that, by having a jury only in what is eminently a proper case to be tried with a jury. It would eliminate all this kind of thing. There are many cases brought now, I have no hesitation in saying, that would not be brought if it were not for the expectation that it could be tried with a jury, and if you go to the judge and say that that is not the kind of case—and I am not speaking of negligence actions now—that should be tried with a jury, it would be cut out immediately and the action would never go on.

MR. FROST: What is going to follow that, Mr. Mason? Do you think that

the judge would be influenced by the fact, for instance, that the defendant was a wealthy corporation?

WITNESS: No, I don't think he should be, I think what should influence him would be the nature of the case, that is whether it is a case in which the jury can make a real contribution.

Q. Well, of course, under the present practice there is the right to make application to strike off the jury notice; that doesn't necessarily have to be done at the trial; I mean, oftentimes, more often it is done before the trial.

A. Quite, but the growing tendency in these cases, and it has been for years, is to shift these cases to the trial judge.

MR. MAGONE: Mr. Mason, what type of case would you suggest shouldn't go to a jury? In negligence cases, you suggest that in cases involving automobiles, that that should go to a jury, and if the defendant was a corporation that it shouldn't?

WITNESS: Well, I am afraid I didn't make myself clear a while ago. I fear that unless there were some regulation, the ordinary judge, on account of the fact that trials for that kind of case have been so often before the juries, would have a tendency to say: "Yes, that should be tried by a jury." Personally, I don't subscribe to that.

MR. CONANT: That gives rise to this: the English rule that is now in operation, I understand, doesn't set out, as I remember reading it, any guidance to the judge in determining that issue at all; you have read the rule, have you?

WITNESS: I haven't read it recently, no.

MR. SILK: It reads:

> "No question arising in any civil proceedings in the High Court or any inferior court of civil jurisdiction shall be tried with a jury and no writ of inquiry for the assessment of damages or other claims by a jury shall issue unless the court or a judge is of the opinion that the question ought to be tried with a jury, or, as the case may be, the assessment ought to be made by a jury, and makes an order to that effect."

MR. CONANT: Well, you see, that is a very broad declaration. I wondered, in considering this, if we were to adopt any such practice, if it would be possible or feasible to lay down any guidance to the court in dealing with such applications; do you think it would be possible?

WITNESS: Well, may I ask, have we got the New Brunswick provision here?

MR. CONANT: The New Brunswick one is a little different, is it not, Mr. Mason?

WITNESS: I think so, I just wanted to refresh my memory on it.

Q. It is on page 39 of Mr. Barlow's report, yes.

A. Well, that is a little better than the other one, to my mind: "If the questions in issue are more fit to be tried by a jury than by a judge." That, at least, affords some indication.

Q. Yes. But more specifically, you have given, very properly, the example of municipalities; does it occur to you that an extension of that principle should be attempted?

A. Well, I fancy there are other corporations who are suffering more than the municipal corporations suffered before.

Q. That is true.

A. As to whether you can legislate specifically for them as you can for municipal corporations, I don't know.

Q. You mean whether we would have a constitutional right to legislate?

A. No, no, whether you should pick and choose. I hadn't considered that aspect of it.

Q. But it's a corporation?

A. Yes.

Q. And now, using that in the broad sense, the corporation, whether it be an insurance corporation or a railway corporation ——

A. Yes.

Q. —— suffers by the present abuse?

A. Undoubtedly.

Q. Now it would be feasible to attack it from that angle?

A. Well, of course, I don't think you can go so far as to say that no action against a corporation should be tried by a jury. The danger, as I see it, is that if your language is too loose, then a judge may try to get rid of the burden cast upon him by an amendment you might make, and say: "Oh well, you might have a jury here." The judge ought to exercise some real discretion, and the New Brunswick provision seems to me to put it very well, that is, that the case is more fitting to be tried by a jury than by a judge. If the judge has the discretion, then we have to depend on the judge. But I would like to give that further consideration, if I might suggest some better form of wording.

MR. STRACHAN: I think that is of very great importance.

MR. CONANT: Oh yes, of the utmost importance.

WITNESS: The next thing is should the Court of Appeal be given wider powers on a verdict of a jury in a civil action? I understand that you have re-

commendations from both Mr. Barlow and the judges on this point, and that they are substantially in agreement to the effect that these powers should be given, and that is what Mr. Strachan was referring to a few moments ago. Well, I hardly subscribe to that. As a matter of experience, I am just going to give one case by way of illustration, without naming it, so that you will see how this thing sometimes may arise. A litigant in a motor action had an undoubted right to recover. Everybody was agreed on that. The first question of the jury is, has the defendant satisfied you that he was not negligent. And further on, there is a question of damages. How much?

Q. Yes.

A. This particular jury had been impanelled, or at least had been in the court room when a man had been convicted of criminal negligence in driving, and they had a good deal of sympathy with him, and when they went out to the jury room to consider the verdict in this particular case, they said to themselves: "If we find this fellow guilty, he is going to get punished"; and they mixed it with a criminal proceedings, so they said: "Well, we'll find for both of them." And in answer to the first question, "has the defendant satisfied you that he was not guilty?" the answer was "Yes." And then the damages, $5,600. They thought they had excused the one from trouble, and gave damages to the plaintiff. Now in the Court of Appeal you want to get that right; what can you do? Seven of these jurymen came into the judge and said: "What can we do? That's not what we intended." And he said: "I can't help it; the rule of the Court of Appeal is that they won't admit the affidavit of jurymen as to what took place." So you are completely helpless.

Q. And it stands?

A. Well, in that case the parties were decent enough to make a settlement of the portion of ————————. But otherwise it would have stood. There is no recourse unless you have some relief of this kind in the Court of Appeal; you're helpless.

Q. How far would you go, Mr. Mason?

MR. FROST: I know of one jury that found a verdict of unavoidable accident and then found certain damages.

WITNESS: Yes.

MR. CONANT: How far would you go, Mr. Mason?

WITNESS: Well, I would be inclined to go the full length that the judges suggest.

Q. The difficulty that comes to my mind, and I am not expressing any views, is as to whether you are really creating and constituting a second jury trial; the jury in the second place being in the Court of Appeal, and the first jury being in the other court.

A. Yes, it is a real difficulty, and no one can shut their eyes to it, as to just

how far you are going to go; if you make your Court of Appeal absolutely predominant, your jury is of no use at all.

Q. Well, we have been asking for formulae this morning; perhaps you will be good enough to let us have a formula along that line.

A. Well, I don't think I will be any wiser than anybody else, but if there is any possibility of helping the Committee on that point, I shall be glad to do so.

Now there is only one other question, and that is the question of assessors.

Q. Yes.

A. I am afraid I haven't been following the matter very closely, but I do remember having had some experience in two trials with assessors; one was a twenty-three day trial, in which we found it absolutely impossible to get along without it, on account of the technical nature of the facts involved. There is already provision in our rules for an assessor, and in these two cases, these two judges of the Supreme Court used the rule, and it worked out very satisfactorily.

Q. Yes.

A. I know that Mr. Justice Middleton used a great deal of such evidence up in Timmins. It doesn't happen very often, and what the trial judge did in each of these cases was to call in the assessor or expert, who sat with him on the bench and advised him as to the technical matters which were brought before him, so that he would have an appreciation of what the evidence was with regard to those matters. Under this practice, the assessor gives a certificate as to the point on which he wants to be informed, but the assessor does a good deal more than just give a certificate, he advises the judge as to the technical matters as the trial proceeds.

Q. But under the present practice you have still the conflict of expert testimony?

A. Well, I'm coming to that. I think if the parties will agree, as has been suggested I think you said by Mr. McRuer, that they will substitute for the practice of calling experts some particular person whom they will agree upon. Well, I don't see how anybody can possibly take exception to that, but, speaking from experience in a few of these trials, I would think it would be absolutely wrong to try to impose upon the litigant that he must agree to somebody else. Because in some of these cases I have found out that, even with the assistance of numerous experts on each side, where the matters are very intricate, it is extremely difficult, on account of the very complex nature of the matter, and the fact that it is so unknown to lawyers and judges, to make much progress.

Q. Yes.

A. And I would say that you must reserve to the litigant the right to call his own experts if he sees fit, limited in number, of course, by the terms of the Evidence Act now.

Q. Unless he consents?

A. Unless there is a consent, if there is a consent, I see no difficulty, but the thing I am so anxious about is that there should never be any legislation that takes away the judicial function from the judge who ought to be, alone, made responsible, and put it in the other officer, and by the way, in the Admiralty practice, it gets pretty close to putting the responsibility in one of the assessors, and that is what shouldn't be.

Q. That is not one of our courts?

A. No.

MR. MAGONE: Mr. Mason, can you help us with designation of judges in commercial cases? Had you given that matter any consideration?

WITNESS: I think if we were in England, I would advocate it, but having in view the number of cases here that might come within the designation of commercial causes, and the fact that our judges have to go all over Ontario, and that these cases arise all over Ontario, I think it is impractical for that point of view.

MR. CONANT: You might have it in Cochrane or Kenora?

WITNESS: Yes, I would like to see it at some time, but I think we are too young for it yet.

Q. Mr. Hanson, have you given any consideration to the question of increasing the County Court jurisdiction? There is an amendment in 1937.

MR. FROST: I think Mr. Mason said he had some information he would submit.

WITNESS: Our committee met with the judges and we considered it and we gathered a great deal of data, and I think I can say to you that at least Convocation would be unanimous in opposing any increase of County Court jurisdiction.

Q. At the present time, by agreement, you can try these cases in County Court, and I think it might be better to leave it right there.

A. Yes, if at a later time you wish our submissions on that, I would be glad to give it, but in the meantime it has been considered with the greatest care and I think the opposition is unanimous.

Witness excused.

MR. K. F. MCKENZIE, Vice-President, Toronto Section, Canadian Bar Association.

WITNESS: I might say at this time that I am not practicing counsel, as others I have heard here, and we represent a little different viewpoint. I might preface my remarks by saying that my viewpoint, as I think it is the viewpoint of every one in the Association who has expressed himself so far, is that it is

not the interests of the profession that this Committee should consider, but solely the interests of the public. What I mean is that anything that is done to expedite, facilitate and simplify and lessen the expense of litigation, in the long run will also be for the benefit of the legal profession, although it may not appear so at the moment.

Now, primarily, what I want to do, Mr. Chairman, is to formulate various resolutions that have been passed at different times by the Association. Now, the Council of the Canadian Bar Association, meeting in February, 1939, passed a resolution with regard to appeals to the Privy Council, which I haven't heard anyone mention here before. The resolution was that:

> "This Council do now go on record as approving the maintenance of appeal to the Privy Council."

And a similar resolution, sir, was passed by the Ontario Section of the Canadian Bar Association.

MR. CONANT: Well, our objective in carrying Supreme Court judgments to the Privy Council would indicate that you are in agreement with us.

WITNESS: Yes, I understand, sir, I understand that your personal views agree with the recommendations of the Council.

Q. Yes, we are appealing a Supreme Court judgment now.

A. Yes, I understand that, sir. It is not necessary for me to read these resolutions, I will file them with the Committee, there is a resolution here to the same effect as that passed by the Ontario Section. That resolution, I think, was passed with only two dissenting voices.

Then there is a resolution which was passed at the same time, against the abolishing of grand juries, which I think was referred to by Mr. Barlow. I wasn't here when Mr. Barlow gave evidence, but I understand he said it was not a representative decision. With due respect, I question that. I think that there was a considerable representation at that meeting, and the majority was in favour of the retention of grand juries. Of course, the question with regard to the substitutions was not brought up and discussed.

Q. Was there any discussion, at that time, on the aspect on which we have dwelled at some great length, that is on the question of safeguards?

A. No, sir.

Q. In connection with indictments preferred by the Attorney-General?

A. No, sir, my recollection is that that was not discussed. I don't think that was suggested at that time; this was a year ago. I think Mr. Armstrong did intend to say something on that, but I think everything he intended to say has been said, and perhaps more, by Mr. Frost than anyone else. I think that expresses the views of the majority of the people at that meeting.

Now I don't want to be understood to say that anything that was passed

was passed unanimously, except the matter to which I have just referred. There is a difference of opinion on nearly every point, and my feeling is that the Bar Association, owing to its constitution, of which you are aware, shouldn't bring forward as its views something that isn't practically the unanimous view of the Association. For that reason we are not constituted to go into the details of these recommendations in the way that the Benchers have done.

Then, sir, there was a resolution regarding the fiat issuing power, which has not been mentioned.

Q. You mean the power to withhold fiats?

A. Power to withold fiats, yes. I think, sir, I will say that there is a general feeling; this matter has been discussed not only by the Ontario Section, but by the Council of the Canadian Bar Association, and I think they are unanimous in the feeling that the present growth of industry and government business, and so on, has made the former practice out of date. To my recollection, Mr. Mr. Lapointe is in favour of abolishing the need for a fiat.

Q. Have they gone any further than we have in any of the other provinces? Do you know, Mr. Magone, has there been any material qualification of a fiat power?

MR. MAGONE: No, I was going to say, Mr. Chairman, I think what Mr. McKenzie means is the abolishing of the fiat, that is the rule that the Crown shall not be sued in tort, is not that what they are referring to?

WITNESS: Well, it comes to practically the same thing, Mr. Magone.

Q. No, it is quite different; we granted a fiat some years ago to sue the T. & N.O. Railway on a tort arising out of the operation of a train, and Mr. Justice McTague raised the issue himself, that the Crown couldn't be sued in tort.

A. Yes, well I think you're right, this is a double-barrelled resolution.

MR. FROST: You mean if the government, generally speaking, is engaging in business, then it should be the same as any other concern, for instance, the Hydro-Electric Power Commission, the T. & N.O. Railway?

WITNESS: Quite. Eactly, and this resolution refers to tortuous action, but as far as the Hydro-Electric Commission goes, its business, like that of any other of these firms, is subject to the decision of the courts, and the Hydro-Electric Act is one of my pet aversions, because its power is more extensive than that of any government department.

MR. MAGONE: Answering your question, Mr. Chairman, I think the only jurisdiction in Canada where they abolished the rule partially is in connection with actions in the Exchequer Court of Canada against government departments for injuries sustained on a government work, or public work, that rule is abolished there.

WITNESS: Yes, that's right. Perhaps, sir, I should have been prepared to

discuss it more fully, as I see you are so interested in it. I haven't studied it with any care, but I am impressed with the general principle.

MR. CONANT: Well, I can quite understand the lawyers sustaining that.

WITNESS: Well, I don't think that is quite fair.

Q. Well, as a lawyer I have the same view, but there is the other angle to it, whether removing that fiat is subjecting these Commissions to innumerable and interminable litigation.

A. They would be submitted to no more litigation than their competitors.

Q. Well, they are assumed to have plenty of means to meet judgments, and we have heard here this morning about the nuisance value of some actions. That is the other side of it.

A. Ah yes, my very great friend, Mr. Mason, but I very definitely disagree with him on that subject. I think you may qualify that, most of the discussion with regard to juries, by the consideration that Mr. Mason mentioned was as to the class of clients that they represent.

Q. Well, those are the two angles, all right.

A. Then, there is a resolution regarding the selection of juries.

Q. Have you a formula ready?

A. I have no formula, but I was impressed with what you said, that if the jurors were selected with more care, it would improve the jury considerably. Then there is a resolution here considering appeals from rulings of governmental boards and commissions. Now, the Bar Association feels very strongly that the administration of justice in our courts is the very rock of our liberties, and it is not only in the public interest, but to our own interest that they should be kept intact for the determination of disputed rights.

Now in saying that, I have in mind not only matters that are now before the courts, but matters which, in the opinion of the Bar Association, should come before the courts. I am referring, of course, to the matters mentioned in the resolution, and the matters mentioned on page B26 of Mr. Barlow's report, and that is, that the right of appeal be granted from boards and commissions established by the government, which are now determining matters which were formerly determined by the courts.

This whole subject is the subject of discussion and investigations by the committee, both of the general association and the Ontario section, and probably more will be heard of that later on, but for the purpose of this committee,—I am not expressing a final opinion—I would suggest there are two classes of administrative bodies, such as, for example, the Workmen's Compensation Board. I would be opposed to allowing wide open appeal from the decisions of the Workmen's Compensation Board; I am using this simply as an example of the class of things I mean. I would limit appeals from such a board to questions of

law and principle, and, if I may depart from my official position and speak from personal knowledge, that Board made rulings which are open to question on the matter of principle; I mean the very rates on which their mortality tables are based; they have changed them, and they are still calculated to rate much above the average returns or investment of the Board; that is a matter that, perhaps, might be subject to consideration, but as to their finding of fact, I would be against opening up anything like that.

I realize, sir, that the function the Workmen's Compensation Board, for instance, exercises, couldn't be as expeditiously exercised by the courts, but when it comes to subjects where prejudicial powers are exercised by the department, or by the officer of the department, who is really interested in asserting the rights of the Crown, the feeling of the Bar Association, with which I entirely agree, is practically unanimous that such matters should be determined by the courts.

Q. Well, there again, haven't you got two angles, on the one hand, you have that undoubtedly very proper, and idealistic situation, and on the other is the difficulty that might result in carrying on government at all, if all your rulings were subject to litigation; isn't that the two sides to the story?

A. I don't think so, sir; the income tax office at Ottawa carries on its affairs very successfully, subject to appeal in most matters.

MR. FROST: Mr. McKenzie, without getting into a controversial question, do you mean an officer of the treasury department making an arbitrary valuation on succession duty matters, without any right of appeal?

WITNESS: Yes, exactly. Now, I don't want to start a controversy about this; we have discussed this privately before, and we don't agree, but what I suggest to this Committee is this; it would be a proper matter for the consideration of this Committee, to see what the simplest and cheapest and most expeditious machinery might be that could deal with that. I mean, try and give the courts a show in the matter.

MR. CONANT: Well now, take—Mr. Frost has given one example, take the rulings of our Securities Commission; do you think those should be always subject to appeal?

WITNESS: Mr. Godfrey himself, sir, recommended they should be subject to appeal.

MR. STRACHAN: When you consider that it might affect a man's livelihood.

WITNESS: Mr. Farris dealt with that, you will remember, pointing out that a man might be black-listed, if I might use the term here, and that black-listing would carry from Vancouver to Halifax, without even a hearing, and a matter of that kind should be, I think, subject to appeal. Really, that is a matter of administration of justice, to a certain extent, but when you come to deal with securities, that is a matter which I would say should be subject to appeal on the matter of principle.

Committee rises for lunch recess.

AFTERNOON SESSION

Parliament Buildings, Toronto,
April 11th, 1940.

MR. JUNEAU, Special Legislation Officer (recalled).

MR. CONANT: Now, Mr. Magone, when Mr. Juneau left off, as I recall it, he was going to honour us with some observations regarding grand juries, or absence of grand juries in Quebec; is that it?

WITNESS: Yes, sir.

MR. MAGONE: Mr. Juneau, you have been in the Attorney-General's department for over twenty years?

WITNESS: Twenty-one years.

Q. And when they had grand juries in the Province of Quebec, of course, you were there?

A. Yes, they had them until 1933.

MR. CONANT: 1933?

WITNESS: Yes.

MR. MAGONE: Do you remember why they were abolished in the Province of Quebec?

WITNESS: I understood that it was to save unnecessary expense, and the unnecessary calling of the witnesses at least three times, once at the preliminary inquiry, once before the grand jury, and once before the petit jury.

Q. Is it the usual thing, in Quebec, to have a preliminary hearing?

A. Yes, it is.

Q. Are there cases in which the Attorney-General directs a charge to be preferred, without a preliminary hearing?

A. In exceptional cases.

Q. Could you tell us in what kind of cases that usually occurs?

A. In conspiracy cases, sometimes, when the preliminary inquiry would be very long, and would not give any more light on the case than the trial itself.

Q. And do you know if that happens often?

A. Oh, no, perhaps five or six times over the whole province during the year.

Q. Five or six times a year?

A. I think so, not more than that.

Q. That would be a higher average than in this province, Mr. Magone.

MR. MAGONE: Yes, I would think so. Well, is there any criticism, Mr. Juneau, of the present system in Quebec?

WITNESS: No, we never heard of any criticism, either from the Bar or from the judges, everybody seems to be satisfied with the present system.

Q. Well, do you know, Mr. Juneau, whether or not, at the time, grand juries were abolished in Quebec, there was any criticism of the action of the government?

A. No, except that, I think, the Chief Justice in opening the court, once made a few remarks, but when he made the remarks the system was just beginning, you know.

MR. LEDUC: Well, that was in 1933 when Sir Franz Royce was on the bench, was it?

WITNESS: I think so, wasn't he?

Q. I don't know.

A. I think he's the one who made the few remarks.

MR. CONANT: Do you remember any particular anxiety on this point, as to the absence of any preliminary hearing where the Attorney-General directed an indictment, having in mind this fact, Mr. Juneau, that under our present system where the Attorney-General directs a charge, it goes to the grand jury; without the grand jury you have no preliminary at all, it goes right to the trial.

WITNESS: No.

Q. Do you remember any anxiety on that score in your province?

A. I know that sometimes a charge is laid after the preliminary inquiry, but when there is some defect in the preliminary inquiry; suppose the preliminary inquiry had been held by the justice of the peace and did not proceed legally. This used to be done before the abolishment of the grand jury, and I think, since the abolishment of the grand jury.

MR. MAGONE: Who are the preliminaries held before in the Province of Quebec?

WITNESS: Mostly before the district magistrate.

MR. CONANT: Mostly lawyers?

WITNESS: Oh yes, they're all lawyers.

MR. MAGONE: Has the justice of the peace any powers to hold preliminaries in Quebec?

WITNESS: Oh, yes.

Q. Do they hold some?

A. Oh, yes, in the outside districts, especially on the north shores or far away from the court house where the district magistrate doesn't go very often.

Q. So, your district magistrates, if I understand it correctly, have the same power as the circuit court judges in Montreal, to hear criminal cases?

A. No, no, to hear civil cases, but they have the same power as the judges of the session, in Quebec and Montreal.

Q. Oh, yes, to hear criminal cases.

A. Yes.

Q. With the consent of the accused?

A. Sometimes with the consent and sometimes without it; it depends, the Criminal Code provides for that.

MR. LEDUC: Isn't that set out in the Criminal Code?

WITNESS: Oh, yes, part 18.

Q. How many district magistrates have you in the province?

A. About fourteen or fifteen.

Q. What salary do they get?

A. Five thousand dollars.

Q. And there is a chief magistrate?

A. Yes.

Q. Or a chief justice of the magistrates' bench, or something?

A. Yes, Mr. Ferdinand Recousive, district magistrate, is the one that directs the district magistrates from one place to another when necessary.

MR. FROST: Well, are there justices, and what not, that take care of minor cases, or do they leave the magistrates to handle all the criminal things?

MR. LEDUC: They have a certain type of an offence ——

WITNESS: Of course, they deal with municipal affairs, but under the Act

they have the power to deal with justice the same as the district magistrates. But generally those cases are transferred to our police courts.

MR. MAGONE: While you're here, Mr. Juneau, is there any provision for the payment by the government for the defence of poor prisoners in Quebec?

WITNESS: No.

MR. CONANT: I'd like you to answer the question I formulated, you got off on something else; I asked you if, when grand juries were abolished in your province, there was any anxiety about the fact that charges laid, or indictments preferred at the direction of the Attorney-General were then not subject to any preliminary.

WITNESS: There was no anxiety about that.

Q. There wasn't?

A. No.

Q. Well, has there been any criticism of that aspect since then?

A. I don't think so, I don't remember of any. Generally, the Attorney-General lays a charge upon the recommendation of the Crown prosecutor, and the matter is submitted, by the Crown prosecutor, to the deputy Attorney-General, and then it is handed over to the Attorney-General for his consent.

MR. MAGONE: I see that there have been, recently, some prosecutions in the Province of Quebec for seditious liability.

WITNESS: Yes, during the last three or four years, there have been quite a few of these cases.

Q. Could you tell the Committee, generally, how those prosecutions were commenced?

A. I think they were commenced by preliminary inquiry.

Q. By preliminary inquiry?

A. In most cases.

Q. I see.

A. I don't think they were commenced on the charge laid by the Attorney-General.

Q. It's only in exceptional cases that that power is used?

A. Yes, I think it would be used, especially when the term of the court is just going to start, and the preliminary inquiry would delay the trial till the next session.

Q. Yes.

A. It saves time for the accused as well as for the Crown.

Q. How many times a year are the assizes held in Quebec?

A. In Montreal we have four criminal terms a year, in Quebec two, and in other districts, one.

Q. I see.

MR. CONANT: Just one?

WITNESS: Just one. This doesn't mean that we call the jurors once a year; the Attorney-General decides whether it is necessary to call the jurors, according to the number of cases and the seriousness of cases on the roll.

MR. MAGONE: Well, are cases ever transferred from one district to another for trial?

WITNESS: Yes, they do that too.

Q. For what reason?

A. Well, mainly when it's an important case, and we are afraid that the jurors in one district would be partial, or it would be hard to find a jury which would be impartial.

Q. Is that done on application to the court?

A. Oh, yes.

MR. CONANT: What has been the general experience from the abolishment of juries, has it retarded the administration of justice, or speeded it up, or what would you say?

WITNESS: Of course, the terms are a little shorter, because it takes three or four or five days at the beginning of each term to submit the cases to the grand jury.

Q. Yes.

A. Those four or five days are saved; it means saving taxation of all the witnesses, calling those jurors, and their expenses and bringing back the witnesses.

Q. A second time?

A. A second time. Sometimes two, three or four times.

Q. I don't suppose you could make any estimate of the saving in dollars and cents?

A. No, it would be pretty hard to arrive at an exact figure, but I think it runs up pretty near to a thousand dollars a day, in some cases.

Q. Is there any demand or discussion for re-establishment of the grand jury in your province?

A. No, not at all.

Q. Nobody advocates it?

A. Oh, no.

Q. All right.

MR. MAGONE: I want to ask Mr. Juneau—I think he can answer this in a syllable—whether there's any provision for the payment of the defence counsel for indigent prisoners in Quebec.

A. No.

Q. Is it ever done?

A. No, in our department it's not, to my knowledge, that we ever authorized the payment of counsel fees for an accused. Of course, the judge chooses, generally, a young lawyer to defend poor prisoners.

Q. Yes, that answers it.

A. And they accept.

MR. LEDUC: The lawyer can't refuse, I understand.

WITNESS: I don't think they can, they're obliged to accept, as far as I know.

MR. CONANT: Doesn't the province help at all in the case of capital offences?

WITNESS: Not to my knowledge.

Q. What about the cost of the evidence, does the province ever pay that in the case of an appeal for capital offence?

A. The cost of the stenographer? Well, of course, they receive salary.

Q. What about in extending the evidence?

MR. LEDUC: The stenographers are paid by salary.

MR. CONANT: So are ours, but we have to pay for extending the evidence.

MR. LEDUC: That covers only services.

WITNESS: Yes.

Q. Taking the depositions and extending the evidence.

A. Yes. I suppose the province pays for it, because they pay the stenographer a salary.

MR. LEDUC: It pays indirectly?

WITNESS: Yes.

MR. CONANT: Thank you, Mr. Juneau.

Witness excused.

HIS HONOUR, JUDGE L. V. O'CONNOR (Cobourg, Ont.).

MR. MAGONE: Judge O'Connor, the Committee have heard certain evidence with respect, particularly, to Division Courts, and it was suggested that the counsel get in touch with you, so that we would have as complete a picture as possible throughout the province. We have had judges from Toronto, and we thought that you might assist the Committee with respect to rural Division Courts.

WITNESS: Yes. I might say, gentlemen, that I received this notice on the fifth of April, and I haven't all the material before me that I would have liked to have had, but I think that I can probably discuss it.

MR. CONANT: Oh yes, I'm sure you can.

WITNESS: I do know that I am the county court judge for the united counties of Northumberland and Durham. I have a territory having a frontage, on Lake Ontario, of sixty-five miles, and a depth varying from twenty to thirty miles north from the lake. As you can see immediately, it's a considerable territory, and, of course, it's mainly rural. We have four towns in the two counties; in Durham, Port Hope and Bowmanville, and in Northumberland, Cobourg and Campbellford. Campbellford is situated a distance of forty-four miles from Cobourg, and Bowmanville, on the west, is distant thirty miles. Now, would you wish to ask me questions, or do you wish me to go on?

MR. CONANT: It's quite all right to go on, judge.

WITNESS: I have before me the Barlow report, and I'm dealing with items on page B32. I understand that the Judges' Association has had a meeting of its executive—I was not a member of it—and that they submitted to the Attorney-General, a certain representation pertaining to the report, and having to do with County Courts, both on the civil and criminal side, and surrogate court assessment, appeals and division courts. I understand that what I am here for is to deal, particularly, with the matter of Division Courts.

Now, in the first place, I agree with the Barlow report, that the juries in Division Courts should be done away with. I have practiced law for thirty-two years before having gone to the bench, and I have been on the bench, now, since January, 1928, and I must say that during all my experience I haven't known

of a case in which the services of a jury has been invoked, except to the detriment of outside litigants. That is found in a particular case and a bad one. Usually, the outside litigant contacts the party residing immediately within the immediate district, invokes the assistance of five gentlemen who reside right around where he does, which can be easily arranged, and it has been my opinion—I have had quite a number of jury cases in my time ——

MR. LEDUC: You mean in Division Courts?

WITNESS: No, I have had them on both courts—I mean, in Division Courts.

Q. In Division Courts?

A. I'm speaking only of Division Courts, yes.

Q. But you have had several jury cases in Division Courts?

A. Not so many.

Q. How many would you say in your thirty-two years' experience?

A. Well, in my thirty-two years' experience I have had three.

Q. That is since ——

A. Since I have been appointed I have had three.

Q. Six in forty-two years.

A. And in every case they have been prejudiced. The judge is nearly always inclined to take the case away from the jury. I remember I had a case, one time, up in Uxbridge in the County of Ontario, there was an expert jury, and I hadn't a ghost of a chance of being tried by the late Judge McIntyre. The judge did everything he could to assist me and my client, feeling we were entitled to a fair deal. We didn't get it because the jury was all of local colour, and the man concerned was a man from around there. I hadn't a chance in the world.

I had a recent case down in Briton, in which a wholesale firm in Toronto sued a merchant down there. There was a jury which I felt very much inclined to take away, but a question of facts came up to a large extent, and I let it go. Well, I charged the jury very strongly on the facts and on the law, and I reminded them of their oath of office, and it was just like water running down a duck's back. I would say, that as far as juries are concerned in Division Courts, that Mr. Barlow is absolutely right, they should be eliminated.

MR. FROST: Well, judge, there's another opinion in connection with Division Court juries. They are chosen from the territory of that particular division which ——

WITNESS: Yes.

Q. Which takes the jury out of a wide category, or wide territory of a county and confines it to a district ——

A. Confines it to the immediate territorial jurisdiction of the Division Court concerned.

Q. That is an angle we haven't considered.

MR. CONANT: No, very pertinent, though.

WITNESS: It isn't a question of administering justice at all, and very often where the case isn't over a $100.00, and not subject to appeal, why, there you simply have to do what these five men say. That's one thing; I didn't know whether you desired anything on it or not.

Q. That's quite all right.

A. In the first place, the trend of this report deals largely with the question of the disposal of cases of more or less minor importance, and that they should be disposed of with a minimum of expense and inconvenience. Now, I'm going to deal with that feature of the case.

Division Courts have to do with cases that are usually not difficult, apart from motor vehicle cases, and, of course, they stir up an awful lot of interest and ardour and all that sort of thing, but as a rule they are not difficult. The pleadings are simple, and even if they are more simple than they should be, the presiding judge has very wide powers, not only of amendment, but to hear the case, in any event, and let it be washed up on the facts. That has largely to do with quests of merchants' accounts, quests of contracts, particularly where the claims are ascertained in the higher jurisdiction, and the jurisdiction extends to $400.00.

There are two main sides: the actions pertaining to claims, like accounts, whether ascertained or otherwise, and actions for damages, called personal actions, in The Division Courts Act, section 54. Now, personal action, actions for divisions, are limited to a matter of $120.00, as you know, which is a comparatively small sum, but you can realize, in a motor vehicle accident case and other actions having to do with claims for damages, that it would be a hardship to have those cases returned in a higher court where pleadings are required, and examination for discovery and all that procedure. That runs into expense, because, after all, the poor unfortunate lawyer has to be paid for his work. So that these courts as at present constituted, in my opinion, are absolutely necessary. Not so much so in a large city like Toronto, but in a community such as I have the honour to preside over, that is very important, for the convenience of the public, and to keep down expenses, cases extending far beyond a $100.00, as suggested by this report, should be determined in a more or less expedite way, with as little expense as possible. In other words, it strikes me that what should be the object of the Act is to have the convenience of the public considered.

Now, it has been suggested here that these courts be cut down to what they call a small "debts" court; just what he means by that I don't know. A small debt is a claim for damages. I don't know what he means.

MR. LEDUC: What would you think, judge, of limiting the jurisdiction of the Division Courts to a sum of, say, $200.00 in all cases now provided for in section 54?

WITNESS: Well, I might say, in answer to that, I felt, a few years ago, that the jurisdiction of that court should be doubled. It was formerly $200.00 for an ordinary account.

Q. But it was only $60.00 in those days for a personal action.

A. Yes, that was increased to $120.00.

Q. Yes.

A. An ordinary claim or account, and so on, was $100.00 a claim. Where the signature of the parties and so on was ascertained, it was extended from two to four.

MR. LEDUC: Pardon me, judge ——

WITNESS: Well, what I was saying, in answer to Mr. Leduc's inquiry, is that the only cases that you have to deal with in matters of $400.00, have to do with claims that are ascertained; where there's a signature of the parties, where there's a guarantee, for instance, or a promissory note. That, as a rule doesn't amount to very much; the defence is very often put in for the case of gaining time.

MR. LEDUC: Right, and in that case, as in the County Court, they don't dare do it.

WITNESS: They don't do it; the solicitor's charges would be out of reach.

Q. You have just given an argument, judge, for cutting down the jurisdiction. You have an action for $400.00 and your court may sit in May ——

A. County Court?

Q. I mean the Division Court. Your court may sit in a certain place in the month of May; the man knows that by putting in a defence he can get an adjournment until the month of October ——

A. If he shows cause.

Q. Yes, but I mean, he'll put in some kind of a defence.

A. Well, there has to be a defence.

Q. Yes.

A. But usually, a solicitor having charge of a crime of $400.00 will look after it, and he'll certainly protest against an adjournment.

Q. Well, didn't you say just now, judge, that some litigants put in a defence just for the purpose of gaining time?

A. Yes, very often.

Q. But in a case like that what would be the ——

A. Take Cobourg, for instance, we have Division Courts eleven months in a year.

Q. Oh, yes, but in your rural courts I suppose you have them about four times a year.

A. We have them more frequently than that, about every other month, because we haven't any, what you might call, strictly rural court.

MR. FROST: Judge, Mr. Leduc's question has raised this point, that if a defence on an amount which is ascertained as a more or less fictitious defence, it provides for the case coming up sooner, but if he is asking for delay, you couldn't bring it up if it were a county court matter.

WITNESS: Oh yes, it's within the jurisdiction of the court to bring it up within eleven days.

Q. Mr. Leduc previously raised the point about the complicate jurisdictional requirements in section 54, and he asked this question: supposing the jurisdiction were raised to $200.00, that would raise damage actions to $200.00; it would leave contract actions the same, but reduce ——

A. Oh, I see, that's the point.

Q. Yes.

MR. LEDUC: Here is section 54, judge. I draw your attention to C and D3. For instance, you can sue for a balance of an account not exceeding $200.00, providing the balance account did not exceed $800.00.

WITNESS: Did not exceed $800.00?

Q. Well, that's the last one. Take C, $200.00.

A. That's an ordinary debt or account.

Q. Yes.

A. If the account did not exceed a $1,000.00?

Q. Yes, and in D it's $400.00 when the debt is ascertained by the signature of the parties, provided that in the case of a balance of $400.00 the total didn't exceed $800.00. That's correct is it?

A. Yes.

Q. Well, wouldn't it be better to have a flat horizontal limit jurisdiction of $200.00?

A. Well, the only thing I can see about that is that it would be a question of personal actions. When a man thinks he's justified in suing for $200.00, he wishes to be able to safeguard his client by examining the opposite side, and all that sort of thing.

MR. CONANT: Supposing, Your Honour, the practice to examine were granted on an order of the court, wouldn't that meet the requirement?

WITNESS: Well, what court would you invoke?

Q. Pardon?

A. An order of the Division Court?

Q. Yes.

A. Well, before whom would it be?

Q. An order of the judge.

MR. FROST: Well then, of course, you're complicating the matter.

WITNESS: Court clerks are not competent on examination, as a rule.

Q. Well, that could be met with in those few cases where examinations seems to be desirable, by the increased jurisdiction or personal action. Doesn't that meet that objection?

A. It would, yes.

MR. MAGONE: Would that be too expensive a procedure?

WITNESS: Well, that's what I was coming at, Mr. Magone. The objection is, that in a Division Court your costs are too high.

MR. CONANT: Well, that might be ——

WITNESS: Very often, Mr. Attorney-General, as you know, a lot of these examinations are made for no purpose at all.

MR. CONANT: But I suggest this, Your Honour, that the observation is not free from this objection, that on a personal action to-day in the County Court, for $2.00 you can have examination.

WITNESS: Oh, yes.

MR. FROST: But the machinery is really there for examination, and in the Division Courts Act it's not.

WITNESS: You have a man who's a trained examiner to take evidence of that kind, and capable of deciding what is evidence and what is not evidence.

MR. CONANT: Yes.

WITNESS: I'm afraid that the extending of that machinery to the Division Court would not work out to the advantage of the immediate public. Take, for instance, a case where the parties all live in Campbellford, a distance of

forty-four miles from the county town, how could it be arranged to have examination for discovery?

Q. Well, they'd have to go to Cobourg if they sue in the County Courts.

A. It would mean a lot of expense.

Q. I can't quite get your point there.

A. It would mean the reporter and all that sort of thing; the expenses would be high.

Q. Your suggestion to Mr. Leduc making a horizontal jurisdiction of $200.00, simply means in cases between $120.00 and $200.00; they'd be subject to division court jurisdiction.

A. I can't see any objection to extending the division court jurisdiction to $200.00 on personal actions, if the Committee feels disposed to do that.

MR. LEDUC: But you'd leave it to $400.00 in the other cases.

WITNESS: Yes.

Q. Well, judge, I notice that here in Toronto Mr. McDonagh, clerk of the First Division Court, gave us figures showing that some 6,600 writ summonses were issued.

A. Yes.

Q. Excluding judgment summonses, and out of those 6,600 summonses, 275 were for more than $200.00.

A. That's a comparatively small amount.

Q. Four percent.

A. You'll find it that way all over the province; claims are seldom over that. But take a case where a man signs a promissory note for $250.00 or $300.00; as a rule there's no defence, except, as you pointed out, that very often it's put in for the purpose of gaining time and to stall it off.

Q. Well, if you put in a defence just a day or so before the last Division Court in May or June, you usually jump to September or October.

A. You wouldn't in my jurisdiction, though you would in some parts of the province, there's no question about that.

Q. If your Division Courts sit every month I understand it wouldn't apply to your case.

MR. FROST: There has been a suggestion with a view of simplifying and lessening division court costs in small claims of a $100.00 and others, I think.

WITNESS: Yes, $200.00.

Q. The divisions that Mr. Barlow has suggested for small claims, should be incorporated in the present Division Courts Act, without otherwise interfering with the jurisdiction of the Division Court, but just simply taking that small claims division and incorporating similar machinery in The Division Courts Act, for instance, providing for service by registered mail and having a block system of fees, for instance, of $2.00 for a case up to $25.00 and so on.

A. $2.00?

Q. Yes.

A. And half of that would be refunded in the event of settlement before a judgment.

Q. Yes. Do you think there's merit in the suggestion?

A. Well, there's this, Mr. Frost. When you're dealing with a large community like the city of Toronto, where the work is very heavy and cases very numerous, the matter of fees might work out, but in outside communities you'll find that the remuneration of the division court clerk and bailiff is so small that it's difficult to get a man that is capable of doing his work.

Q. Well, it appears that the division court fees in these cases are not so unreasonable. The difficulty comes in, for instance, in a case such as your county where the bailiffs' fees are quite heavy for going out and serving a man. The idea is, if that could be cut down ——

A. By registered mail?

Q. Yes.

A. That could be worked out, I think, and it would be quite desirable. A lot depends on him having received notice. I suppose you'd have the party who received it sign a card, or something of that kind.

A. That would be all right.

MR. CONANT: Don't you think, Your Honour, that the block system of fees, where the amount of the fees ultimately payable would be definitely ascertained, or ascertainable, would be preferable to our present system?

WITNESS: Well, the difficulty, Mr. Attorney-General, as far as I can make out, seems to be a question of mileage; a question of the difficulty of serving. If that could be overcome, I think the costs could be cut down very materially.

Q. Well, supposing we had a combination of this block system covering everything up to judgment, we'll say, excepting cost of service, and you allowed service to be made by the bailiff or by the plaintiff on his behalf, or by registered mail, wouldn't that be preferable to our present system?

A. It would provide more service by bailiff.

Q. If the plaintiff wanted five—it's not compulsory.

A. As a rule, if the plaintiff has a fair case, he doesn't care how much it's going to cost the defendant.

Q. Yes.

A. I think you'd have to do one thing or the other. You'd have to eliminate the question of service by bailiff or let it go as it is. I was reading this report with regard to that, Mr. Frost. He says that, for example, a claim not exceeding $20.00 in the Division Court, requires out-of-pocket disbursements including judgment and execution, of $7.04. How that includes the bailiff's fees as well as the division court clerk I'm not able to say, but I figured out from the tariff that the cost of a claim, as far as the division court clerk was concerned, on a claim of $20.00 is $3.95.

MR. MAGONE: I think that must include bailiff's fees and mileage for service.

WITNESS: And on a claim not exceeding $300.00, it says here, the disbursements are $17.24, and I figured it out at $10.00.

MR. CONANT: It seems to be, without going into detail, that everybody that has made the submission here, thought that the division court costs are both too high and to indefinite. I think that is a fair statement.

MR. FROST: Yes.

MR. CONANT: And we're groping for some means of remedy.

WITNESS: Just dealing with that, I'd like to say something that might be of some assistance to you, Mr. Attorney-General. I called on my own division court clerk yesterday, and obtained this information from him: I asked him for his statement as to the year 1939. I might say that the Cobourg Division Court is not the best court in the two counties. Strange to say, I think Port Hope is better, though a smaller community, but probably the country right around there is a little more prosperous and maybe a little more litigious. Campbellford, also, is probably a little better than Cobourg.

It says here, that the number of cases in 1939 were twenty-eight; number of cases tried, twenty-four. It doesn't seem very many, and they were nearly all settled. Number of judgment summonses, fourteen. Now I'm coming to something which, probably, might interest my friends over here. Number of committal orders, one; number of committal warrants, none; persons actually imprisoned, none; division court clerks' fees, $801.28 (that's for the year); and bailiffs' fees, $400.48. Now, that jurisdiction extends from practically Port Hope, on the west, to within three miles of Colborne; that would be a distance of twenty-one miles along the front and extending back to the lake; that is, Hamilton township and about two-thirds of Haldimand township to Rice Lake. Quite a large territory.

MR. CONANT: Can you give us any suggestion as to how we can solve this problem? The only constructive suggestion we have had yet, as I recall it, is to eliminate these costs of service by permitting the plaintiff to serve, if he wants to, or registered mail.

WITNESS: Well, I think that's a very good idea if it can be worked out. I think the Committee can see whether it can be worked out satisfactorily in other districts.

MR. FROST: Take the Surrogate Court proceedings, it's quite the thing, Mr. Judge, to serve appointments.

WITNESS: Oh, yes.

Q. And there doesn't seem to be very much difficulty in that.

A. There are a great many cases like that. Of course there's no litigation, no contention, all parties are anxious to have the estate wound up and get the money. They can easily get the copy of the accounts in advance and as a matter of fact copies of these accounts can be filed with the registrar and obtained on inquiry.

MR. CONANT: If service by the plaintiff would be permitted, or by anybody else, same as a litigant in the Supreme Court, or by registered mail, which had a tendency to let us, say, starve the bailiff, wouldn't a system whereby a bailiff acted as bailiff for several courts meet that situation and perhaps also improve the calibre of the bailiff?

WITNESS: One bailiff for a certain territory?

Q. Yes.

A. Possibly. Mr. Attorney-General, I haven't given your consideration an awful lot of thought, but in a great many of these Division Court districts you might appoint the Division Court clerk as a bailiff.

Q. Yes.

A. And then have your services made by registered mail.

Q. Yes. Well, why couldn't that be done?

A. If you're going to cut this man's fees down to $150 or $200 a year he'll quit, he'd be foolish not to.

Q. What's wrong with that? Why couldn't it be practical, especially in small courts, to make the clearing? Let him run the whole show.

A. They've done that in Port Hope. For many years they've had the bailiff, now the Division Court clerk is a bailiff, and he certainly does the work well.

MR. MAGONE: I notice on this statement that Judge O'Connor has given me, that the average fees are about $2.60.

WITNESS: Yes, and they cover all the cases from a dollar up to $400.

MR. CONANT: Well, another suggestion has been made, Your Honour, that after judgment the jurisdiction of each Division Court should be county wide, and also the jurisdiction of bailiffs county wide. What is your suggestion as to that?

WITNESS: I think that would be a great mistake.

Q. Why?

A. If you're going to do that you're going to clutter up your court at the town, as I see it.

Q. No, no, I don't mean that. What that suggestion involves is this: that if an execution, let us say, is issued by one Division Court, the writ of execution would then run every place in the county, so that a seizure can be placed in that county, so that every bailiff in that county could make the seizure, or whatever it might be.

A. That would be perfectly all right, I think.

Q. Don't you think there's considerable merit in that?

A. I do, yes; that's certainly a matter that would help in cutting down expenses.

Q. Well, it would cut down expenses, wouldn't it?

A. Yes. Well, I thought you were asking me how to eliminate these outside courts and make them all one.

MR. MAGONE: Well, that's another question you might answer, judge; that also has been suggested.

WITNESS: Well, after all, Mr. Magone, I feel this is a matter of public service.

MR. CONANT: What is the point?

MR. FROST: He says it's a matter of public service.

MR. CONANT: What's that?

WITNESS: I mean for the people immediately concerned, not the solicitor.

Q. You are quite right there, it isn't the purpose of Division Court to be of service to the solicitor.

A. You take where I am living, along the lake front, with comparatively

mild winters, but you go back five miles and you're in snow drifts and it's quite impossible for people to come fifty miles to a case, it's quite a ways; whereas they go to Campbellford, the matter being disposed of readily and with little expense. If they can't get in with motor cars, they can get in with sleighs and cut across the fields, and they can get in there conveniently, so I don't think the question of cutting out all these Division Courts in rural communities is practicable at all. Another thing; if they all come down to Cobourg, I suppose it would be better for the solicitors practicing in the county town, but out in the country people fight their own cases to a large extent—I think two-thirds of the cases in minor matters are fought out by the parties themselves. The judge comes in, gets one man, hears his story, and then he gets hold of the other man, hears his evidence, and then he gets the two parties together, and the thing is cleaned up in very short order without expense.

MR. MAGONE: Judge, perhaps—well, perhaps I had better let you finish your submissions before I ask you any questions.

WITNESS: Well yes, if you will. Now there is a lot of talk, in this report and in other places, as to the expense of Division Courts. But it strikes me that the parties who are advocating lower expenses in the Division Court and who would like to have claims of more or less large amounts transferred to the County Court, overlook the thought that in Division Courts, outside of cases over $100, where a counsel fee is allowed, the solicitors' fees are always paid by the litigants themselves. There is no fee for solicitors. You get into a County Court, and there are fees for solicitors and further expenses to people whose difficulties should be ironed out with as little expense as possible. So that those fees would be increased, if not directly, indirectly.

Now on page 233:

> "That procedure be adopted to enable a judge to deal with contested matters in an informal manner."

What he means by that, I don't know, because I have tried to deal with that; already there is a provision in the Division Courts Act that if the pleadings are not sufficiently formal, that the judge make use of his best endeavours to bring the parties together and ascertain what they are really fighting about. The claim is put in and it is not adjourned unless there is something very material and the parties are taken by surprise, where an adjournment could be readily asked for. So at the present time pleadings amount to little, if anything, in Division Court, so long as the judge is able to ascertain what the parties are fighting about he goes ahead and tries the matter. So I don't know what he means by that. If they can make it more simple than it is at the present, well and good.

PARAGRAPH 5, I have already dealt with that. If there is any way of cutting down these fees without injustice to the parties who have the responsibility of carrying on as clerks and bailiffs, and so on, well and good. I might say that there are responsibilities with bailiffs and clerks. Probably the Attorney-General will know something about a case that happened to be in my county, where a seizure was made by a bailiff of the Division Court of certain wood, here a couple of years ago, and since that time some of the parties have gone to the penitentiary

for perjury. One of the parties who had the chattel mortgage brought an action against the bailiff and Mr. Justice Roach threw it out on a non-suit, and it was appealed and the Court of Appeal said it shouldn't have been a non-suit at all, and they gave judgment in favour of the plaintiff on his chattel mortgage, whereas all the material hadn't gone in. Well, there have been costs of over four hundred dollars on that thing.

MR. CONANT: Yes, that brings up this question, the question of confidence of the bailiffs. I am glad you brought that up. I don't know whether you would care to express an opinion, but I would be glad to have you make whatever observation you see fit as to the competence and capabilities of bailiffs generally.

WITNESS: Well, you can't get a man without any confidence at all and cut his field down to nothing.

Q. Doesn't that give rise to the thought that the whole scheme of the Division Court, or Small Claims Court, or whatever you call it, would be better served if you had fewer and better bailiffs?

A. Well, possibly, I think that suggestion of yours of having a bailiff have jurisdiction on an extended area strikes me as a good suggestion. I hadn't thought of that.

MR. FROST: At the present time, Judge, taking Victoria and Haliburton, in some of these small Division Courts, the bailiffs have very little to do, and the job is just one in which they get just a little bit of extra fees, just pickings, and the result is they aren't and never have the opportunity of becoming efficient, and never have the opportunity of really knowing what their job is?

WITNESS: That's right. I think the bailiff I referred to the Attorney-General will hesitate in making seizures again without searching for chattel mortgages.

Q. There is one question I would like to ask you, about the matter of piling up costs; one of the difficulties and one of the complaints has been this: that in garnishee proceedings, that it is necessary to garnishee time and time again, and if a creditor just gets wrong as to which is payday and he gets there a week too soon, and there isn't anything there to attach, and the result is he has to go over it again, and many times the garnishee costs are piled up in this way until they amount to more than the claim. Now that brings up the question of judgment summons proceedings, and so on.

A. Yes.

Q. We had here Judge Barton, and also Judge Morson, both of them, I believe, expressing this view, that the provision should be maintained for jailing debtors, and that the provision, the usual provision for contempt of court, or failing to appear and answer questions, should be maintained, but that the matter of jailing a man for contempt for refusing to pay ——

MR. CONANT: For default?

MR. FROST: —— or for default of payment should be abolished. I think that is what both of them suggested?

MR. CONANT: Yes.

MR. FROST: Now, Your Honour, I noticed in the figures you gave regarding the Cobourg court, there was only one case of committal order, which wasn't executed?

WITNESS: The man paid up.

Q. Either that, or through the leniency of the judge, he didn't go to jail?

A. No.

Q. But the question arises as to whether there should be some system, or whether a system should be introduced in which the garnishee should attach against a proportion of a man's wages, and continuing until the day it is paid, without entering further garnishee proceedings, and without piling up further costs. Now we have had some evidence from Mr. Juneau here, from the Quebec Attorney-General's Department. They have a law down there which goes under the name of the Lacombe Law, in which the judge has the right ——

MR. LEDUC: That is the general law.

MR. FROST: The general law, rather, is that the judge has the right to direct that, say, five dollars a month, or a certain percentage of a man's wages, should be paid into the court during the existence of the debt, to avoid the piling up of garnishee costs, and then there is also the Lacombe law, by which a debtor who owes a number of claims can go to court and make a certain declaration there and make provision for paying in a certain percentage of his wages, to be distributed, rateably, as I recollect, among his creditors.

WITNESS: Avoiding a judgment summons?

Q. Yes. What do you think of that?

A. I think there is merit in that. I might say, gentlemen, that I feel that the matter of working out the collection of claims against debtors is fairly well left in the hands of your judiciary. I have had a number of cases in which parties have been brought up on judgment summonses, not only once, but two or three times, and probably half a dozen times, if the parties were allowed to do it, and I have given instructions to the Division Court clerk that when an order is made against a judgment debtor, that as long as he is paying, no other claims were to be determined or put on the judgment summons list until this was cleaned up. Otherwise a man is strangled with costs.

MR. LEDUC: Well, there is a point, if I may enlarge on what Mr. Frost just said; the Quebec law is this: you can attach a man's wages before they are due.

WITNESS: Before they are due?

Q. Yes, you don't have to wait until they are due before they pay.

A. Yes?

Q. Then the judge can order the seizure, attachment of the salary until the debt is paid. So that avoids issuing a new garnishee on every pay day.

A. Yes, that's a good point.

MR. CONANT: Well, it avoids—the whole thing, Your Honour, is a question of devising ways and means of avoiding the present necessity of garnisheeing each debt as it becomes due. That is what the Committee is concerned with.

MR. LEDUC: And the avoidance of costs every week or every month.

WITNESS: I think that could be worked out very nicely.

MR. CONANT: Mr. Frost has raised a question I would like to have your observation on, section 173 of the Division Courts Act, beginning:

> 'If a party is summonsed and does not attend, or refuses to be sworn, or appears to obtain credit by fraud, or has made or caused to be made any gift or transfer of his property with intent to defraud, etc. . . ."

You know that section?

WITNESS: Yes.

Q. Well, it has been suggested to this Committee, as I take it at any rate, that that should be eliminated.

MR. FROST: Wait now, Mr. Conant, I don't think that, as I recollect it, there was any suggestion that it should be eliminated in so far as parties who failed to attend were concerned.

MR. ARNOTT: I think the Chairman is right, the suggestion was made that it should be entirely eliminated.

MR. FROST: Who made the suggestion?

WITNESS: Would you mind my giving you a couple of instances?

MR. CONANT: Let me formulate my proposal first, please.

WITNESS: All right.

Q. Supposing we take that section, and leave in a and b, that is the two contempt sections, strictly contempt sections, and now, the remaining sections, c, d, and e, are refusals to pay, really because of fraud, or neglect or refusal, that's what they boil down to ——

MR. LEDUC: Oh no, obtaining credit under false pretences, isn't it?

WITNESS: Yes.

MR. CONANT: Well, supposing we eliminated c, d, and e; what would be your view as to the extent, if any, to which it would impair the effectiveness of the functions of the court?

WITNESS: Well, I don't feel that it would impair it very materially. As a rule, when a judgment debtor is placed under examination, the judge inquires into the causes leading up to the debt. Very often he does and with a view to ascertaining whether or not this debtor is acting in good faith, whether or not he desires to pay the debt.

A great many of these judgment debtors come into court and they don't want to pay.

Q. Don't intend to pay?

A. Don't intend to pay, and you've got to have some teeth in your machinery or they'll never pay.

Q. Yes.

A. And the public, the merchant, and other people who are carrying on business in good faith would suffer tremendously if there weren't some teeth in your Act.

Q. But are not c, d, and e, the teeth that you need to have? a, c, d, and e simply refer back to the question of how the debt arose, that is where he obtained credit from the judgment creditor under false pretences, where the debt was incurred, under false pretences, and so on, and it all goes to show that a man who does incur a debt in that way is not trying to assist the court and not trying to help his creditors. I would abolish them. I am rather surprised at these sections being put in there at all. I don't know why they should be, but a man who has obtained credit by false pretences is not the type of man, as a rule, that wants to pay.

MR. LEDUC: Or by means of fraud?

WITNESS: Yes. Now, if you don't mind, I will give you a case which occurred two weeks ago. I don't want to take up the time of your commission, but, after all, there has been a lot of discussion about this judgment summons.

Q. It's all right.

A. I had a young fellow who came up before me last July; I'm not saying who; he had the same name as his father, and he was sued by a wholesale firm here in Toronto for $100 for certain china and other stuff that he purchased. He wrote out an order for this $100 worth of china and he signed his name, which happened to be the same name as his father's. His father was in business also, and the young fellow worked for him. He got the china at a wholesale firm, who thought it was for his father, went through the country and sold the whole business and put the money in his pocket. When he was asked for the

money by a traveller he flatly told the man to go to hell, because he wouldn't collect.

Well, the wholesale firm tried to get it from the father but couldn't; the father said he had nothing to do with it and wouldn't pay. However, the firm sued the fellow. He was a boy of 23 years of age who worked for his father, and a very saucy one; one of these fellows who dressed right up to the minute, drove a car, had a good time, and so on. He came up on judgment summons before me, and when he came in he showed me his hands—he had eczema all over them; they were in a terrible shape. He just hung them out to me like that and said: "I'm not able to do anything." It was a shock to me. I said: "Well, that's too bad, can't you take treatment?" and advised him to take treatment; he said he would. So I said to him: "Can you do anything about this claim?" and he said no, he couldn't do anything. "Well," I said, "the first thing for you to do is to try to get rid of your physical trouble. I'm going to adjourn this inquiry for you to come up on notice, and when you're cured of this trouble you'll be subject to examination. I hope you go to these people and settle the matter in some way, get the matter cleaned up; we don't want a young fellow like you coming into court," and so on. Well, he came up two weeks ago on a show-cause summons; he came walking up to the court as brave as a lion, and he held his two hands out; this hand was completely cured and the other was all right, except on the first and second finger. I said: "Well, I'm very glad to see you're getting along nicely. Are you working now?" "Oh yes," he said. "Whom do you work for?" "I work for my father," he said. "Where did you get treatment?" He said: "I went down south." "Where were you?" He said: "I was in Florida for four and a half months." "Well, now that you're back and working what are you going to do with this claim?" He said: "Well, I'll pay fifty cents a week." "Your claim was about $120. do you realize how long it's going to take you to pay that at fifty cents a week?" "Well," he said, "that's all I'm going to pay." I said: "We'll see about that. How much are you earning?" "$5.50 a week." "Live with your father?" "Yes." "Not married?" "No." "Does your father buy your clothes?', "Well, yes, sometimes." "Do you drive a car?" "Yes, it's my father's." "Well," I said, "I'm going to make an order, now, that you pay a dollar a week, surely you'd be worth $6.00 a week as well as $5.50." He said: "I won't pay it." "All right, then, if that's the attitude you're going to take I'll make an order that you be committed to county jail for fifteen days." He said: "Oh, that's all right." I said: "You're quite welcome to it." He grabbed his hat and out he went, bragging all around the community that he'd never pay a cent.

Now, the way he obtained those goods you'd have difficulty in establishing it was a fraud, he had the same name as his father; but it was a fraud. Now he'll pay because the father is forwarding the money; the father is well off.

Q. Would he pay it without your ability to commit him?

A. Well, the order is there, and ——

Q. Well, if you don't make an order?

A. No, he would not. I'll give you another case. A chap from another court way down east, a farmer who had raised quite a nice family, and all that

sort of thing; he was always looked upon as a pretty sharp person. He turned over all his farm and all his stock to his wife some years ago. One day he went out to a sale, he bought $125 worth of cattle, gave his own note, and when the note fell due he didn't pay it, and the party went to him about it. He said: "You can't collect anything from me, everything is in my wife's name." The matter came up in court, and he simply said that he couldn't pay. Well, then he was brought up on a judgment summons for examination. He came in well dressed—his boys were working on the farm, he was a gentleman around the place; good farm, well stocked. He had everything to show that he shouldn't be here at all. "Well," he said, "you can't collect anything from me." "All right," I said, "I'm going to make an order for you to pay five dollars a month, you're well able to pay it, your wife can pay it, she can help you out." He said: "I won't pay it, I can't pay anything." "Well," I said, "that's up to you." He was brought up on a show-cause summons. He came in as brave as a lion and he refused to pay. As I could see it there was no reason given for not paying according to the order, so I made an order to commit him for fifteen days. About a month afterwards he came into my office and he said: "Well, judge, I came in here to go to jail." I said: "I'm not the jailer." "Well," he said, "you said that I had to go to jail for fifteen days, so here I am, what are you going to do about it?" "Well," I said, "I'm not going to do anything about it. When you come to jail you'll be escorted by the bailiff who will have a warrant to arrest you, and the warrant will be delivered to the jailer and that will be the jailer's authority for taking you in. But I can't do anything with you; you go on back home." He said: "When do you want me to come down?" "I don't want you to come down at all, that's up to the plaintiff."

In about a month's time in walks the bailiff and the old man, he was going to jail. "Well," I said, "that's all right with me if you're satisfied. Haven't you any proposition to make?" He said: "No, I'm not going to pay it." So he was turned over to the jailer, and he spent one night there and the next morning he paid the whole thing.

MR. LEDUC: Did he pay or did his wife pay?

WITNESS: I don't know, but he has been around in that community ever since, living like a gentleman. His wife was able to pay it, it was formerly his farm.

Q. There's one thing I don't like about those instances. In the first place the father will pay to save his son from going to jail, and in the second place the wife will pay to keep the husband out of jail. You see, there's wide machinery in that Act for the protection of the debtor. There's no man that'll go to jail if he can do the right thing to keep himself out.

MR. ARNOTT: Few even give it the slightest thought.

WITNESS: Yes. If a man is arrested by a bailiff and brought in to me and he says: "Here, you take that young fellow." If the young fellow says: "I admit I didn't show the right disposition, but I'll pay that dollar a month," or dollar a week, he won't go to jail.

MR. CONANT: No.

MR. FROST: May I ask you a question arising out of that? You say that the money was his wife's, but the farm was his own and he turned everything over to his wife who had nothing before that?

MR. LEDUC: Well, I'd like to recall a personal instance when I was practicing in Ottawa some years ago. There was a civil servant, there, with a fairly good salary who didn't pay his debts. The father had died leaving not a very large estate, but some estate, anyhow, in which the son had an interest. Well, the procedure was for the creditors to sue that man, bring him up on judgment summons, get a committal order; then the bailiff stalled the matter off so that we could notify the executors of the estate; and they paid to keep him out of jail.

MR. FROST: You mean to say that the threat of sending him to jail made the executors pay?

MR. LEDUC: Although the estate had no legal obligation to pay.

WITNESS: Well, there may be good grounds for that. But, as I say, a debtor acting in good faith should be protected by the judge. Oh well, this man evidently was not acting in good faith, but you see, the executors were assuming a responsible debt that was not their own to save the man, and the creditors were playing on that.

MR. CONANT: I find difficulty, Your Honour, in considering this aspect, whether the effectiveness of the functions of the court would be materially impaired if we took out of the provisions these rather exceptional conditions under which committal can be made.

WITNESS: Yes, I don't think those are really operative at all; they may be a guide to the judge, but ——

MR. FROST: In practice?

WITNESS: As far as I'm concerned, in all my practice and experience I paid absolutely no attention to that; it's a question of a man's ability to pay. Usually, when an order is made against a judgment debtor it's made after a fairly thorough examination; he consents practically every time to the order that is made. I say: "Can you pay five dollars a month?" He says: "Yes, I can."

MR. CONANT: Now, if you remove from this Act, Your Honour, as has been suggested and on which I express no opinion for the moment, the right of the judge, in any and all circumstances, to commit, then the defendant knows it, the debtor knows it, and he's subject to nothing more than the order of the court without anything to follow.

WITNESS: Yes.

Q. How are you going to make it operative?

A. You can't do it if you can't collect by execution; the plaintiff is out in the cold, that's all there is to it.

MR. LEDUC: But if you had a way of garnisheeing wages, don't you think you could get away from the committal provision of the judgment summons?

WITNESS: But there are a lot of men who are not earning wages.

Q. If they don't earn wages how can they pay?

A. Well, you take a man that is, for instance, a carter, or something of that kind, he has a little outfit of his own, there isn't any amount of his kind of people that are not making wages, are smaller merchants, and so on.

MR. ARNOTT: In other words, there should be an expression from the Bench to look after it?

WITNESS: Oh yes, I don't think there could be any harm spread at all about people being incarcerated for debt; there's nothing to it at all, it's all bunk. I say that as a judge, and I have seen a good many cases. I might tell you this, Mr. Attorney-General, I have practiced for a long time up in another county, and for many years we had a judge, up there, who wouldn't commit under any circumstance. We sued and did everything to collect. These people weren't paying their grocery bills or anything else; they were peddling around from store to store to get credit wherever they could and paid nobody. If you haven't got teeth in your Act you might as well shut up shop.

MR. LEDUC: Well, would you suggest bringing that provision into County Courts?

WITNESS: Yes.

Q. Why should a man be committed to jail if he refuses to pay a dollar a week on a $50 claim and be able to get away with a $500 claim?

MR. CONANT: Doesn't it result, from this rather anomalous condition, that in a Division Court, after examination of judgment debtor, the court can make an order?

WITNESS: Yes.

Q. Now, examination of judgment debtor or Supreme Court is not followed by anything.

A. It's an aid of execution.

Q. Now, if this rather extraordinary machinery for assisting in the collection of a Division Court judgment is to remain, should it not be extended to the Superior Courts, the County and Supreme Courts?

A. Well, there's some doubt in my mind ——

MR. FROST: In Division Court, for instance, a man may get a judgment against him for $120, the Division Court judges can follow the procedure which you have outlined. If the judgment is for $125, $5 more in County Court, he's

a free man. Now, it hardly seems fair that that provision should apply in a poor man's court, and yet that court has more wealthy debtors, apparently got claims against them, and you can't do anything.

MR. LEDUC: Take a judgment of $500 in County Court.

WITNESS: You examine a man for judgment debtor in County Court.

Q. But you can't make an order and put him in jail if he refuses to pay?

A. No.

MR. FROST: He may be the same carter that you can put in jail in the other court, yet you can't do anything with him.

WITNESS: No.

Q. Now, the question is this, should it be extended to the other courts, to County and Supreme Court, or should they all be put in the same boat?

A. I don't see any harm in extending it to the other courts if a man is not acting in good faith, if he's trying to perpetrate a fraud hiding under somebody else's skirts, for instance.

Q. I feel that if you're going to continue that in a Division Court or poor man's court, I think we should extend it to the County Court.

A. I don't know about your expression the "poor man's court"; I don't think the Division Court is a poor man's court.

Q. Well, that's the expression that has been used.

MR. LEDUC: That is the argument that has been used to retain that it is a poor man's court. I agree with you that it isn't.

WITNESS: Well, there are claims that can be determined in a summary way and with little expense.

MR. MAGONE: I wanted to ask you, Mr. Chairman, if there's any use in keeping Mr. Gall, of the county's Young Lawyers' Club, and Mr. Fowler, of the county, waiting; it's quite late.

MR. CONANT: No, I don't think so.

MR. MAGONE: Just two or three other things. Is there any need, Judge, for a third party procedure in the Division Court?

WITNESS: Well, I had a case of that type a month ago down in Trenton, but we got over it, my parties consented; if you can't consent it means bringing up another action.

Q. Well, does that happen very often?

A. I have only had it once in my twelve years' experience.

Q. I think that answers it.

MR. FROST: Your Honour, under the section that gives you the right to add parties to an action—I forget just what section it is in the Division Courts Act—do you think it would be well to have a provision that would permit the judge to have the defendant contribute?

WITNESS: Yes.

Q. I mean, without any complicated procedure.

MR. CONANT: As long as they are both before the court.

WITNESS: Yes, I think it would be all right; I think it would be well to introduce that practice.

MR. MAGONE: I think it might happen more often, now, with the advent of the motor car.

WITNESS: Yes. I have another case in which three automobiles were mixed up, but the parties all consented.

MR. CONANT: Shouldn't there be that right in the court?

WITNESS: I think so.

Q. Shouldn't there be that right?

A. I think it would be well to introduce it.

MR. MAGONE: Judge, with respect to execution against lands in Division Courts, do you think that the writ of execution, in the first instance, might go against lands as well as against chattels?

MR. CONANT: At the present time there must be a return *nulla bona*, as you know.

WITNESS: I see no objection to it.

Q. You see no objection to it?

A. No. The only thing I can see about that is that when you first issue execution against chattels you realize your judgment much more quickly and with less expense.

Q. Why does the plaintiff go through that gesture if there's no chance of realizing it, Your Honour?

A. Well, the bailiff has no difficulty in returning *nulle bona*.

Q. Oh yes, but it's only running up the procedure, that is, fees.

A. Well, the procedure requires a dollar, I think, and then there's the mileage. When you make a seizure you have to have a bailiff and provide him with mileage.

Q. But what's disturbing the Committee is this: why should a plaintiff be obliged to go through that motion and involve him to that expense before taking execution against lands if he wants to?

A. That may be true, but here's another way of looking at that; if you have execution issued against lands, in the first instance, as well as chattels, there's going to be added fees, which is what you want the man to be protected from. The sheriff comes in with a fee; I don't know what the clerk would get, a dollar, I think, for issuing an execution, and the sheriff would have a four-dollar fee.

MR. MAGONE: Yes. Would there be objection to the issuing of execution against lands, in the first instance, if the plaintiff filed an affidavit that he knew there were no chattels upon which to realize?

MR. CONANT: I have good reasons to believe ——

WITNESS: Throw the onus on the other side.

MR. MAGONE: Yes.

WITNESS: That could be done.

Q. Have you made any use in your county, Judge, of the arbitration provisions in the Division Court Act, section 156, I think it is?

A. No, I have not.

Q. Another suggestion was made that the Creditors' Relief Act should apply.

A. Yes.

Q. The amount seized in Division Court?

A. Yes.

Q. What is your reaction to that?

A. I think that would be all right.

Q. You think that would work out all right in small claims where a bailiff seizes ten or fifteen dollars to give it to the sheriff?

A. Well, I think I'd limit that to a certain amount.

Q. I see, but ——

A. Because otherwise the costs would be out of proportion.

Q. Yes.

A. To the benefit derived.

MR. CONANT: There's one rather important aspect I'd like the judge to express his views on, that is, summary conviction appeals.

MR. MAGONE: May I deal with conviction appeals to single court, Judge, instead of Court of Appeal?

WITNESS: Yes. Well, I think that it would be preferable to appeal to a single court.

Q. Rather than to Court of Appeal?

A. Less expensive.

Q. Yes. Now, Your Honour, would you answer the Chairman's question regarding appeals on the record in summary conviction cases instead of trial *de novo?*

A. That is, take the evidence.

MR. CONANT: It's the same in liquor control cases.

WITNESS: Yes, it seems to work out all right under the Liquor Control Act; you very seldom get new evidence; it might cut down expenses and at the same time we might shut the door against poor evidence.

MR. LEDUC: I think it was suggested this morning that there could be appeal on the record when the evidence in the court had been taken by a stenographer.

WITNESS: Yes.

Q. Otherwise there'd be a trial *de novo?*

A. Yes.

MR. CONANT: What do you think of that, Your Honour?

WITNESS: I think that would be all right.

Q. Where the stenographic extension of the evidence is an exhibit?

A. It would be quite a saving of time and money.

MR. FROST: Did Your Honour have many such appeals?

WITNESS: In the Division Court?

Q. No, summary convictions.

A. Yes, I have had quite a number; I have two coming up now, breaking and entering.

Q. And now most of the evidence is taken by shorthand writers, anyway, isn't it?

A. Oh yes.

Q. I mean, there are a few cases where the magistrate copies out the evidence by hand.

A. We usually have a reporter, yes.

MR. CONANT: Oh yes, but don't those retrials usually extend out for a long while?

WITNESS: Oh yes, far too long, whereas if you had the evidence itself, the judge would probably read that and the argument is made, and it is closed within half an hour.

Q. Then on your retrial on the appeal, you have interminately this: "on the previous trial you said this, and now you're saying this," and you chew the whole thing over about four times, don't you?

A. I think that is a good suggestion, Mr. Attorney-General.

MR. MAGONE: I think that is all.

WITNESS: There is just one other thing I was going to speak about; I don't know what the Bench has done at all, but in a part of this report I am grieved to see reference made to what is supposed to be the practice of some County Court judges and, amongst other things, on page B34, after referring to a specific case, he asks the question: "How long is this racket going to continue?"

MR. LEDUC: Well, that is not Mr. Barlow's expression.

WITNESS: Yes.

Q. Oh no, that is not Mr. Barlow's expression.

A. No, that was put in the report; I don't know as it is Mr. Barlow's expression.

Q. No?

A. It is put in the report, and it is really a serious matter. I may tell you that my practice is, and it is generally the practice throughout the province, to insist upon all the Division Court clerks sending me a complete list of all cases coming up for trial at certain courts, and the amounts involved, so if there are any cases over $100 that is appealable, I will bring along the reporter, and if there isn't a case over $100 the reporter doesn't go. Now in many counties the reporter is paid by salary. In our county she is not; she is paid eight dollars a

day, and I insist upon that, and what is more, these clerks are instructed that, if the case is settled before the time comes for the judge to leave his home town, that they should either write or, if they haven't time, telephone, and in that way the reporter doesn't go. If all cases are settled, or there are no cases coming up before the court, of course, the judge doesn't go.

MR. CONANT: Yes.

WITNESS: Now it has been said, some place or other, that there are judges who go whether there are any cases or not. Well, I would like to know just who these judges are. If there is such a judge, I think there should be a reprimand given to that particular judge.

Q. By whom?

A. Well, the Inspector of Legal Offices I think makes that reference here some place, and if he finds that, why not report it to the Department of Justice?

Q. But the Inspector of Legal Offices has no jurisdiction.

MR. LEDUC: Report to the Minister of Justice?

WITNESS: Why not take it up with the judge immediately concerned and ascertain whether or not it is true? Now, following along that line, here is a court that I have for the 12th at Millwood, and it says here, and the clerk says here:

> "We will have no court on April the 12th. I got word from Mr. Frost and also from Mr. G. N. Gordon to adjourn the case of Thompson vs. Thompson, and there are no other cases."

That shows you just what the practice is in my jurisdiction, and I think it is common all over the province.

MR. CONANT: Well, I haven't the slightest doubt about your jurisdiction.

WITNESS: And I don't think there is any racket being worked by any judge, just because I feel the judiciary is above reproach in these matters.

Q. Well, I can say to the other members of the Committee, that from my knowledge of Judge O'Connor, there isn't any suggestion that that has ever happened in his jurisdiction.

A. It is really too bad to have this appear in the press. People reading these things think it is great news. Now about the districts, this travelling around ——

MR. FROST: Just on that point, you raised there, Your Honour, I agree that I think, with all the county judges that I know or that I have practiced before, that that is the practice followed; the County Court judges aren't anxious to go to these places if they can avoid it, that is correct.

WITNESS: Well, the inference is we do it for the purpose of that miserable

little six dollars a day and eight cents a mile. Let me tell you about that question of eight cents a mile. Thank God, I am able to drive a car, but, unfortunately, there are judges who can't; take, for instance, the late Judge White of Peterborough; he travelled for a number of years before he died; he always had to take a driver with him, and he paid the driver's expenses and meals and all the rest of it, and it all came out of that six dollars a day.

MR. CONANT: Yes, he wouldn't be anything in.

WITNESS: He wouldn't make anything on that in any kind of a decent car.

MR. MAGONE: Generally, with respect to the continuance of the County Court district, is there any real reason for continuing the present system?

WITNESS: Any reason for continuing it?

Q. Yes.

A. Well, there are many reasons for continuing it; very often a judge is called in because there is a matter comes up that he has had previous dealings with the parties concerned, and it makes it rather awkward for him to determine the matter in question, and he passes that over to a brother judge. I have a case that was to come up last Tuesday in Surrogate Court, a contested claim. There was an aunt, a sister of the deceased party, and a man, a farmer brought a claim for $250 for nursing, and the evidence disclosed that the son, who had lived with his father, was more or less of a rascal, and got married and he moved off the farm and didn't help his father any, and he was fighting the case; he was trying to persuade the executor to fight it. I gave the old lady her $250, which she earned, and he intimated when he was in the witness box that he had a claim he was going to bring, and when he intimated that of course, evidence had come out to show that he was quarrelling with his wife, and wasn't looking after things generally, generally a scamp, and I intimated to him that he'd better forget it, that in the first place he was a son of the deceased, against whose estate he was bringing the action, and he would have difficulties in that way; and what was more, his conduct to date didn't impress me very much. Well, he has turned around and brought a suit for $670 against the father's estate for work done while on the farm, and I, in view of my remarks to him, felt that he would feel that he wouldn't get a square deal.

MR. CONANT: Yes, that's true.

WITNESS: And I have asked Judge Coleman to come down and take the case. There are many cases like that, in which it is very important. You might do away with the districts anyway, and give him the right to call in some other judge. That point that strikes me, gentlemen, is there has been a feeling that the judges are travelling too far. Well, I understand the County Court judges are having a meeting, and they may have made some representations. But it might be considered to cut down the size of the jurisdictions, so that there wouldn't be such long distances to travel.

Q. Just look at that list and see if you have any observations to make on it?

A. Take our district; you know that, Mr. Attorney-General, much more so than any other; but in our jurisdiction, I very seldom go up into Victoria county; it's too far away; Lindsay is sixty-four miles away. The only place that I practically do go to is to Whitby, Ontario county, and sometimes I go up to Peterborough, when there is an important case that the judge there doesn't feel like trying.

Q. Judge, I would like to ask you this: you may answer or you may not, as you see fit; but do you think that the exceptional cases or the incidents in which it is undesirable for the local judge to try his own cases justify that list that you have in your hand there?

A. What is this, travelling allowances?

Q. Does that cover the mileage as well there?

A. Yes. Well, I have no doubt it is abused in a great many cases.

Q. You have no doubt it is abused in a great many cases?

A. I think there is an overdoing it.

Q. Looking at that list judicially, if you like, doesn't that list suggest it is?

MR. FROST: Of course, I think, Mr. Conant ——

MR. LEDUC: This is paid by the Federal Government, of course.

WITNESS: Well, this does not only deal with the district particularly, this covers your own immediate territory as well.

MR. FROST: That's the point. A judge with a big district may necessarily have more mileage than a judge who sits here in the city of Toronto, and doesn't have to go outside the district.

WITNESS: Well now, there is reference to the senior judge of the county of York; he never goes outside of the district of Toronto; why would he have any mileage?

MR. CONANT: That's right.

WITNESS: I notice mine here, $838, to April 16th.

Q. Well, you are one of the modest ones.

A. Well, probably, but I average one court a month outside of my county, and I don't think that is overdoing it. I had more than that up in Peterborough in December, because I was on a case that lasted three days, and the solicitors were never ready; when we get through one day, they weren't ready for the next day; they always had something else on.

Q. Is there anything further, Mr. Magone?

MR. MAGONE: No, that's all from Judge O'Connor.

MR. FROST: Before you leave that question ——

WITNESS: I might suggest, the mileage doesn't seem quite right, and might be cut down.

MR. FROST: There is this suggestion; you mentioned a group of counties, Peterborough, Ontario, Victoria and Durham: it does seem to me that the exchange of judges in the County Court cases in general sessions and County Court Judges' Criminal Courts have really been in the interests of the public. I say that as one who is a resident up there, and knows something about the situation. I think the exchange up there has been in the interests of the public, and I take it, just from my own experience; you take, for instance, Lindsay; we have fifteen lawyers in Lindsay. If the judge, in County Court cases, is confined or restricted to Lindsay only, he gets used to the lawyers that are there, the lawyers get used to his ways, and the result is I don't think there is as good practice in the court there as if Judge Smoke, for instance, came up from Peterborough occasionally, or you came up from Cobourg, and so on. And I really feel this, that the exchange in the district in those larger places has been a matter of public interest.

MR. CONANT: Oh yes, I don't think there is any doubt about it.

WITNESS: There may be something in it, but after all that is more or less picayune, you know; the only question is as to whether or not somebody is running around the country more than he should. There was a statement made here that some judges don't take any courts in their own district; I can't understand that.

Q. It is like a great many other things of human construction or regulation; it isn't the use, it's the abuse.

A. Take your own County Court judge down there in Whitby; he sat on a criminal case there for five days; that doesn't look as though he is running around too much.

Q. No, that's true. Of course we are concerned with it from the standpoint of provincial legislation that has created these districts. Now, if in maintaining that provincial legislation, we are contributing to anything that is wasteful, we have the right to consider it.

A. Oh yes, I think so, if there is any—but I think if there is anybody who has shown that there are judges running around and taking advantage of that sort of thing, the Inspector of Legal Offices ought to speak to him about it.

MR. CONANT: Well, thank you vere much for your assistance, Judge O'Connor.

Witness excused.

MR. G. A. GALE, Lawyers' Club, Toronto.

MR. MAGONE: Mr. Gale, your were appointed chairman of a committee?

WITNESS: Yes, Mr. Magone, chairman of the committee of the Lawyers' Club, to submit to Mr. Barlow, when he commenced his investigation, a brief relating to suggestions that the Lawyers' Club might think advisable to bring to his attention. Following that, a brief was submitted.

Q. Yes.

A. And I believe it has also been submitted to the chairman of this Committee.

Q. Yes.

A. Since that brief was submitted, the lawyers have held various meetings relating to the matters brought before the committee, and it was my understanding that I should perhaps deal with these subjects: First of all, the suggestion regarding the constitution of a rules of practice committee, the grand jury, and the petit jury, and any comments which I might have to make with respects already covered. I may say, sir, that the Lawyers' Club is rather a large body, and it is very difficult to try and get any formulated idea from the Club as a whole, particularly when there has been such a wide scope of subjects covered within the last few days.

Now, the first topic perhaps that I should like to mention is the question of the new rules committee. The Lawyers' Club very strongly recommended to the Master, and authorized me to renew it here, to have the committee reconstituted to include barristers, and in our submission the Master of the Supreme Court of Ontario. We also suggest that a representative of the administrative branch of the judiciary should also be a member, and, of course, by that, we are rather suggesting the Attorney-General himself. I don't know whether you want to hear any arguments that we have.

MR. CONANT: Just to shorten it, because we have had quite a few submissions, I think we would be interested, I at least would, and perhaps my colleagues will concur with me, in any method you have to suggest as to the manner of selecting the barristers to be added to the committee.

WITNESS: Well, it was thought by us, sir.

Q. We have had one concrete proposal, have we not, Mr. Magone, that they be selected by Convocation, that is the Benchers of the Law Society?

MR. MAGONE: Two, sir, and Mr. Barlow's, that they be designated by the Chief Justice.

WITNESS: Well, Mr. Barlow's report is in accord with our recommendation; we felt, with some diffidence, that if this new committee were to be set up, as we suggest that it should, perhaps the control of it should be given or left as nearly as possible, and that perhaps also with respect, that a greater weight would be given to the addition of any barristers if they were selected by the Chief Justice. As I say, there are various reasons which we have to offer for

the reconstitution of the committee. I may just mention one perhaps: that is, in going through the judges' report on Mr. Barlow's report, I notice that there are ten changes suggested by Mr. Barlow which are adopted by the judges. And while I have no statistics on the subject, I believe that ten changes are almost as many changes as have been enacted since the rules were consolidated in 1928, so that, with respect, I submit that a fresh mind, perhaps, does invoke some changes, in which the judges are apparently in agreement.

Now then, sir, as to Division Courts, the recommendation of the Lawyers' Club was simply this: that so far as possible, the procedure relating to Division Courts and the Division Courts be simplified and, secondly, that that simplification be carried further into the question of costs of Division Court actions.

Q. When you say simplification as to costs, you mean certainty?

A. Certainty, yes.

MR. LEDUC: In the costs?

WITNESS: Certainty in the costs, and also simplification of the method of arriving at the cost.

MR. CONANT: Having in mind that, at the present time, Division Court costs are made up of almost innumerable small items?

WITNESS: Exactly, and you never know where you're at, and you can't advise a client where he will be at when he gets through. And I think that is one grave objection which we find with the Division Court at present.

There is another matter which perhaps should be mentioned; we felt that, if the division court clerks could be in some way instructed so that they could advise the litigants or prospective litigants, when they come into their office, not only as to drafting their claims, but advising them generally, so that in small matters the intervention of a solicitor or barrister might be avoided.

Q. It's rather surprising to hear a representative of the barristers say that.

MR. FROST: Of course, that is being done in some of the outside places.

WITNESS: I have no doubt about that.

Q. In Toronto, where they have so many cases, they haven't the time to do it, but in many of the outside jurisdictions the division court clerks do advise them.

A. Yes, sir; there is just one observation, sir, which I would like to make, if I may; the idea of the small debts court was not in existence when we made our submission; it seems like a good idea in one sense, that is it will definitely simplify and reduce the costs in claims under $100; on the other hand, if it is set up in accordance with Mr. Barlow's recommendation, it may have a tendency of increasing the cost for everything over $100. In other words, if you have to come to a central place in each county to try claims of $120 or $150, and bring

all your witnesses, to use Mr. Arnott's county as an example, from Madoc to Belleville to try a claim for $1,250 originally ——

MR. CONANT: That is a modest example; you would have to go a lot farther than that.

MR. ARNOTT: Bancroft.

WITNESS: In that case you are indirectly adding to the costs

MR. LEDUC: Well, in the present County Courts Act there is a provision along those lines.

WITNESS: Exactly, I am just mentioning that some thought should be given to that if the small debts court is established.

MR. CONANT: I don't know whether you are going to deal with it, Mr. Gale, but when you deal with simplification and reduction of costs, that is quite feasible, I think, so far as everything is concerned, excepting the costs of service. Now that is quite apparent, is it not?

WITNESS: Yes.

Q. Now then, when you come to service, that is the imponderable or uncontrollable factor, and if you have any views to express as to how that could be met, I think we would be interested.

A. Well, our view, sir, for whatever it is worth is this: that service might be effected by registered mail, with one of those return card systems, but that judgment should not be signed unless some additional proof—unless the judge were satisfied that apparently service had been effected.

Q. Well, supposing in those cases we provided that where service was effected, the return receipt were provided, and if there was default and nobody showed up, we had something equivalent to a decree *nissi* or judgment *nissi*, and then a notice was sent to the defendant by the same process, to the effect that, for instance, "the judge has committed you to pay $1.50 a week unless you take action as prescribed by law; within fifteen days this judgment may be acted upon." Would that be sufficient to protect him?

A. I would think so.

There is one item in the report with which we do disagree, that is making The Creditors' Relief Act apply to the Division Court, at least, with an unlimited application. Certainly there should be some restriction in the amount.

MR. FROST: That would bring about too many complications?

WITNESS: Certainly; you would collect say, $5 in a small division court action; if that were turned over to the sheriff, I shudder to think what would become of it. I am afraid the plaintiff would never see it.

The suggestion has been made here to-day, sir, about division court appeals going to single judges, and this is purely my own opinion: I would just like to point out that I am quite in agreement with the idea of division court appeals being simplified if they can, but I fear very much that that can be accomplished by sending them to the weekly court of chambers. As you know, sir, we have lists now running anywhere from ten or twelve or fifteen or twenty-five cases set down before single judges, and we are sometimes there till six and seven o'clock in the evening, and if in addition, you had appeals from Division Courts on questions of fact, with evidence again, I don't know when we'd ever get through with them. My own guess would be that there are about one-third of all appeals that come to the court of appeal that are division court appeals.

Q. Oh yes, but Mr. Gale, may I point this out; if we have proper regard for the values and the equities, the courts are constituted to serve the people, and not the people to serve the courts, and if our personnel machinery isn't efficient, then it is a matter of revising our machinery.

A. Yes, all I am pointing out, sir, is the greater time it would require.

MR. LEDUC: I think the suggestion was made that the appeal should be to a single judge.

WITNESS: In other words, some new court?

Q. No, no, to a judge of the Supreme Court or chambers.

MR. CONANT: Yes, a single judge.

MR. LEDUC: I don't believe it was meant that it should go to the court and be on the list with the ordinary cases. That is a matter that could be arranged, and there is some merit in what you say, that it could be held in chambers.

WITNESS: Well, I am suggesting that it would seriously complicate matters to have it go into the ordinary chambers and weekly court list.

Q. Oh, that would complicate it?

A. Oh yes.

Q. Oh, I thought you were asking that it should go there.

A. Oh no. I say, by virtue of the fact that those lists are pretty full at the present time, that it would seriously hamper everybody to have those appeals go to the judge in weekly chambers.

In other words, if that system, or that procedure is set up, I would respectfully submit it would have to go to a separate judge.

MR. MAGONE: Mr. Gale, weekly court, as you probably know, sits in London, Ottawa, Hamilton, Windsor?

WITNESS: Yes.

Q. These appeals might conceivably go to a judge sitting, for the northern district, at Port Arthur or Fort Francis?

A. Exactly.

Q. Don't you think that would eliminate the congestion you suggest in Toronto?

A. Well it might, but if, at the same time, Mr. Magone, you have a great many division court appeals from, in and around Toronto, the county of York, I suppose, contributes the greatest number, and if those appeals went on before the ordinary weekly court judge, or chamber judge, I am afraid that it would hamper things considerably.

MR. CONANT: Oh yes, but Mr. Gale, if that single judge, whether he is chambers or court judge, is an adequate tribunal to hear the appeal, I would be surprised to hear you submit the argument that in order to avoid further work in that court, it should still be heard by an appeal court of three judges, as the case may be. Surely you don't think that is logical?

WITNESS: No, I don't, sir; perhaps I haven't made myself clear.

Q. You see, under the present practice, as you know as well as I do, you go to the Court of Appeal, three judges who, the next minute might be hearing a case involving a million dollars, and on a case involving $150 you've got to have five copies of evidence, and all the rest of it. Now, if that system is not reasonable or common sense, then the machinery for hearing it by a single judge can do it, if it is made available, is that right?

A. Exactly. Of course, I point out, sir, the only difference in evidence and exhibits would be three copies instead of five, and I don't think there would be a great saving in that. I agree with the suggestion that it shouldn't go before the Court of Appeal; all I am saying is that the alternative, in my submission, should be that they do not go before the regular weekly court or chamber judge, but that some separate judge should be designated each month to hear them on a special list.

Q. Well, that may be a good suggestion; is there anything else, Mr. Gale?

A. There was no recommendation, sir, as to the grand juries; as to the petit juries, we didn't feel qualified.

Q. Have you got this formula we are groping for?

A. Regarding petit juries, no sir.

MR. LEDUC: What about juries in Division Courts, Mr. Gale?

WITNESS: We agree with the apparently unanimous opinion.

Q. That they should go?

A. That they are unnecessary, yes. As to the petit juries, sir, with, perhaps the exuberance of youth and inexperience, we recommend that juries be dispensed with in civil proceedings, except those proceedings mentioned specifically in The Judicature Act. I don't think that I could add anything to what Mr. Mason said this morning.

MR. MAGONE: You would dispense with juries in all civil cases?

A. Yes.

Q. Except in those special cases, what is it, libel slander, and ——

A. Malicious prosecution.

Q. Yes.

A. I think there are five of them all told. I think Mr. Mason put it better than we could do it; we discussed the thing seriously and came to that conclusion.

Q. Well, Mr. Mason didn't go as far as that; he went as far as to suggest that there should be some restriction on the right to a jury in all cases, but he didn't go quite as far as you.

MR. FROST: He said the onus should be placed upon the person asking for a jury, to show cause why it should be granted.

MR. CONANT: Yes, I suppose you would subscribe to that view?

WITNESS: We certainly acceded to that view, but our original submission was, that it be done away with entirely for various reasons given by Mr. Mason, which were discussed by us, and which are common knowledge. I may say just one thing, that the Rules 258 and 259, set down that cases which formerly came before the courts of equity shall not be tried with a jury, and cases which came before common law courts shall be tried by a jury, seemed to be entirely arbitrary rules.

MR. CONANT: Yes.

WITNESS: And the fundamental rights of the subject certainly are not any higher in common law courts than they were in equity courts. I think that is all I have, sir.

MR. CONANT: Thank you very much, Mr. Gale.

MR. FROST: Did you make any recommendations regarding grand juries?

WITNESS: No, we didn't make any recommendations along those lines.

Witness excused.

Committee rises until following morning.

NINTH SITTING

Parliament Buildings, Toronto,
April 12th, 1940.

MORNING SESSION

MR. CONANT: Mr. Magone, Mr. McKenzie wishes to add something to what he said yesterday.

MR. MAGONE: Before Mr. Frost starts, Mr. Chairman, I wish to say that I have had some correspondence with Judge Owen, the president of the County and District Judges' Association, following a news item that appeared in the newspapers that the judges took exception to, on the ground that they thought it was a criticism of the amount of their travelling expenses. They asked, at that time, that they be allowed to make representations orally to the Committee, and Mr. Silk immediately wrote back and said that we would hear them at any time. Following that, a meeting of the County Court Judges' Association was held in Toronto, Wednesday of this week, and they were to communicate with me on Wednesday afternoon or Thursday morning, and I was to fix a time for the hearing. Instead of that, I have a communication from Judge Owen which I think proper for me to read into the record. It is dated April 10th. (Reads):

> "At a meeting of the executive committee of the County and District Judges' Association of Ontario, held to-day, the correspondence between our president and Mr. Magone was read, and I was authorized to make representations in writing in regard to the matters which have been discussed by the Committee. The reason for the setting up of the County Court Districts was to cut down the number of junior judges, and to equalize the work between the large and small counties, and also to facilitate the holding of courts and the despatch of business in case of the illness or the absence of the judge. By the provisions of The County Judges' Act, section 20, it is mandatory for the judges of each district to meet at least once a year, to arrange and appoint which of the said courts of the district shall be held by each of the judges throughout the ensuing year, and what other judicial work each shall discharge in the respective courts of the district. In many of the districts, the judges have constituted this enactment to mean that it is their duty to distribute the sittings of the courts so that the judges of one county will hold a number of sittings in counties other than their own. Representations have been made from the Department of the Attorney-General, prior to your incumbency of the office, that it was the desire of the department that the letter of the foregoing provisions of the Act be observed, and that there be a general interchange by the judges throughout the districts. Notwithstanding the reasonably plain provisions of the Act, the best information we have in the matter is that in only one district is there a general interchange of judges for the Division Court sittings. Furthermore, we wish to point out that by reason of the place of residence of some judges, it is less expensive and involves less travelling when a judge of a neighbouring county takes a court, than would be involved if the judge of a county took such a court.

Although the accounts of the travelling allowances of some of the judges may look large, without an enquiry, it is impossible to say that such accounts are unnecessary or have not been incurred in the interests of justice. We are reliably assured that some of the larger accounts have been incurred because of the absence on leave or infirmity of some judge or judges, or by reason of vacancy on the bench in some counties. We are firmly of the opinion that if the judges concerned had been consulted, it would have been ascertained that a number of matters which have been given publicity would have been capable of explanation, and the public would have been placed in possession of the facts. In further reference to the travelling allowances of judges, a number of judges have reported to the department of the Attorney-General, that the number of Division Courts in their counties might be reduced in the public interest, and our association, in a memorandum on file in your office, have made recommendations to the same effect. The number of Division Courts in any county is not in the control of the judge. Our information is that it is the general practice for Division Court clerks to notify the judge that there is no business at the approaching sittings. If that practice is not followed in any county, we will ask our members to see that such custom is adopted. In conclusion, we beg you to be assured that our association is prepared to co-operate with your department and with your Committee, in any manner in which it may appear that justice in the Province of Ontario may be efficiently and economically administered."

MR. CONANT: Yes. Well, now, it is my understanding—or would you confirm it or otherwise, Mr. Magone—that that is all the representation the honourable the County Court Judges care to make on that point.

MR. MAGONE: I think I am safe in saying that that is all.

MR. CONANT: I see. Well, that adds something to the discussion, and it is in a form that will be available and can be considered conveniently by the Committee when we are dealing with that aspect of our enquiry.

MR. MAGONE: Now, Mr. McKenzie, I think you might continue, if you will, where you left off last night.

MR. FROST: There is just one point with Mr. McKenzie—yesterday, we were hurrying him just at a rather bad time. We rushed him. It was just before noon. Mr. McKenzie represents a section of the Canadian Bar Association, and he was dealing with a matter which I think is very important—one which we might look into in an impartial sort of way. He was dealing with the subject of the decisions of certain boards and commissions—and, I suppose, certain government officials who make decisions—and his suggestion is that they should be subject to review. Now, I think that we should hear his argument along that line. That is why I thought, yesterday, it would be too bad to rush Mr. McKenzie.

MR. CONANT: As Mr. Frost says, you started at rather an inopportune time. I thought your discussion was very valuable, and I asked for an adjournment in order that you might have ample time. As far as I am concerned, we'll be glad to hear you to any extent.

WITNESS: Before I go on with that, could I refer to three or four smaller matters that I might forget otherwise? There was a resolution, which I omitted from my list yesterday, passed by the Ontario section meeting in Windsor ——

MR. CONANT: May I interrupt, Mr. McKenzie? I do so because I have had a number of enquiries this morning and late yesterday about the programme of this Committee, and I think we should clear up any misunderstanding at this time, if possible, for the benefit of those who may be interested in the future sittings of the Committee. Mr. Leduc, as you know, a valued member of our Committee (all being valued members), is chairman of another committee, and I had understood from him that that committee wanted to resume its sittings.

MR. LEDUC: At the earliest possible date. Perhaps the week of the 22nd. I think it can be arranged.

MR. CONANT: You won't be sitting next week?

MR. LEDUC: No.

MR. CONANT: So we may be continuing next week.

MR. LEDUC: Well, Mr. Conant, we have been sitting two weeks on this Committee and we have been sitting as long on the other.

MR. FROST: I think there is an advantage in adjourning. Among other things, it would give Mr. Magone and Mr. Silk an opportunity to digest some of the things discussed here.

MR. CONANT: To-night we will adjourn *sine die* to meet again at the call of the chairman. All right, Mr. McKenzie.

MR. FROST: Mr. McKenzie, some of those things you went over yesterday you had to go over in a great hurry. If you want to go back over them, you may.

WITNESS: Well, sir, I might say that Mr. Armstrong was with me yesterday, and Mr. Lang was here before.

MR. CONANT: I think you are quite capable of taking care of yourself.

WITNESS: I just wanted to put on record that the Bar Association was represented. Now, there is a resolution, which I overlooked, dealing with matrimonial cases. I just wanted to leave it with the Committee. I don't want to go into that now, but I would suggest, sir, in regard to the rules, it might be advisable for the Committee to make recommendations. I mean in a general way, without attempting to phrase the rules. Some of the things dealt with in Mr. Barlow's report are rather matters of technical procedure, but there are really matters of principle in which the Rules Committee might hesitate to put into force unless this Committee recommended it.

MR. CONANT: What, particularly, have you in mind?

WITNESS: Well, I don't know whether I can help you there, sir. It would

take too much time to find it. You will, no doubt, in reading those things, see that some of them are matters for more than a casual committee to deal with. Might I suggest, too, in regard to the constitution of that committee. It has occurred to me, since I have come here, that there should be a place on it for a solicitor. Not that there is such a distinction, legally, but I mean an office man on the Rules Committee, rather than simply confine it to counsel. That is a matter of detail, of course, but the office man has often, as you know, a different point of view from a man whose business is purely counsel work. Arising out of that, I was most shocked at the recommendation of the judges, and concurred in by the benchers, in regard to procedure in the sheriff's office. That is on page B36. Evidently, both these bodies have overlooked the fact that nearly all these matters enumerated in paragraph 1 of section 13, as to the searches the sheriff has to make—all those searches have to be made every time a transaction is closed, and it is perfectly ridiculous that you should search for unlimited partnerships in the Registry Office, for limited partnerships in the County Court Clerk's Office, etc. It seems to me that Mr. Barlow's recommendation is eminently sound and would facilitate business a great deal.

MR. CONANT: You mean centering all those searches in one office?

WITNESS: Yes, sir. It seems to me that the Registry Office is more the place for a search than the County Court Clerk's Office.

Q. Have them all there, you mean?

A. I would say so. In the city of Toronto, the County Court Office is not suitable for that. It would be quite impossible to carry on business there.

MR. STRACHAN: Yes, it would be quite impossible.

WITNESS: Certainly. They should be consolidated in one office. Now, sir, there has been some discussion about a commercial judge. I have heard it suggested that the great cause of delay in the city of Toronto, where most of the actions are tried, is a non-jury court, and the loss of time in waiting for cases to be heard is a great inconvenience to counsel and the witnesses, and ultimately redounds to the public.

The judges, if I may say so, are in the service of the public, and cases are not tried for their convenience, but for the convenience of the litigants.

MR. CONANT: Well, generally speaking, don't the judges try to meet the public's convenience?

WITNESS: Oh, yes. But I think the system is bad.

Q. How would you improve it?

A. I would say, as it is set out in England. And if you will look at these *Weekly Notes* which Mr. Silk got yesterday—when the discussion came up—you will see that the short non-jury cases are listed with the probable time, and the dates are fixed accordingly, and in the Commercial Court in London, as I understand it, you are not set down for the week commencing April 9th, you are set

down for April 11th at two p.m. I don't see why it wouldn't be much more convenient to have a similar method in the administration of the Toronto non-jury court.

Q. Well, doesn't that combine more careful examination and planning by the registrar or clerk of the court, and the judge.

A. Yes, sir. In New York, as I understand it, in the equivalent of our non-jury court, all cases are listed once a month, and the counsel are required to appear and state their position, and then dates are arranged for those cases that are ready for trial.

Q. Yes.

A This business of rushing up to the registrar on Friday afternoon to make sure your case doesn't come on next week, and then you find it is on ——

MR. STRACHAN: And if there is a case ahead of you ——

WITNESS: If there is a case ahead of you that takes all week, it costs the public money.

MR. CONANT: Well, Mr. McKenzie, I am very anxious about what you are talking about, but, again, I don't see the formula to remedy it.

WITNESS: Well, sir, I don't think I am at liberty to quote names, but some of the judges think that it can be remedied.

MR. ARNOTT: What is the suggestion?

WITNESS: My suggestion is that dates should be fixed for cases—not a week, but a day. We have now sufficient judges to take care of that situation.

MR. STRACHAN: We have two non-jury courts, I think.

WITNESS: Yes. Suppose a judge is idle for a couple of hours. Is that more important than that the cases should be speedily tried?

MR. CONANT: Well, now, I think that strikes the heart of it. It is a question, as I have seen from my own experience, of the judges loading up the list in the fear that they may have an *inter-regnum* of an hour.

WITNESS: Yes.

Q. And in so doing litigants are on tenterhooks perhaps for days.

WITNESS: Anybody that has had experience with our Ontario courts, knows that you may be on the list and hang around for a couple of weeks before your case comes up.

MR. CONANT: Would you give the registrar or judge the right to put the case on the list without the consent of the parties?

WITNESS: No.

Q. You wouldn't give them that right?

A. Well, I mean, not without the consent of the parties.

Q. Well, isn't there a great difficulty in getting the parties to agree as to the time?

WITNESS: Yes, Mr. Magone, but I didn't say "without the consent". I said "not without the consent of the parties". Not without discussion with the parties. I mean: If I came up and said: "I'm ready to go on with this case. I want it tried. It's pressing." And you said: "I'm not ready to go on." The judge can look at you and see you are just stalling, and say: "Well, we'll put that case on at such and such a time, and you've got to be ready."

MR. LEDUC: In Quebec, they have a system similar to the one they have in the State of New York. I remember in Hull, they used to hold a meeting of the counsel engaged in the cases ready for hearing, and they'd fix all those cases for certain dates during the term, and assign one, two or three cases for each day. It is something of the kind that you have in mind?

WITNESS: Yes. And it would work.

Q. It would work?

WITNESS: I'm sure that three-quarters of the time is lost that way.

MR. CONANT: Personally, I'm glad you brought that up, because, when you talk of facilitating and expediting the administration of justice, there are few matters more important and more relevant.

WITNESS: Well, you see, sir, how I struck a responsive cord in Mr. Strachan, who has suffered in the same way that I have and everybody else has. It is a real grievance, and a sore point in litigations.

MR. MAGONE: What is the reason for it, Mr. McKenzie? Is it because the cases are put on the list without the consent of the parties?

WITNESS: No. I think it is because, to a large extent, the registrar fixes the list, and the registrar has no authority with counsel to enforce—I mean, it's a case of prestige. He hasn't the proper prestige to deal with counsel. And, as a matter of fact, it's largely junior counsel that are sent up to jockey the case around. That is what it amounts to.

Q. You're speaking only of Toronto non-jury?

WITNESS: I'm speaking of Toronto non-jury, which, I think, we are all agreed is the sore spot.

MR. STRACHAN: With regard to the length of time—it might be a case that will take an hour, and it is put immediately behind a case that may last three days, but you're afraid to leave and you sit there with your witnesses ——

WITNESS: Exactly.

MR. CONANT: I suppose, of course, Mr. McKenzie, if the matter were planned, having regard for the convenience of the litigants, it might involve an increase in the number of judges, because you would have to fix a definite list, and it might take more judges in the final analysis. Is that right?

WITNESS: Possibly, sir, the apportionment of the judges between the trial and the Appellate Division is not right at the present time. I don't think there are more than three judges sitting in the Appellate Court for the last six weeks, and there are seven Appellate judges. Isn't that right, Mr. Strachan?

MR. STRACHAN: Yes.

MR. CONANT: You think the disproportion might be levelled off a little better?

WITNESS: I think the Appellate Court might be cut down and the High Court, Supreme Court, and trial courts division added to.

Q. Well, I am glad you brought it up. What is there next, Mr. McKenzie?

A. Well, just following on that, sir, is this matter of The Evidence Act. I haven't seen the draft Act that is under discussion, and I haven't read the new English Act. Evidence has always been a mystery to me, the law of evidence, but I am very much impressed with the idea that if we reform our law of evidence, it would expedite trials and effect justice. After all, the trial of a case isn't a game where you have to play certain rules.

Q. Are you familiar with the changes that have been made in England?

A. I'm not, sir. I am not expressing an opinion on the subject at all, I am simply saying that I think the law of evidence lends itself to reform. I will give you a case. I have a proceedings in Surrogate Court, where the beneficiaries were accusing a Trust Company of negligence running back over a period of fifteen or twenty years, in the case of a mortgage out in one of the western provinces. In order to defend the Trust Company, for whom I was acting, it would have been necessary to prove three or four documents—letters and things of various kinds, showing deals concerning this property over a period of twenty years. That would have involved taking evidence in Los Angeles, England, and Montreal, Calgary, Winnipeg, and so on. There was no method of proving those documents except by the writers and recipients, who were, as it happened, alive.

Now the evidence, in that case, would cost more than the amount involved. It seems to me that that was grossly unnecessary, and there should be some machinery for meeting that kind of a situation.

That, if I may say so, Mr. Frost, is one of the reasons why quasi-judicial appeals are thrown out. My point in bringing all this up is, if we can speed up the courts, we can greatly weaken the arguments for taking things away from the courts.

MR. CONANT: Yes. Just one observation; with regard to that Evidence Act; whether you have any more observations to make, I don't know, but I am not satisfied in my own mind that it is a matter that shouldn't wait upon uniform legislation.

WITNESS: That is exactly what I was about to say, sir.

Q. All right, go ahead.

A. With due respect to the Uniformity Legislation Commissioners, it is largely departmental in the outlook; you don't mind my saying so, Mr. Silk?

MR. SILK: No, go ahead.

WITNESS: You take the draft of the Act which was submitted to the Bar Association by that body; it was a departmental compilation. The practicing solicitors (corporation counsel, they may call themselves) were just completely at odds with the draft of that Act.

MR. SILK: Well, it had been prepared by a special committee: Mr. Jones, from Ontario; Mr. O'Mara, from Ottawa; and Mr. Andrew Smith, from the West; I think it was quite a large committee.

WITNESS: That just emphasizes what I am saying.

MR. CONANT: Yes.

WITNESS: I think, sir, there is something about a Law Revision Committee here. I am the public, as I said yesterday, and I think that the practicing lawyer should be represented on these committees. I am saying I don't know anything about the law of evidence, the Act that is being drafted, but I think, sir, that that is a matter that shouldn't stand. That what they are doing in regard to evidence in Alberta may be quite completely immaterial to what we do here.

MR. CONANT: That is my own feeling, but I note Mr. Barlow's recommendation, and he had evidence here, or submissions, that it should be uniform. I don't see it myself, however. Is there something else?

WITNESS: There might be in regard to the Canada Evidence Act.

MR. FROST: Mr. McKenzie, just on that point; take the matter of changes to The Evidence Act; that, I suppose, Mr. Conant, brings up the question of Law Revision.

WITNESS: Yes.

Q. We had some discussion here about law revision, and one of the points that appealed to me was this: the matter of having those who are dealing with our laws, such as the laws of Evidence, and who know the weaknesses and who know the absurdities in connection with the laws of Evidence, and other laws, bring those weaknesses and those absurdities and those things which are costly

to the attention of a law-making body. Mr. Conant suggested, among other things, that there should be a law revision committee, perhaps of Supreme Court judges. On the other hand, I think Mr. Leduc took the point that the making of laws is purely a matter for the Legislature, and if you go beyond that you may be getting on dangerous ground; on the other hand, it does seem to me that we have this position. Your association, the Canadian Bar Association, is one which is very interested in this subject, and I suppose, considers these subjects at various meetings, and so on, and yet it may be that your findings are not utilized, for the reason that we haven't any method of really bringing these up to the body which has the power to make changes. Now, in the Attorney-General's department, it seems to me that it would be hopeless to ask the Attorney-General, or to ask his officers, who are already, I suppose, overburdened with work and detail, to say that they are the people who have to do it. Would there be anything to this, supposing, for instance—this may be a suggestion which is entirely unworkable, but it is a suggestion—would there be anything to having a committee of the Legislature, each year, sitting while the House is sitting, so that it would be without expense to the public, to have a committee of that sort consider suggestions that might come up, from, say, the Canadian Bar Association, and have them as a committee that would sift things over and pass on suggestions to the Attorney-General's department?

WITNESS: I am very strongly convinced that such a committee would be extremely useful. I have heard judges comment from time to time that they find something in the Statutes that shouldn't be there. They make recommendations, and the recommendations are lost. Certainly, one of the great difficulties of the Canadian Bar Association is that our resolutions are lost. We pass resolutions, and the difficulty is to get any further with them. But I question whether the same could be effected by having a committee sitting during the session; it would very much offset the non-partisan attitude that is required in a committee of this kind, that is not sitting during the session.

MR. CONANT: I don't think that would be serious in matters of that kind; I think you would find quite a non-partisan attitude.

WITNESS: What I mean, Mr. Chairman, is the members of the Legislature would not be quarrelling about this, but they might be quarrelling about something else, and more interested in something else.

Q. But in my opinion, gentlemen, I don't want to labour it, but you come to a point that, in my humble opinion, very much accentuates the question of a law revision committee. The members of the Legislature, while they are the law-making body, are not concerned about the admissability of documents and direct or indirect evidence, the calling of experts, and all that sort of thing. I think that is a fair statement?

MR. FROST: Yes, I think it is.

MR. CONANT: Yes. It becomes, and it is a lawyers' club. Now, if a recommendation for the necessary amendments to just this very Act, The Evidence Act, were properly endorsed or set up or propounded by a proper body, I think the chances are very, very overwhelming that the Legislature would adopt that recommendation, if it were presented by the Attorney-General

to the House. The difficulty is, where is the body, where is the organization to formulate that legislation?

MR. STRACHAN: I might make the suggestion, in connection with this committee, that if such a law revision committee were set up, that perhaps the registrar of the Supreme Court would properly be on the committee. You see, what we lack, is some place where the judges can go to.

MR. CONANT: Some clearing house.

WITNESS: Yes.

MR. CONANT: May we deal one moment with Mr. Frost's suggestion about a committee of the House during sessions. I don't think it would be feasible, for the reason that matters of this kind would require ample time, and I might say, leisure of consideration, and as all the members here know, while the House is sitting, we are pushed hither and thither, and the Attorney-General is supposed to attend four committees at once, and I doubt if it would be feasible.

MR. FROST: Well, of course, that suggestion may be entirely not feasible, but as a new member of the Legislature, I have often wondered as to whether, under our system of things, we really take advantage of the ideas of the private members as much as we perhaps should. Now, after all, in our parliamentary system, there doesn't seem to be as much opportunity for good ideas and capabilities and what not of private members. There isn't the machinery to give effect to, and take advantage of these capabilities, and make them available to the public, and it seems to me that I can't see, myself, why everything in the Legislature should be controversial. I think that there are some things, and there should be some committees, in which controversy isn't the whole thing.

MR. CONANT: Well, it's a big question.

MR. FROST: It is a big question; I know that.

WITNESS: You don't want me to comment on that?

MR. CONANT: About controversial questions?

WITNESS: I might say I agree with Mr. Frost, that is, I don't think the Legislature makes use of its legal talent.

MR. FROST: Not only the legal ability, but the business abilities, also.

WITNESS: Yes, we are talking at the moment about legal problems.

Q. Yes.

A. But I might say, sir, that the Canadian Bar Association, Ontario Section, would be delighted to co-operate with the members to assist in anything of that kind.

MR. CONANT: I think that, from the deliberations of this Committee, a

new day may dawn. We may evolve some system of taking advantage of all the brains of the country.

MR. FROST: Maybe.

WITNESS: Now, referring to the question of quasi-judicial distribution, thinking over what you said, sir, about interfering with the business of departments of government and commissions, I must say that the more I think of it the more I disagree with you.

MR. CONANT: I see.

WITNESS: I don't see any reason why the Hydro-Electric Commission, for instance, wouldn't carry on its business if it were in the same legal position as the C.P.R. or the city of Toronto, which has hundreds of contracts with the public—more than the Hydro-Electric Commission has. It doesn't hamper its business by lawsuits. Anybody can sue the city.

Q. Of course I would like to make this observation at this time because I think it is proper to say that all these are more or less commercial undertakings—like the T.N.O., the Hydro-Electric, etc. Mr. Magone can confirm this, I think, because he often advises on them. There is a very liberal or broad policy adopted, and in every claim that has any semblance of right or reasonableness a fiat is always granted. Isn't that so?

MR. MAGONE: Oh yes. Yes. We don't attempt to advise on the merits between the parties at all if there is a cause of action.

MR. CONANT: Yes.

WITNESS: Well, I strongly disagree with that—with the proposition that a departmental official (and there is no personal reflection, of course) of whatever calibre should sit in the place of a judge, because that is what it amounts to. I mean I strongly feel that we would strengthen our whole system by giving more authority to the courts and not by taking it away from them. After all, sir, dealing with departmental business, if I may say so, I think there is a tendency on the part of people who are engaged in public business to overestimate its comparative importance.

MR. CONANT: Well, Mr. McKenzie, personally I agree with you, in theory. Absolutely. I am just a little bit disturbed by the possibility that if you open the gates these organizations would be flooded with litigations.

WITNESS: But, Mr. Attorney-General, you are not opening the gates. I'm not speaking of you. I'm speaking of the —— But let me make this point before we go on. It isn't this government that started this thing.

Q. Oh, no. I don't understand that your remarks have any political significance at all.

A. It uses the Hydro-Electric Power Commission because that extraordinary power was taken away back in 1910, I think it was. The Hydro—no

doubt you will realize—can go on to your property, take it and erect its towers on it and use it without saying a word to the owner of the property. And I do say that is my impression that the Highway Department, which formerly did not possess that power, has taken it in the last two or three years. Am I right, Mr. Strachan?

MR. STRACHAN: I don't know that, Mr. McKenzie.

WITNESS: I think so.

Q. Under the Highway Improvement Acts?

A. One of the recent Highway Act amendments has given the Highway Department a greater power than they had before.

Q. Well, you can sue the Department of Highways by fiat for certain things under the Highway Improvement Act.

A. The only right a person whose place is taken by the Hydro-Electric Power Commission has is to demand arbitration.

Q. That is the same under the Highway Act.

A. That is the only right they have.

MR. CONANT: Well, isn't that on the principle that the interests of the state are supreme? What would you substitute for it?

WITNESS: That is where we quarrel. Fundamentally, the interests of the citizen are supreme, to my mind. That is to say, the interest of the state is only the aggregate interest of the citizens.

MR. STRACHAN: I suppose that power that was put in the Hydro-Electric was put there originally, when they were pushing their projects through. I suppose they had to act somewhat high-handedly, and perhaps the need for it has now ceased.

WITNESS: It was put in because the Hydro was struggling to establish itself against private power.

MR. CONANT: That was particularly in the case of Sir Adam Beck.

WITNESS: It was Beck that introduced that.

Q. Yes.

A. I can't use words strong enough to disapprove that kind of legislation. Now, sir, I am going to speak of the Succession Duty Act without getting into a controversy about it. The Income tax Administration in Ottawa has been compared to the Succession Duty Act. Now, everybody who gives evidence speaks from a personal bias, and perhaps I have a personal bias, because of the matters that I deal with, largely. There is a right of appeal in practically everything

under the Income Tax Act. It isn't as capable of drastic reform, I might say. This Committee is not interested in that, but the mere fact that there is a right of appeal expedites the business of the Income Tax office.

MR. CONANT: What is that?

WITNESS: The mere fact that there is the right of appeal—now you're going to misunderstand me—what I mean to say is this: That from the point of view of the citizen the fact that there is a right of appeal makes it a great deal easier and more satisfactory to deal with the Income Tax office than it does with the Succession Duty office, where there is no right of appeal. Not that the appeals go on. I realize that there are few reported cases on income tax during the twenty-three years the Act has been in existence. I don't think there are more than twenty or thirty. But the right exists, and the party involved feels that he is safe because the officials deal with the problems knowing that if they are wrong they will be overruled.

Q. Anything further, Mr. McKenzie?

MR. STRACHAN: Could appeals from a ruling of the Compensation Board, I was going to ask you —— Didn't Sir William Meredith particularly design the workings of the Compensation Act to keep the legal profession out of these cases?

WITNESS: I think so, Mr. Strachan, but your office and mine have dealt with matters under the Workmen's Compensation Board within the last few months.

Q. Yes. I might say that there is some sort of machinery set up now in the Department of Labour where they do review the official findings of the Board in what they call "problem cases".

A. Well, what I had in mind, Mr. Strachan, was exactly the matter that I referred to, where Mr. Brown, your partner, and my partner were discussing the matter with the Compensation Board. There appeared this information that I gave yesterday, about the interest rate on which their deposits were calculated being changed. That is a matter that if the Board didn't act according to the feeling that the parties putting up the money —— What I mean is that if they felt that the Board was wrong there should be some right of appeal, some right to redress.

Q. Would you suggest that appeals on findings of Compensation Board would injure the workman at all?

A. No.

MR. CONANT: How far do you suggest going? I don't quite get you, Mr. McKenzie.

WITNESS: Well, sir, here is the case: Compensation, as you know, goes to widows and children if a man is killed. A case came up—in fact it's still pending —in which a woman posed as a widow of a workman who had been killed. It

developed that she had gone through a form of marriage with this man without any divorce, or separation or any dissolution of a previous marriage. The husband had disappeared and no steps had been taken to annul the marriage. Now the law, as I understand it, is that if that man turned up—even if he be declared dead—if he turned up the second marriage would be declared invalid. Now that is a legal question, that if the Board went wrong (they didn't go wrong, but if they had gone wrong) the decision should be capable of rectification. That is the sort of thing I had in mind.

Q. Well, now, Mr. McKenzie, we have two witnesses to be heard. I don't want to cut you off at all, but one of them comes from a long distance. Is there anything further?

A. Not unless Mr. Frost has anything. Oh, yes, I would like to file Mr. Farris' address on this question of quasi-judicial bodies which he delivered at Vancouver. Mr. Farris, Senator Farris, is the president of the Bar Association.

Q. Very well. We'll be glad to have, I am sure. Thank you.

MR. FROST: Do you feel that these bodies have been created, or that these powers have been created—and you mention, for instance, the powers given to the Hydro-Electric Power Commission thirty years ago—do you feel that this was wrong in principle, and that it has been extended, as a matter of convenience, until now it has become a matter?

WITNESS: I think we have only awakened in the last few years as to where this leads. I think it leads straight to what we are fighting against. I am strongly convinced of it.

MR. CONANT: Well, that is a point of view, of course. All right. Thank you, Mr. McKenzie.

MR. MAGONE: Judge Hayward is here. He had some difficulty arranging his court so he could appear before the Committee, but he was able to do so and he is here this morning.

MR. MCKENZIE: Thank you very much, Mr. Chairman. I have great admiration for the inquiries this Commission has been conducting.

MR. CONANT: Thank you.

Witness excused.

JUDGE G. H. HAYWARD, Witness.

MR. MAGONE: Judge Hayward, as I explained in my letter to you, we have had evidence from the judges in Toronto and yesterday from Judge O'Connor. The Committee thought it would be desirable to hear from a representative of the rural section of Ontario, particularly northern Ontario, in regard to what the conditions are there and how the Division Court system is working. Now, probably ——

WITNESS: With special reference to Division Courts?

Q. Yes, with special reference to Division Courts. I'll give you a copy of the report by Mr. Barlow.

A. I brought Mr. Barlow's report with me.

Q. Perhaps, Judge, the best thing would be for you to comment on the recommendations that Mr. Barlow makes and then probably we'll ask you some questions with regard to northern Ontario. It's on page B33.

A. Well, as to Mr. Barlow's submission for the abolishment of Division Courts in the judicial districts, in my opinion it would not be advisable that these courts should be abolished. It might be remembered that in these districts distances are so great as compared to what they are down here, where you jump in your car in the county town and get around to see everybody in the county and back home in the same night with a good paved road.

Q. How big is your district, Temiskaming?

A. Would you like to get a bird's-eye view? I brought a map with me for that purpose. We use the map the Department uses.

Q. Well, if you know the distances I think that would convey as much information as the map.

MR. CONANT: Yes, just tell us roughly. The map couldn't be put into the record very well.

WITNESS: Well, the distance by the roads, travelling from south to north, i.e., to the northern boundary of our district, is about 130 to 135 miles.

MR. MAGONE: Yes.

WITNESS: And from the eastern boundary to our western boundary (that would be at the inter-provincial boundary, where the width is greatest) the distance would be from 108 to 110 miles.

Q. Yes. Well, then, is your district consolidated with other districts?

A. Oh, no.

Q. For the purposes of sittings of the judges?

A. You mean formed into a district?

Q. Formed into a County Court district.

A. Oh, yes. We are formed with Algoma, Sudbury, Manitoulin, Nipissing, Timmins and Cochrane.

Q. Well, then, is there an interchange of judges?

A. No. At our first meeting after the Act came into operation we went into that very thoroughly, and to act for a judge, say in Algoma, the holding of the Division Courts throughout his district would mean that it would take him a month—living in the Sault and going up to former Judge Carson's town of Hearst, where his district's First Court is. He would then start coming down to Kapuskasing, Cochrane, and all the way through and then make the turn at North Bay, through the other districts to Algoma and Manitoulin. It would take well within a month. He would barely do it in that time. And there are other features about it, too. For instance, there is no provision made for travelling expenses other than what the Dominion grants. We have the annual grant for maintenance and travelling, but that wouldn't be a drop in the bucket in the travelling expenses for a man, say, holding these courts for Algoma and going right around.

Q. That is, the judges get five hundred dollars a year for travelling expenses?

A. Yes.

MR. CONANT: In lieu of mileage?

WITNESS: No mileage. That is everything.

Q. Well then, Judge, how many Division Courts have you? Or rather, just a moment—let's get that clear. Then the district judges get a flat, fixed rate of five hundred dollars a year for travelling expenses?

A. Yes.

Q. And you say they don't interchange?

A. No, we found it wasn't practicable at all. As a matter of fact we took it up with the then Attorney-General, and he told us that the Act was not intended to apply, in its provisions, to the districts. Of course, we have no interchange except when a judge happens to be ill.

MR. CONANT: I can't just quite understand that, the need for interchange in the counties, the alleged need or reason. Why is that?

WITNESS: I could leave my home ——

Q. I don't mean that. We have heard laid out before us, here, that the reason for the interchange is the interest of the judge in a litigation, or illness, or, as Mr. Frost, I think, suggested, the desirability of meeting new counsel and new environment, and that sort of thing. All these reasons would apply to the same extent in the districts, wouldn't they? They are now in force. If any judge is ill, he gets relief.

MR. FROST: Well, Your Honour, who is grouped with you? Your district is what? Timmins?

WITNESS: Yes.

Q. And you are grouped with what?

A. As I just said, Algoma, to the west, Manitoulin, Sudbury, Nipissing, Timmins and Cochrane.

Q. Well, do the judges in that district exchange in the matter, for instance, of County Court sittings, or matters of that sort?

A. In what way?

Q. Well, I might just give you an example. In some of the southern districts there will be a group, say, of four or five counties.

A. Yes.

Q. Of course they aren't as far apart as you. I mean, you take west of Toronto—we have various counties that are grouped in with Toronto and are quite closely together. The judges in these districts have exchanged, for instance, the County Court sittings. The judge at Brampton, say, goes to Milton, and so on.

A. Yes.

Q. And we also have that carried out in the General Sessions sittings, and also, to a certain extent, in the County Judges' Criminal Court.

A. Quite so, yes.

Q. Now, do you exchange very much up north, or are the distances so great that it is impossible?

A. It's impossible, for the reason I said before. I could leave my county town, hold my sittings and be back home that night without any trouble at all, with the good roads and motor cars. But that in case the distances are not too great. But, you see, it takes me a day to go from Haileybury to Cochrane or Timmins on the train.

Q. Yes.

MR. CONANT: Uh, hum.

MR. FROST: Your county seat is Haileybury?

WITNESS: Yes.

Q. When you go from there down to Sault Ste. Marie it's quite an excursion?

A. I go to North Bay, stop all night, then spend the whole day out on the train.

MR. CONANT: But the fact emerges, does it not, gentlemen, that in the districts where the disbursements are fixed at a flat rate of five hundred dollars, as His Honour says, there is little or no interchange.

MR. FROST: Well, up there five hundred dollars wouldn't go very far.

MR. ARNOTT: Your Honour, do you think the administration of justice would be more effective if there was interchanging up there?

WITNESS: I can't see it. It's possible, but I can't see it.

Q. You can't see it?

A. But how are you going to get away from that loss of time in travelling?

Q. Maybe you didn't understand my question. As far as the public, the litigants, are concerned, do you think the present system is as effective as if the judges interchanged?

A. Oh, I think so.

Q. You think so?

A. Unless we—well, of course, at the present time if a judge were interested —if I were interested personally, to some extent, I would simply call Judge Plouffe to North Bay and he would come up. Of course, I would pay his expenses, then.

MR. CONANT: What is the next angle, Mr. Magone?

MR. FROST: Of course, Judge, I suppose what you would find workable in southern Ontario might be purely unworkable by the situation that you have in the north, because of the distances.

WITNESS: That is the whole question in a nut-shell.

MR. MAGONE: Judge, what is recommendation number 2?—"That the procedure be simplified." Is it that the procedure in the Division Courts be simplified? What have you to say?

WITNESS: Well, just in what way? What does he mean by that? There is no doubt, I think, it could be simplified and clarified.

MR. CONANT: I would suggest the subject to Mr. Magone because we are a little bit pressed for time to-day. Please correct me if I am wrong, but I think the matter comes down to this, as to whether it would be feasible—this is the districts I am speaking of—to revise the Act so that there would be a horizontal jurisdiction, and that there would be a block system of fees, and some method of economizing on the question of service. My colleagues are agreeable it should be directed to that. What do you think, Mr. Frost?

MR. FROST: Yes.

WITNESS: That is in the Division Courts, cutting down expenses.

MR. FROST: Well, there is this—would this apply as to whether it would be advisable to introduce into the Division Court as it is a block system up to, say, a hundred dollars? In other words, should there be a small claims division

in the Division Court up to, say, a hundred dollars, incorporating in the Division Court system as it is what Mr. Barlow suggests should be substituted for the whole Division Court?

WITNESS: As I understood Mr. Barlow's suggestion, he proposes to bring that part of the Division Court up to a hundred dollars and over a hundred dollars into the County Court.

Q. Well, you may or may not be in favour of that, but the point is this: Supposing you weren't in favour of it, would you be in favour of incorporating such a system in the Division Courts Act as it is, having, that is, a small Claims Court, or where services might be made by registered mail, for instance, or something like that?

A. It's possible.

MR. CONANT: Isn't one large item of the cost in your jurisdiction the cost of serving summonses by the bailiff? Your bailiff does all the service there?

WITNESS: Yes.

Q. Isn't that a large item of the cost?

A. Well, in some cases. For instance, you take a bailiff in the Fourth Division, at Kirkland Lake. If he has to go away to some of the townships, perhaps thirty or forty miles, to get a man, of course his mileage runs up. But from inquiries I have made from the clerk there the fees for a small case of $20 do not run, going back for seven or eight years, more than $4.50 or $4.60, something like that. That would be allowing for mileage service to the bailiff in, say, the Kirkland Lake area at twenty cents a mile.

MR. ARNOTT: That includes the mileage?

WITNESS: Yes.

MR. CONANT: But supposing he were twenty or thirty miles away?

WITNESS: Well, then, it would be $6, say.

Q. Would service by registered mail be feasible in your district?

A. I don't think so, sir.

Q. Why?

A. Well, outside of Kirkland Lake, in the towns of Englehart, Haileybury, Liskeard, and the rest of that whole country, during the fall, or winter or early spring the male portion of the population is largely engaged in lumbering or timbering in some sort of pulpwood or lumber camp, or in some sort of mining operations carried on, so that would get in the way if that method were carried out. The mail man brings the registered letter to the house. The wife signs for it, and there it is, a registered letter. Now, actually, before that debtor

would know he was sued at all, judgment would have entered by the clerk for default.

MR. FROST: You mean the defendant might be away some place in a lumber camp or mining concern and it would not be possible to get him for two or three days?

WITNESS: It would not be possible. And the result would be that we would have a great many convictions because of default. He might possibly not know a thing about it until his employer came up to him and said: "Here, Bill, your wages have been attached." Then he'd have to go down and find out about it at the clerk's office, and then he'd have to get a lawyer and bring it before me. I take those things in a very informal way. I think that is the way it would work out in the districts.

MR. FROST: What would you think of allowing the plaintiff to serve his claim himself instead of the bailiff?

WITNESS: He can serve a writ in the Supreme Court, why couldn't he in the Division Court?

Q. Well, that is the point. We had that argument advanced here. For instance, the judges here in the city of Toronto are rather opposed to that on the grounds that they seem to have a poor opinion of the litigants, that services might not be made. Do you think that that would obtain to your district?

A. No, I don't. Not to the same extent, anyway, as here.

MR. CONANT: It comes down to the question as to whether in your jurisdiction you believe or not that he would effect service, doesn't it?

MR. FROST: Well, after all, it is a very serious matter if people have such poor regard for an affidavit or an oath that they would violate it.

WITNESS: Of course it happens in my court as in any other. There is the affidavit of the bailiff, and on the back of it I accept it.

Q. You mean it might mean a matter of a little more inquiry if the plaintiff served it.

A. Well, if the man defended the action before me and said he wasn't served—you see, up there we've got to be more or less informal. We treat things with a large foreign population, and we try to get at the real merits of the facts. Perhaps I have been a little more lax in that regard than other judges, but I don't see ——

MR. CONANT: Well, Judge, this Committee had before it, I think, a concrete proposal to make a horizontal jurisdiction of the Division Court, say $200, set up a block system of fees within that, a block system so that a man would know exactly what the claim would cost him, or the plaintiff would know exactly the cost incurred. I think we would like to know if you think a block system like that in our system would be advantageous?

WITNESS: Well, Mr. Barlow suggests a lump sum of $2 for amounts up to $50.

Q. Never mind the amount. I think the details of that nature are a matter to be worked out.

A. Well, I'm afraid that you'd find that both clerks and bailiffs would be making so little that you'd have a hard time keeping them. Of course, if that were introduced and the Government were to take over all fees and pay a reasonable salary ——. Outside of the fourth, Kirkland Lake, there isn't a single bailiff, a single clerk, who makes enough fees out of his office to pay his living expenses. He's got to take on another job.

MR. FROST: It's just a part time occupation.

WITNESS: Just a part time occupation. Fortunately we have very good officials, although they make very little out of their Division Court.

MR. CONANT: Approaching it from the standpoint of the public, this question of maintaining the court is entirely a different problem. Approaching it from the standpoint of the public, would it be to public's advantage for a man to go and enter a claim, and the clerk would tell him, "Now, that claim will cost you up to $2" or "up to $3." Exactly that. Not 25 cents for this and 15 cents for that. Do you think that would be to public's advantage?

WITNESS: It might be.

Q. Don't you think it would?

A. I think it might appeal to the public.

Q. Beg your pardon?

A. It might appeal to the public. It's a matter of, as you say, knowing exactly what they would have to pay up to judgment. Of course that would have to be outside of the bailiff's actual travelling mileage.

MR. MAGONE: We heard from Judge O'Connor yesterday that, in so far as his district is concerned, the bailiff and clerk offices might be combined. Would that work in the northern districts?

WITNESS: Well, you see, everything is possible, but I hardly think it possible.

MR. CONANT: Not in the small courts, Your Honour, where they have fifteen or twenty-five cases a year? You don't think it would?

WITNESS: Oh, well, yes, in cases of courts like that.

Q. Well, haven't you courts with less than fifty claims a year in them?

A. No.

MR. MAGONE: How many courts have you in Temiskaming?

WITNESS: Now that Larder Lake has been established, five. As to the taking away from the Division Courts, as now established, jurisdiction and putting it in the County Courts, I am opposed to it for the reason that both the expense to the litigants —— And that brings up the matter of time that he'd be away from his home or office in attending the District Court sitting. I'm not speaking of the County Court, I'm speaking of the District Court at Haileybury.

Of course I think 60 percent of the litigations, perhaps more, come from Kirkland Lake, Township of Teck. That would mean that he would have to come down with his witnesses about 75 miles, be there for the opening day of the court and keep them there until his case was called. Then he's got his lawyers to pay as well, outside of his fee. Now at the present time the way it works out is, in my opinion, much better. Under the increased jurisdiction we are now taking cases which ordinarily would go to the District Court, and it is no uncommon thing, especially in Kirkland Lake, where a suitor will abandon anywhere from fifty, a hundred or a hundred and fifty dollars in order to get in the Division Court to save himself the costs and the loss of time away from the business. He feels that getting his case disposed of speedily by the judge at his home court is worth that to him.

MR. CONANT: Of course I think this observation is pertinent. It has always been in my mind that when you deal with court jurisdiction different considerations apply in the districts than apply in the counties, and it is a nice question as to whether the District Court judge's jurisdiction, particularly, shouldn't be increased because of the comparative infrequency of sitting as a Supreme Court and the distances involved, and the distance to Osgoode Hall. I personally feel that very different considerations should apply in districts than apply in the counties.

WITNESS: That would seem, sir, to be the idea of a former Attorney-General, because you will remember, under part two, Division Courts Act, our jurisdiction calls for $200.

Q. Yes, whereas down here—I practiced here for some time—it's sixty and a hundred and twenty.

A. We always were given jurisdiction up to $200.

Q. Yes.

MR. MAGONE: Judge, what have you to say about fixing the jurisdiction at $200 in all cases?

WITNESS: You mean confining it?

Q. That is, the limit of jurisdiction to $200. We have heard a good deal about that.

A. As it is now?

Q. No. Without the jurisdiction over $200.

MR. CONANT: Limiting the jurisdiction to $200 in all cases.

WITNESS: Well, that is including action on promissory notes and documents where there is no need to call any evidence; the signature is there.

Q. Yes.

MR. FROST: There are frequent instances, I suppose, where there is no defence, because it is more or less admitted.

WITNESS: Yes. Well, I don't quite get the significance of Mr. Magone's question, I'm afraid, but we have now, as we have always had, as I told Mr. Conant, jurisdiction in all personal actions up to $200, and $400 in the others.

Q. Yes. Where the amount is ascertained by signature.

A. Yes.

Q. Well, the suggestion is that that jurisdiction over $200 be thrown in the County Courts and taken away from the Division Courts.

A. Why? What is to be gained by putting it in the County Courts? A man has a promissory note. He applies to the court and says: "I want that man sued." That is a $400 claim ——

Q. I take it, then, you think the present jurisdiction of the Division Courts shouldn't be disturbed?

A. No.

Q. Do you think it might be increased?

A. Well, that has been discussed with the County and District Judges' Association but it wasn't very favourably received by the committee appointed by the Supreme Court to go into the question.

Q. Well, Judge, let us deal with your problems in the north country more particularly.

A. Yes.

Q. Would it facilitate court business if the jurisdiction were increased in northern Ontario?

MR. CONANT: Or facilitate the public's interest.

WITNESS: I think it would. That report which the County and District Judges' Association made, you will remember, went as far as to suggest that many cases which are dealt with in Supreme Court could be dealt with by the district and county judges. In a court as large as the court at Kirkland Lake

it would mean, no doubt, that the judge would have to remain another day or two. I give them two days now. One day for part one, another day for part two. That is in claims over $200, I mean.

MR. MAGONE: What use is made of juries in Division Courts in the north country?

WITNESS: Well, we don't use juries very much up there. It is rather an amusing experience. We have had, in the last four or five years, I would say about no more than nine or ten jury cases.

MR. LEDUC: You mean in Division Court, Judge?

WITNESS: Yes.

MR. FROST: How long have you been there, Judge?

WITNESS: Since 1917, in all about 23 years.

MR. LEDUC: Would you be in favour of abolishing juries in Division Courts?

WITNESS: I don't think they serve any useful purpose.

Q. You don't think so?

A. No. They are just an added expense.

MR. CONANT: What would you think about executions in your Division Court running throughout the district? Would that be any help?

WITNESS: Do you mean that a bailiff from the first could come down and execute in the fourth?

Q. Yes. Well, it simply means that a writ of execution issued out of any Division Court in the district would run throughout the district.

A. I agree with it. It's a matter of saving expenses.

Q. That would save expenses?

A. Yes. I had a case not very long ago and I wasn't able to do it, and the bailiff in one court had to travel way up to a distant part of the county ——

MR. LEDUC: Pardon me, Judge, what are the southern and northern limits of the district—I mean along the T. & N.O. line? How far north does it go?

MR. CONANT: He said it was about 110 miles by 150.

MR. LEDUC: I beg your pardon?

WITNESS: In width?

Q. No. From north to south.

A. 120 or 125 miles.

Q. It goes from where to where? Does it go as far as Matheson?

A. Not quite. Just beyond Birks.

Q. And goes south to Latchford, I suppose?

A. To within twelve miles north of Timagami. For record purposes we go to Timagami, but for jurisdiction purposes we only go to points just north of Nipissing.

Q. Now, you have Matachewan and Elk Lake in your jurisdiction?

A. Oh, yes. The difficulty there is in mileage. They have a resident bailiff in Elk Lake. I don't say he is the best bailiff, but the best available.

Q. Yes, of course. There is a road from Englehart to Elk Lake?

A. Yes.

Q. Through Earlton, isn't it?

A. Yes, and there is also the highway. I think it is 67 or 65 miles from Liskeard, west.

Q. To Elk Lake and Matachewan?

A. Yes.

Q. Oh, yes, I know that. I have travelled over it many times.

A. Yes.

Q. Of course I don't want to suggest to the Attorney-General that there shouldn't be so many courts, but with the exception of courts one and two the others are pretty well scattered.

A. Yes, pretty well by themselves. Number one now takes in the towns of Cobalt and Haileybury.

Q. Yes.

A. Number two the town of New Liskeard and six or seven townships to the north, east and west. Whether those two could be amalgamated I don't know. I don't think it would work out satisfactorily.

Q. What I had in mind was a session at Matachewan, at Elk Lake, which are in a little district by themselves to the northwest of your district. I don't suppose there is much business coming from there.

A. They are in number two now.

Q. Oh.

A. As I said before, we have now a resident bailiff in Elk Lake who takes care of it.

Q. I mentioned Englehart because Elk Lake and Englehart are in together, according to this. That's a mistake. Elk Lake should be with New Liskeard, shouldn't it?

A. Yes, that's right, and McPherson is coupled with number three.

MR. CONANT: You mentioned, Your Honour, making writs of execution district-wide. Would it help if you made the jurisdiction of a bailiff run throughout the district, too?

WITNESS: Well, I think it possibly might tend to increase mileage.

Q. To which?

A. Increase mileage.

MR. FROST: What was that question?

MR. CONANT: I know, but I should have put it this way: If the bailiff's fees would be limited to those which would be chargeable by the bailiff in the jurisdiction in which he was previously operating in.

WITNESS: Well, in that case, why not be made by the local bailiff?

Q. The thought behind the suggestion, I think, arose out of this: Some seem to feel there is a definite competency of bailiffs.

A. Quite true.

Q. And if you allowed the bailiff, subject to the limitation of fees, to operate for a certain plaintiff that wanted to use that particular bailiff, and if the plaintiff could do so, do you think that would be helpful?

A. It might be.

MR. FROST: That would be one difficulty. Down here we have a number of smaller Division Courts in which the cases are so very few that the bailiffs, and in many cases, the division clerks, are not very efficient. The result is there may be in a county one or two good Division Court clerks and one or two good bailiffs. The result is that if the jurisdiction after judgment were made county-wide, the bailiff couldn't pile up fees for running all over the county. If the fees were limited to these the bailiff of that district gets, you might get more efficiency.

A. Well, there is no doubt there is something in that. You would have, in that case, a first class bailiff in number four, for instance. He would get the business. Of course, conditions up there are, to a certain extent, the same as

down here. Where there is a little business to be had, you'd get it. Up there in Kirkland Lake the deputy-bailiff is on his toes. If you want to make an execution at Matachewan you get the bailiff at Elk Lake or down in number two, where, no doubt, you would get better efficiency, but, at the same time, if he is not to get mileage he won't go.

MR. FROST: True. It would appear that there would be, no doubt, a number of cases in which the bailiff would find the trip wouldn't pay at all. Then he won't take it. On the other hand, I suppose there are hundreds of cases where he might take it.

WITNESS: Where the plaintiff would be prepared to pay the extra mileage himself.

Q. Yes.

MR. LEDUC: I don't know that this point has been brought up or not, but do you think it would help if in the north the number of bailiffs was increased? You are familiar, for instance, with the district of Cochrane. I think you have stayed there before. I don't know if you have taken Division Court there.

WITNESS: Oh, well, Cochrane was always in Temiskaming. I had the whole ground. It would take me weeks to go and make my circuit.

Q. You have Division Court at Cochrane, and one at Kapuskasing, about 67 miles?

A. Yes.

Q. And one at Hearst, which is another 60-odd miles west?

A. Yes.

Q. So a man leaving either Cochrane or Kapuskasing to serve a writ half way would have to travel thirty miles in any way to effect his service, and he is entitled to charge mileage for that?

A. Yes.

Q. Would it help to reduce costs if more bailiffs were appointed?

A. Well ——

Q. Suppose you have the bailiff at Fauquier, which is 20-odd miles from Kapuskasing, make service in Fauquier and surrounding places, where the mileage wouldn't be so great, would that help?

A. It would help in the matter of costs to the litigants.

Q. That is what I had in mind.

A. But what are you going to do for this man whom you have as bailiff, and from whom you take the extra mileage?

Q. Well, Judge, I was just thinking of decreasing the cost, because that is a matter that has been very prominently before the Committee—decrease of of cost, of Division Court cost. And the same thing applies to a certain extent to your own district. The bailiff has to travel, for instance, from Elk Lake to Matachewan to effect service. He may go farther. He may go to the mines.

A. That is why I have a resident bailiff at Elk Lake.

Q. I know that, Judge. It's an improvement, but even so he's got to travel some 28 miles to effect service.

A. Yes, and beyond that to Matachewan.

MR. CONANT: Are there any district constables in Temiskaming?

WITNESS: Oh, yes.

Q. Apart from the provincial police?

A. Oh, yes, there is quite a number, owing to the trouble we have had over fees. We have a large foreign population with the mines, there, you know.

Q. Are they appointed in different parts of the district?

A. Oh, yes.

Q. Would you have a constable, for instance, in some places where there is no Division Court bailiff?

A. It is possible.

Q. Would it be possible to use the services of those district constables in the service of process?

A. Well, it is the same as Mr. Leduc suggested we might have for the bailiffs.

Q. Yes. You might appoint these constables bailiffs of a Division Court.

A. Yes. With the co-operation of the local Crown attorney I don't see why it couldn't be carried out.

Q. Or provisions in the Act with respect to the northern districts in which service may be made by constables.

A. Yes.

MR. CONANT: We are groping, Your Honour, for some method of making more definite and minimizing the costs of Division Courts.

WITNESS: Yes.

Q. I think every representation we have had here, if I am not mistaken,

has dwelt upon the desirability of that being achieved. If you can suggest any way, in your district, of minimizing, or making more definite, Division Court costs we'd be glad to have it.

A. Well, that amendment that was made in 1928, under which no wage earner could be sued and garnished at the same time ——

MR. LEDUC: Oh, you mean abolishing the garnishees before the judgment?

WITNESS: Yes. Well, now, I have made inquiries from all our clerks up there and they tell me that there is not five percent who do pay when first sued. When judgment is obtained the other ninety-five percent sit back and hope something will happen for them. The result is a garnishee and an attachment goes on—double the set of costs.

Q. Oh, yes, Judge, but it is a terrible thing to attach a man's wages before you have a judgment against him, because the claim on which his salary is attached may not be good at all. You'd simply force a man to pay by seizing his wages.

A. Well, that is true, but there may be cases, which I will illustrate by my own experience, ——

MR. CONANT: You don't favour the present law of not permitting garnishee before judgment on wages?

WITNESS: For the reason, sir, that I find the costs to the debtor practically double. My clerks tell me that. I don't know except what I have learned from the inquiries I have made.

Q. Have you any observations to make on judgment summonses?

A. Committal orders?

Q. Well, that is tied up with it.

A. There, again, I think the matter can be left to the good sense of the presiding judge. Personally, in the last five years, in number four, Kirkland Lake, I have had to make a number of committals, but during that time only three of them have executed.

Q. Yes.

A. If you deprive the courts of that power—which, by the way, is the same power that the Superior Court has got to order committal for contempt, not obeying the order of the court—I'm afraid it is going to be bad.

MR. LEDUC: But, Judge, the Superior Court or the County Court has the right to order a committal.

WITNESS: For contempt of its order.

Q. Yes, but I mean he can't make an order.

A. Not in regards to the debt.

Q. No, no. There are two steps in the judgment summons. First of all a man is summoned to appear before you to hear the claim examined. In that case if the man does not answer, if he is in contempt of the court, you should have the right of committal.

A. But that is never done.

Q. I mean that is the first step.

A. Judgment summons.

Q. Yes. In that case you have exactly the same right as a judge in the Supreme Court to condemn the man for contempt of court. But once a man has appeared before you and you order him to pay so much a week, or so much a month, and he doesn't, then you can commit him for not obeying your order to pay.

A. If I am satisfied he can pay.

Q. Right. But I mean to say that is a right.

A. In other words, he brings into contempt the order of the court to pay.

Q. Yes. Because you ordered him to pay and he didn't obey the order he is in contempt. He couldn't possibly be in that situation in the County Court or Supreme Court.

A. Quite so, because the rules don't provide for it.

Q. Yes.

MR. CONANT: But it comes down to this. May I frame this question? Supposing there were removed from the Division Courts Act those powers now vested in the court, but sparingly used—as you say, and everybody else agrees with you, I think—supposing those powers were removed, would it interfere with the functions of the court and its ability to recover for the plaintiffs moneys that are due?

WITNESS: I haven't the slightest doubt, sir, but what it would seriously do so because, after all, what are courts for? Now, you must remember that up there we have, as I said before, a large foreign population, and one has really got to understand the situation to understand what I am trying to convey. It is hard to make them understand, and that is why so few committal orders are made to start with. Then, when one is made, you've got to show them, for instance, that it has got to be carried out—that is, the order of the court. Take a case like this: You're making $125 a month. You've got the groceries and the provisions from this man—he carried you and your family all winter, when you didn't have a good job. Now you must pay that—not all at once, but pay

it in one, two, or three or five dollars a month. Well, the average man is not impressed by that argument.

MR. LEDUC: Might I suggest, Judge, that we have evidence from an official of the Attorney-General's office of the province of Quebec, taken yesterday and the day before yesterday. If our laws were amended so that it could be made easier to attach a man's wages—I understand that the practice is now, and it has been for years, that you cannot attach a man's wages before they are due and owing. That is to say, if a man is payable in salary you must serve the garnishee on his salary before the wages are paid.

WITNESS: After the wages are earned.

Q. After they are due. Before they are due, I mean.

A. Yes.

Q. If the laws were amended to make it possible to attach a man's salary or wages after judgment but before the man's wages are actually due, and make the attachment last until such time as the debt is paid, wouldn't that help? For instance, let me put it to you this way: A man works at the Lake Shore. He is paid on the fifteenth of the month, and he is getting twelve days' pay—he is getting some sixty or sixty-five dollars. Now, you have a judgment against him and you serve the garnishee on the Lake Shore Company on the 13th of the month, two days before the man is paid, and that attaches a certain portion of his wages. With the present system it would have to be done on the fifteenth, but under the Quebec system you serve that writ or garnishee on the thirteenth or on the tenth, before the wages are issued, and that attaches until such time as the full debt is paid. Wouldn't that help?

A. Yes. I discussed that with Mr. Legris at one time and I pointed that out to him. Instead of the man being ——

Q. Brought to court over pay-day?

A. —— smothered with garnishees, where he is hopelessly bogged down, in the Quebec system the employer pays so much into the court.

Q. And the proportion is fixed by law?

A. Yes.

MR. CONANT: Out of each pay?

WITNESS: Yes. Until the debt is paid. That prevents one garnishee after another.

MR. LEDUC: You'd be in favour of that?

WITNESS: Yes, absolutely.

Q. Mr. Legris must also have told you about the Lacombe law, which they

have in Quebec, which allows a man who is sued to go to the clerk of the court before execution is issued, or before his wages are garnisheed, make a declaration that he earns so much and is working for so and so, etc. You know the law, don't you?

A. Yes.

Q. Would you be in favour of that also for this province?

A. I rather think it would be well worth trying, anyway.

MR. FROST: It would be something that would avoid a multiplicity of costs, a piling up of costs.

WITNESS: Yes, it would. Your main effort is really to try and reach a cutting down of expenditures. As far as trying it is concerned, I think that that could be experimented also with regard to the abolishing of grand juries. I remember, for instance, that during the last war, the grand juries were abolished in England for the duration of the conflict. Why couldn't we adopt the same thing?

Q. Well, of course, it was re-established in England two years ago.

MR. MAGONE: Why should there be two proceedings—one by way of garnishment and one by way of garnishment in the Division Court after judgment?

WITNESS: You mean a sort of a roving garnishee, as they call it.

Q. Yes.

A. Well, a creditor finds a debtor has other property in other divisions, in other places,—he can only attach property under garnishment against the one garnishee without the order of the court. I strictly enforce that, too. Only one garnishee, unless I know of some special reason why there should be any further garnishment. But how do you distinguish them?

Q. Well, there is provision in the Act for attachment, and, as I understand it, the attachment is against a particular debt, a debt due by a merchant to someone not an employee, and the other is a garnishee proceeding ——

A. Well, they are really the same proceedings.

Q. But in order to get two debts, one from the employer, and one from the merchant, you have a duplication of costs?

A. No, I don't see that.

Q. Don't you have to issue a garnishee and then an attachment, too, with a duplication of costs?

A. No. The attaching order is the garnishee.

MR. FROST: The attaching order is issued after judgment, and I think, Your Honour, it would have this effect—the judge makes an order attaching any debts which are due or may accrue due to the debtor ——

WITNESS: Yes.

Q. On the other hand, if provisions somewhat after the style of the Lacombe provisions—or perhaps I shouldn't say that—but if the provisions were made so that a garnishee would, at the discretion of the judge, attach against the debtor's salary in a certain proportion until the debt was paid, it would probably overcome that, and put them all on the same basis.

A. Yes, I think so.

MR. CONANT: Before judgment it's really garnishee, after judgment it's attachment, isn't it?

WITNESS: No. Garnishee after judgment.

MR. LEDUC: Yes, section 143. You see, "where an attachment order is or is not made," it says.

WITNESS: Yes.

MR. CONANT: There seems to be a duplication.

MR. LEDUC: This needs to be simplified, there is no doubt about it.

MR. CONANT: Yes. Anything further, Mr. Magone?

WITNESS: You know, there are quite a few sections where the Act could be clarified. It's indefinite, there's no doubt about that.

MR. CONANT: That's true. With respect to appeals, judge, the suggestion is made that the appeal from the Division Court should be to a single judge of the Supreme Court rather than to the Court of Appeal. What have you to say about that?

WITNESS: Well, in practically all the cases that are in part two, which were really District or County Court jurisdiction before the increased jurisdiction, I don't see any reason why the judge couldn't dispose of them. It might expedite matters in the Court of Appeal.

Q. I'm thinking of the reduction of costs.

MR. FROST: To save copies of evidence, etc.

WITNESS: Yes. With no further appeal?

MR. MAGONE: Yes.

WITNESS: Of course, the cost now of division appeals to the Court of Appeal are considerable, there is no doubt about it.

MR. MAGONE: I suppose this is a consideration at the present time; there must be seven copies of the evidence; five must be deposited in court, and only three judges sit, only three copies are used? If it were before a single judge, you would need three copies of the evidence, I suppose, one for each counsel and one for the judge, and the cost would be reduced, the transcript cost would be reduced only 5 cents a folio, 15 cents a page?

MR. CONANT: Oh yes. May I ask this question, Your Honour, have you any appeals from summary convictions up there?

WITNESS: Very few.

Q. Have you any view as to whether they should be tried on the record or *de novo?*

A. Well, it strikes me that the main feature there would be, sir, that the evidence that comes before you must be in intelligent shape.

Q. Well, assuming there was a stenographer on the case.

A. Well, we have stenographers, and in some cases, when the evidence comes to you, it is not very well prepared, but if the evidence came to you in a proper way, there is no reason why you couldn't dispose of it on the evidence.

MR. LEDUC: Judge, you are aware of the provision in The County and District Courts Act, giving the right to the Lieutenant-Governor in Council to authorize a district court judge to sit in more than one place in his district as a district court?

WITNESS: Yes.

Q. Have you ever taken advantage of that?

A. No.

Q. You sit in Haileybury?

A. Yes.

Q. Would there be any advantage, any reduction of costs to litigants, witnesses, and so on, if you sat in Kirkland Lake also?

MR. FROST: That is to permit you, in your discretion, to sit there, if you wanted to?

WITNESS: The costs would be materially reduced, because there is the mileage of the witnesses and counsel, and so on. But on a question of costs, generally speaking, I have heard very little dissatisfaction with the costs of clerks and bailiffs, and so on, except in the odd occasion.

MR. CONANT: Of course, that isn't the angle here.

MR. LEDUC: No, what I had in mind here was the cost of lawyers and parties and witnesses travelling from Kirkland Lake to Haileybury.

MR. CONANT: In other words, why isn't there just as much justification for holding district court at Kirkland Lake as at Haileybury, is that it?

MR. LEDUC: Yes.

WITNESS: In other words, move your county town?

MR. LEDUC: No, no.

WITNESS: Well, that would be the effect of it so far as that goes.

MR. FROST: Supposing Your Honour had the right to say: "Now, I think that it would suit the convenience of the litigants in this case if the case were tried at Kirkland Lake; that you wouldn't be bound to have it in Haileybury, and it would be entirely in your discretion to say whether or not it should be tried in Haileybury or Kirkland Lake. I mean, it wouldn't be a matter for the litigants to say, but a matter for the county judge to say. If you were given the power to do that, would that be helpful?

WITNESS: Well, as I said before, it would reduce the expenses to the litigants.

MR. LEDUC: Take for instance, the case of Cochrane and Timmins; well, most of the lawyers are in Timmins.

WITNESS: Yes.

Q. Most of the litigation comes out of Timmins?

A. Yes.

Q. And yet the lawyers and their clients and the witnesses all have to travel to Cochrane.

A. Yes.

Q. Well, suppose the judge could decide, and say, "well, here is a case arising out of something that took place at Schumacher or South Porcupine; why can't we hear that case at Timmins?" "There are two lawyers, two parties, and together with their witnesses, they all would have to go to Cochrane and wait two or three days until their case is called; I'll go to Timmins on that date and hear the case there instead." Would that not save a great deal of money to itigants and parties?

A. Oh yes, there is no doubt about it, but there is no provision for any expenses to the judge, the sheriff, the clerk and the reporter.

MR. FROST: Well, I must admit that I think the lump sum provision that you have up there, due to the size of your territory, and other considerations, is unfair. I mean in southern Ontario ——

MR. CONANT: Which, the $500?

MR. FROST: Yes.

MR. CONANT: Oh, yes.

MR. FROST: I think, when you consider and compare it with that of the other county judges in southern Ontario, it is too low.

MR. CONANT: Oh, yes.

WITNESS: Then there is the $10 per diem allowance they have. Of course, when that was put in there, that was in 1900, and there was very little travelling then.

MR. FROST: Would Your Honour care to say anything about the other matters there?

MR. MAGONE: I wanted to ask Judge Hayward about third-party procedure in the Division Court; do you think it would be an advantage to have third-party procedure in the Division Court?

WITNESS: Oh, I don't know; you're complicating things more or less.

MR. CONANT: Well, Your Honour, just a minute, put it on the basis giving the courts the right to give judgment between the defendants without any elaborate third-party procedure.

WITNESS: Yes.

Q. Supposing we gave you the right, when you get the whole story before you, to give judgment for so much to A, and also give judgment for contribution between B and C, the defendants; would that be helpful?

A. It might be, yes.

Q. You remarked that you thought we could very well get along without grand juries; I think you remarked that, did you not?

A. Yes.

Q. Yes?

A. That has been my own opinion, and as a very eminent English judge said one time, speaking about it, it is an attempt by twelve men, having no experience in judicial matters whatever, and to some extent, in some cases, deliberately, trying to do what an experienced magistrate could have done well.

Q. Well, thank you very much for your help, Your Honour.

A. Of course, there may be cases where a review of the magistrate's committal might be in the interests of justice.

Witnessed excused.

R. M. FOWLER, Representing Management of County of York Law Association.

MR. MAGONE: Yes, Mr. Fowler.

WITNESS: I am representing the Board of Management of the County of York Law Association. The County of York Association has about 750 members, and includes, I think, most of the members of the Bar in active practice in Toronto, and in the County of York. The Board of Management itself comprises about 17 members, and the views that I express are merely the opinions of that Board. We didn't feel it was practical to try and get an opinion from as large a membership. However, we did appoint a special committee, that studied the various questions that were coming up, and that was referred back to the Board and discussed by them, so I can give you the opinion of the Board as such.

The first subject—I will just mention the ones that I have picked out from sitting here for a day or two—the first subject is the question of grand juries. The Board is opposed to the abolishment of grand juries. That is an opposition of some long standing. Back in 1933, I think the matter was up, and it was considered by a committee and by the Board, and they felt it was a valuable element in the administration of justice, and another committee was appointed this year, studied it, and came to the same conclusion, which was agreed to by the Board.

Now, I think the Board recognized that, undoubtedly, at first sight, it seems difficult to say that a magistrate is capable of trying a case when he is not capable of passing on whether or not it is a case to be tried. But I think, if the thing is examined, there are probably great differences in the two processes, the process of deciding whether a man is guilty or not is based upon the evidence, subject to appeal; it is within the regular channels of judicial procedure. But in determining whether a man should stand trial or not, I think the Board felt that there is the possibility of other considerations entering into that decision. Or, what the Board felt was more important, the possibility that the public would think there were other considerations entering into it.

MR. CONANT: The public here are being more censorous than in most other places of the Empire.

WITNESS: It may very well be; I recognize that they have been abolished in other jurisdictions.

MR. FROST: Do you think something might be introduced as a safeguard, I mean to preserve some of these rights, and at the same time get rid of some of the cost and delay, and what not?

WITNESS: Well, I think that the basic opinion of the Board was founded on the idea that justice ought not only to be justice, but ought to have the appearance of being just, and that was the great thing that the grand jury did. It is recognized that there is a necessary and proper tie-up between the Attorney-General's department and the Police Magistrates; that is necessary for their

administration; I don't think the Board was so much concerned that there would be any pressure from the Attorney-General's department, or any improper action from the Magistrates, but, nevertheless, the public, not knowing these facts, may think that there is—may think that somebody who is politically prominent is getting favoured.

MR. CONANT: Getting favoured by being committed for trial, you mean?

WITNESS: No, by being not committed.

Q. If he is not committed for trial the grand jury doesn't help him any.

A. And in the other case, I think it may be that a man is committed for trial through the very process of a magistrate bending over backwards, because he is known to be a politically prominent figure.

Q. Well, of course, speculation of that kind could go on *ad infinitum*.

A. Well, I am only trying to give the Board's opinion, that this was an important, impartial, non-political body interposed between the launching of a charge and the trial of the accused, the placing of the accused on trial.

Q. Are politics much more deep-rooted here than in England, and all the other provinces, and all the other jurisdictions? Does that observation really have force and merit, Mr. Fowler?

A. Well, I wonder if this very moment is the proper time to interfere with what the public have come to believe is one of their safeguards.

Q. Well, they have done it in England within the last few years. However, go ahead.

A. Well, that is the submission, and I think, in answering Mr. Frost, while the Board didn't specifically consider alternatives, it probably would be in favour of it, and is probably more concerned with the problem of providing this type of safeguard, and I think that, in the legislation that was discussed at the last session, there was such a suggestion of a safeguard.

Q. You believe in the *status quo*.

MR. FROST: For instance, we had Mr. White here the other day, and Mr. White said that, while he was opposed to the abolishing of the grand juries, he was conscious of the fact that even in the profession, there was a lot of opinion in favour of it; now, where you have that suggestion, supposing it appeared that the preponderance of opinion was that it should be abolished, what would you think as regards the introduction of safeguards, such as have been suggested here in the last few days?

WITNESS: I think the Board would be in favour of it, if those safeguards were introduced; the Board is not merely interested in an old-fashioned institution, if it has become old-fashioned, it is merely interested in preserving, at this particular time in the country's history, a safeguard.

Q. That is, if there are to be changes, do nothing that will take away the rights of the citizens; substitute them, possibly, but not abolish them?

A. I think the Board would agree with that. I wonder if there is not some constitutional difficulty in the way the thing would have to be brought about? It would be well not to abolish the grand jury until the safeguards were entered.

MR. FROST: Of course, I don't think we can abolish them; that is up to the Dominion Government.

MR. CONANT: Only by representation. On the matter of safeguards, I might make this observation: here is England fighting with everything she's got to maintain democracy, freedom, and liberty, and since the outbreak of the war, she has changed her jury system to the extent of a revolutionary change, putting the onus on the plaintiff, to prove that he should have a jury; now I just can't reconcile those observations and those facts.

WITNESS: Well, I am not opposed, and I don't think the Board would be opposed to a change. I think that the actual jury change that has been made in England, still leaves the existence of a jury there in a proper case.

Q. Oh, yes, but I think you will agree it is a very revolutionary change.

A. Yes, I do.

Q. I think it is more revolutionary than the abolishment of grand juries, myself.

A. I do feel that the Board was most concerned with the idea there should be this impartial body, or some impartial body.

Q. Well, all right, we have that, Mr. Fowler. Thank you.

A. They are not opposed to the change, as a matter of change in itself. Now, on the question of petit juries there is a special problem in Toronto. I think it has been mentioned to you. It is a problem of having personal knowledge of the qualifications of jurors coming before the courts. I think the Board conducted some investigation, and found there had been considerable improvement in the calibre of jurors, at the present time over what there was a few years ago.

Q. Would your Board think that the calibre of the jurors should be improved?

A. Very definitely so.

Q. Have you any formula as to how to do it?

A. The only suggestion I can make, sir, is that it is doubtful if it can be met through the assessments. It seems to me that it can only be met—I don't know whether this has been suggested to your or not—but it can only be met by some study of the jurors' list after it has been made up, if you could have some sort

of a tentative list made, and then have some board or selection committee appointed which would work upon that, and make inquiries to find out as to the capabilities of prospective jurors. I think it is very doubtful, as Mr. McCarthy said the other day, whether this type of information that you could put into the assessment, would give you the type of knowledge that would help you to pass on whether a man was qualified or not, but I think that once you've got a tentative panel of a hundred names, it might be possible to make some inquiries concerning those names, which would enable you to find out who were the better men.

MR. CONANT: Of course, you are confronted with this problem: different considerations apply in rural counties and in Toronto. For instance, here is Toronto with two thousand names, that's a different problem from a county which probably has three or four hundred to select from, you see?

WITNESS: Oh, there's no doubt that the kernel of the difficulty is the inability to have the personal knowledge that the sheriff has in a smaller town. But I do suggest that some type of selecting board might be appointed, or asked to act, in order to try to improve the calibre of the jury list.

MR. FROST: On the other hand, if the present selectors were more careful and took their duties more seriously, they might overcome it.

WITNESS: Well, I was just saying, a moment ago, that our inquiries led us to believe that there has been very considerable improvement made in Toronto in the past few years by that process.

MR. CONANT: This discussion, if nothing else, will help make the selectors more conscious and anxious about their doings.

WITNESS: Well, we're certainly anxious for that on the Board of the York County Association. There are several other matters. The Board agrees with Mr. Barlow that a twelve-man jury should be retained in criminal matters, and is opposed to the reduction of the juries in civil matters. They should keep the twelve men throughout. Now, a moment ago, with Judge Hayward, who was just appearing before you, you were discussing the question of appeals from the Division Court. That matter was mentioned at our meetings, and we felt that it was desirable, in the present situation, that the appeals should go to the Court of Appeal, merely because of the fact that, as far as we could see it, the high court judges were busier than the court of appeal judges at the moment, and that even if the Court of Appeal had one judge sitting it would be preferable than to put it, for instance, into the weekly court list which is, now, a very crowded list.

MR. LEDUC: Have you thought of, Mr. Fowler, a man in Cochrane who wants an appeal from a Division Court, has to go to Toronto.

WITNESS: Yes.

MR. CONANT: Whereas, there might be an Assize there twice a year?

WITNESS: Frequently those assizes are filled right up, though.

Q. Well, frequently they are not.

A. Well, that was in passing, rather a minor matter. As far as the Rules Committee is concerned, the Board is definitely of the view that members of the profession who are in active practice can usefully be made members of that committee.

In their submission to Mr. Barlow, the Board suggested possibly a five-man Board comprised of two judges, two members of the Bar and the master of the Supreme Court, because of his contact with the ——

MR. LEDUC: That is the suggestion of the Board?

WITNESS: Yes.

MR. CONANT: How would you select the barristers?

WITNESS: Well, I think they could be selected either by Convocation or by the Chief Justice. Actually it's merely the fact of having the barristers, so that they could lend a practical knowledge.

MR. CONANT: Yes.

WITNESS: From another point of view—and I might point out that there is nothing new about that—if you look at the rules of 1897 you will see that they were prepared by a special committee.

MR. CONANT: Yes, I think we have had that here.

WITNESS: Yes. And also in 1937, The Judicature Act ——

MR. LEDUC: What do you think of Mr. McKenzie's suggestion, which he made this morning, that we should have an office man, a man who does solicitor's work as a member and one of the legal men.

WITNESS: I think that would be proper. There is a great deal, such as a mortgage practice, etc., which is covered by the rules, and which probably the man that goes into court entirely wouldn't know very much about. Just a word on a Statute Law Revision Committee such as that in existence in England. The Board is in favour of that.

MR. CONANT: You're in favour of it?

WITNESS: Yes. The Board feels that it would be of assistance to the Legislature, and possibly help prevent litigations in the future. Now, as to the pre-trial procedure the Board, after very considerable thought, is very much in favour of the pre-trial system. The consideration that moved them, was the fact that we all recognize that in case after case, a great deal of time was spent on matters of purely formal proof. You gentlemen all know the familiar pleading that the defendant denies each and every allegation, and puts the plaintiff to the strict proof thereof.

Q. Always strict?

A. It's always strict?

Q. Yes.

A. And there are some things—for instance, a garage man's bill, a plan of a street, the execution of a document about which there is no possible doubt, which is coming up all the time in a case, and which probably causes protraction in the hearing, and may even cause actual delay, because some of these formal witnesses may not be available. We feel that all that delay and expense and congestion contributes to a general annoyance of the public in the conduct of the litigation, and we feel that it is all part of the business of maintaining public confidence in the courts if we give a more business-like administration of our courts.

MR. LEDUC: Well, on that question of pre-trial, we have had the evidence of Mr. McCarthy, who states that it might be applicable only in Toronto, and in some of the larger places. Of course, you have all the judges residing in Toronto.

WITNESS: Yes.

Q. Which is quite a different situation from the rest of the province. Would you be in favour of trying it in Toronto?

A. Yes. I see no reason why it couldn't proceed in that way, that it could be tried as an immediate measure in Toronto.

MR CONANT: As a matter of fact, I think I am proper in making this observation: in jurisdictions where pre-trial has been worked out, it has always been worked out in some limited centre; is that not right, Mr. Magone?

MR. MAGONE: I don't know that it was in Michigan.

MR. CONANT: I think so.

MR. MAGONE: In some limited sense.

MR. CONANT: Yes.

MR. MAGONE: Well, it's done there, as I understand it, by the judges themselves; they have the power to make the rules. But I wonder whether Mr. Fowler would know, in respect to that, if in those jurisdictions where they have pre-trial they have examinations for discovery.

MR. LEDUC: Well, I have here in the Barlow report that the pre-trial practice is being used with very great success in the city of Detroit, and in the larger centres of the State of Michigan, in the city of Boston, and in the commonwealth of Massachusetts, in the city of New York, and in the larger centres of the State of California, so that with the exception of Massachusetts, it would be restricted to the larger centres.

WITNESS: I wonder, has the Committee read the summarized recommendations of the American Bar Association? They suggest what they call

"one judge courts". In such courts it would be perhaps well to have an itinerant pre-trial judge to cover these hearings in several jurisdictions, in order to avoid any repetition the council might feel, if they believe that disclosing any offers after settlement made at pre-trial might affect the judge's attitude at the trial, so it could be extended by the method.

MR. CONANT: Yes, but until that system were set up, in order to avoid one judge dealing with it both times, you'd have to limit it to the larger jurisdictions, where two or three judges are available.

WITNESS: But it would be possible, almost, for a pre-trial judge to do a circuit and spend a day in several towns, and do the pre-trial work in that way.

MR. MAGONE: Wouldn't it be possible, in supreme court actions, to *localize* the services of the local supreme court judge?

WITNESS: That is a matter I haven't discussed with the Board.

Witness excused.

AFTERNOON SESSION

Parliament Buildings, Toronto,
April 12, 1940.

MR. FOWLER (recalled).

MR. CONANT: Gentlemen, before resuming, I presume we are through with the pre-trial portion of the discussion. This pre-trial question is important. I am not expressing an opinion, but I would like to say that if it would reduce the expenses of our court five percent or ten percent, it would be well worth while. I would suggest, Mr. Magone, if you could contact some other jurisdiction, for instance, Detroit, and see if you could bring over here for our resumed sitting an official, because I think they have in each jurisdiction a judge that deals principally, if not solely, with pre-trial. If you could bring a judge here to give us some assistance it would be a good thing.

MR. MAGONE: I know the situation pretty well on pre-trial. I read everything Mr. Barlow said on pre-trial. Judge Monahan is the judge who looks after pre-trial in Detroit. And I think, from reading the material he has written about it, that he is responsible for pre-trial, and he has thought about it and has made a lot of speeches about it as well as having written articles on it. My suggestion would be to probably go some place else. He seems to be a man who is attempting to sponsor pre-trial all over the United States of America, he is a real enthusiast.

MR. CONANT: I see. Well, then, we'll leave it this way. I didn't intend to dictate which it should be. I think, subject to what my colleagues say, it would be well worth while to have somebody familiar with the practice in a near-by jurisdiction to come here and tell us about it.

What do you say, Mr. Leduc?

MR. LEDUC: Certainly.

MR. CONANT: Agreeable with that Mr. Arnott?

MR. ARNOTT: Oh, yes.

MR. LEDUC: Is the procedure in Michigan fairly similar to ours?

MR. MAGONE: I don't think so, Mr. Leduc.

MR. LEDUC: Would the procedure in the State of New York—have they got it in New York, by the way?

MR. MAGONE: Yes.

MR. LEDUC: Would there be more resemblance between New York State and our procedure?

MR. MAGONE: I think so.

MR. LEDUC: Perhaps it would be better to get a man from the State of New York. Do you think so?

MR. CONANT: Yes.

WITNESS: Mr. Chairman, it is possible that I can get information from some of the jurisdictions and hand it over to Mr. Magone.

MR. CONANT: That would be very valuable. Naturally, I want to get the man most valuable to us and closest to us.

MR. LEDUC: There is Boston, New York and Michigan.

WITNESS: There is only one other word on the pre-trial matter. I think the consideration is not only the actual saving of time that would be possible by settling the non-contentious issues, but also the possibility of the more orderly conduct of the courts themselves, if you had a better idea in advance, of the probable course that a trial would take.

MR. CONANT: Yes?

WITNESS: That really leads to the next point.

MR. CONANT: Of course, doesn't this observation properly arise out of this? I have been told that it is not uncommon that during the pre-trial proceedings a case is settled or abandoned.

WITNESS: There is that feature of it, certainly.

MR. CONANT: Because sometimes the litigant sees, when he is presented with cold realities, that he has no evidence, or no case, and it winds up there.

WITNESS: It may be, too, that a lot of cases are not settled because the parties never get on to common ground.

Q. Sometimes their clients won't let them.

A. Well, perhaps it's not only the client who stops them.

Q. Yes, all right, Mr. Fowler.

A. The other point that that last remark of mine leads up to is, that it can perhaps best be given by reading the general recommendations which were at the conclusion of the brief that the Board submitted to Mr. Barlow. It reads in this way:

> "In conclusion of its submissions, the Board desires to make a few general comments concerning the administration of justice, and in particular, the conduct of trials. The Board is of the opinion that in a number of ways the public and the members of the legal profession are seriously and unnecessarily inconvenienced, and that, as a result, the administration of the law is subjected to criticism and brought into some measure of contempt. In general, the Board feels that all steps should be taken to assure to the public reasonable, prompt, efficient and business-like service from the courts. In particular, it suggests that immediate steps should be taken to conduct the trial lists in such a way as to prevent unnecessary delay in bringing cases to trial, and lengthy delays between the time a case has been called on the weekly or daily list and the trial actually commences."

Just stopping there, I think that particularly in Toronto, and that is all the Board is qualified to speak about, you may actually get your case on the weekly lists, you may even get it on the daily list, there may be six cases called for next Monday, when you start, and if you are fourth or fifth on the list, the first case may take an hour or it may take three days.

Q. Yes?

A. There is no way of knowing whether you are going to be called Monday or Tuesday or Wednesday. If you have a lot of witnesses, and it is likely that you have, you have to keep those witnesses waiting about in that indefinite fashion. Now, the whole indefiniteness of that trial list is, I think, a very serious matter, not only, and as it doesn't really matter so much from the legal profession's point of view, but more particularly from the attitude of the public viewpoint; a man may be a business man; he is forced to wait perhaps three or four days, right from the time that his case is on the ready list for trial, and anybody who has found himself in the position of being called at 12.40, when he had sent his witnesses away, usually takes the safe method of deciding that his witnesses had better stay right there through the previous cases, and I think this matter often affects the whole attitude of the litigants before the court. Many a man, after going through one of these experiences, will say: "Never again."

Now, in England, they seem to be able to have some idea of the length of time, from the way they make up their lists. You have probably all seen the

lists that appear in the *Weekly Notes* from England, and for instance, in the King's Bench Division, they divide the cases into two lists, entitled "long, non-jury actions" and "short non-jury actions," and then in brackets, after each case, there is some estimate made somehow, of the length of time it is likely to take. For instance, in the short non-jury actions, the first one is five hours, the next five, the next four, two hours, fifteen minutes, and so on. And then on the long non-jury list, they run six hours, one to two days, two days, and so on. So that, with those lists, you get some idea of where you stand, and the short cases are not held up by the longer cases.

Q. I presume the Registrar must make that estimate?

MR. MAGONE: We might inquire about that, sir, and find out how it is done.

MR. CONANT: If we had pre-trial, in the cases that went to pre-trial, perhaps the pre-trial judge could.

WITNESS: Well, as a matter of fact, that is what the Board says in this submission later on. Just one other example. The American Federal Courts are now, I think, subject to a Director of Business of some sort, and it might be possible for you to look into that too. I saw recently a note of the appointment of a Director and Assistant Director of the Federal Courts, who is a Chicago barrister who has been asked to deal with the whole question of business management of the courts, such as their hearings, their lists, if there is congestion in the lists, whether an extra judge should be appointed, and the whole formulation of the business side of the courts, and I don't say this on behalf of the Board or really in any spirit of criticism, but I think the difficulty is that the judges are themselves very busy, busy trying cases, and this requires pretty close and detailed supervision in a long list, particularly such as in Toronto.

MR. CONANT: Who runs the show in Toronto now?

MR. MAGONE: Well, the cases are put on the list without any request of any party. They serve notice of trial and when the trial comes they are put on the list. That is what happens, is it not?

MR. CONANT: By the Registrar?

MR. MAGONE: Yes, and then, as I understand it from the Chief Justice of the High Court, the delays are caused by the barristers or by the parties themselves coming up and asking for delay.

WITNESS: Well, of course, part of the difficulty is that in the present practice notice of trial is served so early in the proceedings, before really, the case is ready for trial and it is placed upon the ready list before it is ready for trial. Frequently, the excuse is made when the case is called, "We haven't had our examination for discovery yet." And it might be possible to make some improvement if the case didn't go on the ready list until there was some sort of certificate from counsel for both sides that the case was ready to proceed. That would at least prevent the collapse of the trial which sometimes happens.

MR. CONANT: Of course, you find a reluctant litigant refusing that co-operation.

A. Well, that is the other side of it. But there is no doubt about the fact that at the present time when you see these long weekly lists at Toronto, that you are absolutely in an impossible position if you are the tenth or twelfth case on that list to know when you are called, and I think that is one of the hardest things for a lawyer to explain to his client, the inability to say when a case is going to be tried.

Q. Well, it is, no doubt, of the utmost importance. The solution may not be quite clear.

A. Just as to how the lists are prepared? I think the ready list is made up at Toronto and it's taken more or less in order and placed upon the list with no segregation of cases whatsoever. The short case and the long case will be mixed side by side, and a man with a fifteen-minute case may be following a case that is going to take two or three or four days.

Q. Isn't it a case though, Mr. Fowler, that with the greatest respect, the judges might improve the situation? Because my experience has been that they are very reluctant to give any time or any commitment as to when it will be called or anything like that.

A. Well, if I may speak just from personal experience rather than on behalf of the Board, I don't see why at the opening of the day's court it wouldn't be possible to get some idea of whether the case that is first on the list is going to take the morning.

Q. Yes?

A. And then assure the people second, third and fourth on the list that they can go until one or two o'clock.

Q. Yes.

A. That is not, I don't think, the general practice.

Q. No.

A. It is quite the contrary.

Q. Yes, it is quite the contrary.

A. As I say, if, by chance, the first case collapses at 12.30 p.m. and you are not ready, then you are subject to censure.

Q. All right, Mr. Fowler.

A. Just completing the submission. "The Board realizes that if the submissions in respect to pre-trial procedure are implemented, the force of each of the present criticisms concerning the conduct of trials will be greatly diminished. But the pre-trial is merely one method towards the desired end of proceeding efficiently with the services to the public by the courts, and whether it is implemented or not, steps should be taken, in the Board's opinion, to provide in our

courts the business-like efficiency which would be achieved by a commercial or industrial organization."

Q. Yes. Have you no observation there on the jurisdiction of the Court of Appeal—the jury appeals?

A. We have not considered that, sir. When I spoke to Mr. Silk I thought that probably it would only be grand jury and jury matters that were coming up at the present time, and some of these other matters we have already dealt with.

Q. Have you any personal views on that Court of Appeal situation?

A. Well, personally, I was here when Mr. McCarthy was talking on the question.

Q. Yes.

A. You mean as to whether—oh, appeal? The Court of Appeal should have power to interfere with the jury finding, and that type of thing.

Q. Yes.

A. I do feel that there is danger in making a very radical change in that. There is, undoubtedly, a law now which permits the Court of Appeal to interfere in cases where the situation is such that no reasonable end could be reached.

Q. Yes.

A. I think that is the way it is put. There is so much difference between the spoken word and printed word. An answer may be given with a smile or with a laugh which doesn't get into the printed record.

Q. Yes.

A. And I think that, probably, is the basis of the rule as to demeanor of witnesses and so on. It does seem to me that you might often have a completely false picture presented as to facts, that is by the printed word.

Q. Is there any middle course between our very restricted jurisdiction of the Court of Appeal and what might be described as a wide open republican view. Is there any middle course?

MR. FROST: Well, there are a lot. Define middle course.

MR. CONANT: Well, I thought Mr. Fowler would define a middle course for us.

WITNESS: Well, I think, possibly, you might have a middle course, that is to say, instead of it being a thing with a result which no reasonable man could have reached. You could say that the preponderant weight of evidence is so great—it doesn't nearly need to be something that almost amounts to fraud on

the part of the jury—if you could say that balancing the evidence, the evidence is so preponderantly against the decision reached by the jury that we are prepared to interfere in that case without stepping in and replacing the function of a jury.

MR. MAGONE: You did have to replace the function of the jury to the extent of credibility at least?

MR. STRACHAN: Don't they do that, Mr. Fowler, on matter of appeals in non-jury cases? Does it shock you very much that the Court of Appeal should take the function of a jury?

WITNESS: Not just merely because they take the function of a jury.

Q. No. I mean it is a narrow minded ——

A. I might say I have never been able, personally, to see the difference between the attitude of the Court of Appeal towards a jury trial and towards a non-jury trial.

Q. Exactly, I never could see where there was such an air of sanctity over a jury trial. Isn't it, perhaps, the same in the fact of a trial by non-jury because you know they so often do?

A. Quite. I do think that any place where you have anything approaching near balance between evidence pro and con, then the finding of fact ought to be supported on the basis that your jury have seen the witness and had the opportunity of seeing the way the questions were answered.

Q. It boils down to this, our Court of Appeal is loath to upset the finding of fact. There is the reason of the seriousness of Supreme Court of Canada decisions.

A. Yes.

MR. MAGONE: Wouldn't you have to amend the charge to the jury and say it must believe everything this witness says; instead the judge says: "Now you can believe part of what he says or none of it or you can believe the whole of it."

WITNESS: Well, I can see that probably the present rule is easier to apply than any middle course rule would be. But, surely, there is some way that the Court of Appeal can add up the evidence on the one side and weigh it against the evidence on the other side and if it is predominantly in favour of the appeal, then the appeal could succeed.

MR. STRACHAN: But Mr. Fowler, don't you agree that there is no suggestion we shouldn't if we were to continue the jury system? Don't you think we are discussing the crux of the whole matter in order to arrive at the satisfactory solution?

WITNESS: I think, perhaps, it is one of great importance.

Q. I would think it is one of the most important things the Committee has to discuss.

MR. CONANT: It seems to me we have two very important angles to this jury system. In my own view one is the qualifications of a jury, capital jury if you like. That is one end of it, and the other is the jurisdiction of the Court of Appeal. Now, I don't know that we have had, as far as my reactions are concerned, any submission yet or any clear definition as to how either of those problems can be met.

WITNESS: Would the Committee permit me to take that problem back to our committee?

Q. Personally I'd be very glad to because in my own view they are the two most important angles of the jury system.

MR. STRACHAN: I do agree with you, Mr. Chairman, I'd be very glad to have any help we could from your committee or any other source.

WITNESS: As I say, I have been speaking more or less on my own because it hasn't been a matter we have discussed and I'd like to take it back and discuss it because we have some active practitioners there who may have some ideas.

MR. STRACHAN: You get the situation we have heard in evidence from somebody yesterday, that one large corporation only had one jury case in fifty years.

MR. CONANT: Something wrong in that.

MR. STRACHAN: Obviously they couldn't be wrong in all those cases.

MR. CONANT: Their batting average couldn't be as bad as that. I think, in connection with that observation, we'll be glad to have Mr. Fowler's further observations formulated from discussions with your colleagues. I think counsel Mr. Silk and Mr. Magone might, during our adjournment, see if there are any jurisdictions where that has been met. About the angles of it, I think they are both very important.

MR. STRACHAN: Another angle, Mr. Chairman, we have so often in our courts—two companies fighting each other. You are not allowed to mention the word "insurance". You have a jury, and the jury then have the problem of deciding which one of the litigants is insured. Couldn't there be some solution to that problem? I mean, shouldn't we consider some amendment to that rule, Mr. Chairman? It is perfectly absurd the way it is now. Tell the jury they are both insured and then you perhaps have the decision on the merits of the case and not on the basis of who the jury thinks is insured or who isn't.

MR. LEDUC: In the case where nothing is said, would they have the presumption that one or the other of the parties is insured?

MR. STRACHAN: Well, it sometimes happens that the solicitor for one of the litigants is not King's counsel, the assumption from the jury is he isn't insured.

MR. CONANT: Of course, the whole problem that always confronts us in the jury system is that admittedly twelve true men are the best to deal with facts if they are not influenced by issues of considerations other than the facts of the case and it must, also, be the effort of the court. The purpose of those who frame laws and those who make rules to prevent considerations other than the facts being the determining factors in juries, and this more or less recent aspect of insurance, is only one particular and special instance of where you can, and the courts have, put their fingers on it and said when that has been disclosed, the court regards the same as improper consideration, therefore, we won't go on.

A. Quite. I'd like, if I may, Mr. Chairman, to take also to the Board's committee this other problem of jury, notices and so on which I think you have discussed. That is the question, whether the onus is on the person asking for the notice.

Q. The onus?

A. The onus should be established because, personally, I think the value of the juries vary from case to case according to its character.

Q. Yes.

A. It may be that the jury is absolutely essential in capital cases and not so essential in other types.

Q. Yes. You are not prepared to express an opinion on jury onus now?

A. Not at the moment; it has not been discussed and I'd rather leave it if I am coming back.

Q. Well, if you care to bring it back we'd be glad to have it.

A. But if I may just in conclusion put it this way that the Board feels, and feels very sincerely, that improvements in the administration of justice in bringing it into line with modern conditions, with modern business methods, are necessary and we feel that the legal profession ought to be behind that, and I believe that the ones for whom we speak would be behind it.

Q. Yes.

A. Now, I don't know beyond that. There are some other things which I am not sure whether you have dealt with or not. Things like the examination for discovery of the officer of a corporation, are you leaving that?

Q. Yes. That is rather a long question. Of course, we are way behind most jurisdictions in that respect, are we not?

A. Well, we feel, and the Board feels, that the examination of a properly selected officer ——

Q. Should be binding?

A. —— should be binding upon the corporation. It is one of the hard

things to explain to a client when you have two defendants, a corporation and an individual, and he reads the discoveries and then you have to tell him this one we can use but this one we can't.

Q. Yes.

A. And it takes it away from the whole sense of reality. Then another face of the matter is certain; difficulties that the Board brought forward in its submission in regard to the Division Court practice in the County of York.

Q. Yes.

A. Now, I don't know whether you are thinking of more elaborate and fundamental changes in Division Court jurisdictions. These practically have little value, but on the other hand, within its present framework there are a number of points which they brought up which they feel should be dealt with. I don't know whether you want me to go into those.

Q. Well, can you summarize them, Mr. Fowler?

A. Well, I'll do my best to summarize them.

Q. I think the Committee would like to hear your summary.

A. This is dealing particularly with the practice in First Division Court of the County of York. We feel that there are a number of undesirable features in it. And there is widespread dissatisfaction in the present practice. One minor preliminary matter is the fact that the office hours of the court are from ten till four. And if you want to, with the clerk frequently sitting from ten until four, you are unable to get in to see the Division Court clerk.

Q. Yes.

A. From nine-thirty to four-thirty is the suggestion we make for the office hours. It's a very minor point. Another point that has happened since the amalgamation of the First and Tenth Division Court in the city is that instead of holding court on four days each week, they hold it on three days each week.

Q. Yes.

A. And this results in long lists, delays and inconvenience, both to the public and to the legal profession.

MR. STRACHAN: Mr. Fowler, on that point isn't it a fact that at the present time sometimes that Division Court sits to seven-thirty or eight o'clock at night?

WITNESS: Well, I can't speak personally, I don't think that has happened recently. Well, that of course is all the more reason why they should sit five days a week instead of three.

Q. Exactly.

MR. MAGONE: Mr. Fowler, if I might interrupt, I think I have already

read to the Committee the summary of the report that you are now giving to them on the practice in the First Division Court in the County of York if that is on pages three, four, five and six of the recommendations.

WITNESS: That is it.

Q. So, if you are covering that ground that has already been covered, and I read this into the record where we were dealing with Division Courts.

A. I want to just, if I may, mention one other element in this matter of long lists. It is the manner in which they round all adjourned cases which are never reached. If the case hasn't reached the first reading, it's an adjourned case and goes to the bottom of the next day's list and the fee is charged for the adjournment.

MR. STRACHAN: You might see it there until five o'clock, and then the next sitting you are still at the bottom of the list.

MR. CONANT: Why wouldn't they come first on the next list?

WITNESS: Precisely. I think the reason is they group two types of adjourned cases, the adjourned cases that are adjourned at the request of the parties and the cases that are forcibly adjourned because the list can't be dealt with.

Q. I see.

A. And all these adjourned cases are grouped together and put at the bottom of next day's list. The result is, if you miss your first train, you may be a long while getting away from the station.

Q. Yes, I see that.

A. I mean, there is another minor point. Mr. Magone has probably mentioned it to you, but I'll just mention it as is. You may have come up there with all your witnesses and found that the case which you thought was on the list isn't on the list ——

MR. STRACHAN: Because of ten cents?

WITNESS: —— because ten cents is missing on the fees.

MR. LEDUC: That has been mentioned.

WITNESS: I see. Well, that is all then.

Q. Mr. Fowler, at this point it has been mentioned by you, there is a proposal in the Barlow report for the establishment of a small claims court, and there has been a proposal discussed here and a suggestion made that the jurisdiction of the Division Court should be cut down to say two hundred dollars. That other cases should go to the County Court with the reduced tariff of fees. What is your opinion of that?

A. I am not able to express the Board's opinion. My personal opinion would be that I think it would be a very good thing.

MR. CONANT: Could you give us your opinion, if you will, about the powers of committal on judgment summons in Division Courts?

WITNESS: Well, I must say I have always personally felt that there was little reason in the rule that you could commit in Division Court and that you can't commit in County and Supreme Court. It seems to be quite unreasonable, and yet, as the judges who have appeared here have told of particular difficult cases that people have just been wilfully not willing to pay a small debt.

MR. FROST: They probably should have been in jail from the start.

MR. CONANT: Then they wouldn't have got into debt, you mean.

MR. LEDUC: Would you be in favour of repealing the powers given to the judges of the Division Courts or extending it to the judges of the other courts or leaving it as it is?

WITNESS: Personally, while I think it would be very nice to use this extraordinary remedy ——

Q. You don't like it?

A. I feel that it is good enough. Otherwise it would be bringing the criminal procedure into civil matters. But that is only my personal opinion.

Q. Oh quite.

A. I feel that is all I can give you.

MR. CONANT: Would you feel disposed to have us call you back at an adjourned sitting, to discuss these matters further?

WITNESS: I not only would do it, but I would appreciate it.

MR. MAGONE: Mr. Chairman, Mr. Cadwell has brought down Mr. Matadall, from Ottawa, who is in charge of Canadian Credit Bureaux, is it, Mr. Cadwell?

MR. CADWELL: Ottawa Credit Exchange, and Secretary to the Canadian Credit Bureaux Association.

MR. MAGONE: With respect to Division Courts, if you want to hear it. I understand he wants to go into some matters which have already been dealt with this week.

MR. CONANT: All right.

MR. F. A. MATADALL, Ottawa, Ontario, Ottawa Credit Exchange.

MR. MAGONE: I understand, Mr. Matadall, you have some suggestions with respect to judgment summons procedure?

WITNESS: Yes, taking it purely upon myself; as far as Ottawa, where I am living, is concerned, it is a city where it is not of much value to pursue the ordinary course of procedure, because of the large number of civil servants living there, and we have to depend almost entirely on the judgment summons, and we find it not very effective, probably for the reason that there are no teeth in the Act and that the debtors are educated to know that if they don't obey an order, they are brought up again and another order is given all of which means the creditor has to put up additional costs each time, and if the creditor keeps this up and the debtor holds off long enough, he will likely get away with it.

I would like to suggest that consideration be given to the discontinuance of the default summons, show cause summons, and that careful examination be made of the debtor on the original summons and that failure to comply with the order would result in automatic committal.

MR. LEDUC: That is, bring back prison for debts.

WITNESS: Well, it's still contempt exactly as it is now.

MR. ARNOTT: Supposing an order was made and a man was away automatically?

WITNESS: Well, of course, provision could be made like that. But at the present time many are committed, but, of course, they may be committed for ten days but they are usually out in twenty-four or forty-eight hours, we usually quit a few.

MR. LEDUC: Usually it's a friend or relative of the family who pays to avoid the man going to jail.

WITNESS: Well, I don't know if he actually pays.

Q. Well, guarantees the debt.

A. But at the present time, mind you, as you will see later, I am favourable to helping the debtor; but at the present time a creditor hasn't much of a chance on a judgment summons order because no payments may be made or several payments may be made, but the debtor has to be brought up time and time again. The costs are high: the creditor pays them.

Q. Your suggestion is that if the judge, for instance, orders a man to pay five dollars a week, and he pays for five weeks, and doesn't pay the sixth week, that they should put him in jail?

A. Yes.

MR. STRACHAN: How long would you put him in for, till the debt is paid?

WITNESS: No. I had in mind a very short committal.

Q. Going back to the days of Dickens and Pickwick.

A. Very well, that is the suggestion. I have another suggestion if you have time to listen to it.

MR. LEDUC: Oh yes, go ahead.

WITNESS: We have in our office at the present time between two and three hundred families whose affairs we administer in a sort of unofficial way. If you like, in many cases they took over an assignment on their salary and we give them a living budget to the best of our ability and distribute the balance of their income over their debts on a *pro rata* basis.

Q. How do these people come to go to you, Mr. Matadall?

A. I don't know how it started, but we have been doing it for years.

MR. CONANT: You mean it's a form of informal voluntary committal?

WITNESS: Yes.

MR. LEDUC: They come in and ask you to do it?

WITNESS: They come in and ask us. Some are involved to the extent of thousands of dollars, some several hundreds.

MR. MAGONE: What fees are charged?

WITNESS: Fifteen percent of the amount distributed.

Q. No, but I am talking now about the fee to the person whose estate you administer.

A. Fifteen percent. They pay us ten dollars when distributing fifty dollars.

MR. CONANT: How does legislation come into that?

WITNESS: Well, I was about to make a suggestion. If it were possible to incorporate in any change of the Division Court something to make this official, if you like.

MR. LEDUC: In the hand of private individuals or private corporations?

WITNESS: Not necessarily.

Q. Or in the Division Courts?

A. In the Division Courts.

Q. Well, that is the Lacombe law.

A. Similar to the Lacombe law we have experienced with in Hull. and it's a little difficult to get information at the time when we found how the distribution is being made; but this plan, as we operate it—an affidavit is made up by the

debtor giving a list of the debts, his total income, the number in his family and its living expenses, and the information as to the total amount he owes, who he owes it to. It's available to any one creditor interested.

We found that the creditors have co-operated splendidly. The result is the debtor is saved the continual additional court costs and is able to reduce his debts.

MR. CONANT: You act as receiver?

WITNESS: Yes. We make the distributions.

Q. Yes. Well now, I just don't quite understand specifically how legislation would help that situation. In the first place, if it's bankruptcy legislation the proof is out of it.

A. Well, not bankruptcy, if a man is paying off his total debts as it stands; now a man can go bankrupt if he wishes. A lot of these people would if they knew enough about it. There is nothing to prevent them doing it.

Q. How would legislation help that?

A. Well, wouldn't it not be possible for legislation to be brought in where a man who is badly involved and who is being continually sued. The most he is doing is paying the costs. Would it not be possible for him to go to Division Court offices, register his intention to pay off his liabilities? If you like, over a period of time, making arrangement for depositing his money.

Q. Isn't that exactly the Quebec law?

A. With this exception, as I understand it: Lacombe law the man has to deposit, under the Lacombe Act, everything over the seizable portion of his wages.

MR. LEDUC: No, he deposits the seizable portion.

WITNESS: Well, that is what I mean. He is allowed to retain whatever —in Ontario at the present time it would be fifteen dollars a week.

MR. CONANT: You meant to say he was keeping it?

WITNESS: Yes, at the present time in Ontario it would be fifteen dollars a week. Well, there are different classes of people who are in difficulties, they live in different ways, they have different numbers of dependants in their families, and they don't think any set amount would be satisfactory.

MR. LEDUC: Well, it's one-fifth up to $3.00 a day, one-fourth from $3.00 to $6.00 a day, and one-third with the daily wage or salary is more than $6.00 a day.

MR. CONANT: Well, I don't see how your system is any better than that, Mr. Matadall, yet.

WITNESS: Well, what I had in mind was a man might be earning a small wage and have a large number of dependants, he'd need to retain more than the present exempt portion of wages.

Q. Well, that goes to the question as to whether our present exemption laws are sufficient.

A. Well, it is in some cases. In some cases it wouldn't.

MR. MAGONE: At present the judge has the discretion.

MR. CONANT: Well, I am only speaking from recollection running over some years now, isn't there a provision in your law that the judge can change the percentage?

WITNESS: I wasn't aware of that.

Q. Oh, yes, if, in a case that you speak of, a man comes and says, Your Honour, I've got fourteen children or even fiftten or ten, this exception is not such, the judge can change that.

A. Well, that is what I had in mind, gentlemen. We have these people coming to us continually.

MR. LEDUC: But don't you think, Mr. Matadall, it's better to have a fixed proportion which can be attached than leave it to the discretion of a judge? I am not contesting the wisdom of the judge there.

WITNESS: Yes.

Q. The point is when a man earns $25.00 a week or $40.00 a week, you know according to the Quebec system that you can attach so much.

A. I think it's much better than to leave it to the discretion of the judge, but I do think these debtors should have some place to go for protection if they are willing to show that they are in earnest and intend to pay up debts, that they wouldn't be bothered as long as they're making the endeavour.

Q. Well, that is the object of the Lacombe law, exactly, and it's been working in Quebec for thirty-six years, and working very well. We got figures here showing that in the district of Quebec, which is slightly larger than the county of Carleton, they have collected $9,000.00 in one year through the operation of that law.

A. Where is that?

Q. In the district of Quebec.

A. Quebec City?

Q. Yes, the city and surroundings.

A. Yes.

Q. It's larger than Carleton. And then in Montreal they collected $300,000.00 in one year.

MR. CONANT: You may find if we go in for legislation of that kind, that would meet the situation and, of course, there is always the possibility we may even improve on the Quebec law.

WITNESS: Of course, I didn't know that you had really considered that.

MR. MAGONE: With the man from Quebec.

WITNESS: I have cases here, sample cases, individual debtors who owe up to $4,500.00, some on account of sickness, some more or less deliberate, some because their wives are not good managers, some girls who are over-buyers. We have a single girl employed in the government owing over a hundred dollars, most of it is clothing, part of the fault lies with the extension of credit in the first place.

MR. CONANT: Well, thank you, Mr. Matadall. That was what you wanted to bring up, wasn't it?

WITNESS: Yes. Thank you very much.

Witness excused.

MR. CONANT: Before going into anything else, I just want to commend to the attention of the members of the Committee an editorial in one of the Toronto papers to-day. It brings out a point that hasn't been considered in this Committee, that is the fact that the grand jury is a secret process, and I thought it was important to bring it to the attention of the Committee, because we have had so much discussion about the safeguards of the grand jury.

MR. FROST: Do you mean, sir, that the grand jury, being a secret procedure, might tend to bury something?

MR. CONANT: Well, I'll just read it. It says:

> "If, as Mr. F. H. Barlow, K.C., has declared, Ontario and the Maritime provinces are the only spots in the British Empire where the grand jury system is retained, it is impossible to understand what ground there can be for the suggestion that our administration of justice will be irreparably maimed if the grand jury is abolished here. Ireland gave up grand juries ten years ago; they had vanished in England in 1923; South Africa has dispensed with them since 1935. Is it possible that the rest of the Empire is out of step with Ontario and the Maritimes?
>
> No one wants to abolish any safeguard the accused person may have. But it has been found possible elsewhere to protect adequately, without the intervention of a grand jury, the person who is confronted by a charge. And in the secret processes of the grand jury there is always room for the suspicion that there is no adequate safeguard for

the interests of society. As was pointed out in the Legislative Committee, persons who have been committed to trial by a magistrate have sometimes been discharged on the 'no bill' of a grand jury. The magistrate, after hearing the evidence in open court, has found a *prima facie* case, and the grand jury, sitting in the seclusion of its own quarters, has said that there isn't any.

This apparent conflict of opinion between the magistrate and grand jury has been attributed to the possibility that magistrates are sometimes not as careful as they might be, knowing that the grand jury will operate as a safeguard in the case of error. But this is not always the case. Where one grand jury has returned no bill, a subsequent jury before whom the case has come has sometimes returned an indictment."

I think it is well worth reading. I would like to add to the record this further observation, that while it has been suggested here that the grand jury is a necessary protection for the accused, it isn't by any means an infallible tribunal. We had a case in Ontario county not long ago where one grand jury found a no bill. A subsequent indictment was laid and the next grand jury found a true bill and the person was convicted by the petit jury, and I think that I would like the Committee to consider that editorial.

Committee adjourned *sine die*.

TENTH SITTING

Parliament Buildings, Toronto,
Sept. 23, 1940, 10.30 a.m.

MR. CONANT: Before proceeding with the work of the Committee, gentlemen, I think I should say that Mr. Magone, who acted as counsel for the Committee, has been assigned by my department almost exclusively to Treasury work, so that he cannot devote his time to this Committee, and, assuming that the Committee would approve of my action, I instructed Mr. Silk some time ago, perhaps a month ago, to prepare himself to act as counsel for the Committee. If that is agreeable, I would like to have a resolution placed on record. Will you move that, Mr. Strachan?

MR. STRACHAN: I move, seconded by Mr. Leduc, that Mr. Silk be appointed counsel to the Committee.

MR. CONANT: The motion is carried.

Then, in connection with our secretary of the Committee—who was on the record as secretary before, Mr. Silk?

MR. SILK: I was acting as both assistant counsel and secretary.

MR. CONANT: Yes, that is right. I thought it would be better to relieve Mr. Silk of some of the secretarial work, although they overlap a good deal. I suggest that Mr. Hicks—Mr. Hicks is in your department, is he not?

MR. SILK: Yes.

MR. CONANT: I suggest that Mr. Hicks act as secretary of the Committee. Is that agreeable, gentlemen? Will you move that?

MR. STRACHAN: I move, seconded by Mr. Leduc, that Mr. Hicks be appointed secretary of the Committee.

MR. CONANT: Carried.

Now, Mr. Silk, what have you ready for us this morning?

MR. SILK: I propose to call Mr. Fowler first, and then Mr. Chitty. Both of these men represent the York County Law Association.

MR. CONANT: Mr. Fowler was with us before, was he not?

MR. LEDUC: Yes.

MR. SILK: Mr. Fowler was practically the last witness. I think one witness followed him. He had to leave to return to the Board of Management of the Association to discuss certain matters.

MR. CONANT: Where did Mr. Fowler leave off?

MR. SILK: His evidence commences at page 901.

MR. CONANT: And it goes to page 932.

(At this point Mr. Frost entered the room).

MR. CONANT: Mr. Frost, in your absence I explained to the Committee that since we were sitting before, Mr. Magone had been assigned almost exclusively to Treasury work and could not very well be spared any longer for Committee work, and I took the liberty about a month ago of instructing Mr. Silk that he would have to carry on; we therefore passed a resolution appointing Mr. Silk counsel to the Committee. Under our previous set-up Mr. Silk was assistant counsel and secretary, and I felt that he should be relieved of some of his secretarial duties and we appointed Mr. Hicks in his department as secretary of the Committee.

Now we resume the taking of the evidence of Mr. Fowler. Before doing that, and now that Mr. Frost is here, I think that we might discuss to some advantage our programme for the next few days. Mr. Frost can speak for himself. As I understand it, he does not want to be here to-morrow; is that so, Mr. Frost.

MR. FROST: I think, Mr. Conant, that I could arrange to be here to-morrow morning and possibly Wednesday morning.

MR. CONANT: That is fine.

MR. SILK: There is a statement of the witnesses on your desk, Mr. Frost.

MR. CONANT: On the agenda we have here, I should like very much to continue till Wednesday night, if possible. Mr. Silk has explained to me that some of these witnesses who are—they are all important, but some witnesses particularly are available to-morrow and Wednesday who will not be available until some time afterwards.

MR. SILK: That is right, sir.

MR. CONANT: I should like very much to continue to-morrow and Wednesday. I regret to hear that Mr. Arnott's partner had an accident, fell down the well of an automobile greasing station, so Mr. Arnott cannot be here, but I am inclined to this view, gentlemen: While of course it is desirable to have everybody here, if we were to try to arrange the Committee and sit only when everybody was here and all the witnesses were available, I do not think we would make much progress. I think we shall have to go on with four members of the Committee present, at any rate. The evidence will be transcribed, and, while a member of the Committee is not present to offer his own questioning, yet we must make progress, particularly if we are going to prepare a report and if any recommendations of that report are to be implemented at the next session. I shall be glad to have the views of the Committee on that, but that is my own view.

MR. SILK: I may say that I have arranged with Mr. Dickson, the reporter, to get the transcript for to-day, to-morrow and Wednesday by next Monday.

MR. CONANT: Then, subject to what may turn up, we will carry on to-day, to-morrow and Wednesday, Mr. Frost, and we can discuss future arrangements then.

R. M. FOWLER, representing Management of County of York Law Association.

MR. CONANT: Now, Mr. Silk, Mr. Fowler was dealing with what last?

MR. SILK: Mr. Fowler was to discuss with his Board of Governors four matters: increased jurisdiction of the Court of Appeal in appeals from jury trials, inproving the calibre of jurors, the onus required for having a jury trial, and pre-trial procedure.

Q. I understand you are going to deal with two of those matters, Mr. Fowler, and Mr. Chitty is going to deal with the other two?

A. Yes. I may have something to say about all of them, but he will implement what I have to say in several respects. Mr. Chairman and gentlemen, Mr. Chitty, of the Board of Management of the York County Law Association, is with me ——

MR. CONANT: I think I might mention that we are honoured in having present with us the gentleman who is the author of the work entitled "A New Charter for Canada." Is that not so?

A. I am afraid it is—"Design for a New Dominion." However, I do not think I can speak on that, or I would keep you all day and all week.

MR. CONANT: I would just like you to know that we appreciate that we have the author of those articles here.

WITNESS: Last time when I was here in the early part of the summer I did discuss pre-trial procedure, and stated the fact that the Board of Management felt that some method should be adopted for getting around some of the technical difficulties of the modern trial, the easy matters of proof which often take time and cause expense, and we had studied the pre-trial procedure. It seemed to us a very interesting matter, that ought to be investigated to see if it would apply to this jurisdiction. I do not think I did mention the fact that there was in England a procedure by way of summons for directions; I think Mr. Chitty knows that procedure quite well, and will speak about that when he follows me. As far as any further matter about pre-trial is concerned, I left it open, but I have found nothing more that I can usefully add to what I said before.

Now, as to the question of improvement of the calibre of jurors, which was another matter I wanted to take back to the Board, we discussed that, and the Board felt unanimously that there needed to be something special done in connection with the larger centres such as Toronto. I think I stated before that the difficulty seemed to be the lack of personal knowledge of the prospective jurors in a large city, such as was supplied often by the county judge and often by the sheriff in a smaller centre. We discussed it, and came to the opinion that any method of questions on the assessment ——

MR. CONANT: Let me interrupt. When you say "we discussed," whom are you referring to?

A. The committee of the Board; and we discussed it with certain members of the Board of Management of York County Law Association. We felt that any method of putting questions on the assessment records would not be sufficient to enable a person to tell whether a man was going to be a good juror or a bad one, and for the larger centres we felt that some board of selection was necessary who would perhaps have a list that would come from the assessment rolls, and the there would be a personal investigation of that list, either by having the prospective people come in and see the board of selection or possibly by some private enquiry that would be made through an investigator or through some other agency.

MR. FROST: Mr. Fowler, in that regard, you remember we discussed that at some length here, I think it was about the closing day last April, and the present method of selecting provides for all that, provided they will do it. Now, if you set up another board to do just what these people are supposed to do, and they are just as—I should not say perhaps careless in their duties as the present boards are, would you improve it any?

A. Well, the only thing is ——

Q. Don't you think that perhaps we ought to suggest that these people be more careful in their selection, and then we would have the remedy, wouldn't we?

A. We find, for instance, in the county of York, I believe, the Senior County Court Judge is on that selecting committee; he is a very busy man,

and it takes a great deal of his time. I am sure Judge Parker has given the very best attention to it that he can commensurate with his other duties. But for a problem as big as the problem is in Toronto, it is not, in our opinion, the sort of thing that the County Court judge ——

Q. Doesn't the present system go back, for instance, to the municipalities, and the original selection and the careful selection should be made by the municipalities, and after that it is not so difficult for the county judges? Isn't that it, Mr. Conant?

MR. CONANT: By the way, there is a gentleman down in one of the city offices here who has been doing this for twenty-five or thirty years.

MR. SILK: Mr. Ogle.

MR. CONANT: That is right. If we had him up here for five or ten minutes, he would explain the system better than you would get by reading the Statutes for a day. The municipalities are asked first of all to send in the names of so many jurymen, as I understand it. Who determines that number?

MR. SILK: I rather think the judge does, but I am not sure.

MR. CONANT: After those names come in they have a board of jury selectors. That consists of the sheriff, the county judge and the clerk of the peace, doesn't it?

MR. SILK: Yes.

MR. CONANT: And that is the present system.

Q. Now, just base upon that your observations, if you will. How do you think that can or should be improved, Mr. Fowler?

A. In a city as large as Toronto, unless there is something added to that system which will enable either a personal investigation, having some of the prospective jurors come and interview the Board and let them see them, or having some investigator who will go and see these prospective jurors—for instance, we have cases occurring all the time of men who are quite unable to hear, getting on a jury panel.

MR. LEDUC: Mr. Fowler, do you honestly believe that the prospective jurors would willingly go forward to be interviewed?

A. They may not, they might not, and that might mean that you would have to have some way of investigating as to the age and the capacity, and perhaps the education and the general physical ability of the various people.

MR. STRACHAN: Of course, you can always do that by a challenge.

WITNESS: You can do it by a challenge. That, of course, is a wasteful way, if he is not going to be a juror. The man is tied up there, and frequently you do not or cannot discover it.

MR. STRACHAN: I do not suppose we want to get into the system they have

in the States, where it takes three or four days to select a jury—really a trial for each juryman.

MR. LEDUC: You mentioned a board of selection; have you given a thought as to the constitution of that board, who should be on it?

A. That was not discussed. I personally think that almost any board made up of people experienced in the courts—probably you could have, perhaps, one of the junior judges, who are not so busy, and one or two barristers, perhaps.

Q. And what machinery would they require to interview prospective jurors?

A. Well, it occurred to me that they might conceivably have a man who would act as investigator, or they might use one of the credit agencies to make a report as to his age and business ability, and what he was doing and so on.

MR. CONANT: We had here, as I recall it, an observation by one counsel who was here; who was that? He said we could get good juries in the country and poor juries in the city, briefly. Who was it said that?

MR. SILK: I think that was Mr. George Walsh.

MR. FROST: No, I think Mr. Walsh said all juries were good.

MR. CONANT: Well, as I recall it—correct me if I am wrong, gentlemen—we have one very unequivocal statement, a very definite statement, that we get good juries in the country and not so good in the city.

WITNESS: I think my Board would agree ——

MR. CONANT: That may be due to this very fact: in the first place, the jury panels in the country are not nearly as large as they are in the city; in the second place, your selectors, both municipal and for the county, or for the entire jurisdiction, know the men better than they do in the city.

WITNESS: We agree completely with that.

MR. CONANT: Now, how can you overcome that?

A. Well, except to give more than a paper check on the people on the jury panel.

MR. STRACHAN: That would involve going around to their houses, because I do not think you could ask these jurymen, unless you paid them, to line up to have a pre-examination before they were selected.

WITNESS: Well, even after the jury list was selected, if there were some investigation, even if there were some personal investigation, even on paper—for instance, you might find that certain men on the list were occupying certain types of position, that they were accountants of a bank, for instance.

MR. STRACHAN: Say you had a jury composed of nothing but accountants and engineers, that might not make them a good jury.

WITNESS: No, I can quite see that.

MR. STRACHAN: The object of having a jury, as I understand it, is to get men who represent an average cross-section of the citizens. We don't want a jury of experts; we have got to have them all in—the unemployed and the professional men, and so on.

WITNESS: Well, we did feel that there ought to be something in the nature of a personal investigation, to replace the personal knowledge of which the chairman is speaking, in the country places. Another factor that came up in Toronto which was of some difficulty, was people who are in receipt of relief serving on juries. We felt that that was a matter that really ought, perhaps, be specifically provided, that someone who was in receipt of relief should not be serving on a jury.

MR. STRACHAN: Well, why, Mr. Fowler? I know lots of very good men who, through no fault of theirs, are on relief.

A. Well, it is precisely a matter of sympathy. We just feel that probably a man in receipt of relief, his whole values and judgment may temporarily be disturbed and upset by the misfortune that has fallen on him, just the same as a man who has recently suffered a severe bereavement might not be a good very juror, because of the distraction of mind he would be suffering from at the time. It is in no sense a criticism of the people.

Q. Or the man who gets a large salary might look on things in a larger way, considering that money is not so much. To a man with a large salary, two thousand dollars might not seem very much; he might be inclined to double it.

A. Well, there has been that in certain cases recently, too, in Toronto. We admit the difficulty of the problem, but we think that Toronto and possibly Hamilton—although we do not know about that, but Toronto is something of a special case, requiring these personal contacts with prospective jurors, if the calibre in larger centres is to be brought up to the calibre of juries in smaller places.

MR. STRACHAN: I would think, Mr. Fowler, that your solution for poor juries, perhaps, is covered in one of the topics you are going to take up, enlarging the rights of appeal in the Court of Appeal from a jury trial. Doesn't it boil down to that? Whatever machinery you are going to set up, you are going to have bad decisions from juries.

MR. CONANT: I have had considerable experience with all sides of the problem; I have sat on boards of selectors as Clerk of the Peace, and it comes down fundamentally to some means of determining the qualifications of the individual. In the country, I have sat on boards of selectors where somebody would know every man that came up—everyone—and you had the benefit of that knowledge. I do not know how you can meet that in the larger centres.

MR. SILK: Mr. Fowler, do you agree that it would be of some assistance, if the assessors were instructed to be more careful in the matter of the occupations that they put down?

A. Well, I think that they ought to be—as much as you can get on paper about the man is helpful, but I still do not think that the occupation, as Mr. Strachan said, is going to be the final test, because a man may be a bad juror, even though his occupation may be a very learned or respectable one.

MR. STRACHAN: When you can put down "Esquire" or "Gentleman" as an occupation, it covers a multitude of things.

MR. SILK: That is my point—or "Manager" or "Director". In some cases, those descriptions of an occupation are absolutely misleading.

WITNESS: Of course, I would think that a board of selection might, in many cases, have some personal knowledge, and be able to pass on a certain part of the list, from that personal knowledge. It would not mean that any investigator or any investigation would have to reach to every one on the list; it would only be the ones of which they did not have some personal knowledge, and that might be an argument in favour of having a reasonably large and representative board of selection to sit in consideration of the list.

MR. LEDUC: It would have to be a pretty large board in Toronto. What is the number of people who might be called upon to serve on a jury?

MR. CONANT: Two or three hundred.

MR. SILK: The list they get in each year is three or four thousand, according to the advice we got from the Clerk of the Peace last spring. That is the total of the lists that are sent in by the local selectors, and then I think they pick about eighteen hundred from that.

MR. CONANT: No, not that much.

MR. LEDUC: But, there are three or four thousand possibles?

MR. SILK: Yes.

MR. LEDUC: Well, in a city like Toronto, you would need a pretty large board to have knowledge of one person.

MR. CONANT: The Honourable Mr. Leduc has raised, I think, a very pertinent point. Would the situation be met if we enlarged that board? Mind you, I do not think that there is dereliction on the part of these boards; it is simply the limitation of their own personal knowledge.

A. We think that too, sir.

Q. But, supposing the boards were enlarged in the larger centres, would that meet it?

A. I personally think it would go part way, at least, toward meeting it, because, instead of selecting a board of say, three or four, you would have, perhaps, a selecting board of fifteen, and out of those fifteen, you might get some personal knowledge as to these people. Then, I would add to that the possibility

that after they had selected from it people that they knew would be acceptable jurors, they should have, in addition, the power to conduct certain moderate enquiries into some of the other names to see who they were, what sort of citizens they were and what sort of capacities they had.

MR. FROST: Mr. Fowler, isn't this the situation? At the present time the municipal authorities--I am not just sure how the selection is made as far as the municipalities are concerned, but the municipal people, as I understand it, are supposed to give a list of suitable names to the County Clerk, I suppose it is, or to the Clerk of the Peace.

MR. CONANT: The Clerk of the Peace.

MR. FROST: And then the board of selectors more or less draw these names out, choosing so many to a municipality, and the idea, I think, is this, to remove the selection of jurors from the local people, but the local people are supposed to give the material to work on. They know the men, they know whether a man is deaf or whether he cannot read or write or whether he is blind, and they are supposed not to put such men on. The municipal people are supposed to choose the men. You speak about your problem here, but I think, in most districts, there is reasonable care taken in sending in names. I should think, Mr. Conant, that in Ontario County generally—say from Reach Township or Brock Township —you get a pretty fair list.

MR. CONANT: Yes.

MR. FROST: Perhaps your difficulty comes in, in carelessness in the large centres, where they do not take just that care, but it seems to me the people who have got to be careful are not the board of selectors, who are supposed to draw names at random, more or less, but it seems to me that the people who should correct the situation are the people who know the men, and who are making the original selection, and are providing the grist for the mill, as it were.

MR. LEDUC: The difficulty is for the local men to know all these people.

MR. FROST: Well, how could Judge Parker, for instance, possibly do it, or anybody else?

WITNESS: I do think, Mr. Frost, that it is not really a charge of carelessness that could be levied against them. I think it is something that is inherent in the problem, the size of what you are dealing with and the difficulty of getting the knowledge. That is why I think that the system, perhaps, ought to be improved, both at the municipal level and at the board of selection level, if it is possible to do it. In other words, the board of selection has its means of winnowing the thing out, and it is particularly necessary in a place where you are dealing with such numbers as you are in Toronto. I would personally like to see whatever can be done to improve the municipal selection, by all means, but go on to improve this board of selection with some more personal knowledge in their considerations than we have at the present time.

MR. FROST: Of course, it is going to be difficult as to how that is to be worked out.

MR. CONANT: There is one thought that emerges from this that is interesting to me. I am not passing on it at all, but I think the Committee might consider it. That is the possibility of enlarging the board of selectors, particularly in the larger centres, like the Ottawa district, Toronto, Hamilton, London and Windsor districts. I think that might be considered.

WITNESS: I think it would be of some help.

MR. SILK: May I read you the appropriate subsection of the Act:

> "The local selectors shall proceed *de die in diem* until the selection is completed, and shall select such persons as in their opinion, or in the opinion of a majority of them, are, from the integrity of their characters, the soundness of their judgment and the extent of their information, the most discreet and competent for the performance of the duties of jurors."

MR. FROST: That is the local selectors.

MR. SILK: That is the local selectors.

MR. FROST: If they do their duty, what better could you have?

MR. SILK: It all boils down to the information of the local selectors.

MR. FROST: They know the men. For instance, in the City of Toronto, with a population of say six or seven hundred thousand, supposing there are five hundred or a thousand names given to a board of selectors, possibly that board might know one or two men in the whole thousand. It would be very difficult for them.

MR. SILK: It is impossible.

MR. LEDUC: Then they have what power they need under the Act. Is it not a matter of providing them with the machinery?

MR. SILK: Machinery for investigation.

MR. LEDUC: Yes.

WITNESS: I think so. I think that is one definite thing.

MR. FROST: You mean the local selectors?

MR. SILK: The local selectors, yes.

WITNESS: Then, passing to the question of jurisdiction of the Court of Appeal on appeals from juries, I only have to report that the Board reached rather a division of opinion on that, and I can only give you the opinion of both, both views that were expressed. First of all, I think they were all unanimous that there was no basic sense in the difference between the powers of the Court of Appeal on an appeal on a question of fact from a judge alone, and from a trial

with judge and jury. In other words, the difference in those two rules did not seem to us to be a well-founded difference. There were people on the Board who felt that it was desirable that a finding of fact by either a judge or a jury should be regarded as final, so that on the basis that I was discussing when I was here before, that the answers change their complexion when they get up to the Court of Appeal on paper, to what they have when you hear them from the witness in the box, that in the general interests of justice the finding of fact ought to be, according to this group's opinion, the final job of the trial court, and that the Court of Appeal should only interfere in cases where there was no evidence to support the finding. Then there was another group—and I confess that this was my opinion—that felt that the appeal from the trial by a jury ——

MR. CONANT: Pardon me: Have you got the present law there?

MR. SILK: It is at pages 157 and 158 of your notebook, sir.

WITNESS: That the appeal from a jury finding ought to be exactly the same as an appeal from a judge on a question of fact, that there was no reason why the Court of Appeal could not undertake that, that their powers should not be expanded by putting those two on exactly the same footing. Beyond reporting those two opinions, I cannot be of any great assistance to you.

MR. CONANT: Are you able to tell us, or have you got a record, Mr. Silk, of the law in other jurisdictions?

MR. SILK: Yes. That follows the pages I refer to, sir. The various provinces are dealt with, commencing at page 161. I have the important portions underlined, if you would like me to read them; I was not able to underline them in your copies. In regard to the Province of Alberta, about halfway down:

> "The court shall have power to draw inferences of fact, and to give any judgment and make any order which ought to have been made, and to make such further or other order as the case may require."

The language is generally the same as ours, although I do not know how it works out; they may have construed it a little differently. The passage from the British Columbia law is not very helpful, because it simply transfers and vests in that court the jurisdiction of a former Court of Appeal.

MR. CONANT: What is the practice in England? Do you know, Mr. Fowler?

A. I think Mr. Chitty could give that to us very quickly, the practice in England on these appeals from a jury trial.

MR. SILK: I have it dealt with here, sir, at page 167, some extracts from Halsbury, commencing at paragraph 370, which deals with jury trials, and at 371, which deals with non-jury trials.

MR. STRACHAN: Perhaps Mr. Chitty could tell us the practice in England.

MR. CONANT: What is your own opinion, Mr. Fowler?

A. My own view on this is, that it ought to be made the same on an appeal from a jury verdict as an appeal from a trial judge without a jury.

Q. Of course, the weakness of that is—it is quite obvious—you are setting up the "super-jury", aren't you?

A. You are taking over some of the functions of a jury.

Q. That is the argument against that, of course.

A. But, I would hope that the Court of Appeal would not interfere except in a case where it was preponderantly clear—that is, that there would still remain all the advantage, in a balanced case, that the judgment would not be interfered with.

MR. STRACHAN: Also, as to the powers of a trial judge, there is the same argument.

WITNESS: I personally cannot see, if a man who is supposed to be expert in sifting evidence reaches a conclusion of fact, and they may interfere with that, why twelve men who are not so experienced cannot be interfered with.

MR. CONANT: This phraseology, this formula, has been juggled back and forth a long while, has it not, Mr. Silk?

MR. SILK: No, there has been no change in Ontario since 1913, and at that time ——

MR. CONANT: Well, but wait a minute. I do not mean, statutory, exactly, but ——

MR. SILK: Oh, by the cases, yes.

MR. STRACHAN: In the Supreme Court of Canada.

MR. CONANT: It is really the Supreme Court of Canada dictum now that determines it, is it not?

MR. STRACHAN: They just won't upset the findings of a jury.

WITNESS: Practically speaking, time and again, even under the restricted rule, the Court of Appeal does interfere, and the Supreme Court of Canada reverses the Court of Appeal.

MR. STRACHAN: And reads them quite a lecture.

WITNESS: Frequently, yes.

MR. CONANT: Personally, I am not satisfied with the present situation, but I rather shudder at the idea of trying to develop a formula to remedy it; that is the difficulty.

WITNESS: One other point, and that is ——

MR. FROST: It is a question whether you can find a suitable formula.

MR. CONANT: Well, I don't know, Mr. Frost, I am sure.

WITNESS: This question as to the onus of requiring ——

MR. SILK: Pardon me, Mr. Fowler. Just before you leave that: did you comment specifically on Mr. Barlow's recommendation? I just cannot find it at the moment.

A. Would you leave that until Mr. Chitty comes on? Mr. Chitty has that definitely in mind to speak about.

MR. CONANT: All right, Mr. Fowler.

WITNESS: One other point: as to the onus as to requiring a jury, as to whether that ought to be changed ——

MR. CONANT: What did you say?

A. The question of the onus of choosing a jury—that is, if a man serves a jury notice, should the onus be upon him to defend the notice, or should the onus be upon the person who is seeking to set it aside? That is one of those things upon which we reached this conclusion, that, while in theory, if you change that onus you would be making a real change, in practice we came to the conclusion that probably the change would be pretty minor or probably of no effect, for this reason ——

Q. Don't let me interrupt, but am I not right in this statement, that the number of jury trials has decreased substantially in jurisdictions where they have changed the onus?

A. It may have done; I do not know that.

MR. CONANT: Do you know the answer to that, Mr. Chitty? Is that not the case, that in jurisdictions where they have changed the onus the number of jury trials has substantially decreased?

MR. CHITTY: I could not say as to that, sir; I do not know.

WITNESS: The real point is this ——

MR. CONANT: Have you any figures on that?

MR. SILK: No, I have not.

MR. CONANT: Well, make a note of that, and get some figures on it.

WITNESS: The point we had in mind was this, that in either case, either to-day or under a changed onus, it comes down to the personal views as to the jury system of the judge who hears the motion. For instance, at the present time you serve a jury notice in a sale of goods case: if you move before certain

judges, or the other side moves before certain judges, to set that notice aside, certain judges believe very definitely in the system of trial by jury, and they will go to the extreme to support that; others are not so much in favour of it, and they will be inclined to strike it out if they can. Now, I think that if you change ——

MR. CONANT: Isn't the present system subject to that hazard, if you want to call it that?

A. Precisely; but my point is, sir, that if you change the onus you will arrive, I believe, at the same result, because in the other situation, where a man serves a jury notice in say, a sale of goods case, then he is required to support the jury notice and to prove why he ought to have a jury. If he gets before a judge who is interested in juries and believes in them, he will discharge his onus fairly simply; if he does not, if he gets before one of the other judges, who do not believe so strongly in the jury system, he won't discharge the onus, and the jury notice will be struck out.

Q. I can quite see that that is—I would not say a pertinent observation; I cannot see that it is a serious argument either way, because any matter that is for judicial discretion is subject to that variation.

A. The net effect of what I am saying, sir, is this, that I think you would have a jury or not have a jury in precisely the same cases at the end of changing the onus as you have to-day.

MR. FROST: That is, it does not make any difference in the end?

A. I do not think it makes any difference whether you change the onus, because I do not think you ever get it so evenly balanced that a person's predelictions will not come in.

MR. CONANT: I am not offering the answer, but I think, if Mr. Silk will obtain the figures, they will indicate that with the change in the onus, the number of jury trials has materially decreased in the various jurisdictions.

WITNESS: I think, Mr. Chairman, that ought to be subject to this investigation further, that if, for instance, you were taking the English records where they have made the change, you would have to add in the possible effect of war conditions and so on, which might easily make people avoid a jury, because of interruptions of business and so on.

MR. CONANT: Well, we will develop that a little further. Before you leave that, may I ask your personal opinion as to this question of onus?

A. I personally think, sir, that there would be very little advantage in making a change. May I then leave it to Mr. Chitty to follow me.

MR. CONANT. Thank you, Mr. Fowler. We are greatly obliged to you for coming back again.

WITNESS. It was a pleasure, sir.

R. M. WILLES CHITTY, K.C., Board of Management of the York County Law Association.

MR. SILK. Mr. Chitty, you are also a member of the Board of Governors of the York County Law Association, are you?

A. Yes.

MR. CONANT. Mr. Chitty, you are also editor of the *Fortnightly Law Review*, aren't you?

A. *Fortnightly Law Journal*, yes.

MR. SILK. Shall we take the various matters, then, in the same order as Mr. Fowler dealt with them? That would bring us to pre-trial first.

A. I have not got very much to add to what Mr. Fowler has said. I have a certain amount of personal experience of what they call the summons for directions, in England. My father was, for twenty-six years, a Master of the Supreme Court there, and the summons for directions comes before the Masters of the King's Bench there. In any discussion I ever had with him on questions of practice here, he always said he never could understand why we did not have the summons for direction here, because he considered that the most useful form of practice in the whole of the English practice; he said that they could not get along without it. Whether you call it pre-trial or whether you call it summons for directions, does not seem to me to make much difference; it is all to the same end, which is to see that by the time a case gets to trial the issues are defined, that unnecessary evidence has not to be called, and that the case is ready to go before the judge, so that the pith and substance of what the parties are fighting about, comes up for decision before the judge. We all know here that you go to trial sometimes, and on the pleadings there are no issues defined at all, and the case may go off on a point that has never been thought of by either party, because the judge, when he hears some of the facts, comes to the conclusion that the real dispute between the parties is something entirely different from what they have put on the pleadings. Pre-trial gets rid of all that; summons for directions the same way.

MR. CONANT. How long have they had that in England, Mr. Chitty?

A. Summons for directions? Since The Judicature Act, sir.

Q. That is, in ——

A. 1873; I think the first rules came out in 1875.

MR. STRACHAN. I was going to ask how it works out; what is the procedure, briefly, Mr. Chitty?

A. Well, the old procedure was that the parties before pleading went before the Master.

MR. CONANT. After they were closed, do you mean?

A. No; before pleadings went in at all, went before the Master, and the plaintiff obtained a summons for directions. They went before the Master; there was a discussion of the issues in the case, and what facts could be admitted and things of that kind.

Q. This is after the record is passed?

A. No.

MR. LEDUC. Just after the issue of the writ?

A. Yes, just after the issue of the writ. That is the former practice. Now, they have changed that to bring it to after the record has been closed, with an option to bring it before, in cases where a motion for summary judgment might be in order, and things of that kind, because in the English system, the specially endorsed writ, the appearance is put in the ordinary way, but the plaintiff is at liberty to move, I think it is under order 14 of their rules, for judgment. Our system is slightly different: the defendant puts in an affidavit of merits to a specially endorsed writ, and then the plaintiff has the option of moving under rule 57, but the decisions under that rule have made that procedure rather ineffective now.

MR. CONANT. In other words, most judges send the case on to trial?

A. Yes, because their hands are tied under that judgment of the Court of Appeal, in Bank of Toronto vs. Stone. But it seems to me that some form of pre-trial ——

Q. Pardon me. I am very much interested. You said that after the record was closed, or in some cases before the record was closed, and then we branched on to something else. Now, I think Mr. Strachan and I would be interested to know the procedure from that on. Is that not right, Mr. Strachan?

MR. STRACHAN. Yes.

MR. CONANT. Somebody serves a notice, does he?

A. In every case the plaintiff serves a notice, a summons or notice for directions; the matter goes before a Master, and of course, you have got to remember that in England the Master has a good deal wider powers, because he has not the constitutional difficulty that we have here, that the Master cannot have judicial powers here. The matter goes before a Master, who has all the powers of a judge in chambers, and he discusses all the various questions that are going to come up, he looks at the pleadings, he decides whether ——

MR. LEDUC. You told us that was done before pleadings?

A. No, it is done now after pleadings; there has been a change.

MR. CONANT. Except in exceptional cases?

A. Except in exceptional cases, where summary judgment is in order. He

discusses the pleadings, and sees that on the pleadings as they stand the issues are defined, and if they are not, he orders amendments to the pleadings so as to define the issues. Then he discusses the questions of fact which ought to be admitted, and eliminates from the trial, facts which ought to be admitted, and which it is simply unnecessary for either party to prove, but which, under the system where you have no summons for directions, would have to be proved, because you might come up to the trial, especially under our rules, in which the silence of a pleading is not an admission of any facts pleaded by the other party, the English rule being exactly the opposite, making the silence of a pleading admission of the facts which are not specifically denied. Then, he discusses also, the question of the extent of discovery, whether a notice to produce documents is necessary, whether the submission of interrogatories, which is what they have in England corresponding to our examination for discovery, is necessary or unnecessary, whether the parties shall be at liberty to do that or not, and then finally, usually, they fix the day of trial at that summons for direction. They have the lists, the Masters have the lists, the judges' lists, and they actually fix the date for trial.

Q. Peremptorily, you mean?

A. Well, they put it on the judge's list for that particular day. They know when the judge has got a free time; they know more or less the length of each case, the length each case is going to take, because they have discussed the matter of summons for directions; they have got a fair estimate of the time it is going to take.

Q. As a more or less general observation—because I know you cannot be specific—do you or do you not, think that that shortens trials or simplifies them?

A. It shortens trials and it simplifies them, because the parties, by the time they get to trial, are only fighting the essential points that matter.

Q. And I suppose on that motion, Mr. Chitty, some cases would blow up, wouldn't they?

A. Oh, undoubtedly, undoubtedly!

Q. I mean, be settled or abandoned or something?

A. Exactly, exactly. A lot of these fishing expeditions that are possible under our practice, could never get to trial under a summons for directions.

MR. FROST: Mr. Chitty, do you think that that system of summons for directions would work in our system as we have it here, in our set-up of courts, our set-up of Masters and Local Masters and what not?

A. I think it would.

MR. CONANT: How would you do in the counties?

MR. FROST: I was just wondering about that.

MR. CONANT: You see, in the counties you have got the county judge and

you have got the registrar, and in very many cases the registrar is not even a lawyer. You could not make the county judge the previewing judge or the judge who would hear the summons for directions, because he might afterwards be sitting on it.

MR. FROST: He would have to hear the case. In the counties, if you had that system, you would almost necessarily have to bring over a judge from a neighbouring county to hear the matter.

WITNESS: That would only apply in county court cases.

MR. CONANT: Yes, that is true.

WITNESS: In supreme court cases the county judge would be sitting as local judge.

MR. FROST: Yes, I should think in supreme court cases that it would work fairly well.

MR. CONANT: May I ask one more question before we leave that, because I am very interested in it. What is the conclusion of that motion? Does the Master draw a report, or an order, or what is it?

A. He gives directions in the form of an order, just in the same way, for instance, as the Master gives directions under rule 169 in third-party cases.

Q. And that, of course, goes to the court as part of the record of the case?

A. Yes. I was just going to say, sir, with regard to the objection in the county court cases, I personally cannot see any objection to the same judge sitting on the summons for direction as the judge who hears the case.

MR. FROST: Of course, that is another point. There may not be any objection to that.

WITNESS: There is no evidence before the judge at that time; he is only eliminating matters which are not essential, providing for admissions of this and that.

MR. CONANT: Of course, there is this other angle to it, that under our present system, if it is continued, there is frequent access to a number of county court judges in a district, and if it was required that the judge hearing the motion for directions could not actually hear the case, you could still meet it by one of your itinerant judges acting.

Gentlemen, I see we are honoured by having with us Sir William Mulock. Mr. Chitty, I understand, is willing to retire for Sir William Mulock.

WITNESS: Certainly.

MR. CONANT: We don't want you to go away, though, Mr. Chitty.

THE HON. SIR WILLIAM MULOCK, K.C.M.G. (formerly Chief Justice of Ontario).

MR. SILK: I understand, Sir William, that there are certain things that you desire to say to the Committee, with regard to improving the administration of justice.

A. Who told you I desired? I was invited here. I am pleased to come, to be of any service. What are the subjects on which you wish my opinion?

Q. I have here a copy of Mr. Barlow's report; we are dealing with a good many of those subjects. The first one is the matter of grand juries, as to whether they should be abolished.

A. I favour the maintenance of the grand jury.

MR. SILK: Shall I go down these various items, Mr. Chairman?

MR. CONANT: Yes.

WITNESS: I prefer leaving the administration of justice to the hands of the jury rather than to some official.

MR. SILK: Then, with regard to the matter of petit juries, it has been suggested that there is some need for improving the calibre of the men who are placed ——

MR. CONANT: Just a moment.

Sir William, you are aware that in England they have largely done away with the grand juries?

A. I don't care what they have done in England. I prefer sending a man to trial to a jury of his people, rather than even at the hands of an Attorney-General or some official.

Q. Well, have you any idea as to what actuated them in England?

A. No, I do not know anything about what they did in England nor the reasons for doing it, but it is not a new question with me. I have had an opportunity of considering the usefulness of grand juries. I think there are many things that are referred to grand juries that ought not to be, unnecessarily. The trial judge tells the jury to go and examine these institutions, and so on; that is all nonsense; they are well examined by other officials. In that way you might curtail the length of time that grand juries are engaged in sitting, but I do not believe in taking the administration of justice out of the hands of the people and vesting it in officials.

Q. Well, of course, my observation about England applies in most jurisdictions in the British Empire, Sir William; you are aware of that, are you?

A. I am not very familiar with the systems in many parts of the Empire, no.

Q. I was saying as a general observation, there are comparatively few jurisdictions in the Empire that have retained the grand jury system; you were aware of that, were you?

A. I have expressed exactly my opinion on the grand jury question, and you could not shake me from it, because I have been for thirty years in touch with them.

MR. CONANT: Well, that is quite all right, Sir William.

MR. SILK: It has been suggested, sir, that there is some need for improving the calibre of the men who form the petit jury panel; have you any observations you would care to make on that?

A. Well, if you tell me what changes you have proposed, how to improve the calibre, I might have an opinion. I haven't with respect to that.

Q. Well, it was suggested this morning that there ought to be a special board formed, in for instance the city of Toronto, which would go down the list of jurors who form the panel, with a view to finding out more about each man before he is placed on the jury panel.

A. Yes, that is very important.

Q. Do you think there is any real necessity for that, Sir William?

A. I think it can be improved; I think you could select from a panel.

Q. It has been suggested also that there should be a more substantial fee paid by a plaintiff who desires to have a trial by jury. The fee now is $4. A fee of $25 has been suggested, I think, and the fee I think in Manitoba is either $50 or $100.

A. Yes.

Q. Do you consider, sir, that our fee should be increased from $4 to a larger amount?

A. I have not considered the question, but I do not like anything to take place that prevents people getting the benefit of a trial by jury if they desire it. If you increase the fee abnormally you make it difficult for many a suitor to get a trial by jury. You have to be careful about that. Four dollars—what are the total disbursements involved in an action tried by jury, up to that time?

Q. It would be about $10, I think.

A. The court fees?

Q. I think so, sir; perhaps not that much.

A. A slight increase might not do any great harm.

MR. CONANT: Of course, I think, Sir William, the thought that is behind

it is that trial by jury undoubtedly involves the state in greater expense than a trial without a jury, and it is a question whether the litigant, the individual, desiring that machinery should contribute more to the cost of it. Of course, if it were increased to $25, or even to $50, that would not bear the cost of it.

A. There are comparatively few cases that are tried by jury; a great many are not tried by jury at all. The trial judge himself exercises his judgment to a large extent. I do not know how many, but a very small proportion of the cases are tried by jury, the civil cases—is that not so?

Q. Oh, yes, there are more tried without juries, that is true.

A. A vast number. I think the amount you would gain—how many cases are tried by jury to-day in this province?

MR. SILK: I am sorry, sir; I do not know.

WITNESS: Well, if you knew that you would see what change it would make in your revenue. How many courts are there in the province? One for each county, isn't there?

MR. SILK: Yes, one for each county, and for each district, sitting twice a year in most cases, I think.

WITNESS: Sixty—a hundred and twenty, would there be?

MR. SILK: Yes, I think approximately that, sir. There are more courts in Toronto; there are four jury courts in Toronto a year, I think.

WITNESS: Well, call it a hundred trial courts ——

MR. SILK: Well, there would no doubt be some increase in the revenue; that was not the entire point, though. Do you consider, sir, that the powers of the Court of Appeal should be extended where an appeal is taken from a jury?

A. What do you mean?

Q. Well, there has been some suggestion that the hands of the Court of Appeal are pretty well tied where the appeal is taken from a jury trial, whereas if the case has been tried by a judge sitting without a jury the Court of Appeal in practice has a good deal more power.

A. It is not power; it is discretion. The court hesitates to disturb the finding of fact by a jury where it would not if it was found by a trial judge. It is not a question of power.

Q. So that you do not consider, sir, that there is any need to extend the power of the Court of Appeal in jury cases?

A. It has the power to disturb the finding of fact either by judge or by the jury—by judge or by jury. It respects the findings in a verdict on a trial of a question of fact by a jury more than it does the finding of a trial judge, but it is all in the discretion of the court; you do not require any change in the law.

Q. Then, Sir William, there is the matter of pre-trial procedure. Are you familiar with the term "pre-trial procedure", which they have in certain states of the Union?

A. Never heard of it.

Q. Well, under this procedure the parties are called before a judge.

MR. CONANT. Or the Master.

MR. SILK. No, they are called before a judge in most of the States, sir.

Q. In a somewhat similar proceedings in England they are called before a Master of the Supreme Court, who has the same powers as a judge. Without hearing any of the witnesses, he endeavours to narrow the issues, and in some cases the case is entirely settled and is dealt with at that hearing. If that procedure were to be followed in Ontario it is suggested that it would substantially shorten many of the trial lists, as, for instance, in the Toronto Non-Jury Court, where for some years the list was excessively lengthy. Do you consider, sir, that there is any need in this province for such a procedure as that—or perhaps you have not considered it and do not wish to express any view on it?

A. I have not considered it, and therefore my opinion would be of no value, little or no value. At the same time, I would hesitate, speaking off-hand, to adopt that change. Once the parties have got to the court, I do not approve of the courts influencing them by persuasion or otherwise; they should proceed according to the law and have the case tried according to law. If the judge sitting there has the suitors before him, he can frown and look at them and suggest this and suggest that; that is for the lawyers to do. I think it is an unwise suggestion. Do not attach any weight to what I say on that, sir.

Q. Very well, sir. In Mr. Barlow's report he suggests that there should be an appeal on matters of law from certain boards, such as the Workmen's Compensation Board.

MR. CONANT. Boards and commissions.

MR. SILK. Boards and commissions.

A. Well, I disapprove of vesting absolute power in any tribunal other than the court.

Q. So I take it, then, sir, that you would be in favour of allowing an appeal from all boards and commissions on matters of law?

A. I would have to go into the details to have a real opinion. The drift of egislation to-day, vesting judicial powers in an irresponsible body unskilled in the law, is the destruction of justice, is highly unwise. It might be reasonable —I think the powers vested by the Legislature nowadays in arbitrary tribunals, men who know nothing about the law, is imperilling the rights of the people, the judicial rights. Don't take the right of a man to appeal to the courts from him; that is a general proposition. You may modify that, make references and

so on, trying the facts, but don't leave the administration of questions of law to people who know nothing of the law. That is what you are doing to-day, in England as well as here. The Lord Chief Justice of England has taken a very decided stand and written some very able articles on it.

MR. CONANT. Well, it is even more so in the United States than in England, is it not, Sir William?

A. I do not know how far they have gone in the United States, but that book written by Lord Chief Justice Heward is very instructive.

MR. SILK. "The New Despotism"?

A. Yes. It is a drift in the wrong direction, that sort of legislation, in my opinion.

Q. Now, Sir William, as to the rules of practice, that is, the rules of court, which are now made by the judges, do you consider that there would be any advantage in having several barristers on that committee?

A. No! Nonsense!

Q. Well, I think that is fairly definite.

A. It is.

MR. CONANT. What about the onus as to jury notices?

WITNESS. Put in a whole sheaf of barristers, and they wouldn't have a word to say in the presence of the judges; you wouldn't get any opinions from them.

MR. SILK. Now if I may return to juries for a minute. At the present time any plaintiff who desires to have a jury simply serves a jury notice; it has been suggested that a plaintiff who desires to have a jury at the trial should be required to prove to the judge that it is a case that can better be tried by a jury than by a judge. Do you wish to express any view on that?

A. Well, that question is determined when the case is called on.

MR. CONANT. Mr. Silk, with all deference.

Q. In many jurisdictions, Sir William, they have shifted the onus so that a person desiring a jury goes to the court and gets an order. As you know, the practice now is that a person moves to strike out a jury notice. In many jurisdictions they have reversed that, so that the person moves for a jury order. Have you any views as to that, Sir William?

A. Well, there might not be any harm in an application and the question being disposed of by the judge before you get to court. I do not see any serious objection to that.

MR. SILK. Now, I think this is the last matter, Sir William. Do you know the Lord Chancellor's Committee as it exists in England?

A. No.

Q. Well, it is a committee of the Bench and of the Bar, which is appointed by the Lord Chancellor to study certain matters of law. There is no statutory authority for the committee. There are about fourteen members, about seven judges, I think, and the same number of lawyers, and from time to time they study various matters of law that are referred to the committee by the Lord Chancellor. They make a report to the Lord Chancellor, and in most cases their report is presented to the House of Commons in the form of draft legislation, and in a good many cases it is passed. Do you see certain advantages in such a committee being appointed in Ontario—for instance, to study matters which might be referred to it by the Attorney-General? It might possibly be a committee of the judges of the Supreme Court, without any barristers.

A. I would see no objection to referring to the judges any question as to amendment or improvement of the law, and their giving their advice to the court. That could do no harm, I should think.

Q. And having the judges as a whole make a report to the Attorney-General or the Government?

A. I would think it very advisable. Speaking off-hand, I think it would be very advisable, very instructive and very helpful to the Legislature if the opinion of the courts was taken before changes were made in the law. Is that what you mean?

Q. Yes, that is what I mean, sir.

A. Well, I think it might be very helpful, if it was the judges, but I do not approve of calling in other than those who are sworn as judges to be advising in regard to the law. Let these lawyers and others who have opinions go and present their views if you like, but why tie the hands of the Legislature, and they would be more or less tied.

MR. CONANT: Of course, Sir William, I do not know whether you understood that in England the commission set up by the Lord Chancellor deals only with what might be called lawyers' law, that is to say, not controversial matters, more or less abstruse points which, by variations in judicial interpretation, have arrived at a condition of uncertainty or sometimes an unsatisfactory condition. Now, in England that is all that is referred to the commission by the Lord Chancellor. He never refers what you might consider controversial matters, and his commission deals with the purely legal aspects of it and makes a recommendation to the Lord Chancellor as to what they think the law ought to be. For instance, I think contributory negligence has been referred to them, and the question of liability between joint tort feasors, as to which the Legislature would be in any event largely guided by legal advice. That is the kind of question with which his commission deals, Sir William.

A. That is a commission to advise the Lord Chancellor?

Q. Yes, sir.

A. Not the Legislature?

Q. Oh, no, Sir William, they report there to the Lord Chancellor. As a matter of practice, however, most of their recommendations have been passed on by the Lord Chancellor and have become legislation.

A. That is how it is worked out in England?

Q. That is the way it is, yes.

A. I see no harm in that. Anything that would help the Lord Chancellor form an opinion must be helpful.

Q. Just one more thing, Sir William. Would you care to make any observations as to the advisability of amendments in connection with what we call expert testimony, expert witnesses? There is a suggestion that we might adopt here somewhat the same practice as they have in the Admiralty Courts and in some other jurisdictions, of the expert testimony being given by an expert either agreed upon by the parties or selected by the court, with the view to avoiding the conflict of expert testimony. It is suggested that sometimes here we have two experts on one side and two experts on the other, and so on. Would you care to make any observation on that?

A. I really do not see what you have in view. I know the difficulty in trying questions where it depends on expert testimony, but as to the qualifications of these experts, that is a point, really—I do not know how you will determine a man's qualifications; do you?

Q. Well, of course, in the Admiralty Courts, the Admiralty Judge has an assessor, and the thought is that we might incorporate in our civil practice something similar to that, so that, instead of having expert testimony on both sides, one person would act as expert adviser to the Court on the technical or expert matters that are involved.

A. I have not thought of that sufficiently for my opinion to be of any value.

Q. Of course, if there was no injustice done it would certainly reduce time and expense, would it not, Sir William?

A. Oh, yes.

Q. There is a lot of time and expense involved in conflicting ——

A. I think there is room there for some improvement, but what it should be I cannot say.

Q. Quite. I did not know whether you had any thought off-hand; I did not presume you had considered it at any length. Well, I am sure we are very much obliged to you, Sir William, for coming before us to-day. Have you any observations you would like to add of your own motion, sir?

A. Oh, no, I would not take the liberty of doing that.

Q. Well, we would be very glad to hear any observations you care to add.

A. I suppose you have considered the question of reducing or increasing the number of jurors?

Q. Yes, we have. We would be glad to have your view on it, sir.

A. The judge has a good deal to say as to the number of jurors to be summoned, hasn't he?

Q. That is, the entire panel?

A. Yes.

Q. Yes, sir. But the trial panel is determined by statute, of course. In some jurisdictions they have reduced them to seven.

Mr. SILK: Eight in one: seven in England, I think.

MR. CONANT: In England they have recently, since the outbreak of the present war—last August—passed legislation reducing them to seven, Sir William, I think.

A. Well, I have often thought there were more jurymen loafing around the courts than were at all necessary. If every judge would use good commonsense he could save money by liberating jurymen. If I had a case that was going to last two or three or four days, why keep fifty jurymen waiting till that case is over? The trial judge, if he would—I think they ought to do it—who would give consideration to the taxpayers, would let the unwanted jurymen go home for a few days. Wouldn't that deduct the pay, except the travelling expenses?

Q. Would you care to express an opinion, Sir William, as to whether a jury—a petit jury I am speaking of at the moment—as to whether a petit jury of seven would answer?

A. There is something very sacred in the old twelve-jury system. I think you might very well—with regard to the grand jury, is that quite an item of expense?

Q. Oh, yes.

A. Well, why shouldn't you limit the grand jury to the question for which they originally came into existence, namely, sending suspected men to trial? Limit it to that, let them hear their cases, and then let them go about their business.

Q. Do you think five would be enough, Sir William, for a grand jury?

A. How many are there now?

Q. Thirteen; and it is a majority now, of course.

A. I would think five enough. They do nothing but send the man to trial; that is all they have to do. Limit their duties to that.

Q. But you are reserving judgment on the question of the seven-man petit jury, are you?

A. I do not think I would put—I would not like to put a finger on the twelve-jury system. It has not worked badly, and on the whole it is not a very great expense. Maybe the expense could be reduced. You may adopt some rule, I think, that would call on the judges to exercise their discretion early in the sitting of the court.

Q. Well, thank you very much, Sir William. I am sure we are greatly obliged to you.

A. You are engaged in very important work indeed.

Q. Thank you, sir.

R. M. WILLES CHITTY, K.C. (recalled).

MR. SILK. Mr. Chitty was just saying that he could not see any objection to the same judge sitting on the summons for directions and sitting at trial.

MR. CONANT. That would hardly be consistent, of course, with a recent ruling put out by my own department, that magistrates who are going to try the case should not take the information.

WITNESS. Well, of course, I think that is an entirely different matter. I mean, in criminal cases you deal with things in an entirely different way from civil cases.

MR. LEDUC. In the case of a pre-trial isn't the judge really sitting on two stages of the same trial?

A. Well, I think so.

MR. SILK. Just before we leave the question of pre-trial. I distributed to the members of the Committee a copy of the Report of the American Bar Association, which included a very excellent report on pre-trial procedure. I have endeavoured to digest that report, and my digest is at page 178.

MR. LEDUC. You have read that report on pre-trial, I suppose, Mr. Chitty?

A. I have read part of it.

Q. I was going to ask you this. they mention the summons for directions in the English courts. There was an amendment in 1938, which would be fairly recent.

MR. SILK. With the possible exception of Mr. Justice McTague, I do not propose to call any further witnesses on pre-trial, and I thought if we went over these various headings we might get Mr. Chitty's observations.

MR. FOWLER. I think the Committee did study that when we were studying this question in the County of York Association.

MR. SILK. May I just take the various headings, then, on page 178. The advantages of the system are.

"(a) It narrows the issues;

"(b) it shortens and speeds trial hearings; and

"(c) it avoids trial in cases where a trial is not useful (as where the defence has been entered for purposes of delay only)."

I do not suppose there is any discussion on any of those three matters; they are the three advantages to pre-trial?

A. Undoubtedly.

Q. "2. Pre-trial hearings must be before a judge. (Hearings before a clerk or master are not satisfactory because the judge must have power to dismiss the case or enter judgment by default if the system is to work). It follows that pre-trial hearings must be compulsory and not voluntary."

I may add that I have also a committee report of the New York Bar, in which it is stated that the system was introduced in San Francisco on a voluntary basis, and it died within a period of two months. That report is at page 96 of the notebook.

MR. FROST. In connection with that paragraph 2, Mr. Silk, as just read by you, do you think that would make any difference to your suggestion of the introduction of the English system here? In the matter of masters hearing these matters, do you think that would make a difference? Do you think if there were to be some sort of pre-trial arrangement here that it should be before a judge?

MR. SILK. Mr. Chitty pointed out that the master has a good deal more power in England.

MR. FROST. In England, yes; but in applying that to our country here, in this province.

WITNESS. I think you could get ninety percent of the advantages that Mr. Silk talks about by summons for directions before a master. I do not think it is essential that the person hearing the summons should have power to dismiss the action.

MR. STRACHAN. Do you think our master could possibly handle the number of hearings on top of his other work, Mr. Chitty? He is a pretty busy man.

A. I think the saving of time in other directions would enable him to handle the work, because there would be a tremendous saving of time.

MR. STRACHAN. There would be a saving in the various interlocutory applications.

WITNESS. Yes.

MR. CONANT. We have already three assistants.

MR. STRACHAN. Well, one is assigned to mechanics' liens.

MR. FOWLER. May I break in at that point? It does seem to me that there may be a constitutional question involved here, that on this pre-trial matter the master may be performing judicial functions in a way as to which there is no question raised in England, whereas here we might find that the procedure inaugurated, if the master were doing it, might be found to be an unconstitutional act. I think that constitutional question ought to be considered with considerable care by the law officers.

MR. SILK. May I read a short extract from the report of the Committee of the American Bar Association, at page 25, column 1:

> "The advisability of having the pre-trial hearing conducted before a judge, with full power (as limited by the rules) to dismiss a case, or enter judgment of default, cannot be disputed. It is only when the pre-trial hearing is held before such a magistrate, for example, that the parties could be expected to reach an agreement as to the reasonableness of a doctor's bill, or of a garage bill, in a tort case. Similarly, unless a judge is in command it would be impossible for the parties to be required to make a binding election as to whether or not a physical examination of the person of an injured tort complainant would be required."

In other words, all these matters would be subject to review by the trial judge, and there would be nothing definite or conclusive about the pre-trial here.

Then number 3:

> "3. The pre-trial judge should preferably not be the trial judge. (Parties might feel prejudiced at trial if a settlement had been made at a pre-trial hearing before the same judge. It follows that the success of the system in a one-judge court would be doubtful.)

With our County Court districts I do not think we have any one-judge courts in the province.

Q. Have you any observations with regard to that, Mr. Chitty?

A. Nothing except what I said before, that I do not see that at all, because there is no evidence before the judge, and there can be no possible prejudice. It is only part of the mechanics of getting the case down to trial. If your pre-trial system is going to develop into a system of endeavouring to force settlements, which it seems to me is the great danger of pre-trial, then I can quite understand this objection, but as long as you confine it to a matter of settling issues, eliminat-

ing evidence, and seeing that the case is in shape to be tried if it has to be tried, then I do not see that there is any objection to your going before the same judge on the summons for directions or the pre-trial as you go before on the trial of the action itself, and all the advantages of summons for directions or pre-trial lie in getting a case ready for the proper trial rather than in bringing cases up which ought to be settled and then making the parties settle, because that is not the procedure, it was never intended for that purpose, and we all know as lawyers the difficulty we have had with some judges; I do not think there are any to-day, but there used to be judges who would take you into their room and make you settle cases; we all know that difficulty.

MR. CONANT: I would not admit the knowledge officially, Mr. Chitty.

WITNESS: No, I don't suppose so, but unofficially I think you could take judicial notice of it.

MR. SILK: It all boils down to this, that when the trial judge has knowledge of any offers of settlement, it makes very little difference, in your opinion?

A. I do not think, with a judge alone, with any judge on the Bench to-day, it would make the slighest difference whether he knew there had been offers of settlement or not.

Q. "4. The system is more adaptable to large centres than elsewhere."

I may add that, according to this 1938 report, rules were to be passed in 1938 which could be made to apply to all the Federal District Courts. I do not know whether those rules were passed or were invoked generally or not. At any rate, it seems to me in the province of Ontario our big difficulty would be to furnish judges who would go out on circuit to take pre-trial hearings.

A. Well, I think you could eliminate that, as I say, by using the local judge and the master ——

MR. CONANT: Mr. Chitty, there does not occur to me to be any reason, but I was wondering if you could think of any difficulty that would arise, supposing we were to make this effective in what you might call the larger jurisdictions, Ottawa, Toronto, Hamilton, London and Windsor, would there be any conflict or any difficulty arise from that? Can you think of any?

A. I cannot think of any, sir.

MR. SILK: In most of the jurisdictions in the United States, sir, where it has been brought into force it has been tried out first of all in the larger centres—the cities of Detroit, Boston, Los Angeles, San Francisco.

MR. STRACHAN: How long a procedure is it? I suppose it is hard to say. Take our non-jury list, for instance; we always have at least four or five hundred cases on it. Isn't the Master's Office at Osgoode Hall going to be pretty congested, even if he put them through averaging ten or fifteen minutes? It would take at least half an hour, sometimes an hour. It seems to me there is not going to be much time for the master to do his other work.

WITNESS: Well, how many of those four or five hundred cases are undefended divorces?

MR. STRACHAN: Quite a few of them.

WITNESS: Well, you would not need any procedure in that case. Once you have got your system working, it seems to me—in the first place, you would not have four or five hundred cases on a non-jury list, because most of them would have disappeared before they got there, or a great many of them would have disappeared before they got there.

MR. SILK: I see a note in the same report to which I referred, of the American Bar Association, to the effect that the pre-trial hearing need not usually last over ten or fifteen minutes, which is a surprisingly short time, I think.

MR. FOWLER: You might easily avoid, too, the business of having another motion in the same case which would take half an hour, if you had your pre-trial procedure.

MR. CONANT: "5. The hearing should follow close of pleadings." We have discussed that, excepting in exceptional cases.

"6. The hearing must be informal with no reporter present." That would appear to be obvious.

"7. Pre-trial procedure should be dealt with in rules of court."

MR. SILK: Rather than by statute; that is a general observation on this report.

MR. CONANT: Of course it can be dealt with by statute; there is no doubt about that. It could be made part of the Judicature Act.

MR. SILK: I think in the United States a good many of the courts have full power to make rules on all matters, so that they can very easily make pre-trial rules without further authority.

WITNESS: That does not make much difference, because your rules have the force of statute anyway.

MR. CONANT: Quite. We can override them by statute.

MR. SILK: "8. The system has usually been invoked where trial lists are very much in arrears." The prime example of that was the original jurisdiction where they had pre-trial, in the city of Detroit, where the lists were forty-five months behind, and in Boston I think the lists were something like two years behind. Just referring to the report, before I conclude the matter of pre-trial; I notice that in Boston out of 10,700 actions 2,700 were settled at pre-trial. that is about twenty-five percent.

MR. CONANT. There would not be anything on record as to the extent to which pre-trial had shortened the trial of cases; there would not be anything on record as to that?

MR. SILK. Except that in the city of Detroit it has brought the list right up to date now, I think, whereas it was almost four years behind. In the city of Boston it has had the same effect.

MR. CONANT. You made an observation there, Mr. Chitty, with which I was rather struck, as to the danger of pre-trial being used to force settlement. I agree with you that there might be a danger there. Is there any way of avoiding that at all?

A. Well, if you give the jurisdiction to the master I do not think there would be any danger whatever, because the master could not force settlement; and you could eliminate your difficulty with regard to the statement that Mr. Silk read from page 25 of this report, about the judge must have power to dismiss the action, by enabling the master to make a report in cases where he felt that the action ought to be dismissed.

Q. That is the way you could meet this question of jurisdiction?

A. And then it could go to the judge.

Q. Just as we do to-day. I have in mind—don't check me too closely—in some cases matters are referred to the master or to a local judge by a Supreme Court judge, and he reports on it back to the court, but it must finally become a judgment of the court.

A. Exactly.

Q. Could not this jurisdiction aspect of it be met in the same way?

A. I think so, I think so.

MR. FROST. What, if any, appeal is there from the finding of a master in connection with these pre-trial matters?

A. I suppose you would have the same appeal that you have from any matter of practice before the master, and in the case of a report by the master of course it must be confirmed, and the rules provide that before a report is confirmed either party may appeal from the report. In the case of a finding of a master, for instance, striking out parts of a statement of claim or something of that kind, there is an appeal to a judge in chambers.

MR. SILK. I think if an appeal is given from a pre-trial hearing the pre-trial is going to lose many of its advantages; it is going to complicate the procedure and add to the cost.

MR. FROST. What if the master makes a finding which is manifestly unfair and has the effect of depriving a plaintiff or a defendant of his rights? Then is there no right of appeal?

MR. SILK. I think the proper place for that to be dealt with, Mr. Frost, would be at the trial, by the trial judge.

MR. FROST. That is in effect, then, really a right of appeal, is it?

MR. SILK. Yes. What I had in mind was, if it was to be an appeal to a judge in chambers or in weekly court it is going to add to the number of hearings.

MR. FROST. Mr. Conant, what was the demand for pre-trial, if there has been any demand? Is it because of situations existing here in Toronto, or is it general?

MR. CONANT. Oh, no, Mr. Frost. It arises from the general desire, for which if you want you can make me responsible, to expedite and reduce the expense of the administration of justice; that is the whole thing.

MR. FROST. I mean, it is directed to all of our courts?

MR. CONANT. Oh, yes.

MR. FROST. It is not just because of difficulties that you are having in some courts, as to getting cases tried?

MR. CONANT. Oh, no.

MR. STRACHAN. You say, Mr. Chitty, that in all the courts pleadings are sometimes drawn so that the judge is at a total loss to know what a case is about —sloppy pleading—and that would obviate it?

A. Exactly. I can tell you of a recent instance of that, where two counsel both got a brief on a case, on the opposite sides of the case, and they did not get it till the morning that the case was coming up for trial; both looked through the pleadings, and both discovered that neither party had seen what the issues were, the solicitors had not seen what the issues were between the parties at all, and, further than that, both discovered that there was no dispute between the parties at all on the law as it stood; they went out and settled the case in ten minutes, before the court opened, because there was not any fight.

MR. STRACHAN. And there are hundreds of instances.

WITNESS. There are cases of that kind.

MR. CONANT. Of course, one of the defects of this pre-trial system is, those counsel could not obtain the fee that they got in such cases.

WITNESS. No, but, on the other hand, they would not be faced with situations like that.

MR. FOWLER. Mr. Chairman, we would probably have more cases, too, because people would be more willing to go to law.

WITNESS. I think that is the whole aspect of this pre-trial or summons for directions, that it puts a certain amount of sort of business aspect into the handling of cases before the courts.

MR. CONANT. What is the next branch, Mr. Silk?

MR. SILK. The next matter with which Mr. Fowler dealt was improving the calibre of jurors.

Q. Have you any observations?

A. I cannot add anything to what Mr. Fowler has said on that point.

Q. Then what about the onus for requiring a jury trial, or where a jury trial is required?

A. I think just as Mr. Fowler says, you can change the onus and find that you would effect no change in the practice.

MR. SILK. Of course, that is not so.

MR. CONANT. Frankly, I find it difficult to subscribe to that view, because the onus is always a very important factor, is it not, Mr. Chitty?

A. Not in a matter like that, which is purely a matter of discretion in the particular judge before whom it comes. If he is in favour of juries you will get a jury every time; if he is not ——

Q. The judicial mind, though, is always impressed with the question as to where the onus lies; you hear long dissertations on that.

A. But on the other hand, sir, I think you will find that if you change the onus you will get a lot more judges sympathetic with people having juries than—I mean, judges who might to-day strike out a jury notice, if you shifted the onus they would be rather inclined to give the jury to the man who wanted it. It depends on the judge.

MR. SILK: I think it was agreed at the spring sittings of the Committee that it would not make much difference unless we laid down a rule as to the type of case which should be tried by a jury.

MR. CONANT: Well, let us strip this thing of some of its surplusage. Don't you think that changing the onus, Mr. Chitty, would have a tendency to discourage those cases, of which there are some no doubt occur, that have been launched with a view to getting to a jury and perhaps getting a brand of justice that would not otherwise prevail?

A. I think you would get those same cases. They might fade out when they failed to get the jury, if they did fail to get the jury.

Q. Yes, but don't you think that if there were in this province any solicitors who were supposed to launch actions with that in view, they would think twice before doing so if at some stage they had to go and get a jury order?

A. I doubt very much whether you would have very much effect there. I think they would start off with the same sort of optimistic point of view, that they would get their jury in the end. As Mr. Fowler says, they would certainly make the effort to get it.

MR. STRACHAN: And they would get it, just the same as ——

WITNESS: They would pick their judge and get their jury just the same.

MR. CONANT: Those questions about picking their judge—I do not like to see them going on the record so freely and so often.

WITNESS: Perhaps I was a little too outspoken on that. My feeling, sir, is that these questions with which we are now dealing are solved by the third point, which is the question of the powers of the Court of Appeal.

MR. STRACHAN: Yes, I think so too. I think that solves your difficulty about the type of jury and everything else.

MR. CONANT: What is the next point, Mr. Silk?

MR. SILK: Extending the powers of the Court of Appeal in appeals from jury actions.

WITNESS: Of course, speaking from the point of view of the York County Law Association, I can only say what Mr. Fowler said, which is that there was a divergence of opinion on that, and the opinion was very markedly divided, and we came to no real conclusion, but my own view coincides with that of Mr. Fowler ——

MR. CONANT: Let us have that view again.

A. Well, my view is that the Court of Appeal should have the same power to deal with the findings of fact of a jury that it now has to deal with the findings of fact of a judge sitting without a jury.

Q. I indicated before that the present rule of law (let us call it) is pretty narrow, but what formula would you develop? How far would you be disposed to go in relaxing the present rule, if that is a correct way of putting it?

A. Well, some years ago I discussed this matter with Mr. Justice Macdonell, and ——

Q. That is, the late Justice Macdonell?

A. That is, the late Mr. Justice Macdonell, yes, Norman Macdonell. We drafted an amendment to what was then section 26 of the Judicature Act, practically in the words that I gave you just now, and that amendment was sent up by Mr. Justice Macdonell to the then Attorney-General as a suggestion as to an amendment which would eliminate this continual fight between the Court of Appeal and the state of the law of the Supreme Court of Canada, whichever way you like to put it.

MR. STRACHAN: Mr. Barlow suggests that subsection 1 of section 26 be amended to read:

> "The Court upon an appeal may give any judgment or verdict which ought to have been pronounced."

WITNESS: Well, my feeling is that that does not achieve the purpose, that it is not specific enough, and that a subsection should be added to that section, simply saying that the Court of Appeal shall have the same power to deal with findings of fact of a jury that it now has to deal with findings of fact of a judge sitting without a jury.

MR. CONANT: And you would not limit it to perverseness or any other qualification?

A. No, I don't think so. My own personal opinion is that if you do that, then you get down to the English system, in which the findings of fact of a trial judge sitting without a jury are treated very much the way that the Supreme Court of Canada now treats the findings of fact of a jury; that is to say, they won't reverse a finding of fact unless they can find that there is a tremendous preponderance of evidence against it, or, for instance, that the oral evidence which the trial judge has accepted does not fit in with the documentary evidence, or something of that kind. The continual fight in the Court of Appeal these days seems to be to reverse the jury's findings if they possibly can, because their hands are tied in that respect and have been tied by decisions in the Supreme Court of Canada, or at least they say they are findings in the Supreme Court of Canada; as a matter of fact, the House of Lords has endorsed all those findings in the Supreme Court of Canada, and the Court of Appeal, while pretending to fight the Supreme Court of Canada, is actually fighting a finding of the House of Lords.

Q. Of course, there are the two aspects, I think, that this Committee has to consider: one is the aspect of the administration of justice and the ample opportunity for review as part of the administration of justice as a more or less abstract theme, but there is also this other important aspect, that if you open the door as wide as you are suggesting, Mr. Chitty, would you not be encouraging appeals in almost every case where a jury had spoken?

A. I do not think so, sir, I do not think so, because I think you will find that your Court of Appeal would come around and adopt a much stronger attitude with regard to findings of fact than they do to-day. That is to say, that they would be much more inclined to accept findings of fact in all the trial courts, whether with or without a jury, than they are to-day, because under the present system, their hands being tied in one respect, they are rather inclined to feel that they must review the facts in every case.

MR. STRACHAN. It would also have the effect of discouraging cases where the plaintiff knows if he can get to the jury and get a verdict that is the end of it.

A. Exactly.

MR. FROST. Generally in appeals from a judgment of a single judge the courts usually take the view that a judge, having seen the witnesses and so on—I mean, it is only in very unusual cases that they do interfere, is it not?

A. Exactly.

Q. Where there is an absolute preponderance of evidence against the judge's finding?

A. That is certainly the case in England, and to a great extent it is the case here.

Q. And you think that if that were extended to juries the courts would obviously take the same attitude, that unless there was such a preponderance of evidence that the jury's decision was ridiculous they would not interfere with it, they would say that the jury, having seen the witnesses, were in a better position?

A. Exactly; I think so. And may I say in this regard at this point that the Court of Appeal made the heaviest complaint recently in a case where the jury was a special jury and you could not possibly question the calibre of the men on that jury, and yet the Court of Appeal were more critical of that jury's findings than they have been of juries' findings for quite a while; yet that, as I say, was a special jury, with men of the best possible calibre that you could get. They actually reversed the finding, and the Supreme Court of Canada restored it. But it seems to me that if you are talking about calibre of juries and things of that kind, the basic trouble at the present moment seems to be the question of the powers of the Court of Appeal, and that once you have solved that problem you have solved the other problems with it.

MR. CONANT. Well, what is the next theme, Mr. Silk?

MR. SILK. That is all Mr. Chitty has. I was going to call Mr. Thompson, and then Mr. Cadwell.

MR. CONANT. Well, wait a minute. Have you any views on this question of expert testimony, Mr. Chitty?

A. It seems to me that the danger of that, sir, is that you may get a sort of class of professional assessor or people to assist judges of that kind who will build up a reputation for themselves without having any too much knowledge. I think it is a little dangerous, perhaps. The courts do not seem to have any great trouble with this question of expert evidence, and I have never been in a case where there has been any tremendous conflict between the experts on the one side and the experts on the other, with skilful cross-examination.

MR. CONANT. Didn't we have a case here recently involving the installation of equipment in the Stock Exchange that went on for days, if not weeks, and it was largely a question of expert testimony, was it not?

MR. SILK. Mr. Justice Roach had an expert on the bench beside him. Mr. D. L. McCarthy told of one ——

MR. CONANT. Yes, but that is not the procedure that we are discussing.

MR. SILK. No. They still had a great number of experts on each side.

MR. CONANT. Would not all parties be just as far ahead—perhaps not in that case; I only brought that to mind—if when you have technical matters to determine an expert were agreed upon by the parties or appointed by the court, and his finding on technical matters would prevail? Wouldn't you be just as far ahead, Mr. Chitty, as you would be after calling—what is it? Is it three you are allowed now?

MR. SILK. Three in some cases and five in some cases.

MR. CONANT. Well, whatever it is, each party calls all the experts he is allowed, and you have a horrible volume and confusion of expert testimony, and the judge has got to try to sort that out; would you not be farther ahead if you had some person to do that?

A. I do not think you would, sir, because fundamentally the judge has got to make the decision. The danger perhaps is not so real as the appearance of the danger, and that is, parties would feel that if they were not allowed to call their own expert witnesses, the man to whom the court referred was biassed against them, or something of that kind. Somebody said it is more important that justice should appear to be done than that it should actually be done, and it is the appearance of the matter that seems to me to be the danger of the thing; besides which, as I say, finally the judge has got to make up his own mind, and it does not seem to me whether he has got to make up his mind on the evidence of one man or on the evidence of half a dozen makes much difference.

Q. Now, one more point, although you may be diffident about answering my question, in view of evidence we have had this morning. Have you any observations to make regarding the rule-making body of the courts?

A. Well, sir, if you look into the history of that matter you find that lawyers, barristers, lawyers not members of the Bench, have been members of committees for a great many years in this province. There were members on the committee that made up the rules in 1897; there was a body consisting of judges and lawyers from 1897 till I think 1910, when Mr. Justice Middleton was appointed a commission of one to revise the rules that came out in 1912. Then it seems to me that even after that there were lawyers on the rule-making committee, and, with all deference to the judicial opinion on the subject, my feeling is that the judges ought to welcome the assistance of men who in a month's practice handle more rules than they perhaps do in five years on the Bench.

MR. SILK. There was a point raised by Mr. Fowler at the last sittings which was not on the agenda; that is, that the answers given by an officer of a corporation on an examination for discovery should be binding on the corporation. Have you had occasion to consider that, Mr. Chitty?

A. I do not think I could add anything to what Mr. Fowler has said. It has always seemed to me to be a very difficult question that is raised there, but I cannot see, if the officer can bind the corporation in every other way, which he can, being the agent for it, why he should not bind it by his answers on examination for discovery.

Q. Mr. Fowler made another suggestion regarding examinations for discovery, if I remember correctly, and that was that a case should not be permitted to go on the trial list until the examinations have been completed, because that is a popular excuse for not being ready to go on.

A. Well, if you adopt the summons for directions or pre-trial, all those points would be eliminated.

Q. That is right.

MR. CONANT. You would see that there was an order.

WITNESS. Exactly. That is another advantage, of course, of pre-trial or summons for directions, that there are a great many cases where your examination for discovery is wholly unnecessary, and yet the parties examine, and just pile up costs, and get nothing on the examination for discovery, and it is never heard of again.

MR. SILK: There is just one more point that was raised by Mr. Leduc the other day; we have not had any expression of opinion on it. That is the fact that to obtain an increased counsel fee it is necessary to come to Toronto; there is no power in a local taxing officer to grant an increased counsel fee. It means a good deal of business for the lawyers in Toronto, but it is very inconvenient for counsel at outside points. Have you ever considered that matter of taxation, Mr. Chitty?

A. I have never been able to see why the local taxing officer, subject to possibly a right of appeal to the taxing officer in Toronto, why the local taxing officer should not have full powers to ——

MR. CONANT: Why should not the trial judge do that in all cases, Mr. Chitty?

A. I do not think they would welcome being handed the power.

Q. That may be the case, but ——

A. Of course, it is done all through the west.

Q. Here is a judge who has heard all the facts and knows the merits and demerits and all the rest of it; now, what better person is there in the world to pass on the merits of an increase in counsel fee?

A. I quite agree. You see all the western judgments coming in, as I did when I was doing the Dominion Law Reports; the counsel fee was always at the bottom of the reasons for judgment. It is done all through the west. I never studied the practice on that point, but I do not see why it should not be done the same way here.

MR. FOWLER: On that point, may I just add—that was not up when I was giving evidence—I don't know whether Mr. Chitty has ever lived in a small Ontario town, but I do think that there is a factor coming into that question of increased fees by the local taxing officer which is of some importance, and that is that you really need to protect the local taxing officer against his friends, who are friends in the profession in that smaller town.

MR. CONANT: That would not apply to the judges.

MR. FOWLER: Oh, no, not to your suggestion, but to the question that Mr. Silk asked.

MR. LEDUC: Of course, that would be subject to appeal, Mr. Fowler, but

I think it is ridiculous for a man in Toronto or Hamilton not to be able to get more than fifty dollars counsel fee unless he instructs an agent in Toronto.

MR. CONANT: Mr. Chitty, one more question. You know something of the law revision committee in England set up by the Lord Chancellor?

A. Yes, sir.

Q. Have you any observations to make on that?

A. I think we undoubtedly should have something of that kind here. One of the things, for instance, that stands out in my mind at the moment is that owing to their efforts the ruling Shelleys case was abolished in England. It ought to be abolished here, I should say, because, as a great many of the judges have said, it defeats the intentions of the testator more often than it carries them out. That would be the sort of thing that could be done if you had a ——

Q. It would be proper for such a committee to consider?

A. Yes. One of the troubles with the law to-day is that it progresses slowly, and the public seem all the time to feel that the law is not up to date. If you had such a committee sitting all the time, and having any little point or large point that comes to the Attorney-General's attention referred to it for report, then there would be a tendency to keep the law far more up to date, far more progressive, than it is now. It was my suggestion which I threw out the other day that in 1873 and through a little later here we had the Judicature Act, which combined the various divisions of the Supreme Court into one Supreme Court, and that very well that principle might be extended to all the courts, a Judicature Act for all the courts, carrying the inferior courts into the superior court and making them simply divisions of the one court and co-ordinating and consolidating the procedure, eliminating the question of County Court jurisdiction and Division Court jurisdiction, because each court would be a division of the one main court, and in that way each case would fall into its own proper sphere and it would not matter whether the County Court had jurisdiction up to $500 or $1,000, because it would be a part of the same court, each case would just fall into its little niche according to the amount claimed or something of that kind, and it seems to me that some sort of procedure—I may be twenty-five years ahead of my time in suggesting this thing, but something like that is going to come.

MR. LEDUC: Is that not somewhat the system they have in Quebec, where one court deals with all cases over $100?

MR. CONANT: The Superior Court, they call it, don't they?

A. Yes.

MR. SILK: There is no division of that court, is there?

A. There are no divisions of that court, and my suggestion is perhaps a little broader than that; but that is a point that even this Committee—and I am not saying anything derogatory of the Committee at all, but it is a point I

do not think this Committee could deal with here, because, while you are all lawyers here, and I think all the Committee are lawyers, if I remember rightly, you have not got the time to go into those things.

MR. CONANT: It is a big question.

WITNESS: It is a very big question. It might very well be dealt with by a law revision committee.

MR. FROST: At the same time, it is a good objective. I mean, supposing it were to be done, for instance, next year, the result would be that the statutes would be all out of line, there has just been a revision, and so on, but if it were made to take place say about 1947, when there is to be in the ordinary course a new revision of statutes and all the rest of it—I mean, taken as a long-range objective it could probably be worked out, and I think myself it is probably the right thing.

MR. SILK: Mr. Frost, if you propose to have all the statutes revised, I think you should appoint the committee at least ten years in advance.

MR. FROST: Well, you are going to meet that situation. For instance, if you consolidate all the courts, take the tremendous number of changes there have been in the statutes ——

MR. SILK: I thought you meant the law revision committee; you mean the court revision. I see.

MR. CONANT: Is there anything else you care to comment on?

A. I don't think so.

MR. SILK: I was just going to ask, Mr. Chitty, in connection with the law revision committee, do you consider all the judges of the Supreme Court would be an appropriate law revision committee, or should there be a representation of the Bar on the committee?

MR. CONANT: Well, may I just revise the question to this extent. In England it is a mixed committee, isn't it?

A. Yes.

Q. Members of the Judiciary and members of the Bar. What would you have to say regarding the constitution of that committee?

A. I would suggest that it should be a mixed committee. Whether that would be acceptable to the judiciary or not I am not sure.

MR. CONANT The question is, would the lawyers be afraid to speak?

We will adjourn until 2.15.

MR. SILK: I have arranged with our witnesses to come at two o'clock every day.

MR. CONANT: Well, adjourn until 2.15.

Adjourned at 12.45 p.m. until 2.15 p.m.

On resuming at 2.15 p.m..

ROBERT JAMES MACLENNAN, K.C., Solicitor for the Sheriffs' Association of Ontario.

MR. SILK: Mr. Maclennan, you are the solicitor for the Sheriffs' Association of Ontario, I think?

A. I have been for a number of years.

Q. And also for the sheriff of York County?

A. Yes.

Q. There are three or four matters affecting sheriffs about which I wanted to ask you. One which you mentioned to me just now was Mr. Barlow's recommendation that there should be a central place of execution in the province?

A. Yes.

Q. Had you something to say about that?

A. Well, that is one to which the sheriffs have given a great deal of attention, and endeavoured to have something done at Ottawa.

Q. That is page B26 of Mr. Barlow's report.

A. But without success there. That is, the sheriffs would like to have an official executioner, so that there would not be this fear in their minds when a sentence has been passed that there is nobody in sight to attend to it, but the authorities say that is a provincial matter.

MR. CONANT: What are the advantages of it? What are suggested as the advantages of it?

A. The chief thing is to have the execution take place in some central prison, not scattered over the province.

MR. STRACHAN: The fear of the sheriffs, Mr. Maclennan, is that if some person who is a professional executioner does not turn up, under the statute the sheriff will have to do it?

A. The sheriff will have to do it himself, or his deputy.

MR. SILK: It is suggested in Mr. Barlow's report that there are four advantages.

> "1. It would save the expense of and obviate embarrassing difficulties of sheriffs in providing a scaffold, death watches, etc., in county jails.
>
> "2. It would prevent the embarrassment and anxiety of a sheriff in obtaining an executioner.
>
> "3. It would prevent the undesirable morbid excitement that is aroused in smaller places when there is to be a hanging.
>
> "4. It would solve the question of appointing an official executioner. A man could be appointed who could have other employment about a provincial prison and who would always be available."

I understand that, as regards number 4, the official executioner is now employed at the Assize Courts every day; isn't that right?

MR. STRACHAN: He used to be outside a door, but I do not think that exists now.

WITNESS. There is another reason that Mr. Barlow did not put in his report, that was in the memorandum that I sent him; that was this, that the moral effect of a hanging would be much greater in the prison, where there are a large number of hardened criminals, than it would in a county gaol, where, if there are any prisoners, they are for minor offences. That was another reason why.

MR. LEDUC: Wouldn't that mean having the executions in a penitentiary?

A. No; then you are getting on Dominion grounds. What they have done in Manitoba—you have had that before you, I suppose?

MR. SILK: No.

WITNESS: The clause in the Code says (sec. 1065):

> "Judgment of death to be executed on any prisoner shall be carried into effect within the walls of the prison in which the offender is confined at the time of execution."

In Manitoba the Attorney-General arranged with the judges to provide that their prison called Headingly, outside of Winnipeg be a central place, so that when a judge in Manitoba at an assize has a sentence of that sort to pass he commits the prisoner to this one prison; they all go there, not in the county gaol, so that is a simple way of getting ——

MR. CONANT: Of course, when you come down to the practical instance of it, it would mean creating a new centre some place or other?

A. Well, what they did in that prison was to just have a set of cells that would not be next the others, and a chamber.

Q. Did they already have a prison there?

A. Yes, like the prison at Guelph, something of that sort, a provincial prison.

MR. SILK: I think that would be very unpopular with the people of Guelph.

WITNESS: Well, it would be, but still ——

MR. CONANT: I more or less casually mentioned this thing to the Provincial Secretary one day; he said it might be a splendid idea, and suggested that they do it in Whitby. I would pass that on, and suggest that we do it in Lindsay; it would be an admirable place for it.

MR. LEDUC: Quite central.

MR. CONANT: Yes, quite central.

WITNESS: Another trouble that is experienced in the county is that they don't want to keep their scaffold and all that all the time, so when the prisoner is sentenced there is probably no apparatus at all, and when they go to get their lumber for it nobody will sell it to them, and no carpenter will take the job of building it.

MR. CONANT: What is the next point?

MR. SILK: Three headings under "Procedure in the Sheriff's Office." The Committee has disposed of some of the headings. Sub-headings numbers 1, 3 and 6 remain. Under sub-heading 1 Mr. Barlow says:

> "If a write of execution against goods is to be enforced by a sheriff with the minimum of delay and expense, all information in connection therewith should be immediately available to the sheriff. At the present time to ascertain the necessary information a search must be made,"

and he states the various offices: the Sheriff's Office, the Land Registry Office, the County Court Clerk's Office, and the Office of the Assistant Receiver-General. Then he says:

> "It would appear most logical to have all these registrations made in the County Court Clerk's Office where one search could be made and one fee paid."
>
> "*I recommend* that the necessary amendments to the various statutes be made to provide for the registration under all these Acts in the County Court Clerk's Office."

Q. Have you any comments as to that proposal?

A. That is the sheriffs' suggestion, that the County Court Clerk's Office—most of them are there now, but to have in the Land Office a registration of the partners in firms, when you want to find out about that, seems to be anything

but a logical place. But there is another thing, where the double jurisdiction comes in there; that is, under section 88 of the Dominion Bank Act, when a man in business wants to get a loan, the bank will make it on his signing a lien of some sort which is registered in one place in the province, that is, in the Receiver-General's Office, so that anyone in any county wanting to know about that has got to communicate with there, and it seems to me that the Attorney-General's Department might persuade the Ottawa authorities to amend the Bank Act in that section and have these liens registered in our County Court Offices. It would be worth trying.

MR. CONANT: Well, is it always possible to determine the local jurisdiction?

A. Where the merchant and his goods are would be the place.

MR. CONANT: Well, of course, that is a simple case, but sometimes the transactions have far greater ramifications than a merchant in one town.

MR. LEDUC: Goods may be transferred from one branch of a company to the other.

WITNESS: I think loans of that sort are mostly on goods in a factory or something of that sort.

MR. CONANT: Well, mostly, but not entirely.

MR. STRACHAN: We would have to enlarge our County Court Clerk's office in Toronto considerably, Mr. Maclennan, wouldn't we?

A. Oh, no; there are quite a number every year of those, of course.

MR. CONANT: I am not sure that some day we won't have to come to the point of central, perhaps duplicate, but included in the registration central registration of all these things—conditional sales agreements and all that sort of thing—because under present conditions the mobility of assets is so great that registration in one county does not mean anything.

WITNESS: You can load on to a large truck everything a man has got, and have it across the border.

MR. SILK: That applies particularly to encumbrances against motor vehicles.

MR. STRACHAN: Yes; you would have to search in every county office in the province.

MR. CONANT: We were dealing with the Bank Act; what section was it?

A. Section 88 of the Bank Act.

Q. Your suggestion is, registration where?

A. In the County Court Clerk's office instead of all with the Receiver-General on Toronto Street.

MR. SILK: So that there would be forty-eight or fifty places where you would have to search in the province instead of one central place?

A. That is where it would be. You would search in that county—I mean, where the merchant was.

MR. SILK: In regard to sub-item number 3, on page B38, Mr. Barlow says:

> "The exemption clauses in the Execution Act were drafted many years ago. Times and conditions have entirely changed and it has been submitted that in the interest of unfortunate debtors and also to make clear the duties of sheriffs, that a complete revision should be made.
>
> "*I recommend* that the list of exemptions be revised and enlarged to meet modern-day conditions."

Those exemptions are contained in section 2 of the Execution Act. I do not know whether I need to refer to some of them.

MR. STRACHAN: One towel, one coat ——

MR. SILK: One cooking stove with pipes, one crane with its appendages ——

WITNESS: One cow, for instance, to a farmer.

MR. SILK: Fifteen hives of bees, so if a man happens to be in the bee business he is protected, but if he happens to be in some other business he is not, because it is drafted in a specific rather than a general way.

MR. CONANT: I have not looked at that for a long while, but I think the total exemptions must come within a certain maximum—$200, I think.

MR. FROST: Well, there is some difficulty about the Act. It has been added to. For instance, some time ago they added in a team of horses. Now, whether that is within a total of $200 or not is doubtful.

MR. CONANT: Yes, that bit of legislation is in bad shape, no doubt about that.

MR. LEDUC: I think we are all agreed on that.

MR. SILK: A bill was prepared and introduced a year or two ago, and did not pass the House.

WITNESS: It went rather too far.

MR. FROST. What was the objection at that time?

MR. SILK: The whole objection, I think—I have a memorandum on it in this book—was that we included one or two items, for instance stock-in-trade, and we had a lot of wholesalers up here who raised very great objection to the inclusion of the words "stock-in-trade," I think, to the vendor of a thousand

dollars; but I think if the Committee had taken more time the bill might have gone through.

WITNESS: It went too far, the other.

MR. LEDUC: Leaving nothing to live on.

MR. SILK: You will find a memorandum on page 95, Mr. Frost, which endeavours to explain why the bill did not pass the House. I prepared this memorandum immediately I came out of the Committee.

MR. LEDUC: When did that bill come before the House?

MR. SILK; 1937. Mr. Clark, the present Speaker, introduced it. I say:

> "I am of the opinion that the chief objection to the bill is the exemption of stock-in-trade to the extent of $1,000 in clause (e). At present there is no exemption with respect to stock-in-trade and it would appear well to omit any reference to stock-in-trade in the provisions of The Execution Act."

I followed the provisions of some of the western Acts where they do exempt stock-in-trade.

MR. CONANT: You mean, make it exempt up to a thousand dollars?

MR. SILK: Yes, they do in some of the western provinces, but apparently that would not be popular in Ontario, with the wholesalers at any rate.

MR. LEDUC: There are some small traders or merchants who would be absolutely exempt from execution.

MR. SILK: The whole thing would be exempt.

MR. CONANT: What is the next point?

MR. SILK: The next one is ——

MR. CONANT: Sale of land under writ of execution?

MR. SILK: No; seizure of book debts. At page B39 Mr. Barlow says.

> "In 1929 the Execution Act was amended to enable the sheriff to seize book debts and other choses in action, but no direction was given as to the mode of seizure.
>
> "*I recommend* that subsec. (2) of sec. 19 of the Execution Act be amended by adding the following:
>
> " 'Such seizure may be made by the sheriff serving a written notice of the execution upon the party liable under the book debt or other chose in action and from the time of such service the book debt or other chose in action shall be bound by the execution.' "

Q. Do you see any objections to that procedure, Mr. Maclennan?

A. No. That statute of 1929 was one that I drafted, and it has been a very, very useful one in the collection by creditors against debtors.

MR. CONANT: Without the necessary procedure having been determined, what have you been doing?

A. The sheriff would go down, he would go to a bank, and he would say, "You have two accounts against this execution debtor of mine; I want the money."

Q. Mr. Barlow says that under the present Act there is no ——

A. But they would work it in that way. The bank might say, "Isn't there more formality than that to it?"

MR. CONANT: Well, this is more or less obvious. Anything else, now?

MR. SILK: I have nothing further, unless Mr. Maclennan has something further.

WITNESS: The question of making better provision when the sheriff seizes shares registered with a company in the name of his debtor, has that been dealt with?

MR. CONANT: Yes, it has.

MR. LEDUC: That is one matter we decided to leave aside for the time being. The matter was discussed, and there were some difficulties in finding the right solution. We had that before. I do not know if it came in the evidence, but we certainly discussed it.

MR. SILK: What matter was that?

MR. LEDUC: Seizure of company shares.

MR. SILK: I have a letter from Mr. Barlow which I received since the sittings of the Commission, in which he wishes to rescind that recommendation.

MR. CONANT: All right; anything else, now?

WITNESS: I was going to remark there—of course, things of this sort happen. The sheriff seizes stock, and it is in the debtor's name, and he sells it and he gets the document that is provided under the Execution Act, and the purchaser of the stock goes down to the company and says, "I want you to give me a certificate," and there is a long harangue back and forward there and nothing done. In the meantime thirty days have gone by, and the sheriff has distributed the money among the debtor's creditors, and the man who bought the stock has got nothing, has not been able to get a title. What I was going to say is this. I do not think we have time to deal with it fully again now, but it should not be overlooked. Those who oppose—that is, people going to the Stock Exchange

and buying stocks for investment always register them in their own names, banks and other do all that, but there is a certain amount that is shoved back and forward, stock sold and ——

MR. CONANT: Street certificates.

WITNESS: And nobody knows where the certificate is. The people who are doing that are the speculators, they are the ones that oppose this, and that is one of the banes, as you know, of a great many citizens, that speculative bee that gets into their bonnets, and they say, "It we have got to register every time we buy, we are buying to-day at this price and we are going to sell in a hurry to-morrow because we see it going up"—pure speculation, not real business.

MR. FROST: Still, it is a very real business that you have to contend with, isn't it?

A. Oh, yes, and a very ——

MR. CONANT: Well, how do you suggest it should be met?

A. In the way that was set out in this report; that is, when the sheriff sells he would advertise before he makes any distribution of the money, before he sells, and then if the person who has that stock certificate, claiming ownership, nobody knows where he is, does not come forward within so many days, then the statute would say the company must give a new certificate to the sheriff's purchaser.

MR. LEDUC: But you realize, Mr. Maclennan, the owner of the street certificate may live in British Columbia or anywhere else out of the jurisdiction?

A. That is his own fault in not registering when he bought.

MR. FROST: Isn't that putting a very great risk in the way of business by doing that? I mean, after all, a great deal of business now is carried on by way of street certificates.

A. A business that is not healthy; it is the speculators entirely who oppose this.

Q. Well, would you really say that?

A. Yes.

Q. That the people who do not register stock certificates are mainly speculators?

A. I would say so. If you were buying for investment you would see it was registered pretty soon.

Q. Well, it is curious the number of share certificates that we run across, with people who have actually bought for investment, that are not registered.

A. I do not think you will find many sane investors not putting it on record that they are now the owners. Then there is another question, that the companies find when they begin to issue their dividends they do not know where these are.

MR. LEDUC: But then they are registered, of course.

MR. CONANT: They always advertise payment of dividends.

Anything else, Mr. Silk?

MR. SILK: No.

WITNESS: Might I speak of this, the question of disposing of the Crier of the Court? I mean, among the sheriffs it would be a sort of *infra dig* to have a constable opening the court and so forth without any gown on.

MR. LEDUC: I beg your pardon?

A. To have a constable—it is suggested that it could be done by one of the sheriff's constables on opening and closing and calling for witnesses and that. The reason apparently is that it is a dollar to the crier in every case, civil case.

MR. FROST: Oft-times policemen in uniforms are more dignified looking than some of the court criers.

MR. LEDUC: I think so.

MR. FROST: Some of them are dressed apparently for the War of 1812.

WITNESS: The fault is in appointing a man who should be superannuated.

MR. SILK: Court criers were abolished in England many years ago.

MR. CONANT: Why shouldn't the clerk or the registrar of the court do it?

A. He could do it, of course.

Q. Well, why not?

A. But most of the clerks are busy with other things just at those moments.

MR. LEDUC: Not at that very moment.

MR. CONANT: I cannot see that. A court crier in the court in my county has been retired at eighty years of age, and we are not going to appoint any more criers.

MR. SILK: It might be done by the sheriff himself, if all the others are busy.

MR. CONANT: We will experiment with it in Ontario.

WITNESS: Would you let me mention another item that I sent to Mr. Barlow but which he has not put in his report? That is, when the sheriff goes out with an execution to make a seizure of a debtor's goods, he cannot break into a debtor's house, but if he has a replevin order or a replevin writ, the Replevin Act provides that in such cases when the sheriff goes he can notify that he is coming to replevin certain goods in that house, just as if you were under a Fi. Fa., if you wanted certain goods to seize, and if the debtor or the man who has the goods to be replevied there won't let him in, then he comes after six hours' notice, and if he is not allowed in within that time he can break in. The people who are subject to replevin know that is the law, and they do not keep the sheriff out, and it makes the machinery there work much better. Well, if something of the same sort were put in the Execution Act, that the sheriff on giving a notice to an execution debtor, where he has a writ against his goods and the house is full of them perhaps, cannot get in, he can never break in, because that is the law.

MR. CONANT: You say there is that distinction between replevin and execution to-day?

A. Yes. In replevin you can do that. Then in replevin he can say to the debtor, "You have got something in your pocket here that I want to replevin; I want you to show them to me."

MR. LEDUC: But in the case of a replevin you deal with certain specific goods?

A. You deal with the goods in that house.

Q. There is a difference. You are dealing with certain specific goods, say with a piano; the piano is there, and the sheriff goes there to replevy the particular instrument. In the case of a writ of execution there may not be one thing in that house that belongs to that debtor that can be attached by the writ of execution, but you see the difference in the two procedures?

A. I see the difference, but I do not think the difference is sufficient not to oil the machinery more.

Q. It makes a good deal of difference there.

A. Then in replevin, as I said ——

MR. SILK: I think that is about all I have.

MR. FROST: Just a minute, please. There was some question raised in connection with the collection of Division Court judgments, as I recollect, that the bailiff system and the sheriffs' organization should be amalgamated in some way or other. Could Mr. Maclennan give us any information on that?

WITNESS: I have made this suggestion: When you place an execution with the sheriff in the County or the High Court, that binds the goods and lands from that moment, but if you have an execution, a judgment in the Division Court, there is nothing bound until the bailiff goes out and seizes something.

MR. CONANT: That is right.

WITNESS: I have made this suggestion, that when the amount of a Division Court judgment is say $25 or more the creditor might issue some sort of execution and file it with the sheriff to bind the debtor's goods; it might also at the same time bind the land, which can be done later, but leaving the execution bailiff to go out and do the seizing.

MR. CONANT: At the present time, as I recall it, you can take an execution against lands and place it in the hands of the sheriff after a return of *nulla bona*, is that not so?

A. Yes.

MR. SILK: As to goods, yes.

MR. CONANT: You have got to exhaust your remedy against the goods—and is it a transcript that goes from the clerk of the Division Court to the sheriff, or does he issue execution?

MR. SILK: He issues execution, I think.

WITNESS: It goes from the County Court to the sheriff.

MR. CONANT: A transcript from the County Court clerk?

A. Yes.

Q. Then he issues execution?

A. Against lands only; but if a creditor were allowed to do that it might greatly assist the Division Court bailiff in his work.

Q. Of course, I have always thought that the present system was pretty cumbersome; it loads it up terribly. By the time you get the execution in the hands of the sheriff, you have to take a *nulla bona*, pay the fees on that, then, as I recall it, a transcript, then you have got to get a Fi. Fa. on that and take it to the sheriff's office?

A. Well, not quite so much, but it is a bit complicated.

MR. SILK: I think the proposal to which Mr. Frost referred was that the sheriff's officers could perform all the work that is now being performed by Division Court bailiffs in the event of Division Court bailiffs being abolished. Have you given any thought to that?

A. I have thought that the bailiffs under the sheriff's direction acting under a Division Court judgment should perhaps be better trained and knowing what they were doing than some of the Division Court ——

MR. CONANT: Why would it not be possible—because we are looking for simplification—why would it not be possible, with a writ of execution, where an

execution is issued out of a Division Court office, for a duplicate of that, or a certified copy if you like, to be filed in the sheriff's office, so that from the time of filing it would hold whatever any ordinary writ of Fi. Fa. would, and the bailiff could go on and operate under the writ that he gets and at the same time preserve the rights of the execution creditor, the one that is filed in the sheriff's office? Wouldn't that be feasible?

A. That is my suggestion.

MR. FROST: It seems to me that there should be some linking together there of judgments which were obtained in Division Court; some of them under the present system are quite substantial, and it seems to me that there should be some method of tieing that in for the protection by filing it with the sheriff.

WITNESS: I think the Chairman has got that idea, and that could be readily done, and I think it would improve the Division Court machinery greatly as far as collecting debts is concerned.

MR. CONANT: Of course, I suppose you would have to go on and if the execution is satisfied by the bailiff's seizure there would have to be some termination of the writ in the sheriff's hands, and then there would also have to be some procedure for a praecipe or something requiring the sheriff to seize or whatever it might be; you would have to set up some machinery to reconcile them, wouldn't you?

A. Well, the Division Court could notify the sheriff when they collected the money under the writ so you could call it off, but we have not been able to collect anything; we proceed under the lands.

MR. CONANT: Well, that is only a consideration.

Anything else?

MR. SILK: Mr. Chairman, in that regard, may I point out that this Committee already has rejected Mr. Barlow's recommendation, that the Creditors' Relief Act should apply to Division Courts, so that I do not think this proposal would be quite consistent with that view.

WITNESS: What was that about the Division Courts and the Creditors' Relief Act?

MR. SILK: Mr. Barlow recommended that moneys collected under the Division Court Act should be distributed under the Creditors' Relief Act.

WITNESS: What the statute says now is that when the Division Court makes money under an execution against goods, it has it on hand, and there is an execution in the sheriff's office, they must pass the money there, but there is no provision saying they should find that out; that is, a Division Court clerk before distributing the money should ask, so as to observe what is already in the law, "Have you any execution against this same debtor?" Then the money should go to the sheriff.

MR. SILK: The Division Court clerk avoids the provision by not making a search?

A. By not making a search.

MR. CONANT: All right, thank you, Mr. Maclennan.

EARL DAWE, Bailiff.

MR. SILK: Mr. Dawe, you are engaged in the business of a bailiff in Toronto; you are with the E. W. Woods Company?

A. Yes, Mr. Silk.

Q. You are the proprietor, are you?

MR. CONANT: What is the name of the company?

A. E. W. Woods & Company Limited.

MR. SILK: On various occasions you and I have discussed the Costs of Distress Act, particularly the schedules of tariffs payable under that Act, and you have told me that because the tariffs are so low there is not a bailiff in the province that pays any attention to them?

A. That is quite right, sir. Pardon me; I should not go that far.

MR. CONANT: Let us understand. So far as necessary, distinguish the kind of bailiff you are talking about, whether it is a Division Court bailiff or a landlord's bailiff or what it is.

MR. SILK: I am referring to all bailiffs that operate under the Costs of Distress Act, which includes all bailiffs in the province except Division Court bailiffs; they are in a separate category entirely. I have the tariffs copied out at pages 155 and 156.

Q. Now, can you give us some examples of the difficulties you have had with the operation of this Act, Mr. Dawe?

A. Well, at the outset, Mr. Silk, the second item—and I think it applies practically all the way through, for the three schedules, although perhaps we should only deal with numbers 1 and 2, though in the final analysis number 3 we are concerned with as much as the others. The charges permitted for keeping a man in possession where the goods are not removed are out of all keeping, of course, to what you can employ men for who are respectable and responsible and able to take care of a position such as ——

MR. CONANT: You mean seventy-five cents a day is not enough?

A. Hardly, sir.

MR. SILK: Seventy-five cents a day where it does not exceed $80, and a dollar a day in schedule 2 where the amount exceeds $80.

MR. FROST: I often wonder why, provided the bailiff locks the stuff up or puts it in such shape that it could not be removed, it is necessary to have a man there.

WITNESS: It is only in exceptional cases, Mr. Frost, I think, perhaps, where in a store there is a sale of merchandise.

MR. CONANT: You usually take an undertaking?

A. Usually a bond to cover it, yes. I would say in nine hundred and ninety-nine cases out of a thousand—I am speaking for ourselves here in the city—a bond is taken which places the custody of the goods in the tenant, and we expect to find those chattels there if we have to realize on them later on; and of course the percentage of cases, as you gentlemen probably appreciate, where anything drastic or extreme has to take place is very, very small. The difficulty, of course, is that these items that are set out, this is a schedule that was drawn some forty or fifty years ago, I am given to understand, and the items that are allowed there for the carrying on of the business are quite inadequate, we feel.

MR. SILK: Mr. Dawe, in section 6 of the Costs of Distress Act there is provision for taxation of costs; subsection 2.

> "The person whose goods are distrained or seized, or the person authorizing the distress or seizure, or any other person interested, upon giving two days' notice in writing, may have the costs and expenses of the bailiff or other person making the distress or seizure taxed by the clerk of the Division Court within whose jurisdiction the same was made."

And then there is provision for an appeal to the County Court judge. Is that section used frequently?

A. Not frequently, but too frequently for our liking, if you can understand what I mean. If anybody does go before the clerk as set out we have not got a chance in the world of justifying a modest cost in connection with it, because the schedule is so ——

MR. CONANT: Are there not consequences from taking excessive costs there? Don't they go to jail or something like that?

MR. SILK: Not in this Act, I think.

WITNESS: I think that some time ago, Mr. Conant, the Act was changed to eliminate the jail end of it, if I am not mistaken. I think there are some penalties now.

MR. CONANT: You have not been in jail lately, then?

A. Not at all, sir. I think there is some two or three times the penalty of the overcharge, isn't there, Mr. Silk? We have never had that, but I understand there is something of that nature. You see, that is usually handled through the clerk of the Division Court, but of course covered under the Costs of Distress Act.

Q. What do you think should be done with the schedule?

A. I think, Mr. Conant, that a fair basis on which to work is that of the Division Court bailiffs' schedule. It is certainly closer to the point than this, because it has been brought fairly well up to date. You take, for instance—there was a suggestion made a moment ago about a bond. Under the Landlord and Tenant Act there is no provision for a bond, but in the Division Court Act it specifically allows for the cost of a bond.

MR. FROST: Do you mean there is no provision for the cost of the bond in landlord and tenant ——

A. I mean there is no provision for the taking of a bond, even.

Q. That is just the point I am coming at. Isn't there some question where a man is not placed in possession that the distress is abandoned?

A. That is right, sir; that is, as the Act exists at the present time.

MR. CONANT: You run the risk of losing your distress rights?

A. Yes, sir, we sure do. We don't like it to become public property, but that is the case.

Q. You run the risk of having to make up the difference between seventy-five cents and whatever you pay for it if you do put him in?

A. That is it, sir; and of course it works out a definite hardship, because there are a lot of people that mean well, and eventually over a period of time we collect the account in instalments, give them an opportunity, and adding the impost of possession charges would just make it out of all proportion.

MR. SILK: Do I understand you to say that if you were put on the same basis as the Division Court bailiffs as to costs and tariffs ——

A. I think in the average case we would be pretty well satisfied, or fairly close to it. There are a couple of items there that are perhaps inadequate, we feel—but may I go just a little farther, Mr. Conant?

MR. CONANT: Yes.

WITNESS: And say that under the Costs of Distress Act there are three schedules, the first and second covering distress warrants, that is, landlord's distress, and the third a seizure under a chattel mortgage, and under that section there is a provision there that practically makes it the same schedule for the Conditional Sales Act. Am I correct in that, Mr. Silk?

MR. SILK: I think that is right, by a fairly recent amendment.

WITNESS: The chattel mortgage and the Conditional Sales Act, in my humble opinion, as far as schedules are concerned, are entirely removed from one another, because schedule 3, covering the chattel mortgages, more or less

falls in line with 1 and 2, whereas schedule, shall we call it 4, which should be the costs of distress under conditional sales contracts, can cover two or three times the amount of expense that there is under others, because of the work entailed in connection with the repossession of motor cars, distances, towing charges and all that sort of thing, and there is no allowance for anything like that in the Act at all.

MR. SILK: But those charges are made just the same, according to the present practice?

A. They have to be made, because people employ us to do these jobs and we have to pay our men.

MR. SILK: I have sent up for a copy of the Division Court tariff, but I don't know that it is necessary ——

WITNESS: I am sorry, I have one here, I think. There is nothing later than April, 1938, is there, Mr. Silk?

MR. SILK: I don't think so. That is bulletin 15.

WITNESS: I have marked with crosses the items that ——

MR. SILK: Well, I don't know whether the Committee wants to go into that much detail.

MR. CONANT: Oh, no. I think they have the observation fairly clear.

MR. SILK: Is there anything else you wanted to say, Mr. Dawe?

A. I would like to say a lot, but these gentlemen's time is valuable.

MR. CONANT: Go ahead, Mr. Dawe.

MR. FROST: Mr. Dawe, what would you think of sometime preparing a schedule showing, for instance, the Division Court costs, showing the landlord and tenant costs, and showing the places where there are inequalities and places where there are no allowances for costs, and so on?

A. I would be only too happy to do that. And you must remember, after all, I only represent one firm, and, while we are perhaps regarded as the largest in the city, yet there are others who have just as much right to express an opinion as us, and I would like to sit in with representatives of those better firms and then submit something of that kind.

Q. Well, why not do that? I think you should do that, Mr. Dawe. Another thing that I think should be done or should be considered is this: if there is not the right in landlord and tenant proceedings to take a bond, I think that that should be made definite, for the reason that we are anxious to save debtors' costs, and if you have to uselessly put a man in charge when you might take a bond it seems to me ——

A. We don't like to have to do it at all, sir. It is only done in extreme cases, where we strike somebody that is stubborn and we feel that the security of the landlord is being jeopardized; but I am quite confident that if Mr. Silk goes through the Act we will find nothing there at all that makes any provision for us taking a bond.

MR. CONANT: Of course, the result of that is that, it not being part of the statutory machinery, there are no rights preserved by the taking of the bond?

A. No, sir. We are placed in a very embarrassing position.

MR. CONANT: It seems to me that is before the courts, Mr. Frost.

MR. FROST: Yes, it has been.

MR. CONANT: What is the decision?

MR. FROST: I am not sure what the decision is, but there is a great deal of doubt existing on this point. If a seizure is made for distress the question arises as to whether you have to actually put a man in charge and saddle the poor debtor with all those costs, or whether you can take a bond from him.

WITNESS: Or take out the physical chattels that you have under seizure.

MR. FROST: Yes. Now, the doubt as to all those things is adding needless cost to the debtor.

WITNESS: That is our contention.

MR. FROST: And if it could be made plain on that point, if it is not plain, I think we should recommend ——

MR. CONANT: We should consider that.

MR. FROST: Yes; we should recommend that a bond be permitted.

MR. CONANT: There is one thing I want to discuss, and I think the Committee might take it into consideration; I am not passing any opinion on it at all. Under our present law, as I recall it, a landlord can appoint any person bailiff; is that right?

A. That is right, sir.

Q. Whether that person is qualified to act as bailiff, or whether he knows anything about the law of landlord and tenant, or how to seize, or how not to seize, if he gets a warrant from the landlord he is duly constituted a bailiff?

A. That is right, sir.

Q. Now, I do not know the experience of my colleagues on this Committee, but I have sad recollections of cases where landlords have run into very serious litigation because of irregularities in the conduct of bailiffs—I am not reflecting on your firm at all.

A. That's all right, sir.

Q. Do you care to make any observations as to whether it would be in the public interest particularly, not particularly in the bailiff's interest but in the public interest, that a bailiff should be subject to some qualifications or restrictions or control?

A. At the present time, Mr. Conant, we are controlled by the city of Toronto; we are licensed by the city of Toronto.

MR. CONANT: I should have added to my observation, I think there is something in the Municipal Act about licensing bailiffs, isn't there?

MR. SILK: Yes, there is.

MR. CONANT: That a municipality may or may not.

WITNESS: "May", yes.

MR. CONANT: There are comparatively few municipalities in the province that have invoked that.

WITNESS: That are large enough perhaps to have a bailiff.

MR. CONANT: Particularly in the townships. I do not think the townships license their bailiffs; do you think so, Mr. Frost?

WITNESS: Around Toronto they do; East York and York Township and those we pay license fees to all of them.

MR. CONANT: Do you care to make any comment?

A. Well, it is very definitely to the advantage of the landlord—we will presume, for instance, that he employs somebody who is a friend of his as a bailiff to go out and make a levy for him against some tenant that he has some animosity towards, and that man may not be a responsible party—I am referring to the party he appoints—and he does something irregular, and afterwards the tenant comes back at him and he finds that he is worthless and he can't recover anything against him, but the damage has already been done. Here in the city of Toronto, as I was going to add, we are licensed by the Police Commissioners, and we have to put up a bond with the city of Toronto. It just so happens that, as you gentlemen know, in connection with the collection of taxes the City employ four or five bailiffs' firms; in that connection, we have to put up bonds which are of an enormous amount in proportion. The other bailiffs, though, have to put up a bond which amounts I think to a thousand or two thousand dollars, and they have to be passed by the License Board as fit to carry on business, and the names of their employees all have to be submitted, and police records, if any, checked on, and so forth, and they won't issue either a license to a bailiff or a bailiff's officer who does not now pass the O.K. of the Police Commissioners. That only has taken place in the last six to eight months.

Q. Taking the public interest, taking the one case of landlord and tenant——

A. It is in everybody's interest.

Q. Is it not more in the interest of the landlord as well as the tenant, that whoever may be employed as bailiff shall be competent to act according to law?

A. Surely.

MR. FROST: Of course, Mr. Conant, that is true, I think, in Toronto.

WITNESS: In large centres.

MR. FROST: In the larger centres; but when you get into sparsely settled districts, and perhaps it is necessary to send a bailiff say from Timmins to some other place in Northern Ontario, or even in Victoria or Haliburton, where you have to send them long distances, then the sending of a bailiff from one of these centres ——

WITNESS: Very costly.

MR. FROST: It is very costly, and sometimes you might use, for instance, a local constable or something of that sort and take a chance on it.

WITNESS: And perhaps get into a peck of trouble over it, too.

MR. FROST: Oh, well, you might.

MR. CONANT: Admittedly, Mr. Frost, that is the other side of the picture, of course that is the other side, but ——

WITNESS: What does happen quite often, Mr. Conant, we will have a solicitor, say in a town perhaps forty or fifty miles outside of Toronto, where the town is not sufficiently large for a bailiff to be carrying on, and the town nearest there is only a Division Court bailiff there, and when he goes to the Division Court bailiff he says, "I am not familiar with landlord and tenant, you better get somebody from Toronto to do it," and we travel forty or fifty miles out there and do that job. I suppose that you might say, if I say to you there is no provisions for that in the Landlord and Tenant Act, "Well, the landlord will have to pay whatever the difference in cost is," but should the landlord be saddled with any costs if he has to take these actions because a tenant doesn't pay his rent?

MR. CONANT: Well, I don't know.

MR. FROST: Well, who should be saddled?

MR. CONANT: I was at it for twenty-five years, and it seemed to be the general idea that a bailiff is an official clothed with peculiar and particular powers and subject to peculiar and particular obligations or limitations, and some of them are very technical, and I have often wondered whether there should be any regulation or requirement for a person to act in the capacity of bailiff.

WITNESS: Yes, even we, with our twenty-five or twenty-seven years' ex-

perience—I would not for a moment expect to be able to go through the Landlord and Tenant Act and give an intelligent interpretation of it in some respects, because the Act was drawn at a time when a lot of things referred to there were popular and they don't even exist to-day. The Landlord and Tenant Act is certainly in need of revision right from A to Z; that is my humble opinion.

MR. CONANT: Yes, no doubt about that.

WITNESS: There are questions arise almost weekly in our office, and, to be perfectly frank with you, we just have to use what we think is common sense in connection with it. You ask a legal interpretation, and you get two or three different opinions in connection with it, and you don't know what to do.

MR. CONANT: Of course, you would not suggest that there is any law or anything done in any courts of law that are not common sense, would you?

No answer.

All right, Mr. Dawe.

STANLEY THOMPSON, Ontario Securities Commission.

MR. SILK: Mr. Thompson, you are attached to the Securities Commission, and I understand you are in charge of the administration of the Collection Agencies Act?

A. Yes, Mr. Silk.

Q. The last witness at the spring sittings of the Commission was a Mr. F. A. Matadell, who is the chief officer of the Ottawa Credit Exchange.

A. Yes.

Q. I think that is what he calls his company. He described to the Committee a system of pooled accounts, whereby he would look after all the creditors for any one debtor, the debtor would pay a proportion of his wages to the Credit Exchange, and the Exchange would distribute the wages among the creditors at a charge of fifteen percent.

A. Yes.

Q. To be paid by the debtor. I understand you have investigated that system?

A. I have investigated the handling of pooled accounts; that is where the debtor makes an arrangement with a collection agency to disburse certain moneys that he pays in to his creditors.

MR. CONANT: Just wait a minute, now. Let us get this in mind. That arrangement of collection agencies is not within the law; that is something aside from the law, isn't it?

A. It has nothing to do with collection agencies; it is purely a voluntary arrangement whereby a person becomes a trustee.

Q. But that is not covered by any statute?

A. No.

MR. SILK: There is no provision in the law of Ontario for it at all.

MR. LEDUC; It is suggested that we should legalize it.

MR. SILK: I wanted to deal first with the Ottawa Credit Exchange.

A. I made a survey, and I have their actual figures here and I have tabulated them, whereby the Ottawa Credit Exchange have 132 debtors owing $100,401.57 to 2,687 creditors.

MR. LEDUC: Mr. Thompson, there must be some duplication there in the number of creditors, surely.

A. No, sir.

Q. You have 132 debtors ——

MR. SILK: Excuse me, Mr. Leduc. May we ask the Press not to quote names at this point.

MR. LEDUC: Yes, I think it would be better.

Q. What I mean is this, Mr. Thompson; you will probably find ——

A. That some of those accounts ——

Q. That some merchants ——

A. Are owed.

Q. —— are owed by several of these debtors?

A. By several of these debtors.

Q. So when you have the total number of creditors at 2,687, it is really a lesser number than that, but there are 2,687 claims?

A. Claims.

MR. FROST: Would you mind giving me those figures again, Mr. Thompson?

A. 132 debtors owe $100,401.57, the number of claims are 2,687, and since the pooled accounts were entered into the debtors have paid $26,498.07. Of those 132 debtors 88 debtors had judgments against them. The debtors are paying to the agency 15 percent service charge for disbursing this money.

MR. SILK: That 15 percent is paid by the debtor?

A. Is paid by the debtor. Now, the situation opens up and goes farther than that. At the time that those debtors entered into this arrangement of pooled accounts 570 creditors had already placed claims for collection.

MR. FROST: What is that again?

A. At the time that these debtors entered into an arrangement with the agency to handle this account 570 creditors had placed their claims there for collection.

MR. SILK: 570 creditors of those debtors?

A. Of the 2,687 previously referred to.

MR. LEDUC: That is about 20 percent.

WITNESS: Those claims amounted to $15,851, and the average charge on that fifteen thousand is 30 percent.

MR. SILK: That is, they charge the creditors a further 30 percent ——

MR. CONANT: No; a further 15 percent.

MR. SILK: A further 30 percent.

WITNESS: A further 30 percent. You take 15 percent off. If a debtor pays in $20, they will take off 15 percent of that for their service charge. Then if all that money was to go to creditors who had previously placed their claim, they would then take 30 percent off after having deducted 15, so on some of that they would get 45 percent.

MR. LEDUC: We will put it this way: the debtor pays $20; he gets credit for really $17?

A. Yes.

Q. The creditors get $17 less 30 percent; that is $11.90?

A. Yes.

Q. And the collection agency gets $8.10?

A. Yes.

MR. LEDUC: A little more than 40 percent on a $20 claim.

MR. SILK: 45 percent.

WITNESS: That is in about 20 percent of the cases.

MR. CONANT: Well, what happens in the rest of them?

A. The rest of the cases, there was no charge to the creditor; there is just 15 percent; he gets his money in full.

MR. FROST: That is, the creditors they are not acting for, they get their money?

A. They get their money.

Q. If they have enough sense to stay away from the collection agency they don't pay the 30 percent?

A. That is right, that is it. I have carried that a little bit farther, which I think is of interest, that the average payment per month per debtor is $23.53.

MR. LEDUC: $23.53?

A. $23.53.

Q. And what is the average earning of the debtor?

A. I haven't got that.

Q. Well, that is important.

A. The earnings, sir, would vary, because some of these people would be out of work at times.

Q. You say the average payment per month?

A. I am taking the average payment per month.

Q. Is $23.53?

A. $23.53.

Q. Well, if the average earning is say $125, that is not out of the way, but if the average earning is $70 it is outrageous.

A. Yes, but I have taken that over 132 debtors, and they have been paying in for approximately one year.

Q. And in one year they paid that, but you do not know what their earnings are?

A. I could not get that.

Q. What I have in mind is the proportion of the amount they pay to the amount they earn.

A. That is on their pooled accounts, and on practically—the agreement entered into, there is an arrangement as to what is necessary for their living allowance, the number in their family, the rent that they are paying, and other charges that they have to be paid.

Q. Who decides that?

A. They list all those; then they come to an agreement as to what that debtor can pay, and that is generally a voluntary arrangement between the debtor and the agency. The debtor has to keep in mind that he is forced with either making a proper payment per month or else this will go back into court and he will have a lot of additional court costs added. That is why most of these pooled accounts come into existence, or, as sometimes happens, when a debtor has been up once or twice before a judge, the judge recommends that he make some arrangement of settlement. Some agencies obtain their work from that, and I know that happens quite frequently in Ottawa and also in Windsor.

MR. CONANT: How much of that is there going on in the province?

A. I have my total figures for the province, as the information came in up to the 12th of September; some has come in since, but it has not changed the averages. On 270 debtors owing $176,000 ——

Q. That is for the whole province?

A. This is not quite for the whole province, sir, because there are about four figures should have been added to this, just came in recently. They owe $176,000; there are 4,667 claims; they have paid $52,000; 183 of those debtors had judgments against them; the average service charge is 12.6 percent; the number of creditors paying commission to the agency are 991, that is, just a fifth.

MR. FROST: They are holding the bag for the 4,600, then?

A. They are holding the bag. And the amount is $33,000 that is owed to those 991. The average monthly payment per debtor is $21.48, and the average amount available for disbursement per creditor is $1.09 per month.

MR. SILK: There is only one matter you have omitted ——

A. I have gone a little farther than that. The number of creditors or claims per debtor is 17.

MR. CONANT: Average?

A. Yes; which would mean that 17 persons could take a debtor to court and get judgment against him, and so on and so forth, and that is what the debtor is faced with, and that is why this situation has arisen where these people are self-appointed trustees.

MR. CONANT: Well, of course, the thought immediately arises there that this is a sort of extra-judicial proceeding, isn't it?

MR. FROST: Well, it is taking the place of our cumbersome bankruptcy proceedings—not only cumbersome bankruptcy proceedings, but cumbersome collection proceedings that we have.

WITNESS: I think what might explain this fairly clearly is, one agency, the

largest agency in London, made comments as to why these pooled accounts were opened; they say they do not solicit them, and they put in here, "This man was sent to us," and they name the employer, "who asked us to try and work out some arrangement to pay off his debts, to prevent him from being garnisheed continually. He is a young man with four children. The arrangement is working very well." That man started on February 27 to pay $512 to 10 creditors: he has paid $69.

MR. LEDUC: That is, this year?

A. This year.

Q. He has paid how much did you say?

A. He owed $512, and has paid $69.

MR. FROST: Mr. Thompson, take that case: there is a man with four children, he owes $512 to 10 creditors, and he has paid $69. Under what circumstances would you say that the charges that were made were exorbitant, or would you say that in view of everything it is not a bad arrangement?

A. I think it is a very good arrangement. It is very much cheaper than paying court costs, and also he does not have to take out time from his work, he is not always receiving letters that he is going to be haled up into court, but he has made the arrangement and as long as he lives up to his end of it he has got peace of mind. Another one which is rather interesting ——

MR. LEDUC. Pardon me. Before we leave this case, what was this man's salary, or what were his earnings over that period?

A. I could find that out, sir, but I haven't got it.

Q. Well, I think it would be interesting to find what proportion he pays of his earnings.

MR. FROST. Of course, I suppose his tendency is, he wants to get this load off his back as soon as he can?

A. As soon as he can.

Q. And he is anxious to pay the $512 and get it done, and then say he is a free nigger.

A. And that apparently is the situation all the way through. They find out as to what a man earns, what he needs to live on—his living expenses vary according to his occupation. A travelling salesman's cost of living is much higher than that of a day labourer; the travelling salesman has to be dressed, look neat and keep up a personal appearance, and he may have to have a car. Those have to be taken into consideration.

MR. LEDUC. What I do not like in this picture is this: the collection agency may tell the man, "You earn so much, therefore you will pay so much, or else."

WITNESS: "We will take court action against you."

MR. LEDUC: Yes.

WITNESS: Yes.

MR. LEDUC: So that it is not a voluntary arrangement.

WITNESS: He can elect to either refuse to do it and then take his chances in the court.

MR. CONANT: The thing that seems rather extraordinary to me is, if there is merit in that it should be done by some court official.

MR. LEDUC: Absolutely.

WITNESS: That is what I am working right up to.

MR. CONANT: But we are up against the constitutional difficulty as to whether this province would have the right to deal with that.

MR. LEDUC: Well, they have been dealing with it in Quebec for thirty-six years.

MR. SILK: And in Manitoba for ten years.

MR. FROST: You have a suggestion there, Mr. Thompson, have you?

A. Yes; the next is rather interesting:

> "This man came to us at the suggestion of Judge Ingram after he had a number of garnishees against him. The judge advised him to come to us and make a regular arrangement to pay his debts."

A lot of the judges are in the same position; they see these men coming up, they know the costs they are adding on to them, and they try to get them to make some arrangement. Now, I have discussed the Lacombe law with a good many of the agencies, and I think every one of the agencies is in favour of something like that coming in, if it can be worked properly. The objections raised to both the Lacombe law and the Manitoba statute for the Orderly Payment of Debts is that the provisions of the Act are sound but they cannot be properly administered. The argument in both cases is that the debtor is protected and the creditor may be protected if the debtor is willing to pay, but if the debtor falls down after the arrangement has been entered into the creditor may wait three months before he finds out that no money was paid in, unless he happens to be in a position where he can walk into the court to find out; and a provision might be made whereby, if the debtor makes a proper assignment and fails to disclose in that assignment his proper earnings, or fails to pay into court what is decided upon by a referee as to what he can pay, then a permanent garnishee be put on his salary, not the way it is now, and if he does not disclose it he should be in contempt of court.

MR. LEDUC: And put in jail?

A. If he is foolish enough to file a false affidavit, and does not disclose it, he should be in contempt of court and jailed.

Q. Well, jailing for debt ——

A. It is not being jailed for debt.

Q. If he didn't owe the money he would not be in the position of being in contempt of court.

A. But he can make full disclosure of his earnings. Both Acts provide more or less that the debtors have the right to dispute every claim. The other thing is that relations are permitted to file, and relations see that they get a greater proportion of it. That is the only two things they have. The debtor is not forced—there is no follow-up system. Collection agencies are successful in their operation; they collect over two million dollars a year in bad accounts, because they follow up every debtor; if he promises to pay on such-and-such a date they follow him up if he doesn't.

Q. Mr. Thompson, I don't think we will go into the way in which some of them follow them up.

A. I know some of them are very bad, but they are not as bad as they used to be, sir.

MR. SILK: I should like to take a moment, Mr. Thompson, on the Orderly Payment of Debts Act of Manitoba. I understand you have made a study of it?

A. I have read it over three or four times. I also have ——

MR. SILK: I sent copies of the Act to the members of the Committee some time ago. At page 177 of the notebook I have endeavoured to make a short comparison of the Lacombe law and the Orderly Payment of Debts Act. In the first place, the Lacombe law applies only to wages, while the Orderly Payment of Debts Act of Manitoba applies to all moneys owing. Secondly, under the Lacombe law the exemptions are fixed by statute, while under the Manitoba Act the amounts payable are agreed upon or fixed by the court. Thirdly, under the Lacombe law the employer is not affected, while under the Manitoba Act the clerk may take an assignment of all moneys owing. Fourthly, the Lacombe law applies to all claims, whereas the Manitoba Act does not apply to large claims—that is, claims over $800, I think—except by consent.

Q. I believe you have discussed the provisions of the Orderly Payment of Debts Act with someone from Manitoba who has had experience with it?

A. I got my information in a roundabout way; I got it through the Toronto Credit Bureau at Toronto. Mr. Suydam, the manager, was attending a convention ——

MR. CONANT: This is the Lacombe law?

A. No, this is the Manitoba Act. He discussed the matter with Mr.

Womersley, manager of the Credit Bureau of Winnipeg, and perhaps I could read three or four extracts from his letter, which I think clearly set out the situation as he could learn it:

> "I understand from him that the Court decides what the debtor should be able to pay and at times too pessimistic a view is taken of his ability. There is also no system in effect whereby there is an automatic follow-up in case of delinquency.
>
> "Distribution is supposed to be made to creditors every three months, which naturally gives a debtor considerable leeway. There is also no publicity in connection with those who have taken advantage of the Act, with the result that claims are often overlooked."

He ends up by saying:

> "There is nothing fundamentally wrong with the Act, and if it were handled by an outside Trustee with similar powers as granted to the Court, it should operate to the advantage of both debtors and creditors."

Q. Mr. Thompson, in connection with that last observation, does he give his reasons why he thinks it should be handled by an outside trustee rather than a clerk of the court?

A. Unless provision is made to follow it up. There would be an incentive if the clerk of the court got a percentage on the amount collected, but if that incentive is not there, then if the debtor doesn't come in to pay, well, he just doesn't come in.

MR. LEDUC: The suggestion was made, I think by Mr. Matadall, that instead of charging fees as at present in Quebec there should be a straight commission of five percent—I believe that is what he suggested.

A. The province would have to pay quite a bit.

Q. Oh, no.

A. I believe there is $15,000; I believe it costs the province of Quebec $15,000.

Q. They have a different system, but he suggested changing that system and charging a straight commission of five percent, and he expressed the opinion that they would be able to pay the whole cost of administration by charging five percent.

A. A collection agency could never operate on five percent.

MR. CONANT: No, but they have got expense that the clerk of the court hasn't.

WITNESS: There is no follow-up system, and if they have a follow-up sys-

tem where the creditor is going to reap the benefit of it, it is going to cost money. I think the creditor ought to also bear part of the cost. I don't see why the creditor shouldn't. They let their claims go for six months, two or three or four years, and if they get the money in many cases it is found money. They should pay the court part of the costs of the operation.

MR. FROST: I suppose your point is that if you just create a department in the Division Court for doing this, and you place no incentive for the Division Court clerk to make these settlements work, then in most cases they just won't work?

A. The debtor is very willing when he first comes in to make his affidavit as to earnings and everything else, and he is willing to make one payment to stop any court action, but the next payment may not come in promptly, and if it is not followed up he may not come in and make a third payment at all.

MR. LEDUC: What has been the experience in Manitoba, Mr. Thompson? Do they find that a man makes one payment and then skips?

A. They find that it is not very satisfactory to the creditor.

MR. SILK: I discussed it with Mr. Wilson McLean; Legislative Counsel, when he was down here some months ago. The Act has been in force since 1932. It is working very well. He said the only possible complaint was that the procedure on default might possibly be improved somewhat. It is a little bit cumbersome. It requires a motion to be made by one of the creditors, I think, before the proceedings on default are put into action, and some little time may possibly go by before the creditors find out that the debtor has fallen behind in his payment. That is the chief complaint.

WITNESS: That is the chief complaint that I have, that there was three months' lapse. Isn't there provision under section 8 of that Act for a permanent garnishee in case of default?

MR. SILK: It is called an assignment of earnings. It really amounts to a voluntary continuing garnishee.

I think that is all I have to ask Mr. Thompson. Mr. Cadwell has something more to say.

MR. CONANT: How many collection agencies are there in the province?

A. 121.

Q. All over the province?

A. Yes.

MR. SILK: Then what number of collection agencies have pooled accounts, Mr. Thompson, of that 121?

A. Eighteen agencies handle pooled accounts.

Q. Make a general practice of pooled accounts?

A. That they will handle them, yes.

MR. CONANT: Those are limited to large cities, of course?

A. Those are in the large cities. The surprising part of it is that there is a tremendous business in Timmins.

Q. Is there an agency up there handling pooled accounts?

A. There are two of them, sir, and one of the average payments per month is $31, and the other is $23—well above the average.

MR. SILK: There is a large working-man population in Timmins.

WITNESS: And better salaries.

MR. LEDUC: Oh, yes, of course.

MR. FROST: Mr. Thompson, before you go, have you any suggestion to get around that Manitoba defect?

A. They have a system of filing fees. The debtor pays, I believe, a dollar when he goes under this Act, he pays twenty-five cents a creditor; otherwise, in the case of the average number of creditors, 17, he would have to pay into court a dollar for the filing and $4.25 for the creditors; that is $5.25 he has to pay into court. Each debtor is supposed to be notified of the arrangement.

MR. CONANT: Each creditor, you mean?

A. Each creditor. Then there should be a follow-up system, that each creditor should be notified of default of payment under the arrangement entered into, not let it go for three months.

Q. And he can move then if he wants to?

A. Then he can move. That then would stop that long three months' delay where disbursement is supposed to be made.

MR. LEDUC: Yes, there is something in that.

WITNESS: And then I feel that after a debtor has once entered into the arrangement, the original cost is the main cost—getting out the letters and getting the creditors together, getting the debtor in and settling on how much he is going to pay. That is the cost of operation. Then if he doesn't live up to it, or fails to disclose his earnings, if you had a section in there whereby it would be contempt of court—a fine does no good on a debtor in a case like that. He has elected first of all to enter that arrangement, and I think it is up to the debtor to be forced to meet it.

MR. FROST: That would be somewhat of a judgment summons proceeding if he failed to ——

MR. CONANT: To show cause.

WITNESS: Yes, immediately.

MR. CONANT: Referring to the collection agency business generally, what is the usual basis of charges for collections?

A. 26.3 percent.

MR. LEDUC: Is the average?

A. Is the average charge on two million dollars a year collected. A lot of those claims are five and six years old.

MR. CONANT: 26.5?

A. 26.5. I worked that out about three months ago, sir.

MR. LEDUC: Mr. Thompson, don't they adhere pretty closely to the Commercial Law League of America rates?

A. No.

Q. They don't?

A. No.

Q. They charge more?

A. No; they scale it. Their fees start at 10 percent. It all depends on the type and the length of time the account has been outstanding. On accounts less than six months old I think the recognized charge is 10 percent, up to 15 percent.

Q. On any amount?

A. On any amount, unless the amount is less than five dollars. On these very small claims, on account of the bookkeeping entries, it would not be worth while to have the 15 percent, or some of them, on instalment payments or payments of less than a certain amount, then their fees go up. They start from there and go up to a maximum of 50 percent, but there is no charge on the basis of which they work.

MR. CONANT: All right, Mr. Thompson, thank you.

JAMES ROY CADWELL, Inspector of Legal offices.

MR. SILK: Mr. Cadwell, you appeared before the Committee last April, and you were requested to go down to Montreal and make a thorough study of the operation and administration of the Lacombe law; I understand you have just returned from Montreal after making such a study?

A. Yes, I was down in Montreal on Saturday of last week.

Q. Just explain to the Committee what you found, please.

A. The first thing that I observed in relation to the actual practice of the Lacombe law there was that it is added to the ordinary type of action. That is the first thing that has to be clearly understood, that it is not really a separate action in itself, but it is ancillary to the ordinary action that is entered into court, and, because of that, the Lacombe law in itself does not reduce the total cost of the action. For example, one claim that I checked was a claim for $60; up to the time of the application of the Lacombe law the court costs, including the attorney's fees, was $23.60.

MR. CONANT: $60, and the costs were what?

A. $23.60.

Q. Yes?

A. $12 of those costs were attorney's fees.

Q. Now, wait a minute. How did they get attorney's fees on that?

MR. LEDUC: The tariff provides for them—any action over $25.

WITNESS: Apparently the solicitors in Quebec are much better protected than they are here as far as their costs are concerned.

MR. SILK: They get about $16 on every claim of $100, I think Mr. Juneau said?

A. Yes.

Q. Collected by the court.

A. The next thing that I was impressed with was the fact ——

MR. LEDUC: Before you go further, Mr. Cadwell, you realize, of course, that in Ontario if the Lacombe law were in force the costs instead of being $23.60 would be about $4.50 or $5?

A. That is what I was going to suggest. The Lacombe law if applied under our present system of costs and multiplication of costs would be not very effective, but if we simplified the procedure in the Division Courts here and then used the advantages of the Lacombe law it should work out very well. Another thing about the practice in Montreal—and this is the practice throughout the province of Quebec—the money that is available for distribution is not on a *pro rata* basis except after the payment of the original court costs.

Q. Of the first judgment?

A. Yes.

MR. FROST: What was that again, Mr. Cadwell?

A. The distribution is not on a *pro rata* basis except after the payment of the original costs.

MR. CONANT: The original costs come out first?

A. Yes, sir. And that is also true on any subsequent costs that may occur by virtue of the Lacombe law. That is, if the original action, as in this case, was $23.60, that amount would have to be paid first before there was any distribution on a *pro rata* basis. If there were two or three creditors and they all filed notices under the Lacombe law set-up, those costs likewise would have to be paid before there was any *pro rata* distribution.

MR. LEDUC: You mean the cost of recovering their judgments?

A. Well, they would not take out a judgment.

MR. CONANT: They would file a claim.

WITNESS: They would file a claim, and for that there is a fee. I think I have the amounts here. The fees chargeable for the Lacombe law only: up to $25—that is, $24.99—the fee is $2 plus a 20-cent stamp.

MR. CONANT: This is the filing fee?

A. Yes. From and including $25 up to $40 the fee is $3, plus a 30-cent stamp. From $40 to $60 the fee is $5, plus a 40-cent stamp. Over $60 the fee is $6, plus a 50-cent stamp, and that is the highest.

Q. Just for filing the claim?

A. That is right, sir.

Q. And putting him in the picture?

A. Yes, sir, putting him in the folder and allowing the benefits of the Lacombe Act to apply.

MR. LEDUC: You remember that Mr. Juneau gave evidence here, and said he was not satisfied with that way of collecting the fees, that he thought that they should charge a straight commission on the amounts paid by the debtor.

WITNESS: Well, that is over and above these.

MR. LEDUC: I don't think so.

WITNESS: If I remember rightly, Mr. Juneau was referring to the 2 percent which is charged on the distribution. I will be coming to that later.

MR. LEDUC: Yes, but he made another suggestion, if my recollection is correct, which was to this effect, that if the province abolished all these fees and

charged a straight 5 percent on the moneys paid in by the debtor that would be sufficient to pay for the cost of that administration of the Act.

WITNESS: Well, I am merely giving the practice as it is.

MR. LEDUC: As it is now?

A. Yes.

MR. CONANT: Go ahead, Mr. Cadwell.

A. The distribution ——

MR. SILK: Excuse me; I think you will find that at page 622 of the evidence.

WITNESS: The distribution according to the law must be made every three months, but the practice in Montreal is to only make a distribution when 10 percent of the original amount is on hand in the court. They are not following the law in relation to that. The costs of distributing it every three months was prohibitive, so they let the amounts accumulate until they are 10 percent of the original amount of the claim.

MR. LEDUC: If I may interrupt, this is what Mr. Juneau said:

> "Instead of charging for any declaration and charging for filing any claim, I would suggest that when the debtor has deposited $50, before the distribution of his $50, we would charge $2.50, 5 percent, and in the end $1.25 would be charged to him and the other $1.25 would be charged to the creditor."

WITNESS: That is what I say of the Lacombe law. I think we must think of it, not as a separate type of action, but as something that is ancillary to the main Division Court set-up, and it is only as you improve your general set-up that the Lacombe law can be made effective as far as the public generally are concerned.

MR. FROST: Mr. Cadwell, have you considered something in the line of the Lacombe law which would be an original type of action something like this Manitoba set-up—in other words, that it would not be necessary for a man to be sued or to have a number of judgments against him before he went to the court and took advantage of this particular law?

A. I must say that was my view, but that is not the practice in Montreal.

Q. I know it is not, but do you think it is feasible to form such an action?

A. That is, prior to judgment?

Q. Yes.

A. Or prior to the issuing of an action ——

Q. Supposing a man finds himself in a tight spot and he says, "Here, I owe $1,000, and I have 15 creditors; I want to start at once on an orderly payment of these creditors." Do you think that there is possibility of an action being formed, or a law being enacted, which would permit that man to go to say, the Division Court clerk and lay his situation before him, and let the Division Court clerk notify these people? In other words, the man would start, as it were, an action himself, to permit him to meet his obligations in an orderly way.

A. Yes, I think it could be done.

MR. SILK: It may be just a coincidence, Mr. Frost, but under both the Lacombe law and the statute in force in Manitoba, they require at least one judgment; they are both the same on that score.

MR. FROST: One judgment is required?

MR. SILK: That is right.

MR. FROST: Well, I suppose, after all, there is not such a world of difference there, is there?

MR. SILK: I think you will usually find one judgment in a case where a debtor would invoke such a statute.

MR. FROST: You could easily get one man to sue him.

WITNESS: Now, on the distribution, a charge of two percent is made; that is, if the defendant pays in for distribution $100, the court takes $2, and $98 is distributed among the creditors.

MR. FROST: And that two percent is taken from the creditors?

A. Yes—from the debtor.

MR. CONANT: The two percent taken from the debtor?

A. Yes.

MR. STRACHAN: It is taken from the creditor, isn't it?

A. No. The $100 is paid in ——

Q. He owes $100; does he pay in $102?

A. No. He pays $100 in; $2 is deducted by the court and $98 is distributed.

MR. FROST: Does that settle his claim then?

A. No; that settles just the $98.

MR. SILK: It is paid by the debtor.

WITNESS: The feeling in the court at Montreal is, and I think rightly so, that this percentage is not great enough to cover the administration costs of the court.

MR. CONANT: I shouldn't think it would be.

WITNESS: And they also feel—the clerk there feels—that a portion at least of this, and he suggests 50 percent, should be paid by the creditors, and he also recommended, in line with Mr. Juneau, that it should be at least 5 percent.

MR. LEDUC: To take care of all fees?

A. Yes.

MR. LEDUC: I have here Mr. Juneau's evidence, and that may answer the objection made by Mr. Thompson a moment ago; at page 622:

> "WITNESS: Yes, I would suggest that the clerk do a little more than he does, actually; according to this draft"—he was referring to a draft bill—"I suggest that the clerk gives notice to the creditor for the claim, and when the debtor has delayed his payment for say ten or fifteen days, so that the creditor would not have to come to the court to find out.
>
> "MR. LEDUC: You mean, give notice to all the creditors, or only the original one?
>
> "WITNESS: To all the creditors who have filed their claim. Of course, this notice could be sent out at the same time as the cheque,"

and so on and so forth.

WITNESS: The other thing about the Lacombe law that was new to me is, that it is a general law that can be applied to any person earning wages, regardless of where the action is instituted. That is, it does not matter whether it is in the Supreme Court, the Superior Court in Quebec, or the Circuit Court, which is equivalent to our Division Court, or in the rural sections, the Magistrate's Court. If a man earns wages, he can receive the benefits of the Lacombe law.

MR. LEDUC: When you say wages, of course, you mean salary?

A. Yes, salary and wages.

MR. CONANT: I suppose up to a certain amount; that would not apply in an unlimited way?

A. There is apparently no limit, sir.

MR. LEDUC: But it applies only to wages or salary; it does not apply to any income derived from mortgages or to anything of the sort.

WITNESS: Whether the defendant takes advantage of the Lacombe law or

not, is entirely up to himself; it is on a purely voluntary basis. If he does take advantage of the law his wages cannot be garnisheed after that time by anyone.

MR. CONANT: As long as he ——

A. Fulfils the conditions. And those conditions are, that within three days after he receives his salary, he pays the money, the pro rate amount into the court, of his salary, and if there is a variation in his wages or if he is out of work, or if he receives only part wages, he must file a declaration indicating the facts. If he does not do this, then he loses the benefit of the Lacombe law.

Q. He is in default then?

A. Yes. The Lacombe law is applied in the rural sections of the province by the Magistrate's Court, which is a court that looks after civil work as well as criminal work.

Q. Do they all have a clerk—that is, magistrates—do you know?

A. Yes, they do, sir.

MR. LEDUC: Oh, yes.

WITNESS: The Circuit Court looks after only civil actions, and that is the court in use in Montreal.

MR. SILK: The Circuit Court exists just in the city of Montreal, doesn't it?

A. No, the Circuit Court exists throughout the province, but ——

MR. LEDUC. In name only.

WITNESS: In name only, because the Magistrate's Court in the rural sections largely replaces the Circuit Court. The Lacombe law does not depend upon money being due and owing, as our garnishees do; it can be made at any time prior to the receipt of money.

MR. CONANT: Let me get that point. That is a material amendment to our law of attachment or garnishee?

A. Yes, sir.

MR. STRACHAN: We cannot garnishee a man who is paid in advance.

MR. LEDUC: Oh, yes, you can.

MR. STRACHAN: Not here.

MR. LEDUC: Here you can't, no.

MR. CONANT: I was not quite clear on that when we were discussing it

before. That, of course, has always been one of the difficulties—a weakness or a strength, according to your viewpoint—of our garnishee law. Strictly speaking, under our law you cannot garnishee a debt until it is due and payable. How far would they depart from that?

A. They do not consider the question of the debt being due and owing in any way, as far as the application of the Lacombe law is concerned.

MR. CONANT: They deal with anticipated earnings; would you put it that way? Is that about the way it would be described—anticipated earnings?

A. A debtor makes a declaration that he is earning such and such, anticipating what they will be, and after the time of that declaration being made, if the conditions are fulfilled, then his wages cannot be garnisheed.

MR. LEDUC: But, in the case of a garnishee, you can garnishee a man's salary before it is paid.

MR. SILK: That is the general garnishee law in the Province of Quebec.

MR. CONANT: Do they have the same exemptions or comparable exemptions there to what we have here as to wages?

A. I do not know, sir.

MR. LEDUC: It is not quite as complicated as our exemption system.

MR. SILK: As to wages, the exemptions in Quebec are fixed very definitely. Do you know off-hand what they are, Mr. Leduc?

MR. LEDUC: I think wages under one dollar a day are exempt.

MR. SILK: I have it here. Wages under $1 per day are not seizable; from $1 to $3, 20 percent is seizable; from $3 to $6, 25 percent is seizable; and over $6, 33⅓ percent is seizable. They fix those amounts definitely. In the Province of Manitoba they do not; the clerk and the debtor endeavour to arrive at some proper amount to be paid into court; if they cannot agree the judge fixes it.

WITNESS: If the original creditor or any of the creditors receiving payments under the Lacombe law set-up, think a false declaration has been made, they can contest the declaration or seize the wages of the debtor by garnishee; then it is up to the debtor to establish his rights to come within the law. If the matter is contested, it comes before the Circuit Judge. As to the application of the law generally ——

MR. SILK: Mr. Cadwell, excuse me. If it is for a large amount, I understand it is referred back to the judge of the appropriate court; I mean, if it was in regard to a claim for $10,000, it would go to the judge of the Superior Court?

A. Yes, that may be so. I was thinking of the Circuit Court here.

MR. LEDUC. The garnishee would follow the original action. He could not garnishee without a judgment. Take the case of a creditor who claims that a debtor is not making the proper payments; he could not garnishee that man's wages unless his claim was based on a judgment?

A. Oh, yes; on the original judgment.

Q. Yes?

A. Yes.

MR. CONANT: So that one of the claimants who filed, if the thing broke down and he wanted to go on, he would have to start at the beginning again, get judgment and go on from there, wouldn't he?

A. Yes.

MR. SILK: I think you will find that if the claim is not contested under the Lacombe law, it automatically becomes a judgment, and I am sure that is the situation in Manitoba, and I think Mr. Juneau said that was the situation in Quebec.

WITNESS: As a matter of fact, some creditors do take out judgment, even after the Lacombe law, for one reason, because of the opportunity of proceeding on their judgment by execution or by examination, because the Lacombe law only applies to wages, it does not free any of the man's other assets, whatever they may be, and if that is done, the costs of course are added to materially, because they have to pay the costs up to judgment. They in turn take precedence.

MR. LEDUC: Are you sure of that last fact, Mr. Cadwell? Suppose a man takes judgment for the purpose of executing against some land or some other assets of the debtor, and accumulates a lot of costs, after the man has taken advantage of The Lacombe Act; is the creditor really entitled to add those costs to his claim?

A. Yes.

Q. If it is already filed?

A. Yes.

MR. CONANT: But only after there has been default?

A. I cannot be clear on that.

Q. Well, a creditor could not come in and sit in on this party and take the benefit of it to a certain point, and then pull out and take proceedings without anything having altered the position of the parties, unless there was default?

A. That is, subsequent to the arrangement being made?

Q. Yes?

A. Yes, I think that is true, sir. But, before that time any number can take out judgment, and those costs are added.

Q. Well, when do they reach the point when there are no more judgments? obtainable?

A. After the debtor has filed his affidavit or declaration.

Q. So then, the debtor has it in his power to stop this getting of judgments?

A. That is right, sir; but if he defaults, then after that time they can proceed.

Q. The gates are open again?

A. Yes. As to the application of the law, approximately 50 percent of the defendants take advantage of the Lacombe law, in the first instance.

Q. Is that so?

A. Yes.

MR. SILK: Mr. Cadwell, would that be of the defendants in the Small Debts Court?

A. I am speaking only of the Circuit Court. I was not contacting the Superior Court at all.

MR. CONANT: You mean to say that 50 percent of the people who are sued in the Quebec courts, which correspond to our Division Courts, take advantage of this Lacombe law?

A. That is, the Montreal court, sir. That figure is not precise, but it is the best judgment that the clerk could give me. Now, the administration of the Lacombe law, which is what I was primarily concerned about, is quite heavy. In Montreal, seven bookkeepers are required, one for each ledger. The money as received is received by a cashier and is deposited in a special bank account, less the 2 percent fee, and a return is required to be made each month to the Provincial Government. As a matter of audit, the return must coincide with the amount on deposit in the bank. The bank account is kept in the name of the court, and cheques are issued on this by the clerk of the Surrogate Court.

Q. Does he sign alone?

A. I believe he has authority to sign, yes, as clerk of the court. In the action itself no money is used, which is different from our system.

Q. No money is what?

A. No money is used; they use stamps. All the documents in the Circuit Court are stamped documents.

MR. LEDUC: I believe all these employees are on a salary?

A. They are paid direct by the Provincial Government.

Q. And all these fees go to the province?

A. Yes.

Q. That is the reason for the stamps?

A. Yes. The amount of 2 percent which is deducted as part of the court fees, is retained by the court and is used to purchase stamps, which in turn are supplied by the Provincial Government. I asked the view of the clerk as to the view of the collection agencies as far as the application of the Lacombe law in Montreal is concerned, and apparently there is not the same supervision of collection agencies in Montreal that there is here. There is considerable antagonism between the court office and the collection agencies. The feeling of the collection agencies is that the Lacombe law is perhaps depriving them of ——

MR. CONANT: Invading their field?

A. Yes.

MR. LEDUC: On the other hand, they are often accused in Quebec of invading the solicitors' field.

MR. CONANT: The collection agencies?

MR. LEDUC: Yes.

WITNESS: There is another curious set-up in relation to the court that impressed me, mentioned I think by Mr. Leduc privately, and that is that there are no court bailiffs. Bailiffs in Montreal are a separate corporation, known as the Corporation of Bailiffs. They do the work of the civil courts on a fee basis, the fees for which depend upon the amount of the claim.

MR. CONANT: And the Government has nothing to do with appointing those bailiffs?

MR. LEDUC: No. They fix the fees, though.

WITNESS: They fix the tariff, and apparently the system works out fairly well.

MR. CONANT: Well, you can't act as bailiff unless you are a member of this institution or organization?

A. That is right.

MR. LEDUC: But there are usually several bailiffs in the same town, so if you are not satisfied with the way Mr. Jones looks after your business, then you can hand it to Mr. Smith.

MR. CONANT: Anything further?

A. I don't know whether you are interested in knowing the officers in charge of the court. I have them listed here. There is a chief clerk, there is an assistant chief clerk, who looks after Circuit Court matters in the court, chief accountant, assistant chief accountant, ledger keeper, cashier and record guardian; so the list of accounts are considerable in the office.

MR. LEDUC: But that is not only for Lacombe law work?

A. Oh, no; that is for the complete office work. The following forms are used ——

Q. You say there is a chief clerk; are you speaking of the Circuit Court or of the Superior Court?

A. No, this is Circuit Court.

MR. LEDUC: You must have more than one assistant clerk; you must have three or four.

MR. SILK: Mr. Juneau said there were at least ten clerks engaged on the Lacombe law in Montreal.

WITNESS: There are seven, one for each ledger. You must realize, too, gentlemen, that most of our conversation was carried on in French, and, although I have some knowledge of the French language, it is perhaps ——

MR. LEDUC: We must not confuse the clerks in the office with the deputy clerks. There is a clerk of the Circuit Court, and he must have three or four deputy clerks.

MR. SILK: Yes, and then there are a lot of assistants.

WITNESS: I procured copies of the forms that they use.

MR. SILK: Those forms have already been filed by Mr. Juneau.

MR. CONANT: I think they should be just filed.

Q. Have you got any figures as to whether this system has paid its way in Quebec?

A. Oh, it has not—I can only speak for the Montreal office. The 2 percent, which is used for purposes of administering the Lacombe law, is not adequate.

Q. You do not know the deficiency?

MR. SILK: It was given to us by Mr. Juneau, $15,000

MR. CONANT: Is he speaking of the province, Mr. Leduc?

MR. SILK: No; he says in Montreal administration of the Lacombe law costs $15,000 over and above fees and the 2 percent.

MR. CONANT: From your examination, Mr. Cadwell, what would you say are the advantages and disadvantages of this system?

A. The advantages, sir, are that the debtor, the honest debtor, can make an arrangement whereby he can pay his debts in an orderly fashion without interference.

Q. Rateably and with the minimum of expense?

A. Yes, with the minimum of expense.

Q. What are the disadvantages?

MR. LEDUC: And without his employer knowing anything about it.

WITNESS: Yes.

MR. CONANT: Yes, that is right; that is important.

WITNESS: The disadvantages are that in the event of there being a dishonest debtor, he may arrange with one of his relatives to file a claim under this *pro rata* set-up, and through a private arrangement may ——

MR. CONANT: By collusion?

A. Yes, by collusion. But outside of that ——

Q. Now, wait a minute. Has any of the other creditors the right to challenge that claim?

A. Yes, they may challenge that.

MR. LEDUC: I was going to ask something else. Are these claims verified by affidavit?

A. I believe so. On the whole, the Lacombe law seems to work out equitably to the debtor and to the creditor, but my impression of the Circuit Court fee set-up in Montreal is, that it is just as cumbersome as our present set-up, and unless we do something about that in the first instance, the application of the Lacombe law would not be very satisfactory here.

MR. CONANT: You mean, by inaugurating a block system?

A. Block system, yes.

MR. LEDUC: Well, even suppose we kept the same system, Mr. Cadwell, you mentioned that claim of $60, and, if my recollection is correct, the cost on a $60 claim would be around $4.50 or thereabouts?

A. $23.60.

Q. That is in Quebec?

A. Yes.

Q. But I mean here. That was in the First Division Court, I believe, of York. The average amount of costs in 100 cases of varying amounts came to $6.79.

MR. CONANT: Up to what amount?

MR. LEDUC: Well, those were 100 cases, but then, the average cost on an action between $60 and $100 amounted to $7.17, so even if the man was given the advantage of getting under the Lacombe law, after he owes that $7.17, it would be much better than it is in Quebec.

WITNESS: Yes, but I think that we should go a step further than that, and give him the opportunity of making his arrangement prior to judgment.

MR. CONANT: Prior to judgment?

A. Yes, or prior to the issuing of an action in court.

Q. You mean, if a man is threatened and is cornered, he could invoke it himself?

A. Yes.

MR. SILK: Mr. Cadwell, have you studied the Act in force in Manitoba?

A. I must confess I have not.

MR. SILK: I have Mr. Ogle here; I see we have about half an hour left.

MR. CONANT: Well, that would be all right.

MR. SILK: Mr. Ogle, from the city sheriff's office.

DAVID J. OGLE (Sheriff's Office, City of Toronto).

MR. SILK: Mr. Ogle, you have been engaged in the office of the sheriff of the city of Toronto and the sheriff of the county of York for a good many years?

A. Yes.

MR. CONANT: How many years?

A. About twenty-six years.

MR. SILK: And you have had a good deal of experience in the matter of selecting jury panels?

A. Yes; that is my work principally.

Q. The Committee desires to devise a scheme whereby the calibre of the jurors might be improved. Have you any observations you might make, which would have the effect of improving the calibre of jurors on the petit jury panel?

MR. CONANT: Let us have first the present system, Mr. Ogle.

A. I might say, Mr. Conant, that just before the opening of the assize, I had a talk with Mr. Justice Hope. This talk originated, of course, from him. He thought that something should be done in regard to raising the standard of these jurymen, also the question of the number of men that are summoned, who are exempt under the statutes. I told him that that commenced very largely with the Clerk of the Peace, and I had an idea that when letters were sent out to these local selectors, that some mention was made of that. I promised go get him a copy of that letter that went out, which I did. Colonel Denison has sent out a rather strong letter just two days ago to these local selectors.

Q. That is getting ready for next year's list?

A. Getting ready for next year's list.

Q. Yes?

A. Pointing out the fact that a number of jurymen have been summoned who are not—well, they are qualified, but they are exempt under the statute—for example, men employed by the T.T.C. and the railways and the Hydro, and so forth—and there has been a lot of expense bringing these men, and of course—well, we don't bring them; they are off.

Q. They just confuse the lists?

A. They just confuse the lists. We summon fifty men, perhaps, and there is twenty-five percent of them are away for such reasons as that. Now, when Colonel Denison sent out that letter, he also pointed out that the calibre, the standing, of these men should be looked into, and that we ought to get a little different men to what have been coming down. What effect that will have I do not know, but that is where it begins; that is where the jury commences.

Q. That is important, yes.

A. Yes.

Q. And if those municipal selectors ——

A. If they do as has been suggested to them, I think we will see a change.

MR. STRACHAN: How do they function, Mr. Ogle? What knowledge have the municipal selectors got except what they get from looking at the list ——

A. The local selectors send in ——

MR. CONANT: Who are the local selectors, first of all? The assessor, the clerk ——

A. The assessor goes around ——

Q. Well, never mind that.

MR. SILK: The local selectors are, under section 15, the head of the council, the clerk, the assessment commissioner and the assessors of every local municipality.

MR. STRACHAN: How many of those in the city of Toronto actually function?

MR. CONANT: Does that apply in Toronto too?

MR. SILK: Any two of whom shall be a quorum.

MR. CONANT: Then your local selectors are the head of the municipality, the assessor and the clerk?

A. Yes.

Q. Who determines the number of names that they shall send in?

A. The clerk of the peace sends them a list instructing them with regard to the number of names that they are to send in.

Q. So that he sends, for instance, to the townships around here, saying, "You will please select a hundred names from your municipality"?

A. Yes.

Q. Who determines that, the clerk of the peace or the judge?

A. Well, no, the judge—you have the selection committee that determines in the first place the number of jurors that will be required for the year.

Q. Who is that committee?

A. You will find that further over, Mr. Silk.

MR. SILK: The number is fixed, though, by the judges, isn't it?

A. In the city of Toronto, the Senior County Court Judge.

MR. CONANT: The sheriff?

A. The sheriff, the treasurer.

Q. The clerk of the peace?

A. And the mayor.

Q. They determine how many are required?

A. Yes.

Q. I am speaking of the county of York now particularly.

A. Yes.

Q. Who determines the number required in the county of York?

A. The county of York and the city of Toronto are the same; it is all one.

MR. FROST: That would be the warden, wouldn't it?

A. The warden only comes into the picture when they are selecting jurors from the county, that is, outside the city.

Q. I know, but who tells the city of Toronto how many jurors are needed from Toronto?

A. The clerk of the peace.

MR. CONANT: Does he determine the number?

A. It would be determined at a meeting that is held in September with regard to the number for the year; then it is built up from that.

Q. Then who determines that number, whether it is a thousand or ten thousand?

A. Well, that is determined by this selection committee.

MR. SILK: That is done by the county selectors, isn't it, Mr. Ogle?

A. Yes, the county selectors.

MY. FROST: Who are they, for instance?

A. Well, the mayor ——

MR. SILK: The county selectors: the mayor of any city situate in the county, the warden, the treasurer of the county, the treasurer of any such city, the sheriff or, in his absence, the deputy sheriff, any three of whom shall be a quorum.

MR. FROST: They decide how many jurors there shall be?

A. Yes.

MR. CONANT: From each municipality?

A. Yes.

Q. Then the clerk of the peace tells them that; that is the letter you have just spoken of now?

A. Yes.

Q. Then when you go the the local municipalities, it is the head of the municipality, the assessor and the clerk that pick out the men to meet that requisition?

A. Yes.

Q. Then that is returned to the clerk of the peace?

A. To the clerk of the peace.

Q. Now, what happens from thereon?

A. Then you have a jury roll.

MR. FROST: Tell me this: Before you get that far, the municipal people, that is, the mayor and the clerk and what not, as was read there—from the city of Toronto you might be asked for how many? A thousand jurors, or would there be that many?

A. There would be more than that on the roll.

Q. I know, but the original list that is sent in, which is the basis?

A. Yes; say from the city of Toronto?

Q. Yes.

A. Oh, there would be all of a thousand, yes.

Q. Well, how do they choose those names? (No answer).

Q. The reason why I ask you that, Mr. Ogle, is this very point: complaint has been made that the calibre of jurors is not good enough—I think I am putting it correctly—and they say that that situation is particularly bad in the city of Toronto. Now, we had one gentleman up here this morning who complained about the calibre of jurors that are on the jury panels in the city of Toronto, and he said that there should be at least some different system for Toronto if the rest of the province was not changed. What I would like to find out is this: how is it that the calibre of jurors is not good? Is there any reason that you can suggest that the calibre is not good? I mean, when the statute provides that those selectors from a municipality are to send in say a thousand good names, why is it that they don't send in a thousand good names?

A. I should say that in the smaller communities these assessors would have a better knowledge of the men; in a small town they would know every person in it.

Q. Is there any suggestion that you could make to remedy that condition in Toronto?

A. I don't see how it could, because the mayor would not ——

MR. CONANT: Suppose you enlarge the board; it is a pretty small group that selects them?

A. It is, yes

Q. Supposing you enlarged that group, would that help?

A. I doubt very much if it would, because in a city like Toronto it is surprising just the very few names of these people that come before you that you would know.

MR. STRACHAN: It would be just luck if you knew any of them.

WITNESS: I have been handling these juries for a great number of years, and it is very seldom that on a panel of say three hundred names I would know any more than two people out of the whole list.

MR. FROST: Well, how do you choose the original names, Mr. Ogle? Do you just take them out of a box?

A. These names come in, the name and the address and the occupation.

MR. CONANT: That is off the assessment roll?

A. Yes, the occupation of the man, but very invariably these men are described just as clerk, manager, and so on; there is nothing to indicate where they work or what the nature of their work is.

MR. FROST: Well, do you just take haphazard say a thousand names from your roll?

A. Well, the roll is three times the number that they require for the list from which the drafting is done. They go through these names, and I suppose they would reject some of them, I have no doubt, but it must be difficult for those ——

MR. CONANT: That is fundamental.

WITNESS: Yes.

MR. CONANT: You are right at the point now that is fundamental on this. I have sat on these boards myself, not in Toronto, and I can quite see that in Oshawa somebody on that board would know practically everybody who comes up.

A. Yes, exactly.

MR. CONANT: But how can we improve the situation, the system, for a city like the city of Toronto? That is what we are concerned with, is it not, gentlemen?

MR. FROST: If your basic list is, generally speaking, good, then your juries are going to be good.

WITNESS: The only suggestion we have to make would be that more of these jurors are drawn from the better residential districts in the city, and their occupations, but there is another thing that happens: as soon as you get a good

man that is a good juror and a strong man, he is a busy man, and there is all kinds of pressure to get that man off.

MR. CONANT: What's that?

A. There is all kinds of pressure put on the judge to let him off. The judge, of course ——

Q. He doesn't want to serve?

A. He doesn't want to serve. Mr. Strachan will come along and say, "Well, I have got a man here; he is a very important man."

MR. CONANT: You are only using Mr. Strachan as an example. He would not do such a thing.

MR. STRACHAN: No.

MR. CONANT: No. I must challenge that statement as to Mr. Strachan. I know Mr. Strachan wouldn't do a thing like that.

WITNESS: Well, I can't remember what he did, you know, but I am just working on it, anyway.

MR. STRACHAN: Do you think that because a man comes from a better district he is going to be a better juror necessarily, Mr. Ogle? I would rather question that.

A. Well, he might not, but it would eliminate perhaps some of the men that come around. It is a very difficult question.

MR. STRACHAN: I would disagree with you right there.

WITNESS: It has been remarked that in Hamilton they do get a better type of juryman. Of course, that district is much smaller than Toronto.

MR. STRACHAN: There has been criticism even of the verdict of a special jury, hand-picked men.

MR. FROST: I suppose you take so many from every ward, do you?

A. Yes, and then they are finally drawn by ballot.

MR. CONANT: That is the final list?

A. That is the final. That is the drafting from the jury list.

Q. Yes, I understand that, but it seems to me that there is the basic problem, to develop if it is possible a better method for the municipal selectors; there is where the trouble starts; isn't that it? Isn't that what you call them, the municipal selectors?

A. The local selectors.

Q. The local selectors?

A. The local selectors.

Q. And you cannot suggest any way of improving that?

A. Well, you see, the assessors go around—that is where it commences—and they place a "J" opposite the man's name ——

Q. Just on that point, the assessor of Toronto—the assessment commissioner is the man who is on the selection board, isn't he?

MR. FROST: Yes, but he has nothing to do with the actual assessing.

MR. CONANT: He doesn't go around. They have in Toronto probably twenty-five men who go around and put the "J" on.

WITNESS: Not the assessor. They have men doing that work.

MR. CONANT: But the man who does that work on the field, he is not the man who sits on the board of selectors?

A. He does not sit on the board of selectors.

MR. STRACHAN: He just marks the "J".

WITNESS: He marks opposite that name, those that are eligible for jury duty.

MR. SILK: Mr. Chairman, it might be interesting to ask Mr. Ogle if he knows whether the head of the council, the clerk or the assessment commissioner actually do sit in on the selection, or is the work left to the two assessors to form a quorum?

WITNESS: Well, I have never been present, so therefore I could not answer that question.

MR. FROST: Tell me, Mr. Ogle, do you think if these jurymen who beg off stayed on the job the juries would be better?

A. Well, I have seen very good men get off, I know, men capable of making decisions.

MR. CONANT: Do you think there is too much latitude that way, in excusing jurymen?

A. Well, that would be criticizing the judges.

MR. STRACHAN: It is pretty hard to get a juryman off a jury; there has to be a very, very good reason.

MR. CONANT: You are not speaking from experience?

MR. STRACHAN: Oh, no! But I am told.

MR. CONANT: It is alleged that it is difficult.

Now, there has been a suggestion here that was not promoted so much to-day, that something might be accomplished by having the assessors indicate by some symbol or symbols the educational attainments of prospective jurymen; wasn't that it?

MR. SILK: That was Mr. Peter White.

MR. STRACHAN: The difficulty about that, Mr. Chairman, is that the assessors very seldom see the man at the house; they simply enquire from whoever comes to the door who lives here and who is the owner and tenant, and so on; the man of the house, the juryman, is generally at work when they come.

WITNESS: That is just exactly what happens, and if they don't get the information there they get it from the neighbour next door, and often it is wrong. We have had men come there—for example, in the last jury we had, we had a K.C., a man who was exempt.

MR. STRACHAN: It is pretty hard to get into a district where there is not at least one of them.

MR. CONANT: Or even to find a street without one.

WITNESS: He never should have been on the list.

MR. SILK: Mr. White's suggestion was to have the local selectors indicate generally the education, experience and physical fitness.

MR. STRACHAN: But they never see them.

MR. SILK: Pretty difficult.

WITNESS: I think that this letter that Colonel Denison sent out will have an effect, because he has gone into it very thoroughly.

MR. CONANT: Well, can you suggest anything that might be done by way of legislation to improve the situation?

MR. FROST: This might be very cumbersome, Mr. Ogle, but supposing you had all your assessors, say twenty-five in the city of Toronto, meet, and each one of them nominate say fifty men, or whatever it might be, from his division, good men, and then make your choice, your original draw of say a thousand, from them?

A. These men should have first-hand information, because they are actually attending at the man's home, and they could form some opinion if they saw him, but of course the man is out to work during the day when they are there.

MR. CONANT: How many of those men have they got in Toronto that pound the streets with the big book under their arm? Fifty?

A. I am sorry, I cannot answer that question.

Q. Well, there would be twenty-five at least?

A. There would be quite a number, yes.

Q. Wouldn't they be the men who should know more about the personnel of the city than anyone?

A. That would be my opinion.

Q. Would it be quite feasible to require that those men should indicate on the roll in a separate column in some way or other, by some formula, the degree of fitness or qualifications for jury duty?

A. Well, the only thing a man would do, I would say, would be just answer the question in his own mind, "Is that man fit for jury duty or is he not?" and if he is, mark him with a "J" as being a man that would be quite suitable for a juryman. Unless he was satisfied with regard to that he wouldn't mark it at all.

MR. STRACHAN: If he was a friend of his he wouldn't mark it.

WITNESS: Well, of course, you couldn't control that.

MR. SILK: I do not think those men have any particular knowledge. I am sure the man who goes along the street I happen to live on doesn't know me, and I don't think they will see one man out of twenty on the street, because they come along in the daytime, when most men are at work.

MR. STRACHAN: I have never seen our assessor.

MR. SILK: They have got me down as an Anglican, and I go to the United Church.

MR. CONANT: Just to carry that a bit further, and get it on the record: After the respective municipalities return their—is it a list or a roll they return?

A. They send in a list to make up the roll.

Q. They send in a list?

A. Yes.

Q. And then the county selectors go to work?

A. And they make up a jury list from the roll from which they draft their jurors.

Q. The various lists?

A. Yes.

Q. The petit jury and the grand jury?

A. Yes.

Q. Supreme Court and all the rest of it?

A. Yes.

Q. And that consists of the warden and in Toronto the mayor of the city and the whole list that was read out?

A. Yes, that is correct.

Q. Now, in a jurisdiction like this county, those men would not have any personal knowledge of many of those on those lists, would they?

A. No, they would not.

Q. It always strikes me, gentlemen, that this system is a relic of—of course, this system, I suppose, has been in force perhaps for fifty years at least, hasn't it?

A. Oh, yes.

Q. More than that?

A. I suppose more than that.

Q. Isn't this a relic of the days when communities were smaller and there was more local and personal knowledge of everybody in the community?

A. You find indications of that in the Jurors Act; you would be reminded of that, yes.

MR. FROST: Actually speaking, Mr. Conant, as you know, there is not very much trouble in outside localities.

MR. CONANT: Which fits into my remark of a minute ago. In the small communities or counties, it is pretty well agreed, or at least opinion is fairly unanimous, that there is no complaint about jurymen; it is when you get into the larger communities.

WITNESS: These men who have been entrusted with making up the list or finally selecting these men would have some personal knowledge of them, whereas that is impossible in Toronto.

MR. FROST: Furthermore, the exemptions are pretty broad.

MR. CONANT: That is true, yes.

MR. FROST: It might be better to cut down on the exemptions.

MR. CONANT: Well, we are letting some of the best fish out of the bag, aren't we, with the present exemptions?

MR. SILK: Mr. Barlow tried to find a way to cut down on the exemptions, but he concluded that it was impossible.

MR. CONANT: Well, that is the problem. It is the problem of the larger cities.

MR. FROST: Exemptions are very, very broad. The truth of the matter is, if the jury system is to be retained and if it is so valuable, then why should broad classes be exempted?

MR. CONANT: I wonder what was the original basis of that exemption. Was it that these exempted persons were vital to the state's ——

MR. FROST: Have you got the exemptions there? For instance, a bank manager ——

WITNESS: A bank manager is exempt.

MR. SILK: Members of the Privy Council and of the Executive Council, the Senate, the House of Commons, the Assembly; every officer and other person in the service of the Governor-General or the Lieutenant-Governor; every judge, police magistrate, sheriff, coroner, gaoler, keeper of a house of correction or lock-up house; every sheriff's officer and constable; every minister, priest, or ecclesiastic, every barrister and every solicitor; every officer of any court of justice; every physician, surgeon, dental surgeon, pharmaceutical chemist and veterinary surgeon qualified to practice.

MR. CONANT: I wonder why that class was exempted.

MR. STRACHAN: Because they might get a hurry-up call.

WITNESS: A pharmaceutical chemist is a man who is compounding prescriptions.

MR. STRACHAN: They had a chemist on the jury in Bardell v. Pickwick.

WITNESS: There is one that is rather old-fashioned now, I think—every miller. Well, that happened away back when a man ——

MR. CONANT: Go ahead and read it.

MR. SILK: The next deals with the army. Then every pilot and seaman engaged in the pursuit of his calling; every head of a municipal council; every municipal treasurer, clerk, collector, assessment commissioner, assessor and officer.

MR. FROST: Well, why so?

MR. SILK: Every editor, reporter and printer of any public newspaper or journal.

MR. FROST: They are the very people who should be in there, editors of newspapers; they know all about everything. They should not be exempted.

MR. SILK: Every professor, master, teacher, officer and servant.

MR. CONANT: We won't go into the professor matter just now.

MR. SILK: That includes every servant of a university or college.

MR. FROST: After all, why should a school teacher be exempted?

WITNESS: Well, that would be very awkward. We had an instance ——

MR. FROST: That may be, but isn't the administration of justice above everything else?

MR. STRACHAN: Why should it be any more awkward to serve on a jury seven days in a man's lifetime than it is for a man to go in the army? It is all awkward.

WITNESS: They might have to leave the ——

MR. STRACHAN: Well, they have occasional teachers.

MR. SILK: Every person engaged in the management, working of a railway or street railway, and every person permanently employed by any public commission, carrying on the business of developing, transmitting or distributing electrical power or energy.

MR. FROST: Well, why?

MR. SILK: That means all employees of Hydro are exempt. Every telegraph and telephone operator; every miller; and the last is, every fireman. There are certain qualifications as to firemen.

MR. CONANT: They are too broad. I think we should consider that. I think particularly we ought to look into the exemption on newspaper editors, reporters, and that kind of thing.

Thank you, Mr. Ogle.

Adjourned at 4.33 p.m. until 10.30 a.m. on Tuesday, September 24, 1940.

ELEVENTH SITTING

Parliament Buildings, Toronto,
September 24th, 1940.

MORNING SESSION

On resuming at 10.30 a.m.:

MR. CONANT: Gentlemen, I have a letter to put on file; perhaps we might do that. It is not on a very cheerful subject. It is a letter that has come to me from Mr. Maclennan, the witness here yesterday, enclosing a letter from the

sheriff of the county of York. It has to do with this question of executioner. Perhaps Mr. Silk will read it out, and then it can go on record. It is a rather morbid subject for a cloudy morning.

MR. SILK: It is on the letterhead of the sheriff of the county of York, addressed to R. J. Maclennan, Secretary-Treasurer, Ontario Sheriffs' Association:

"Dear Mr. Maclennan:

The other day John Ellis, the executioner, was in my office and was discussing the matter of executions from the standpoint that you and I have already discussed it, that is, the engagement of some person to do the executions who should be in our opinion engaged by the Department of Justice, but the Department of Justice do not see the point.

Ellis tells me that he has been discussing this at the request of one of the western sheriffs, and it is their opinion that the Attorney-Generals of Ontario, Manitoba, Alberta, Saskatchewan and British Columbia should together engage the services of some executioner and jointly pay him a salary that would mean a living allowance and which would include the payment of say two understudies.

This man is very efficient and has worked in Alberta, Manitoba, Saskatchewan and also British Columbia.

Let me know what your opinion on this is and how we should go about it. Perhaps it would be well to make this the matter of discussion of the executive of the Sheriffs' Association if you wish and possibly a memorandum to the Attorney-General of Ontario would result.

I am,

Yours sincerely,

(Sgd.) W. H. S. CANE,

Sheriff, County of York."

The letter is dated September 19, 1940.

MR. CONANT: Well, I don't think there is anything arising out of that. Is the witness ready?

MR. SILK: Yes; Judge O'Connell.

HIS HONOUR JUDGE O'CONNELL, Senior Magistrate, county of York. Formerly Senior County Court Judge, county of York.

MR. SILK: Judge, you are at present the Senior Magistrate for the county of York?

A. Yes.

Q. And for a good many years you were a County Court Judge in the county of York?

A. Yes.

Q. And a great part of your work was in criminal court, that is, the Court of the General Sessions of the Peace and the County Court Judge's Criminal Court?

A. That is so.

Q. At that time you had considerable experience in the matter of grand juries?

A. Yes, I have had considerable experience with grand juries during those years.

Q. It has been recommended in Mr. Barlow's report—you have read the Barlow report so far as it has to do with grand juries, have you?

A. Well, you were kind enough to give me a copy this morning; that is the first time I have seen it. I have read it over during the few minutes I have been sitting here.

Q. I am sorry you did not have one earlier. Mr. Barlow has recommended the abolition of grand juries, for the reasons given in his report.

A. Yes.

Q. Do you concur in those reasons, or in the result?

A. Well, I do not concur in the result. For very many years I have been advocating grand juries in my charges to the grand juries, during the years I have been sitting as County Court Judge, Chairman of the Sessions, and I have not seen any reason to change my opinion since then. In the first place, I think one important fact has to be borne in mind, and that is that the grand jury is a very ancient institution, it has come down to us through the centuries, and I think its very antiquity, its age, is to some extent a warrant of the useful part it has played during these centuries in the administration of the law. That very fact of itself, I think, would demand consideration before any radical steps were taken to abolish it. To me it seems to agree with the very spirit and genius of the Anglo-Saxon race. It is essentially a democratic institution.

Q. You know, do you, Judge, that there is virtually no grand jury in England?

A. Oh, yes, I know that.

Q. Nor in South Africa and most of the other parts of the Empire?

A. Yes. Well, it seems to me that the grand jury manifests to some extent the irresistible determination of that race to keep the control of things in its own hands.

MR. CONANT: What always puzzles me, Your Honour, is this, and perhaps you can add something that will resolve my difficulty: granting all you say about the condition of the grand jury and its historical background, why should not that same reason prevail in all the rest of the Empire? They have abolished them largely in England and in every other substantial jurisdiction except Ontario, haven't they?

MR. SILK: And the Maritimes, I think, sir.

MR. CONANT: And the Maritimes.

WITNESS: Well, I do not see any reason why those reasons should not prevail throughout the whole of the Empire.

MR. CONANT: But yet they have abolished them.

WITNESS: That may be so. People may take different opinions about these things.

MR. CONANT: What I meant specifically is, do you know of any different consideration or condition existing in Ontario from those in any of these other jurisdictions, that would make the continuance of the grand jury advisable here and not in the other jurisdictions?

A. I do not know of any condition existing in Ontario which is different from the conditions existing in these other parts of the Empire where they have abolished the grand jury. If there are good reasons for abolishing the grand jury in other parts of the Empire, if the reasons are good and substantial, I suppose they would equally prevail here.

MR. CONANT: Well, of course, one of the best reasons is that they have abolished them in many jurisdictions for many, many years. You see, in England they abolished them during the last war, and then they reinstituted them, and then they abolished them again. Isn't that the history of it, Mr. Silk?

MR. SILK: Yes, that is right, sir.

WITNESS: I do not suppose it is quite a safe process of reasoning to conclude that because some place else they have done something we should do it here. It is well to examine the reasons why it was done there and the reasons why it should be done here. They may have abolished the grand jury and they may have been entirely justified in doing so. The responsibility of abolishing the grand jury rests on the people here; they will have to determine for themselves whether there is good reason for abolishing it, rather than coming to the conclusion that because other people have done it we should do it here.

MR. SILK: Your Honour, I think we are all agreed that the fundamentals of our administration of justice are derived from England, aren't they? Very largely our administration of justice is patterned on the English system, since the beginning of Upper Canada?

A. Does that relieve us from the responsibility of deciding these things for ourselves?

MR. CONANT: Oh, no; but I cannot see the process of reasoning that would justify grand juries here and not justify them in England, or *vice versa*.

A. There is this condition, that might prevail here which did not prevail there at that time, and that is, that the world war has changed things to a very large extent, and it is because people take a different view of things.

Q. May I ask one question, your Honour? Do you not think that if grand juries were abolished there would be a disposition on the part of magistrates to give more careful consideration before making commitments or otherwise?

A. I do not think it would make any difference as far as the magistrate is concerned. I think the magistrate is impressed with one idea when he is trying a case; he tries his case and comes to a conclusion as best he can upon the evidence before him, without considering what the result will be in some higher court, or what will be the result when the case goes before the grand jury.

MR. FROST: Tell me, sir, just with regard to the matter of grand jury investigations, in view of the fact that the custom has arisen that the Crown counsel should lay the evidence which is at his disposal before the grand jury, no other counsel being present, does that affect your opinion as to the value of the grand jury from an investigating standpoint?

A. No, no.

Q. May I make myself clear, sir? Take, for instance, in the preliminary inquiry before the magistrate, where the parties are represented and where both sides have a chance to question and to cross-examine. It does seem to me this way, that the magistrate has a better opportunity of forming a conclusion as to whether there is sufficient evidence to send a man on to trial than a grand jury has, where the one side only is represented, and where the case may get the Crown attorney complex, if I may put it that way. Mr. McFadden will probably disagree with me in that statement, but nevertheless I think that it is true that there is such a thing as a Crown attorney complex, and when a Crown counsel takes a strong view on the case he naturally impresses his view on the grand jury, with the result that the grand jury decision ofttimes just reflects his opinion.

A. Well, if you will pardon me for saying so, I think that is simply viewing the functions of a grand jury from one point of view, where there are various points of view to be taken. You are viewing it now from the mere point of view of it being a safeguard to the liberty of the subject.

Q. Yes.

A. That is only one of the functions of the grand jury, and in my opinion there are several other important functions of the grand jury as well as that that should be considered before grand juries are abolished. That is only one of them. As far as the protection of the subject is concerned, the argument frequently used is that the man has already been on for trial before a magistrate, the case has been investigated, the magistrate has heard the evidence presented by the prosecution, and, if the defence so desire, has heard the evidence presented

by the defence, and therefore is in a better position to decide whether there is a case to be tried by the petit jury than a grand jury would be that hears only one side of the evidence. Generally speaking, that is so, but as long as you are administering the law by human agents you must not expect that in every case magistrates are safe agencies in dealing with the liberty of the subject. They will make mistakes, and they frequently do make mistakes, because every human agent makes mistakes, and sometimes they send men on for trial where subsequent investigation shows they should not have been sent on for trial.

Q. Well, there has been another objection ——

A. Then if this man goes on to trial he may be put to a very considerable amount of expense and the state put to a very considerable amount of expense which might be saved by proper investigation by the grand jury, if a mistake has been made by a magistrate in sending on the case in the first instance; and it is quite evident that there are a number of cases where the grand jury find no bill, indicating that the magistrate has sent some cases on for trial that should not have been sent on for trial. I have never heard the Crown counsel complain that the grand jury made any mistake in rejecting those bills. Take some cases: they may last for days and they may last for weeks; I have had a case last before me for weeks, and a man put to an enormous amount of expense.

Q. I should like to ask Your Honour this other question. Now, sir, I am not suggesting that this point is at all fair, but it has been raised by the press in the province in the last month or two, or at least since this matter has been under investigation here, that because of the fact that the hearings of the grand jury are in private and the fact that the Crown counsel alone is there, in effect the decisions of the grand jury are more or less hole-in-corner sort of affairs, and that if the Crown counsel in his widom takes a very lenient view of the case—and he may be wrong—no bill might be brought in. I believe there was criticism of a case down east here in connection with that very thing, in which I believe the grand jury brought in no bill, and then afterwards it was laid under some other procedure and I believe a conviction was found. There was criticism, I believe, in one of the Toronto papers over the fact that that procedure was not a safeguard to justice but in fact it resulted in more or less of a hole-in-corner procedure which lent itself to just defeating the very ends that we were trying to protect. Now, sir, I say perhaps that may not be fair, but I am just stating that that is what has been in the press.

A. That may occur; it is possible. You will have mistakes made, and corruption, do what you will, but is that any reason for abolishing an efficient institution, because things like that occur? Grand juries may make a mistake, and throw out a bill that should have been a true bill; that may happen; the point or observation is this fact, as far as that aspect of the case is concerned: does it afford any protection to the citizen? If it affords protection to the citizen, in working it out they may occasionally make mistakes. As I said before, that is only one aspect of the grand jury.

Mr. Conant: Well, of course, isn't the state to be considered too, as well as the citizen?

A. Of course the state is to be considered, absolutely. Where is the state's

interest neglected by reason of the fact that you are protecting the interest of the citizen by putting around him the safeguard of the grand jury?

Q. Well, you spoke about the human element, which is very true. I think that that would apply to a "no bill" by a grand jury; the grand jury might make a mistake. Now, since I have been in office I can recall at least three cases in which a grand jury found no bill, and I afterwards, in my right, directed a bill to be laid, and they were tried and convicted; so the grand jury is not infallible.

A. Oh, no, it is not infallible by any means. As I have said more than once, one point that is emphasized is that it is considered a safeguard for the citizen. That, of course, arises a great deal out of its historical development, because there was a period of English history when it was a very important safeguard of the rights of the citizen. It protected citizens against the arbitrary rule of tyrannical kings, and it has developed and protected the liberty of the subject down through the centuries.

Q. That was really its origin, wasn't it?

A. That is all historical. It may be said, well, there is nothing in that now, because tyrannical kings have disappeared with the coming of the democratic form of government. It is not so. Democratic forms of government may become just as arbitrary as kings in the course of time, as the history of Rome and France teaches, and it is well to keep that spirit of freedom living in the hearts and the minds of the people, that they will keep control of those things themselves, and safeguard ourselves against arbitrary rule, either of kings or democracies. It is a spirit that lives in the community that it is well to preserve. I think, when one looks at what is going on in Europe at the present time and sees democracy vanishing from the face of the earth, this of all times seems to be the most inopportune time to talk about abolishing the grand jury or any other democratic institution we have. We should make every effort to keep alive our democratic institutions.

MR. SILK: Your Honour, there is one further proposal with regard to grand juries that has been made, and that is that the work which is now done by the grand juries might very well be done by a judge of the County Court; that is, he would hold the same type of hearing as the grand jury now holds. Do you consider that would be practicable?

A. I have not such a superstitious regard for the ability of judges as to say that in all cases their wisdom and good judgment is better than that of twelve men sitting in the decision and consideration of these cases. You do not always get, by any means, judges that can be depended upon to have sound judgment and good common sense. I think it would be an extremely dangerous thing. Everybody knows that there are inefficient judges; they cannot all have sound judgment and common sense, and to place the liberty of the subject in the hands of such a judge instead of in the hands of the grand jury is absurd.

MR. CONANT: The members of the Bar would never make such a suggestion about the judges.

WITNESS: Well, the members of the judiciary are privileged.

MR. FROST: Of course, sir, I ——

A. There was another feature of it. I think one is apt to make a mistake when one simply takes a concentrated view of just one of the functions of the grand jury. There are several functions of the grand jury. In the next place, the grand jury sits, as it did in ancient times, and they virtually try a number of cases. The petit jury come into court, and their mind is concentrated upon one case, and their mind is concentrated on the determination of the issues of that case, but the grand jury sits there in the room and it takes a cross-section of the whole community in which it is presiding. It takes a view of the social and moral conditions existing in that community, it finds how the law is observed, and very frequently it finds defects, serious defects, existing in the law—for example, traffic cases, various cases. In fact, there is a section of the community whose mind is concentrated upon those social and moral conditions of that community, with a view to bettering them if they possibly can, and they very often discharge important work in doing so and make recommendations that are attended to, and in consequence the law has been improved and amended from time to time as a result of advice of grand juries. That is one important function.

Moreover, consider the grand jury sitting, preserving that spirit I mentioned some time ago, of the determination of our people to keep the control of things in their own hands. They feel their sense of dignity and responsibility in discharging that work. They are participating in the administration of the law; they feel the dignity and responsibility of it. That is a very important feature. It imparts to the individual doing that work a sense of respect, and, in fact, affection, for the law, which is a very important thing in these days, and it may be said, "Well, that is only confined to a few men, the grand jury are only a part of the large community," but that is not so, because these men carry that spirit with them out into the community in which they live, and they emanate that idea amongst the people of respect and affection for the law, which is an important thing in any civilized community. That is one function of the grand jury which should not be overlooked.

Then, as to the safeguarding of the citizen, as I have said before, magistrates will make mistakes, and they will send men on for trial from time to time who should not be sent on for trial, and very often the functions of a grand jury save that man and save the state a very considerable amount of expense by preventing the case from going on to trial.

The saving of expense is said to be one reason why grand juries should be abolished. Are you quite sure that you are saving a large amount of expense by abolishing the grand jury? Take the concrete instance: a case comes before the grand jury and they find no bill; that ends it. If that case came directly from the magistrate to be tried, that case might last for days, it might last for weeks, and during the time that case was going on you would have twelve men trying it and you would be paying them their jury fees, and not only would you have the twelve men trying it and being paid fees, but you would have probably forty or fifty men sitting in the jury room during the days or weeks this case was going on, and you are paying them for sitting in the room idle, waiting till this case is disposed of. When you consider those things, you are not perhaps saving very much expense after all by abolishing the grand jury.

I think there are very many concrete instances of why grand juries should not be abolished. One idea that keeps constantly presenting itself to me is this, that it is a democratic institution, and when we see how democracies are vanishing from the face of the earth, and when we observe that these democratic governments are lost by reason of the fact that one democratic institution after another is abolished, until democracy disappears, it seems to me that the present time, having regard to what is going on in the world at the present day, and the tendency for people to adopt totalitarian forms of government, it seems to me that this of all times is a most inopportune time to talk about abolishing the grand jury.

MR. CONANT: Your Honour, just before leaving that—I think probably we need not pursue it further—do you not think this, that if they are to be continued a grand jury of five or seven would function just as well?

A. Should be continued?

Q. If they are to be continued, would a grand jury of five or seven function just as well?

A. That is an aspect of it I have never considered, whether it would be just as well to have seven as twelve. We had a very much larger number than twelve many years ago. I think we had twenty-six or twenty-seven, didn't we, some years ago?

Q. Well, we had more; I do not remember the exact number.

A. Yes, we had more. That has been abolished. I have never carefully considered whether seven would be just as satisfactory as twelve, but it may be that I am highly prejudiced in my view of the grand jury, for the simple reason that for a long number of years I have been constantly charging a grand jury sitting in court on what I considered the historical and practical importance of grand juries. I should be very sorry indeed if so important a democratic institution should disappear from our civilization.

MR. CONANT: What is the next subject, Mr. Silk?

MR. FROST: Tell me, sir, before you leave that, what do you think of the grand jury's inspection of public buildings and what-not? Do you feel that that is useful or not?

A. That is another function of the grand jury, too, which I think is important. I know that there are some people who advocate the continuance of a grand jury who say that that function might be taken from them. I do not think so. Everybody knows that these public institutions are inspected from time to time by public officers, and are very often pretty perfunctorily inspected, it becomes a mere matter of routine, but the grand jury, as I say, with that spirit of wanting to keep control of things in their own hands, inspect these institutions upon which their money is spent; it is their money that maintains them and keeps them, and they want to know what is being done with the money. They have a perfect right to, and they have a perfect right to know the institutions they are supporting, whether they are well supported and are serving the pur-

poses for which they are created. These men go out into these institutions that are maintained on public money and inspect them, and very often they find a condition existing that should not exist. There is hardly an inspection made by a grand jury in which some comment is not made about the inefficiency of these institutions, notwithstanding the fact that they are being inspected by public officials, and there is no doubt about it that their complaints are well founded, because upon investigation they are found to exist, and they should be removed, and they would not be removed unless the grand jury inspected these institutions. Then, again, it creates a spirit of benevolence—altruism is the word—in the minds of the grand jurors themselves; they lose their selfishness, they take an interest in their fellow men and in the public welfare, by interesting themselves in these public institutions.

MR. CONANT: What is the next subject, Mr. Silk?

MR. SILK: Your Honour, I think you expressed a desire this morning to say something with regard to the procedure in Division Courts, and particularly with regard to judgment summonses?

A. Well, what is it you would like me to say about judgment summonses?

Q. I thought that you had some views with regard to the present judgment summons procedure as it is now in force in the Division Courts, as to whether it is a proper and desirable procedure to be continued?

A. Well, it is subject to very serious abuse. Very many times a man has a large number of judgment summonses issued against him, and then when he makes default in the payment of some of these judgment summonses, a show-cause summons is issued, with the result that a very considerable amount of costs are piled up against the man, sometimes amounting to more than the debt. If something can be done to abolish that fault in the system it should be done. I think you mentioned to me some procedure in the province of Quebec.

Q. The Lacombe law, yes.

A. From the somewhat hasty consideration that I have been able to give it, it seems to be probably the most effective and satisfactory way of dealing with that question.

Q. Do you wish to express any views on any of the other matters before the Committee?

A. I do not know of any other matters before the Committee, except the few that you mentioned to me this morning, and I would ask the Committee to excuse me from expressing any views on them, because I have not given the matters any important consideration. Perhaps I should apologize for taking up so much time now in discussing the question of the grand jury with you.

MR. CONANT: There is one subject, Your Honour: There are quite a few summary conviction appeals come before your court, aren't there?

A. Before the County Court Judge's Court?

Q. Yes.

A. Oh, yes.

Q. Of course, now it is a trial *de novo*, the appeal?

A. These summary conviction appeals are tried *de novo*.

Q. Liquor cases, of course, are tried on the record?

A. Yes; that is a provincial law.

Q. Quite. What do you think of the advisability of trying appeals on the record, the same as we do with the liquor cases?

A. A couple of aspects of that occur to me. In the first place, is it wise to take an appeal from a magistrate to a single judge, County Court judge? Is the County Court judge in any better position to decide the case than the magistrate, under ordinary conditions?

MR. SILK: Do you suggest that the appeal should go to the Court of Appeal?

A. I do not see the logic of appealing from a very sensible, prudent magistrate, a man of good judgment, perhaps to an inferior County Court judge; I do not see the sense of it.

MR. CONANT: Well, of course, if it went to the Court of Appeal it would be on the record, Your Honour.

WITNESS: Well, it may not be necessary to go to the Court of Appeal, but I do not think it should go to one man, and have him reverse the decision of the magistrate. If the County Court judge is going to decide the case on appeal, I think by all means he ought to try it *de novo*.

Q. All the evidence over again?

A. I think so, because you cannot determine—the magistrate tries the case, he sees the witnesses, and he is able to decide the demeanour of the witness and the manner in which he is giving his evidence. You lose all that by reading it off the record, and you place the County Court judge in a position very much inferior to that which the magistrate has, of watching the witness; so if you are going to have the County Court judge decide it, you should have him try it *de novo*. And I question very much whether it is a proper course to pursue, to take appeals from a magistrate ——

Q. That always appeared to me to be a very anomalous thing in our administration of justice—two trials of the same issue. It is contrary to every other branch of our procedure, two trials, isn't it? The law is very jealous under our *autrefois* acquit and *autrefois* convict law that a man should not be put in jeopardy more than once, and yet in our summary appeals we really put him through two trials on the same charge and ostensibly on the same facts. When I was more intimately associated with them it always seemed most ridiculous to me.

A. I do not think, myself, it is a very logical procedure, simply for the reason that it is an appeal to one man. If you would have two County Court judges sitting on the case it might be different.

Q. Well, would it improve it if the appeals were made to a Supreme Court judge?

A. That means expense.

Q. Well, if you are going to constitute an appeal court of say two or three judges—three, it would probably be—it would be equally expensive, Your Honour, would it not?

A. Not necessarily so. You have two or three judges of a district in different parts of the province of Ontario, witnesses come to the county town, and have the cases tried, instead of having to come to Toronto or engaging counsel in Toronto, if you hear it on the record instead of *de novo*.

Q. Supposing we were to set up the system—I am just trying to give practical application to what is in your min l—supposing we were to set up a system and constitute a board of three judges from the district to hear summary conviction appeals, would you then try them on the record, hear the appeal on the record?

A. Yes, I think in that case it might be well to try them on the record. There you have three men sitting.

Q. Well, I agree with you, there is some force to that, some merit to that.

MR. SILK: It has been suggested here—I am not sure whether it is in Mr. Barlow's report—that an appeal from the Division Court should go to a single judge of the Supreme Court instead of, as now, to the full court or a court of three judges.

A. Well, you take a judge, for instance, sitting in the County Court of the county of York, sitting in the Division Court; his Division Court judgment will go to a single judge. That same judge may be sitting in the County Court, and his judgment may be appealed to the Court of Appeal. Why should there be that added restriction?

MR. CONANT: Because the issues are not as large.

WITNESS: That is the only reason, because the amount at issue is not large.

MR. CONANT: But doesn't it strike you, Your Honour, as being illogical that in a Division Court case, involving let us say $75 or $100—say $125, because the right to appeal is in cases of over $100—that it should engage the attention of three judges usually at Osgoode Hall, and all the rest of it, five copies of the evidence, five copies of the exhibits, the appeal book, and all the rest of it? I just want your view, your Honour.

A. Well, I am hesitating about expressing an opinion, because I have never been called to consider that question before, and I do not like expressing opinions

unless I have got some reason for them. I am sorry, I would not be able to give you much light on it.

Q. That's all right, you Honour. These just come up more or less incidentally.

MR. SILK: I think there is just one further matter. It has been suggested before the Committee that there is some need to improve the calibre of the jurors; that observation applies particularly to the county of York. Do you consider that that need exists?

A. Well, since you have mentioned it to me this morning, I have been just wondering how you are going to improve the calibre of the jurors.

MR. CONANT: That is what we are wondering, Your Honour; we want you to tell us.

A. I am sorry, but I have not been able to see just now how you are going to improve the calibre of jurors. The selectors sit down at a table; they have the jury book before them; there are three of them sitting there; the clerk calls off three names; one of the selectors mentions one of those three names—he never heard of him before, knows nothing about the qualifications and that sort of thing—and so on all along the list. How are you going to improve that?

MR. CONANT: The fundamental difficulty, apparently, has arisen from the fact, Your Honour, that in the early days of the jury system, say seventy five years ago, juries were chosen in a jurisdiction where the selectors had reasonable opportunity or likelihood of knowing somebody knowing those jurymen, and that condition still exists in the smaller jurisdictions, in my own county for instance, but where you get to the City of Toronto, where you are dealing with thousands of names, how can we meet that situation in the larger jurisdictions?

A. I don't know; I don't know how it can be done. Do these selectors in these smaller places always exercise care in selecting?

Q. Oh, yes; not only that, but then you have a board of selectors in the smaller places, for instance, in my own district, and somebody around the table will know practically every name that is called; one man won't know them all, but somebody will know something about every name that is called. That does not apply in Toronto, of course, does it?

A. No, it does not. They are selected here without any knowledge of the qualifications of the men whom they are selecting. I do not know how you are going to do it.

Q. It is simply a matter of routine in Toronto, picking out enough men?

A. Just picking out the men without regard to qualifications.

MR. SILK: I think that is all I have for His Honour.

MR. CONANT: Thank you very much, your Honour.

J. W. McFADDEN, K.C. (Crown Attorney, County of York).

MR. SILK: Mr. McFadden, you have been the Crown attorney for the County of York for some years now?

A. That is correct.

MR. CONANT: For how many years, Mr. McFadden?

A. I came in as assistant in 1919; I have been Crown attorney since 1931.

MR. SILK: Twenty-one years in the office. And you have had considerable experience with grand juries?

A. Quite a lot.

Q. During that time, have you read Mr. Barlow's report?

A. Yes.

Q. That pertains to grand juries. And do you agree with his reasons and particularly with his conclusion that grand juries should be abolished?

A. I am not so sure that there is much to be gained by abolishing the grand jury. Of course, one cannot pronounce on that without knowing what, if anything, is going to be set up in its place. The point I want to make is this, that the grand jury in the city of Toronto and county of York, so far as being an expense, it has saved the city thousands.

MR. CONANT: It has what?

A. Saved. There was one sitting of the Supreme Court where I think the saving to the city of Toronto was about $11,000.

MR. SILK: Because of the number of no bills, you mean?

A. They threw out eleven out of twenty-two. Now, take the cost of one trial. We won't average two trials a week in the Supreme Court. We have fifty-two jurors, and this last week they have only tried one, because it lasted until Thursday night and they could not start a new case then, and consequently there was only one. But even take two: that is three and a half days; that would average, I think, about $1,100 to perhaps $1,500, so you can see that if eleven bills are thrown out, the saving in money under the old system is very considerable.

Q. Would a large part of those cases that were thrown out be cases in which automobiles were involved?

A. Yes. As a matter of fact, I have got the bill here. There has not been a time when a grand jury has met in the city of Toronto but they have thrown out bills, with two exceptions—that is since 1935, because I have the figures since then. They have thrown out eleven, and six, and four, and four—all the time.

Now, as to the expense of the grand jury: according to the sheriff, I figure the expense of the grand jury is only $400.

MR. CONANT: You mean for a sitting?

A. For a sitting. So that you see the grand jury costs you—and, of course, I am only talking about Toronto, because I don't know anything about the country. You pay $400 for the grand jury ——

MR. SILK: Excuse me. Does that just include the actual moneys paid to the grand juries, or does it include counsel fees and fees to witnesses?

A. Oh, no; this is the actual money paid to the grand jury.

Q. I understand the other fees amount to about the same?

A. $1,500, I think, in the Sessions, and $1,900 odd in the Assizes. I said to him, "How much of that is taken up by visiting?" "Well," he said, "it would be a thousand at any rate"—$1,000 for visiting, so that leaves the cost of the jury roughly about $400 for each sitting.

MR. LEDUC: You mean, it costs a thousand dollars to have the grand jury visit the institutions?

A. Yes.

MR. FROST: Couldn't that be done by a small jury taken from the petit jury panel, the visiting end of it, or would that be desirable?

A. It might be done; but in my opinion I would do away with visitation altogether.

MR. CONANT: You would do away with what?

A. Visitation by grand juries.

Q. Inspection of institutions?

A. Inspection of institutions, yes.

Q. Visitations, with all deference, does not seem to be a very good word, there.

A. If the jury were confined to passing simply upon bills and simply be dismissed, making it a business institution, I think they would perform good work, as is shown in Toronto by what they have done in the past.

Q. Just while you are on that, Mr. McFadden, do you or do you not think that if grand juries were abolished, magistrates would give more mature consideration to preliminaries before committing them or otherwise?

A. I do not think, Mr. Attorney General, that that is a conclusion you can

draw, because you have to consider human nature. Take these motor accident cases, especially when children are killed. A magistrate, perhaps, considering the law of recklessness as laid down in some of our cases, may thrown it out. What is the consequence? The only consequence of that is that there is a complaint at once, and the magistrate has got to make a report, and he looks upon it as a sort of censure, and he comes to the conclusion that it is easier to send it up to the grand jury. This is one thing I think that you must remember, that is, that the grand jury will satisfy people. They have not the confidence in the Crown attorney, but they have confidence in the grand jury. I don't know why it is, but when they go there before thirteen men, probably coming from the same localities as themselves and asking them questions, they seem to be perfectly satisfied. I have never had a complaint. And very often when a man's child has been killed, and you can understand him being perhaps much irritated about it, and thinking the magistrate was a sort of fool to throw it out, that it should have been sent up, yet if you say to him, "Now, bring all your witnesses and we will put a bill before the grand jury," and if the grand jury return no bill, you will never hear another word. So that I do not think, in answer to your question, that we are going to look for a new heaven and a new earth so far as committing by magistrate is concerned. They are in a more or less awkward position.

MR. SILK: Do you think it is advisable to retain a grand jury of the same size, thirteen men?

A. Well, you know, that matter was considered by your own House here. Five years ago I recommended that we cut it down to eleven or nine, I forget which.

MR. SILK: Nine, was your recommendation.

MR. CONANT: Why wouldn't seven do just as well?

A. Because you don't leave any leeway in your Code. Seven must return a true bill.

MR. CONANT: You would have to arrange the Code, of course.

MR. FROST: If the Code could be amended, would you think seven would be sufficient?

A. I do not see any object would be gained by that, because, after all, the expense of a grand jury is not going to kill the country, and it is a very bad thing having one province with one number of grand jurors and another with another.

MR. CONANT: We have got it now. They are trying cases in the west with seven-man petit jurors, Mr. McFadden.

A. Yes, and in criminal stuff objecting to it, to the small number of jurors.

MR. CONANT: Who is objecting?

A. The Bar of Manitoba had a protest.

Q Yes, but I have not heard any other objections. The people out there are perfectly satisfied with seven-man juries, so far as you can find out.

A. Then they must look for a unanimous jury.

Q. No, they don't.

A. I was not aware that they had amended that. The section reads that where the panel is not less than thirteen, seven instead of twelve may return a true bill.

MR. SILK: I think that is it. It is in the Code, and I haven't a copy here.

MR. FROST: Where you run into some criticism of the expense of grand juries is perhaps in some of the smaller centres, where you have this situation: You have, I suppose, ninety or ninety-five percent of cases tried in a summary manner, and they elect trial before the magistrate or elect speedy trial before the county judge; then you run into a small residue of cases in which there is a jury trial, either at the Sessions, or in the compulsory cases, such as manslaughter or murder before the Assize Court jury. In those cases you find that grand juries are necessary, and the expense to the public of calling and empanelling a grand jury to pass upon what the magistrate has passed upon before, in finding there is sufficient evidence to send the man up for trial, the combination of that and the combination of keeping the petit jury sitting there, usually until the next day, while the matter is being considered, does add a great deal of expense in those cases. Now, that applies, I should say, in most of the counties outside of Toronto. As to your situation here, you have given, of course, very good reasons ——

A. Yes, of course, I prefaced my remarks by saying I know nothing of the country places outside.

Q. In that line, it would be fine to find some way of just getting over that difficulty and that added expense. You can see the situation?

A. Yes.

Q. For instance, some man is brought up for stealing cattle—I know of one such case—and he elects trial by jury; the result is that a grand jury is empanelled, the petit jury is empanelled, or the panel is brought there, and then after a bill is brought in he is put on his trial. Well, the expense of that is really enormous. The result is that grand juries have got into very bad favour with the county officials and with the county councils and what not, and I think that is why we get so many resolutions from county councils asking that they should be abolished. Now, I am very much impressed with the arguments that you and His Honour, Judge O'Connell advanced, but there is the practical difficulty.

A. Well, of course, the real expense is your trial jury; that is your real expense.

Q. Your situation in the city here may be different, where magistrates are handling a great mass of cases and they are being passed through, and perhaps, consideration such as they should have is not given to them. On the other hand,

I am bound to say this—I may be wrong; you may be able to correct me with some of the records here—I cannot tell you of a case in recent years in central Ontario, for instance, where a no bill has been returned. In every case it seems—of course, it may be that the magistrates are very good, are infallible, but that is the situation. The result is that many people have got to say, "Well, this is just a reflection of the Crown counsel's opinion on this thing." Again, that may be unfair, but that is what is causing the agitation from the other side of it.

A. I cannot see why your Crown counsel would want to get a true bill in a case where he knows, after labouring a couple of days before a jury, he is going to get a verdict of not guilty. If a case cannot carry itself through a grand jury, it certainly won't carry itself through during the trial; that is obvious.

MR. CONANT: When you spoke of expense, Mr. McFadden, I did not question you then; you referred only to the direct expense, that is, the fees of the jurymen and that?

A. Yes. I am not allowing anything for counsel ——

Q. Of course, are there not a lot of expenses that are difficult to estimate, such as officials and counsel, and, particularly in country Asiszes, very often I have seen the petit jury held up and kept waiting around until the grand jury makes its presentment. That is pretty difficult to estimate, isn't it?

A. Yes. Well, of course, that can't happen here, because we usually are going on with both at the same time.

Q. But it does happen in the country.

A. As I say, I don't know anything about that.

MR. STRACHAN: Not if a civil case goes on.

MR. CONANT: Oh, no, they won't start in on a civil case ——

MR. FROST: Well, here is your difficulty, for instance: In country places the criminal list is usually small, and the grand jury can take that, probably, in one day. Well, the judge will hesitate to call a petit jury in a civil case; he usually sets over all jury cases until next day, or perhaps for two days.

MR. CONANT: That is right.

MR. FROST: And he takes non-jury cases.

MR. CONANT: And the petit jury panel are waiting around.

MR. FROST: That is the point. Sir William Mulock mentioned the fact that judges could let the panel go. On the other hand, some of these people have to travel considerable distance, some of them a hundred miles, and you can't send them back; it would be cheaper to keep them.

WITNESS: What would the objection be to having your grand jury called

the week before, so that you know exactly what bills you are going to refer to them?

MR. FROST: What is that again?

A. What would be the objection to calling your grand jury the week before you call the petit jury?

MR. CONANT: Of course, that would not work in the Supreme Court, Mr. McFadden, because the judge has to come from Toronto to Whitby; he couldn't come down this week and again next week. He has that assignment, and he has got to clean the whole thing up.

MR. SILK: I think we made provision for that in the Statutes of 1937, so that the petit jury can be told not to come until a day or so after the court opens, or even a week.

MR. MCFADDEN: There is a provision for that in there?

MR. SILK: Yes, it is there.

MR. CONANT: What is the next, Mr. Silk?

WITNESS: Pardon me, Mr. Chairman. Talking about that small grand jury, you have this difficulty: you may get a couple of cranks.

MR. CONANT: What, on juries?

A. On a grand jury. Sometimes you just happen to strike one man, and he is "against the Government" all through.

Q. I thought that grand juries were impeccable, without reproach, Mr. McFadden.

A. Well, there is just the odd case that you may strike. Generally, they are very good and give very great consideration.

MR. SILK: The provision in the Code that you refer to is section 921 (2):

> "Seven grand jurors, instead of twelve, may find a true bill in any province where the panel of grand jurors is not more than thirteen."

And you say that if we reduce the grand jury to nine, the difference between seven and nine is ——

MR. CONANT: You would have to amend the Code throughout. There is no use taking time on that. You would have to set up a new provision for finding a bill. You could not do it under the present framework.

WITNESS: Of course, the advantages of the grand jury are simply these, that you have got an independent body that, so to speak, will carry the responsibility of certain cases which you may not want yourself to press. To give you

an example of what I mean, there have been occasions where men have wanted a bill laid against a man say for arson; there is no doubt it is an incendiary fire, but it is very doubtful, and at the same time, perhaps, suspicious, that the owner of that building has set fire to it. Sometimes they wanted a warrant. Well, I hesitated to ask for a warrant, and I have often said to them, "I'll tell you what I'll do: I'll put all the facts before the grand jury. If they say, 'Yes, we think that man should be put on his trial,' all right," and that has worked very satisfactorily. Another time where the grand jury works satisfactorily is where you have a public inquiry, perhaps lasting for weeks, perhaps months, and there is no sense going through all the paraphernalia of a committal for trial there; the defendant knows all about what the facts are; put the bill before the grand jury straight off.

MR. CONANT: Do you think that is a fair substitute for a preliminary by a magistrate in open court, with cross-examination and all the rest of it?

A. I think so.

MR. FROST: Is that not somewhat after the American style? I am not at all familiar with their style, other than what I get from newspaper accounts. For instance, you see lots of accounts where grand jury investigations are conducted in certain places in the States, and they bring in bills and what-not, and apparently their proceedings are in public; do you know anything about that?

A. No, I do not, but I know that in Scotland they consider a committal for trial very unfair.

MR. SILK: Thomas Dewey had two or three grand juries sitting at once, for a year or two.

MR. FROST: Yes. How was that carried out?

MR. SILK: Well, apparently, as soon as he started an investigation he would have a grand jury empanelled, and then he would bring all his witnesses before the grand jury, and the grand jury would instruct that proceedings be taken.

MR. CONANT: They have an entirely different set-up.

MR. SILK: Oh, of course they have. The grand jury serves a different purpose there.

Q. Mr. McFadden, there is just one angle you have not discussed; that is the matter of substituting a County Court judge for a grand jury, to hear a *prima facie* case.

A. If you are going to change—the next thing is, what is the advantage of that?

MR. CONANT: That arose, Mr. McFadden, out of this situation: As you know, the Attorney-General can direct an indictment to be laid against anybody. Then the objection was raised that he could put a person upon his trial, if there was no grand jury, without any intervention, without any intervening protection, and the suggestion was made that in the case where the Attorney-General directed

an indictment to be laid, those cases would have to be dealt with by a judge before they went to trial, and in those cases, only he would function in the same way as a grand jury would. It is just a protection to the subject, Mr. McFadden.

WITNESS: I don't know that there is a great deal of protection. Take the Crown attorney to-day, preparing a bill; he has to get the sanction of a judge; he gets the sanction of a judge, but he doesn't waste half an hour or an hour even, going over the case with a judge.

MR. CONANT: Oh, yes, but that is hardly sufficient protection, Mr. McFadden. That sanction is usually given on the assurance of the Crown attorney that it is a proper case. I say that with all deference. I do not think even the present practice is quite sufficient.

WITNESS: No, but I am pointing out to you just how that thing in actual practice works. He has reliance, undoubtedly, on the Crown that he is putting a proper bill before him. Now, there are cases where we should observe the depositions are laid before the county judge, and he gives the sanction whether he will allow a bill to be prepared or not. As a matter of fact, I have an Act here, I think it is in Northern Ireland, where that is done; they did it in the Sessions, but not in the High Courts. But that, of course, is going to take time too; it means, if the judge is going into it ——

MR. CONANT: Oh, yes, but that does not arise very often. Their view was, that where that extraordinary remedy is taken of the Crown preferring a bill, there is no grand jury to put them before, we would interpose a judge who would function as a grand jury in finding no bill or a true bill before the person was put on trial. That would be a very considerable protection, wouldn't it?

A. I think that would be a wise thing to do.

Q. I think it would be better even than the present practice?

A. It might be all right.

Q. I have always thought the present practice was a little bit drastic.

A. Of course, the abolition of the grand jury would speed up your administration of justice.

Q. The abolition of the grand jury would speed up the administration of justice?

A. Oh, yes.

Q. And I put this to you, Mr. McFadden: Isn't it difficult, if not impossible, to accurately estimate what that would mean in the saving all round—witnesses waiting, jurymen waiting, officials, judges, counsel—if you once concede that it would speed up the administration of justice, mustn't you at the same time, concede that it would mean a very considerable saving, more than the $400 you refer to?

A. It would save, of course, all the fees you pay to witnesses that you bring before a grand jury.

Q. Oh, well, the waiting, the time of all parties waiting ——

A. I do not see that you are going to alter your actual trial, but you would save the public coming down and save perhaps, complainants and their witnesses being brought from work, and subjected to cross-examination two or three times.

Q. One of our greatest difficulties, particularly in criminal trials, is to reconcile our witnesses to the fact that they have to wait around, isn't it, Mr. McFadden?

A. Oh, yes; and a lot of men ——

Q. There is a very great difficulty there.

A. Some men lose their jobs over it, undoubtedly.

Q. That is right. Doesn't it occur to you that anything we could do to better meet the convenience of witnesses—in criminal cases particularly, because most people have no personal interest in a criminal trial—is very well worth consideration?

A. Oh, that is certainly one point that pulls on that side, so to speak, because these witnesses are down sometimes at the preliminary, they are hanging around, then at the grand jury ——

Q. Before we amended the law they used to go to an inquest, a preliminary, a grand jury and a petit jury.

A. Yes. An independent citizen that was not interested in the thing at all ——

Q. By the time he was through with it he was pretty nearly ready to say, "Well, I'll never get mixed up in one of these again," wasn't he?

A. He was not only ready to say it; he did say it.

MR. FROST: I was wondering as to whether, before His Honour Judge O'Connell goes, and before Mr. McFadden leaves the box, you wanted to raise that question about improving the ordinary petit jurors.

MR. CONANT: Oh, yes.

MR. STRACHAN: His Honour Judge O'Connell said he did not know any way of doing it.

MR. CONANT: May I ask you, Mr. McFadden: Your office handles, I presume, appeals from summary convictions?

A. Yes.

Q. What do you think of the present practice, *de novo* trials?

A. Oh, I would think it should be retained. The difference between The Liquor Control Act and the ordinary trial was, in The Liquor Control Act they were trying to enforce an unpopular measure, and the reason they gave an appeal on the record was, that the judge was supposed to look over the record, and if the magistrate was not wrong he was to affirm it; that was the principle. In other words, *prima facie*, the magistrate is right. But in a trial *de novo* it is a new trial before a judge, and he can take his own view.

Q. Isn't it illogical, taking the whole scope of all our administration of justice, really putting a man on trial twice, Mr. McFadden? That is the way it always seemed to me, because that is what it means.

A. It is open to that construction.

Q. Doesn't our law all through guard against that most jealously, putting a man on trial twice? *Autrefois* acquit and *autrefois* convict—there are volumes of law on that. Yet, in this instance, we deliberately put a man on trial twice for the same offence and ostensibly on the same facts.

A. That is quite true; but then look at it in practice. A lot of your summary convictions appeals would be taken from decisions of justices and ——

Q. Oh, not nowadays; they are all lawyers now, practically all our magistrates are lawyers now.

A. Well, magistrates, let us say, then. They have got a lot of cases to go through; on the afternoon list in Toronto, there are sometimes a hundred.

MR. STRACHAN: About a hundred thousand a year in Toronto.

WITNESS: Oh, it is tremendous. Take, for instance, a man is prosecuted for speeding. The magistrate reads out the name, and the man picks up the card and says, "Doesn't appear," looks at the information, "Speed so-and-so," and he fines him five dollars. There is no justification for that, but the magistrate is quite safe in doing it, because if there is an appeal he can start *de novo* and bring down the officer. But if you were going to bring down the officer to prove all those offences, the city of Toronto would need to double the police force of Toronto. If every officer had to come down and swear that that was the car and the speed the man was going at, so as to make the *prima facie* case for the magistrate, you would need another staff of police officers. So it is very useful in this respect, that where things are going through fast, and perhaps some little technicality is missed out, you can, up in the other court, put the formal proof in, although it is left out in the court below, and in actual practice it works out very well.

Q. What was the other point? About juries, whether you can formulate any formula for improving the jury panels.

A. I personally, haven't any objection to our jurors in Toronto. I think we get a good jury in the criminal court. Of course, once or twice we may hit

or we may miss, but generally speaking we get a very good jury trial. Of course, some of our best men are sometimes released, and some of our best men are very often challenged, especially in criminal courts where there is such a big challenge, but, taking it all in all, I do not see that anyone has any reason to quarrel with the jurors whom we get; at least, I would not quarrel with them.

Q. What do you think about the exemptions? Do you think they are too wide for modern conditions?

A. I am afraid you have asked me there something that I haven't much studied. I don't know that I want to express any opinion on that at all.

MR. CONANT: Anything else you want Mr. McFadden to discuss?

MR. SILK: No.

MR. CONANT: Thank you, Mr. McFadden.

WITNESS: Here are these figures.

MR. FROST: This is very interesting. Have you anything further?

A. No—unless the visitations of the grand jury; I can give you those if you want them.

MR. CONANT: This item of eleven no bills and eleven true bills at one assize, is that correct?

A. That is correct.

MR. SILK: It might be helpful to file that with the Committee, if a copy is available.

MR. CONANT: Yes. Put some heading on it when you do so, to indicate what it is.

WITNESS: You are quite aware that they cut down the visitations of grand juries in 1936?

MR. CONANT: Oh, yes.

WITNESS: But the arrangement then thought to work out was that there would be one visitation in the fall and one in the spring, the Supreme Court jury visiting in the fall and the Sessions in the spring.

MR. CONANT: There must be six months intervene; isn't that it?

A. Yes; but then, unfortunately there was a clause put in, that where the judge directs ——

Q. Otherwise directs.

A. Well, as a matter of fact, it is not working at all, because, as you will see from that schedule, there have been three years where there should have been six visitations; there have been thirteen of the City Hall and the Toronto Gaol.

Q. How many?

A. Thirteen.

Q. In what period?

A. Between October, 1936, and October, 1939.

Q. That is over four a year.

A. Practically every—you see, the judges direct that practically every one ——

Q. Just while you are there, why would the judges do that?

A. Well, you will excuse me.

Q. Is it your view that that should be eliminated, and make it six months definite, without any discretion in the judge to vary it?

A. The reason the discretion was left in was, we thought that perhaps some peculiar—the reason I say "we" is because I had something to do with the amendment—was, we thought some peculiar condition might arise, some sudden complaint about some hospital or something, and we thought it would be a wise thing to leave a discretion to a judge.

Q. Has any peculiar condition ever arisen that really necessitated it?

A. No.

MR. FROST: Mr. McFadden, there is something to be said for having members of the public chosen—for instance, a grand jury will be chosen—to have them inspect homes for the aged, jails and what not; I think it is in many ways a good thing, but do you think that perhaps that situation might be met by taking say, five or six, perhaps seven, men from the petit jury panel and delegating them to do that, that that might save the expense of dragging around thirteen men?

MR. CONANT: There is no reason why you could not strike an inspecting jury from your petit jury panel, is there?

A. Oh, none in the world, no.

Q. And they would be just as competent to do it?

A. You talk about—it is not a very great source of education to educate five men out of the community. Of course, it is all very good. Where the grand jurors are impressed most of all is when they are in the grand jury room passing on bills; that is where they get their eyes opened as to what is going on.

MR. FROST: Of course, I was only referring to the inspection angle of it.

WITNESS: Yes, I understood.

MR. FROST: For instance, Sir William Mulock said yesterday that he thought the inspection end of it might be done away with. You take that angle also. His Honour Judge O'Connell took the view that it was an important function. Now, it occurred to me that perhaps if inspection by jurymen is desirable, perhaps it might be done by petit jurymen, who would be waiting in any event there, perhaps, on the jury panel, and that they might be given that duty of making these inspections.

WITNESS: Yes, that could be done; there is no reason why that could not be done.

MR. CONANT: Thank you, Mr. McFadden.

J. G. HUNGERFORD, Estates Officer, National Trust Company.

MR. SILK: Mr. Hungerford, you are an estates officer with the National Trust Company?

A. That is right.

Q. I refer to Mr. Barlow's report, item number 12, appeals from the Surrogate Court, and there is also a statement of this matter on pages 175 and 176 of the Committee notebook. Referring to section 29 of The Surrogate Courts Act, subsection 3, the words that cause the difficulty are the final words of the subsection:

> . . . if the amount involved exceeds $200" (an appeal shall be) "in like manner as from the report of a Master under a reference directed by the Supreme Court."

That refers to Rule 507 of The Consolidated Rules of Practice, the rule that governs an appeal from the Master, which reads:

> "An appeal from the report or certificate of a Master or Referee shall be made to the court upon seven clear days' notice, and shall be returnable within one month from the date of service of notice of filing of the report or certificate."

Mr. Hungerford, I think you will agree with me that the difficulty is that, while it is the practice to serve a notice of filing from a report of the Master, that is not the practice in the Surrogate Court?

A. That is correct.

Q. You will also agree that it is not a practice that could easily be adopted in the Surrogate Court, having regard to the number of interested parties in many estates?

A. Exactly so.

Q. Now, will you tell us some of the difficulties that have arisen in the practice of your company, with regard to not being able to close off appeals under this section?

MR. CONANT: Where is that?

MR. SILK: Number 12 in Mr. Barlow's report, at page B35.

WITNESS: Mr. Silk has outlined the situation. Practically speaking—I think I can speak for the Trust Companies in this—no Trust Company files the report, nor does it serve notice on beneficiaries, because of the fact that that would be expensive, especially in small estates, where you have got a large number of beneficiaries who might have vested or contingent interests. It is simply the practice to send a copy of the judge's order to the other counsel who are represented on the passing. As a result of that, it would seem to leave it open almost indefinitely, if the judge's order is not filed and notice of the filing sent to the interested beneficiaries, for them to open up proceedings.

MR. CONANT: At any time?

A. At any time, sir, yes. In other words, the passing of the accounts could not be considered filing of the release to the executors at all. Of course ——

Q. There is case law on that too, isn't there? Isn't there some case law on the effect of the judge's order on the passing of accounts?

A. I don't know, sir, but it seems to be amply clear from this, that if the procedure set out in section 29 is not followed, it does leave it open to a person who is beneficially interested in the estate to attack the passing of accounts, and it could not be considered a final release. Now, actually, we have not had any cases—I have checked it with the other Trust Companies—we have not had any cases where that has actually been done, but it is something which we think is most unsatisfactory that this should be left open for any number of years, and it is something which could be very easily remedied.

MR. SILK: That is, under the existing law and the existing practice in the courts, there is no time limit for the taking of an appeal?

A. I am not speaking for Trust Companies alone; that applies to any executor, of course. It is just that we feel that ——

Q. You said it was the practice of the Trust Companies, but I believe it is the general practice in the court?

A. I am quite sure, yes. There was a suggested wording ——

MR. CONANT: How would this amendment take care of it?

A. The amendment would take care of it in this way, sir: There was a submission, I might mention, to Mr. Barlow be ore he made his report, by the Trust Companies Association, it was submitted by Mr. Leonard, after consultation with some of the other officers of the Association, and his suggestion is

that that reference, "in like manner as from the report of a Master under a reference directed by the Supreme Court," that those words be deleted and such words as these substituted, "Provided that every such appeal shall be returnable within one month from the date of service, by prepaid registered post or in such manner and upon such persons as the judge of a Surrogate Court may direct of a copy of such order, decision or determination."

MR. SILK: That is practically Mr. Barlow's recommendation, isn't it?

A. Yes.

Q. That is his proviso at the top of page B36?

A. Yes.

Q. In substance.

A. It is something that is unsatisfactory to go over the same ground again, and feel that you are never released by the passing of accounts, since someone can open this up at a later date.

MR. SILK: Well, I don't think I have anything further to ask Mr. Hungerford.

MR. CONANT: What is Mr. Barlow referring to on page B36, tariff of fees, when he speaks of lack of uniformity?

MR. LEDUC: He probably refers to some estates that were open before the tariff was put in force and have not been settled yet.

MR. CONANT: Have you anything else you wish to submit?

A. That is all sir.

MR. CONANT: All right, thank you.

Witness retires.

MR. SILK: That is simply a matter of amending the Order-in-Council to clarify the date upon which the new tariff comes into force.

MR. CONANT: What else have you, Mr. Silk?

MR. SILK: I have nothing more this morning—I understand Mr. Frost wants to get away—unless some matters to be read into the record, which will have to be done at some time.

MR. CONANT: Mr. Coulter, did you want to get on?

MR. COULTER: No, not until this afternoon.

MR. SILK: Mr. Coulter is going to be called this afternoon after Mr. Manning and Mr. Kent have made their observations on the same matter.

MR. CONANT: Well, what do you want to proceed with now, Mr. Silk?

MR. SILK: There is a letter on the matter of taxation of counsel fees, from Mr. Harold E. Fuller, K.C., of Sarnia, addressed to Mr. Barlow, dated January 6, 1939.

MR. CONANT: You are dealing with increased counsel fee now, are you?

MR. SILK: Yes.

MR. LEDUC: And other fees too.

MR. SILK: He deals also with the whole matter of taxation. The portion of the letter referring to that is about one page:

> "I suggest that Tariff A of the Rules of Practice be amended to provide that a local taxing officer shall have equal jurisdiction with the taxing officer at Toronto. Such an amendment would be not only of great convenience to all solicitors practising outside of Toronto but would also save clients' expense.
>
> At the present time if any increases are desired under the tariff it is necessary to apply in Toronto which not only takes time but costs money, which of course the client eventually pays. Not only this, but under item 18, where there is an originating motion made, a local taxing officer has no power at all to fix a counsel fee. This matter has been before the Ontario Section of the Canadian Bar Association on two occasions and both times a resolution favouring the change was passed. It seems to me that now when local taxing officers are for the most part taken from the ranks of practising solicitors and particularly when one considers the fact that they have the right to tax a solicitor and client bill, that they are well qualified to tax a party and party bill. This is particularly so when one considers that on a party and party taxation the other side are almost invariably represented by a solicitor, whereas on the solicitor and client taxation often the client is not represented by a solicitor.
>
> I am informed that one objection which has been raised to the suggested change is that it is desirable to have more or less of a uniformity of fees throughout the province. I suggest, however, that the present system gives no uniformity and if one were to examine a few of the bills taxed by the senior taxing officer it would be apparent that the present system does not give uniformity in the matter of fees. In the majority of cases the local taxing officer has much better and greater knowledge of the work done by the solicitor and is much better qualified to tax the bill than the senior taxing officer. For example, just recently I appeared on a motion before the court at Sarnia. The motion took about an hour. The senior taxing officer taxed my bill on the motion and allowed me a counsel fee of $250.00. There was an appeal from the motion and on the appeal I spent two days at Toronto with a junior counsel and argued the appeal. The taxing officer at Toronto taxed my bill and allowed me a counsel fee of $260.00 and refused to allow

any fee to the junior counsel because, he said, that the matter was one involving a question of law only and a junior counsel was not required. Had the local taxing officer taxed my bill on the motion I am sure he would not have allowed me over a $100.00, although he would probably have allowed a larger fee on the appeal.

The present system is cumbersome, expensive and unsatisfactory and I would urge as strongly as I can that this amendment be made. If you think it necessary or desirable, I would be pleased to make further representations in connection with this proposed change."

MR. CONANT: Well, that is of value; that should go on the record.

MR. SILK: Now, as to the work this afternoon, we are going to take up the matter of assessment appeals, with Mr. Manning, Mr. Kent and Mr. Coulter. Mr. Coulter is also going to say something about appeals from boards and commissions.

I have some matters here that I might usefully read into the record, if the Committee so desires. I may explain that when the Committee rose last spirng I wrote to Mr. Coulter, the chairman of the Municipal Board; Mr. Whitehead, the Securities Commissioner; the Hon. Mr. St. Clair Gordon, chairman of the Liquor Board; Mr. Young, of the Labour and Industry Board; and Mr. Harold, the chairman of the Workmen's Compensation Board. The replies for the most part were brief, except that from Mr. Harold, which is very useful. I asked them to reply, stating:

(a) What powers are exercised by your Board;

(b) What, if any, appeal exists from rulings of the Board; and

(c) Any views or observations you may care to make as to the advisability of an appeal.

I received a reply from Mr. Young, of the Industry and Labour Board, which comes under the Department of Labour. I will read the relevant part of his letter, which is short. He says: (April 19, 1940)—

"The Industry and Labour Board does not exercise any powers that have hitherto been exercised by the courts."

I might just add this, that Mr. Barlow's recommendation does not apply.

"The Board administers the Industrial Standards Act, the Minimum Wage Act and the Apprenticeship Act, and makes certain decisions in the administration of these Acts. We have no way of enforcing our decisions, however, except through the courts.

For instance, if a barber is found cutting hair for less than the schedule price, or if an employer is found violating a minimum wage order or an Industrial Standards schedule, the only way we can enforce observance is by taking the offending party to court."

Mr. Whitehead, of the Securities Commission, writes a longer letter; I think I will omit his answers to (a) and (b), and simply read his observations. He says, under date of April 19, 1940:

> "I, personally, would be glad to see a right of appeal from the rulings of the Commission where such rulings involve the refusal to grant a broker's or salesman's licence or the suspension or cancellation of a broker's or salesman's licence, particularly because such action might deprive a broker or salesman of his means of livelihood; but even in such cases where the decision arrived at is based on the Commission's records and other information obtained as to the honesty and integrity of the party concerned, the decision is a discretionary act and a right to appeal from such decision would likewise require the exercise of discretion by the court to which his appeal is taken and would not be an appeal on a question of fact or law. The measuring stick in the mind of the Commission in making such decisions is whether or not the broker or salesman concerned, in view of the information which the Commission has on its files as to his method of doing business in the past, can reasonably be expected to deal honestly with the public in connection with the sale of securities, and the decision on such a point clearly involves the exercise of discretion.
>
> Any order made by the Commission under ss. (b) of paragraph (1) above is clearly a matter of discretion and in my opinion there should be no appeal to the courts from such decision.
>
> Where the Commission exercises its power to compel funds and securities to be held as referred to in ss. (c) of section (1) above, until the Commission has revoked such direction, it might be advisable to provide for an appeal from such order, but such appeal should not go further than to enable the party concerned to have the Commission appear before the courts to show cause why such direction should not be revoked. The present power of the Commission to order funds and securities to be held is very useful in preventing the fraudulent removal of such securities, but the 'Stop Order' should be revoked as soon as the Commission is satisfied that the danger of the removal or dissipation of such securities has disappeared. Such revocation, however, should not be arbitrarily withheld."

MR. CONANT: Before you leave that, Mr. Silk, if you have not got it available, I would like you to get and place before the Committee the present system in England on appeals from the board which corresponds to our Securities Commission. I do not think that has been placed on record, has it?

MR. STRACHAN: No, I don't think so.

MR. CONANT: Gentlemen, don't you think that would be of value to this Committee, to have that?

MR. SILK: I think I have that in my files, and will locate it.

The letter from Mr. St. Clair Gordon is dated May 1, 1940, and he says in his observations:

"1. It must first be remembered that the Liquor Control Board is a licensing and control board and is not a law-enforcement agency. The only penalties which may be imposed by the Board alone are the cancellation or suspension of licenses, authorities, and liquor privileges. All fines and, or, jail sentences are determined by the courts and the Liquor Control Board, in no manner, assumes jurisdiction over criminal breaches of the Act."

Then, skipping to number 3:

"3. From the very nature of the powers ——"

MR. CONANT: Just a minute, Mr. Silk. Mr. Frost, in order to meet his convenience, is asking: if we continue until to-morrow night that would about exhaust the available evidence you have for this week?

MR. SILK: Yes, it will.

MR. CONANT: And we would resume, presumably, on Monday morning.

MR. SILK: And for next week, Monday and possibly Tuesday; I am not sure.

Mr. Gordon's letter continues:

"From the very nature of the powers granted to, and the obligations imposed on, the Liquor Control Board, it must be apparent that there can be no satisfactory appeal to the courts. In having general supervision throughout the whole province, the Board are in a better position to determine the needs of various municipalities than any tribunal dealing with a single, isolated case."

The one remaining reply I have is somewhat lengthy. It is from Mr. Harold, of the Workmen's Compensation Board. There has been a great deal of work put into it. I think it should be read into the record. Shall I proceed?

MR. CONANT: Well, if you can finish that before the adjournment. Take out the important part.

MR. SILK: I will just give his observations. He first of all tells the functions of the Board, which are well understood by this Committee, I think.

"On the question of appeal I may refer you to the material which was furnished the Department of the Attorney-General in January of 1935, and again in February, 1940. . . .

The original Act drafted by Sir William Meredith, then Chief Justice of the province, after extensive investigation in Canada, United States and Europe, contained no right of appeal. In his final report to the Government, extracts from which are appended hereto on a separate sheet, he expressed himself in part as follows:

Page 509. 'I think it would be a blot on the Act to have a right to appeal unless it can be shown there is danger in making the Board final.'

Page 511. 'One of the justifications for this law is to get rid of the nuisance of litigation, and I think even if injustice is done in a few cases it is better to have it done and have swift justice meted out to the great body of the men.'

Page 14. 'In my opinion it is most undesirable that there should be the appeal for which the draft bill provides. A compensation law should, in my opinion, render it impossible for a wealthy employer to harass an employee by compelling him to litigate his claim in a court of law after he has established it to the satisfaction of a board such as that which is to be constituted, and which will be probably quite as competent to reach a proper conclusion as to the matters involved, whether of fact or law, as a court of law.' . . . 'In my judgment the furthest the Legislature should go in allowing the intervention of the courts should be to provide that the Lieutenant-Governor in Council may state a case for the opinion of a Divisional Court of the Appellate Division of the Supreme Court of Ontario, if any question of law of general importance arises and he deems it expedient it should be settled by a decision of a Divisional Court. Although I say this my judgment is against the introduction of any such provision, as it is probable that if any form of appeal to an appellate court is allowed, a defeated litigant will have the right to take his case to the Judicial Committee of His Majesty's Privy Council.' "

Then Mr. Harold continues:

"In 1919 the first concrete suggestion for an appeal was made. A bill was drafted, providing for a limited appeal on questions of law in matters of general importance, with a safeguard providing that the Lieutenant-Governor in Council should deal with the necessity or appropriateness of taking the appeal after first making an application to the Board for reconsideration of the matter in question. This proposal met with the opposition of both workmen and employers, and was abandoned.

In 1924 a modified form of appeal or review was suggested. A bill was drafted and introduced providing for the creation of a Review Board which would review the decisions of the Board. The bill was strongly opposed from the outset by organized Labour, whose views were set out in the letter to the then Premier, Honourable Howard Ferguson, in a letter of March 20, 1924. They expressed themselves as 'viewing with alarm the intention of the Government to press the bill' and were 'compelled to enter a more emphatic protest and more in keeping with the seriousness of the changes contemplated.' They further expressed themselves as follows:

'It is the opinion of the representatives of labour that the results of the proposed legislation will only cause contention, uncertainty, delay, and dissatisfaction, and increased expenditure in the administration of such legislation.'

'The outstanding features of the present Workmen's Compensation

Act have been precision in dealing with claims, stability of procedure, definiteness of the administration, and the general satisfaction experienced by those who are the beneficiaries of such legislation.'

'The present Act has been inexpensive and of great advantage to the parties concerned, we are thoroughly convinced, and we therefore appeal to your Government to withdraw Bill 167, as such legislation is inimical to the best interests of the workers of the province, and can only create dissatisfaction,' "

and so on.

"In 1927 the question of appeal again arose. In that year a Report of a Special Committee on the Workmen's Compensation Act was made to the Forty-third Annual convention of the Trades and Labour Congress of Canada, at Edmonton, Alberta, on August 22-27. The findings of the committee have an important bearing on the matter of appeal. In its report the committee expressed itself as follows:

Page 6. 'The prompt and satisfactory adjustment of all claims for compensation within the scope of the Act, is the ideal set for injured workmen and the dependents of those who are killed. That this is most desirable will be readily conceded by all concerned. The fact that there are between 50,000 and 60,000 accidents reported to the Board annually and that about 99 percent of all claims for compensation are being satisfactorily adjusted without any difficulty, is complimentary not only to the administration of the Act but also to the measure of co-operation of employers, workmen and medical men generally throughout the province. Moreover, it is a practical demonstration of the effectiveness and merit of the present system of providing compensation to injured workmen as against the old law with its intolerable delays and uncertainties due to the nuisances of litigation.'

Page 17. 'That over 97 percent of claims for compensation are being adjusted without any difficulty; and that less than 3 percent are regarded as "problem" cases. This statement seems to be substantially supported by the limited number of complaints received from the trades unions of Ontario in reply to the committee's questionnaire.'

No recommendation was made for an appeal.

In 1931 the Honourable Mr. Justice Middleton was appointed a Commissioner to inquire into, report upon, and make recommendations regarding the advisability or otherwise of making amendments to The Workmen's Compensation Act. In the submission of organized Labour to the Commissioner they expressed themselves as

'strongly opposed to the creation of appeal boards set up for the purpose of making final decisions on claims, because this would allow the reintroduction of many of the objectionable features associated with the litigation in which injured workmen were so often involved prior to the enactment of the present measure. Moreover, the power of such

an appeal board to make final decisions would close the door to any further review of claims.'

A suggestion was made that difficult medical questions might be referred to a committee composed of three medical practitioners. While these might make recommendations to the Board, the decision of the Board was to be final.

The Report of the Commissioner, dated February 11, 1932, copy of which is enclosed herewith, should be referred to. The working of the Act is referred to on page 4 in part as follows:

'This scheme of compensation in the place of legal liability based upon negligence has worked well and has given complete satisfaction to all those concerned. It has been a great advantage to the general public for it has avoided the expense incident to the litigation which prevailed under the former system. To the workmen it has brought compensation without the burden of establishing negligence.' "

And it goes on in the same vein:

"Reference should also be made to the remarks and findings of the Commissioner on pages 12 and 13 of his report. He finally concludes that:

'There is almost unanimous agreement on the part of all concerned that the introduction of any right of appeal would be disastrous. I am satisfied that the workmen should be the last to complain of the existing condition.' . . .

'I do not recommend any change looking to either an appellate tribunal or to any of the various schemes for boards of review.'

Since 1932 some suggestions have been made for a limited type of appeal or review, but have been dropped. As stated in the memorandum forwarded to Mr. E. H. Silk, Assistant Law Clerk, on January 25, 1935:

'One of the difficulties about an appeal in Ontario and the other provinces of Canada where the same plan of workmen's compensation applies is that while the claimant workman is a definite party the compensation is payable out of a general accident fund to which all contribute and no one is individually liable.'

In the provinces of Nova Scotia and New Brunswick a limited form of appeal is provided, but so far as my information goes very little actual use has been made of these provisions. It might be noted that no costs are paid under any Workmen's Compensation Act in Canada, whether as to compensation, medical aid, assessment, or any case stated, or any appeal.

Summing up, therefore, I think it may fairly be said that the present

plan of recompensing injured workmen and their dependants for industrial accidents is one of social insurance rather than recourse to law, and the functions of the Board are largely administrative, with powers to decide certain questions which may by analogy be called adjudicative. This insurance feature of the system has many times been commented on by the higher courts."

And he cites a number of cases:

"Walsh, J., said:

'It will be seen that by a process of evolution, a legal question has become a social one of insurance.'

Viscount Haldane in . . . (1919) . . . said:

'The right of the workman does not . . . depend on negligence on the part of the employer, as in ordinary employers' liability . . . but arises from an insurance by the Board against fortuitous injury.'

Lord Blanesburgh in . . . (1927) . . . calls it:

'A compulsory system of mutual insurance throughout an industry at risk under it.'

Iddington, J., in the Supreme court of Canada, in . . . (1923) . . . said:

'The aim of the whole Act is to eliminate the litigious struggle and strife and judicial peculiarities in mode of thought and applying the law.'

and Duff, J., said at page 54:

'The autonomy of the Board is, I think, one of the central features of the system set up by The Workmen's Compensation Act. One at least of the more obvious advantages of this very practical method of dealing with the subject of compensation for industrial accidents is that the waste of energy and expense of legal proceedings and a canon of interpretation, governed in its application by refinement upon refinement, leading to uncertainty and perplexity in the application of the Act, are avoided.'

After reconsideration of all the reasons which may be advanced for or against the granting of a right of appeal, if asked to express an opinion, I am forced to accept the conclusion of Mr. Justice Middleton, the Commissioner appointed to review the whole subject," ——

MR. CONANT: Have you that report available?

MR. SILK: Yes, I believe I have, sir. No, I am sorry, I have not.

MR. CONANT: Well, get one and put it with the records, will you?

MR. SILK: Yes.

Mr. Harold then quotes Mr. Justice Middleton:

> " 'There is almost unanimous agreement on the part of all concerned that the introduction of any right of appeal would be disastrous.'

and I agree with him when he said:

> 'I do not recommend any change looking to either an appellate tribunal or to any of the various schemes for boards of review.' "

I think that is very comprehensive on the whole history of proposed appeals.

MR. CONANT: Is that all you have at the moment?

MR. SILK: Mr. Coulter is going to speak verbally this afternoon on the subject.

MR. CONANT: Then we will adjourn until 2.15.

Adjourned at 12.25 p.m. until 2.15 p.m.

Tuesday, September 24, 1940.

AFTERNOON SESSION

On resuming at 2.15 p.m.:

HAROLD E. MANNING, K.C.

MR. SILK: Mr. Manning, you are a practising barrister in Toronto, and you have had a good deal of experience in connection with assessment work; you are the author of a text, I think, on assessments?

A. That is correct, yes.

And I understand you are also the president of the Property Owners' Association of Ontario?

A. That is correct also.

MR. SILK: Mr. Chairman and gentlemen, it is my intention to call two or three other witnesses with regard to assessment appeals this afternoon. The present assessment practice is explained on pages 169 and 170 of the Committee notebook. I don't know whether it would be a good idea for me to read that over before we commence.

MR. CONANT: You don't need to for me; I have been through it all.

MR. SILK: Then, Mr. Manning, you have certain observations you want to make with regard to assessment appeals; I will just let you go ahead.

A. Thank you, sir. Mr. Chairman and gentlemen: I am very much obliged to you for giving me this opportunity of appearing before you, and perhaps before I go on it might be pertinent to say a few words as to the capacities in which I think perhaps I am justified in coming. The Ontario Property Owners' Association is a corporation without share capital. It represents an aggregation of local property owners' associations in a variety of places, places like Windsor, Hamilton, Oshawa, Ottawa, and a number of other places of that sort, and the Toronto Association itself has the adherence of quite a large number of people, some 3,000-odd are on our list, and the values of the properties which are represented directly and indirectly through individual memberships would reach a very large percentage of Toronto's assessment roll. That is my excuse for coming to you here.

Now, of course there has been, and we are all of us familiar with the fact that there is a notorious decline in the value of real estate, including buildings, and for the purposes of this discussion I do not make any distinction at all between land and buildings. That is commonly attributed mostly to excessive taxation which results from assessments of land and buildings at more than their realizable value, more than any realizable value that has been apparent to most of us for well over ten years, and, secondly, to tax rates, which since 1929 have been very much above pre-existing levels. I do not need to elaborate that.

A brief scrutiny of the Report of the Royal Commission on Dominion Provincial Relations, the second book, and at page 144, indicates that the Royal Commission thought that there should be certain withdrawals from the shoulders of municipal corporations of responsibility for some kinds of expenditure. Then they observed that there was practical unanimity in all the representations that were made to the Royal Commission right across Canada on the subject of the weight of real property taxation. They only name one ——

MR. CONANT: I do not want to shut anything off, Mr. Manning, and I hesitate to say it, because my remarks may be construed that way. We are concerned more with practice than we are with fundamental ——

WITNESS: I appreciate that, Mr. Chairman, and I am merely using that as an introduction, because I do not want to take up your time unduly.

What they said was, in passing on, the solution of the problem, they thought, lay rather in some more responsive method of readjusting assessments to actual facts than that which existed, and that submission of the Royal Commission can be found somewhere about page 144 of the second volume. Now, I am here, with great respect, to submit that that is not altogether the case, but to draw attention to certain things in connection with assessment appeals which make readjustment practically impossible, in our submission.

You will recall Mr. Barlow's report dealt in a rather short fashion with appeals under the Assessment Act; it is Part XXIV, and in my copy is at page 371. I shall read only the recommendation:

"*I recommend* that the Assessment Act be amended to provide:

1. For an appeal from the county judge on the evidence and proceedings before him to the Court of Appeal.

2. For an appeal at the option of the appellant in lieu of an appeal to the Court of Appeal on the question of *quantum* only from the County judge . . ."

And then he deals with the question of costs, to which I did not propose to direct any attention. I took the liberty of speaking to Mr. Barlow about ——

MR. CONANT: Is that broad enough? An appeal from the county judge in all cases ——

A. That is what I was getting at. I do not read it so, and yet I do not read it as excluding that, Mr. Chairman. Strictly speaking, if one were to take the language literally, an appeal from the county judge on the evidence and proceedings before him would be a variation of the present practice, which, as you know, enables appeals to the Court of Appeal only on a stated case, in which the Court of Appeal declines to consider the evidence at all.

Now, the difficulty as we see it in assessment appeals is that it is impossible to get to the Court of Appeal on any matter which really affects the *quantum* of assessment. My friend Mr. Coulter will recall some proceedings we have had before the Municipal Board, in which I am still obstinate enough to think that we could have had a different decision from the Court of Appeal. But I wanted to make this clear: Prior to 1910 the principles upon which values should be determined in courts of assessment appeal were discussed not infrequently in the Court of Appeal. Since 1910 all the research I have been able to give to the matter indicates that there have been only five decisions in the Ontario Court of Appeal represented in the regular law reports which deal with assessments at all. A brief run over them might indicate just what the nature of them was.

There was Ontario Jockey Club v. Toronto, which had to do with the valuation of buildings and the question of whether that value should be added to the value of land for an alternative purpose; the case of Re Canada Co. and Colchester South, some valuations of oil-well properties; the case of Re Toronto and McPhedran, which had to do with the values of leasehold properties let by the city of Toronto around this vicinity; the case of Dreifus v. Royds, which has been discussed not infrequently, and which led to some inconclusive results, but as far as it goes indicates that the assessment appeal court should have regard not only to the values of adjacent property ——

MR. CONANT: There are some very valuable observations in that case.

WITNESS: If they were adhered to, but we think they are not adhered to. And, finally, the case of Re Ontario & Minnesota Power and Fort Frances, which introduces the so-called expropriation rule, which has been cut down by subsequent observations in the Supreme Court of Canada, I think, to the place where practically the expropriation rule could not be considered to exist. That was a rule put forward by Sir William Meredith to suggest that not only should property owners be assessed for present realizable values of their property, but for

such values as might with perhaps some confidence be predicted as inherent in the properties if they were utilized for those purposes for which they were most advantageously suited; for example, potential water power development sites, for which there might be no immediate market.

In my submission, that has been one of the most unfortunate decisions in its effect upon property values that could possibly have been made, because on the basis of that decision it has been customary, when evidence was brought forward before assessment appeal courts to indicate that the present value of a property was definitely shown to be limited to a certain sum of money, to put forward a hypothetical solution which would indicate that the value was very much greater.

We have, for example, in Toronto a large number of vacant properties in the downtown area, and the persistent and recurring type of evidence that is offered on assessment appeals is that these properties, which are now only usable for car parking and possess only negligible value to their owners, are potential sites of vast buildings, and that if the property were adequately used a large building would be put up and it would produce such-and-such result to the owner. It is overlooked completely that there is not any demand in the city for large buildings, and that existing office space shows rather a weakening than a firming ——

MR. CONANT: Does that reconcile with our Assessment Act, that basis of computation?

A. Well, in my submission, no, but there is some justification for it in the *dicta* used by the courts in such cases as the Ontario & Minnesota Power case. And we get back to this, whether there is in the Assessment Act a realistic and categorical statement that only the present sale price is the proper value of property. Repeatedly—and I say this with great deference—I am told that the ——

Q. Have you got the Assessment Act there?

A. I have a copy here. Section 39 in the new revision, I have underlined some words in subsection 3 that I think indicate that selling value is the proper value to apply. Repeatedly the suggestion is offered that what you could realize for the property now, or what you can say you could have realized for it at any time in the last eight or ten years, is not indicative of the value, that there is some other kind of value which can be arrived at in some kind of rough process, by what I should call inspired guesswork, because I do not know any way of determining what a value is except by the acid test of whether you are or are not able to sell it.

I wanted to say this, and I shall probably at a little later time refer in greater detail to the decision: What we have in effect arrived at at the present time is that no decision of an assessment appeal court can effectively be carried beyond those assessment appeal courts where the question is the amount of the assessment. If there is any figment of evidence, however much most of us might question its propriety, or any intelligent foundation for that evidence, opinion evidence, then the decision of the assessment appeal court is beyond review, even

though you show a categorical fact such as an actual sale, with all the safeguards that the courts have laid down as proper; and the judgment of the Court of Revision in confirming an assessment roll, of of the county judge sitting in review of the Court of Revision, and the Ontario Municipal Board sitting in large cases in review of the county judge, is in effect final and irrevocable. It is also in effect a judgment awarding to the municipality ——

Q. Are you referring to all cases?

A. All cases, yes; I would not qualify that.

Q. There is an appeal, of course, to the Municipal Board in the larger cases?

A. Yes, I said that. Perhaps I did not make myself clear. In the larger cases the appeal to the Municipal Board does exist; it is ten thousand in certain municipalities, and forty thousand in the bulk of them.

Q. Let us divide your submission, for the purpose of clarity, or in the hope of clarity. You are addressing your remarks now to cases appealable to the Municipal Board?

A. To all cases, Mr. Chairman. I was merely indicating this, that the judgment of an assessment appeal court is in effect a judgment awarding to the municipality such sum of money as by the rating by-law may be imposed upon a property by virtue of the confirmation of the assessment roll.

Q. In the larger cases are you not content with the appeal to the Municipal Board?

A. No, Mr. Chairman, I am not. What I wanted to draw attention to was some rather remarkable figures. The annual amount levied on assessment rolls which are confirmed in Ontario is something in excess of $115,000,000, or approximately that. In 1935 in Ontario it was $117,000,000-odd. Now, that is a sum of money which in effect is adjudged either by default in not appealing from an assessment or after an appeal to be payable by the taxpayers to the municipalities in that year. It is questionable if all the County and District Courts and the Supreme Court of Ontario, in all kinds of jurisdictional activities they have, pass upon sums anything like approaching that amount. I had some conversations with Mr. Cadwell to see if it were possible to make exact statements about the annual amount of judgments, and found there were no statistics compiled which would indicate it, but there were some matters of knowledge which would give one an approximate idea. Mr. Cadwell's idea was that very nearly one-half of the monetary amount of all judgments pronounced by the Trial Division of the Supreme Court and by the County and District Courts in any year in Ontario was pronounced in Toronto and in the county of York, and, assuming that forty percent was a fair figure, multiplying the Toronto and York figures by two and a half, I arrive at these things on conversations with Mr. Winchester, the county clerk here, and Mr. Smyth, the registrar of the Supreme Court. In the County Court in 1935 there were 885 judgments, both after default and at trials, and Mr. Winchester was firmly of opinion, though he could not have determined it without several days' research, that

the average of those judgments would not exceed $500. If one took that as the basis, there are only $442,500 worth of claims adjudicated upon in the year in the county of York, and, multiplying by two and half, you would come to something a little over $1,000,000—$1,100,000, I think—for all the County and District Courts in Ontario. If you go to the central office you will find that there were in that year $7,606,000 reported through the central office as the aggregate amount of judgments and taxed costs. I was not able to get any figures which would indicate the amount of property which passed on other types of judgments, such as bankruptcy and mortgage foreclosure and the rest of it, but if you take that figure of $1,604,000, it gives you a total adjudication of all the Trial Division of the Supreme Court of Ontario as something between eighteen and nineteen million dollars, and you could say the sum total of all the judgments for the recovery of money pronounced by those courts in regard to every kind of transaction giving rise to an obligation was about twenty million dollars a year, and yet the assessment appeal courts annually deal with something close to six times that amount of money.

MR. LEDUC: That sum of one hundred and seventeen million dollars represents the tax paid on real estate?

A. Yes, Mr. Leduc.

Q. Well, surely you did not mean that; the largest part of that sum of one hundred and seventeen million dollars is not in dispute.

A. It is not in dispute ——

Q. Unless you deny the right of the municipality to levy any kind of taxation.

A. I do not deny the right of the municipality to levy any kind of taxation. I am only drawing attention, if I may, to the importance of the matters pronounced upon, and I would say this ——

Q. Let us put it in another way. I think the total value of assessable real estate in the province is something like three billion dollars, isn't it?

A. Well, it is over two, I think; I am not sure of the exact value.

Q. I figured that out from the one-mill subsidy that we paid.

A. Well, you are very much more likely to be right than I.

Q. What proportion of that three billion dollars would be appealed in any year?

A. That I could not say; I haven't any statistical information.

Q. Would it be five percent?

A. It might be; it might be more than that.

Q. Ten percent?

A. I couldn't tell you; I do not know of any statistics ——

Q. If you took ten percent, that would represent about eleven million dollars a year tax?

A. If you were going, though, to find out how many properties the owners would say were assessed at more than their fair market value, you would find a a very much larger proportion, sir, I think.

Q. Perhaps; but I am not impressed by your figure of one hundred and seventeen million dollars.

A. Might I say this: I think you would find that a very large body of opinion believes that the vast amount of property is assessed for more than it would realize. Now, there are many people who do not appeal from their assessments who think their assessments are over the realizable value. I could name you a number, for instance, of my own personal knowledge—because, they say, there is no use.

Q. All right, but suppose your property is really worth $10,000, in your opinion it is worth $10,000, and it is assessed at $12,500, and you appeal the assessment; the amount involved in the appeal is really $2,500, that is all.

A. Maybe.

Q. So don't stick too closely to that figure of one hundred and seventeen million dollars.

A. I think I could come back at you in another way. About two-thirds of the judgments that are pronounced in the courts are default judgments, and that the people who are adjudged to be responsible to pay do not deny liability.

MR. CONANT: I think we can take it as a settled fact that assessment is a very important subject.

MR. LEDUC: Yes, it is very important.

WITNESS: I am trying to get only that thing out; I do not want to press the argument beyond that.

MR. CONANT: Well, we are with you there, Mr. Manning; it is very, very important, and affects a very large group of people.

WITNESS: In my submission, it is the most important single thing that has to do with the transfer of money in a year's work in the province. I am very far from suggesting that the courts do not have many other functions, of course, of great importance, which are not recognized in any such statistical illustration as I am attempting to give on this.

MR. CONANT: I would go this far with you; I would say comparatively few people are affected by court judgments, whereas a large number of people are affected by assessments.

WITNESS: I think that is true. I would go one step further. The actual bulk of money transfers in a year affected by matters of that sort, in my submission, is much larger than the bulk of money transfers on the other judgments of the courts, and if we can get to an appreciation of that fact perhaps I will have done all that I intended to do on this branch.

MR. CONANT: What is wrong with our practice? Tell us about that.

A. In my submission, the present practice is wrong, because it permits of the giving of opinion evidence as a decisive factor in assessment appeals, and it furnishes no standard ——

Q. Say that again?

A. It permits of the giving of opinion evidence as the decisive standard in assessment appeals. Now, I recognize there is an inherent ——

Q. I do not just get what you mean.

A. Let me put it this way: In my own personal experience, which perhaps is not very large in the mere number of appeals, but does involve taking a good many fairly heavy appeals, almost inevitably what one meets with is this: On the one side a narrative of what has been done in the way of sales in the last ten years in some approximately comparable property, and a narrative of what the rentals actually derived are and what the earning experience has been, *de facto*, and showing from those two things that there is no reasonable expectation that the property as it is could ever be worth more than so many dollars; I mean, it becomes a mere matter of logical arithmetic; and one is met on the other side by this sort of criticism, that in the judgment of the witness who is called by the municipality the property is worth three times that, it is worth fifty percent more than the assessment. We cross-examine that witness to ask whether he has got anything to do with property which shows any such value, and he says, no, but in his opinion the property is going to come back. You ask him why the figures that are quoted are not satisfactory, and he says, "Oh, well, you should do this, you should do that, you should do the other thing to your property, you should put up a building, and if you did in my opinion you would be able to rent for so much money." You suggest to him that there is not any demand for buildings of that sort, and he says, "It is my opinion you could do it," and on the footing of that your appeal is unsuccessful.

Now, perhaps I might become a little more categorical, and give you an illustration in which I carried an appeal to the Municipal Board and subsequently to the Court of Appeal. There was the old Home Bank property near the corner of King and Yonge Streets. It was assessed some years ago—it is on a 42-foot frontage by a 90-foot depth—it was assessed some years ago at some $6,400 or $6,600 a foot frontage, and the building assessed at around $20,000 or $25,000. That assessment on successive appeals to the Municipal Board has been reduced, and I think it now stands at around $4,000 a foot frontage, and the aggregate assessment is something in excess of $150,000. Now, that property remained vacant for a period of six or seven years from 1930 on. Persistent efforts were made to rent it or to sell it. The weight of taxation, business assessments and the rest of it, and the nature of the building, made it

impossible to find a tenant for more than very temporary purposes—perhaps a month or so for a charitable campaign—and finally, after six or seven years of effort and liberal advertising, it was sold for cash by a solvent company that was under no pressure to sell except such pressure as common sense dictates to another solvent company, the Halifax Fire Insurance Company, for $75,000.

MR. CONANT: How much assessment had it been carrying?

A. It had been carrying over $190,000 at the time of the sale; it is now assessed in excess of $150,000. I carried those appeals forward to the Municipal Board. These things I think I may say fairly were proved: the whole of the experience and the caretaking and the effort to find the sale, the fact that the city's witness who came to testify to a wholly different value had known about the property being available, that he knew there was a bargain to be picked up if he could pick it up, that he made no efforts to find a purchaser because he did not know where to find a purchaser, that he could not say where any purchaser could be found, and he could not indicate how anybody could have sold the property for more money, but still in his opinion it was worth something more than the amount of the assessment.

Q. What do you mean by "worth" in that connection?

A. I don't know either, Mr. Chairman. I only know of one standard of worth: that is what I can get out of a property. But, in spite of the evidence, that that was the actual experience with the property, and the proof of the advertising and all the rest of it, the finding of the Board was that it was unable to find that the value was less than the amount of the assessment. Now, in my submission ——

Q. Did you take that to the Court of Appeal?

A. I took that to the Court of Appeal, and what I submitted to the Court of Appeal—I think I can recall the argument reasonably well—was this: We have shown all the circumstances which are laid down by the Supreme Court of Canada as the test of value in our long effort to sell, and in showing that there was not any pressure, any hardship on the owner, which compelled him to take less than a real price, and the city has not shown anything to the contrary. All they have brought in is opinion evidence that the property is worth more, and that opinion evidence carried one step further: In order to meet the situation which arises on the Ontario & Minnesota decision, the expropriation, evidence was offered on behalf of the appellant to show that the property was of such a configuration and character that used by itself it would not be possible to demolish the existing building and put up an alternative building and show a better return. Now, those figures were not criticized by the city's witness except in regard to one factor, and that was, what should be the proper sinking fund, and there was no evidence to indicate that anybody would have financed such a building on the terms that the city's own witness thought should have been proper.

Q. How could we help that situation?

A. I think the way that situation could be helped, Mr. Chairman, is this ——

Q. So far as the matter of practice is concerned; you got to the Court of Appeal all right.

A. Yes, but here is where I failed in the Court of Appeal: The Court of Appeal says, "Are you driven, Mr. Manning, to show not only that the court below came to the wrong decision, but that there was no evidence on which they could come to the decision to which they did come—no evidence"? and I say, "Yes, I think I am driven to that."

Q. Now, wait a minute.

A. That is because the Court of Appeal has no jurisdiction in matters of fact. You will find it, I think, at about section 83 or somewhere thereabouts.

Q. Do you mean 85 (1)?

A. I have forgotten the exact number.

Q. The ground upon which an appeal lies to the Court of Appeal—question of law, construction of statute?

A. That is it.

Q. Municipal by-law, agreement in writing?

A. Yes.

Q. Just let us examine that. I am interested in that, and that is germane to our investigation.

A. That is the real thing I am talking about.

Q. Your contention is that that is too narrow a basis both for getting to the Court of Appeal and for the Court of Appeal to adjudicate?

A. Exactly so, Mr. Chairman; that it is impossible—impossible—to find any standard on which you can get to the Court of Appeal and can get an assessment reopened unless you throw it open on questions of fact. May I put it this way: The courts, if one were to look over the current peremptory lists ——

Q. We have already been discussing a related subject, Mr. Manning, the question as to whether the jurisdiction of the Court of Appeal in appeals from juries should be broadened.

A. Yes, I am aware of that discussion.

Q. You know the extent to which it has been narrowed?

A. Yes, I appreciate, and I think, with great deference, that it should be broadened. But may I say this: There is growing a very powerful feeling among the people, the type I go out and talk to—and, frankly, I talk to them as an agitator, and I don't apologize for that.

Q. Not a red?

A. Not a red agitator, but a blue one, if you like, a very pessimistic one. Every person accused of the vilest kind of offence against a woman, or any other kind of crime, under the Criminal Code, or under the penal laws of the Province of Ontario, can have every kind of question, both of law and fact—there may be a question of leave, but it is never refused—raised to try to find some way for him to escape conviction and punishment, if it is open to him. Every man who is guilty of a breach of trust, or of negligence in the administration of a motor vehicle, or of improper conduct in respect of any one of a dozen relationships of which one could think casually, or in respect of a contractual obligation, is entitled to have every question of law and fact which goes to determine his liability reopened, and discussed from start to finish in the Court of Appeal.

Q. Yes, but, Mr. Manning, isn't it the scheme of this Act that on those matters, or on matters other than the ones that are reserved to the Court of Appeal, the Municipal Board would take care of them?

A. I appreciate that, Mr. Chairman, and I have given you a case in which I think, with the greatest respect to the Chairman and other Members of the Board—and I am not impeaching their sincerity at all ——

Q. I only pointed that out, because in the cases you are referring to, there is no other tribunal like the Municipal Board that is interposed in these cases.

A. I fancy, though, we are perhaps a little at cross purposes, because, in my submission, there is a very real question of the principle of law to be adopted, and perhaps I won't be regarded as having said anything that is either improper or reflecting upon the independence of the tribunal before which I appear, but I have had this sort of thing put to me, that in regard to one property where, in my submission, it was demonstrated that the value was non-existent to the owner, I am told that the value is undoubtedly there, and I say, "Yes, but you can't tax the owner, who has not got the benefit of it," and the answer is, "The assessment is confirmed."

I take another case, shall I say—one omits to mention names, because it is not a matter of personal invidiousness at all—"How is the city going to finance if we allow your appeal?" and I say, with the greatest of respect, that is not a question open for consideration under this Act.

Q. And the Supreme Court of Canada has said that.

A. But I cannot get to the Court of Appeal on that basis.

Q. Doesn't the Supreme Court lay down in one of those cases that the need of the municipality is not the ——

A. That is true; but, notwithstanding that, I should be willing to pledge my utmost belief that it is a very decisive factor in most assessment appeal courts.

Q. Wasn't that the Port Arthur case?

A. The Dreifus case?

Q. In which the Court of Appeal dealt with the evidence that had been adduced as to the need of the municipality; they laid down there, that the need of the municipality was not the test.

A. That is possibly so; I am not familiar with it. But I should say, beyond all doubt, it has played a very large part in the thinking of county judges, and a very natural part, because they are on the spot. Now, in my submission, Mr. Chairman, the only way that this could ever possibly be improved upon would be to open the channel of appeals. We have got to such a constriction of the basis ——

Q. What could be the purpose of the Municipal Board if that were done, Mr. Manning?

A. Well, I should say this: it might very well be that the Municipal Board's usefulness in the matter of assessment appeals would disappear. It might also be that the Municipal Board sitting in review of county judges, might discharge very useful functions, if its orders were subject to review in cases where you are dealing with opinion evidence. Let me get back to this ——

Q. Say that again?

A. In cases where the decision was based upon opinion evidence, an appeal to the Court of Appeal might be an extremely useful thing. Let me, perhaps, go back to this Halifax Fire case, and examine it as it seemed to me. I was personally satisfied that the expert evidence, which was the only evidence given on behalf of the city, could be disregarded, and might, as a matter of law, be considered not to be cogent, for this reason, that it was not related to any known facts or any experience in regard to comparable properties, it was a mere *ipse dixit*, if you may put it that way, and there was some authority in the Supreme Court of Canada, which indicated that in certain other classes of cases, opinion evidence of that character would not be given credence. The Court of Appeal differed from me, and I am here largely telling my sad story, because they did not agree with that proposition at all; they said that did not apply in assessement matters.

Now, there is another class of thing that has been very important and decisive in assessment appeals, and that is the regard that is paid to the assessments of adjacent properties. They are considered to indicate very much what the value ought to be. Well, one can reduce the thing to an absurdity, and say that if you don't get a starting point to break the chain somewhere, you will never be able to break it at all, and some adjacent property must tumble from its pinnacle before you can reduce the level, if there is to be a standard of writing down or writing up assessments from some nodal point. Now, how serious that is in Toronto I think might be illustrated from some figures on properties which were examined ——

Q. With all deference, Mr. Manning—I am profoundly interested in your discussion, but I am not sure that it is directed to the purpose of our enquiry. As I said, we are dealing with procedure. When you speak of broadening the

grounds of appeal to the Court of Appeal I am interested, because it is germane, it is relevant to our inquiry; and I come back to the question I propounded: if you broadened the grounds of appeal to the Court of Appeal, you would be largely circumventing the Municipal Board, wouldn't you?

A. I think you probably would, I think you probably would; but there is no reason why the jurisdiction of the Municipal Board, as I see it, should not be retained in large appeals.

Q. On questions of fact—and that is what it really resolves itself to—on questions of fact, the Municipal Board now is the last court?

A. That is true.

Q. On questions of law, the Court of Appeal is the last court. Why isn't the Municipal Board just as capable of dealing with questions of fact as the Court of Appeal?

A. Well, I have tried to show a case in which, with the greatest respect for the Board, the Municipal Board did not find on the facts, and I submit that ——

Q. But they have jurisdiction to find on the facts?

A. They have jurisdiction, and they found on the facts—let me put it that way—but they did not find where the facts ought to have taken them, and it is very much the same problem you have with regard to the reopening of the finding of fact of juries. My submission is that the Municipal Board erred in regarding any principle of law as justifying an assessment at $150,000-odd, when the actual experience of the people who dealt with that property revealed that the value was only $75,000, and the only possible way you can get that corrected is to give an appeal from that adjudication. I do not want to take up your time indefinitely ——

Q. But these questions of values and opinions as to values will always be matters of opinion when you get all through, no matter whether it is the home-town Court of Revision or the Municipal Board or the county judge; it is always a matter of opinion.

A. Well, but isn't it also a matter of experience, and mustn't opinion be tied to experience, or else it is utterly undependable and likely to produce very startling results. I can say this, that there is a very great and growing feeling, that it is just precisely because these things are decided on the basis of opinion evidence and without regard to experience, that we have got a shocking situation developing, and I was going to illustrate only this: There were some 29 sales of downtown properties took place in Toronto between 1936 and 1938 inclusive; I have got a list of them here, and some other sales. The average of all those sale prices to all the assessments was only about 65 percent, the assessments exceeded $2,800,000, and the sale prices were slightly in excess of $1,800,000. Only 8 out of the whole 29 properties sold for prices in excess of the average, and the remaining 21 sold for prices below the average, and if you exclude the two properties which sold at the top end of the bracket, the old Mail and Empire property and the T. G. Bright property at the end of Albert Street, you get an

average of 56 percent. That is to say, the sales were about 56 percent of the assessments. I did some other juggling with the figures: only 4 of the properties sold for more than 10 percent above the average, 16 of them sold for more than 10 percent below the average, and those, so far as I have been able to find out, were all the sales of downtown properties in those years. It is true, a large number of them were sales by estates, but that is not quite so indicative of low prices as one would imagine, because, when the time comes that practically the only properties sold are properties sold by estates, then there is something wrong with the fluidity of your transfer of real property.

MR. STRACHAN: But, Mr. Manning, aren't we up against the same thing every time the court gives a judgment? Take, for instance, a claim under The Fatal Accidents Act, and try to figure the pecuniary benefits that might have accrued; it is impossible to lay down a rule of thumb—or in any damage action.

A. I would say no, Mr. Strachan, because you never sell a claim under The Fatal Accidents Act, and you do sell real property.

Q. Well, but as to pecuniary benefits, it is guesswork, after all.

A. I would submit that there ought to be a much more realistic standard. Let us come back to the Halifax Fire again; here you have got an actual categorial experience.

MR. CONANT: I don't want to interrupt, Mr. Manning, but it does seem to me that your submission is directed to or takes the form more of a criticism of the Municipal Board than it does of the procedure.

WITNESS: No, Mr. Chairman, I don't want it to appear so.

MR. CONANT: Well, at the monent it is ——

WITNESS: It is leading up to what I wanted to say were the ideas that led us here, because I felt before I laid the foundation, there wasn't any use expressing the idea. Those ideas are twofold: on one side of them they are matters really beyond the purview of this Committee, as I understand it, namely, the question of the definition of what value is in The Assessment Act.

MR. CONANT: The fundamentals of value.

WITNESS: It is necessary to bear that in mind in considering this submission, because, unless we make a very hard standard of value, I don't know where we are going to be in finding a basis for starting off to review assessment practice, and I should like to take the liberty of reading two resolutions which have commended themselves to the Property Owners' Convention for some time; they have been passed more or less like hardy annuals at the conventions. The first of them is this:

> "RESOLVED THAT it should be made compulsory that real property which has been sold by taxpayers" ——

And notice the word "taxpayers"; I deliberately draw attention to that, because it is not intended to contemplate sales by municipalities of tax-sale lands.

—— "be assessed at not more than the actual bona fide sale price, and that no assessment should be permitted in respect of any real property for any sum of money other than its present value, for the purpose for which it is held and utilized," ——

and I make that very sharply, because we get into the realm of prophecy and crystal-gazing when we try to find some alternative use for property that has not yet been found, and no one is wise enough to prophesy what will happen to any property, in my submission.

—— "and that in determining the assessable value of properties, revenue production shall be a governing element to which effect must be given."

Now, one cannot say that it must be the only element, but a governing element. That, in other words, is the objective focus on which your judicial system, as we submit, should be based.

The second one, then, comes to this:

"RESOLVED THAT The Assessment Act should be amended to provide that, in addition to all rights of appeal now existing, an appeal shall lie as of right to the Court of Appeal on all questions of valuation within the jurisdiction of that court, as to the amount involved, and that it shall be the duty of the court to reject opinion evidence not based on demonstrated facts of recent occurrence, and to dispose of valuations accordingly, so that the persistent scandal of excessive valuations confirmed by assessment appeal courts shall be removed."

Now, Mr. Chairman, I think I have said imperfectly, but still with a fairly complete survey of it, all that I propose to say, and, if I may come back to it, just as it has been considered necessary to provide a forum for appeal of all questions of fact in regard to all the ordinary litigious matters, in order that errors, either of interpretation of the law or of dealing with particular facts shall be corrected, in all kinds of matters which are of vastly less moral weight, at any rate, than the matters which concern the well-being of people in their own homes, so, in my submission, it is neither a reflection upon the assessment appeal courts as such, nor an unreasonable thing to ask, but on the contrary, a very reasonable thing to ask, that the same rights of appeal on questions both of fact and law shall be open to people who own property, as are open to people who are of very much less merit in this community.

MR. SILK: Mr. Manning—go ahead if you have something further.

A. Well, I was not going to say any more than that in effect, Mr. Silk.

Q. I was going to suggest, Mr. Manning, it might be a matter of convenience to the Committee, if you could state your submissions in a concise form, such as Mr. Barlow has. In conclusion, Mr. Barlow says:

"*I recommend* that The Assessment Act be amended to provide:

"1. For an appeal" ——

and so on.

A. You would like them as shortly as that?

Q. If we could get it down to that form it would be better.

MR. CONANT: Just before you leave, Mr. Manning, just repeat this, because it is a problem that disturbs me. If you broaden the grounds of appeal to the Court of Appeal, what is the function of the Municipal Board in the assessment structure?

A. I would expect this, that the Municipal Board would be like every intermediate Court of Appeal, a very strong filter.

Q. Well, would it be necessary? Would you make that part of the progress to the Court of Appeal, or make it optional, like our Privy Council?

A. I think I would be tempted to make it optional.

Q. That is to say, you could either go to the Municipal Board or go direct to the Court of Appeal?

A. Yes.

Q. Or you could go to the Municipal Board and then to the Court of Appeal, as in some cases we can go from our Court of Appeal to the Supreme Court and then to the Privy Council, or we can go direct to the Privy Council. What have you in mind, there?

A. I have not given that phase of it very much thought, Mr. Chairman, because I have been more concerned in my own thinking to see whether it was not possible to get these questions of principle once more before the courts, shall I say.

Q. Have you traced the history of this legislation? Has the Court of Appeal ever had any broader grounds? Have there ever been broader grounds?

A. Not technically on questions of fact, Mr. Chairman, but it has actually considered questions as if it had the right. And I might say this in passing: in England there is somewhat similar legislation, which stops appeals on questions of fact to the courts of law, but it is a curious thing ——

Q. Where does it stop at there?

A. It stops, I think, with a County Board of Valuation, or something of the sort; I have forgotten the exact name; it may be the Justices in Quarter Sessions Assembled; I think, perhaps, that is it. But there was a recent decision I noticed in the *All England Law Reports*, in which—as you know, their principle of assessment is different from ours; they only assess on the net annual rental value, and questions frequently arise as to what are the component ingredients, whether, for example, if your rent includes heated apartments, you must make a deduction for the cost of heating and janitor service, and that sort of thing. Now, in the view that our Court of Appeal takes of such a matter, that would be exclusively a question of fact, and therefore not a matter open to review, but in the view of

the English Court of Appeal that was a question of law, and they very definitely expressed their opinions as to items A, B, C and D, as matters which must be dealt with in this or that or the other way by the court below. Now, no such appeal would be possible in this country. We have, for example, the kinds of cases that have come up in recent years on that very difficult branch of The Assessment Act, the assessment of incomes of corporations not derived from the business in respect of which a business assessment is imposed. That has given rise to all kinds of curious decisions, I mean conflicting decisions, on fact—the Famous Players type of case and the International Metal Industries type of case. Sometimes the court has said it is taxable, sometimes not; sometimes they have said the income was derived from the business, sometimes they have said not. Now, as far as an observer like myself would be concerned with the matter, it would seem as if every one of those questions involved the consideration of what, from the legal point of view is a business, and whether as a matter of law certain uses of money could be considered an integral part of the business, but both the Court of Appeal and the Supreme Court of Canada have held in categorical terms that once a matter has been considered by the appropriate assessment appeal court, either the county judge or the Municipal Board, and a decision has been arrived, the process by which that decision was arrived at, the distinction between the business of the company for which it is assessed for business assessment and other business, is not open to review. In my submission, it ought to be open to review if the law is to be certain and not capricious.

Q. Would you care to make any observation on this, Mr. Manning—the place of the county judges in these appeals? Have you any observations to make as to that?

A. Well, of course, the county judge is the natural person to whom any matter of judicial decision would be referred, because he is on the spot.

Q. No, but I had this in mind: since I have occupied my present office I have had several complaints reach me, with which I have nothing to do—I have no jurisdiction—to the effect that the county judges did not seriously consider and really adjudicate upon such appeals, that they, as a matter of fact, confirmed them. I am not stating that as a fact; I am stating that as representations that have been made to me.

A. I understand.

Q. I was wondering if you ——

A. I should be very tempted to make similar representations, Mr. Chairman. My experience, which has gone to a fair number of outside counties as well as Toronto, leads me to feel this—and again, I do not want to be thought to reflect on the personnel or integrity of judges, but it leads me to feel that you have got as many types of decision on this sort of appeal as you have men. Some judges, for example, would be rather hostile to the municipal point of view, and some judges would be, as I think, excessively friendly to them, because they are impressed with the needs of the local community, or they are impressed with certain things that have been in their experience.

Q. Of course, there is nothing we could do by way of procedure, if there is an evasion of what you might call duty there; there is nothing we can do.

A. In my submission, the contrary. I think this is not getting beyond the bounds of proper observation. Again I am harking back to the Halifax Fire. I can recall the pronouncements of at least one of the judges in the Court of Appeal—it was a bench of five judges—to the effect that if there were anything at all they could do for me, they felt it ought to be done at once. Now, naturally, when the court has come to the conclusion that it is without power to deal with it, one does not get very many academic pronouncements of that sort, but, in my submission, unless you open up the bottle-neck, you will never get that confidence in the administration of justice amongst people who have to pay land taxes which I think there should be, and I feel it is a very serious political problem, if you like, in the background, because you are demoralizing—I mean this in the generic sense; we are all demoralizing, if you like, because we are all carrying responsibility to the law—the class of persons in this country who I believe have been the backbone of its economy, and certainly the backbone of its moral fibre. I speak of the people who own homes. I could tell you all kinds of pathetic stories of people who come into my office, who hoped twenty years ago to buy their own homes and be secure in their old age, and by virtue of their taxes having been doubled—they were not very large amounts, $250 or $275 a year—they had just missed out, and they were behind for just about the amount of the taxes over and above the amount of their calculations, and they were losing their homes.

Q. Well, of course, that is a very large question.

A. It is not the only answer, of course, there are other things that have to do with it, but it is a very serious thing when you find this dwindling in the proportion of home ownership, when you find an increase in the amount of mortgage foreclosures and ——

Q. Now, I should be glad if you could help us on this procedure question; I don't know whether there is anything more to be said about procedure, Mr. Manning?

A. I would not think so, Mr. Chairman; but it does seem to me important that there should be the opening of that view. I thank you for your courtesy.

MR. SILK: Mr. Manning, there is just that one other point—I don't know whether you care to do it or not—to express your conclusions very briefly, one, two and three?

A. I can do that.

MR. CONANT: Perhaps we could have a written summary of them.

WITNESS: I should be glad to do that, yes, and I will send it in to you in the next two or three days.

C. M. COLQUHOUN, K.C., City Solicitor, City of Toronto.

MR. CONANT: I suppose, Mr. Colquhoun, you will convince us that the Court of Appeal is not vested or clothed with all the merits that Mr. Manning attributed to it.

WITNESS: I think, Mr. Chairman, that the Court of Appeal should not be interested in assessment appeals except on questions of law and interpretation of statutes; but my main purpose in asking——.

MR. CONANT: Well, I am not surprised at your view.

Go ahead, Mr. Silk.

MR. SILK: Q. By way of introduction, Mr. Colquhoun; you have been the City Solicitor for the city of Toronto for how many years?

A. About fifteen years or more.

Q. Restricting ourselves, if we may, to the practice on assessment appeals, have you any observations to make either as to the practice or as to Mr. Manning's recommendation?

A. Mr. Chairman, I have not considered this as Mr. Manning has. I just had the pleasure of hearing his observations. My purpose in writing to the Secretary of the Committee—and I want here to express my gratification at being allowed to say something. I am perfectly willing to do anything I can to assist the Committee. I do not know whether I will be popular or not, because my main purpose is to suggest that this Committee should not be dealing with assessment appeals at all.

MR. CONANT: Only as a matter of procedure?

A. That it does not come in the question of administration of justice.

Q. Well, I don't know that I could go that far.

A. I am reading now from a copy of the Ontario *Weekly Notes*, where there is a notice signed by Mr. Magone, counsel to the Committee, inviting submissions. He says:

> "At the recent Session of the Legislature a Select Committee was appointed for the following purpose:
>
> " 'To inquire into the administration of justice in the Province, including the constitution, maintenance and organization of provincial courts, both of civil and of criminal jurisdiction, and including procedure in civil matters in those courts'."

Now, if you leave out the first three words, the rest of that, starting "the administration of justice in the province, including," etc., is exactly the wording, word for word, of clause 14 of Section 92 of the British North America Act.

Q. That is true.

A. Clause 8, which is an entirely different clause, similarly gives the province jurisdiction over municipal affairs in the province, and that is the section

under which municipal assessments come, not under the administration of justice clause. If there is any doubt about that, I could refer the Committee to one or two cases where something to that effect has been said.

Q. You are directing your observations to ousting our jurisdiction on this, or what is it?

A. No, Mr. Chairman, I have no doubt that the Legislature, if you went back to them, would increase your jurisdiction to inquire into municipal institutions.

MR. LEDUC: I think so.

MR. CONANT: I think so.

WITNESS: But at present you are dealing with the administration of justice only, not with municipal institutions.

MR. CONANT: But Mr. Manning comes here, quite properly I think, and says that the administration of justice so far as it affects assessment appeals is not what it should be. I think we are quite competent to deal with it.

WITNESS: I am not doubting your competence.

MR. CONANT: Not only competent, but our commission is broad enough to enable us to deal with it.

WITNESS: I submit the commission is not broad enough; that is my submission.

MR. SILK: Mr. Chairman, may I point out that the terms to which Mr. Colquhoun has referred are the terms of Mr. Barlow's commission.

WITNESS: No; I am reading from the *Weekly Notes*.

MR. SILK: Oh, yes, you are quite right. I beg your pardon.

MR. CONANT: Well, we are glad to hear you if you have any observations to make on this question.

WITNESS: If you are going to deal with assessment appeals it seems to me those matters should be considered with matters such as who should exercise municipal franchise, voters' lists, and matters like that. There has been agitation as to those. Those are all municipal matters. You won't find very much law telling you what assessment appeal courts are, presumably because it is so clear that nobody need ever say very much about it, but there are one or two cases I can give the Committee if they think they would help. There is a case of In re North of Scotland Canadian Mortgage Company, in 31 Upper Canada Common Pleas; that is a case back in 1881, involving assessment of personal property and the constitutionality of the statute authorizing the assessment. Mr. Justice Galt, in giving the judgment of the Court, says, at page 559:

"By section 92 of The British North America Act, 1867, in each province the Legislature may exclusively make laws in relation to matters within the classes of subjects next hereinafter enumerated, that is to say,

8. Municipal Institutions in the province.

It is manifest, it was the intention of the Act, that all matters relating to municipal institutions should be within the exclusive jurisdiction of the Provincial Legislature, and" ——

and this is the part to which I refer ——

"as it is essential to the existence of such institutions, they should have power to make assessments for municipal purposes . . . "

MR. CONANT: I do not think that is in issue here, Mr. Colquhoun. The only issue there is, if it might be called an issue, or the concrete submission, is that with regard to the jurisdiction of the Court of Appeal, the grounds of appeal to the Court of Appeal should be broadened. What do you think as to that?

A. If this Committee is going to deal with assessment appeals at all, yes. No, I do not think they should. The Courts of Justice as such—I do not call the Court of Revision or the County Court judge hearing assessment appeals or the Municipal Board hearing assessment appeals, they are not courts of justice; they are merely assessment appeal courts or assessment courts set up, to determine what portion of the public expense for the year each ratepayer should bear; that is all.

MR. SILK: I presume, Mr. Colquhoun, you have read Mr. Barlow's report where it relates to appeals under The Assessment Act?

A. Yes, I have.

Q. And his conclusions?

A. Yes, I have.

Q. Do you agree with the conclusions?

A. Can you tell me particularly which conclusion?

Q. He makes three recommendations; if, for the reasons you have already given, you would prefer not to make any observations, all you need do is say so.

A. No, I can only give you my off-hand reaction to it. I have not given it the consideration Mr. Manning appears to have given it, but I have had certain experience, and some of it has probably stuck, or I may be biased because I have been acting for the municipality so long; but one conclusion, one of his recommendations particularly, the last one, that on appeals to the county judge, the Ontario Municipal Board and the Court of Appeal, discretionary power be given to award costs to the successful party, I disagree with entirely.

MR. CONANT: Well, I do not think we need take up time with that; that is not very fundamental; but I would like if you care to offer any elaboration as to why you think that the grounds of appeal to the Court of Appeal should not be broadened.

WITNESS: Because I think that the Court of Revision, the first court to which you go in assessment—may I preface my remarks by saying this: I gathered, after hearing Mr. Manning, that his attitude is first and foremost a Toronto attitude, and I think you should try to get away from that in dealing with assessment appeals. Toronto is only one municipality out of several hundred municipalities. There are only twenty-eight cities in Ontario, unless there have been some recently of which I have not heard; there are several hundred, seven or eight hundred, towns, villages, townships, where the Court of Revision is to all practical purposes the Council, five members appointed by the Council, and the members of the Council may act. In all those municipalities the Council, who are compelled to strike a tax rate and levy enough to pay their debts, are saying what every individual should pay, what his assessment should be, and it is taxable.

MR. CONANT: I am not sure that that system, of making the members of the Council the Court of Revision, is a proper system, but we won't stop for that at the moment.

WITNESS: That is the system.

MR. CONANT: I know it is.

WITNESS: I am merely saying, this is more than Toronto. We are dealing with an Act which affects the whole province.

MR. CONANT: Yes, but then of course when you are dealing with the jurisdiction of the Court of Appeal, that is a problem that is common to the whole province, too.

WITNESS: All I want to say with regard to that, Mr. Chairman, is, the members of the Court of Appeal cannot be expected to know as much about values of local property as the local men on the job. I am speaking to a committee of lawyers, and I think you will all agree with me. A lawyer does not know as much about the values of property as a man dealing with real estate, and, anyway, the local man on the job knows what the property is worth, more than the member of the Court of Appeal does.

MR. CONANT: When you speak of the man on the job, to whom do you refer?

A. I mean the member of Council who is a member of the Court of Revision.

MR. CONANT: Yes, but when you come to that, I repeat that the system—and that is the system in towns and townships, that the members of the Council are the Court of Revision—I am not sure that that is a proper system, because you have got a court constituted from the taxing body; it is not an impartial tribunal.

WITNESS: I rather agree; it cannot be an impartial tribunal, because they are saying what portion an individual must pay of the rate that they are going to levy; but they are the men that should know best the values of that property, more than a man sitting in Toronto in the Court of Appeal.

MR. CONANT: Didn't we amend that, Mr. Silk?

MR. SILK: Yes, that was amended about three years ago, Mr. Chairman, I think; it used to be the Council itself.

MR. CONANT: That was the only one that could function?

A. That could function.

Q. Now they can appoint ——

A. Now they can appoint any five members, but members of the Council may be members of the Court of Revision.

Q. But they can go outside if they want to?

A. As far as I know, the Court of Revision is still the Council.

MR. SILK: Have you any suggestions to make as to appeals to the Municipal Board and the powers of the Municipal Board in assessment appeals?

A. No. Much that I have said about the qualifications of a member of the Court of Appeal to deal in values of property in any particular locality might apply to a member of the Municipal Board, but there is one difference, because the Municipal Board do go around and look at properties and are a little closer to it than a member of the Court of Appeal; but I think there is much to be said for the county judge being the final arbiter of the *quantum* of an assessment. There is no reason why it should be the county judge except that he is the chief judicial officer in the county, and he is a man of intelligence and should know values. You might reasonably well have a postmaster or something like that, but he is the chief judicial officer.

MR. LEDUC: Yes, but in the case of a County Court judge who is brought in from an outside district ——

A. He won't know as much about it.

Q. He won't know as much about it for a while, till he gets to know his district?

A. No, but I cannot think of any man better qualified to act as an appeal judge than a County Court judge.

MR. CONANT: Well, have you any further submission?

A. My main submission is as to that, Mr. Chairman. You might be kind enough to think I was trying to help you out and ease your labours by showing

that this was not administration of justice at all, that appeal courts or assessment appeal courts are municipal matters.

Q. Well, a Court of Appeal which has its grounds and its jurisdiction so definitely defined as this has ——

A. Well, you might want to ease your labours a bit by keeping away from things with which you do not have to deal.

MR. CONANT: Thank you, Mr. Colquhoun.

MR. SILK: Mr. Gray of the Municipal Affairs Department will be here in just a moment, and then Mr. Coulter will follow.

ALFRED J. B. GRAY, Chief Supervisor, Department of Municipal Affairs.

MR. SILK: Mr. Gray, you are the Chief Supervisor of the Department of Municipal Affairs?

A. Yes.

Q. You have had long experience with assessmens and assessment appeals, Mr. Gray?

A. Yes.

Q. And you know the present practice as to assessment appeals?

A. Yes.

Q. The County Judge and the Municipal Board and so forth?

MR. CONANT: When you speak of experience, not in your present department?

A. No; both as being head of a municipality and also in the department, and also when I was engaged in real estate and financial work I used to also give evidence as to values and so forth.

MR. SILK: You were at one time Reeve of York Township, were you not?

A. Yes, I was.

Q. And you have been with the department for how long?

A. Since 1934.

Q. Supervising municipalities?

A. Yes. I am also chairman of committee appointed by the Bureau of Statistics to study assessment law and procedure.

Q. I understand you also gave some assistance to a commission that was set up in the Province of Manitoba a year or so ago on assessment matters in Winnipeg?

A. Yes.

Q. Now, Mr. Gray, have you some suggestions which you would like to make as to the mode of assessment appeals?

A. Well, any more than limiting—what we find in dealing with assessment appeals, and the criticism which is passed by many of the municipalities in the province, is that the county judge does not seem to have the knowledge to deal with the matter when it is brought before him. That is the feeling of ——

MR. CONANT: Is it a question of knowledge?

A. Well, it is the question of his being acquainted with changing conditions, as would enable him from the time at his disposal, to deal properly with the evidence which is brought before him by experts and so forth. The feeling has been in the past few years that the county judge has been too apt to confirm the assessment rather than to recommend any changes, in view of the changing conditions. It has been felt that where we have sat in independent Courts of Revision, which were free of council members, and with the appeal in large assessments to the Board, a more favourable decision has been brought about, and has resulted in municipalities changing their method of assessment with a view to bringing about their equity.

MR. SILK: You say, then, that the Ontario Municipal Board is a more appropriate appeal tribunal than the county judge?

A. I think so. The only difficulty there is that the Ontario Municipal Board is limited in dealing with assessment appeals by the amount of the assessment.

MR. CONANT: Do you think that amount should be lowered?

A. I think so.

Q. To what?

A. Well, to an amount which would be reasonable; where property say, is assessed at ten thousand or more.

MR. SILK: Do you suggest the appeal should be from the Court of Revision direct to the ——

A. There should be an alternative appeal; if you are going to retain the county judge, there should be an alternative appeal direct to the Ontario Municipal Board. Even though in large appeals, the Ontario Municipal Board has had the power to deal with assessment appeals, I feel that the law should permit a person to choose where he will go. It has not been the habit of the Ontario Municipal Board to deal with appeals direct; they have more or less

forced them to go to the county judge first, and then only deal with the matter as an appeal from the county judge which I think has in many cases, brought about additional expense which was unjustified.

MR. CONANT: You think there should be the right to go straight to the Municipal Board?

A. I think it is there now in the Act, my own opinion is, but the Board has not adopted that procedure, and also in most cases the municipalities have been forcing the appellant to go to the county judge first.

MR. SILK: Would you still give the appeal to the county judge in cases under $10,000?

A. My own personal opinion is this, that much more could be gained if, instead of having local Courts of Revision, there was appointed by the Provincial Department, district Courts of Revision, and then give an appeal direct to the Ontario Municipal Board, and delete the county judge entirely from it. I feel that, even to have a Court of Revision appointed by the Council, the Court of Revision is too apt to look upon what effect it might have upon the revenue of the corporation rather than from the standpoint of equity.

MR. CONANT: Because it is a creature of the Council?

A. Because it is a creature of the Council. But I feel if Courts of Revision were created as district Courts of Revision, with proper men qualified to deal with the matter, as appointed by our own department, for instance, that we would have more and better consideration given to assessment appeals, and in cases of appeals other than law, it could go direct to the Ontario Municipal Board.

MR. SILK: Do you wish to say anything in regard to the powers of the Court of Appeal?

A. Then I think the powers of the Court of Appeal should be limited to only increase or decrease, in keeping with the values of the similar property which they are considering. I think it is unfair ——

MR. CONANT: That is a rather general statement. Can't you define more clearly what you mean?

A. Well, in this way: An appeal will go at the present moment to the county judge or to the Ontario Municipal Board, and they will listen to that appeal on the basis of evidence, they will reduce that piece of property even although by doing so a person of similar property is having to pay taxes on a higher assessed amount. In other words, you force a person then, if he wants to get redress, to appeal against every piece of property in the municipality. In other provinces they are limiting, and in the States they are limiting the courts to only being able to decrease or increase, in so far as it will not change the value in keeping with other similar properties. The whole purpose of assessments is to bring about equity in taxation, and if you are going to allow one man do be reduced because he appeals and another man not, because he feels there has been

equity, then the other individual is being called upon to pay higher taxes. We had a case of that in Fort Frances. You heard Mr. Manning speaking of the Fort Frances situation. Here was a pair of semi-detached houses built at the same time and all of the same condition, yet one member who had owned this property was considered to have been a member of the Council who had been dealing with assessment appeals in the past. The one property had been reduced. Well, there was an appeal brought forward, and the assessor felt that after an investigation into values and all that should be taken into consideration, the higher assessed property was the fairer value, and he increased that asesssment. When the matter came before the county judge he reduced that assessment, on the ground that there had been no change in the values in 1939 over that of 1938. So here, although you had two pieces of property of a similar condition and similar type, one by action of the judge was permitted to have reduced assessment over that of the other, so there was no equity in taxation by reason of his action.

Q. Turn up that section which sets out the grounds of appeal to the Court of Appeal.

A. Section 85. That is purely on a question of law.

Q. Now, what do you say as to that?

A. I feel that that is all that should be allowed, is a question of appeal on law, that the Ontario Municipal Board and the Court of Revision, if it is properly appointed, should be quite able to deal with the value end of it, of the appeal.

Q. You heard Mr. Manning's statement?

A. Yes, I heard Mr. Manning's statement. I quite appreciate, Mr. Manning's information is based on the knowledge end of it, but what I feel is this, that if we are desirous of making an assessment, it is for none other than to provide equity in taxation and to share the cost of municipal service between all citizens; therefore what we should endeavour to do from our Act is to bring about an equitable equalized assessment, so if the judge is limited to its review or the Court of Revision is limited to its review, to see that people are equalized properly, then there can be no injustice done to anyone.

Q. Well, of course, that is quite obvious, but that doesn't get you anywhere. It is a question as to what procedure is the best to bring that about.

A. Well, the best—I do not think that the matter of appeals will solve that problem. I think in the first place it is the matter of instructions and control over the assessor's duties will give you a better equalized assessment. There are a number of people throughout Ontario to-day that from a nuisance value will endeavour to continue appealing assessments, and sometimes Courts of Revision will reduce that assessment rather than face the municipality being caused the cost of going through lengthy appeals to a Supreme Court, if it was a Supreme Court, or to a county judge or to the Ontario Municipal Board. I feel that if we want to bring equity in assessment it will be a matter of the procedure followed in making the valuation, and this whole difficulty has been created by this argument over sales value, and the greatest amount of criticism that we

have in the assessment field to-day is the criticism against taxation, not necessarily the method of assessment.

Q. Well, I don't know about that, Mr. Gray.

A. Well, that is my experience, that you will find most people are complaining about the taxation which property has to bear.

Q. Well, of course, assessment is one of the incidents attached to that.

A. Well, assessment only controls the basis of levying, but will not limit the expenditure by which taxation is increased. If you were to reduce all the property to a dollar, you would have to raise that amount of money, and taxation could still be heavy and excessive.

Q. What do you say as to the respective functions or merits of the Municipal Board as compared with the Court of Appeal as a final court?

A. My experience with the municipalities, and generally speaking with people who have large assessments, is that they are more desirous of having the Ontario Municipal Board deal with the appeal than they are of the county judge.

Q. I was asking you to compare the Municipal Board and the Court of Appeal.

A. Well, all I can say is this, that I have had no experience with the Court of Appeal other than through the judge, and we always find in large assessments we want to come back to the Board. But in Manitoba, for instance, they have the appeal direct from the Court of Revision to the Supreme Court judge, and when I was studying ——

Q. A single judge, you mean?

A. Instead of having an appeal to the District judge, which would be our County Court judge, they appeal right to the Supreme Court judge.

Q. In all cases?

A. Yes. And I find from my study of the Manitoba system, and the members of my committee, that they are still having the same problem of appeals as they ever had, and it has now come to be the thought of everyone that you will not solve this problem of inequity by appeals, because the average small person who wants to appeal is going to think of the cost, and I think they find in Manitoba that it is more costly to go to the higher court than it is to the lower court.

MR. CONANT: All right, thank you. Anything else, Mr. Silk?

MR. SILK: No, not from Mr. Gray. Thank you, Mr. Gray.

There is a representative of the Real Estate Brokers Association.

MR. LEDUC: Mr. Kent?

MR. SILK: No, Mr. Kent is not going to speak.

CHARLES FURNELL, Ontario Association of Real Estate Brokers.

MR. SILK: You represent, I understand, the Ontario Real Estate Brokers?

A. The Ontario Association of Real Estate Brokers. Our Association, Mr. Chairman, has associations in Windsor, London, Kitchener, Hamilton, Toronto, Ottawa, and individual members in other municipalities, and the parent body is the Ontario Association. We have had a committee that we have called an assessment committee working for a few months, and there is one submission we have to make, and that is in connection with appeals. The situation to me seems to be this, that some of the proceedings can be made and are being made farcical, both before the Courts of Revision and the county judge and the Municipal Board.

MR. CONANT: Being made what?

A. Somewhat of a farce. I will explain what I mean. If an appellant puts in an appeal to the Court of Revision and the appeal is not allowed, he can then of course go to the county judge, and if it is not allowed there, if the property is of sufficient assessment, he can go on to the Municipal Board, and if, having gone through those steps, he is turned down and gets no reduction, he must accept that with as much good grace as he can muster, the decision that his assessment cannot be reduced; but not so with the assessor. If, on the other hand, this man appeals and gets a reduction from the Court of Revision, the assessor may appeal to the County judge or the Municipal Board, and those boards, the judge and the Municipal Board, may uphold the reduction given by the Court of Revision, but there is nothing to stop the assessor the following year from placing that assessment right back to where it was before the reduction was made.

MR. CONANT: With the similar right of the person assesed to appeal again.

MR. SILK: And the cost of an appeal year after year.

WITNESS: Yes; that is what I am coming to. I can cite cases, but unless you compel me I would rather not give names, although you could read these letters.

MR. CONANT: No, we don't care about that.

WITNESS: We have one case here, where in the city of St. Catharines an appeal was made last year, in which I appeared as an expert witness, together with another expert. I did not go down to the Court of Revision; the lawyer who was handling the case for the property owner appeared at the Court of Revision, and I presume that, having travelled from Hamilton, he was paid for that. Later we appealed, and I appeared before His Honour Judge Stanbury, and a reduction was made of $5,000. Now, to my knowledge, Mr. Chairman, those proceedings cost $350, and a reduction was made of $5,000. Assuming

that the tax rate in St. Catharines is 40 mills, that man saved $200 a year, but this year we have to go through the same procedure, because that assessment is placed right back. Now, I had another ——

MR. CONANT: Now, just stop at that point. What could we do to remedy that? What do you suggest could be done to remedy that?

A. I suggest, Mr. Chairman, that when an assessment is set, either in favour of the municipality or the appellant, by the Court of Revision or the county judge or upon appeal, say, that that assessment should stand for three years; in other words, it should not be upset by the assessor. The appellant cannot upset it, but the assessor can. Now, I am not suggesting that the assessor cannot upset it upon appeal. I think if, the following year, having received a reversed judgment, the assessor wishes to appeal again, that may be all right, but not to be able on his own volition to change that appeal and put it right back.

MR. LEDUC: This is, of course, subject to the fact that there has been no change in the property?

A. Yes; and there was no change in the property that I mention.

Q. But I mean, the suggestion you make, there should be no change for three years, provided there is no change in the property itself?

A. That is right. Now, one of the men who preceded me, brought up the matter of Courts of Revision consisting of councils and township councils. I had such an experience where I appeared as an expert before a township council, and the township council formed the Court of Revision. The mayor of that township, upon hearing that my principal was going to appeal to the county judge, told me frankly there and then, that if his assessment were reduced by the county judge, it would most certainly go back the following year. If you wish me to give you these cases, I can tell you where they are.

Q. No, it is all right.

A. Another one, where we got a reduction of $8,500, in the town of Simcoe, at quite a cost. Upon leaving the court I happened to mention to the assessor, who had been a little bit bitter right through the proceedings, "Well, I suppose that assessment will stay now." "Oh, not necessarily," says he, "it will very likely go back next year." Now, in the case in St. Catharines it did go back, and I have another case in Hamilton, a letter here from a firm of lawyers, who wrote me reminding me that a reduction had been made last year in an assessment, and tellimg me that he was surprised to see that the assessment was now back to where it was before the assessment was reduced. He says:

> "We took the matter up with the assessor of the ward in which this property was situated, and he advised us that he did not agree with the Court of Revision, and that he accordingly exercised his prerogative and increased the assessment."

I submit, gentlemen, that that is entirely wrong, and I think that is as strong a case as I can give you now.

MR. CONANT: Supposing there is a material change in the value of that property within that three years?

A. I suggest then, that the assessor most certainly would have the right to make a change.

Q. Well, how would you define that by statute?

A. Well, I don't know how you would define it by statute—I am not a lawyer, Mr. Conant—but I think the mechanics of the thing would be this, that the assessor may go down to the property and find it demolished or an addition made, and that he can make his assessment accordingly, and the owner surely should be ——

Q. I did not mean a change in value from alteration in the property, but from conditions in the municipality, which might change very radically in two or three years.

A. I suggest that in three years they are not changes that would materially affect the matter, and he would have the right of appeal in any case.

Q. Who would?

A. Either party, the assessor or the owner.

Q. In other words, you would have it assessed in the original assessment the same, with the right of either party to appeal against that assessment?

A. I think so.

Q. You would have a fixed assessment for three years at the amount decided in the last assessment appeal, subject to the right of appeal?

A. Yes.

Q. Do you care to discuss this question of the jurisdiction of the Court of Appeal in these matters?

A. No, I do not feel qualified to go that far, sir.

Q. All right, thank you.

R. S. COULTER, K.C., Chairman, Ontario Municipal Board.

MR. SILK: Mr. Coulter, you are chairman of the Ontario Municipal Board, about which we have heard something this afternoon. In your experience, has the present assessment appeal practice given a good degree of satisfaction?

A. Well, naturally, as chairman of the Board I feel that it has. I have felt, coming from a small town, and having a good deal of municipal practice before I came to the Board, that if there was one appeal to the Court of Revision by any person, the Court of Revision in smaller places, composed of the members

of the Council, who represent the different wards in the municipality, who know the values in those wards, after the Court of Revision has dealt with a matter, they deal with it pretty fairly in most cases. Then there is the further appeal to the county judge. In my practice, I realized that you could not get very far in an appeal to the county judge from the Court of Revision in most cases.

MR. CONANT: Why?

A. He seemed to take the valuation of the Court of Revision and the assessor.

Q. As a matter of course?

A. As a matter of course. Then the suggestion made of an appeal on a question of fact to the Court of Appeal: that would necessitate in every appeal to the judge that there should be a reporter present who would take down all the evidence, in every case, and in case of a further appeal to the Court of Appeal that evidence would have to be transcribed, and the expense in every municipality would be great; I do not know whether it is warranted or not. In the present practice there is an appeal to the judge, and in the smaller places the judge does not have a reporter. In Toronto he has a reporter, and the evidence is transcribed when the appeal comes up before the Municipal Board. Then the Municipal Board hears the evidence *de novo*, and generally have a reporter. And in that way there are three appeals; whether three appeals are necessary I do not know.

MR. SILK: What about the powers of the Court of Appeal, Mr. Coulter?

A. The powers of the Court of Appeal? They deal practically only on a question of law. An appeal from the Board to the ——

MR. CONANT: How is your Board constituted at the moment? Who are the members?

A. I am chairman.

Q. You are a lawyer?

A. Yes. Mr. Near is an engineer, and has had a great deal of municipal and engineering experience; he was an engineer in Toronto, an engineer in St. Catherines, also in London, and has had a very wide experience. Mr. Van Every is now a member of the Board, and he has had a very wide municipal experience.

MR. SILK: Then I wonder, gentlemen, if we might revert back to the matter of appeals from boards and commissions, which we discussed just before lunch this morning.

MR. CONANT: Just before leaving that: you have heard Mr. Manning's submission, that the grounds of appeal and the jurisdiction of the Court of Appeal should be broadened, I think he intimated, practically, to cover everything that is in issue in an assessment appeal; what do you say as to that?

A. Well, of course, I would not object at all, if this Committee would relieve the Municipal Board of all assessment appeals, as far as that is concerned, but in

appeals to the Court of Appeal you must remember that the Board hears and sees the witnesses, it sees the property, knows something about valuations in the municipality, and I don't know; as a practicing lawyer I would say no, that there should be no appeals except on questions of fact under the circumstances, but as a member of the Board ——

MR. LEDUC: You mean, there should be no appeal except on questions of law?

A. Questions of law.

Q. You said fact.

A. I beg your pardon; I am sorry.

MR. CONANT: Then, there has been the question as to whether the ——

A. May I interrupt just there?

Q. Yes.

A. Mr. Manning spoke about an appeal to the Court of Appeal, where opinion evidence has been given. Who would be better able to judge the value of opinion evidence than those who have heard the men who were giving that opinion evidence?

Q. Then, there is the question of the amount. There is only an appeal to your Board where the amount involves a minimum of $40,000?

A. Yes.

Q. In the organized counties. What do you say as to that?

A. It is very difficult to say whether the Board could handle all of the appeals on smaller amounts, and yet I feel that there should be an appeal on smaller amounts to some board or commission.

Q. A man with a $10,000 property, it may mean just as much to him ——

A. It generally means more to him.

Q. —— as a $40,000 man?

A. Yes; it generally means more to him. As to assessment at bona fide sale value, I do not think it could be managed at all by a judge or board.

Q. What?

A. An assessment on bona fide sale value. You would never have any equalization of assessment in any municipality, and that is, after all, what is supposed to be gotten at, that each man should pay his fair share of the debts of that municipality. It would be a very nice question as to what is a bona fide

sale value. A sale under mortgage, would that be? A sale from one relative to another, would that be?—and so forth.

Q. Of course, it is actual value.

A. It is actual value, that is what it is. It is not the question of sale value at all; it is what is the actual value of that property.

MR. STRACHAN: But isn't that the complaint Mr. Manning was making, Mr. Coulter, that that was not the way they were doing, that they were looking into the future and saying it had potential value?

A. Not necessarily. What is the value of that property compared with ——

Q. What you can get for it—isn't that the actual value?

A. No, I would say not by any means.

MR. SILK: In some cases you can't get anything.

WITNESS: You take for the past few years, it has been almost impossible to sell properties. I was talking to a real estate agent the other day about a certain house in town here, as to whether he wanted to sell it. He said, "No," he said, "I don't want to sell. There is no chance of selling," he said, "except to a certain few people who will buy at forty percent of the value to-day. That is the only chance you have to sell."

MR. STRACHAN: You take houses up in the Annex, up on St. George Street and in that district, assessed at $30,000 and $40,000; you couldn't possibly get more than $12,000 or $15,000, for a boarding house, and yet they are assessed at those figures. What would you say the actual value was there?

A. Well, whatever is the value ——

Q. Just what you could get for them?

A. No, I wouldn't say that at all, because some people have to sell, some people don't have to sell. It is a very nice question as to what is the actual value of a property; it is a very difficult question for any board or any judge to decide.

MR. CONANT: I think that word "value" is one of the imponderable words in the English language, isn't it?

A. Yes, it certainly is.

MR. CONANT: Economists have discussed and argued, and always will, as to what it means.

Well, Mr. Silk?

MR. SILK: Then, may we refer to the other matter, of appeals from other

boards and commissions having quasi-judicial powers. It is Mr. Barlow's item number 26, on page B72.

Q. Mr. Coulter, would you describe to us in a general way, the powers of the Municipal Board under the various statutes which govern its work and jurisdiction, with a view to describing in what cases there is an appeal from the Board and in what cases there is not?

A. Well, it would be very difficult for me to tell all of the matters with which the Board deals to-day.

Q. I think we need only pay attention to the more important ones, under which you are working almost from day to day.

A. We have, I suppose, from forty to seventy assessment appeals.

MR. CONANT: A year?

A. A year. We have, perhaps, twenty to twenty-five arbitrations.

MR. SILK: Under what Act would that be?

A. Under the ——

Q. The Arbitration Act?

A. No, it is not under The Arbitration Act. The Public Works Act; under The Public Works Act.

Q. The Grand River Act also ties in there, does it not, in the matter of arbitrations?

A. Yes, it ties in there with arbitrations. We sat for over a week on that arbitration. But that was altogether a question of valuation, values, hearing witnesses and placing the values; and so it is with the arbitrations. Whether it would be better to have an appeal to the Court of Appeal from the amount of our valuations is a question, but we see all the witnesses and see the property usually, in nearly all cases.

Q. Do I understand, that in no case is there an appeal from the Board on a matter of fact or amount?

A. No.

Q. And that in all cases there is an appeal from the Board on matters of law?

A. Yes.

Q. Then, I think that is pretty much in accordance with Mr. Barlow's recommendation, so far as the Municipal Board is concerned. He says:

"*I recommend* that a careful inquiry be made, and that a right of appeal

be granted from decisions, determinations and orders made by Boards and Commissions established by the Government, which are now determining matters which were formerly determined by the courts."

He does not restrict that to matters of law. Apparently, Mr. Barlow would give an appeal as to matters of fact ——

A. Yes.

Q. —— and amount as well. Do you see any objection to that, Mr. Coulter?

A. No, I see no objection to it at all.

MR. CONANT: The purpose of the Municipal Board, Mr. Coulter—it goes back quite a few years; it was originally the Municipal and Railway Board, wasn't it?

A. Yes.

Q. The purpose of that—you can correct me if I am wrong—was to provide an expeditious, inexpensive machinery or tribunal for settling matters that were largely, if not entirely questions of fact and detail of subjects related to municipal affairs, was it not?

A. Yes—altogether.

Q. Now, isn't there this further observation, that the procedure for getting to the Municipal Board, pleadings and all the rest of it, is much simpler than it is in the case of proceedings through the courts of law?

A. Oh, yes. You see, all we require is a notice of application or of appeal to the Board, and we generally ask that they file something to show what their application is for or what their appeal is about, and very seldom are costs allowed by the Municipal Board. And not only that: lawyers are ——

Q. The preliminaries are not at all extensive?

A. Not at all.

Q. It is an informal tribunal; you are pretty liberal and ——

A. Not necessary to have counsel.

Q. If you think anybody has been prejudiced by this or that, you allow pretty freely opportunities of setting things right, don't you?

A. Absolutely, in nearly all cases. And I think that is why the Municipal Board was established, to give the people a place to go, so far as municipal matters are concerned, especially, at the least expense possible. For that reason I did feel that it might be wise, in some cases, especially, to determine—depending on the amount of the assessment, that the appeal should go directly from the

Court of Revision to the Municipal Board, rather than go from the Court of Revision to the county judge and then to the ——

Q. What hardship would there be, Mr. Coulter, if an appellant had the option of going either to the county judge or directly to the Municipal Board? What hardship would result from that?

A. I do not think there would be any hardship, except to the Municipal Board.

MR. LEDUC: Well, we are not concerned with that.

WITNESS: No, I think it would be a wise thing to give them a chance to go there.

MR. CONANT: There seems to be, I wouldn't say a general impression, but at least, it is suggested that a great many of the county judges are not too alert in meeting their duties and responsibilities on these Courts of Revision, Mr. Coulter; so that if that is the case and when it is the case, if there is a situation in a county where a judge is known to be disposed to simply confirm assessments, why compel the people to go before him and go through that machinery, that procedure?

A. Well, I have heard that expressed, I have heard that feeling expressed.

Q. Of course, there might be one feature of it, that if that were established as the alternative practice the county judges might easily evade all assessment appeals.

A. I do not think it would be possible for them to if there was an assessment appeal directed to ——

MR. CONANT: I say if the people got that impression the appeals might be directed to the Municipal Board.

Now, Mr. Silk?

MR. SILK: Mr. Colquhoun points out a provision of the Municipal Board Act which is rather unusual, because it is a power which the courts have not got:

> "The Department or the Board may at any time of its own initiative or upon application made to it review any order, direction or decision made by it and confirm, amend, vary or revoke the same."

So that there is really an appeal to the Board from any of its own decisions; it never becomes *functus*.

I think that is all. I have a request ——

WITNESS: I might say the Board has power—the question of costs was mentioned. The Board has power to allow costs in any matter before it.

MR. SILK: I have a request from Mr. Bosley that he be permitted to make certain representations. I do not think he will be long. I do not know what the nature of his representations will be.

MR. CONANT: Very well.

WILLIAM H. BOSLEY, Real Estate Broker.

MR. SILK: Mr. Bosley, you are engaged as a real estate broker in Toronto, are you?

A. Yes, I have been engaged in the real estate business for twenty-seven years, and have appeared before many Courts of Revision in Toronto and elsewhere, many times before my friend Mr. Coulter. I think Mr. Coulter gave you the clue to the situation pretty much when he said that he could not take sale prices as indicative of value, that you had to look for an equalization, and that, gentlemen, is the attitude of the courts all the way through, commencing with the Court of Revision, the county judge and the Railway Board or the Municipal Board. I think the fault lies primarily with the assessors. In Toronto the assessor has to cover the entire city, with a corps of assessors, every year. It always seems to me to be a very great waste of time and effort, and a more competent job could be done if an assessment was made once every three years. That is the practice in Great Britain, where rates are levied on income-producing properties based upon the ability to produce, and I think that if the assessor say did one quarter of a city the size of Toronto this year, and that was left over for the next two years, you would get a very much better job. Those assessments are reviewed largely by members of council, who in effect sit in judgment upon their own work.

MR. LEDUC: Do you mean here in Toronto?

A. No, not in the city of Toronto. I am speaking now by and large. That is the case, and I think that is very bad practice, because I have found many times over ——

MR. CONANT: I think I would agree with you.

MR. LEDUC: Members of council should not be members of the court?

A. No, sir. I think those who sit on review on assessments should be men skilled in the art of appraising.

MR. CONANT: And disinterested.

WITNESS: And disinterested men. And in that way I think you would get what we are all seeking to find, that is, the truth. If that were done I do not think you would have very many appeals beyond that first Court of Revision. But the fact is that very little justice is done by and large by Courts of Revision. I do not say that is true in the city of Toronto, but it necessitates an appeal to the county judge, and in Toronto the county judges are said to be overworked, and the time which is given for a hearing is exceedingly limited; in other words, justice is rushed through. I would much prefer if I had to appeal from the

court of revision to go direct to the Ontario Municipal Board, where you have an impartial body of three men, not interested in any municipality, and I think if that were done, the right of appeal either to a county judge or to the Municipal Board, you would simplify the mechanics of the Act and get greater justice. I do know that the Government—Mr. Gray as chairman of the committee was considering the revision of the Assessment Act, and I know you gentlemen are not concerned immediately with that, you are concerned with the mechanics of the administration of the present Act, but the revision of the present Assessment Act I suggest is long overdue; and if appointees, assessors in the first place, were men skilled in arriving at value instead of being copybook writers who go around, look at a building and copy what the man who was there last year did, you would not have half the trouble you have to-day. Now, the art of appraising is very skilled, interesting, and calls for a good deal of common sense and education. That is all I have to say, gentlemen.

MR. CONANT: Have you any observations on the question of the jurisdiction of the Court of Appeal?

A. No. That is a legal matter, Mr. Conant, that I am not competent to speak about.

Q. You are satisfied with the Municipal Board?

A. By and large, yes, but I was discouraged to find Mr. Coulter saying that the primary motive was the equalization, not the determining, of real value, because I was informing Mr. Coulter, I was seeking to impress him with the necessity of reducing an assessment from $54,000, I told him I could sell for $25,000, I have sold for $16,000, all cash, a willing buyer not obliged to buy—you know the old formula. Another case, an assessment of $54,000, in the city of Toronto, the old Union Trust building at the corner of Victoria and Richmond, appealed that, no relief, we sold it for $25,000 The analysis which Mr. Manning gave you was prepared in my own office, and I think it was accurate, and that can be repeated many times Mind you, I am one of these men who believe that a carbon appraisal of the assessable value of the city of Toronto would not result in any reduction in the total assessment, but on the contrary would mean an increase and therefore a lower tax rate. Assessors have not either the time or the skill to recognize changing conditions. I do not think conditions change sufficiently in three years, no harm would be done, if a new building were built assessment could be made at any time, but to try to go over an entire city year after year is a useless waste of effort, and I would suggest that cities over fifty thousand, if assessment was made once in three years, a better job would be done. You know The Railway Act calls for that, Mr. Chairman.

MR. CONANT: Is that all, Mr. Silk?

MR. SILK: That is all.

MR. CONANT: Then we will adjourn until the morning, gentlemen.

Adjourned at 4.20 p.m. until 10.30 a.m., Wednesday, September 25, 1940.

TWELFTH SITTING

Parliament Buildings, Toronto.
September 25, 1940.

MORNING SESSION

On resuming at 10.30 a.m.:

C. F. NEELANDS, Deputy Provincial Secretary.

MR. SILK: Mr. Neelands, you are the Deputy Provincial Secretary?

A. Yes.

Q. In charge of the branch of the Government which supervises prisons and reformatories?

A. Yes.

Q. And you have held that position for how long?

A. Nine years.

Q. And what position did you occupy prior to that?

A. Superintendent of Ontario Reformatory, Guelph.

Q. And before that you were Superintendent of Burwash, were you?

A. Yes.

Q. I understand you opened up and established the Jail Farm at Burwash?

A. Yes.

Q. You have read the portion of Mr. Barlow's report which deals with a central place for capital punishment?

A. Yes.

Q. Do you agree with Mr. Barlow in his recommendations? That is on page B26.

A. In general, no.

MR. CONANT: In general what?

A. No.

MR. SILK: Will you tell us why you do not think that there should be a central place of execution in the province?

A. In the first place, the responsibility of the business of carrying out an execution is something no one wants, and that is just as true of prison officers at a reformatory or a jail as it is of the prisoners in the jail; none of them want to have anything to do with it or be near it. In the second place, it is my opinion that the fact that there is capital punishment and that it is carried out should be brought home to the people of the province. There is a third reason that I can think of just now, and that is the difficulty of near relatives of the prisoner being near him prior to execution. For instance, if a person from Kenora is to be executed and the place of capital punishment was Toronto, it would be extremely difficult for those relatives to come down here and stay two or three months or even a portion of that time. The sheriffs, of course, are inexperienced, to begin with, they don't want to have anything to do with it, but they are charged by the law with doing it at present, and the statutes would have to be changed by the Government at Ottawa. Even if there was a central place the sheriff would still be responsible for it.

MR. STRACHAN: Do you ever have any trouble with the executioner not turning up and the sheriff being ——

A. Never heard of it.

Q. That is what they seem to be fearful about, the sheriffs, that they will be left to do it themselves.

A. I have never known of such a case. A good many years ago there was a man who acted as executioner; he always turned up, but the sheriffs I believe at times had to send an officer along with him to make sure that he didn't have too much to drink, just had the right amount.

Q. He is now deceased?

A. Yes. The man who carried out these executions for seven or eight years until about a year ago appeared to give entire satisfaction, and the man who has carried out the last few executions I believe has been quite satisfactory.

MR. CONANT: Satisfactory to whom?

WITNESS: I should say, to begin with, I have never been present at an execution, and my knowledge of the matter is academic. I have talked to a great number of men through the last twenty-five years who have been present at executions; I unwillingly talked to two of the hangmen.

MR. CONANT: Would there be much economy involved if they had a central place? About how many do we have in a year?

A. I don't think so, sir.

Q. What do we have in a year in the province? Four or five a year?

A. In 1936 there were three executions—each of these years is the year ending March 31, the year I am stating.

Q. The execution year corresponds with the fiscal year?

A. Yes. In 1937 there were three. In 1938 there were five. In 1939 there were three. In 1940 there were four.

Q. Not a very serious item, then?

A. No.

MR. SILK: Mr. Neelands, on the matter of expense, I think I think I have the original of the memorandum from which you are reading, and I see that you state in each case the cost of a scaffold varies from a minimum of $30 to a maximum of approximately $100?

A. I obtained that figure in discussion with the Auditor of Criminal Justice accounts. That is the cost of equipment.

MR. CONANT: What is the executioner paid?

A. I understand it is $100 for the execution, plus expenses and if there is a reprieve just before the date of execution he is paid $50 and expenses.

MR. FROST: I suppose we should not get involved in constitutional questions, but I suggest to Mr. Neelands that he get the report of the Select Committee of the House of Commons in England. I think in 1930 there was recommended the abolition of capital punishment altogether.

MR. LEDUC: The cost of an execution, then, would be altogether around $250?

A. I believe so.

Q. And if all executions took place in the same jail, all we would save would be the cost of the scaffold?

A. Correct.

Q. Because the executioner would still be paid his fee?

A. Correct.

Q. And his expenses. So we would save perhaps three or four hundred dollars a year?

A. Correct.

MR. CONANT: Of course there is always the fear that was spoken about, that the sheriff, who is responsible for the execution, may have to do it himself.

MR. SILK: There is only one reason Mr. Barlow speaks of that has not been dealt with. That is number 4:

> "I would solve the question of appointing an official executioner. A man could be appointed who could have other employment about a provincial prison and who would always be available."

I think that same situation exists to-day; a hangman could be given employment in some provincial institution?

A. I do not agree with Mr. Barlow there. I do not think it would solve the question of appointing an official.

MR. LEDUC: May I ask this question: would it be good for the morale of the jail to have the executioner employed there?

A. Absolutely not. We have got an example of that. This executioner who acted for six or seven years until recently was a quiet and unassuming man; he could not live on the amount of money he got for executions in this province, even supplemented by what he was paid for executions in western Canada and the Maritimes, and so he would be available still for executions he was given a temporary job as a guard outside the Toronto jail, walking around the grounds there at night keeping people from approaching too close to the jail. They did have him on work temporarily inside the jail, and the effect was so bad they immediately moved him out, so we have had practical experience on that point.

MR. CONANT: All right; I do not think we need any more on that point, Mr. Silk.

Thank you, Mr. Neelands.

WITNESS: I might just add this, that through the years—I believe the expenses are paid by the Attorney-General's Department.

MR. CONANT: Yes.

WITNESS: The Provincial Secretary's Department has the custody of the prisoner, but there is no official responsibility in respect to carrying out the execution, but during these years, probably because no one else wanted to do it, we were a sort of clearinghouse for information on the theory of hanging or executions, to the sheriffs, advising the sheriffs and giving them all the assistance we could. The sheriff's office in Toronto—I might put it this way—has been the employment bureau, having the name and address of the executioner, and that is the situation to-day. I do not know the name or the address of the present man who does this, but I know it is in the sheriff's office in Toronto, and it is only a matter of—two weeks ago I referred a sheriff to the sheriff in Toronto for the information.

MR. CONANT: All right, Mr. Silk. Thank you, Mr. Neelands.

Witness retires.

MR. SILK: I had arranged with Mr. Slaght and Mr. Greer to be here this morning. Mr. Slaght will be here at about eleven o'clock; he is unavoidably detained. Mr. Greer has sent me a letter which I should like to read into the record, dated September 24:

"Dear Mr. Silk:

I think that it will be impossible for me to attend your Committee

to-morrow because of the fact that I am trying a case in the Assizes, and the court sits from ten until five except for lunch time.

My position as to the abolition of grand juries is that it would be a great mistake for many reasons, and to send cases to trial solely on committal by a magistrate would eventually be much more costly in the administration of justice than to have the grand jury pass on the facts. The question of expense of administration of justice within reasonable limits is no argument it seems to me for having the public satisfied that men who are accused of crime are protected by the standard methods that have prevailed for centuries in British law, and to relieve the grand jury from the responsibility and pass it on to government officials eventually would cause a certain amount of distrust in the minds of the public. Magistrates cannot get away from the fact that they are government employees, and if they feel that the Attorney-General's department has a policy in regard to certain types of crime, such as careless driving or automobile accidents, the difficulty of having a fair trial is very possible, and constantly county judges have protested against the weakness of Crown evidence as a basis of committals where elections take place before a county judge without a grand jury, and have stated that cases should never have been allowed to go from Magistrates' Courts in a preliminary hearing. This in itself is some justification for the retention of a grand jury system, and there are many reasons that might be advanced against such a drastic removal of an ancient safeguard.

Yours sincerely,

(Sgd.) R. H. GREER."

Then I have submissions on grand juries from Crown attorneys, county law associations, and others.

MR. CONANT: Were they not put in when we were sitting before?

MR. SILK: No

MR. CONANT: Well, can you summarize them as you put them in?

MR. SILK: I will be as short as possible. Most of them are quite short.

The first one is a joint submission of the Crown attorneys of Welland, Grey, Halton, Ontario, Wentworth, Dufferin, Peel, Northumberland and Durham, Wellington, Norfolk, and York.

MR. LEDUC: Is that an association?

MR. SILK: It does not seem to be an association; it seems to have been an informal meeting of some kind.

MR. LEDUC: What do you call them? Crown attorneys ——

MR. SILK: From eleven counties.

MR. LEDUC: That is in southern Ontario, is it?

MR. SILK: In the southern part of Ontario.

MR. CONANT: Do they join in one observation?

MR. SILK: Yes, and it is just a short one.

MR. CONANT: Well, read it.

MR. SILK: "The meeting approved the grand jury system but suggested a reduction in the number of jurors. Two Crown attorneys were in favour of abolishing grand juries."

MR. CONANT: They are in favour of reducing the number?

MR. SILK: Yes, they are all in favour of reducing the number.

MR. CONANT: Do they mention the number?

MR. SILK: No.

MR. LEDUC: Two only favour abolition.

MR. SILK: Two only favour abolition.

From Raoul Mercier, K.C., Crown attorney in Ottawa:

"I would believe in doing away altogether with the grand jury. In the city of Ottawa we are blessed in Mr. Strike and Mr. Clayton with two very efficient magistrates and I do believe that when they commit an accused, it is loss of time and money to recall witnesses and go over the same matter before a grand jury."

From Mr. Lancaster in St. Catharines:

"I believe that the grand jury system should be retained. A grand jury has two main functions, that of considering indictments, and that of inspecting public institutions supported in whole or in part by public funds. It is no doubt true that most criminal charges are now fully passed upon by police magistrates and given full scrutiny by Crown authorities before reaching the grand jury room, but there is at present certain procedure provided whereby an indictment may be preferred to a grand jury direct in the first instance, and this, in my opinion, should not be disturbed. The inspection of public institutions might perhaps be dispensed with due to the extensive system of public inspectors that we have, but this duty as well as the consideration of indictments gives to a body of men representative of the best element of the community a chance to have contact with the administration of justice and to be actually an interested and integral part of it."

MR. LEDUC: I was going to ask you if the eleven Crown attorneys make any suggestions as to these inspections by the grand jury?

MR. SILK: No, they do not here.

From Mr. Annis, at Oshawa:

"I am of the opinion that whereas the grand jury probably serves no useful function at the present time, but as it would appear that public opinion may not be willing to see it go, that the number of cases to be referred to a grand jury should be limited to cases of a more serious sort involving a substantial maximum penalty and where there is only one criminal case coming before a session, the presiding judge and local officials should have some discretion in dispensing with the calling of a grand jury."

MR. LEDUC: Might give the presiding judge some discretion in dispensing with the calling of a grand jury.

MR. SILK: That is, in cases where there is only one criminal case coming before the session.

Then from Mr. Kelly, Norfolk County:

"Some of the reasons, I think, for a grand jury investigation in a criminal case are (1) a safer trial and better protection of the accused or innocent. In larger cities where there are many criminal trials the grand jury no doubt works out all right. There is not so great a necessity for a grand jury in the country or rural districts, perhaps. If there are no criminal trials to be heard, under the present practice, grand jurors and petit jurors do not attend for criminal trials and are notified accordingly."

Mr. Kearns, at Guelph, simply says:

"While retaining the grand jury, why couldn't the number be reduced to, say, seven?"

Mr. Ballard, of Hamilton:

"It is suggested that the grand jury serves no useful purpose, and that it might be abolished in Ontario as in other provinces.

The grand jury has cost this county about $600.00 for the past year

As a means of inspection of institutions it is more a form than a reality. The inspection is always more or less cursory, and rarely, if ever, shows any thorough investigation or insight into the actual working conditions and conduct of the institution investigated. If these investigations are necessary and are to be of value, they would be much better carried on by some qualified government inspector.

As a protection to a person on trial the jury would appear to be very much a fifth wheel. A qualified magistrate who commits for trial and an experienced Crown counsel who weighs the evidence and pre-

pares an indictment are infinitely more qualified to judge of the merits of a prosecution than are twelve men with no experience in law. Further, it is usually the experience of Crown counsel that a grand jury will do very much what Crown counsel wishes to be done in finding a 'true bill' or 'no bill.' "

MR. CONANT: He favours abolition, then; isn't that the sum and substance of it?

MR. SILK: Yes, definitely.

Then we have submissions from county law associations. There are just two of them, I think.

From Lindsay, Mr. Jordan writes on behalf of the Lindsay Law Association and says he encloses a resolution favouring the abolition of the grand jury. The resolution is formal.

Mr. Spereman, of Owen Sound, writes on behalf of the Grey Law Association:

"Be it resolved that the Attorney-General be asked to amend the provisions of the Jurors Act, to provide that a grand jury shall consist of seven jurors instead of thirteen, and that grand jurors be drawn from a panel of petit jurors."

There are two or three submissions from the profession generally.

MR. CONANT: We have not had any submissions on the feasibility of drawing a grand jury from the petit jury panel.

MR. SILK: That is the first time it has been suggested, I think, sir.

MR. FROST: Just why wouldn't that be feasible?

MR. CONANT: Well, Mr. Frost, it is largely the mechanics of the thing. I could not express an opinion on it at the moment.

MR. STRACHAN: I should think the danger would be, the petit jurors might be also serving on the trial.

MR. FROST: Of course, if they were called first of all for the grand jury, then they would be out of that.

MR. STRACHAN: You might get one case, though, in which they would get a preconceived idea, without hearing the defence.

MR. CONANT: We might look into that; make a note of that. I think that is a thing we should perhaps consider.

MR. SILK: Then a submission from Mr. J. N. Lindsay, a lawyer practising in St. Thomas:

"I feel that the grand jury can be dispensed with in regard to the inspection of the public buildings as this can be allocated to the county engineer."

Then this is from Mr. F. W. Griffiths, K.C., of Niagara Falls. Mr. Griffiths says:

"A competent coroner" ——

I think he must mean "A competent Magistrate." It is quite a lengthy letter, and an error may have crept in.

"A competent coroner is better qualified, after hearing all the evidence, than is a grand jury of laymen who hear only one side, and in many cases not all of that."

Those are all the submissions I have on grand juries.

While we are waiting for Mr. Slaght, I do not know what the pleasure of the Committee is, but I have several other extracts in these same files marked, pertaining to pre-trial and certain other matters that have been studied.

MR. CONANT: I think you can put them in now We can keep them segregated in our minds.

MR. SILK: I am going to cover several matters. I have two extracts ——

MR. LEDUC: Well, here is Mr. Slaght.

ARTHUR G. SLAGHT, K.C.

MR. SILK: Mr. Slaght, you have indicated your desire to attend before the Committee and express your views on the proposed abolition of grand juries?

A. Well, perhaps, Mr. Silk, that is not quite accurate. Some months ago I wrote the Committee expressing my view, and I think I said that if they should desire me to attend in person I would be glad to do so, but otherwise I was putting my view before the Committee on paper for what it was worth. However, I am glad to come.

MR. CONANT: As with all tribunals, we would rather have first-hand evidence, if possible.

WITNESS: Well, I can put my views very briefly. I am strongly opposed to the abolition of the grand jury system. If, as I gather, the proposal would be to substitute the judgment of the Attorney-General for that of the grand jury as to whether ——

MR. CONANT: The judgment of whom?

A. The Attorney-General.

MR. CONANT: Oh, no.

WITNESS: Well, let me get straight on that, then. Take in Alberta, for instance, who performs the function that has heretofore been performed by the grand jury?

MR. CONANT: Well, they have the preliminary in the same way, and then the indictment goes directly to the petit jury.

WITNESS: But it can only go if the Attorney-General approves of its going and endorses it to go.

MR. SILK: The Attorney-General's agent.

MR. CONANT: Or his agent.

WITNESS: Or his agent.

MR. SILK: Which would correspond to the Crown attorney.

MR. CONANT: In practice, yes.

WITNESS: Perhaps it would be more correct to say that if the system is changed and the present jury abolished, the Attorney-General or his agent would have their judgment substituted for the judgment now brought to bear by a grand jury—I think that is clear—and as Attorney-General for this province you will understand that I have the highest regard not only for our Attorney-General personally but for the conduct of his office since he has exercised that important position, but my view is this, that the function of the grand jury at present is a judicial function purely; they are judges of the problem as to whether or not on the evidence presented to them a man should be placed in jeopardy on trial before a petit jury. I do not approve of shifting to prosecuting officers any further judicial functions than are borne by them at the present time.

MR. CONANT: I don't want to interrupt your statement, but you have regard to the fact that there is a preliminary before the magistrate, Mr. Slaght?

A. Sometimes, and sometimes not. Under 873 the Attorney-General may short-circuit an accused and deprive him of any preliminary hearing. I have been in many cases where that has happened, and the first that an accused learns of the fact that he is indicted may be, under the present system, after the Attorney-General has preferred an indictment against him behind his back, submitted it to a grand jury, in secret of course, and secured an indictment, and he might then be arrested that night and placed upon his trial the next day or such convenient time as may be.

Q. Taking that situation, Mr. Slaght, frankly, that is the only incident that occurs to me to require further protection. Wouldn't there be ample protection in those cases in which the Attorney-General does prefer an indictment if the bill were to go before a judge, who would then function in the same way as a grand jury?

A. Well, in my view, no. Under our present system, as you know, the consent of a judge is frequently sought and obtained for the preferment of a bill

before a grand jury, particularly in a case where there has been no preliminary hearing, and, without any disrespect to the Bench, my experience tells me that if a crown prosecutor of standing appears before a judge with a bill of indictment and steps up to the Bench and says, "I would like your consent endorsed to submit it to the grand jury," the learned judge frequently will endorse the consent without any more enquiry as to the facts of the case.

Q. Oh, I agree with that.

A. Then he says to the Crown Prosecutor, "Is this a case you think should be presented?" and the learned judge takes a substituted view, he sanctifies the indictment with his approval, which to my mind is a practice which does not make for the best administration of justice.

Q. I agree with that; but, you see, Mr. Slaght, the procedure before the grand jury is set out in considerable detail. For instance, a grand jury may not reject a bill until they have heard all the witnesses, and so-and-so; they can find a true bill after hearing two witnesses or whatever they see fit. Supposing the submission to the judge in the case of an indictment preferred by the Attorney-General were surrounded with the same detail and machinery, wouldn't that be ——

A. I do not think that is feasible, sir, because work it out in a given case. The representative of the Attorney-General wants to give the judge the facts that he would give to a grand jury. The judge has got to take half a day and hear under oath *ex parte* without cross-examination the very witnesses to detail the facts, as they do before a grand jury, with none of the safeguards of cross-examination, and the judge's mind, the very judge who next morning sits on trial of the case ——

Q. Oh, no.

A. You would appoint a special one?

Q. That would contemplate an entirely different ——

MR. FROST: Mr. Slaght, I think there was the suggestion here that in cases where the indictment was preferred—I don't know whether the proper expression is "preferred"—by the Attorney-General, at least submitted by the Attorney-General, in those cases there should be some amendment to the procedure whereby that matter would go before a magistrate in the ordinary course for preliminary hearing, so that the magistrate would have the opportunity of passing upon as to whether there was sufficient evidence to send the man up for trial, and, furthermore—which I think is very, very important—to provide an accused person with some notice and idea of what the charges are against him. I agree with you, I think that that is a tremendous defect, if it were simply that a man might have an indictment preferred against him and be arraigned on a charge of murder for the next day without any opportunity of knowing what the nature of the evidence against him was.

WITNESS: Well, dealing with the provinces where the Code or where the practice has dispensed with grand juries—take Alberta, for instance: there is no

such practice there, as I understand it, as is suggested by the Attorney-General to me or as is indicated by you.

MR. FROST: Correct; I think that is correct.

WITNESS: And you have got to rewrite the Code on all that practice, and you might find a good deal of difference of opinion about making it compulsory to go back for a preliminary hearing. I am rather assuming that if in this province we should abolish grand juries we would adopt somewhat the practice of Alberta or the other provinces that are working along without grand juries, and I have not seen any such scheme as you indicate, which would to some extent do away with the evil I have in mind.

MR. FROST: I do not think there is any such scheme, Mr. Slaght, at the moment.

WITNESS: Then if you come to work that out with the other sections of the Code in that respect you will find you would have to make very revolutionary changes in the whole criminal practice, I think.

MR. SILK: I think what you are looking for, Mr. Chairman, is on page B3 of the Barlow report; there is an extract from the Code. It refers to section 873 of the Code.

WITNESS: You see, my view is this: There is a heavy responsibility on the shoulders of our Attorney-General under the present law, in many respects, such as the responsibility under that section where he may compel a jury trial where the offence is punishable with more than five years, and as an administrative officer he has grave responsibilities; and I for one would not be in favour of adding to his responsibilities the substitution of his judgment for the present judicial judgment of a grand jury. Was there something else, Mr. Attorney-General, before I leave this point? I have got other reasons why I think the grand jury should not be ——

MR. FROST: Of course, that is a very important point you are on right now.

MR. CONANT: I don't want to interrupt ——

WITNESS: I am glad to discuss it.

MR. CONANT: But I am frank to say that in my consideration of this whole thing—and with all deference to the views expressed by yourself and other gentlemen—the only point that has bothered me is the safeguard against what you might call a vindictive or arbitrary Attorney-General, and I am dealing with it personally when I say that. I am just turning up 873; it outlines the practice there. Frankly, I do not see any real difficulty where there has been a preliminary in our province, which is largely manned now with lawyer magistrates—the calibre of our magistrates has improved, I think, in the last ten or fifteen years—but I am conscious of the fact that a vindictive, imprudent Attorney-General ——

WITNESS: Or a politically-minded Attorney-General, one who might be subconsciously influenced.

MR. CONANT: That is right; to put it broadly, an Attorney-General who for any improper reason or on any improper motive might lay an indictment, that there should be protection against that. But I have thought, Mr. Slaght, that, while I think that provision must prevail, because there are cases where it is found during the course of a trial or in a peculiar situation that you should bring somebody else in to have the case before the court—you have seen those situations; that is what they are intended for, those special powers. I had thought that in those cases where the Attorney-General prefers an indictment, if that indictment and the witnesses endorsed on it—in fact, the same machinery as applies to the grand jury—were taken before a county judge or any judge other than the one who is going to try it, that would be a safeguard against an official's animosity or prejudice.

WITNESS: Did you ever know that to be done? That is, you find a fresh judge, who is going to sit for a day and hear witnesses as a grand jury does, and then a second judge to try it? Are you going to let a County Court judge sit first on the *ex parte* evidence as a grand jury would, and then have the Supreme Court judge step on the bench next morning and try it? I have never known that sort of machinery ——

MR. CONANT: I don't think we have any of that machinery, but we could constitute such machinery, and it is a matter of opinion, Mr. Slaght, whether that judge would not be as competent to pass upon the bill as a grand jury, in those exceptional cases.

WITNESS: Well, in law he would, but I think one of the virtues of a grand jury is that it is composed of a cross-section of the community; it has got a merchant, a blacksmith, a farmer or several farmers, and you are reaching back to a body of men who know something about human nature, possibly in a greater sense—perhaps the gentlemen of the press will be a little wary here—than some of our judges after many years upon the bench. Our system isolates them to some extent from participation in all those human activities which the average citizen enjoys, and therefore he becomes a storehouse of knowledge as to what motivates men and women in the various activities of life, and whether they are likely innocent or whether they are likely to be criminal; and I would not at all approve of substituting either a County Court judge or a Supreme Court judge for the grand jury to perform the functions that the grand jury now performs. That is without the slightest disrespect to the Bench.

MR. CONANT: You of course have in mind that that is only suggested for the comparatively few and exceptional cases where an indictment is laid by the Attorney-General. The practice would still remain, Mr. Slaght, that in most cases, in fact ninety-nine per cent. of the cases they would go through the preliminary before a magistrate, as they do now.

WITNESS: Well, my experience the last few years has not been that high. I have defended a good many cases where the Attorney-General has given a direction and there has been no preliminary hearing.

MR. CONANT: But you defend exceptional cases, Mr. Slaght.

MR. SLAGHT: Well, I don't know about that. But the point is this: An Attorney-General may have representations made to him by parties interested

in prosecuting somebody; they may be activated by the highest motives, but they may be partisan and they may be misled, and he can, if representations are made to him sufficiently strongly, short-circuit a man away from any preliminary before a magistrate whatever, and he can prefer a bill of indictment against him and that is the first inkling the man has, after the bill goes before the grand jury, and if a bill is found, then he can be arrested. Now, that in itself to my mind is a dangerous practice, but, as you pointed out, there are occasions when perhaps the best interests of the administration of justice make it desirable that that should be exercised; I think very sparingly exercised.

MR. CONANT: And I think you will agree that it is sparingly exercised.

WITNESS: But unless you are going to take that right away from the Attorney-General to deprive a man of a preliminary hearing, then you have, by doing away with the grand jury, I think, taken a retrograde step, and I have heard of no proposal to take away from the Attorney-General that right of preferring an indictment without a preliminary. My friend Mr. Frost made a suggestion of that, but that is a pretty radical change in the present law.

MR. CONANT: Oh, yes.

MR. FROST: Well, of course, Mr. Slaght, there is some merit in the suggestion from this standpoint: You mentioned, for instance, the case in which the Attorney-General prefers an indictment against an individual and that goes before a grand jury. He may know nothing about it; he is not represented there or anything of the sort. There is this to it, that in going before a magistrate on a preliminary hearing he at least has the advantage of being represented, being able to cross-examine witnesses, and to find out something of the nature of the charge against him. Now, I have just a recollection; it seems to me that in the Home Bank cases—I may be wrong about this, but it seems to me that in the Home Bank cases something of that sort applied, and in that case there were endless demands for particulars and what-not, and it would really have been much better in the first place if the matter had gone before a magistrate and there had been a preliminary and these people had had the right to find out what the nature of the charges against them was, and had had cross-examination and so on. That is the other side of the picture, I think.

WITNESS: I agree with you, that a preliminary has two chief purposes: one, to have it determined whether the man should be further subjected to any prosecution or not, whether there is enough to send him on for trial; secondly, to enable him through his counsel to cross-examine, as you put it, and obtain particulars of the charge that he has got to meet at a trial later on. That last function is sometimes overlooked in the speed with which preliminary hearings are forced through; I do not think very often, but sometimes, where there is a great grist of work, preliminary hearings, unless counsel arrange in congested city areas for an afternoon or something, are pretty perfunctory affairs, and after a witness or two the man goes on. But I have heard of no concrete proposal to force a preliminary hearing in any case where the Attorney-General does not want it, and unless and until there is that forced preliminary, the protection of the accused, I think it is a dangerous thing to dispense with the grand jury and put that judicial function on the shoulders of the Attorney-General in addition to the very serious duties he already performs.

MR. CONANT: You are hardly accurate, Mr. Slaght, in that summary; if you couple with that the suggestion that where the Attorney-General does prefer an indictment it should go before a judge who would function as a grand jury.

WITNESS: Well, I have expressed myself on that, sir. I do not think that would be a satisfactory substitute. You indicate to me that in no case would you have the judge who is to try the man perform that preliminary function.

MR. CONANT: Oh, of course not.

WITNESS: That would be a vicious thing to do.

MR. CONANT: Yes, impossible!

WITNESS: Then have you given thought to working it out, as to where you will find another judge in an assize town—say in Kenora, the county judge, perhaps—who will sit and hold an enquiry like the grand jury would hold, and then he finds a true bill and passes it on. What are you going to do in the case in the County Court, with a County Court indictment? Who is going to ——

MR. CONANT: Under our present system, Mr. Slaght, that would not present much difficulty, because throughout the province our County Courts are included in districts, and the judges move from county to county all the time.

WITNESS: I understand that. But our sessions, trying the criminal cases, occur, with some variations in some counties, on the same dates in 92 counties in the province. I should think 70 of them open on the same day, the criminal sessions, in the spring and the fall. Isn't that so?

MR. LEDUC: I think your number of counties is slightly high, Mr. Slaght.

WITNESS: I think it is only York and London and Ottawa where there are special dates for sessions. I think it is low, sir, with great respect. If there are 92 County Courts, then ——

MR. SILK: There are only about 50, sir.

WITNESS: Well, is it not so that the bulk of them all sit at present on the same date?

MR. LEDUC: Oh, yes, that is right.

MR. SLAGHT: Then the county judges in their respective counties, or the man who is transferred from one county or exchanged with another, they are all sitting there to go on with the work of the court.

MR. CONANT: Oh, yes, Mr. Slaght, but there is nothing to prevent that bill being dealt with at any time before the opening of the court.

MR. SLAGHT: Just the fact that you might have nineteen witnesses that you are going to have the expense of sitting around two days beforehand and sitting around afterwards. Our grand jury system obviates that in great meas-

ure, because they come for the grand jury and they remain for the trial. That is a factor by which you will add expense.

MR. CONANT: Perhaps we are getting away from the fact that this class of cases is comparatively rare. With all deference to your recollection, I do not think there are half a dozen a year in the whole province in which the Attorney-General prefers an indictment; I do not think there are that many.

WITNESS: Well, I just concluded a twenty-eight-day trial in which there was no preliminary. The Attorney-General preferred an indictment in that. Then I have had a series of cases in London for the past four years, five trials, no preliminary in four of those, indictment preferred. Perhaps my experience has been out of the ordinary, I grant that.

MR. CONANT: I am quite sure that it has.

WITNESS: Well, apart from that—then I have other reasons.

MR. CONANT: All right, go ahead.

MR. FROST: Mr. Slaght, just before you leave that point: what would you think of the suggestion of reducing the number of grand jurors to say nine or seven? There have been quite a large number of representations along that line.

WITNESS: Well, I will deal with that in my third point, If I may, because it is more relevant there.

MR. CONANT: Go ahead, Mr. Slaght.

WITNESS: My second point is that the grand jury system as at present is of real use to the Crown under these circumstances, in perhaps more serious cases. I think there was a murder trial recently in this city which I might outline as a possible case; one's mind might go to that. Take a charge of murder or of burglary, or hold-up cases: The Crown sometimes have to use men who have criminal records, and perhaps one of four, the least guilty, will turn state's evidence, so to speak, and the Crown's case in some links in the chain is practically dependent upon the oath of such a witness. If you do away with the grand jury the prosecuting counsel may bring such a witness prior to the trial to his office and endeavour to find out what he is really going to say in the witness box at the trial, but he has no way to make him talk if he refuses to talk, and he has not any sanctity of an oath hanging over such a reluctant witness, who has been a criminal himself; and if the grand jury system is perpetuated he can take that man before the grand jury, have him sworn, and there develop him in the quiet of the grand jury room, where he is not overshadowed with any fear of retribution by the friends of the men being prosecuted in the criminal world, and you are likely to get the truth from him in that way, and then he is not likely to go back on what he has sworn to there when he goes into open court at the petit jury trial. Now, I think—I have never discussed it with Crown prosecutors—that in a case of that kind the grand jury preliminary, with a witness of that type, is of assistance to the Crown in administering justice. That is a minor point compared to my other objection.

Then the third point is that I believe that it is a healthy thing for the community that men of the type of grand jurors—and there is a special panel selected; my experience is, perhaps they are of a little higher type, if one may say so, than the panel for the petit jury; they try to get rather outstanding men in various counties to sit on the grand jury panel. I would not see any grave objection to making them nine instead of thirteen; I would not go below nine, I think. But they are known to be on the grand jury, and they go in and get their eyes opened, so to speak, in the grand jury room in connection with the administration of criminal justice, and they also learn something, and they create a feeling of security in the community that criminal justice is administered quite as much by the people of that district as by the judges that hurry down from Toronto to conduct the trial and the Crown prosecutor that hurries in. In other words, it builds up a knowledge of and respect for the administration of criminal justice throughout the community.

Now, I think that states my views, but let me put this to you: As I understand it, the great argument for dispensing with them is the saving of dollars, the saving of expense. It is not thought that it will hasten the administration of justice any. I think grand juries throw out bills sometimes that would have cost the province a great deal of money to have gone on with a trial; there is that to balance. Then, as I understand it, our system costs us about $90,000 a year; you will correct me if I am wrong.

MR. CONANT: Well, of course, it is difficult or impossible to get an accurate figure, because of all the incidentals and the effect it has on an assize, to what extent it speeds up the assize, and all that sort of thing. It is almost impossible to get a figure.

WITNESS: Of course, there is the factor of their examination of public buildings. I am afraid that gets to be pretty perfunctory; I fancy when they go to examine a jail, the floors are pretty well scrubbed, because the fact that they are going to visit is known and anticipated; and perhaps an inspector who popped into town unexpectedly would get a better inspection of a jail than a grand jury.

MR. FROST: Do you think that angle might be dispensed with?

A. Well, perhaps so, but they are there, and unless they abuse it it doesn't take very long to go to these places. The old saying, that it is ——

Q. They have the right to do it?

A. Yes, they have the right to do it; they are told that by a judge, and they are not compelled to do it. But there is a good deal in the old saying that not only must we administer criminal justice effectively, but we must have the people believe that it is effectively administered and create confidence in it, because in these days, with subversive activities, communistic theories, the proper, speedy and efficient administration of criminal justice is a national bulwark of the utmost importance.

MR. CONANT: Oh, there is no doubt about that.

There is one observation I want to make. This is another angle to it that has disturbed me. With the greatest respect to your views and those of the others, when you analyze the whole of the British Empire you find that we are perhaps the largest jurisdiction left which has retained the grand jury. Now, take their experience in England: At the outbreak of the last Great War they put through legislation abolishing them for the duration of the war, so that they automatically came into effect again at some period about 1919. Then I think it was last August they re-enacted similar legislation abolishing them in most of England. Then, of course, as you know, they haven't them in Quebec, Manitoba, Saskatchewan, Alberta, British Columbia, South Africa and Australia. I cannot reconcile the view of eminent gentlemen like yourself with the experience of these other jurisdictions, Mr. Slaght.

WITNESS: Well, take England alone: I don't know anything about how it works in Quebec, but I think you will find the resumption of the abolition of the grand jury last August was largely due to the shadow of war hanging over.

MR. CONANT: Oh, yes, no doubt about that.

WITNESS: And so that quick, speedy action could be taken by the Attorney-General and his officers.

MR. CONANT: Well, supposing we were to abolish them during the duration of the present war?

A. Well, I don't see any need to, with the Defence of Canada Regulations as they are.

Q. I beg your pardon?

A. I don't see any need to, with the Defence of Canada Regulations as they are. We have gone in the Defence of Canada Regulations away outside the ordinary everyday regulations you throw around people in wartime. Very drastic measures are on the statute books now by way of those regulations, where we can move most rapidly against any supposed enemies. And what have you before you—I have not followed this—whose opinion have you as to the highly efficient working of the substitute systems? Have you any opinion from Alberta juries and ——

MR. CONANT: Oh, yes, we have an expression from all of them, and they all express the view that it has been very satisfactory. Here is one from Saskatchewan ——

MR. SILK: I do not think those letters have been placed before the Committee yet.

MR. CONANT: Here is one of October, 1938; it is not very fresh, but it is good enough. This is from the Department of the Attorney-General ——

WITNESS: Well, of course, the Departments of the Attorney-General like to get rid of the grand jury, because they are a nuisance to them.

MR. FROST: You mean they have the Crown-cttorney complex sometimes.

MR. CONANT: It says:

> "The system of administering justice without a grand jury existing in this province has worked out very satisfactorily, and I have never been informed of any desire having been expressed at any time that the grand jury system should be substituted."

WITNESS: Well, I would sooner have the view of a judge who was active in the carrying out of criminal justice.

MR. CONANT: What disturbs me is this: What different conditions exist here that make the grand jury so particularly necessary that do not exist in England or these other provinces or these other jurisdictions? That is what I can't see.

WITNESS: Well, you could ask yourself the question the other way round if you were in England: What different conditions exist in England that justify our dispensing with it when Canada finds it so satisfactory in the main, or when Ontario finds it so satisfactory? That, sir, does not impress me unless you have got something from judges in these jurisdictions where they say that the system works well without the grand jury. I do not speak for them, and I may be subject to correction, but I think unanimously the Supreme Court judges of this province would hesitate to see the grand jury system abolished. You may have something from the judges or you may not.

Now, here is a suggestion, a halfway suggestion of which I do not approve, but I have heard it put: abolish grand juries for sessions and you save half of the $90,000 and cut it down to $46,000, but maintain grand juries for assizes, and in that way you get your inspection twice a year of public buildings, and you get what I referred to, the contact of the county with the administration of criminal justice to at least fifty percent of its present contact, and you do not do away with them altogether. Have you considered that at all?

MR. CONANT: That has never been suggested; at least, I have never heard it.

WITNESS: If this is just a money-saving device, there is where you could save half the cost in a year—I mean, a money-saving suggestion. You could save half the cost, and you would still maintain more than half the virtue of it.

MR. FROST: That would have this benefit too, that it would mean that always, for instance, in murder cases, where if there is a conviction there is a verdict which will never be changed once it is carried out, in all murder cases you would have the intervention of a jury.

WITNESS: In more serious crimes, which have to come before the assizes, yes. Now, if you cut it in two, that is $46,000 a year; that is a pretty small sum to preserve if one believes that it does go to preserve the efficient administration of criminal justice, when you realize that in Canada we are spending three and a half million dollars every day now, a million and a half for peacetime services under our regular budget, and two million dollars a day for war services—three and a half million dollars every day we spend in Canada. Are we to lop off $46,000 or $90,000 a year in this province? We pay I think probably forty percent in Ontario of that three and a half millions a day.

MR. CONANT: Rather more than that.

WITNESS: Well, say forty percent of three and a half millions; that is what? Practically a million and a half this province is spending every day.

MR. CONANT: On war.

WITNESS: No; two-thirds of it on war; a million on war and half a million on other services.

MR. CONANT: You are taking the total Federal budget?

A. I am taking the total Federal expenditures. We budgeted for about $450 million peacetime normal governmental administrative services in Canada this year.

MR. FROST: Mr. Slaght, the way this is working out now is just roughly this, that every accused person who elects trial by jury automatically gets the intervention of a grand jury. If your suggestion—it is not your suggestion, for the reason that you hardly agree with it, but you have voiced the proposal that if it were confined to Supreme Court or Assize Court cases, then that intervention would really only come in murder cases, generally speaking, because they are the principal class of criminal cases, I suppose, that are tried by Supreme Courts.

WITNESS: And rape.

MR. FROST: And rape. Of course, there are other cases, but I think they are comparatively few. But you would be in that case, retaining the grand jury in the very serious cases, and particularly in those where, once the penalty is imposed, it cannot be called back. That is one of the difficulties about capital punishment. There are some curious angles to the grand jury business ——

WITNESS: Well, that halfway measure is not my proposal, but I have heard it discussed, in fact I have discussed it with some pretty high authorities, and I think in some quarters it would be thought that rather than take it all away, you should not go further than that. My view is, you should not interfere with it at all.

MR. CONANT: It is a new thought to me. I had not heard the thought before. It is a very acceptable suggestion or thought, and I am greatly obliged to you, I am sure.

MR. SILK: I think the only proposal of that kind comes from Mr. Kelly, the Crown attorney of Norfolk County; I read it this morning.

May I pass on, sir, to other subjects?

MR. CONANT: Yes.

MR. SILK: In connection with petit juries, Mr. Slaght, it is suggested in Mr. Barlow's report that there is some need to improve the calibre of the men who are on the petit jury panels.

A. Well, I don't know how you are going to do it. The method of selection of the petit jury is by statute, as I recall it; the county judge, the sheriff of the county and the Crown attorney, go through the voters' lists and they select a lot of possibles, and then that is boiled down, and so on. You don't want university professors on the grand jury. Lawyers are barred from the grand jury, doctors as a rule—I mean from petit juries—doctors as a rule are not exempt, but they like to be exempted and usually try to get off, because their duties are such that it is difficult for them to be locked up for a week on a murder case, for instance. I have no criticism to make of the standard of the personnel of petit jurors, after forty years of talking to them.

MR. SILK: Then there is a further recommendation of Mr. Barlow. He recommends that all civil actions where a jury is now optional, be tried by a judge without a jury, except where upon an application to the court or a judge, it is found that the questions in issue are more fit to be tried by a jury than by a judge.

MR. CONANT: It is shifting the burden for a jury ——

WITNESS: Is that in civil cases?

MR. SILK: In civil cases.

MR. CONANT: Shifting the burden as to whether you have a jury or not.

MR. SILK: Where a party requires a trial by jury, there would be a certain onus on him to prove that the case is more fit to be tried by a jury than by a judge sitting alone.

WITNESS. I would not approve of that. We have built up a long line of cases on the question of when a jury notice should be struck out; we have rules that compel ——

MR. CONANT: They have done that in a great many other jurisdictions, Mr. Slaght.

WITNESS: Have they?

MR. CONANT: In England, you move for an order that a case be tried by a jury, and the onus is upon the person seeking the jury to establish its fitness.

WITNESS: Well, personally, I would not be in favour of shifting any onus as it now stands. Equitable cases, cases of taking accounts and all that, as a rule, are tried without a jury here, and under our practice, a party who is complaining of being forced on with a jury trial may apply prior to the trial to a judge in chambers to strike out the jury notice. He may succeed, or that judge frequently refers it to the trial judge, and the trial judge himself, who has read the record and knows something about the case as a rule, may exercise his discretion, except in certain cases that the rules compel him to try with a jury: for instance, libel must be tried by a jury; the judge has no discretion. I would not tinker with the present rules or jurisprudence in that respect, by starting off on a new line of cases and arguments, because you have shifted the onus somewhat.

MR. SILK: That is a special war measure in England, although it is now the permanent law of New Brunswick.

With regard to appeals from jury trials, also in civil cases, Mr. Barlow recommends that upon an appeal from the findings of a jury, the Court of Appeal be given jurisdiction to give any verdict which in their opinion ought to have been pronounced.

MR. CONANT: Yes; I would like to have your views on that, Mr. Slaght—the widening of the powers of the Court of Appeal on appeals from jury trials.

WITNESS: Well, I would be opposed to carrying out that finding.

MR. CONANT: I beg your pardon?

A. I would be opposed to carrying out the finding that has just been read to me. You are widening the powers of the Court of Appeal, but at the same time you are depriving litigants of their rights to jury trials, because, if that power is given and a jury trial is had and an appeal taken by the unsuccessful party, the Court of Appeal think a miscarriage occurred by reason of a wrong direction or misdirection or the wrongful admissibility of evidence, if you let them render the verdict that they think the jury ought to have rendered—they have not seen the witnesses, they are not in as good a position to determine what the true verdict is, and you deprive that litigant of his right to a new trial before a jury by such an amendment, and you substitute these gentlemen sitting here at Osgoode Hall for a jury as against him. I would not approve of that.

MR. CONANT: Well, it is pretty narrow at the present time, isn't it, Mr. Slaght?

A. Well, at the present time they may grant a new trial, or they may allow an appeal or they may dismiss an appeal. I think that is all they should be asked to do.

Q. Yes, but I mean to say, on the question of facts, they do not go very far that way, do they?

MR. STRACHAN: Under the Supreme Court of Canada decision, Mr. Slaght, the Court of Appeal must accept the findings of fact of the jury; that is the effect of the decisions.

WITNESS: I think that is a healthy situation.

MR. CONANT: You do?

A. Yes, I do. What does a jury trial mean? I mean, what does the right to try your case by jury mean to a man if, after trying it there, and without any misdirection to the jury, without their having heard any evidence wrongfully, that should have been rejected, they pass upon the facts, and you come along to a Court of Appeal, a corporation appeals or a wealthy person appeals to the Court of Appeal if they have got the money, and they have got a second chance before a jury of three or five judges, up there substituting their view of the

evidence on questions of fact, for the views of twelve men who saw every witness, and heard the inflections of their voices and followed the trial? I think that is a very dangerous step.

MR. CONANT: Well, of course, that is one view of it, there is no doubt about that.

MR. SILK: Mr. Slaght, a complaint has been made to the Committee that it is well-nigh impossible for an incorporated company to get a fair trial before a jury, because, where the jury finds the word "Limited" or some similar word, such as "Limited", the members of the jury seem to get the impression that that company has unlimited means, and usually render a large verdict against it. Have you had that experience?

A. No, I couldn't say that I had. I think that is putting it too vigorously altogether. There may be cases involving a corporation like the Canadian Pacific or the old Grand Trunk or the T. Eaton Company, known to be a company of great wealth, in which there may have crept in some prejudice in the minds of a jury, but if that prejudice goes to the assessment of damages too high, we know that our Court of Appeal now has full jurisdiction to reduce damages in a given case, and say that those damages are excessive. They frequently have to exercise that in negligence cases involving a corporation, when young children of tender years, three or five or seven years old, are killed. Well, a jury is sympathetic, and they give sympathetic damages to the parents, perhaps five or eight thousand dollars, whereas, our law as it stands, makes it improper to consider other than the expectation of support from the child which the parent has, and that usually fritters it down to a very small amount, a relatively small amount, because a child for a time is a burden rather than an asset. Whether that law ought to be looked at or not is another matter. I think that is put too strongly.

MR. CONANT: Of course we have gone some distance along that road. Isn't it so that there is no jury in actions against municipal corporations?

A. No.

Q. I sometimes find it difficult to reconcile that with the fact that we have a jury in actions against any corporation. What is the theory behind the elimination of juries from actions against municipal corporations?

A. Well, I have never traced it back. It is pretty well established. It comes from the English theory, I fancy, the practice. Snow and ice cases, falls on sidewalks and that, they must be tried without a jury. I think, in some of these public service corporations, such as tramways and street railways and those ——

MR. CONANT: They are tried with a jury.

WITNESS: They are tried now with a jury. I am not sure but what it might be proper to take them away from jury trials, on the ground that in those cases it is pretty difficult to eliminate some prejudice as against corporations of that type.

MR. STRACHAN: It always seems strange to me that municipalities could have a trial without a jury, and a creature of the municipality like our Toronto Transportation Commission is forced to go before a jury; and their experience is pretty bad with juries.

WITNESS: Well, I think our law could, perhaps, be safely changed, with regard to a limited type of corporations who are rendering a quasi-public service.

MR. CONANT: I am inclined to agree with you there. Mr. Slaght, would you care to express any opinion on the constitution of our rule-making body in the province? As you know, at the present time it is limited entirely to the judges. There has been some thought and discussion of enlarging that to embrace members of the Bar.

A. I would be favourable to that. I fancy the judges themselves would welcome an addition, or some advisory assistance at least, possibly legislative assistance, I mean, power to sit on rule and regulation making committee. A small quota from the benchers would, I think—men in active practice on the other side of it, I mean at the Bar, could at times make useful suggestions about rules.

MR. SILK: Would you suggest that members of the Bar be appointed by the benchers, or perhaps by the Chief Justice, or by the Attorney-General?

A. Well, any of those methods would, I think, be reasonably safe.

Q. The barristers would presumably hold office for terms of two or three years.

A. Yes.

Q. It would not be a permanent appontment.

A. I would think the Bench themselves would welcome assistance of that kind.

Q. I don't know whether you are familiar with the system of pre-trial procedure as it exists in some of the States. Mr. Barlow makes a recommendation as to pre-trial procedure in this way:

> "That in any action set down for trial at Toronto, Ottawa, Hamilton, London or Windsor, in the Supreme Court or in the County Court of the County of York, the court may, in its discretion, direct counsel for the parties to appear before it for a conference for the purpose of preparing the action for trial, in order that the same may be ready to proceed when called, and thus save the time of the trial judge as well as counsel engaged."

A. Is that practice in vogue in other jurisdictions? I am not familiar with it.

MR. CONANT: In England they have a system—what did Mr. Chitty call it?—motion for directions; in England they have a universal system, evidently,

corresponding with the limited system in our province, as in a third-party action you go for directions. In England apparently, in all civil actions, they must go before a judge previous to trial, and the case is gone over to eliminate those things which appear to be not necessary to prove, and boil it down to the real issue.

WITNESS: What tribunal do they go before?

MR. CONANT: They do it before the Master in England.

MR. SILK: The Master over there has the same powers as a Supreme Court judge.

WITNESS: Well, I have not given any thought to it. Off-hand, I would not be favourable towards a change of that kind, because I think our rules, after practically—I suppose in twenty-five years, there haven't been any very radical changes in our rules of practice in this province.

MR. CONANT: No.

WITNESS: And I think they have been worked out so that actions are promptly brought to trial, with the safeguards of production and discovery, and preliminary motions to strike out pleadings. I think they compel the narrowing of the issue pretty well under the present practice. I would want to study as to how it worked in other jurisdictions, before I would express approval of it.

MR. SILK: In the matter of production and discovery, have you any view as to whether the examination for discovery of an officer of a corporation should be binding upon the corporation—which is not the case now, of course?

A. I do not think it should.

MR. CONANT: Mr. Slaght, this is rather a departure from the subject, but in England they have a committee, the exact name of which I forget—I think it is called a law revision committee; the Lord Chancellor appoints certain members of the Bench and certain members of the Bar, and from time to time, he submits to them what might be called lawyers' law, joint tort feasors and contributory negligence problems, and that sort of thing, for study and report to him, not controversial law, but abstruse points of law that become involved by, perhaps, conflicting decisions and uncertainties and that sort of thing. Apparently it has been found very beneficial there.

WITNESS: Is it a paid job?

MR. CONANT: No.

WITNESS: Or is it an honorary job?

MR. CONANT: Purely honorary. I think the government there provides a secretary or something. Do you or do you not, think that there would be a real use for an organization like that in this province?

A. Your statement of it to me is the first I have heard of it; I was not aware of that practice over there. It might be useful; I could not see much harm arising from it. They do not have powers to change the jurisprudence?

MR. CONANT: Oh, no.

WITNESS: They only study and recommend changes?

MR. CONANT: They report back to the Lord Chancellor there—it would be the Attorney-General here—and he, in his wisdom or otherwise, advances that in the form of legislation; then it comes to Parliament or the Legislature and it is threshed out, of course, admittedly with the background of having been recommended by this committee.

MR. SILK: Mr. Slaght, are you familiar with the practice in the Admiralty Court, of having an assessor sit on the Bench with the judge, and in that way doing away with experts

A. No, I am not familiar with that practice. I have not practised in the Admiralty Court for thirty years, and then only two or three cases were all I ever had.

Q. Well, the practice in that court is that the judge sits on the Bench with an expert, who is known under that practice as an assessor, and that eliminates the necessity of the parties calling experts; there is in theory one impartial expert engaged in the case, whose function is to advise the judge.

A. Well, off-hand, I would think it was useful, because Admiralty law is a branch of law all to itself, and there are so many practices in Admiralty that only an expert could describe; the average layman doesn't know anything about the way vessels pass one another and enter harbours, and all those things that are involved in collisions and that sort of thing. I should think that was a useful and proper practice.

Q. Mr. Slaght, under that practice, you appreciate that the parties do not have any right to call their own experts?

A. Well, I ——

MR. CONANT: The practice is, where it has been adopted, Mr. Slaght, this, that where there are technical matters that would have to be determined, in arriving at a decision, the parties themselves may agree upon one man who will determine the technical aspects of it from the facts as presented in evidence, or if they cannot agree, a judge appoints a technical man to give the evidence to the court, as to what the speed of light is, or of sound, or whatever the technical aspects are. Then, instead of having two or three experts on each side, sometimes giving very directly opposed evidence, his evidence would prevail.

WITNESS: Well, anything that tends to take away from litigants the right to present credible expert witnesses, whose views might differ from those of an expert appointed by the court, I would be opposed to.

MR. FROST: Getting on dangerous ground.

WITNESS: Yes. If you carry that to an extreme, then, perhaps, counsel should go before a judge and they could agree on a set of facts and so on, and let the judge decide everything; for instance, in an injury case, let him say without any medical evidence, whether an injury is permanent or not. I think you are getting on dangerous ground. You should not deprive litigants of the right—with the proscriptions there are against abusing it; you can only call, I think, three experts in any case, without the leave of the court to call more. I would not be in favour of taking that right away from a litigant.

MR. CONANT: Its only purpose was to avoid the expense and the delay. Some persons have made a rather disparaging remark about experts in litigation; you have heard that, no doubt?

A. Yes. There is a sliding scale, I believe.

Q. And to avoid three witnesses on one side and three witnesses on the other, swearing to an opinion on something.

A. Three cheques passed one way and the other three cheques passed the other way, I suppose, for the opinions and services. That sometimes looks as though it was abused; but is this proposal that you are now discussing one made to apply generally, or just in the Admiralty Court?

Q. In all civil actions.

A. In all civil actions?

Q. In all civil actions, yes.

A. That is, do away with the right to call expert evidence by substituting this?

Q. Yes.

A. Oh, I would be opposed to that.

MR. CONANT: I think they have done that in England, haven't they?

MR. SILK: I don't think so, sir. I think it is strictly an Admiralty practice. It is on B17. It has been in the Admiralty Courts of England since 1855, and also in the Admiralty Courts of Canada.

MR. STRACHAN: It has been adopted in New Brunswick.

MR. SILK: Yes, it has been adopted in New Brunswick under their new rules.

MR. CONANT: Yes, that is right.

MR. SILK: Mr. Barlow has taken the view ——

MR. CONANT: He says:

"This practice has recently been adopted in the Supreme Court of New Brunswick and, as I have already mentioned, has, for a very long time, been used in the English Admiralty Court, and for a shorter length of time in the Supreme Court of England" ——

Yes, they have it in England, not for so long a period as in the Admiralty Court.

WITNESS: They have gone so far over there, in an automobile injury case, as to deprive the plaintiff from calling doctors to show the character of the injury?

MR. CONANT: They can call witnesses as to the character of the injury, but when you come to opinion as to whether that would be a permanent injury or so-and-so, and so-and-so, that would be the function of the ——

WITNESS: They won't permit the witnesses called to express themselves on that?

MR. CONANT: No. The doctor will be called, and he says, "I found this condition, and it developed into this condition, and so-and-so," he would describe the medical aspects, but the conclusion, the medical and scientific conclusion as to the effect of that, would be opinion, and it would be the function of the one person.

WITNESS: I would not be in favour of it.

MR. STRACHAN: Just the opinion of one man; he might be wrong.

WITNESS: I would not be in favour of that change. You will recall that under our practice here, we have the right to a defendant to ask the Master to appoint a supposedly independent medical practitioner to whom the plaintiff must submit for medical examination, and that supposedly independent medical practitioner, who is selected by the Master or a judge in chambers, and not by either of the parties, then examines the plaintiff, and then must make a report in writing to the court, which report must be made available to both plaintiff and defendant. Now, that practice goes along the road part way to what they are doing more radically, and, with that safeguard, I would not be inclined to make the opinion of that person final, and exclude the court from giving effect to the judgment of a reputable doctor who was called, and who differed from that doctor.

MR. CONANT: Well, even in that case, that man does not express an opinion; he simply reports conditions that he finds.

WITNESS: Oh, no, he expresses his opinion as to whether the injury is permanent, or whether there is permanent disability or not, and he expresses all kinds of opinions, if I may say so with respect, in his report.

MR. CONANT: Is there anything else you want Mr. Slaght to discuss?

MR. SILK: Yes.

Q. They have a practice in England, as Mr. Barlow says, to facilitate the

trial of commercial cases, that a special judge should be designated for the trial of those cases, as has been the practice in England for many years, and along the same line, Mr. Barlow also suggests that one judge might be assigned to try matrimonial causes exclusively. Would you be in favour of assigning special judges for special types of work in the Supreme Court?

A. Well, I think it worked out well in our Bankruptcy practice. I have not considered how far you could extend it. Do they define "commercial cases" in that?

Q. No, that is not defined here.

A. What would you take to be meant by "commercial cases"?

MR. LEDUC: The suggestion is for matrimonial cases.

MR. SILK: No, excuse me, Mr. Leduc, there are the two. The one suggestion is for commercial cases, and the Master goes farther than that.

WITNESS: Well, I would not be in favour of a judge being assigned to matrimonial cases only. He would have to have a very strong stomach not to break down.

MR. CONANT: You say you would not be in favour of it in matrimonial cases?

A. No. I think it would be more healthy to let the trial Bench diversify, and hear such cases as come before them.

Q. Would you care to discuss the subject ——

MR. LEDUC: You would be against assigning a special judge to matrimonial cases?

A. I would be against it.

MR. CONANT: Would you care to discuss the rather large question of the jurisdictions of boards and commissions, as to whether there would be appeals from them to the Court of Appeal, Mr. Slaght?

A. Off-hand, I would say there should; I think there should. They sometimes deal with matters, so far as amount is concerned, which involve tremendous sums of money. Somebody showed me a schedule, I don't remember when or where, with regard to some board or commission, showing that the amounts involved in their judgments far exceeded the amounts involved in the judgments of three judges of the Supreme Court of Ontario, for instance.

Q. But in most of these cases, these boards and commissions constituted over the years—because we have been constituting them for the last quarter of a century; one of the earliest of them was the Workmen's Compensation Board; they were undoubtedly designed to avoid expense and delay and the uncertainties of litigation, and they are almost entirely limited to matters of fact and discretion, aren't they?

A. Pardon me, sir; let me interrupt you to say, I did not have the Workmen's Compensation Board in mind when I was speaking, because ——

Q. Well, I did not intend to pin you down to that, either.

A. In think in the main, that Board works fairly well without any right of appeal from it. There may creep in the odd individual case of injustice. I have been asked in my practice, and quite frequently am still, because of connection with the mining world in earlier practice, to try and have review made of judgments rendered by the present Workmen's Compensation Board, over a long period of years, and I always find them courteous to receive any representations, although they do not hear counsel; they keep lawyers away. I have asked them to review cases and they have done so; I do not recall any particular results in such cases. I would hesitate to recommend an appeal being granted from that Board, but I am not very well able to express an opinion on that; I would not like to. But in the main, with boards and commissions that ——

MR. STRACHAN: Take the Securities Commission, Mr. Slaght, where a man's livelihood might be taken away.

WITNESS: The Securities Commission? Well, I don't know: that is an administrative duty; if you get that into the courts, you will make a fine field of litigation for the lawyers, but whether it would have other good results, I don't know. In fact, I have had very little practice before the Securities Commission. I read sometimes of complaints of disappointed people ——

MR. LEDUC: You do not believe there should be an appeal from that commission?

A. Well, I have never given it any thought. I prefer not to express myself on that; I would have to study it.

MR. CONANT: Would you care to express an opinion regarding the Ontario Municipal Board?

A. Yes, I think there should be appeals from the Municipal Board.

Q. Would you care to say how far you would go in that? If you don't care to, it is quite all right.

A. Well, perhaps in trifling amounts you should curtail appeals, but I think you could fix a dollar basis, so that amounts involving perhaps more than a thousand dollars—that is just an arbitrary guess of mine now—would have to be looked at. But I think the Municipal Board deals with matters of tremendous money import, and there should be an appeal to the courts from them.

Q. Isn't there this angle to that, Mr. Slaght—I am not expressing any opinion on your view, but isn't there this angle—that the Municipal Board undoubtedly has matters which involve private individuals as well as larger interests, corporations and so on, or municipalities particularly; are you not putting the private individual at a very distinct disadvantage when you give the other parties the right to appeal?

A. No more than you are in our entire system of the administration of justice by way of appeal. That criticism could be made of every appeal that is possible, under the present system of jurisprudence.

MR. LEDUC: Mr. Slaght, the Municipal Board here has a multiplicity of applications of different kinds; in which particular cases would you give a right of appeal to the courts?

MR. CONANT: What was your question, Mr. Leduc?

MR. LEDUC: I say the Municipal Board hears a multiplicity of applications of different kinds; in which category or categories of cases would Mr. Slaght give a right to appeal?

WITNESS: I have not studied it enough, sir, to have my opinion of much value on that, but I would think in matters of importance. They deal with little applications which are discretionary, about whether you could do this ——

MR. STRACHAN: P.C.V. licenses.

MR. LEDUC: I had that in mind, for instance. I do not believe that is a case in which you should give a right of appeal to the Court of Appeal, where the Board refuse or grant an application for a P.C.V. license.

WITNESS: Oh, no, I wouldn't. That is administration, departmental, and the courts should not be brought in on those.

MR. CONANT: Of course, there are cases in which, under our municipal law, assessments are imposed or levies are made under by-laws which are approved by the Municipal Board; I think that is correct, is it not, in many cases? Do you think that in those cases there should be a right of appeal?

A. Well, again, I think there should, in important cases. After all, the money standard is about all you can apply as to the importance of cases, unless you are closing up a man's property or expropriating it, or something of that kind. I think there should be an appeal in important cases, that is, where the pocket of the litigant is severely hit by the judgment, he should have a right of appeal, or where the other litigant thinks that the amount is inadequate, and that he has been hurt. What the standard of money value should be as a test, I am not in a position to say.

MR. SILK: The Board is required to give its approval to certain municipal debenture issues; that is strictly administrative, and discretionary. Well, I think I have nothing more to ask Mr. Slaght.

MR. CONANT: Well, thank you, Mr. Slaght, for coming up.

WITNESS: I am glad to have been here. Any opinions I have expressed are not arbitrary.

MR. CONANT: Oh, no.

WITNESS: They are expressed with the full knowledge that there is the other side to be presented. I have given you my real views on the matters we have discussed.

MR. CONANT: We all have the common purpose of what is best for the administration of justice, I am sure.

WITNESS: Yes, I am sure of that.

(Witness retires.)

MR. SILK: I have some material on the matter of the service of summonses by mail. I read first from page 41 of a pamphlet entitled, "Growth of Legal-Aid Work in the United States," which is published by the Federal Government at Washington.

MR. CONANT: This has to do with service ——

MR. SILK: Of summonses by mail.

"This notice is sent by registered mail," —

speaking of service of a summons in a small claims court in this particular case.

MR. LEDUC: In which jurisdiction is that, Mr. Silk? Where does that take place? In the States?

MR. SILK: Yes, it is in the States. I am not just sure which state this particular one refers to, but it goes on and explains.

> "This notice is sent by registered mail, return receipt requested. If the postman (who knows most of the persons in this district) cannot make delivery, then the court may order other process. In the Boston district in 1931, only 3 notices were refused and only 72 were returned because the defendant could not be located. In fact, service by mail works so well that the Cleveland court, which has used it longest, has discarded registered mail and uses the ordinary mail, not merely in small cases, but as the regular method of service in all municipal court cases. A series of cases holding that it is perfectly legal to have service of process by mail, are collected in a comment in the May, 1934, issue of the *Columbia Law Review* . . . ."

However, that article is not very helpful.

The Windsor Chamber of Commerce have this to say:

> "That service of all summons in Police Court, with reference to prosecutions under The Highway Traffic Act or under municipal by-laws, be made by registered mail, thus eliminating the cost of personal service."

I have a letter from Magistrate Jones here; it is expressed in general terms, but the late magistrate used to stress the necessity for service by prepaid registered mail.

MR. CONANT: He thought what?

MR. SILK: He was a great exponent for service of all Police Court process by registered mail.

MR. CONANT: Did we ever develop any figures as to how large a factor cost of service is in a Police Court or Division Court? I am just trying to recall; do you recall?

MR. FROST: No, we didn't; we didn't touch Police Court at all, I think.

MR. LEDUC: No Police Court. In the Division Court, we had the evidence of Mr. McDonald, that in 100 cases the total cost amounted to $6.79, out of which the clerk got $3.83 and the bailiff $2.48. Well, a large part of that, I suppose, would be for service; most of it would be for service of papers.

MR. SILK: The Chief of Police for the city of Toronto, as well as Mr. McFadden, the Crown attorney, have together made a study of service by mail, and they think that they would save nothing in the city of Toronto by service by registered mail.

Appeals from boards and commissions: You asked me yesterday to find the provision in the English Act, which provides for an appeal from the body which in England corresponds to our Securities Commission.

MR. CONANT: Yes, I would like to hear that. I assume you gentlemen would, would you not, Mr. Leduc?

MR. LEDUC: Yes.

MR. SILK: I read from The Prevention of Fraud (Investments) Act, 1939, an Imperial statute; it is a new Act at that time. Section 5 reads:

> "5. Subject to the provisions of this section, the Board of Trade may refuse to grant an application for a license or, where a license has been granted, may revoke the license,"

if certain conditions exist, which I do not think I need to read.

Section 6 says:—

> "6. (1) Where the Board of Trade propose, in pursuance of paragraph (2) of the last preceding section, either to refuse to grant an application for a license or to revoke a license, the Board—
>
> (a) shall serve on the applicant or the holder of the license, as the case may be, a written notice of their intention, specifying the particular matter upon the consideration of which their decision would be based, and inviting him to notify in writing to the Board, within fourteen days from the date of the service of the notice, whether he desires his case to be referred to the tribunal of inquiry constituted under this section."

MR. CONANT: "Tribunal of inquiry," they call it.

MR. SILK: Tribunal of inquiry. It goes on a little further down to explain how that Board is established:

> "(b) if he so notifies the Board that he desires his case to be so referred, shall refer the case to the said tribunal and direct the tribunal to investigate the case, and report thereon to the Board, shall not make a final decision in the matter until they have received and considered the report of the tribunal, and shall not either refuse to grant the application or revoke the license, if the said report contains a recommendation by the tribunal that the license should be granted or remain in force, as the case may be."

MR. LEDUC: That is not an appeal, really; it is a reference for investigation.

MR. CONANT: It is a review.

MR. SILK: It is a review, yes.

MR. CONANT: By another tribunal.

MR. SILK: By another tribunal; and the tribunal makes a recommendation which apparently is binding, even though it is only a recommendation.

MR. CONANT: Who constitutes that tribunal? The board that you are referring to corresponds to our Securities Commission.

MR. SILK: The Board of Trade. It is really a department of the Government in England, I think. It performs the same functions as our Securities Commission.

Subsection 2:

> "(2) For the purposes of this section, there shall be a tribunal of inquiry (hereinafter referred to as 'the tribunal') consisting of a chairman, and one other person appointed by the Lord Chancellor, being members of the legal profession, and one person appointed by the Treasury, being a person who appears to the Treasury to be experienced in matters of finance or accountancy and not being a person in His Majesty's service."

MR. CONANT: Is that board paid? Are they compensated?

MR. SILK: "A person appointed to the tribunal shall be appointed to be a member thereof for a specified period not being less than three years, subject to such conditions with respect to the vacation of his office as may be imposed before the time of his appointment."

MR. LEDUC: Would you read the preceding section again, Mr. Silk, giving the procedure? The matter is referred to the tribunal of inquiry, and then what happens?

MR. SILK: " . . . the Board . . . shall refer the case to the said tribunal and direct the tribunal to investigate the case and report thereon to the Board, shall not make a final decision in the matter until they have

received and considered the report of the tribunal, and shall not either refuse to grant the application or revoke the licence if the said report contains a recommendation by the tribunal that the licence should be granted or remain in force, as the case may be."

I do not see anything regarding payment here, but I think surely they must be paid.

MR. CONANT: That is limited, apparently to the licensing powers of the Board. Of course, we have not got it here, but our commission exercises far more powers than that, purely licensing.

MR. SILK: As Mr. Whitehead pointed out yesterday, all of such powers are very much discretionary.

MR. CONANT: Are you calling Mr. Whitehead?

MR. SILK: I did not think it was necessary.

MR. CONANT: I think it would be well to hear Mr. Whitehead on that point. What do you think, Mr. Leduc?

MR. LEDUC: Well, he gave his opinion in a letter which Mr. Silk read for us yesterday.

MR. SILK: I discussed it with him this morning on my way up to the office, and he assured me that there was absolutely nothing he could add, that he takes the view that his powers are entirely discretionary and could not possibly be subject to appeal, although they might be subject to review by some type of tribunal such as they have in England.

MR. CONANT: Of course, I am in substantial agreement with that, but there is the observation that has been made twice by two eminent men that there should not only be justice but the appearance of justice, and the latter aspect is the important aspect in that, is it not?

Is there anything else you want to put in now?

MR. SILK: On the matter of the exemptions under the Execution Act, I think the Hon. Mr. Clark, Speaker of the House, intends to appear before the Committee next week. He introduced a bill at one time on this matter.

I wrote to four or five of the sheriffs of the province—I have got their names from Mr. Cadwell; Mr. Cadwell recommended them—sending them a copy of Mr. Clark's draft bill, which is in the Committee books, and I have here the observations of the sheriffs. Most of them are brief.

MR. LEDUC: They agree with the Act?

MR. SILK: With the proposed bill. The four that I have written to ——

MR. CONANT: Where is it here?

MR. SILK: It is on page 91 of the Committee book.

Sheriff Graves of St. Catharines has this to say, referring to the draft bill:

"In the matter I would suggest that clauses A, B, C, D and F of section 2 be amended as suggested.

The amount in clause E is too high and I would suggest that the amount be $500.00.

I would leave out the word 'verbal' in section A of the proposed amendment to the Act.

The amount of $1,000.00, the proposed change of section 3 of the Act is too high and I would suggest that the amount be $500.00.

The proposed changes in sections 4 and 7 of the Act are reasonable and should be enacted."

Sheriff Harstone of Peterborough says, re section 2:

"(a) If the present list of household furniture exemptions were altered and brought up to date, I think that would be sufficient. The clause suggested would enable the debtor to retain a number of luxuries which, in my opinion, should be liable to seizure for debt.

(b), (c) and (d) I agree with.

In section (e) my experience is that the present exemptions of $400 should be sufficient, as a further exemption would be abused to a very great extent.

(f) seems to be quite reasonable."

Sheriff Rutherford of Owen Sound says:

"As I have only been sheriff since the offices were amalgamated less than two years ago and as during that time the work in the sheriff's office has been light, I do not feel that my experience is such that I am fully competent to make recommendations to the Committee regarding exemptions.

However, for what they are worth, I would submit the following recommendations to exemptions in the case of a farmer, in respect to whose circumstance I am quite familiar.

No farmer can work and pay his debts unless he has sufficient stock and implements. The minimum for a small farm would be:

Implements to value of	$300.00
Two horses to value of (with harness)	200.00
Eight cows, value	500.00

With privilege to substitute for these 1 sow for 1 cow, or 5 sheep for 1 cow.

25 hens, value	$25.00
Household furniture, value	300.00

Feed for above stock.

While the above exemptions would amount to about $1,500.00 they are the minimum with which a farmer could get along and leave him any hope of ultimately paying his debts, and with these exemptions to farmers, credit would be refused except where security was ample, which would be a blessing rather than a handicap in the majority of cases, as over-expansion by farmers lacking capital is responsible for most failures."

Sheriff Graham of London gave a great deal of consideration to the matter. He says:

"I would imagine that this Bill had been copied from legislation in one of the western provinces as very few farmers in Ontario sow 160 acres in grain."

I may say that this bill was drawn as the result of a study of all the Acts in the Dominion, all nine of them.

"While I feel that the exemptions should be fairly liberal I do not believe legislation should be enacted making them too liberal as, in my opinion, this would have a tendency to destroy the credit the defendants otherwise might have.

On the other hand I am going to make some proposals that I trust will be helpful ——"

MR. LEDUC: Mr. Silk, you have read this bill of Mr. Clark's?

MR. SILK: Yes.

MR. LEDUC: In how many cases out of a hundred would the bailiff or the sheriff be able to seize anything?

MR. FROST: Very few.

MR. SILK: I don't know.

MR. LEDUC: I know the first exemption is the household furniture, utensils and equipment which shall be found in and form part of the permanent home of the debtor. He might have very valuable paintings or all kinds of things, and nothing could be seized.

MR. SILK: Mr. Clark's intention, so far as the home is concerned, is to leave it intact, and I would like him to explain that particular section.

MR. LEDUC: I see, for instance, in this morning's paper there is some dis-

cussion in court about the Flavelle estate. I do not believe Sir Joseph was ever threatened with execution, but in such a case would the bill protect every stick of furniture in a very rich man's home?

MR. SILK: Unless it had been bought on a conditional sales agreement, I suppose.

MR. FROST: Well, that is too wide. I think myself that the present exemption as regards household goods and furniture is pretty sparse, but, at the same time, the difficulty with these things is that if you go ahead with very wide exemptions you destroy people's credit. The Farmers Creditors Arrangement Act had that effect.

MR. LEDUC: Well, perhaps we had better wait until Mr. Clark comes in.

MR. SILK: May I read the observations of Sheriff Graham? He has given it a good deal of consideration.

> "Section 2, subsection (a). I would have this read, the beds, bedding and bedsteads (including cradles), dressers, in ordinary use by the debtor and his family."

He gives his proposed changes, and then explains them down below.

> "Subsection (b). No change.
>
> Subsection (c). In place of one washtub I would insert one washing machine and I would further insert one radio and musical instrument, also living room furniture, and the total value of all combined not to exceed $350.00.
>
> Subsection (d). No change.
>
> Subsection (e). I would change this to read 2 cows, 6 sheep, 4 hogs, 36 hens, 1 dog and 1 team of horses and harness necessary for the same, in all not exceeding the value of $500, and food therefor until the next harvest."

MR. FROST: Well, that is reasonable, too. The present exemption is pretty skimpy and unsatisfactory.

MR. SILK: Then he would insert a new subsection.

> "New subsection. In the case of a person engaged solely in farming and operating a 100-acre farm, sufficient grain for seeding to the extent of 60 bushels of oats and barley to seed 30 acres and 40 bushels to seed 20 acres of wheat or approximate amounts necessary for the planting of corn, beans, etc.; and 12 bushels of potatoes. (Example on basis of 100-acre farm).
>
> No change recommended in further subsections.

I will endeavour to give the reasons for some of my suggestions by way of increasing exemptions.

In the first instance, in changing a wash tub to a washing machine, I may say that I have had rather distressing experiences wherein a delicate woman, being the wife of the defendant and the mother of several children, needed the electric washing machine in the home more than anything else, but under the present Act it was subject to seizure and sale.

I think it is reasonable that dressers should be added to the bedroom suites.

I also think that in keeping with the times that a living-room suite should be allowed as the defendants and their families cannot enjoy much home comfort sitting on dining-room chairs.

I also think that a cheap radio and a cheap musical instrument should be allowed, as it has been my experience in driving on the streets in this city where the poorer families live, that practically all have a radio, and I presume they depend on it for local and world news as well as entertainment, as I know that many of them do not get the daily papers. Music is being taught in the schools and it is an advantage for the children to have the benefit of a radio and a cheap piano or some other musical instrument.

In order to cover allowances for these extra articles I am recommending that $150 be added to the $200 which is now allowed, making it $350.00. I believe this amount would cover all these articles, the same being in the cheap category.

I have suggested two cows instead of one as one cow is not sufficient to keep a family in butter and milk. I have also suggested 36 hens instead of 12 and increased the value of the chattels from $400 to $500.

I have made the suggestion in regard to the new section covering seed grain, etc., which I think is important, as no defendant can go very far towards paying his creditors if he is not allowed seed grain, etc."

Sheriff Graham adds in a further letter that he is of opinion that under the Landlord and Tenant Act the exemptions should be the same as they are at the present time.

MR. CONANT: Have you some evidence to go one with this afternoon

MR. SILK: Yes, sir.

MR. CONANT: Adjourn till 2.15.

Adjourned at 12.30 p.m. until 2.15 p.m.

Wednesday, September 25, 1940.

AFTERNOON SESSION

On resuming at 2.15 p.m.:

J. FINKELMAN, Associate Professor of Administrative and Industrial Law, Department of Law, University of Toronto.

MR. SILK: In connection with Professor Finkelman's observations, I may point out that in the Committee notebooks there are exgracts from the statutes giving powers to make rules and regulations at pages 18B to 46. I have copied out a great many of the provisions in the statutes which provide for the making of rules and regulations. Also at pages 47 and 48 there are some observations expressed. And in the Committee notebook the last three pages which were distributed comprise a memorandum prepared by Professor Finkelman.

Q. Professor Finkelman, you are a Professor in the Law Department at the University; you are Professor of Administrative Law?

A. That is right.

Q. How long have you occupied that position?

A. Ten years.

Q. A few years ago you and Dr. Kennedy, who I understand is the head of that Department, endeavoured to collect all the rules and regulations passed under Ontario statutes?

A. That is right.

Q. Would you care to tell the Committee some of the difficulties that you encountered in endeavouring to collect all the rules and regulations into one volume?

A. Well, I don't know whether I am entitled to disclose the difficulties we encountered, because we received instructions to gather them—it was in the form of a letter from the Attorney-General, I believe. If I am permitted to deal with that subject I am quite prepared to do so.

MR. CONANT: I do not see where the disability arises.

WITNESS: I am just asking; I don't know whether that was a confidential matter or not.

MR. CONANT: Oh, no, I don't think so. It is a public matter.

WITNESS: Well, the first step we took was to interview Mr. Bulmer, because we gathered that he would probably have on file all the regulations and the simplest procedure would be to get them from his files and then consolidate them in that way. Mr. Bulmer told us that although they were available in his files

it would be almost impossible to dig them out. His suggestion was that we ought to visit each department and obtain the regulations from them. I thereupon saw the Deputy Minister of each of the administrative departments of Government and showed them a copy of the authority which we had received from the Attorney-General's Department and explained the nature of our task. I asked each department to supply me with a list of all the regulations they had under the various statutes. Unfortunately, we only got a very, very small proportion of the regulations that were available. Very few of the departments were able to give us anything like their regulations.

MR. CONANT: Just on that point—I do not want this discussion to be at all personal; nobody does—was it because the regulations had not been conveniently compiled or retained, or why?

A. In the majority of cases I would say that the reason was that they were not conveniently compiled in the department. In one or two departments I believe that they were rather reluctant to have their regulations handed over. That is just a personal opinion. I was never told by any department that they could not co-operate. Afterwards, since we could not get anything from the departments, I sat down and read through every Act and made a note of every section in which there was power to make regulations, and wrote a letter to the department concerned and asked them for the regulations under that Act.

MR. SILK: Would you give us the number of Acts which provide for regulations?

A. In the Revised Statutes of Ontario for 1937 there are 399 Acts consolidated, and there are 271 statutes with the power to make regulations. Some of the powers are very narrow, some of them are extremely wide.

MR. CONANT: Give me those figures again. How many Acts?

A. 399 statutes in the R.S.O. 1937, 271 confer power to make regulations, and in addition to that there is of course the section of the Interpretation Act — I think I have it here somewhere.

MR. SILK: It is copied into the notes at page 19. It is a general provision.

WITNESS: Section 24 of The Interpretation Act says:

> "The Lieutenant-Governor in Council may make regulations for the due enforcement and carrying into effect of any Act of this Legislature, and may prescribe forms, and may, where there is no provision in the Act, fix fees to be charged by all officers and persons by whom anything is required to be done."

I may say that I only found one Act in which the power to make a regulation —let me put it this way: I only found one Act in which there was no express power to make a regulation and where the administrative authority had to resort to the Interpretation Act to implement the Act.

MR. CONANT: That is why it is put in the Interpretation Act, likely.

WITNESS: Probably.

MR. CONANT: To take care of any obvious omission.

WITNESS: We wrote to each department under each Act, and in many cases we got no reply. Where that happened I always wrote to Mr. Magone and pointed out to him that there was such-and-such a power to make regulations, and that I was unable to obtain copies of the regulations, and, through him, I always got a reply to each letter, either setting out that there were regulations and telling me where I could get them and sending me copies of them, or else that no regulations had been made. I may say that there were 55 Acts out of the 271 in which there was power to make regulations under which no regulations had ever been made.

MR. FROST: Pardon me just a moment. Mr. Silk, on pages 18B and 18c there is a short statement as to what bodies have rule-making authority. That apparently only covers ——

MR. SILK: In connection with the courts.

MR. FROST: There is the point. I was just wondering how far Mr. Finkelman is dealing with here. Are we considering the rule-making powers, or are we considering regulations under such Acts as the Highway Traffic Act?

MR. CONANT: The scope of our enquiry really goes only to the making of rules as it affects the administration of justice.

Q. Have you any observations to make, Mr. Finkelman, as to rules so far as they affect the administration of justice?

MR. STRACHAN: I was just going to observe, isn't this the point: A lawyer is asked to give an opinion on a statute, and he finds it impossible to make sure he is correct unless he reads the regulations. That difficulty has occurred in my practice, and no doubt it has in yours, Mr. Frost, and that is what we are going to ——

WITNESS: That is right; that is what I understood I was to give evidence in connection with.

MR. CONANT: Well, I have no objection; that is all right.

MR. FROST: Of course, after all, I can see that the regulations under these various Acts—for instance, the regulations under say a marketing Act affecting farm products would be very different from regulations under the Highway Traffic Act.

MR. CONANT: Or the Gasoline Tax Act.

MR. FROST: Or the Gasoline Tax Act, or something like that.

MR. STRACHAN: It may make a decided difference in a legal opinion.

MR. SILK: They are really a part of the statute law of this province, Mr. Frost, having the same force as a statute.

WITNESS: They have the force of law, and I would say roughly from the regulations we gathered that if they were all compiled they would run well over five thousand pages.

MR. SILK: There would be as much bulk as there is to the Revised Statutes, including the index.

WITNESS: If not more.

MR. FROST: Then the question is as to whether there should be some method of having these published?

MR. CONANT: I was just going to ask: of course, in a great many cases the regulations have been compiled and published, haven't they?

A. In quite a few cases, but I would not say in the majority of them; and if they are published they are only published after a long period of time.

Q. I wonder how that practice has grown up, because it is probably the heritage of many, many years, isn't it?

A. That is true.

Q. I mean, the making of regulations is more characteristic of the last twenty-five years than of any period before, wouldn't you say, Professor Finkelman?

A. It goes back about a hundred years, I would say. In the Consolidated Statutes of Upper Canada for 1859, I had occasion to check them about a month ago, and I find that out of 128 Acts which were consolidated there, 42 authorized subordinate legislation.

Q. Yes, but we have been doing more by way of making regulations in the last twenty-five years, haven't we, than we did before?

A. That is right.

Q. It arises from the fact that with the complexities of modern business and life it is difficult to set out and to anticipate in a statute all the situations that may arise, and so it is left to the regulations; isn't that the answer to it?

A. That is correct. There have been two committees in the British Empire who have investigated this question. One was a committee on Ministers' Powers, appointed by the Lord High Chancellor in 1932, sometimes known as Lord Donoughmore's Committee. They investigate this whole question and came to the conclusion that we can't get along without regulations, that it would be impossible to put everything in the Act. The other is the report of an Honorary Committee on Subordinate Legislation in South Australia in 1935.

MR. FROST: They found much the same?

A. They found the same situation, and came to the conclusion that it is absolutely necessary to provide for regulations if you are going to carry out social legislation to-day. If I might be permitted to read a short excerpt ——

MR. SILK: Is that the Report on Ministers' Powers?

A. That is the Report on Ministers' Powers. This is what they have to say in one connection:

> "It is customary to-day for Parliament to delegate minor legislative powers to subordinate authorities and bodies. . . . Some people hold the view that this practice of delegating legislative powers is unwise, and might be dispensed with altogether. . . . It has even been suggested that the practice of passing such legislation is wholly bad, and should be forthwith abandoned. We do not think that this is the considered view of most of those who have investigated the problem, but many of them would like the practice curtailed as much as possible. It may be convenient if on the threshhold of our report we state our general conclusions on the whole matter. We do not agree with those critics who think the practice is wholly bad. We see in it definite advantages, provided that the statutory powers are exercised and the statutory functions performed in the right way. But risks of abuse are incidental to it, and we believe that safeguards are required, if the country is to continue to enjoy the advantages of the practice without suffering from its inherent dangers.
>
> But in truth whether good or bad the development is inevitable. It is a natural reflection, in the sphere of constitutional law, of changes in our ideas of government which have resulted from changes in political, social and economic ideas, and of changes in the circumstances of our lives which have resulted from scientific discoveries."

That was the committee in England—in Great Britain, rather—and the same conclusion is to be found in this report of the committee in South Australia.

MR. CONANT: Tell me, in the other jurisdictions are the regulations compiled and published with any more certainty or regularity than you say is the case here?

A. They are in Great Britain. The vast majority of them—I would like to qualify that. A great many of them are published in what is the equivalent of our *Gazette*, at the end of each year there is a volume consolidated of the regulations for that year, and every so often there is a major consolidation. I believe there are about fifteen or sixteen volumes in the legislative library upstairs, containing the regulations of Great Britain—of England, rather, because Scotland does not come under the Act. In the United States they passed the Federal Register Act in 1935, and they provide for what is called the Federal Register, and every regulation there which is indicated by the President as coming within the Act must be published there. It is a daily thing, they are consolidated every year, and there are seventeen volumes of a complete consolidation already published, to be consolidated every five years under the Act.

MR. FROST: Professor Finkelman, after your investigation of this matter, do you think there should be some similar plan carried out here?

A. I am convinced that there should be. I was convinced of it at the time when I undertook the task, because I found, in teaching administrative law, that time after time I was coming up against the problem of a statute with regulations under it, and there was no way of ascertaining what the regulations were.

MR. STRACHAN: As I say, that is what the practitioner is up against every time he gives an opinion on a statute.

WITNESS: Exactly.

MR. CONANT: Surely, professor, each department which has passed or whose operations are affected by regulations would have and be familiar with the regulations, wouldn't it?

A. I regret to say that that is not the case.

MR. SILK: Did you not find one case, professor, where the department was carrying on under a set of regulations which had been passed under an Act now repealed?

A. Well, where the regulations have been passed under an Act which is subsequently repealed, under the Interpretation Act the regulations would still operate under the amended Act, if there is an Act substituted for it.

MR. FROST: Strangely enough, I ran across a case, I believe, not so long ago—it has just slipped my mind what the case was—in which the court said they were acting under regulations under an Act that had been repealed some years before. I will remember it shortly.

WITNESS: If I might just interject, Mr. Attorney-General, I remember an incident about two years ago when a lawyer downtown called me up and asked me—I think is was under the Foreign Judgments Enforcement Act—whether a certain province had been included under that Act or not by proclamation. He told me that he had no way of ascertaining whether it had been included or not.

MR. SILK: Except to 'phone the Law Clerk's office?

A. Except to 'phone the Law Clerk's office.

Q. You have prepared a memorandum for the use of the Commitee ——

MR. CONANT: Let us pursue that for a minute. What would be the practical way of compiling them? Are you sufficiently familiar with departmental routine here to suggest how it might be overcome?

A. Well, the scheme that we undertook a few years ago was a costly way in so far as time was concerned, and I am afraid it is useless. I learned by bitter experience, and I think we can also draw on the experience of the United States. When the Federal Register Act was passed in the United States they contem-

plated a consolidation by some central authority of all the regulations. Well, they dropped that, and in 1937 they passed an amending Act requiring each department by a certain day to compile these regulations and file them with a division of the Archives Department, which was charged with the duty of consolidating them, and an administrative committee was set up to consolidate all of them with a report on the ones which should be consolidated. I can read the provision of the amending Act:

> "On July 1, 1938, and on the same date of every fifth year thereafter, each agency of the Government shall have prepared and shall file with the Administrative Committee a complete codification of all documents which, in the opinion of the agency, have general applicability and legal effects and which have been issued or promulgated by such agency and are in force and effect and relied upon by the agency as authority for, or invoked or used by it in the discharge of, any of its functions or activities on June 1, 1938. The Committee shall, within ninety days thereafter, report thereon to the President, who may authorize and direct the publication of such codification in special or supplemental editions of the Federal Register."

Now, I think we can learn from the experience they have had in the United States. Professor Yutema, of the Michigan Law School, was in Toronto this spring, and I spent a couple of hours with him discussing this very point. He was the chairman of this committee, and he told me that the conclusion they came to was that each department should be charged with the responsibility of preparing its own consolidations.

Q. Would legislation be necessary to accomplish that?

A. No, I do not think legislation would be necessary, if the administrative heads of the various departments insisted that it be done; but if there were no legislation, then a department might omit or some subordinate in a department might omit to forward a regulation to the central agency for consolidation, and the work would be lost.

MR. SILK: Professor, are you confining your observations to a general scheme of consolidating all existing regulations?

A. Quite.

Q. Which would be a very large order. Now, if we should confine ourselves to a consideration of the rules and regulations that might be passed in the future, would it take care of the situation properly if two things were required: firstly, that all delegated legislation require the approval of the Lieutenant-Governor in Council, and secondly, that all delegated legislation be published in *The Ontario Gazette?* Would that afford a proper record of all delegated legislation?

A. As far as the question of publicity is concerned, I would say that publication in *The Ontario Gazette* is highly desirable.

MR. FROST: It would not be in a handy, usable form, though.

WITNESS: You would have to consolidate them in some fashion. After all, there are some regulations that have been in force now for twenty-five—I would go beyond that—fifty years, and they are still in their original form, and publication in the *Gazette*, unless you provided some sort of handy index, would make it rather inconvenient for consultation; but it would give publicity, where you have no publicity to-day.

MR. SILK: At the present time there are some sets of regulations which can only be found in typewritten form in a departmental office?

A. That is very true.

Q. And no copies are available?

A. No copies are available.

MR. FROST: Take, for instance, the Game and Fisheries regulations; they are published and amended—or they are published, in any event—every year, my recollection is; and that is also true of the Highway Traffic Act?

A. Yes.

Q. Would it be so difficult, for instance, if the Highways Department published all its regulations, all the regulations that that department has control over, has power to make, if they published in their little pamphlet book each year their regulations? If every department did it, then you would have met the situation, wouldn't you?

A. It would serve some purpose; you would have the regulations in a more convenient form than you find them to-day. But, at the same time, the remark of Mr. Strachan is to be considered, that the lawyer has not got all these things on his shelf, and the lawyer is not going to write 271 times to the Government asking for copies of these regulations.

Q. Well, perhaps you misunderstand me. Supposing, for instance—you say there are 271 Acts in which there are regulations?

A. That is right.

Q. Supposing, for instance, the Department of Mines had the administration of say fifteen Acts and had made regulations of various kinds under the fifteen Acts, supposing the Department of Mines each year published a little booklet after the fashion, for instance, of the regulations that are published now by the Game and Fisheries Department, and in that little booklet the Department of Mines had the regulations that were made under those fifteen various Acts; now, if each of the departments did that, then it would be only a matter of writing to each department and asking for the regulations for that year or that were published that year. Wouldn't that pretty well meet the situation?

A. That would certainly be an improvement, but then I would ask you the other question: why not go the one step farther, and consolidate all of them, if you are going to consolidate ——

MR. LEDUC: What about the question of expense, professor?

A. That is something about which I know nothing.

MR. LEDUC: But it is the all-important point. Mr. Frost mentioned powers just a moment ago: I have power to make regulations, that is, the Lieutenant-Governor in Council has power to make regulations; I don't believe that more than fifty or sixty people are interested in those regulations. We have them either printed or mimeographed and ready for anyone who asks for them, but if we have to print them, together with other regulations, of all the other departments, it would be a tremendous expenditure of money for nothing. It would mean this, that if you wanted the regulations concerning the Department of Game and Fisheries, and didn't care a hoot about the regulations made by the Department of Mines, yet you would have to purchase the whole volume and get all the other regulations in which you might not be interested at all.

MR. STRACHAN: The same thing would apply, Mr. Leduc—I as a practising lawyer may not want to consult the Ditches and Watercourses Act more than once in a lifetime, but when I want to I want to know that I have all the regulations with it; it may be very important. You may not have twenty people in the province who want them.

MR. CONANT: Have the regulations ever been compiled in this province?

MR. SILK: No.

WITNESS: They were compiled but not published.

MR. CONANT: How long ago?

A. Three years ago.

MR. SILK: Two or three years ago. It was when Professor Finkelman and Dr. Kennedy worked on it.

MR. LEDUC: I think it was in 1935 or 1936.

MR. SILK: Yes.

MR. STRACHAN: Do you run into this situation, professor, that in some departments they may be working under regulations that were published under an Act which has been repealed or amended so much that they are not applicable to the present Act? Wouldn't that be possible?

A. Well, that raises an entirely different problem, with which I should like to deal separately; that is the question as to whether the regulations are always *intra vires*. I would not care to say off-hand. I did not sit as a court on the regulations when I was examining them, but I drew the attention of Mr. Silk to some of them, and I have doubts as to whether the regulations are all valid, not only under the Acts which have been amended but under the original Act itself. I have great doubts as to that, and I would strongly suggest that all regulations should at some time before they come into effect be submitted to

the Legislative Counsel for review. That, as a matter of fact, was raised in the Report on Ministers' Powers in Great Britain, that very point was brought up, and in the minutes of evidence you will find a good deal of time was devoted to that problem. If I may just read their conclusions, what they say is:

> "As things stand, under the existing procedure of leaving the drafting of regulations to the departments, the work is uneven—some is good and some is bad. Regulations on the whole tend to be somewhat less well drafted than Government bills as originally presented to Parliament, which are all drawn in the office of parliamentary counsel. . . . The present practice does not mean that there is a risk of regulations being less thoroughly drafted and less clearly expressed than bills as originally presented to Parliament, but thus there is an absence of the safeguards afforded by the special skill, training and position of the parliamentary counsel, with the inevitable consequence, for instance, of an increased risk of the Minister, on whom the power of making regulation is conferred, assuming to himself, in the terms of the regulations which he makes, powers more extensive than those conferred by the Act under which the regulations are made, and it is said by some critics that this result is not infrequent."

Now, I am not qualified to say anything on that point; I am merely reading you the report of the committee in Great Britain on that.

MR. SILK: Then, professor, there is a certain type of regulation which applies only to a very limited class of people, as, for instance, regulations passed under some of the professional Acts—the Law Society Act, the Medical Act, the Optometry Act, and so forth; do the same observations as to publication apply to those regulations which govern the internal workings of these organizations?

A. Well, that would be determined by experience. I don't know whether I would be prepared to make a general statement on that, but I would say this, that all regulations, whether made by professional associations or not, in my opinion should be submitted to the Lieutenant-Governor. They should either be ma deby the Lieutenant-Governor in Council or subject to the approval of the Lieutenant-Governor, because that is the only way in which you can preserve parliamentary control. Otherwise you get this situation, that someone, a member, gets up in the House and asks a question about the workings of some of these bodies that you have mentioned, and the Minister can only rise and say, "We don't know anything about that, and we can't compel them to make any statement; they are an independent body." But if the regulations—after all, the regulations are law, they are akin to legislation, and they should be made in some such way that Parliament has control over them. I might say that in Ontario there are only about two or three cases at the most where there is not parliamentary control in that fashion.

MR. CONANT: By means of Orders-in-Council?

A. Yes; all the regulations even of professional bodies have to pass through the Lieutenant-Governor in Council at some stage. I might also say that Ontario is peculiar in that respect; it is about the only jurisdiction which has done that so thoroughly.

MR. CONANT: I think Ontario is right in that respect.

WITNESS: I agree with you, sir.

MR. CONANT: They should not create bodies and let them run off at will.

WITNESS: I have the figures on that here somewhere.

MR. SILK: The Ontario Veterinary Association Board may make its own regulations for supervision.

WITNESS: In an analysis I made of 213 Acts, leaving out those which deal with rules of procedure giving power to the judges, and so on, I found only 13 which delegated power to an administration or body without expressly requiring the consent or approval in some form of the Lieutenant-Governor in Council. Of these 13 acts 3 delegated powers to various ministers, who would of course be responsible directly, 5 to departments of the Government, and thus responsible directly, and 3 to senior civil servants. The only independent boards which enjoyed authority which was not subject to control were the old Minimum Wage Board and the Ontario Municipal Board. The Minimum Wage Board, of course, makes orders which are in a sense legislative and in a sense judicial, so I doubt whether you could change the procedure there; it would mean that every order, every wage order of the Minimum Wage Board would have to be submitted to the Lieutenant-Governor in Council and be approved. I doubt whether that is advisable. The second is the Municipal Board, and of course it is really occupying the position of a court in many respects.

MR. SILK: Well, we have got a good many boards that make that type of order. There is the Milk Control Board.

MR. CONANT: The Industry and Labour Board.

WITNESS: Yes, the Industry and Labour Board; but those are —this may be academic, but I regard those as being more of a judicial nature than the rules made by others. It may be a purely ——

MR. STRACHAN: The Milk Control Board?

MR. SILK: You referred, I think, to the Industry and Labour Board?

A. The Industry and Labour Board, yes.

Q. Which does not exercise any functions that were at any time exercised by a court?

A. As I say, that is —that may be an academic distinction, but the information I have here is in an article I prepared for compilation of essays, and I made a distinction on that score.

MR. CONANT: What is the next, Mr. Silk?

MR. SILK: Professor Finkelman has prepared a short memorandum; I don't know whether the Committee wishes him to elaborate on it or not. That is the last three pages of the notebook, which should be numbered 180, 181 and 182.

WITNESS: May I, with the consent of the Committee, refer to clause 3 (c), the question of parliamentary control—or preferably number 4. I would like to draw your attention to the recommendations made by the Committee on Ministers' powers as to the safeguards which should be employed when a bill which confers delegated legislative power, the power to make regulations, is brought before the House. This committee recommended that

> "(a) A memorandum should accompany each bill delegating legislative power to explain the need for the power, the manner of its exercise and the safeguards to be employed.
>
> (b) A standing Committee of the House to consider and report upon every bill containing such a feature in order to ascertain whether the power is in any way unusual."

To explain a little more fully what they mean by "unusual", they stated that the committee should enquire

> "(1) whether the precise limits of the power were clearly defined;
>
> (2) whether any power to legislate on any matter of principle or to impose a tax was involved in the proposal;
>
> (3) whether any power to modify the provisions of the bill itself or any existing statute was involved in the proposal;
>
> (4) whether there was any express proposal to confer immunity from challenge on any regulation which might be made in exercise of the power and, if so, whether a period of challengeability was proposed and, if so, how long a period;
>
> (5) whether, if there was no such express proposal, there appeared to be any doubt that any such regulation or rule would be open to challenge in the courts on the ground that it was *ultra vires;*
>
> (6) whether the proposals in fact contained in the bill were consistent with and sufficiently explained by the memorandum of the Minister attached to the bill;
>
> (7) whether there appeared to be anything otherwise exceptional about the proposal."

Those were the recommendations of the committee with regard to the introduction of legislation. They also suggested that once the regulations had been made they should also be submitted to either this same committee or to a similar committee, which would carry on investigation into the following matters —this is as to the regulation itself, not as to the bill.

> "(1) Whether any matter of principle was involved;
>
> (2) whether the regulation or rule imposed a tax;
>
> (3) whether the regulation or rule was (a) permanently challenge-

able; or (b) never challengeable, i.e., unchallengeable from the commencement; or (c) challengeable for a specified period of time and thereafter unchallengeable and, if so, what was the specified period;

(4) whether it consisted wholly or partly of consolidation;

(5) whether there was any special feature of the regulation or rule meriting the attention of the House;

(6) whether there were any circumstances connected with the making of the regulation or rule meriting such attention;

(7) whether the regulation or rule should be starred, on the grounds that it was exceptional, and subjected to the procedure described below."

And certain special procedure is described. Now, those were the recommendations of that committee.

MR. LEDUC. When were those recommendations made?

A. 1932.

Q. Have they been adopted by the House of Commons?

A. I could not tell you.

The recommendations of the committee in South Australia dealing with the same point were that the joint committee of both Houses should investigate with respect to every regulation, should inquire with respect to every regulation into the following matters.

"(a) That they are in accord with the general objects of the statute;

(b) That they do not trespass unduly on personal rights and liberties;

(c) That they do not unduly make the rights and liberties of citizens dependent upon administrative and not upon judicial decisions;

(d) That they are concerned with administrative detail, and do not amount to substantive legislation which should be a matter for parliamentary enactment."

MR. CONANT. Don't we in many cases require that regulations must be tabled in the House?

A. Yes, there are a few cases in which that is true. I will give you the figures in just a moment.

Q. Well, I don't know that it is important to know the exact figures.

A. I am afraid that is of very little use. Yes, there are seventeen Acts in

which the regulations have to be tabled. The evidence before the Committee on Ministers' Powers was pretty clear that that was for all practical purposes useless, because no member went into the question, no member examined. That was in Parliament in Great Britain; I do not know what the situation is here.

Q. Was it suggested by that that a regulation would not become effective until it had been considered?

A. Oh, no; that would destroy the value of delegating legislative power at all.

Q. Then upon a review by a committee in that way what would be the procedure if the regulations were not found proper?

A. It would be reported to the House and the House would take action.

MR. SILK. Professor, could you tell us something about some of the recent bills in the States?

A. If you would just pardon me one moment, I would like to draw the attention of the Committee to one other point. In a few cases, only two or three cases, the House here reserves the right to disallow a regulation after it has been made. Now, to my mind, the value of that is great, because it permits the House to disallow a regulation without touching the Act itself.

MR. LEDUC. You mean two or three provincial statutes?

A. Two or three provincial statutes.

Q. Which are they?

A. The Mining Act is one.

Q. The Mining Act?

A. Yes, sir, the Mining Act. I could give you the exact provision of the Mining Act in a moment.

MR. SILK. Chapter 47; it will probably be section 182.

MR. LEDUC. We have got to table the regulations.

WITNESS: Yes, and there is a provision there that they may be disallowed.

MR. LEDUC: Yes, it is section 182.

WITNESS: Yes, I think it is section 182. They can be disallowed, and there are several of the Acts administered by the Department of Education. I think the Department of Education Act, section 12, contains a similar power to disallow, and that covers several other Acts.

MR. CONANT: What is the machinery for that disallowance?

A. I should imagine that the ——

MR. SILK. Resolution of the House, would it not be?

A. Resolution of the House.

MR. SILK. I should think it would be in the form of a resolution of the House.

MR. CONANT. It would have to be more than that.

WITNESS. In South Australia the regulations are subject to disallowance by resolution of either House on motion moved within fourteen sitting days after the tabling.

MR. LEDUC. This section says that the regulations are laid on the table of the House, and if the Assembly disapproves by resolution of such rule or regulation either wholly or in part the rule or regulation shall have no effect from the time such resolution is passed.

WITNESS. Well, I am not suggesting that the regulations shall have no effect until Parliament has acted; I am suggesting ——

MR. LEDUC. But isn't that the case? Even the statute doesn't say so, that in any case where the regulations have to be tabled—you said there were seventeen Acts—the resolution is always to declare that these shall have no force and effect.

MR. FROST. It would require a bill to do that.

WITNESS. It would require a bill to do that, surely.

MR. LEDUC. But the Legislature can act; whether it is by bill or by resolution, the Legislature can act.

WITNESS. But the resolution of the Legislature would not destroy the validity of the regulation if the department insisted on retaining it. I suppose we are getting academic on that point, because ——

MR. LEDUC. But I mean as long as the regulations are laid upon the table of the House and the House has cognizance of them, the House then may proceed to declare whatever procedure they adopt for that, but the House certainly has the right to declare that these resolutions shall have no more force and effect.

WITNESS. With all due respect, sir, I beg to differ.

MR. LEDUC. Well, what is the limit of the powers of the Legislature?

MR. CONANT. It can't change a man into a woman.

MR. LEDUC. Well, I think that is about all.

MR. FROST. Perhaps Professor Finkelman means, Mr. Leduc, that the

Legislature undoubtedly has power, but they could not do it by resolution, they would have to pass a law to do it.

WITNESS. I quite agree that if they passed an Act repealing the legislation, that is correct.

MR. LEDUC. I say whatever means they adopt, they have the right to do it.

WITNESS. I grant you that, sir.

MR. CONANT. But in those special cases where the statute provides, that can be accomplished by resolution.

WITNESS. By resolution.

MR. CONANT. Well, we have settled that. Now, what is the next point?

MR. SILK. I was going to ask the professor if he would care to describe in a general way some of the recent bills that have been before Congress where they have endeavoured to give an appeal to a person who feels that he has been offended under a Federal regulation. I am referring particularly to the Logan Walters bill, which has been before Congress twice.

WITNESS. I would not like to discuss that into the record, because I have not had enough time to go into it; I would just have to discuss it generally. If it would be off the record I would be willing to talk about it.

MR. SILK. Well, we could ask the reporters or the press not to take it down, and the stenographic reporter not to take it down. I think it would be very helpful.

MR. CONANT. What is the point that turns on it?

MR. SILK. The Logan Walters bill purports to give an appeal from a ruling under any Federal regulation in the States.

MR. CONANT. An appeal to whom?

MR. SILK. To any person who feels he has been offended.

MR. CONANT. But an appeal to what tribunal?

MR. SILK. It requires each board to set up a board of three persons, and the appeal goes to that board of three persons, but the board cannot hand down its decision until it has been approved by the chairman of the commission—rather, the board, speaking in the wider term of the word "board"—or commission, such as here for instance if it were the Workmen's Compensation Board, the Workmen's Compensation Board would be required to set up a smaller board of three members, and if a person felt that he had been offended ——

MR. CONANT. Does that apply to all regulations?

MR. SILK. It applies to all rules and regulations passed under any Federal

statutes of the United States. As I say, the bill has been before Congress twice, but it has not been passed. It is a scheme that is worthy of some study, although it is not in force. The appeal goes eventually to the courts.

MR. CONANT. Well, what is the next point, Mr. Silk?

MR. SILK. I have nothing further, sir.

MR. FROST. Could Professor Finkelman give us any opinion upon the feasibility of consolidating the rules that are mentioned in those some 26 statutes?

MR. SILK. The rules that apply to court?

MR. FROST. Yes.

MR. SILK. Have you given any thought to that, Professor Finkelman? That is, the rules applicable to the Supreme Court, the County Court, and under several statutes such as the Controverted Elections Act, the Devolution of Estates Act—all rules that pertain to procedure in the courts, and a great many of them are found in different volumes and texts; have you given any thought to that?

MR. FROST. For instance, here is a list, or a partial list.

MR. SILK. On pages 18 B and 18C.

MR. FROST. The point is this: it may be a County Court matter, and there may be something, for instance, under The Devolution of Estates Act or something of that sort; would it be possible to consolidate those rules in one volume?

MR. SILK. And may I point out, Mr. Frost, that a good many of those rules are made by different bodies. For instance, under The Estreats Act, the judges of the Supreme Court make the rules, under The Charities Accounting Act, the Lieutenant-Governor in Council makes the rules, and there are one or two other bodies and combination of bodies; under one Act it is the judges of the District Courts or a majority of them.

Q. In the first place, we would have to have a uniform rule-making body, I take it?

A. I am afraid that is rather out of my field. It is not properly part of the administrative law, and I have not given it much thought. I think, though, upon the other divisions of administrative law, that a uniform law-making body is certainly a sound suggestion.

Q. Well, I think I have nothing further, unless you have something further to add, Professor Finkelman.

A. I might just add this, that sometimes in drafting a bill providing for the making of regulations, phrases are introduced which may have the effect of preventing the courts from reviewing the regulations. Where that is done deliberately I have no quarrel, but sometimes it is done inadvertently. For

example, in 1894 there was the case of Institute of Patent Agents vs. Lockwood, which decided that where an Act had in it the phrase that the regulations shall have the same force and effect as if contained in this Act, they said the courts cannot review it, because the regulation for all practical purposes becomes part of the statute, and the court cannot review that regulation to determine whether it is ultra vires or not. About 1930, a similar statute came before the courts again ——

MR. CONANT. In what country?

A. In England. They are both English cases. The Lockwood case went to the House of Lords, and in the case I am referring to, Rex vs. Minister of Health, Ex parte Yaffe, 1930 or 1931, they held that they would review, despite those words. Now, there is some doubt as to the validity of that decision—I am expressing no opinion on it at the present time—but another problem came up in that case which does affect us directly here. In the Lockwood case in 1894, the court had also said that regulations which are placed on the table of Parliament become effective and judicial review is gone; so that there were the two features in the 1894 case. Then in 1931, the court in the Yaffe case, in trying to distinguish the Lockwood case, said—this is *obiter*, but nevertheless, the House of Lords did say this—that where regulations are placed on the table of Parliament, the courts are prevented from reviewing them. Now, with all due respect, I submit that that *obiter* is wrong, because the purpose of placing them before Parliament is not to determine whether they are ultra vires or intra vires, but to determine whether they follow the policy of the legislation, whether they are wise. That is a question which ought to be considered, because, if laying on the table of Parliament prevents the courts from reviewing them, it may be necessary to introduce some provision into The Interpretation Act which would prevent that result following.

Q. Just before you leave, and as a matter of information as to your work as far as it has progressed, would it involve much further work to finally get all the regulations together?

A. The work that was done is now out of date completely. In order to do the thing, you would have to start from the very beginning again, because there would be no way of ascertaining—let me amend that. I suppose it would be much easier to determine, find out, what regulations had been made between that date and the present, but, on the other hand—that would not be very difficult, but I would suggest that the scheme we employed at that time, namely, of ourselves collecting and consolidating and revising regulations, should be dropped, and that the scheme adopted in The Federal Register Act in the United States should be adopted, namely, that each department should be made responsible for supplying its own regulations, in any way it sees fit and in its own language.

Q. Well, supposing—I do not think this is entirely academic—supposing we had an official, call him a registrar, like a Registrar of Deeds—and in some respects he would correspond with that—and provided that every regulation passed by any department of government must, before it becomes valid, be filed with him and stamped, let us say, wouldn't that in the process of time, overcome a great deal of this difficulty?

MR. LEDUC. Could you sublet the authority of the Lieutenant-Governor in Council to the standard of an employee?

MR. CONANT. It would be simply for the purpose of filing. That would not in itself give any validity, excepting that it would be a central compilation.

MR. SILK. It could be in the office of the clerk of the Executive Council, where a good many of them are now filed.

MR. FROST. Mr. Bulmer told me things were so complicated in connection with these filings that he couldn't find anything.

WITNESS. His system of filing is such that you cannot turn up the regulations under any Act. He said it would be necessary to take each file and go through it right from the beginning, because everything that has been done under each Act is filed in that fashion. There would be a great deal of material there that would be confidential, and no one would be admitted to those files, and I would not ask for permission to go through those files.

MR. CONANT. Yes, but the regulations that we are discussing divide themselves into how many categories? First, there is the ordinary regulation that has the approval of the Lieutenant-Governor in Council; then there is the regulation that has the approval of the Minister; is that another category?

MR. LEDUC. Yes.

MR. CONANT. And what other category?

A. Regulations made by the department.

Q. Isn't that the Minister?

A. Well, the Act says the department.

Q. I always question that wording.

A. Mr. Attorney-General, I may agree with you on that, but the Act says that. I am merely referring to what the Act actually says.

MR. CONANT. That is a custom that has grown up in this province in the last twenty-five years, that this and that must be done "by the Department of So-and-so." I think it is awfully bad draftsmanship and legislation. What is a Department? It is not a body corporate; it is not an individual.

MR. LEDUC. They are established by statute, I believe, some of them.

MR. CONANT. Pardon me; may I finish that?

Q. Whatever other category there may be, at least we have mentioned two or three of them?

A. You have boards and commissions.

Q. Boards and commissions; supposing there was a provision that all regulations should not only have the same sanction that is now required, removing none of those sanctions, but they must also be filed with whatever the proper official would be, and they would be effective from the date of filing?

A. That is right, that is the provision that now applied in the United States, and I think that would cover the situation, for publicity for each regulation as it comes into effect.

MR. LEDUC. Professor, you may have given the information before; however, I noted this, that out of 213 Acts, 13 give the right to make regulations without the Lieutenant-Governor in Council's approval?

A. They do not specifically mention the Lieutenant-Governor, that is right.

Q. But in those 13 cases is the authority given to the Minister —or to the Department, which comes to the same thing—or is it given to some boards or commissions?

A. No, it is given in such a way that Parliament —it is given to the Minister or to the Department or to a senior civil servant, except in the case of the Municipal Board; the Municipal Board is the only example there.

Q. Out of those 13?

A. Out of those 13.

Q. But in the other cases it is either the Minister or the Department?

A. That is right.

Q. Or some official of the Department?

A. That is right. As I said before, Ontario is peculiar in that respect, and certainly has the best form of control in that respect, of any common-law jurisdiction that I know.

Q. But in nearly 94 percent of the cases, the Lieutenant-Governor in Council must make regulations or approve of them?

A. Yes, I would say in 99 percent of the cases.

Q. Well, 13 out of 213?

A. Yes, but those 13, when you break them down they disappear, with possibly one exception.

MR. SILK. The Board of the Ontario Veterinary Association has that power, and it does not come under the classifications you mentioned; it is an independent board. However, that is a small matter.

MR. LEDUC. But the making of regulations without the concurrence of the Lieutenant-Governor in Council is the exception?

A. That is right.

MR. CONANT. Oh, yes, I would expect that to be the case.

MR. LEDUC. Now, are there any important regulations that may be made without the Lieutenant-Governor's concurrence?

A. Not that I know of. I might just point out in connection with judicial review, something I came across here.

> "The Colonization Roads Act declares, that a by-law of a municipal council with respect to colonization roads 'passed with the approval of the Minister, shall not be open to question in any court upon any ground whatever'."

And, with regard to The Ontario Municipal Board Act, may I just read this section, because this is the widest power that I know of. (Sec. 67)

> "(1) Every by-law of a municipality approved by the Board, and every debenture issued thereunder bearing the seal and certificate of the Board, shall for all purposes be valid and binding upon the corporation of such municipality and the ratepayers thereof, and upon the property liable for any rate imposed by or under the authority of the by-law, and its validity may not be contested or questioned for any cause whatsoever, nor shall it be necessary to its validity, that the judgment or opinion of any court or person be requisite or obtained.
>
> (2) Where the Board is satisfied that any by-law or other proceeding of a municipality is not entirely beyond its jurisdiction and powers or void *ab initio*, and the validity thereof has not been questioned in any court, in any litigation which is pending or the by-law has not been set aside or quashed, or the proceeding declared to be invalid by any court, the Board may, notwithstanding any invalidity in the by-law or proceeding, approve the same, and in such case, the provisions of subsection 1 shall apply to the by-law, and to every debenture issued thereunder, bearing the seal and certificate of the Board."

Now, I am not questioning the wisdom of entrusting powers of that sort to the Municipal Board, but I just want to point out that there is probably the widest power to make regulations that has even been conferred.

MR. CONANT. When you say "to make regulations," you mean in the exercise of its discretion?

A. Yes; it is a purely discretionary power.

MR. LEDUC. Is what you read part of the regulations or part of the Act?

A. That is part of The Municipal Board Act. I am just referring to that example. It is section 67 of The Municipal Board Act. I am just drawing attention to that, as a case in which the jurisdiction of the courts is ousted completely; we have taken away the jurisdiction of the courts.

Q. Oh, yes, but by an Act of the Legislature.

A. Oh, true. I am not suggesting that that ——

Q. Excuse me, but I do not see where the question of regulations comes in there.

A. In this way, that the by-law of a municipality is a legislative power. Now, that by-law approved by the Board, the approval in itself to my mind is also an exercise of the legislative power.

MR. SILK. It is more in the nature of an order than of a regulation.

MR. FROST. It brings a law into effect.

WITNESS. Yes.

MR. SILK. I do not think that could be called a regulation.

MR. CONANT. I would call that an order of the Board. You are discussing it as a regulation, are you?

A. Well, it is pretty hard to draw the line between an order and a regulation. That is another point that the Committee ——

MR. LEDUC. I was going to add to what the Attorney-General said, it seems to be more in the nature of a judicial order than an administrative regulation.

MR. CONANT. A regulation I would construe as something of general application, an order as of particular or specific application.

WITNESS. Well, you are going to run into difficulties there. What about a regulation saying that there may be hunting in a certain district at a certain time?

MR. LEDUC. But for a number of people, of general application in that district.

WITNESS. Your by-law, although it applies to the municipality, imposes taxation of general application in the City of Toronto.

MR. LEDUC. No, no; it is an order validating the by-law passed by one municipal body, representing if you like, six hundred thousand people, but one municipal body.

WITNESS. Well, I am not prepared to argue that point. I do not think it is of great importance; I just gave it as an example.

MR. CONANT. Is there anything else, Mr. Silk?

MR. SILK. I don't think so, sir.

MR. CONANT. Do I understand you to say, professor—I ask you again,

because I am rather impressed with the point that it raises—from your examination you think that it would help, over the future years at any rate, if there were provision made for the filing of all regulations, in addition to the sanctions at present required, with some central bureau or clerk in connection with our legislative machinery?

A. I think it would be of definite assistance.

Q. You think it would be of definite assistance?

A. Definite assistance. It would certainly enable anyone who wanted to find the regulations, if the authority with whom the regulations are to be filed keeps any sort of index, it would certainly help.

MR. FROST. There is the point; an index would have to be kept, and, furthermore, to make it really available to the public, you should be able to procure copies of those.

WITNESS. I am afraid we are talking about two things now. There is, first of all, the question of having them available some place—that is a condition precedent to publication—and then there is the additional question—I agree with you entirely, that there should be publication, but there is the first step; you should first have some central registry for it.

MR. CONANT. Quite. Then, if at any future time, the Government or any Government wanted to publish them in any form, they are ready and available for them.

WITNESS. Yes; you would not have to go through the process I had to go through in digging them up.

MR. FROST. Professor, Mr. Leduc just mentioned a moment ago, that in his Department there are regulations passed under many Acts, which have no real general application at all; they may affect perhaps, fifty or a hundred people or concerns in the province, and the publication of those might be very voluminous and might cost a lot of money. Now, is there any way of reaching some compromise on that situation, and getting over that? Supposing the Department of Mines were to publish and make available to the public in pamphlet form, regulations which in their opinion are of general application, so that if you wrote to the Department of Mines for a copy of their regulations, they would send you the regulations which are generally applicable to everything, and if you wanted anything additional over and above that, you would have to write for it directly; would that help?

A. You have raised two questions. Dealing with them separately. Any compilation by any Department of its general regulations which would be available to the public, is certainly a step in the right direction. My personal opinion is, that it does not go far enough. I think you have to have consolidation of all the regulations in an annual volume like the statutes, if you are going to cover the thing thoroughly, and do what you are now doing with statutes. You regard the statutes as so essential that every lawyer buys them, must have them on his desk if he is going to interpret the law and is going to advise his clients. If instead of ——

MR. LEDUC. But pardon me; these are the Statutes of Ontario, and the annual volumes only contain new legislation or amendments to existing legislation.

WITNESS. I am not suggesting an annual consolidation; I am merely suggesting that annually there would be a volume containing the amendments of that year.

MR. LEDUC. In that case it might be incorporated in the statutes?

A. Quite. The technical side of it I am not discussing at the moment, but, going back to my example, if you were to take that volume of statutes and tear it in half and send half to the lawyer and leave out the other half, you would be in exactly the same position as you are to-day, by giving him statutes and not giving him the other half of the statutes. That is from one point of view. The other question which you raise, namely, whether it would be possible to compromise. Both in England and in the United States, they have worked out a compromise. A board is appointed. Certain members of the Legislature are appointed to determine that certain regulations are not to be published, because they are not of general interest and so forth; for instance, you might decide that regulations affecting the civil service should not be published because they are not of general application; you might decide that regulations of certain professional bodies should not be published because they are not of general application; you might decide any number of things with regard to that—regulations which are merely of a temporary nature—all those things could be left out. It would not be necessary to publish everything. That would be a matter for the Committee to work out.

Q. What I have in mind is this, professor: I am not opposed to the publication of the regulations, I think you are right in saying that they should be published, but I cannot agree with you, as to the inclusion of all the regulations under the same cover. Let me give you an example I have in my own Department. Here is The Mining Act, and in The Mining Act there are fifty-four pages of mining regulations. Well, we have them printed separately, and if a man wants The Mining Act he gets the whole Act, but a lot of people are interested only in the mining regulations, and we save money by having them printed separately.

A. But, sir, there is nothing to prevent you printing that separately and distributing it. This scheme I am suggesting, would not prevent you from distributing to those who are interested in only a portion of the regulations, the regulations in which they are interested and nothing more, or that portion in which they are interested of certain regulations.

Q. To tell you the honest truth, I can't imagine one man in the province being interested in all the regulations; they are mostly interested in one or the other.

A. Well, sir, could you tell me how many people are interested in those regulations, as to the conduct of mines? In the statute it is the conduct of mines, and I have them on my desk, I don't suppose I have read them, but they are on my shelves, and every lawyer in Ontario has them.

MR. LEDUC. But they are part of the statutes; that is why they are on your shelves.

MR. FROST. Mr. Finkelman, you would suggest this; for instance, in 1947, when there is a revision of statutes, that at that time there should be a revision of regulations, and that every subsequent year there should be published with the statutes, a copy of all of the regulations that are passed in that year, and so on for the next ten years, until there is another revision—that is about what you suggest—so that a lawyer, for instance, ordering the statutes, would order the statutes plus the regulations?

A. I would agree with you, only I would qualify it in one respect, that I do not like to see this thing hanging fire until 1947, seven years hence, and there is going to be a good deal of law made by way of regulations before then.

MR. CONANT. If we took this in easy stages, which we like to do, if we were to start with the central filing of all regulations, we would at least, make a very constructive start in that direction, wouldn't we, professor?

A. Definitely.

Q. Then if, in a year or two years or five years from now, we wanted to publish a compilation, we would have the raw material ready?

A. That is right. You would have nearly all the raw material ready; and I would suggest in addition, that when you set up your central registry, you require each Department over a period say of a year, within a year from the date of the establishment, to file all its effective regulations.

Q. You would have to provide that on or before a certain date all regulations must be filed, and thereafter they must be filed on a certain basis of time schedule, or something of that nature, and in the course of time you should have them all together then.

A. That is true. There would be one provision with regard to such a registry that I would suggest. I think it would be necessary to require that the regulations shall be filed within a certain time after they are made; otherwise you would get into this situation. The Securities Act provides that regulations shall become effective in all respects, as if enacted in this Act upon the publication thereof in *The Ontario Gazette;* that is section 35 of The Securities Act. Now, regulations were made under this Act on May 20, 1936; November 24, 1936, and May 29, 1937; they were not published in *The Gazette* until May 6, 1939.

MR. SILK. Three years later.

Q. Would you make the filing a condition precedent to the coming into force of the regulations?

A. I think so.

MR. SILK. I think it is the only way to enforce the filing.

WITNESS. You would have to have some provision of that sort; otherwise filing would be meaningless.

MR. CONANT. Yes, that is true. All right, Mr. Finkelman, thank you.

MR. SILK. I have some matters I should like to read into the record; I do not think it would take more than fifteen minutes altogether. The first matter is in regard to assessment appeals.

MR. CONANT. Are there more submissions about assessment appeals?

MR. SILK. There is just one, a letter from Mr. Harold Fuller, K.C., of Sarnia. He says.

> "There is one other matter regarding which I have forgotten whether I spoke to you about before, and that is the matter of the appeals under The Assessment Act. Under the present Assessment Act, section 73 gives a right of appeal from an assessment to a Court of Revision. Section 84 provides for an appeal to the Ontario Municipal Board in certain cases, and section 85 provides for an appeal to the Court of Appeal. Except in the case of the Court of Appeal, there are no costs provided for, in spite of the fact that after you get past the county judge, the amounts involved must be more or less substantial. It seems to me that the right of appeal to the Municipal Board might well be dispensed with, except possibly, where the appeal is solely confined to the *quantum* of the assessment. There certainly can be no advantage in having an appeal from a county judge on a matter of law to the Municipal Board, when there is a provision in The Municipal Board Act which provides that on matters of law, the chairman of the Board shall rule. The sole effect of this section is to put Municipalities to needless expense, because I suggest, in the great majority of cases coming before the Municipal Board, in which a question of law is involved, there is in any event, an appeal to the Court of Appeal. The fact that under the Act the hearing before the judge as well as the hearing before the Municipal Board is a trial *de novo*, results in a great waste of time and money.
>
> Under subsection 2 of section 85, it is provided that any party who desires to appeal to the Court of Appeal from the decision of a judge, may make application to the judge, but it appears that the application must be made to the judge during the hearing, and before he has given a decision. I do not see what possible use this section is as it now appears. One does not know what the judge's decision is going to be, and therefore can not know whether or not he desires to appeal during the hearing. It seems to me that this section could very properly be amended."

That is all I have on assessment appeals.

On the matter of pre-trial procedure, the Windsor Chamber of Commerce has this to say:

"That the Chamber particularly endorses the recommendations made by Mr. Barlow, in part 3 of his report, with respect to pre-trial procedure in civil actions."

Mr. H. R. S. Ryan of Port Hope, a practising barrister, has this to say, with regard to pre-trial.

"The trial of actions could be simplified, and made quicker and cheaper, if directions for trial were given in each case by the local Registrar or local Master. All documents could be brought in before the Registrar or Master, and those which were admitted could be taken as Exhibits, and abstracts could be arranged. Admissions of fact could be made, and a statement of facts so far as agreed on could be prepared. With such a statement, a *precis* or brief could be prepared and presented to the judge, which should expedite the trial and make his task easier. Many cases which are now put on the list, and settled on the day of the trial, thus upsetting the preparations of counsel and witnesses in subsequent cases, might be settled on such a motion, and the lists would not be so cluttered up with actions which it is never the intention of either party to bring to trial. Formal proof of such documents as were admitted could be dispensed with, and time could be saved in this way also. Possibly, appointments for trial could be made, and much jostling in settling the weekly list could be avoided."

Mr. MacGregor, the magistrate at Pembroke, has this to say.

"It is suggested that in Summary Conviction cases, it be sufficient if the magistrate took notes of evidence rather than the evidence in full.

Of course, this could only apply to cases of offences against Ontario statutes, but there might be a recommendation to the Department of Justice at Ottawa, that this be enacted in the Code. If this procedure were in effect, it would save considerable expense, especially when the magistrate has to go to small places, and there is a stenographer available where court is held."

I think that is meant for, "there is no stenographer available."

"It would seem to me to work no hardship on the accused, because, in the case of an appeal, all the evidence is again heard.

The procedure in appeals from Liquor Control cases, to be the same as in appeals from Summary Conviction cases, and not on the Record as it is now."

Of course, that is consistent with his previous submission, that magistrates' notes should be used.

Mr. W. B. Common, of the Attorney-General's Department—this is a memorandum to yourself, sir, which you sent to Mr. Barlow:

"Re—Ontario Summary Convictions Act, R.S.O. 1937, Chapter 136.

The above Act provides the machinery for the prosecution of charges, the recovery of penalties, and appeals in all prosecutions under Provincial Statutes.

Section 3 of this Act provides that part 15 of the Criminal Code, excepting certain sections, shall apply *mutatis mutandis* to every prosecution under Provincial Statutes. As you know, the appeal sections under part 15 of the Criminal Code provide for a trial *de novo*.

This is really, in my opinion, an archaic procedure, and dates back to the time when there was no record kept of the trial, and it was necessary that a trial *de novo* on appeal be had.

It has always seemed to me to be an anomalous situation, where either the Crown or the accused should have 'two bites of the cherry'. In other words, if the prosecution fails, it has another chance to bolster up its case on an appeal *de novo*, and by the same token, the accused has another chance to defeat the cause of justice by bolstering up his case in a trial *de novo*.

These conditions obviously lead to indifferent prosecutions, and indifferent defences, with resulting expense by way of appeals *de novo*. I have always been strongly of the opinion that in appeals in summary conviction matters under Ontario Statutes, the appealing party should be confined to the record of the proceedings before the magistrate. This will tend to a more careful prosecution of the offences, and in the same manner, more careful defences. I might point out as a good example, the appeal provisions of The Liquor Control Act, in which the appealing party is confined to the record before the magistrate."

MR. CONANT. There is this thought occurred to me in regard to summary convictions. if that were done, it would have to be limited to cases in which there was a stenographic report taken, would it not?

MR. SILK. I think that was agreed the other day, sir.

The Nipissing Law Association state:

"That in all cases in which a magistrate delivers judgment, the appeal from his judgment to be to the local judge.

That all appeals be heard on the evidence originally given, and that there be no trials *de novo*."

The Windsor Chamber of Commerce, on the matter of assessors and experts, particularly endorses the recommendations of Mr. Barlow.

That is all I have, with the exception of one matter which has not yet been before the Committee. I think Judge Mott discussed it with you last spring, and it was suggested that it be placed before the Committee at the resumed

sittings. It is in regard to the procedure under The Deserted Wives' and Children's Maintenance Act.

MR. CONANT. That has been more or less renewed by discussion in one of the near-by municipalities. Didn't the Council of East York have a discussion of that?

MR. SILK. Yes, I believe that is right, sir—or was it York Township?

The proposal, briefly, is to give the magistrate some jurisdiction over the children and the parents of the husband and wife with whom he happens to be dealing. Judge Mott says:

> "Section 1 of *The Deserted Wives' and Children's Maintenance Act*, gives magistrates the power to summons and hear summarily cases of desertion of a wife by her husband, and to order the payment by the husband, of such weekly sum as he may deem proper for the maintenance of the wife and child.
>
> This section does not give the magistrate any power to make provision for the custody of the children or the conduct of the parents. The magistrates are constantly being confronted with cases where the husband interferes with the wife's parents, with whom she may be living, and where the child is shuffled back and forth between the parents, and he has no power to deal with such situations. The parties could obtain some relief in the Supreme Court, but since most of the cases dealt with are poor people, many of them bordering on ——"

MR. FROST. Didn't he have power under The Children's Protection Act? I thought there was a provision there ——

MR. SILK. That is under a different act, sir.

MR. CONANT. The only power now is to make them wards, isn't it?

MR. SILK. Yes; under The Children's Protection Act they are committed to an institution and they become wards.

> "The parties could obtain some relief in the Supreme Court, but since most of the cases dealt with are poor people, many of them bordering on the mentally unbalanced, the cost of a Supreme Court action is prohibitive. The same difficulty arises under section 2 of the Act, which gives the magistrate power to order a father who has deserted his child, such sum not exceeding $20.00 weekly, as the magistrate may consider proper. Magistrates are constantly being confronted with cases where the father obeys the order, but molests the wife, by complaining to her employers, confronting her on the street at all times of the day, or where the parents fight among themselves or with the parents.
>
> The courts of summary jurisdiction in England, have power to order that the parties be no longer bound to cohabit with each other, that the

legal custody of the children, where they are under sixteen years of age, be given to the wife or husband, and order the payment by the husband, such sums as are reasonable for the maintenance of the wife and children.

It is proposed that the amendments to section 1 and 2 of The Deserted Wives' and Children's Maintenance Act, give only judges of the four family courts, when a wife or child has been deserted by her husband, power to make an order regarding the custody of any child of the parties, the right of access thereto of any person or either parent having regard to the child's welfare, the conduct of the parents or persons, and the conduct of the parents towards each other."

And he has a draft section. You will note from that last paragraph, that Judge Mott would make a test of the proposed legislation in the four family courts in the province; there is one in Toronto, one in Ottawa, and I am not sure where the other two are.

MR. CONANT. That boils down to extending the powers in those deserted wives' cases to determining who shall have the custody of the child.

MR. SILK. And also restraining the parents of the child's father and mother—that is, restraining the grandparents.

MR. CONANT. It seems to me that one of the neighbouring municipalities was anxious that the magistrates should have fuller powers to send the husband to jail.

MR. SILK. York Township.

MR. CONANT. Yes; they wanted the magistrate to have power to send him to jail; wasn't that it?

MR. SILK. I think they wanted the magistrate to have power to have a deserting husband whipped, if I remember correctly.

MR. CONANT. Well, whipped and sent to jail.

Is that all for the present, Mr. Silk?

MR. SILK. Yes, that is all for the present.

MR. CONANT. And what about Monday?

MR. SILK. On Monday we have Chief Justice Robertson, Chief Justice Rose, Mr. Justice Middleton, probably Mr. Justice McTague, Mr. Fairty of the Toronto Transportation Commission, and to-day at noon I invited Mr. Hellmuth.

MR. CONANT. That ought to be enough for one day.

MR. SILK. Mr. D. L. McCarthy and Mr. Mason wish to make representations on behalf of the Benchers with regard to pre-trial and increased County Court jurisdiction.

MR. CONANT. Can we finish these submissions early next week?

MR. SILK. I think we ought to allow Monday and Tuesday.

MR. CONANT. Is that agreeable, gentlemen? All right, thank you.

(Adjourned at 3.50 p.m., Wednesday, September 25, 1940, until 10.30 a.m., Monday, September 30, 1940.

THIRTEENTH SITTINGS

Parliament Buildings, Toronto.
September 30, 1940, 10.30 a.m.

MR. CONANT. Gentlemen, I am sure we all regret that since we adjourned we have lost one of the members of our Committee, fortunately not by reason of what might be called a sad occurrence, but by reason of a choice that he has made to leave the field of political controversy and ascend to the heights of the judicial realm, as one might say. We certainly cannot augment the Committee at this stage; this Committee was appointed by the Legislature, and it can only function under that appointment until the Legislature meets again. I do not think there is any question that we should go on and finish our work, much as we regret the absence of Mr. Leduc, which still leaves four members of the Committee. While it is an unfortunate number, the matters with which we are dealing are not, after all, controversial in the sense of being likely to raise any acrimony or anything of that nature; if we differ as a Committee we undoubtedly will differ honestly on matters of opinion and our own views of things. When we come to make our report we will simply have to work out the best we can with the members that are available. So I think, and I believe the Committee will agree with me, that we will have to proceed.

It is always convenient to have a Vice-Chairman, although one may not be necessary at this stage, if the Committee care to suggest a Vice-Chairman; perhaps it should be put on record. Mr. Strachan might care to undertake that duty; he is here in the City all the time. and there should be somebody here all the time. Is that agreeable Mr. Frost?

MR. FROST. Yes.

MR. CONANT. Then there will be a resolution of the Committee that Mr. Strachan be the Vice-Chairman; he is available at all times. On that understanding, gentlemen, we will proceed.

I might call you attention to the fact that since we adjourned on the 25th the evidence of the proceedings for those three days, September 23, 24 and 25, has been extended and is now available. That indicates a considerable improvement in the mechanics of the Committee, and when we conclude our hearings the evidence and proceedings will no doubt be soon available again.

Now, Mr. Silk.

MR. SILK. Mr. Chairman, I may explain at this point that last week I discussed with the Chief Justice of Ontario and Mr. Justice Middleton the form in which the judges might best express their views on the various subject, and I furnished to each of the judges a copy of pages 3A and 3B of our Committee notebooks, so that they might know the various matters upon which the Committee has not yet made a final decision. It has been decided that the best way in which we should proceed would be for the Chief Justice to go down a list of subjects which he has prepared and discuss each one as he proceeds.

THE HONOURABLE R. S. ROBERTSON, Chief Justice of Ontario.

MR. SILK. The first matter, sir, is the proposed abolition of the grand jury system in Ontario.

MR. CONANT. I should like to interject that, so far as I am concerned—and I know I speak for the Committee—we are not only pleased but honoured by having the Chief Justice here, also Chief Justice Rose and Mr. Justice Middleton. We have had a lot of submissions on these various points from members of the Bar and from citizens generally; I think these are the first submissions we have had from members of the Supreme Court, are they not, Mr. Silk?

MR. SILK. I think that is so, sir, yes.

MR. CONANT. And I just want to say, sir, we are very grateful to you for coming here and giving us the benefit of your views.

WITNESS. I think I am speaking fairly for the members of the Bench generally when I say that we all regard the matter, any matter affecting the administration of justice, as a matter of our concern, upon which we ought to give any assistance that we can. The judges at the beginning of this year had an elaborate report prepared, copies of which I think are in the hands of the members of the Committee. I should just like to say this about that, so that you may understand how it was prepared. What we call the rules committee—that is a committee of five or six judges, of which Chief Justice Rose is the chairman—took in hand the consideration of Mr. Barlow's interim and final reports during the Christmas vacation at the end of 1939 and spent a good many days, I think perhaps most of their vacation, in that work, in preparing the report. The report was then submitted to the whole council of judges, and we spent pretty much the whole of two days and part of a third day in going over the report and making changes in it, additions to it, adding reasons here and there that came within the experience of some judge, perhaps, who had not been on the committee. So you have in the judges' report, I think, a pretty full and fair representation of the opinion of all the judges. I should not want you to think that we were all unanimous on every point, but on every point of importance—I recall only one as to which there was a divided vote; that was on a matter affecting some matter of practice in matrimonial cases, and not of any great importance, perhaps.

My remarks would be very much abbreviated by my referring to that report without reading it, and suggesting that you will find there what is more valuable than the opinion of any one judge; you have the opinion of the council of judges.

On the matter of grand juries I just want to say a word or two. A statement was made by Chief Justice Rose somewhat over a year ago in, I think, addressing the grand jury in Toronto. He made a careful statement of his views upon the matter. I do not know whether the Committee members have that. I have a copy which he was good enough to give me, and I thoroughly endorse, so far as my poor opinion is worth anything on the matter, all that he said. If it is of any value to the Committee, I have that here.

I just want to add a word or two, more by way of emphasizing one aspect of what he said. The matter is often discussed—let me say this first. I should like to speak of grand juries and juries together in this particular aspect of it. A good deal is said by way of criticism of the work of both grand juries and petit juries, to the effect that they are influenced by things that perhaps a wise judge would not allow to affect him. I do not suppose opinions will ever agree as to the merits of that criticism. There are those who say that the views that the jury adopt, and that they are criticized for adopting, are all that ought to enter a wide consideration of the merits, particularly of a criminal matter. They err, if they err at all, usually on the side of mercy or leniency towards the accused; that is the general trend and the general object of criticism. In civil matters the jury is apt to lean towards the poor man rather than the corporation or the rich man. Again, some people think that is an error on the right side. You will never get unanimity or anything like it on that question.

But it seems to me that that is not the most important view. Every citizen, in my mind, has the right and the duty to take part in the administration of justice, and whatever our practices have in the past afforded in the way of opportunity for that participation, in my view, should not be curtailed. The administration of justice is a function of government, and the people generally should have a hand in it. No mistake is more common to-day than to think that, because some benevolent and wise dictator, perhaps in the nature of an autocratic commission, can do a better job, the right of the people to run their own affairs should be curtailed. To be a free and self-governing people is an end in itself; it produces the best men and women, even if someone else could be found who would do a more efficient job; and, in my view, any curtailment of these rights, any curtailment of the activities and the rights of the people to govern themselves, even in the administration of justice, should be avoided.

As to grand juries, there is one observation I want to make in addition to that. We have had them, of course, for hundreds of years. I know that in some of our provinces, I know that in England, they dispensed with grand juries, but the period in which they have been so dispensed with has been so short that it is impossible to tell anything of the operation of it. The grand jury is hundreds of years old. Now, if the grand jury has become in any way antiquated, let us modernize it, let us correct its deficiencies, rather than get rid of it.

In that connection one observation I should like to make is this. We all know that it is common practice for grand juries to make presentments at the end of their work, and they make recommendations, and the presiding judge thanks them for it and says that he will see that a copy of their recommendation is sent to the proper quarters; and that is the last you ever hear of it. I think something could be done to make an improvement in that respect, and I am making this suggestion, not having considered the matter, but rather as some-

thing to show that something could be done. It would be possible, for example, to require that any institution or officer who is made the subject of criticism or recommendation in the grand jury's report should report back to the next grand jury what has been done about it, or, if nothing, why, giving an explanation, so that the matter may be carried on and not pigeon-holed, as I am afraid is what generally happens.

Then it has been said, I understand, before this Committee that it is important that the grand jury should have a say in who should be prosecuted, who should be tried before a petit jury. It is also important, I think, that the grand jury should have the right to see who is out on bail and not being brought to trial. I know they have the broad right to indict people themselves, but in practice in this country that is not done. Everyone knows that by some procedure in the State of New York the grand jury is a very active body in bringing before the courts people who have not been brought there otherwise. As to that function, while I should think it would be very seldom exercised, it would be well to see that the grand jury have it before them as one of their duties.

MR. CONANT. You are referring, of course, there to the general gaol delivery that the court ——

A. Well, I was getting a little beyond the gaol delivery. In one aspect, I am thinking of the man who is out on bail, who has been charged with some offence, and whose trial for some reason or other is postponed and postponed. That happens at times, so far as I know always for a good reason, but I also know, and everybody knows, that the public sometimes asks questions. Well, let the grand jury settle the matter. There is nothing like satisfying people by an enqiry by their own representatives, so that there will be no criticism. The courts are criticized ——

MR. FROST. Tell me, sir, just in that regard. You mentioned the situation in New York, and some mention was made of that here a few days ago. Apparently, as I understand it, according to newspaper reports, the proceedings are in public. Now, there has been some criticism in connection with grand juries due to the fact that the hearings and the evidence are not in public. Do you think that there should be any improvement or there could be any improvement along that line, or is that desirable?

A. I would think it ought not to be in public. In a preliminary enquiry of the kind that they make, they ought to be privileged, they ought to have the freest hand to make it and feel that they are not injuring anybody by doing so. I have often wondered just what the difference was in New York, and I thought perhaps it was more due to the very great enterprise of the newspaper reporters, who manage to get out of the jurymen things that they were supposed to keep secret.

As to both grand juries and petit juries, I should like to suggest that the exemptions from service are far too many, and I am not speaking particularly or chiefly of statutory exemptions. There are a great many what one might call unauthorized exemptions. There are a lot of persons who would make admirable jurymen, I should think, as they make admirable men in their own affairs, who never serve on a jury; I don't know what they would think about it

if a constable were to turn up with a jury summons for them; they have never heard of such a thing; but I think they ought to. I would think that if you had the general manager of a bank and a mechanic and a farmer all on the one jury it would do them all good, and they probably all would understand each other much better in their affairs afterwards. One is tempted to think sometimes that the only men who are called to serve on a jury are men who will be glad to get the jurymen's pay, that anybody above that standard is left off.

MR. CONANT. Well, your Lordship, there you raise a question that is of very great interest to this Committee; that is the question, first, of course, whether it is desirable, and secondly whether there is any means of improving the calibre or status of jurymen.

WITNESS. Well, my suggestion is, the way to improve their calibre and status is to call everybody.

MR. FROST. I agree; I think that is right.

MR. STRACHAN. I agree.

MR. FROST. Particularly at a time like this, when we have military service, when everybody is called upon to serve; why shouldn't everybody be called upon to serve on a jury?

WITNESS. And let me add another practical suggestion. I am quite aware, but not as fully aware as Chief Justice Rose, that at every assize, and I suppose at almost every place, there is someone who comes and asks to be excused, and has perhaps a valid case. A man in large business would have his affairs arranged, his appointments, perhaps a trip to England or a trip to some other part of Canada, that would make it impossible for him to serve a week or two weeks for which he is called. I do not suggest that the court should not exercise a wise discretion in relieving him, but I would suggest that this should be done, that he should only be relieved upon terms that he serve again at the earliest date possible, and, of course, for that there is no machinery under our present practice.

MR. CONANT. No. May I propound this, your Lordship? There are twenty-six categories of exemptions, from A to Z. Supposing those were eliminated, all or substantially, and we set up some machinery or procedure for dealing with such cases as might require attention; do you think that would meet the situation?

A. Well, I do not think you could—I would not think you wisely would abolish all exemptions. For example, there is no use putting lawyers on a jury; they would be the worst jurymen in the world.

Q. Well, I said all or substantially all.

A. I have not read the list of late, but I think it includes persons ——

MR. FROST. For instance, Hydro employees and street railway employees.

WITNESS. I don't know why they should be left off—or every editor, reporter or printer of a public newspaper or journal; why, who would make a better juryman than a reporter? They know everything.

MR. CONANT. What I am coming at is this, your Lordship. I am in full agreement with you, that this list of exemptions should be very radically revised. Then the difficulty occurs, it seems to me, as a matter of practical working out, as to whether any other procedure would be necessary than what we have now to take care of any who might feel that they should be exempted. You see, as I recall it, your Lordship, to-day the only one who can exempt a man is the trial judge; is that not so?

A. Yes.

Q. Now, that might not meet the situation, if you were eliminating a large number of the categories of exemptions, because you might have to know beforehand, some time in advance of the trial, whether your panel was going to stand or whether there were going to be exemptions, a hole shot in it, as it were. Would it not be possible to have that done previous to the trial?

A. I think the method of selecting jurors to put on the panel for the court, the system, perhaps ought to be reconsidered. In my early days in practice, my senior, the late Mr. Justice Idington, happened to be Crown Attorney, and he used to have me attend the meetings of the selectors at times, and I saw something of the way the work was done. It was not done very much as one would suppose it would be done who had not seen it. In part that gave me the idea, which I have always had since, that the question whether the man would want to be bothered rather entered into it, particularly for the petit jury. But there is this also. the selectors had a fair knowledge of the county, and if a man for example was incapacitated for some reason they were apt to know it, one of them would likely know something about it. They left people off, and did a lot of the work that would eliminate people that I think perhaps you were in part suggesting would not be useful.

MR. CONANT. It seems to come down to this, as far as we have analyzed it, your Lordship, that in the counties—for instance, I have sat on boards of selectors in Ontario County. Now, somebody on that board knew practically every man that came up. But when you get to a city like Toronto, and I imagine Hamilton, and the larger centres, where you are dealing with literally hundreds if not thousands of names, that does not apply; the old-fashioned system—because this is a relic of years ago—where the selectors were presumed to have personal knowledge, does not apply in the case of the city of Toronto. We had here one gentleman, Mr. Ogle, who has been engaged in this work for, I think he said, twenty-five years, and he gave us the distinct impression that in Toronto it is purely a matter of mathematics, or mechanics if you like. Now, is there any way of overcoming that in the larger centres? That seems to be the difficulty.

CHIEF JUSTICE ROSE. Has Judge Parker been asked about that?

MR. SILK. No.

MR. CONANT. No, he has not. We might hear from him.

CHIEF JUSTICE ROSE. He can probably answer that question better than we can, can't he?

WITNESS. Yes. My actual experience of it, of course, is pretty old, pretty ancient.

CHIEF JUSTICE ROSE. I know that he is much concerned in it; he has talked to me about it.

MR. CONANT. Well, we will hear Judge Parker, possibly, before we adjourn. Pardon me for interrupting, your Lordship.

WITNESS. Well, I don't know that I can add anything now to what I have said on the point. I merely desired to call attention to it.

MR. CONANT. May I mention this, your Lordship just before you leave the question of grand juries. There are one or two things that have bothered me particularly in that connection. Granting all you say about grand juries, and all that others say, I find it difficult to understand or to appreciate why those considerations have not applied in so many other jurisdictions—all the western provinces, England, and I think South Africa and Australia. In fact, we are the only large jurisdiction in the British Empire, substantially large jurisdiction in the British Empire, that is left with the grand jury. And let me point this out to your Lordship. As I recall it, in England at the outbreak of the first Great War they abolished grand juries for the duration of the war, so that they automatically came into effect again I think in the year 1919; then last August they substantially abolished them again. I instance that as indicating that they have had the experience of about five years, from 1914 I think until 1919, and yet they revert to the same system last August, with some minor exception; I think there are two counties in which they still have them. That is one of the things that has perplexed me in this matter.

WITNESS. Well, I have thought of that at times. I do not know how much of what one might call "follow your leader" there is in that. As a matter of fact, the present suggestion that you make, Mr. Attorney-General, is rather of the same order, to do it because somebody else did it. But, more seriously, I think there is this to be said. To any observing person there has been what, in my judgment and in the judgment of many people, is a most undesirable trend in democratic countries. We have been rather looking somewhat enviously at what we call the efficiency of the dictators; we have come rather to distrust the democracy that at the present time we are fighting to preserve; we have been rather doubtful of the people's ability to do this, that and the other thing. It is evident in many things besides the administration of justice. The general tendency has been attacked vigorously in England by the Lord Chief Justice. I am not suggesting that he has said anything about grand juries—so far as I know he has not—but the tendency attacked by him is that, instead of letting elected bodies govern matters and control them, keeping the people in direct touch, we have all sorts of commissions and boards set up that, rather autocratically sometimes, deal with these matters. In the United States, of course, everyone knows that in the impending election one of the issues is the question whether the people should any longer permit that sort of thing to the extent to which it has gone on. That is my answer to the ——

MR. CONANT. Of course, I am still perplexed, and, with the greatest deference, it does seem to me that England is the home or the genesis of our parliamentary institutions and our administration of justice, and I cannot relieve my mind of the thought that their regard for democratic institutions should be as great as ours, and yet in the face of that they have reverted to the system of doing away with grand juries after their previous experience.

WITNESS. I do not know at all, of course, to what extent there is unanimity in England on the matter, and the fact that they had a short trial of it during the last war is, to my mind, proof of very little. Wartime is not the time to test these things, nor is a short period of four years of much value. When you have had an institution that has existed for over seven hundred years, to give it a brief trial for three or four years in exceptional times, a trial of doing without it, I would not think would form any safe guide to anybody. I think there is a definite trend among certain classes of minds to curtail democratic institutions ——

MR. CONANT. What they call reactionaries?

A. —— which are of vital importance.

Q. They call them reactionaries, don't they?

A. Some people call them that, yes.

Q. Rightists or reactionaries. There is one more observation I should like to make to your Lordship; that is a matter that has concerned me, and if you care to comment I would be very glad to have your comment. The question has been raised as to whether, if grand juries are abolished, there should not be some protection set up against the present power of the Attorney-General to prefer an indictment, which at the present time goes before the grand jury and which, if the grand jury were abolished, would go directly to the trial tribunal, the trial jury. It has been suggested that to meet that situation, where the Attorney-General prefers an indictment, a judge would function in place of the grand jury to find out or to pass upon whether there was a bill that should be tried or not, only in cases where the Attorney-General lays an indictment. They are not very frequent—I do not know how many there would be in a year, but there are very few—but it has been suggested that there should be that protection against an arbitrary or dogmatic Attorney-General's placing a man upon his trial without any intermediate procedure. Would that occur to you as offering a safeguard, your Lordship?

A. Well, let me deal with it this way, will you? In the first place, as to the practice as it has existed and as it exists to-day, I have not heard any criticism, nor am I aware that there is the slightest ground for criticism, of any action taken by any Attorney-General.

Q. No, I haven't either.

A. I think there has been no criticism. As to whether, in the event of there being no grand jury before whom the bill may be first laid, the trial judge ——

Q. No, I don't mean the trial judge, your Lordship. What I have in mind is this. Take in my own county, for instance, and suppose an indictment is directed there. The procedure that is contemplated is that the Crown Attorney could take an appointment from any judge, county judge or any judge that is available, and that judge would function in exactly the same way as a grand jury, subject to the same rules about calling witnesses and so on. That judge would not be the trial judge, your Lordship. Then, if he found no bill, that would end it; the Attorney-General's dictum or direction would be washed out. If he found a true bill on that indictment, then it would go on to trial as at present.

A. Well, I would think that first of all the proposition would have to be much more definitely laid out and the exact procedure better defined before one could speak very definitely about it; but, speaking of it as you put it to me, I would say that, in my opinion, it does not at all supply the gap that would be created by dispensing with the grand jury. I would think that the extent and value of the enquiry would vary tremendously with the person of the judge who made the enquiry—the question, for example, of who is to direct what witnesses shall be brought or whether witnesses shall be brought at all. There would always be pressure on the judge—I do not mean improper pressure brought by any person else, but what he would have in his own mind would be that he should not delay and that he should not cause unnecessary expense. In the case of the grand jury, the witnesses are there; they are brought there for the purpose of the trial if there is going to be one, and they are put before the grand jury first.

Q. Of course, what I had in mind was this, that in all respects the procedure would be exactly the same as it would be with the grand jury; the witnesses would be endorsed on the indictment, they would be present, and before "no bill" was found all the witnesses would have to be called—that is the rule, I think—but with the right to find a bill at any stage.

A. I know, but I may be wrong in taking this from you; it would involve a great deal of unnecessary expense if the witnesses were all brought for two occasions—on one occasion to appear before the grand jury and on a separate occasion to appear at the trial. As we have it now in the ordinary case the witnesses come to the Assizes and they are through at the Assizes.

Q. Of course, but I again call your Lordship's attention to the fact that these cases are comparatively rare. In the whole province I am quite sure there would not be half a dozen in a year.

A. I thought you were putting to me the circumstance of there being no grand jury at all.

Q. Yes, that is right.

A. So that every man who went on trial at the Assizes or the Sessions ——

Q. Oh, no.

A. Well, how does he get to trial?

Q. What I mean is where an indictment is laid by the grand jury— I should have added this—without any preliminary investigation having been held. I should have added that.

A. By the grand jury?

Q. No, no; by the magistrate, without any committal. The Attorney-General to-day, as you are all better aware than I am, can lay an indictment without any preliminary, without any committal by a magistrate. I am suggesting that in that case, if there were no grand jury, no committal by a magistrate, and the Attorney-General exercises his prerogative, which he has always had in this province, I think, to lay an indictment, instead of the grand jury there be substituted the safeguard of having a judge passing on that bill in exactly the same way as a grand jury.

A. Well, I fail to see why the observations I have been making do not exactly apply to the situation of which you are speaking. That is, you will have no grand jury, but at some time before the trial commences before a petit jury you will go before some judge, and you take with you the proposed indictment and the list of witnesses on the back of it. As I say, the judge as got to hear it. That is not at the Assizes, but presumably at some other time, and you have to bring your witnesses there to appear before him, unless you do make it the trial judge, and the trial judge has no time for that sort of thing, preliminary enquiries of that sort. I do not know whether you intend to have that proposal continue the secrecy of the grand jury hearing, but in the second place you are taking away two things. You are taking away from the grand jury, who represent the people, their right to say, is this man a man that should be put on his trial? Everyone knows that grand juries are not always governed by the exact terms of the Criminal Code in deciding that; they sometimes say, and I think properly say, "It is all very well, this man may technically have committed an offence, but it is not an offence for which he ought to be tried."

Q. Oh, yes, that is true too.

A. Then in the second place you take away from the prisoner himself, the accused person, the protection that he has of having his peers pass upon it rather than some judicial officer.

Q. Of course, we have had instances to indicate that grand juries even are not infallible, your Lordship.

A. None of us is infallible, and we never will be.

MR. FROST. Tell me, sir, do you think there is any merit in the suggestion that grand juries should be limited to the more serious class of cases, such as are tried, for instance, in the Supreme Court?

A. Well, of course, we all know that there has been, by amendments to the Criminal Code as to procedure, a great limitation in the cases that—a man can get a very long term now without the grand jury ever having heard of his case.

MR. FROST. Well, that was the point, sir.

MR. CONANT. We had the suggestion, by Mr. Slaght, I think it was ——

A. I remember the suggestion. As a matter of fact, Mr. Slaght and I had discussed it.

MR. FROST. I think the point is this. There are such a large number of cases now in which the accused has the right, for instance, to elect trial before a magistrate or speedy trial before a county judge, and so on, that it does seem in the great run of cases that it is rather a curious situation, that just because he elects trial by jury and would come up before say a Sessions jury there should be a grand jury intervene. On the other hand, cases which are normally tried in the Supreme Court are of such a serious nature, for instance murder, where the penalty is one which cannot be recalled if it is ever imposed, and perhaps there is some merit in the proposal that grand juries should be limited to Supreme Court cases. Now, sir, I do not know what your opinion on that is, but ——

A. Well, I don't know that I should offer one. Some little time ago Mr. Slaght and I were discussing it, and the question of expense came up, and I think it was I who said, "Well, if the expense is found to be too burdensome, in any event let us keep half a loaf if we can't have the whole one."

MR. CONANT. These are not days of appeasement, though, any longer.

MR. FROST. You have to appease the taxpayer.

WITNESS. You will observe, of course, that it is only the accused who has the right to say, "Well, I will have a summary trial before the magistrate," or "I will take a speedy trial before the county judge." The accused has been most carefully preserved in his rights. I don't know that I can add anything useful.

MR. FROST. In connection with that same matter, sir, would you care to offer any opinion as to whether grand juries should be reduced from thirteen to nine or to some other number?

A. Well, I cannot say I have any considered view upon the matter, but grand juries used to be a great deal larger than they are now, in my time in any event; I don't remember offhand when the revision was made. But I think you take away somewhat of its representative character if you reduce it and make it too small. There is this lingering always in the idea of the grand jury, that they may know something about it, they may know the circumstances of the people concerned or something of that kind that may incline them one way or the other. I do not suggest that in our modern ideas they should try the case on their own knowledge, but I don't know that there is any way of excluding their own views.

MR. CONANT. I don't want to be offensive, your Lordship, but, returning to that subject regarding the indictment by the Attorney-General. I take it from the Code and the practice as I understand it—for instance, in Quebec, Manitoba, Saskatchewan, Alberta and British Columbia, where they have no grand jury, the Attorney-General can prefer an indictment, and it goes directly to the petit jury. Personally, I am rather inclined to feel that that is a very

drastic removal of all safeguards in those few cases in which the Attorney-General does function, and that the intervention of a judge acting as a grand jury in those cases—where there has been no preliminary, of course, no committal by a magistrate—might be some safeguard against some bureaucratic or arbitrary official putting a person on his trial.

WITNESS. Well, I certainly think they went twice too far; that is, I think they were wrong in abolishing the grand jury in the first place, and I think they were next wrong in omitting to put anything in its place. I would stop at the first. I think the grand jury ought to be maintained, and I do not think we have any substitute for it that is adequate, nothing that fills the same place, of giving a free people the right to have an important say in the administration of justice.

MR. CONANT. Just one more matter, your Lordship. In the amendment that was made to the Jurors Act, I think it was in 1936, it provides for inspections at intervals of not less than six months, but there is a qualification added, that no inspection shall be made without a specific consent of the judge. We had submissions here that indicated that that specific consent had been given in many cases and had apparently run up the number of inspections inordinately. Do you suggest any reason why that qualification should not be removed, the specific consent of the judge?

A. I really must say I cannot add anything of value on that. I have no real knowledge of the subject.

MR. CONANT. Perhaps his Lordship Chief Justice Rose will give us an observation on that when the time comes.

CHIEF JUSTICE ROSE. Yes, I know something about that.

MR. CONANT. Yes, Mr. Silk?

MR. SILK. Then, going on to some other matters pertaining to trial by jury, the next matter dealt with in Mr. Barlow's report with which we are concerned is the matter of increasing the fee where a litigant requires a trial by jury. The fee now is $4; it has been suggested that it should be a substantial fee, of perhaps $25 or $50. In the province of Manitoba it is $50 in some parts, and I think it is $100 in the city of Winnipeg.

WITNESS. I don't know that I can add anything to what is said in the memorandum of the judges that you already have, and you will that on page ——

MR. SILK. It is on page 5, sir, under heading 2, sub-heading 6.

WITNESS. "Costs of trial by jury should remain as at present and not be saddled upon the private litigant. Fundamentally, in our system all people should have equal rights in the courts. The commissioner's suggestion in this matter would discriminate in favour of the rich as against the poor."

That is very briefly stating the view. A jury is much more commonly

asked for by the person with limited means than by the person with ample means, and I think that costs of litigation are already too high, I think so high that they to some extent form an obstruction to the obtaining of justice by people of very limited means. I would sooner see people made to pay for something else rather than pay in this way for a jury.

MR. CONANT. Of course, there is this angle to it—I am not expressing any opinion—that the jury, while it is a part of our administration of justice, is an expensive form of adjudication. Should the taxpayer, should the state, provide that rather elaborate machinery for, after all, the comparatively few among our whole population that invoke it?

A. I do not know—I do not know whether anyone knows—what proportion of the cost of the administration of justice is made up of jurors' fees, but in principle I do not know any reason why a litigant should pay for the jury any more than he pays for the judge. I think there are places where the judge gets fees—I am not suggesting in any British possession, but I think there are places where the judge gets paid so much for the cases he tries, at least some judges, and magistrates perhaps do among us; I do not mean police magistrates, but they used to; a justice of the peace got paid.

Q. Your Lordship observes that the cost of litigation is high; I think you would probably agree that it is not the costs that are collected by the state that constitute those high costs; it is items entirely beyond the control of the state, because the fees payable to the state ——

A. I quite agree that the ——

Q. May I suggest that the fees payable to the state on most litigation would not exceed perhaps $10 or $20 or something of that nature. It is the parties' own expenses that make the costs so high, is it not, your Lordship?

A. It is expense none the less that he has to pay.

Q. Oh, yes, quite.

A. And as a general principle I should say that a man should no more have to pay for the services of a court to try his rights and wrongs than he has to pay the fireman for coming to put the fire out in his house if there is one, or the policeman for arresting the man who robs him.

Q. Oh, quite, I agree with you. I only made the observation because I did not want to have the impression go out, and I did not think you meant to give the impression, that the high costs involved are imposed by the state

A. Oh, no.

Q. That is not the case.

A. No, I was thinking of the matter broadly, that litigation is an expsenive venture; but I quite agree that the disbursements that in any way find their way into government channels of any sort, or any officer or examiner or anything of that sort, are quite small.

Q. Nominal.

A. And they have not greatly increased with the expense of providing them.

MR. CONANT. Then your next item, Mr. Silk?

MR. SILK. The next is as to the right of a trial by jury. Mr. Barlow recommends:

> "That all civil actions where a jury is now optional be tried by a judge without a jury except where upon an application to the court or a judge it is found that the questions in issue are more fit to be tried by a jury than by a judge."

That rule was recently adopted in the province of New Brunswick, I understand.

MR. CONANT. In England, too, haven't they that rule now?

MR. SILK. Yes, I believe they have, quite recently. We looked that up the other day.

WITNESS. Well, I do not approve of the suggestion. I think our present practice affords ample opportunity to the court to winnow out the cases that a jury should not try. Many persons think that we have perhaps gone too far, and I think in that instance we have gone farther than they have in England. There are many cases tried in England with juries that we do not try that way.

MR. CONANT. You mean by statute?

A. No. The practice is different. The judges do not dispense with juries as freely as they do here. One reading the law reports is rather impressed with the questions there that go to juries, that we would not think of presenting to a jury.

MR. SILK. Then the matter of increasing the powers of the Court of Appeal where an appeal has been taken from a jury trial; I see that the judges, on page 6 of their memorandum, not only approve of that, but also suggest the manner in which section 26 of the Judicature Act should be amended.

WITNESS. Well, we deal with that on page 6, and we make a recommendation. I only wish that I could feel that the recommendation was going to meet the whole difficulty, but I have an idea that fifty percent of it will still remain. There is a real difficulty, owing to the different viewpoints of different judges. Every lawyer in this province knows that there have been in recent years numerous cases in which the Court of Appeal of the province has set aside the verdict of the jury, holding that it was not reasonably supported by any evidence, and on appeal the Supreme Court has taken a different view. Now, that difference in viewpoint is not entirely based upon their views of the powers of the Court of Appeal; in some cases it is quite obvious that it is a different view of the facts, a different view of the inferences to be drawn from the facts. One only gets that idea well in his mind by having to deal with some of the cases. Perhaps nothing emphasizes it so much to one as to have his own judgment reversed; he

then begins to enquire why. But I think there is no question that this suggested amendment, the one suggested by the judges on page 6 of their memorandum, will not entirely remove the difficulty that exists and is rather regrettable; but I do not know any way to avoid it.

MR. CONANT. Of course, I suppose the fundamental argument on this whole question is as to whether the Court of Appeal should be placed in the position of acting as a reviewing jury, a super-jury, because by the extent to which you increase the powers of the Court of Appeal to interfere with juries' verdicts you are more or less nullifying or reviewing their findings; isn't that it?

A. Yes.

Q. I am not stating that as my opinion; that is the argument on the other side. Personally, I have an entirely open mind on this subject, but I think it is of the utmost importance, your Lordship; I think you perhaps will agree with that?

A. Well, I should hope that, even if you were to go the full distance of the recommendation that has been made on page 6 of the judges' report, the Court of Appeal would exercise their increased powers with great moderation.

Q. That is what it all comes down to, isn't it, your Lordship?

A. Yes.

Q. It all comes down to that, that if the ——

A. Not all, no. You still have the other element of which I speak. It is astonishing, and since I have been on the Bench I have been much impressed with astonishment at the different views that different minds will take of the same evidence. I do not know any way to account for it, or any way to cure it; they simply do, that is all, and that is very marked as between the Court of Appeal and the Supreme Court. And let me say this, that it has not always trended the same way; I think that one could go back over a reasonably long period of years and find a time when it was almost the reverse, that the Court of Appeal was more disposed to take the view that the jury should rule, and the Supreme Court the other way.

Q. Your Lordship, this is the angle of it that concerns me particularly; aside from the excellence of the jury or of the Court of Appeal, what concerns me primarily is as to the effect upon litigants or our people. What is the final result, if the powers are enlarged, upon the people who are availing themselves of the machinery for the administration of justice? That is what concerns me particularly.

A. Well, speaking entirely for myself, I am democratic enough to not shed any tears over leaving it the way it is, and if the Court of Appeal goes wrong and upsets the jury without good grounds, then they ought to be set right; but I do not like the idea of curtailing the proper functions of a jury.

Q. Well, haven't you got two angles, rather, to look at? You have got

the angle of let us say the wealthy litigant, who when he meets a reverse before a jury will almost certainly go to the Court of Appeal if the jurisdiction of the Court of Appeal is enlarged, and haven't you also got the category of the action, the type of litigation, that has been brought forward solely because or largely because of the hope of getting a compassionate jury or something of that nature to give a favourable verdict? It seems to me there are the two angles to it.

A. Yes.

Q. Would you care to discuss those two angles, your Lordship?

A. Well, of course, there is not perfect agreement among judges or among courts as to just what power the Court of Appeal has now to review the finding of a jury. As I have said, that is one of the matters upon which, either in the interpretation of the rule or its application, the Supreme Court at Ottawa as at present constituted seems to frequently disagree with the Court of Appeal. That has been for a matter of some years; cases have been frequent. One must recognize that there is some difference of opinion between the two courts as to just what the rule is. The judges of the Court of Appeal think they are following rules well established by the Privy Council. Whether the Legislature should go so far as to say that the finding of the jury shall have just as much and no more respect paid to it than the finding of fact of a trail judge, I do not know; that is a matter for opinion.

Q. Your wording here is, "may pronounce any judgment which upon the evidence ought to have been pronounced." Now, that, I take it, would leave it open to the Court of Appeal, practically to occupy the same position, and exercise the function in the same way as the jury, would it not?

A. I am afraid that unless the Court of Appeal interprets those words very mildly, that is the effect of it, and I should hope that the Court of Appeal would do so. I would not like to see the Court of Appeal usurp the functions of a jury.

MR. FROST: This, sir, might lead to that, if the Court of Appeal were not disposed to interpert that very mildly?

A. Well, I am afraid that that may be so, and therefore, I think perhaps, more consideration ought to be given to it. It is a difficult question.

MR. CONANT: Well, it is. We are all in agreement on that, and I am sure ——

WITNESS: And it becomes more difficult when we try to reconcile the pronouncements of some of the courts. I think that there have been *dicta* in the Supreme Court of Canada that it would be difficult to reconcile with some statements made by the Privy Council.

MR. CONANT: Well, are we right in assuming, your Lordship, that your inclination would be to leave matters as they are?

A. Rather than adopt ——

Q. That may be a leading question.

A. I would leave it as it is until I found a quite satisfactory solution.

MR. CONANT: What was the wording Mr. Barlow suggested there? Has he got a wording suggested?

MR. STRACHAN: At page B12.

> WITNESS: "The court, upon an appeal, may give any judgment which ought to have been pronounced, and may make such further and other order as may be deemed just."

The judges thought that that, while meaning substantially what the recommendation they make means, was not specific enough in stating that they might reverse findings of fact. Mr. Barlow's text preceding his suggestion, really leads to an amendment such as the judges suggest, and the view was merely that he did not carry out his own suggestion adequately.

MR. CONANT: May I ask this, your Lordship, because this to my mind is very fundamental to the consideration: would you be disposed to express any opinion as to whether litigation to any considerable extent is carried forward with the hope and expectation that the jury under our present practice, may be induced to give a verdict, and that the same practice might not prevail if it were subject to wider review?

A. I have no doubt that there are cases that are brought to trial before a jury, that probably would never be taken to trial if there were no jury. That happens, and, while it does not happen every Assize or anything of that kind, it happens commonly enough, I think, to be a practice that we must all recognize as one that exists.

Q. What you might call adventure in litigation?

A. Oh, well, I don't know. There are men who do excellently before a jury, and who do the very opposite before a judge, and they always feel that if they can have a jury, then they have got a chance. If you ask those men, of course, they think the jury has got far more sense than the judge has, for that particular type of thing.

Q. I think our minds are directed to the same class of action; but are there not actions, is there not considerable litigation that is carried forward, realizing that ultimately it will find itself before a jury, and that the verdict may depend upon considerations other than the strict merits of the case?

A. Oh, there are cases of that kind. I would not say considerable; I would not like to state the percentage; it would be very small; but there are such cases, I have no doubt.

Q. If the powers of the Court of Appeal were widened, that class of case would probably be discouraged, would it not?

A. Possibly so. I think that perhaps, is the main purpose, or one of the main purposes, of the suggestion. The trouble is, you might pull out some good plants while you were pulling out the weeds.

MR. FROST: All those uncertainties go to make up British justice, after all.

WITNESS: Oh, quite.

MR. FROST: And if you try to cure some uncertainties, perhaps you will do more harm in another direction.

WITNESS: There is no such certainty that the judge will be right. There is nothing infallible about the court that I know of.

MR. SILK: Then, sir, on the matter of pre-trial procedure, Mr. Barlow discusses that practice at some length, which is in force in some of the states of the Union, and concludes that the rules of practice should be amended to provide for pre-trial procedure in certain of the larger centres of the province.

WITNESS: That is dealt with in the judges' report at page 12, and the judges were unanimously opposed to it; and I, for my part, heartily concur in their view.

MR. CONANT: Since both of these reports were set up, we had one submission here, your Lordship, I think it was from Mr. Chitty.

MR. SILK: It was Mr. Chitty, yes.

MR. CONANT: He outlined to us the practice in England, where they have what they call order for directions. He stated to us here, that in England they have a practice similar to our practice in third-party proceedings here, where you have to go for directions, and he was telling us that in England at the present time, they have a motion for directions in all litigation before it goes to trial. I was just wondering if you were familiar with that practice there, your Lordship?

A. Only in a general way. Of course, they also have the pre-trial practice, which I take to be something quite apart from that. That is, this motion for directions is made, as I understand it, quite early in the litigation.

MR. CONANT: Yes.

MR. SILK: I think, sir, as Mr. Chitty explained, that practice has been changed within the last two years, and the motion does not now take place until the pleadings have been closed.

WITNESS: Whether something in the way of certain selected classes should be done, to avoid going through all the procedure of pleadings and discovery and production of documents and notices to admit and produce, whether that should be permitted in every case, I think, is a matter for consideration. However, that is not Mr. Barlow's suggestion. Mr. Barlow's suggestion does not operate at that stage at all. Pre-trial procedure is something that comes along after the case is ready for trial; they then appear before a judge and discuss the issues as stated on the pleadings, and if the pleadings need some amendment, they amend them then; the judge tries to get the issues narrowed if he can, get admissions of facts that are not really controverted, and principally tries to see if the case cannot be settled. Mr. Barlow refers particularly to the State of Michigan, with one or two other states. It so happened that early this year,

Chief Justice Bushnall of Michigan was at Osgoode Hall, he had come to observe the operation of the Court of Appeal, and he sat with us throughout practically a whole day, and during the day I had an opportunity of discussing pre-trial procedure with him. The discussion was an interesting and informing one, and, so that I should not forget about it, I made a memorandum immediately afterwards of some of the things he said. From that, it appeared that the immediate occasion for adopting pre-trial procedure there, lay in the very deplorable state of their trial lists; as I have it here, the situation was such that one could not count on his case being reached on the trial list in anything short of three years.

MR. CONANT: Is that in the State of Michigan?

A. In the County of Wayne only; it is only in the one county, the County of Wayne, in which county Detroit is; that is the only county in which they have pre-trial procedure, or in which they had it some months ago, and I have not heard of any change. A man would set his case down on the list, and he could count on three years from that time for the trial. The improvement that has resulted since, mainly in any event, through pre-trial procedure, is that a man can get down to trial now, in from ten and a half to eleven months after getting his case on the list. We would not think there was anything very wonderful in that. I do not know what number of cases they have, nor just what the limits of jurisdiction are, but I take it that the jurisdiction extends downwards considerably more than that of the Supreme Court of Ontario, and that for some reason, they have a vast number of cases; that is, they will have thousands where we would have hundreds of cases here. He said that the main purpose served by the procedure, was in getting cases settled. The pre-trial judge makes a definite effort to bring about settlement. The pre-trial judge is never the trial judge, one reason being that his efforts at bringing about a settlement are thought to make it improper that he should try the case. The pre-trial judge makes an effort to get admissions when possible, as to matters that are really not controversial, and to have the real issues between the parties so definitely framed, that the trial will be directed to the real matter in controversy. No amendment of pleadings is allowed at the trial. Chief Justice Bushnall says their system of pleading is not very satisfactory, and that it tends to obscure the real issues rather than to state them; that is, if a man has an action arising out of an accident, he will plead every possible sort of defence, whether it has any application to the facts of that particular accident or not, so that by reading the pleadings the judge is no wiser; he tries to get them amended. Now, in order that pre-trial procedure should operate, he said, it was essential that they should not allow them to amend at the trial, and they do not let them amend. That, we would think here, was rather barbarous; with the very flexible procedure we have here, it is not at all uncommon to amend the pleadings at the trial, and it is often necessary, in order to do any sort of justice between the parties. Something comes up during the course of the trial that is a great surprise to everybody—perhaps, no great surprise, in view of what the parties themselves know—and the pleadings are amended, constantly amended. They are amended sometimes in the Court of Appeal to fit the case. That is not possible under pre-trial procedure.

I understand, in addition, that one of the judges in England, who had a good deal to do with this pre-trial procedure as adopted there, has discussed the matter somewhat with Mr. Justice Middleton, and he, perhaps, will have

something to say about that first-hand, but I understand they do not look on it with much favour. Chief Justice Rose will also have something to say about the matter, as to the practicability of it, but there is no occasion for it here. And let me say this further: nobody can say what we need in the way of something to expedite the disposition of cases on the list, without some figures as to what is the state of the lists.

MR. CONANT: Well, so far as that is concerned, it strikes me it is not only the question of the state of the lists, your Lordship, but it is the question of the time occupied by trial that has to be considered. I do not think it could be complained, that in our province there is any serious piling up of cases, but there is the question as to whether the trial would be expedited.

WITNESS: Let me say a word or two on that. This does not pertain precisely to this point, or perhaps to any point on your agenda, but it is something that I think ought to be considered. Cases do nowadays, take a long time to try, sometimes. I happened to be reading a book written by an English barrister during the summer, and he commented on what he said was a very notable fact there, that they were having a great many long cases—things that were almost unheard of years ago, cases lasting a week, two weeks, perhaps a month. Well, it is noticeable that we have the same thing, and I was very much interested in what he had to say about it, and the causes of it. Without making a long story of it, he ended up his summary or his enquiry by the observation that he thought that these long cases were to be attributed largely to the great complexity of human affairs; matters of business had now become so involved, dealings between people were of an entirely different character from what they were even fifty years ago; that was his conclusion. Now, that is one thing that one has to keep in mind.

The other matter is, it is very noticeable that there are many more practising lawyers taking their own briefs than prevailed even perhaps twenty-five or thirty years ago. I was aware somewhat of the trend in practice, but since going on the Court of Appeal I have been amazed at the small proportion of cases that are argued by what one might call senior counsel. The practice is not altogether a trend in the right way, I think. Everybody, I would think, would agree that the young man just through ought to try his hand, when it is not too risky for his client, at handling his own case; he is not going to be able to find out whether that is what he is cut out for unless he tries, and to stop the first time is no good; he has got to get some experience, and he has got to find out by experience and trial and error, whether he is making a mistake in handling his own cases. One has all sorts of patience and sympathy with the young man who is appearing to try to get ahead as counsel, but many cases are argued by counsel who are no longer young, and who can have very little hope of developing a practice as counsel. Years ago, men in their position found it more profitable, I think, to stay in their offices, and much more pleasant, and they got counsel of experience to handle their briefs. It has something to do with the expedition of the trial. The man who is inexperienced is afraid he will leave something out, he takes an interminable time to examine a witness, and it is like hunting for a needle in a haystack, perhaps, to find out just what he has got that is relevant after he is through.

That has also its effect on examinations for discovery. Both as counsel

and as a judge, I have been struck with the length of the examinations for discovery, that are almost useless. They examine about everything, the things they know and that are not in dispute, as well as everything else, with no particular purpose. They are not conducted by people who are skilled in doing it. Now, I do not want to enlarge upon that, but it is a trend that is marked.

MR. CONANT: I do not think we can remedy that situation, your Lordship.

WITNESS: I don't know; I don't know that you can do it by legislation, but it is a thing that ——

MR. CONANT: Perhaps the Law Society could meet that.

WITNESS: —— one must not ignore. Let me put it this way: It is hopeless to think that you can get very far in expediting litigation by rules, when tendencies of that kind overrun the law. These men don't know anything about rules; they don't care much about rules; that is one of the troubles. It is a marked tendency. I am not sure that something cannot be done about it somewhere else, but my point is that you cannot cure that by speeding up the rules, shortening times.

MR. CONANT: Perhaps your observations might indicate that the English system would be better here, your Lordship.

WITNESS: Oh, well, it is hopeless to think of its being adopted. Whether it would be better or worse I do not know. Let me give you another illustration ——

MR. CONANT: Well, the English system does eliminate a great deal of what you are referring to.

WITNESS: Oh, undoubtedly so, undoubtedly so; but then it has its other difficulties.

MR. CONANT: Oh, quite.

WITNESS: The other matter I want to mention is this: In the Court of Appeal, we clean up each month's list that month. That has been the practice for some years. Every month we clean up that month's list, unless there is some extraordinary reason that has not anything to do with the court. A man is given ordinarily, fifteen days to appeal and thirty days to conplete his appeal, and yet if you take any month's list, you will find cases there in which judgment was given many months before. For example, in our list for September, we had I think, five cases on our list, five or six, in which judgment was given last year. One of them, the oldest of the lot, judgment was given in August, 1939. The case got on the list ready for hearing in September of 1940. Well, that has nothing to do with the Rules of Practice. There may be some good reason for it, such as the difficulty of getting copies of evidence, but that won't countenance such a delay as that. The parties may be discussing settlement; the appellant may not have come along with the money to pay for the evidence; it may be all ready and he can't pay for it; there may be adjournments to suit the convenience of counsel, to keep the evidence out till counsel is ready to argue, and

that sort of thing; there are a lot of reasons, but it all goes to show that it is futile to think that just by shortening times in the rules or the statutes, you are going to remove all delay in litigation, and they are, I think, the main causes of the slow progress.

MR. SILK: Your Lordship, there is a recommendation that the Rules of Practice should be amended to permit a trial judge to sit with assessors, as is now done in the Admiralty Court. The judges reply to that recommendation on page 8, but I think I should explain; I think it was Mr. Barlow's intention that if a judge does elect to sit with an assessor, there should be no expert witnesses called, so that Rule 268 of the Rules of Practice does not entirely take care of the situation as is suggested by the judges.

WITNESS: The judges were quite, I think, seized of that, as perhaps their statement really shows. We thought, in the first place, that our report made it plain—that is on page 8—that it was unthinkable that the parties should not be permitted to call expert witnesses. Anyone who has had any sort of experience in the trial of serious cases, where expert witnesses were needed, would know how utterly impossible it would be, it would be a denial of justice, denial of a fair trial, to institute any such practice. Take the common sort of case, in which you have an accident and the patient goes into a hospital, and perhaps is examined first by an interne, gets in a public ward. The judge is going to call one doctor; the patient perhaps, has been under the treatment of several doctors. I had a case of the kind once myself, several years ago, in which the two doctors on the ward—and they were well-known doctors—had the most bitter disagreement; I understand that it started in the hospital, but it certainly was carried into court. The doctors were more prominent in the trial than the lawyers were, because one very well-known doctor, at that time on the staff of the University, was so angry that in court he shouted out an observation to the other equally eminent doctor, who was giving evidence. They utterly disagreed as to what was the cause of the trouble. That was a case tried by a jury. The matter, as far as the jury was concerned, was settled by an old gentleman, who was not on any hospital staff or any University staff either, but who knew how to talk plain English, and got up and told the jurymen what he thought was wrong in a way they could understand. But you get that kind of thing in any sort of case where you have expert testimony—a different point of view, different training, different experience.

MR. CONANT: But, would not the court itself be in a better position if, instead of having opinion evidence on one side and opinion evidence on the other, you had one established expert to make the deductions?

A. Well, that is really making the expert the trial judge.

MR. FROST: You would have to get an infallible expert, I suppose.

WITNESS: Yes. They say the law officers in England at one time, got an enquiry from a magistrate as to whether it was necessary to hear the evidence for the defence, because, he said, it always bothered him. Of course, it is one of the things with which the judges have to do the best they can. The judge is there to decide the case; he is not to be overruled, surely, by the dictum of some doctor. These questions are not always simple questions of medical opinion;

they involve more or less symptoms, questions of fact. But I do not think that you could find any lawyer who had any considerable experience with that kind of case—and I am talking now from a much longer experience as a lawyer than as a judge, but with a considerable experience of this kind of case, and it is simply unthinkable that some one expert should give his say-so. I have never seen that type of case where there was not room for difference of opinion, honest difference of opinion.

MR. CONANT: I was rather surprised. I would have thought the judiciary would have welcomed that. I could understand the lawyers not welcoming it, but I should have thought the judiciary would have welcomed that. I should think the members of the Bench would be bewildered sometimes at the conflict of expert testimony they get.

WITNESS: It would no doubt make the judge's task very much easier, but I think the judges are all seized with the idea that they would like to administer justice, and it cannot be done that way. I have no hesitation in saying that the thing is, as I have said, simply unthinkable, that people should be deprived of their right to call experts. And I do not understand that in Admiralty they are called experts; the man simply sits there in an advisory capacity, and that can be done, and is done in our own courts. Mr. Justice Roach had a case that was giving him some difficulty not long ago, a question of some very intricate electrical apparatus in the Stock Exchange, a question of patent infringement or something of that sort; after finding himself becoming submerged with the technical evidence he was getting, he appointed an expert to sit with him. That is already provided for in the rules, and in my judgment is as far as it is safe to go.

MR. SILK: I understand the Committee does not wish to hear anything further, on a central place for capital punishment.

MR. CONANT: No.

WITNESS: May I say, Mr. Silk, I wanted to skip on, if I might, and speak for just a moment on County Court jurisdiction and Division Courts, and I would like to speak of them together. County Court jurisdiction is not in Mr. Barlow's report, as I recall it; I have no memorandum of it.

MR. SILK: No, I do not believe it is, sir.

WITNESS: But you had it on the agenda that you showed me.

MR. SILK: Yes, I have it on the agenda.

WITNESS: The only reason I want to speak of that is this, that in 1935, the judges made a report to the Government upon somewhat similar proposals, which no doubt is in the possession of the Government somewhere. I was chairman of a committee of the Benchers at that time, who waited upon the judges, the Law Society having been asked to submit anything that they desired to submit; I was on the committee. We collected a good deal of information of one sort and another, which I am sorry to say I have lost, and I have only a general recollection of it. Mr. McCarthy was good enough to see me the other day about this, thinking that perhaps I had still the information that we collected

at that time, but I have not got it and it cannot be found in the files of the secretary's office, so it is not available.

One trend of the report was this, that in the Division Court there are an enormous number of cases, far more cases than all our other courts put together. The Division Court is an important court, in that it does deal with the troubles of an enormous lot of people. The County Court itself, so far as the number of cases is concerned, is not an important court. There are not many. Some of the judges have very few cases in a whole year—I am speaking now of outside of Toronto, because, in Toronto it is an important court; the judges here are kept busy trying County Court cases. The suggestion was that the Government should increase the County Court jurisdiction by perhaps doubling it. The figures that we had went to indicate this, that to double the County Court jurisdiction meant very little. If they had cases that went up to $1,600 or $2,000, whichever it might be, added to what they now have, outside of Toronto, they would have very little more to do, and the Supreme Court lists would be saved very little. That is, you have a mass of litigation dealt with in the Division Court; you have a lot of important cases that take up a good deal of time to try, that are dealt with in the Supreme Court; in between there is a field that is pretty nearly vacant. If you were to take the number of cases—and this is the sort of thing we collected—if you took the number of cases say, where the amount involved was between two and three thousand dollars, the cases that went to trial, in the Province of Ontario, you would not get many, and if you distribute them over the province it means nothing. In other words, it came down to this, that the average County Court judge might have perhaps. a couple more cases to try in a year if you doubled the County Court jurisdiction, but it would not mean much more than that. I am sorry I haven't the figures; I know we got some figures by going to the Inspector of Legal Offices, not printed reports, but something that was not printed, and from one or two other sources we got some information.

MR. FROST: So many of those cases can be tried in the County Court on consent now, if the parties agree, I think.

WITNESS: Well, just there, there is a strange change in the last, perhaps, three or four years. That practice seems to have almost fallen into disuse. There used to be cases not uncommonly, particularly perhaps in Toronto, where the parties, by not raising objection, had given the County Court jurisdiction. That seems to have much fallen into disuse. I think, perhaps, that the provision allowing Supreme Court costs to be awarded is what put an end to it; that is, the parties say, "Well, if we are going to pay Supreme Court costs, we might as well have it tried in the Supreme Court; why try it in the County Court?" One party or the other is very likely to say that.

MR. CONANT: Your Lordship is aware that there is the amendment of 1937, which has never been proclaimed ——

A. Oh, yes, I know all about it—at least, I knew all about it.

Q. Well, specifically, would your Lordship care to make any observation as to whether you think it would accomplish anything worth while by proclaiming that amendment?

A. Well, I think I had something to do with having the clause put in The General Statute Amendment Act of that year that required the proclamation, and the Act itself did not require any, but I think the Benchers—I was then the treasurer of the Benchers—I thought it should not be done, and I still think it should not be done. It is no reflection upon the County Court judges. The important work of the County Court judges, except in Toronto, is not trying County Court cases. The County Court judge has a multiplicity of important duties to perform, and his judicial functions are much more called into requisition in the Division Court than in the County Court.

Q. I think that the only reason for increasing the jurisdiction—at least, the only one that has ever occurred to me; let me put it that way—is as to whether it would result in a better distribution of the work. Now, let me pursue that for just a minute. I think that we pretty generally agree that the Supreme Court, particularly the Trial Division, or referring only to the Trial Division for the moment, is pretty well loaded up all the time. On the other hand, we have jurisdictions in the province—I think I had a record showing where one County Court judge tried three cases in one year; I think that is correct. Now, would it level up or work any better, your Lordship? That is the only thing that would affect me.

A. That was the purpose of my first observation. That is why we got the figures together, and they went to indicate that it did not mean anything—nothing worth while. Where the judge tries two cases now, he might perhaps, have a third; the judge that has four cases now, might perhaps, have five or six. The addition is nothing, and the reduction—it is striking, when one gets the figures of that sort of thing, that the number of cases between one and two thousand dollars are not many when you spread them over the province. I don't suppose there are a hundred of them that go to trial; I don't suppose there is anything like a hundred of them in a year outside of Toronto. Toronto is another situation. I do not think I can add anything more on that. That disposes of 8 and 11.

MR. SILK: Yes, that is 8 and 11 dealt with. Now as to number 14.

WITNESS: Number 9—I wanted to speak of appeals from interlocutory orders in the County Court.

MR. SILK: That is number 9 on the agenda; it is number 10 in Mr. Barlow's report, I think.

WITNESS: Page B31 of Mr. Barlow's report?

MR. SILK: Yes, that is right.

WITNESS: That is the question of whether there should be appeals from interlocutory orders in County Courts, the suggestion being that they might go to a Supreme Court judge. The judges deal with the recommendation on page 12; at the foot of page 12 of their report they recommend against it, on the general ground that it adds undesirably to the cost of litigation. There is no great harm done by it. I confess, I have seen cases in which a County Court judge had made an order—that was in practice, not on the Bench—that I thought,

did injustice and was hard to defend, but whether for one case in a thousand you ought to grant a right of appeal, is very doubtful. Speaking broadly, I would say it would be distinctly undesirable, as tending to add to the cost of litigation over matters that are comparatively trifling. As things are now, the bill of costs that is ordinarily taxed in a County Court case that goes to trial, is pretty high for the amount ——

MR. JUSTICE MIDDLETON: It often amounts to more than the amount in dispute, on each side.

WITNESS: Rather commonly so. And to add the possibility of appeals on interlocutory orders—the whole trend has been in the High Court, to prevent appeals in interlocutory matters. One looking back over practice the length of time I practised is very much struck with the change there has been, the way appeals on practice matters have been eliminated, and without any great harm to anybody.

Then, may I go to 12?

MR. CONANT: Before leaving that, I don't know whether you have a note there, your Lordship; were you going to discuss appeals from Division Court judgments?

A. I hadn't it in mind, no.

Q. Well, may I ask you this: would you care to make any comment as to the advisability of amending the practice so that Division Court appeals would go to a single judge instead of the Court of Appeal?

A. Well, I really do not think it would do any harm to make the change. I had not given any special consideration to it.

Q. What is in mind is this, your Lordship: at the present time—you will correct me if I am not right—an appeal from a Division Court requires five copies of the evidence and of the exhibits and the whole thing?

A. And the attendance of somebody to argue it.

Q. That is true, yes.

A. He gets $15 as a maximum.

Q. Would not substantial justice be met, your Lordship, if Division Court appeals were to a single Supreme Court judge?

A. As I say, I cannot see any objection to the change.

Q. Well, from the standpoint of the public, the people at large?

A. I am afraid it is the legal profession that feel the pinch the most. It is not worth anybody's while for $15 to go through all the preliminary proceedings and then argue the case for $15 in the Court of Appeal—to get, as you say, five copies of evidence and an appeal book and set the case down and all that sort

of thing. A simpler procedure would, I think, be desirable. Whether you would want to make an exception in cases over $200 ——

Q. Well, that might be considered, too.

A. There are cases that do arise in the Division Court that sometimes by making the matter *res judicata* become important. I remember a case of that kind between landlord and tenant, in which the settlement of the question of one month's rent governed the whole term of a long lease. There might be some provision made for going further by leave.

CHIEF JUSTICE ROSE: There was a time when they were heard by one judge of the Court of Appeal, was there not?

WITNESS: I don't remember.

MR. JUSTICE MIDDLETON: That produced a great deal of dissatisfaction, if I remember it rightly.

MR. CONANT: Which?

MR. JUSTICE MIDDLETON: Division Court appeals being heard by one judge of the Court of Appeal. You picked your judge and got your judgment accordingly, and there was a desire to appeal from him to the full court.

MR. CONANT: I would not dare to say that myself, your Lordship.

WITNESS: It is a matter upon which I have made no enquiry.

Then, if I may refer to the matter of Surrogate Court appeals, that is on page 35 of Mr. Barlow's report, and page 13 of the judges' report. I only want to refer to the matter in one aspect; that is, appeals on passing accounts. Mr. Barlow's recommendation is that these appeals should all go direct to the Court of Appeal, and not, as they do now and have for many years, direct to a single judge. In the time I have been on the Court of Appeal I have not seen any appeal on passing accounts; there has not been any. I had in the course of a good many years' practice a not inconsiderable number of matters of that kind; I never took one to the Court of Appeal, so far as I remember, or was taken there. Now, it would be a great injustice to say to people who ordinarily, ninety-nine times out of a hundred, are content with the judgment of a single judge, obtained without expense, "Well, you have got to go to the Court of Appeal, and you have got to get copies of the evidence, you have got to get appeal books, you have got to pay counsel to argue in the Court of Appeal," when people don't want to go to the Court of Appeal. I think the recommendation was made without knowledge of the fact that these cases do not go to the Court of Appeal, and I think for the very obvious reason that is stated in the judges' comment, that is, they are matters that are very difficult to deal with in the Court of Appeal. A lot of small items where you have got to dig into a lot of papers and accounts and that sort of thing—it does not lend itself to being very adequately considered in a court with a number of judges.

MR. JUSTICE MIDDLETON: There is only one appeal of that kind that I can

recollect; that came before Sir William Mulock, and after struggling with it for all of a day he couldn't get anywhere. I think that is the suggestion of a man who is not at all familiar with the way the thing works out in practice.

MR. CONANT: Now, just let me present this to you, your Lordship. I am in substantial agreement with you, but would not substantial justice be met if those appeals were taken to a single judge on very much the same basis as we were discussing Division Court appeals a few minutes ago?

A. Well, that is where they are taken now.

Q. Yes, but there is an appeal to the Court of Appeal.

A. Oh, you mean and stop there? Why not, in the event of an important case coming along that ought to be heard by the Court of Appeal, say that it cannot go any further except by leave?

Q. That is what I am coming at. Supposing you make it uniform for both the Division and the Surrogate Court, the right of appeal to a single judge and then by leave to the Court of Appeal?

A. Yes.

Q. Both in Division Court and Surrogate Court?

A. That is precisely what I noted on here.

Q. Wouldn't that do?

A. I think your suggestion is the right one.

MR. SILK: Then, sir, there is a second phase to Mr. Barlow's recommendation, which relates only to subsection 3 of section 29. He says:

> "Under the practice as provided in the last two lines of the present subsec. (3) the order, determination or judgment requires to be filed and notice of filing given to every interested party, otherwise the same does not become confirmed and the time for appealing extends indefinitely."

WITNESS: Well, I hadn't anything to say on that.

The next item, I may say—I am largely blank now until you come on to number 24, I think, of Mr. Barlow's assessment appeals. I wanted to say just a word or two about that. That is number 18 on your shorter list.

MR. SILK: I had intended to ask you, sir—I don't know whether you were going to say anything—about expenses of trial where the venue has been changed, which is item number 14.

WITNESS: Well, I think Mr. Justice Middleton is going to say something about that. Perhaps it is not necessary for me to comment on it.

MR. CONANT: We have had considerable observations on these assessment appeals, your Lordship; we will be very glad to have yours. This is in more or less the same category as enlarging the grounds for appeals in jury cases.

WITNESS: I had a good deal of practice at the Bar in this respect; I took a good many to the Municipal Board, I used to be there quite frequently, and went as far as the Supreme Court with this sort of thing. The great difficulty that is complained of, I think, comes down to this, that the appeals are usually or frequently on the question of value. They are not always; often it is a matter of exemption or some special provision of the statute as to the basis of assessment; but the great complaint is that you have a value fixed by the assessor or by the county judge, it may go to the Railway Board or it may come straight to the Court of Appeal on a stated case, and the Court of Appeal's jurisdiction is distinctly limited to questions of law and construction of statutes and agreements and so on. That does not give the Court of Appeal any right to interfere in the ordinary case of what is complained of as over-valuation. Now, the value of a piece of property is primarily a question of fact; that has been decided by the House of Lords not so very long ago, it has been decided by the Supreme Court, and frequently decided by the Court of Appeal; that is primarily a question of fact. Of course, if you find that in deciding that question of fact the judicial body appealed from has misconstrued the law or the statute, the Court of Appeal can take some action; but where it is the ordinary case of each party calling the limited number of witnesses and each swearing stoutly to a set of figures, and the judicial body having determined somewhere between them, the Court of Appeal cannot do anything about it. Now, we run into that constantly, there is always somebody trying to get around it and trying to get in, and we have to simply say, "Well, whatever sympathy we have for you, we can do nothing for you."

MR. CONANT: Well, do you think it should be enlarged, your Lordship?

A. I know, but I don't think that you can enlarge that with the Assessment Act in its present form and get anywhere. You are getting farther and farther away as you come on with your series of appeals from any actual knowledge of the situation. The Court of Appeal would simply hear the evidence that the Municipal Board or the county judge had acted upon, and I don't know that they are in any better position to form an opinion upon the question of value than these bodies are. Mr. Manning had one of these cases before the Court of Appeal not long ago; he had a very ingenious and interesting argument, and he thought that he might persuade the Court of Appeal to climb the fence, but we were not able to agree with him. As a matter of fact, most of us, or some of us in any event, ourselves looked around pretty carefully at one time or another for a way around, and were not able to find it. Definitely, it was not the intention of the Legislature in enacting the present provisions that there should be any way around that.

Q. Doesn't it come down to this, your Lordship: if those grounds were substantially broadened you would be circumventing the Municipal Board, which is different from your tribunal, sir, in this respect, that it does hear the evidence and sees the witnesses?

A. Well, it is like any cases of appeal from a trial judge; you should not interfere unless you see something has gone wrong in principle somewhere. I

think the Municipal Board is usually in a definitely better position than the Court of Appeal. The Municipal Board, for example, if it is an outside place, will go and see it, and, as you say, they have the witnesses there, and they can make a much more satisfactory sort of enquiry than the Court of Appeal could. I would say this, that I would think that any change should only be made in connection with some revision of the Assessment Act. Perhaps the Assessment Act in some respects is due for revision; opinions differ on that, of course.

MR. SILK: I am not sure what the next item is of which your Lordship has a note.

WITNESS: Just a word on the next item, that is, appeals from boards and commissions, item number 26. All I want to say about that is that care must be taken in any provision for appeals; that is, I do not think the matter could be covered at all by a general provision, an omnibus provision, that there should be an appeal from the board or any board or commission to the Court of Appeal on all questions of law and interpretation of statute and that sort of thing. I think each board must be dealt with by itself, and there are some of them from which I should think it would be unwise to grant an appeal. There are boards that deal with matters that ought to be dealt with as practical questions, the solution of which is required speedily, and to permit the delay of an appeal to discuss questions of law is in some circumstances not wise. Just to give an illustration, I would think that anyone would hesitate a long time before allowing appeals from the Workmen's Compensation Board. There are other boards that deal with property rights and that sort of thing at times, and perhaps some sort of appeal might be allowed from them. But, as I say, I think the whole matter is one for consideration in each case.

MR. CONANT: Yes, each one would have to stand on its own circumstances and merits.

WITNESS: Yes; sometimes you would say no, sometimes you might give it.

The next item—and just a word on that—is number 28, the law revision committee. That matter had already been discussed by Chief Justice Rose and myself with the Attorney-General, and substantial agreement I think had been reached, that some committee of that kind was quite desirable and would no doubt be useful.

MR. SILK: Have you any views as to the constitution of such a committee, sir?

A. Oh, no, I would not say anything about that.

Q. Whether it should include members of the Bar or whether the judges as a body should ——

A. I should think so. I think that one might for the law revision committee follow somewhat the practice that is adopted in England by the Lord Chancellor's committee, where they do not confine it strictly to the judges. It is perhaps desirable to have for certain subjects men in practice who are especially familiar with the subject.

Q. Would you suggest that the matters to be taken under consideration should be matters referred to the committee by the Attorney-General?

A. Whether they should be confined to that I do not know. It might be well to bear in mind in that connection the provisions of 107 of the Judicature Act, which provides for the judges' holding an annual meeting at which they might suggest changes in the law; perhaps it might be well to let them also refer questions to this committee.

MR. JUSTICE MIDDLETON: There are a good many things as to which it is better to let sleeping dogs lie, I think. Some of these questions might be brought up and debated; the experience of centuries has been embodied in the law as it is to-day, and there seems to be no reason why the law should be as it is, but it has been so for generations.

WITNESS: I have in mind, for example, questions such as were dealt with in England as to the law of evidence. They have considered that matter. It has been considered a good deal in the United States by important bodies as to whether one cannot by some change in the law of evidence eliminate a good deal of expense that is now incurred over matters that are purely formal. Then there have been questions as to both the Statute of Frauds and the Statute of Limitations. There was a matter—I have a note of it somewhere; I haven't it here—about the Trustee Act, something which came up recently, which brought it to my attention that in England they have in quite recent years, the last two or three years, I think, enacted some provisions in substitution for some provisions which still appear in our statute. Well, I do not say they ought to be adopted, but I think they might well be considered.

MR. CONANT: Would not a law revision committee be a valuable means of considering many or all of these what you might call lawyers' law questions that come up, as distinct from controversial issues?

A. Well, I don't know. I would hope that the Attorney-General would be discreet in what he would refer, and not send too many controversial matters, but rather matters that looked as if the law had become a little antiquated. There are, particularly in these days, too many people who seem disposed to tear up anything that happens to be old and start new on everything. There is a definite trend that way. I think it is not to be encouraged, and I do not think that a committee of this kind ought to be made the safety valve for the discussion. These people will never be satisfied; they would not be on the committee, I hope, and they perhaps would never be asked to be heard. A committee of this kind would have to be composed of some lawyers.

MR. CONANT: Oh, yes; its value would largely depend upon the constitution of the committee.

WITNESS: Quite. Oh, I would not make it a clearing house for crank notions.

MR. SILK: I think the last matter, sir, is the matter of a reconstitution of the Rules of Practice committee.

WITNESS: Well, on that, with deference to those who think otherwise, I think the Rules of Practice committee ought to be left as it is. I notice in the reports of the American Bar Association dealing with these things they are making suggestions of one kind or another, but apparently without exception their recommendation has always been that the judges of whatever court is being considered should make their rules. Now, the rules are not, as has sometimes been suggested, rules for the judges, they are rules for the people who practice in the court, and it does seem to me that it is somewhat detracting from the dignity of a court, from its proper functioning, to say that the people who practise in the court should join with those whose duty it is to conduct the court in saying how it will be conducted. It is allowing somebody else to interfere with the business which is peculiarly the business of the judges and of which they ought to be the persons most competent to determine. I speak freely about it, because in my time on the Bench I have not been much engaged in making any rules; I must say I never drew up any. I practised a long time, and I never saw any reason for thinking that the rules would be bettered by allowing some voice in it, some authoritative voice, on the part of members of the Bar. The judges are in touch with the Bar; they soon hear of any desires for change, and give consideration to them. But the Benchers of the Law Society usually hear of any dissatisfaction that prevails to any extent among the profession, and, while a Bencher for some considerable time, I never heard of any complaint by the profession in that regard. I think the rules ought to be made by the judges and would be best made by the judges.

MR. SILK: Since 1925 they have had members of the Bar on that committee in England.

WITNESS: Yes, I am aware of the fact that they have had. I have not heard anybody say the rules were any better. And one must remember, differences in the attitude, the connection that exists between the members of the Bar and the Bench in England. The men who are appointed, you will observe, are always the head of some body—that is, the Solicitors' Society, or the Inner Temple, or some place of that kind, the treasurer or something of that kind—I have forgotten exactly who the officers are, but it is always somebody who has attained some office of responsibility, like the treasurer of our Law Society, for example.

MR. SILK: Well, I don't believe I have anything further to discuss, sir, unless you have something noted.

WITNESS: I have nothing more on my list. I am sorry to have talked so much.

MR. CONANT: We are greatly obliged to you, your Lordship, for your coming up.

We will adjourn till 2.15.

Adjourned at 12.55 p.m. until 2.15 p.m.

Monday, September 30, 1940.

AFTERNOON SESSION

On resuming at 2.15 p.m.:

THE HON. H. E. ROSE, Chief Justice of the High Court.

MR. SILK: Mr. Chief Justice, I presume we will start again with the matter of grand juries, and I don't know whether you desire to express yourself on that matter or express concurrence, or what form your remarks will take.

WITNESS: I might almost, Mr. Chairman, confine my remarks on all the matters that have been discussed this morning to a statement that I am in entire agreement with the Chief Justice of Ontario, but perhaps you do desire a little elaboration.

The question as to grand juries is one on which I feel rather strongly. My idea is that there is a tendency in the discussion to lose sight of what is really the most important question of all. As long as the faculty of humanity to err exists you cannot devise a system which always will produce the correct result in any case, but you can devise a system which gives the public confidence in the administration of justice in the sense that the public is satisfied that a real endeavour is being made—sometimes unsuccessful, of course, but is being made—to arrive at the right conclusion in every case. That confidence in the administration of justice is something that I think we ought to endeavour to secure, at whatever cost, and I think that you go a long way towards securing it when you teach as many of the public as you can what the courts are and what they are trying to do; and I know of no better way of teaching them than the present method of making as many of them as you can take an active part in the administration of that justice.

The Chief Justice of Ontario was good enough to refer to a charge that I delivered to the grand jury. It is longer ago than he mentioned; I think it is more like two or three years ago than one. It was before the matter had got into anything like the controversial state, and I thought I was perfectly free to talk to them; I have not felt so free of late, and I have kept quiet. But I tried to put that idea before that particular grand jury, and there was some publicity given to the address and there was some favourable comment in newspapers; some were sent to me, some country papers, in which it was quite approved. I do not know that I put it very scientifically; I was trying to put it in a way that the grand jury would be sure to understand. If you would let me, I should like to read a passage or two from what I said. Contrary to the usual practice, I had written this part of my charge out in advance, and written it fairly carefully. I said:

> "One of the great duties of the State is, of course, to safeguard its own institutions and the persons and property of those who are under its protection. The criminal law is a body of rules made in the performance of that duty. The punishments prescribed for the breach of those rules have as their principal object the deterring of potential offenders and, to the extent that is possible, the reformation of actual offenders."

Then, passing over some of those things:

> ". . . when a charge of crime is laid the enquiry is whether a wrong has been done to the State—that is to the whole body of the public—by the infraction of one of those rules that make up the criminal law. Now the person accused is himself one of those who are under the protection of the State and for whose benefit the laws are made; and so it is the duty of the public at large to see to it that he is not humiliated and put to expense by being called upon to defend himself against a frivolous or vexatious charge. The public at large cannot perform that duty for itself; and so, under our present system, the duty is performed by a committee of the public known as the grand jury."

Whether that is an accurate expression does not matter.

> "That committee's business is to conduct a perfectly dispassionate enquiry as to whether there is reasonable evidence in support of the charge—evidence, that is to say, which, if not explained or displaced by other evidence, would warrant a conviction. If the evidence heard by them is of that character, their plain duty to the whole public is to put the accused man upon his trial; if the evidence is not of that character, their equally plain duty to the public in general and to the accused in particular is to stop the prosecution. Now it may be that this function of the grand jury would, in most instances, be performed just as efficiently by a single, trained individual. I have said to you that, in my opinion, the grand jury is peculiarly well qualified to perform it in cases of certain types; but I suggest to you that the question is not so much whether the individual or the committee will be the more efficient as whether, in the public interest, it is better that the work be done by the committee.
>
> What I have said about the reason for having criminal law and about the part taken by the grand jury in its administration is, of course, well known. But there seems to be, nowadays, a tendency to forget it and to regard with a certain hostility the courts in which that law is administered, as if they were in some sense an institution imposed upon a subservient public by some autocratic power, rather than to know them for what they really are—the machinery set up by the public through its delegates, Parliament and the Legislature, for the performance of a special part of the public duty. This tendency is deplorable. Democracy, as a system, is being challenged. If it is not to give place to a system in which power is concentrated in the hands of an individual or of a group, democratic institutions, such as our courts must be known for what in truth they are, and must be prized."

And so I went on to say that it was desirable that as many as possible of the public should take part in the administration of justice, and that the educative effect is really great. I think I know. I have had many sheriffs throughout the country tell me that after an Assize Court in which the jury were kept in attendance for some little time—this applies partly to the grand jury, partly to jurors in general—jurors would tell them that their whole idea of what the courts were and were trying to do had been changed by their attendance at the

Assizes, and would express themselves as most satisfied with what they had seen and learned. We had a very pleasing instance of it in Toronto. When the jury in the last case that was being tried had rendered their verdict the foreman asked my permission to make some remarks, and he proceeded to read a little address that had been prepared by the jury as a whole. He had a nice sort of vote of thanks to all and sundry, and then he went on to speak just in that same strain and to tell what an eye-opener and education their attendance in the court had been. I always tell grand juries in charging them something of that sort of thing, and tell them that they ought to remember that the laws that are being administered are their laws, made by their representatives, and that if, owing to the increased familiarity with those laws which they have gained by their attendance in court, they have formed the opinion that some law is wrong and ought to be changed, or something is wrong with the procedure and ought to be remedied, it is their duty to make their opinions known, if not in their presentment if they are a grand jury, to their representative in Parliament or the Legislature, or to the Attorney-General or to the person competent to deal with the grievance that they think they have discovered. I attach tremendous importance to the retention both of the grand jury and the petit jury for that reason.

Now, the grand jury, we know, throw out cases in which magistrates have committed for trial, and, so far as I have been able to judge, they are usually right in what they do; but there are cases in which a lawyer, from his training, is bound to come to the conclusion that an offence has been committed—he may come to it very reluctantly, because he may not think that there ought to be a prosecution, but he is driven to that opinion—and his conscience would not let him do anything other than prefer a charge. A grand jury is not troubled with that same kind of legally educated conscience, and—the Chief Justice of Ontario adverted to this—if a grand jury comes to the conclusion that, while perhaps an offence was committed, in all fairness this man ought not to be prosecuted, no matter how much you talk to them about what the law is they won't cause him to be prosecuted; and, just as it has been said to be the function of a trustee to commit wise breaches of trust, I think that there is a considerable advantage in leaving to the common sense of an intelligent jury and a conscientious jury—and I think most of them are conscientious and try to do their duty when their duty is properly explained to them—I think there is a great advantage in leaving these practical matters, like the matter whether in a particular case there ought really to be a prosecution, to them. I should like to see them retained, just as they are at present, improving the personnel if you can but not abandoning the institution because sometimes the personnel is not what it ought to be.

That indicates what my answer would be to the Attorney-General's question as to whether, supposing the grand jury were abolished, review of the Attorney-General's decision to prosecute in some instances might be in the hands of a judge. At first blush—I have not had much time to think about it—at first blush, I do not like the suggestion. I can see possibilities, perhaps in very rare instances but still possibilities, of arousing something like political controversy by the suggestion in a case in which the judge reverses the Attorney-General's decision—a suggestion of conflict between the administration and the courts. It is most desirable that there should be no possibility of such a suggestion at any time about anything. Take it that the Attorney-General's decision is reversed in some cause celebre of some sort; are not some of his political opponents likely to

try to make capital out of the fact that the judge did not view the matter in the way in which the Attorney-General did? If the Attorney-General is upheld, are not his political friends likely to try to make capital out of the fact that his decision was sustained? Perhaps I am not putting it too clearly, but don't you think that there is the possibility of that, dragging the court away from its independent and isolated position into a sphere in which there may be the kind of talk that I have suggested?

MR. CONANT: Well, it is rather novel, it is a new thought, that had never occurred to me, but my reaction, your Lordship, is this: at the present time an indictment preferred by the Attorney-General goes before the grand jury, and I have never heard of a reaction of that nature in any indictment before.

WITNESS: With the grand jury; no, I do not think you ——

MR. CONANT: That would be most undesirable, I agree with that—most undesirable.

WITNESS: Any idea of controversy between ——

MR. CONANT: Oh, yes; but I do not know why it would be more apt to occur if a judge were finding a bill or no bill than would be the case if a grand jury were finding.

WITNESS: There may be nothing in it, but it was a danger that—perhaps after more reflection I might not have said what I have said, but, as you say, the topic is just as new to me as the suggestion is to you.

MR. CONANT: Of course, that suggestion arose, your Lordship—because I am frank to say that I think that in these other jurisdictions which have provided no safeguard they have gone a long way, and I think that in this province if we were abolishing the grand jury there should be some safeguard against a dogmatic, vindictive or capricious Attorney-General, and I do not know of any other safeguard that you could employ.

WITNESS: If you abolish the grand jury and retain the Attorney-General's power to prefer indictments—I have not looked at the Criminal Code recently on the subject, but, as I remember it, it is absolute.

MR. CONANT: Yes.

WITNESS: What are you going to do with the other case that is provided for in the Code, of an individual with the consent of the presiding judge preferring an indictment? The Attorney-General has the power without anybody's consent; the individual has it with consent.

MR. CONANT: Well, I think that they would have to go to a judge in the same way. I do not think that the individual should be in any higher position than the Attorney-General.

WITNESS: The individual would go to the judge, and then the judge would make himself a grand jury and hear the ——

MR. CONANT: No, not the trial judge, your Lordship; it would have to go before another judge to find a true bill. But again, your Lordship, you are dealing with cases that very infrequently happen.

WITNESS: Oh, I know. I think we are probably dealing with cases that may never arise, and perhaps it is not worth while to discuss that aspect of it; but the other aspect of it is the one that has struck me as the strong, strong reason for keeping the grand jury where it is.

MR. FROST: Of course, there is the point, sir, that if grand juries were abolished a man might conceivably be put on trial for his life without having the intervention of a preliminary hearing or a grand jury; that might possibly happen, and he would simply be forced to go to trial without any other body passing on the question as to whether there was sufficient evidence to send him up for trial or not.

WITNESS: Well, only if the Attorney-General directed an indictment.

MR. FROST: Yes.

WITNESS: But you can hardly conceive of the Attorney-General doing that kind of thing.

MR. FROST: Of course, that may be, but ——

MR. CONANT: You see, on that angle, we are dealing with a very exceptional situation. Those indictments by the Attorney-General happen only in rare cases, and usually in cases in which, in conspiracy or something like that, you get before the court and you find you should have had John Brown in, he is part of this gang; now, rather than hold up the whole trial and adjourn it to another assize or something of that sort, in order to get on with it we prefer an indictment, it goes into the grand jury room, and he is before the court with the rest of them. Now, I cannot recall ever preferring an indictment, ever signing the direction, other than in those exceptional cases—or a retrial of some kind or something of that nature.

WITNESS: I cannot remember more than two or three, in my twenty-odd years' experience, of indictments preferred in that way.

MR. CONANT: Well, I agree with your Lordship that there should be some safeguard, because we are dealing with the situation for the future as well as for the present, this is an entirely impersonal discussion.

WITNESS: Oh, of course.

MR. CONANT: And we don't know who may be Attorney-General a year from now or ten years from now or twenty-five years from now. I don't know whether your Lordship would care to make any observation regarding the fact that the grand jury has been abolished in so many other jurisdictions.

WITNESS: I cannot add anything to what the Chief Justice of Ontario said about that. It has been abolished, we know, but we do not know what the—

anyway, it is an old institution, and what is going to be gained by the abolition of it? The only thing that I have ever heard is the saving of expense. Is there going to be much of that? If you get a long Assize Court and the grand jury reject a bill, you are going to save all the expense of keeping a large panel of petit jurors waiting—and witnesses and counsel and so on—until that particular case is reached.

MR. JUSTICE MIDDLETON: Saving of witness fees as well.

WITNESS: Yes, I said witnesses and counsel and so on, and jurors. Don't you think that they probably, by the rejection of the small number of bills that they do reject, save pretty nearly the amount of their fees?

MR. CONANT: Well, of course, your Lordship, I think that it is practically impossible to set down a column of figures and add them up.

WITNESS: No, you couldn't do it.

MR. CONANT: You can't do it, because, as one witness here remarked, the abolition of the grand jury would undoubtedly speed up the administration of justice, no doubt about that.

WITNESS: Speed up to what extent?

MR. CONANT: Well, in a great many assizes your work is delayed until the grand jury is ready.

WITNESS: I should not say so, Mr. Attorney-General. The practice at the Assizes, as I know it, is to open with the judge's charge to the grand jury and the grand jury retiring to deliberate, and as soon as they retire the first civil case on the list is called and proceeds while they are out; and as soon as the Crown Counsel has got his bills and is ready to proceed, then the civil business stops and on you go with the criminal business.

MR. CONANT: Your experience has been much wider than mine, but I would say that without the grand jury there would be a material speeding up of the administration of justice.

WITNESS: Well, you would save the judge's charge to the grand jury, which takes half an hour or an hour at the opening of the court.

Would it be your experience that you would save much other time?

MR. JUSTICE MIDDLETON: No, I don't believe so.

MR. FROST: It is rather surprising; I would not have imagined that this would have been the case, but apparently in the city of Toronto in thirteen percent. of the cases no bill is brought in.

WITNESS: Is it as large as that?

MR. FROST: I see on the 5th of February, 1937, of 22 cases there were 11

true bills and 11 no bills; that is rather amazing. Of course, that is not the case all the way through. That is an extreme case.

WITNESS: That must have been very exceptional.

MR. FROST: There is one here, for instance, January, 1940, it is 6 to 1; September, 1939, is 7 to 2; April, 1939, is 7 to 0—in that instance there was no case in which no bill was brought in; January, 1939, 10 to 6.

MR. JUSTICE MIDDLETON: Is that at the Sessions?

MR. FROST: No, sir; those are Supreme Court cases.

MR. CONANT: Assizes.

MR. FROST: Assizes.

WITNESS: Without knowing, I could make a guess that the cases in which there were so many no bills were cases of ——

MR. CONANT: Motor cars. Motor car cases.

MR. STRACHAN: Running-down cases.

WITNESS: In which they probably thought that if there was any bill it ought to be a bill for negligent driving and it ought to be in the Sessions; but I don't know.

MR. CONANT: Of course, I must say I am not very much impressed with those figures, because you have this situation there: Those decisions of the jury in cases of bills which they reject are not subject to review at all; that ends it. Now, in my own experience, I think I have had three cases, certainly two, in which I afterwards directed an indictment to be laid and there were convictions in both cases. What I mean by that is this, that there is the state as well as the individual to protect, and whether in all those cases of no bill the grand jury is right it is impossible to say.

WITNESS: Oh, of course it is impossible.

MR. FROST: Of course, I only brought that up from the standpoint of expense, that there is apparently ——

MR. STRACHAN: Isn't it the practice, your Lordship, in the city of Toronto, for instance, at the Assizes, that first there is the address to the grand jury, and then the court proceeds immediately with the first case on the civil list, and in fact usually the first week is taken up ——

A. Sometimes the first fortnight.

MR. STRACHAN: Sometimes the first fortnight, so that the saving in time in Toronto, as his Lordship says, is half an hour.

MR. CONANT: Yes, I think that is true in Toronto, but I do not ——

WITNESS: I am speaking of my own practice throughout the country. I think all judges follow the same practice; they must, because they know that their time for the court is limited, and they have got to get on with something.

MR. CONANT: There is one more matter, your Lordship, before we leave that. In the Jurors' Act, you recall it was amended in 1936 limiting the inspections to not less than six months intervals, and then there was a qualification added, "without the specific consent of the judge." Do you think there would be any injustice if that qualification were removed, "without the specific consent of the judge"? Do you think that is necessary?

A. I have used that power, I can remember twice, I think, where the grand jury told me that for some reason or other they wanted to go and see some particular place and they satisfied me that there was good reason why they should go to that one institution. I cannot remember what the circumstances were—I dare say if you were to ask Mr. Dickson he could—but the leave was not granted until what I thought was a real case for the granting of it had been made out, and, as I remember it, they had something or other to say afterwards in their presentment that was quite useful.

Now, Chief Justice Robertson suggests that the presentment never gets very far. I think you will remember of instances of having had presentments sent up by me upon which you have taken some action. They are not all valuable, but some of them are. I had another one which was dealt with by the Liquor Commission; there were some remarks they had to make about some particular hotel or something of that sort; I communicated with the chairman, and he investigated and did something.

Q. But don't you think it would be sufficient, your Lordship, for all practical purposes if the statute were left with the six months definite?

A. I haven't thought very much about it. As I say, since the statute was passed I have only known of, I think I am right in saying, two instances in which they were allowed to make their ——

Q. I think we had figures to show that in Toronto here there were eleven inspections in three years; wasn't that it?

A. Oh, yes, but we have changed all that by your statute.

Q. Well, no; these were within the period, and it was explained that it was due to the special direction of the judge, the increased number. We have the figures, eleven in three years, whoever submitted the figures—I think it was Mr. McFadden ——

MR. SILK: It was Mr. McFadden, yes.

MR. CONANT: He was asked why there were so many, and he said the judges had given specific instructions or permissions.

WITNESS: To go to particular institutions or institutions in general?

MR. CONANT: Well, I do not recall that. Was it eleven, Mr. Silk, in three years?

MR. SILK: I don't see the number; it was a very large number, though.

WITNESS: The figures astonish me.

MR. CONANT: Well, we have it here in the evidence of Mr. McFadden.

MR. SILK: I have a chart here supplied by Mr. McFadden, but it is not clear what years it applies to.

MR. CONANT: Well, we were only discussing it in relation to this qualification in the section; it did not have any meaning before that.

MR. SILK: It looks as though the number of inspections was something like thirteen, from the chart which I have before me, in three years.

WITNESS: I can't understand it, because Judge Parker and I have tried to work out a system by which we are complying as nearly as possible with that Act. We have a general inspection once a year by an assize jury and a general inspection once a year by a sessions jury.

MR. CONANT: Here was the question; I asked the question (at page 1140):

"Q. There must be six months intervene; isn't that it?

A. Yes; but then unfortunately there was a clause put in, that where the judge directs ——

Q. Otherwise directs.

A. Well, as a matter of fact, it is not working at all, because, as you will see from that schedule, there have been three years where there should have been six visitations; there have been thirteen of the City Hall and the Toronto Gaol."

WITNESS: Oh, well, is that what he means? Of the City Hall and Toronto Gaol—I can understand that.

MR. CONANT: "Between October 1936 and October 1939."

WITNESS: Because, as I understood the section—I always tell them to inspect the Toronto Gaol and the City Hall every time, because I thought that is what the section meant. That may be my fault; I may have misread that section. What is the number of it?

MR. CONANT: Section 44.

WITNESS: I wonder if I have been using the Act in the form in which it was before it got into the Revised Statutes.

MR. SILK: I do not think there was any change at the time it was incorporated in the Revised Statutes, sir.

WITNESS: If this is the only section that governs, I have been wrong.

MR. SILK: It is just the same, I think.

MR. CONANT: It seems to me that the only qualification is the judge's direction.

WITNESS: I think I have been giving them a wrong direction.

MR. CONANT: Well, it is not important.

WITNESS: You had better change me rather than the statute.

MR. CONANT: Doesn't it occur to you that if we cut out the limitation at the end ——

A. I never saw much reason for sending them more frequently to the gaol and the court house. We always get the same presentment about the court house, that it is inadequate, which is true. I wonder if it is in the Jurors' Act—oh, this is the Jurors' Act.

MR. SILK: There was no provision at all before 1936 for inspections. Prior to 1936 there was no provision in any statute.

WITNESS: Well, I don't know where I got it into my head that they ought always to look at those two institutions. If that is what Mr. McFadden means, I am sorry to admit it, but the fault is mine, not that of the statutes.

MR. CONANT: Well, it's all right, it's all right.

What do you want to pass on to, Mr. Silk?

MR. SILK: I think we have pretty thoroughly covered grand juries. There are three or four aspects of petit jury trials.

Q. The first one, sir, is as to improving the calibre of the men who make up the petit jury panel. In the first place, do you agree that there is some need for improvement?

A. Yes.

MR. CONANT: Do you think the exemptions are too wide, your Lordship?

A. Yes, I think as absolute exemptions they are too wide, but you have got in individual cases to exempt. To exempt a man, for instance, who says, "I have got a one-man business, I have been having hard times, and just now I have got a contract on hand," you have got as a matter of humanity to let him go. Somebody else is really the foreman directing a number of men who are at work on something that is of importance, there is nobody available to take his

place for a fortnight, and if he is away the work stops and the other men are out of a job for the time being.

Q. It seems to me one of the difficulties that arises there, that if you cut down the exemptions you would have to set up some machinery in advance of the trial to determine who is to be exempted or who is to be excused, because otherwise, sir, you might have your panel substantially impaired by the trial judge without an opportunity of meeting the deficiency.

A. I think that question would arise more often in Toronto than elsewhere, wouldn't it? In Toronto what happens is that the juror who thinks he has some reason for being excused writes a letter to the sheriff and the sheriff lays it before the judge, ordinarily on the day of the opening of the Assizes, but in special cases, very special cases, earlier. As far as I can make out, I think that works pretty well. The sheriff is able to tell the judge a little time in advance that if many exemptions are granted there is going to be too great an inroad into the panel. I have not found practical difficulty in the way it works.

Q. Have you any suggestions as to how to improve the calibre of jurymen, your Lordship?

A. No, because I have never seen a jury struck; I do not know how they do it. The judges make a suggestion that it might be desirable to see that the county judge takes part always in the selection. Beyond that I do not think I have got practical experience that would be very valuable.

MR. SILK: The next matter pertaining to petit juries is Mr. Barlow's suggestion that where a petit jury is required the person requiring it should be charged a more substantial fee; he suggests a fee, I think, of $25.

WITNESS: The Chief Justice of Ontario has discussed that. The judges were, as I remember it, quite unanimous in the recommendation that they made—first the committee made to the judges, and then the judges passed on. I look on it just in the same way that the Chief Justice does.

MR. CONANT: All right, Mr. Silk.

MR. SILK: Then there is the proposal that all cases should be tried without a jury except where the judge finds that the questions in issue are more fit to be tried by a judge.

MR. CONANT: It is a question of shifting the onus for jury trials.

WITNESS: I think it is where it ought to be now.

MR. SILK: And have you any views, sir, as to extending the powers of the Court of Appeal in an appeal from a jury?

A. I should rather not talk about that. I took part in the framing of that proposed rule, but ——

MR. CONANT: His Lordship the Chief Justice rather recedes from that

recommendation, your Lordship. Would you care to express any personal preference?

A. Do you remember Lord Darling, at one of the Bar Association dinners when he was out here, saying that he was always telling them in England that it didn't matter much what law they had as long as they had a wise man like him to administer it? If you gave a wise Court of Appeal great power it would use it pretty sparingly.

Q. I think I may be pardoned for propounding to you, sir, the more or less hypothetical question—let us regard it as hypothetical: do you not think, sir, that there are actions carried through and brought to trial with the original intention that they shall go to a jury, that are dependent upon a jury for their very existence?

A. I don't know; there may be; I don't know.

Q. You have not sensed that?

A. I think I can remember one or two where I had some such idea—that some appeal to sympathy might succeed, where an appeal to reason would not; that is the kind of thing you mean, is it?

Q. Yes, of course—or any consideration other than the merits, whether it is sympathy or anytlng else—any consideration other than merits.

A. When we were working at that draft amendment of ours, my idea was, that the finding of a jury ought not to be very much more sacred than the finding—that is, the finding of fact of a jury, ought not to be very much more sacred than the finding of fact of a judge, who had seen the witnesses and heard them; and I do not think that it was in our minds that the Court of Appeal, no matter how wide its powers, was going to ignore findings of fact, whether made by a judge or by a jury, and start over again on the evidence, and just consider the evidence as if nobody had made a finding of fact on it.

Q. There are the two aspects, it seems to me, your Lordship. Of course, there is the more or less fundamental criticism that broad powers in the Court of Appeal in a measure, set it up as a super-jury, and also in a measure, usurp the functions of the jury; but, so far as the public are concerned, it comes down to a question as to whether there is better justice administered by the Court of Appeal having wide powers of review. That is the fundamental consideration. With the narrow powers to-day, a jury might go very wrong, and there is no way to right them, is there?

A. They can order new trials, when they think the verdict is against the weight of evidence.

CHIEF JUSTICE ROBERTSON: You have no reasons for judgment from the jury.

WITNESS: That is true, yes. As the Chief Justice of Ontario points out,

the court is not helped by having the reasons for judgment in the case of a jury, and does not know what did lead the jury to the result achieved.

MR. CONANT: Reasons by the jury, you mean?

A. Yes. I mean, that is one reason for treating the jury's finding rather differently from the finding of a judge, because the judge has given his reasons, and perhaps has shown where he went wrong.

Q. Yes; I was not aware that juries did give their reasons.

A. No, they don't.

Q. Well, it is an important question, that, it seems to me—a very important question.

A. I think that perhaps what influenced me in concurring in that suggestion that is in our report was, very considerable confidence in the wisdom of the Court of Appeal, and its fitness to be trusted with very, very wide powers, which I did not expect to see exercised too freely.

MR. SILK: Then, sir, there is the matter of pre-trial procedure, which you heard this morning discussed, both as it exists in the United States and in England.

WITNESS: I cannot make out what in the world is supposed to be gained by it in this jurisdiction. The issues do get defined before the cases come to trial here. May I ask Chief Justice Robertson whether I am right in saying that the Chief Justice of Michigan—I forget his name.

CHIEF JUSTICE ROBERTSON: Bushnall.

WITNESS: Yes, to whom you referred this morning. —— told us that, while they had some procedure for examination for discovery, they had no practice of examination for discovery such as we have?

CHIEF JUSTICE ROBERTSON: Yes; he said they had some provision for it in their rules or statutes, but nobody ever held one; it was an unknown thing.

WITNESS: That examination for discovery, while it is sometimes too long, as the Chief Justice has said, does define the issues. I think, when you get down to trial here, both sides know, in pretty nearly every case, what they have come to try, and the court knows. I think you are going to make another step in the cause, and an expensive step. If the case is an important case, in which senior counsel have been or ought to be or will be retained, the settling of issues and the deciding as to what admissions are to be made and so on, can, I should think, hardly with safety, be entrusted to the junior. Are you going to make the senior go through all that procedure? Supposing at the time that pre-trial comes on, he has not yet been briefed or has not yet got up his case; supposing the man originally contemplated is changed before the trial, and does not look at the case quite in the same way as his predecessor; you have got some kind of cut-and-dried issue presented to the court, and the court has no power to amend or change as the case develops. We pride ourselves upon the elasticity of our

practice, the technicalities of the American practice have no place in our procedure, and we, in a way that would shock them, which is sometimes pretty rough and ready, do at the trial, get down to the real issue, and make such amendments as are necessary to get that real issue disposed of. I think you are going to tie the hands of the judge, make it difficult for counsel, and are going to increase the expense unduly—and all for I don't know what. I don't know what the Commissioner is trying to improve or what grievance he is trying to remove; I have never been able to grasp it.

MR. CONANT: What is the next, Mr. Silk?

MR. SILK: The next is the matter of assessors and experts. It has been recommended that the trial judge be permitted to sit with assessors, as is now done in the Admiralty Court, which would do away with the calling of expert witnesses.

WITNESS: In something more than twenty years' experience, I have never thought that I wanted one.

MR. CONANT: No, but this would be, of course, replacing expert testimony on each side.

WITNESS: But how can you? How is the court going to select the supremely wise expert who, without hearing the opinions of other experts, is going to tell the court all about it? I have done this: in one of these cases in which you do have conflict of expert testimony—they do not arise so often, but arise occasionally; for instance, boundary disputes, where surveyors are in difficulty—I have, using the powers that we have at present, appointed a surveyor, not as a judge, but to go, with the other surveyors if they choose to come along, and go over the ground, hearing what is said, and to make a report of his conclusion, upon which I was free to act or not, as I thought best after hearing argument. I think, usually when that kind of thing is done, his report is pretty well accepted by both sides. I have done something to the same effect in the case of a contest, as to competency to make a will or something of that kind—no, it couldn't be competency to make a will; it was competency to do something in the case of a living person. But I should have been very sorry to be called upon to select the man who, without hearing expert evidence on the one side or the other, was to ——

MR. CONANT: Why would he need to hear expert evidence if he was an expert himself? I don't just get the significance of that.

A. Because perfectly honest experts will differ; medical experts perfectly honest will differ.

Q. Yes, but supposing you have a case, let us take the case of a person who has been injured in any kind of situation that you like, personal injury.

A. Yes.

Q. At the present time, you call doctors and whoever can give evidence, as to the conditions that have existed, and the course of the treatments and that

sort of thing; then you have two or three doctors on each side, as to the probability of the future effect of these injuries. Now, why wouldn't the court be just as far ahead if they had one expert to advise the court as to the probable effect of those injuries?

A. What, by going and looking at the man?

Q. No; from hearing the evidence in court.

A. Oh, from hearing the evidence?

Q. Yes, of course.

MR. FROST: You might get the wrong expert.

WITNESS: Without hearing any opinions, do you mean?

MR. CONANT: He would just hear the evidence of facts, the medical data that is built up, as to the injury that has been caused to the person. Now, the question may arise as a matter of opinion, as to what is the permanent or future effect on the person. Now, why wouldn't one expert, either agreed to by both parties or selected by the court, be just as effective as two or three on each side, as to what that is?

A. Because, the two or three on each side have their reasons for their opinions, and they put forward those reasons.

Q. They are usually exactly opposite, according to the side that has retained them.

A. Oh, I don't think so. There may be some such cases as that, but I do not think there are very many. They put forward the reasons that lead them to their conclusions, and the tribunal then must weigh these reasons.

Q. Yes, that is right.

A. If you want to substitute for the judge, a man of the particular profession, whether it is engineering or medicine or surgery or what you like, to hear those reasons and perform the function of a judge, well and good, but I doubt very much if he can do it a great deal better than a judge or jury can.

Q. That would only be a duplication; that would not accomplish anything.

MR. SILK: Now, sir, if you will refer to the list you have before you, you will see that the next group of subjects pertains to practice in the County Court, and in other courts which are presided over by judges of the County Court. I don't know whether you have prepared yourself to make any comment or not.

A. Do you want to hear me about those matters? Or are they sufficiently covered by what the Chief Justice of Ontario has said?

MR. CONANT: Well, if you have anything to add, your Lordship.

WITNESS: I have not.

MR. SILK: I understand Mr. Justice Middleton is going to deal with item number 14, expenses of trial, where the venue has been changed. Have you any view to express there?

A. I haven't any.

Q. That takes us down pretty well to the Law Revision Committee.

A. I think that might be a very useful committee. I think I mentioned to you, Mr. Attorney-General, that until a few years ago, it was the practice during almost each Session of the Legislature to send down—this is perhaps, not exactly the same thing, but to send down to the judges, some, or a good many bills for consideration and report to the Attorney-General, and the judges used to meet and report. I think the reports were private reports to the Attorney-General.

MR. CONANT: How long ago was that practice, your Lordship?

A. Well, it continued all through Sir William Meredith's time as Chief Justice, and it seemed gradually to drop into disuse, we never knew why. The judges were always very glad, indeed, to be of any help that they could be in that regard. How long ago is that, that the ——

MR. JUSTICE MIDDLETON: I don't remember.

WITNESS: Did it continue while Sir William Mulock was Chief Justice?

MR. JUSTICE MIDDLETON: Sometimes; not much.

WITNESS: Mr. Justice Middleton tells me he does not think ——

MR. JUSTICE MIDDLETON: I think Sir William killed it off.

WITNESS: He does not think that there was very much during the time of Sir William Mulock as Chief Justice of Ontario. I do not think it stopped like that (a snap of the fingers) at any point, but I think it gradually faded away, why, I do not know.

MR. CONANT: It has seemed to me—and I am again dealing with it in an entirely impersonal manner, that the system they have set up in England certainly has a lot to commend it.

WITNESS: I think so, too.

MR. CONANT: On what I might call lawyers' law; I do not mean controversial matters. There are a lot of more or less abstruse points of law, as to which, perhaps, by conflicting decisions or just a combination of circumstances, nobody is exactly sure what the law is or what it ought to be. If those points were submitted to a committee of that kind, you would get the views of men who were dealing with the problems, and it might be of very great value, because

on those questions, from my experience—and I think one of the members of the Committee will bear me out—on questions of that kind, the Legislature is actuated by a desire to do what is right; they do not become controversial in the Legislature.

WITNESS: I should not think so.

MR. CONANT: Isn't that right, Mr. Frost?

MR. FROST: Yes.

WITNESS: I should think that would be so. I quite agree with that, and perhaps what I said about the practice, as to specific bills was irrelevant, but the fact remains, that the judges are at your disposal for that purpose without any legislation, if their services are desired.

MR. SILK: Just while we are on the matter of committees, sir, there is the Rules of Practice Committee. Since 1925, the practice in England has been to have members of the Bar on the Rules of Practice Committee. —— (At this point Mr. Arnott entered the room.)

MR. CONANT: I am sure we are glad to have Mr. Arnott with us again.

WITNESS: Haven't we got pretty good Rules of Practice now, and don't they get amended as often as they need to be amended, and does anybody complain that the judges won't listen to suggestions that are made to them by any Bar Associations or other persons? As a matter of fact, don't most bodies that have to administer laws lay down their own procedure? And isn't that all that these rules amount to, a laying down of procedure for administering such statute or other law as we are sworn to administer?

MR. SILK: Mr. Barlow takes the view that the practising barrister in a good many instances, sees the matter from the standpoint of the litigant perhaps, more clearly than the judge does.

WITNESS: Yes, but the practising barrister is entirely free to make representations to the judges, and I think the judges consider all the representations made to them. Somebody has got to decide in the last instance, what the procedure is going to be.

MR. CONANT: Of course—I think we had that the other day with Professor Finkelman—with few exceptions, and they are not important, when the right to make rules is delegated by the Legislature, there is the requirement that they shall be ratified by Order-in-Council. Wasn't that his observation, Mr. Frost? There were some minor exceptions; I think the Veterinary College or something like that did not require it.

WITNESS: As a matter of fact, all our rules have validated by statute.

MR. STRACHAN: He was talking about rules under statutes.

MR. FROST: I think he was talking about rules in connection with the regulations—for instance, Highway Traffic Act regulations, about how many red lights, and so on.

MR. SILK: Administrative law.

WITNESS: You are making laws there, aren't you?

MR. CONANT: Yes, but the same observation applies, with all deference to my colleague here, that when the Legislature delegates the power to make rules, they are delegating the power to affect rights and relationships of individuals.

MR. FROST: That is particularly true, for instance, in mortgage actions.

MR. CONANT: I do not know of the rules of any body or commission or jurisdiction, that affect the rights of people any more than the rules of the Supreme Court.

MR. FROST: Just let me get this straight: are the rules of Supreme Court not confirmed or brought into effect by Order-in-Council?

A. No, no; by statute. They are confirmed periodically.

MR. JUSTICE MIDDLETON: 1913, and from then on, I think they have been three times confirmed since 1913.

MR. CONANT: They are effective, nevertheless, your Lordship.

WITNESS: Oh, yes.

MR. CONANT: As a matter of—what would you call it?—convenience or precaution, in the past they have been periodically ratified.

WITNESS: That is true.

MR. CONANT: But your committee, if I am not mistaken, can pass a rule to-morrow and promulgate it and it is in effect.

WITNESS: We haven't any committee that can do that; the judges can.

MR. CONANT: The judges can, yes.

WITNESS: We have a committe which reports to the judges, but it is the judges who act.

MR. SILK: It is under section 106 of the Judicature Act, subsection 2, which says:

> "The judges of the Supreme Court may at any time amend or repeal any of the rules and may make any further or additional rules for carrying this Act into effect, and in particular for",

and it goes on, and the only rules which require to be approved by Order in Council are under clause (h):

> "Subject to the approval of the Lieutenant-Governor in Council for

making rules from time to time regulating all fees payable to the Crown in respect of proceedings in any court."

MR. FROST: Your point was as to whether the rules should be confirmed by Order-in-Council, for instance, before they do come into effect.

MR. CONANT: Well, yes.

MR. JUSTICE MIDDLETON: I think the rules can be confirmed without an Order in-Council.

MR. CONANT: Oh, I think so. I do not think, as the law stands at present——

MR. JUSTICE MIDDLETON: At any rate, they have always been submitted for confirmation from time to time.

MR. CONANT: Well, that was as a matter of convenience or precaution, I think, in order to remove any question as to their force and effect and validity; but on the reading of the Judicature Act, excepting those rules affecting the Crown's revenues, I do not think any order is necessary at all.

MR. SILK: I do not think there has been any Order-in-Council since 1928, when the last general revision took place.

MR. CONANT: However, your Lordship, you feel that it should be left with the judges?

A. I am not able to speak for the judges as a body about this, but personally I do not see any great reason why there should not be provision for confirmation by Order-in-Council, provided you do not interfere with the necessity that arises from time to time of passing rules for some emergency, which are not expected to have practical effect for very long; but whether, like the by-laws of directors, they should be valid until the next annual meeting or until next something, I do not ——

MR. FROST: Of course, I can see that that is the difficulty.

WITNESS: If you can devise some scheme for making them subject to confirmation without preventing their temporary use during the time when the question of confirmation or no confirmation is under consideration.

MR. CONANT: What detriment or disadvantage would there be, your Lordship, if a committee were constituted, consisting of course of the judges, but adding to it outstanding members of the Bar, let us say ——

MR. JUSTICE MIDDLETON: Outstanding members of the Bar won't know anything about the details of the rules.

MR. CONANT: The Treasurer of the Law Society, and men who from their official positions would be regarded as representing the attitude of the Bar.

WITNESS: I think I was rather approaching it from the other direction; I was asking myself, wherein has the present procedure proved inadequate? What is wrong with the present body?

MR. CONANT: Well, of course, we have had ——

WITNESS: I think I approach most questions of change that way: what is wrong with the present thing?

MR. CONANT: As I understand it, we have had both systems here. When the rules were revised—was it in 1897?

MR. SILK: Yes, sir.

MR. CONANT: That was by a joint committee, was it not?

MR. SILK: That is right, yes.

MR. CONANT: Are the names here?

MR. SILK: They are not in that volume, sir, I think.

WITNESS: In 1897?

MR. CONANT: Yes. There was a very substantial revision in 1897, as I recall; that was done by a joint committee of the judges and counsel, was it not?

MR. SILK: Yes, sir.

MR. CONANT: We had those names here. What were they in? I saw them here.

MR. FROST: They are given in the evidence.

MR. SILK: The Attorney-General was also on the committee, I think, and his Deputy.

MR. FROST: I believe Mr. Barlow gave that evidence.

MR. SILK: I have sent out for them, sir.

MR. CONANT: Well, is there anything else, your Lordship, any other observations?

A. I do not see anything.

Q. There was one other point I had in mind, and I would like your opinion, as a trial judge, Chief of the Trial Division, if you would care to express any opinion, because I think it is an important matter. We had up here the question as to whether the present provision of the law doing away with juries in the case of actions against municipalities should be extended to organizations or bodies of a similar nature, creatures of municipalities if you like to call them

that, public utilities commissions, railway boards, and matters of that kind. Would you care to express any opinion on that, your Lordship?

A. I do not see any reason why they should be abolished in those instances. I do not think the same consideration applies to them as applies to the municipality. Mr. Justice Middleton might be able to ——

Q. What do you regard as the consideration that did move the Legislature to do that?

How many years ago was that, Mr. Silk?

MR. SILK: 1896, I understand.

WITNESS: I may be wrong, but my recollection of that—perhaps Mr. Justice Middleton could check me—was that the theory put forward at the time the jury were dispensed with in the actions against municipalities, was that these actions were against local municipalities in which the jurors were ratepayers, and the jurors were being asked when they awarded damages to decide that they might have to add a couple of mills to their own tax rates, and that the individual was not getting justice. In other words, I thought the agitation came from the plaintiffs' side rather than from the municipalities' side. Now, if there is any agitation in the case of these commissions you mention, it comes from their side, not the general public's, I should suppose. Can you check that?

MR. JUSTICE MIDDLETON: I think that is right.

WITNESS: Mr. Justice Middleton tells me that my recollection is right.

MR. CONANT: I cannot dispute it; I don't know. I have often wondered what the fundamental reason was, whether it was that or whether it was the impression that juries were very liberal in their awards against municipalities.

WITNESS: No, I think they thought they were not a bit liberal when it came to an icy sidewalk in their own village or something of that sort.

MR. CONANT: Even if that is the case, your Lordship, these commissions or creatures of municipalities are, after all, in the final result, the burden of the taxpayer in the same way.

A. Yes, but then what juror thinks about that in considering an action against one of them?

Q. Well, thank you very much.

A. I am one of those, as you may have gathered, who like juries, and I find working with them extremely interesting, and I think that generally speaking they are anxious to do their duty.

Q. Oh, yes, no doubt about that.

A. They are not as quick as a judge would be, but it is very rarely indeed

that I have thought that I knew that the verdict of a jury was wrong—very rarely. I have sometimes thought that they were not very wise in their assessments of damages, for instance, that they might go too high or too low, that their calculation was not as accurate as an individual's might be; but on their findings of fact I like them.

Q. It is a question as to whether the Court of Appeal should be allowed to disturb those findings of fact.

A. Well, I know a case where I should like them very much, and where they are not used, and that is in the contested divorce case. I believe they could size up situations ——

Q. You think you ought to have juries in divorce cases?

A. In a good many contested divorce cases that I have seen I have had a feeling that a jury might understand the persons concerned somewhat better than I could, and might draw more accurate inferences from proved facts.

Q. That raises a point, your Lordship. I don't want to take up time, but do you think that any further precaution is necessary, other than what we have now, in divorce cases, so far as the intervention of the Attorney-General's Department is concerned? What I have in mind is this, sir, so as to more or less narrow the discussion: a considerable number of divorce cases are undefended, aren't they?

A. Nearly all of them.

Q. And in those cases the judge has no assistance or little assistance to meet the more or less *prima facie* case that is presented; that is correct, isn't it?

A. True.

Q. Would you care to make any observation on this aspect of it: at the present time the state does not come into it until after the trial and the proceedings are on their way for a decree absolute; that is right, isn't it? Would you care to make any observation as to whether you think it would help to prevent collusion or any of the other undesirable aspects of it, if, before the original trial, the Attorney-General's Department, representing the State in this case, were served with a copy of the record and with the notice of trial, so that the Attorney-General could intervene if he saw fit?

A. I think every judge would welcome most heartily any intervention of that sort.

Q. You think they would; do you think it would be helpful, your Lordship?

A. Time after time the judge has a kind of suspicion ——

Q. A hunch, I think they call it colloquially.

A. —— that what he is hearing is very far from being the truth, the whole

truth and nothing but the truth. He tries a little bit of cross-examination himself, but he cannot cross-examine effectively, because he hasn't anything much to go on.

Q. No background.

A. He is uninstructed about the case altogether. We did work out at one time, when Mr. Bayly was Deputy Attorney-General, a draft—perhaps we didn't exactly draft the rules, but we drafted suggestions, and we were going to pass rules if the Attorney-General approved of the scheme that we had. The scheme was roughly this, that if a judge during the trial was dissatisfied he could halt the proceedings and direct a report of the evidence so far taken to be forwarded to the Attorney-General, who then would or would not, as he saw fit, come in at the resumption of the trial. That was the general outline of the scheme. I think the Attorney-General then in office—I forget who he was—was pretty well satisfied that it might be a good plan. Then there was a general election coming on, and we thought it better not to pass the rules until we saw what the attitude of the next Attorney-General was. There was a change of Attorney-General at the time, and—well, a few times during his tenure of office I wrote to ask whether he had yet considered the scheme, and he had not, and so we took no such action. You ask whether the record in each case ought to be sent to the Attorney-General: that would mean sending him no more than he has got now, because now, as I understand it, he gets the writ and statement of claim, doesn't he?

Q. Yes, but he doesn't get it until after the trial.

A. I thought he got that at the time originally.

Q. I don't think so.

A. I thought you got it at the same time as the service. I thought we provided that in the rules. But, at any rate, he would have only that bald paper, and unless he was—it was said to us at the time that I speak of that it would involve the setting up of a large staff, probably, and a great deal of expense, if the Attorney-General were to undertake to investigate each of these cases before it came to trial.

Q. In England they do it by means of what they call a King's Proctor, don't they?

A. Yes, but I do not know when he comes in exactly, or in what circumstances.

MR. JUSTICE MIDDLETON: Before the trial.

WITNESS: He may, but does he in all cases?

MR. JUSTICE MIDDLETON: I think so. He may not desire to appear.

WITNESS: We know that tricks are played on us about service of papers and that sort of thing. We know, for instance, that there are cases of persons posing as co-respondents and being served with papers who are not real co-

respondents at all, and even respondents posing as respondents and being served when there was no real service of papers. But I thought that the statement of claim went to the—perhaps not. If the Attorney-General did see the statement of claim I don't think he would be very much farther on unless he undertook forthwith an investigation of the case, and what we were trying to evolve was some scheme by which we could sort out, we could select the cases in which we thought we should be glad of the assistance of somebody.

MR. CONANT: You see, Rule 17 says a copy of the judgment *nisi* shall be served upon the Attorney-General within one month from its date, and so on. He is only aware of the proceedings when he gets a copy of the judgment *nist.* I am just asking whether it would help any, whether it would likely to guard against possible abuses, if before the trial, say at least ten days before the trial, we were served with a copy of the notice of trial and of the record up to date?

A. It would help tremendously if upon being served with those papers he would investigate.

MR. FROST: That would be a big job, and an expensive one.

WITNESS: But it was thought at that time that that meant too much work for the Department and too much expense, and so, as I say, we were trying to compromise by finding some means of referring to the Attorney-General the cases in which we had suspicions.

MR. CONANT: Of course, your Lordship is aware of a case not long ago where it became very apparent, and as the result of our Departmental intervention it was found there was something wrong.

A. That was at Ottawa?

Q. Yes.

A. Yes.

Q. That was very obviously an abuse of the process of the court.

A. Absolutely.

Q. Now, if there is any way to prevent that ——

MR. FROST: Do you think, sir, that it would be an improvement to amend the rules to provide that the judge might suspend the hearing if he became suspicious of the evidence and the way it was given and so on, and then report the matter to the Attorney-General?

A. That was the scheme that we had in mind, but we did not want to adopt that until we knew that the Attorney-General would approve. I suppose that eight out of ten of the cases, or nine out of ten probably, perhaps a larger percentage, are perfectly genuine cases. It is the odd crooked case, if I may use that expression, that all this machinery is designed to meet. The more intervention there is by the Attorney-General the better the judges will be pleased,

but the Attorney-General, I take it, has got to be protected against the necessity ——

MR. CONANT: Being overwhelmed.

A. —— of intervention in every case.

Q. It occurs to me that both schemes have this merit, that if the party to an improper action realizes that this may come under the surveillance or review of the Attorney-General, either at the trial or by postponement of the trial, it is going to rather make him cautious about entering upon the project; wouldn't it have that effect?

A. We thought so, we thought so. That does not need legislation at all.

Q. No; it would be a matter of rules.

A. But that is our general attitude, that we are not satisfied that at present we are able to prevent the obtaining of decrees in cases in which they ought not to be obtained, and that we should welcome very much the assistance of the Attorney-General in those cases, while, as I say, he ought not to be burdened with the ordinary, perfectly honest case, about which no suspicion arises at all.

Q. Well, I am sure I am very interested; I will certainly discuss it further.

A. I should be glad to pursue that—perhaps we need not take up the time of the Commiteee with that, but I should be glad to pursue it with you at any time at all.

Q. Thank you very much, sir.

MR. SILK: Mr. Justice Middleton.

THE HON. MR. JUSTICE MIDDLETON.

MR. SILK: Mr. Justice Middleton, have you anything to add to what the two Chief Justices have said with regard to grand juries?

A. I agree in all that has been said both by the Chief Justice of Ontario and Chief Justice Rose with regard to grand juries. I should like to emphasize just one point, that is the educational value to the grand jury, and also the point that the time may come, and come unexpectedly and suddenly, without any warning, when the suspicion will arise that there is not fairness in the way in which a matter is brought to trial. I do not know when the temptation may come, or whether the temptation will ever come, but the suspicion is bound to come sooner or later that there is unfairness, and the only way we can succeed in preventing that kind of feeling from growing up in the minds of the public, in the minds of the public who are accused rightly or wrongly of crime, is before the actual occurrence. The educational value to the grand jury goes without saying; it is the greatest possible advantage to have a grand jury educated and trained.

I remember one time charging a grand jury very carefully and particularly in a murder case, and the same charge stood for the petit jury. The man was directed to be hanged, and afterwards was hanged. Some time later I had a man who had been on the jury painting a house up in Muskoka, and he said, "Do you remember me?" I said, "I can't place you, but I am sure I have seen you." "Oh," he said, "I was on that jury. It's a good thing you charged that jury as you did, that no matter what sympathy and so forth we might have for him we should not allow sympathy to prevail, because when the jury were considering it there was one man said, 'I am not going to send that man to the gallows.' I said, 'How do you dare to say that, with the judge's words still ringing in your ears?' That man is an unworthy citizen, unworthy to be on the jury.

MR. FROST: Sir, this may be rather a curious question, in view of the fact that you have spoken about the value to the public from an educational standpoint, but, just in view of the other angle, the matter of expense and so on, do you think there would be much lost if the number were reduced somewhat, say from thirteen to nine or something of that sort?

A. It has been in process of reduction for a good many years; it was twenty-three, and now it is down to thirteen. I think that is about as far as we can afford to go. The expense is not very much.

Q. Well, sir, with the situation in Toronto, I think that that is quite correct. I think, in view of the number of cases, and the number of cases in which no bills are brought in, that that is apparent, that the grand jury in Toronto must in fact save the people money. On the other hand, sir, in the outlying districts, in the ordinary county towns, where perhaps there is one criminal case, the proportionate cost in those cases of the grand jury goes up, and I think that that is where the grand juries have got their bad name from, is the fact that the county council committees, on looking over the administration of justic accounts, think that the cost of the grand jury is out of all proportion to the good they perform; and it was just to meet that situation that I wondered whether it was possible to make some reduction in cost there by reducing, perhaps, the number.

A. If the cases coming before the grand jury are not important criminal cases, then there is no doubt in the world that a large grand jury is unnecessary.

Q. Well, sir, you find that, for instance, in the cases coming up before the General Sessions. Now, Mr. A may be accused, for instance, of some theft; he has the right to elect trial before a magistrate, he has the right to elect speedy trial before the county judge, or he has a right to elect trial by jury, and in the cases of trial by jury automatically the grand jury comes in, and it is an expensive matter for the public. On the other hand, in the matter of Supreme Court cases, where, for instance, matters of life and death are decided, it seems to me that every safeguard should be kept there. On the other hand, it does seem curious that, just because a man elects trial by jury, there should be the intervention of something else which does run up the cost of the trial as far as the public is concerned.

A. In the Sessions they get through these cases very, very rapidly. A case doesn't last half an hour sometimes.

Q. Well, of course, I know that is true.

A. They hear a witness and the story that he stole something: true bill.

MR. SILK: Then, sir, the next matter we have before us is the matter of petit juries, which has been discussed in three or four aspects. The first of those is as to improving the qualifications of petit jurors.

MR. CONANT: Before you proceed to that—there may be some repetition in this question, your Lordship—don't you think that we would be providing ample safeguards if we maintained the grand jury only in the Supreme Court Assizes, which, after all ——

A. There is something in that.

Q. Which, after all, deals with the more serious cases?

A. Yes.

Q. and recognizing the fact—your Lordship may not be quite as familiar with this observation as I am, because I have acted for the Crown—that in a great many of the Sessions cases which go through a grand jury and a petit jury the issue is not very large.

A. I think there might well be a distinction between the Supreme Court and the Sessions cases.

MR. CONANT: All right, Mr. Silk.

MR. SILK: Then I was asking you, sir, about the matter of improving the qualifications of the men who go on the petit jury panel.

A. I would like to see some method of excluding people who are on relief from the petit jury. I do not think they are desirable petit jurors. There are a great many men that are on relief who are on the petit jury. They don't ask to be excused.

MR. CONANT: They don't ask to be excused?

A. They don't ask to be excused, because it is the easiest way they know of getting five dollars or whatever the fee is.

Q. Of course, you are bringing up a big question there, as to whether a person forfeits his rights as a citizen because he is in the unfortunate position of having to be subject to the State's benefactions for the time being.

A. It would have to be carefully considered, of course. But the people that are hanging around the court expecting to be called and sometimes getting called are not the most reputable citizens and not the kind of people that you would expect to pass as between A and B.

MR. FROST: Do you think, sir, that the exemptions might be narrowed?

A. I think the exemptions should be narrowed in one sense, and perhaps made wider. The man who has the misfortune to be poor ought not to be on the petit jury. The trouble is that the poor men getting on the jury outnumber the rich, and they are ten to one anyway.

MR. CONANT: I cannot avoid this observation again: I can see that the twenty-six classes of exemptions that we have now are too wide. We have millers on there, and tradesmen who fifty years ago occupied a vastly different position from what they do now, and I can also see the force of Chief Justice Rose's observation, that outside of those exemptions there may be people engaged in war contracts or other important operations; but it does seem to me that if we are going to adopt both a more restricted and a more liberal exemption there would have to be some machinery for determining those excuses or exemptions in advance of the court, because otherwise, if you leave it until the court day, your panel might be—well, shot, I guess is the word; it might be disrupted; so that if you had those exemptions determined far enough in advance that your panel could be filled out, if there were a sufficient number of them, it seems to me that is what would have to be done. Would you not think so, your Lordship?

A. I do not think it applies very radically except in Toronto, and in Toronto the panel is only for two weeks, and at the end of the two weeks the panel is dissolved and a new batch of jurors called.

Q. Yes, but take, for instance—I think this is important, or I would not labour it—take the county of Ontario, where I come from; I think our usual panel is forty-eight. Now, if by reason of let us say discretion you are going to excuse a sufficient number from that panel on the court day, then your panel might be impaired and you could not handle the work?

A. How many would be excused?

Q. Well, we can't tell.

A. I don't think there are ever more than half a dozen excused.

Q. Well, why couldn't those exemptions or those excuses be determined by the local judge in advance of the Assize or the Sessions?

A. I don't see any reason why not.

Q. Do you see any reason why that could not be done, your Lordship?

A. I do not see any reason why it should not be done.

CHIEF JUSTICE ROSE: No, unless—I don't suppose he would like the job.

MR. CONANT: Well, your Lordship, take Whitby, for instance; he would have a better local knowledge than your Lordship would.

CHIEF JUSTICE ROSE: Oh, yes, of course he would. That is the reason why I thought he might not like it.

MR. FROST: If the requirements for an excuse were placed sufficiently high there would not be very many excused; I mean, just suppose you left it where it was now, and made it that only very, very exceptional circumstances would permit being excused.

WITNESS: All the High Court judges require the circumstances to be quite exceptional.

MR. CONANT: There is this other angle to it: When I was Crown Attorney I have had lots of men come to me in advance of both Sessions and Assizes, perhaps a week or ten days ahead, men who had important business engagements and commitments and who wanted to arrange their affairs; I couldn't give them any undertaking; I had no means of determining in advance of the opening of the court what would be the disposition of their applications to be excused. And it always struck me that there should be some machinery by which a man with a genuine case could determine, if necessary, a week ahead of the time of the court.

CHIEF JUSTICE ROSE: I don't know what your difficulty was. I have done it many times.

MR. CONANT: You are referring to Toronto, sir; I am referring to the outside points.

CHIEF JUSTICE ROSE: I have done it in outside places, too, on letters from the sheriff saying that such-and-such a person for such-and-such a reason could not come.

MR. CONANT: Well, it is not a matter of first importance. All right, Mr. Silk.

MR. SILK: Then, sir, it has been suggested that the powers of the Court of Appeal should be made wider where an appeal is taken from a jury trial.

WITNESS: I think the powers of the Court of Appeal should be made wider.

MR. CONANT: You think they should?

A. At the present time if there is any evidence whatsoever the Supreme Court holds that the verdict of the jury should not be interfered with.

Q. Do you approve of the proposal of the judges contained in their report on the Barlow report?

A. Yes, I think, generally speaking, I do.

Q. Do you wish to express any views on pre-trial procedure as it has been discussed?

A. I think the pre-trial procedure is one of these myths. When Mr. Justice Roach was out here a few years ago, he was one of the champions of pre-trial procedure in England, and I discussed the matter with him here to find out what his view was, because he and another judge—I am not sure who the other

judge was—were taking charge, took all the pre-trial cases in England. He listened very sympathetically to what I had to say about the business, and he said, "Don't adopt it, don't adopt it in Ontario. It is not adapted for Ontario." It is one little court in London where there is a vast amount of important business, and the other judge and himself took charge of it all, and they had the pre-trial procedure adopted there. He said, "It is not adapted for the ordinary court," he said, "it is only something that would be peculiarly adapted to the situation in London." And I don't think the pre-trial procedure is at the present time carried on in London. Mr. Justice Roach is not now presiding. He said it was really a child of his own, and "Don't adopt it in Ontario, because you will come to grief."

One of the great difficulties about it is, it requires the senior counsel to be present. He can't trust the making of the arrangements to the junior, because the junior doesn't know enough, and so nothing is ever accomplished. It becomes like the summons for directions in England; they are parodied by an imaginary interview between counsel. Counsel goes in. "Mr. Counsel, are you appearing on this motion?" "Yes." "What is the case about?" "I don't know." "Do you?" "No, I don't. "Well, let's go in, we'll make an order," so the judge goes in, suggests the ordinary process. "Yes, that will satisfy me," so the order is then made saying statement of claim will be put in, and statement of defence ten days thereafter, reply if any within ten days thereafter, and then notice of trial to be given, examinations to be had, production to be made, and so forth. All the dates are fixed in the Consolidated Rules without any order. So the process is practically obsolete there, because it never resulted in anything. The judges couldn't do anything, because the judge will say, "Well, what is the case about?" "I don't know, my Lord. I was just told to come here." So the judge gets nothing and does nothing. That is the result of nearly all these experiments.

MR. SILK: Then, sir, you have heard the proposal that the judges be permitted to sit at trial with assessors, as in the Admiralty Court?

A. I think that is—I don't like to say it, because I don't know who is the champion of that, but I think it was somebody who has never tried a case, either with or without assessors, or there would not be such a suggestion made. It is essential that the parties should be at liberty to give evidence of experts whom nobody else would believe in; otherwise they won't be satisfied. If he should by any chance be chosen to be the assessor to assist the judge, then there is nothing but disaster ahead.

MR. SILK: Then there is one matter about which I particularly want to ask Mr. Justice Middleton, because I know he has some definite views. That is Mr. Barlow's recommendation number XV:

> "That the Judicature Act be amended to provide in civil actions for the payment of any additional expenses incurred by a county by reason of a change of place of trial."

That is at page B40 of the Barlow report.

WITNESS: The venue is never changed unless it has been unreasonably laid

in the first place. Then the change that is made is in accordance with the balance of convenience. And I cannot see why the change being made from an unreasonable place to a place that is found more reasonable should have any effect upon the costs of the trial.

MR. CONANT: Of course, I might say this: we do get complaints from counties—I mean our department does—as part of the criminal justice accounts business.

WITNESS: Well, that arises from another circumstance.

MR. CONANT: I was going to say, I think that most of those are the result of a change of venue in criminal trials. For instance, there was a case tried at I think it was at Brampton, a murder case, that arose down at Niagara, and that very often happens.

WITNESS: That is to get a fair jury, and in that exceptional case I would quite agree that the expense of the trial should be saddled on the place to which the venue naturally belonged, not upon the place where the trial is held. There is the chance that this county has been fortunate and got off without having any serious criminal trials and therefore has a virgin assize, and because we send a case down to be tried at that virgin assize should not saddle a peaceable county with the expense.

MR. CONANT: Do you think it is feasible to adjust it in civil matters, your Lordship?

A. It is perfectly simple in civil matters, because I don't think any case was ever tried. The only case I have had of that kind was the Oshawa graft case, where the venue was changed from Woodstock to St. Thomas, and then the man pleaded guilty.

Q. You mean Oxford, don't you?

A. I went up there to spend six weeks' time trying the case. I don't think that is really a serious matter at all.

MR. SILK: Have you any views, sir, on the necessity of permitting appeals from boards and commissions, particularly on matters of law?

A. I agree with what was said by the Chief Justice, that that must be met by special legislation in each case. Some commissions may be dealing with matters of law, but they are trivial matters of law, and it would be a farce to have an appeal. The same thing applies to the suggestion that there should be interlocutory appeals in the County Court. I should like to say something about the County Court and the Division Courts. The amount of business that is transacted in the Division Court, the number of cases, is exceedingly large; it runs up into fifteen thousand or something of that sort. The suggestion was made a few years ago that there should be a conjoint Division and County Court, and that the Division Court cases should be tried at the County Court sittings, and an alternative suggestion that the Division Court should be given an increased jurisdiction. Well, I agree with the idea that there should be a fairly

large jurisdiction in the Division Court; that would make an inroad on the County Court. I disagree with the idea that there should be any corresponding increase in the jurisdiction of the County Court. I think there should be a fixed sum, a liberal sum, but in fixing that liberal sum in the County Court it should be accompanied by a simplified procedure. In High court cases the procedure has to be very wide and thorough and searching. The High Court procedure is well adapted to the High Court actions, but it is not adapted to the County Court actions, in which the matters involved are really little more than in the Division Court. The Division Court jurisdiction and procedure will not apply to those cases, because one of the objects of preliminary proceedings is to enable what is to be tried to be sorted out from the chaos of facts so that the judge may know and counsel may know what it is that is to be tried. If a man goes down and finds there is no pleading in the County Court, and he is told, "Oh, the defence is this or that," something quite foreign to what he had understood, well, he has got to apply for an adjournment, the adjournment is made, the expenses of witnesses are incurred, and the expenses of solicitor and counsel attending the court, and all that expense is thrown away, and has to be borne by one side or the other, but, because it is a benevolent idea, the judge says no costs, that nobody has to pay the costs. Well, the clients sooner or later find out that the statement "No costs" does not mean at all the idea that there are no costs. So there must be in the County Court a sufficiently elaborate proceeding, preliminary proceeding, to enable the facts to be brought out and to be understood; but when once the facts are brought out and are understood in that sense, it is idle to have the elaborate machinery of examinations for discovery and interlocutory motions piled up in these cases, so that there are bills that they say are not adequate, the solicitors say, "Oh, these things don't pay," but which are two or three times the amount involved in the suit.

MR. CONANT: Yes, that is one of the injustices of our present practice. You can get a County Court action for two or three hundred dollars, and ——

A. And you get a bill on each side of $250.

Q. How can we overcome that?

A. You can overcome it by having a simpler procedure adapted to the County Court instead of letting the County Court shield themselves by saying, "Oh, well, the High Court rules apply." At the present time, in all things that are not provided otherwise, the High Court rules apply. There should be a simpler procedure in the County Court.

MR. FROST: For instance, an in-between set of rules, in between Division Court and High Court?

A. Yes; and I would have no interrogative proceedings in the County Court unless there was special leave for it.

MR. CONANT: Would you eliminate discovery?

A. I don't know whether I would eliminate discovery or not; that is a matter that requires some discretion, because discovery is a means that reduces the expense of proving facts that the man is ready and willing to admit. I

would let discovery only be at the approval of the judge, or let the costs of it be borne by the party seeking discovery—do something to discourage it.

Q. Have the judges ever given consideration to a simplified practice for the County Courts?

A. Never.

MR. FROST: How could that be done, sir?

A. The High Court judges are making rules for the High Court, for the Supreme Court, not for the County Court.

MR. CONANT: Yes, but you do make the rules for the County Court?

A. Well, we do, in the sense that—that idea that I put forward has never been considered in my time by the judges of the Supreme Court.

MR. FROST: Would you suggest, sir, then, that County Court judges should make the rules for the County Court and start ——

A. Oh, let the High Court judges make the rules. I do not think the County Court judges have enough opportunity for discussion to ——

Q. Well, sir, the point is this: how would this simpler procedure be arrived at? How could it be brought about?

A. By instructions of the High Court judges; that would be the way I would do it. Until recently the Surrogate Court rules required the rules of practice to be made by the Surrogate judges and submitted to the High Court judges for approval; four or five Surrogate judges got together and drafted rules of practice and submitted them to the High Court judges. We had practically to redraft them all and send them down to the County Court judges. They said they were glad to get them, because, they said, "We don't know how to do it."

Q. I think, sir, that is the first suggestion we have had of a different set of simpler rules for County Court, and it rather appeals to me.

A. I think it is—it is intended to be a suggestion of some merit.

MR. CONANT: Well, undoubtedly it is.

WITNESS: When County Court cases cannot be tried, and well tried, for less than a hundred dollars' costs, it has grown out of proportion.

MR. FROST: I think that is true, sir, and there is a tremendous difference. For instance, a case of $200 in Division Court, and a case of a dollar or two more in County Court—it is absurd and out of all proportion.

MR. CONANT: You find that to your sorrow if you ever get in the wrong court. Did you ever do that?

MR. FROST: Yes.

WITNESS: In the High Court there are cases vastly more complicated than cases in the County Court. I don't mean to say that—some County Court judge may say, "Oh, I had a case last year that would puzzle anybody," and he will trot out the terrible example, but that is not the average case in the County Court. The average case in the County Court can be tried in an hour or so, and is simple, just a mere matter of whether you believe one man or believe the other. In the High Court they get very complicated.

MR. CONANT: The rules have always been common to both courts, haven't they?

A. I think they have. I have put it up to the County Court judges individually; I have said, "Why should you have as much power to investigate complicated affairs as the High Court cases require?" "Oh," they say, "we think they are just as important, just as difficult to try," but they are not, as a matter of fact.

MR. CONANT: Well, what is the next, Mr. Silk?

MR. SILK: The next one is the law revision committee. They have in England, sir, what is known as the Lord Chancellor's committee.

WITNESS: The law revision committee; I agree with what is said by the Chief Justices.

MR. SILK: Then what about the Rules of Practice Committee? The proposal is ——

A. The Rules of Practice; I agree with what was said by the Chief Justices. I would say that in my opinion they ought to be arranged by the Supreme Court—for the Supreme Court by the Supreme Court judges. They are experts in the matter, I do not think anyone questions their honesty of purpose, and I do not see how anyone can question their capacity in preparing these rules. They are not complicated, they are not difficult, but they do require a little consistent imagination running through the whole of them to see that they do not clash, the different parts, with the others. I speak with some knowledge and experience about that.

MR. CONANT: Oh, yes, there is no doubt about that.

WITNESS: Because in 1913 I was asked to prepare the rules. I then found that there were 1,200 rules then in force, and I boiled them down to about 700 or 750, and I provided for innumerable things that were not provided for in the other rules. I could never have arrived at that result if I had had a committee either of judges or anybody else sitting on my shoulders, because no judge other than myself could have considered himself charged with the whole thing. I did it, having taken a circumspect view of the whole.

MR. CONANT: Anything else?

MR. SILK: I have nothing further, no.

MR. CONANT: Is there any further observation you would like to make, your Lordship?

A. I don't think so.

MR. CONANT: Then we will adjourn at this time.

MR. SILK: Sir, may I discuss the programme for the next day or so?

MR. CONANT: Well, what have you available for to-morrow?

MR. SILK: Judge Parker is coming at eleven o'clock to-morrow, and Mr. D. W. Laing is coming too, on behalf of the bailiffs. Then possibly Mr. Hellmuth may come; I have not heard from him yet. Then Mr. Justice McTague, the Hon. Mr. Clark, the Speaker of the House, and one of the Benchers, I don't know which one it will be.

MR. CONANT: Well, will you be ready at 10.30 in the morning?

MR. SILK: Yes. I have arranged with Mr. Fairty, who wants to be sure of a full hour, to have him come on Wednesday morning, if that suits the Committee.

MR. CONANT: That is all right.

Adjourned at 4.35 p.m. until 10.30 a.m., Tuesday, October 1, 1940.

FOURTEENTH SITTING

Parliament Buildings, Toronto.
October 1, 1940.

MORNING SESSION

On resuming at 10.30 a.m.:

MR. CONANT: Gentlemen, Mr. Silk has discussed with me our programme, and has indicated that at the moment, for to-day and perhaps for to-morrow, we have only two witnesses available. I don't know how it suits the convenience of the gentlemen of the Committee, but it is very difficult for me to be kept dangling in mid-air, as to whether we are to go on to-day and to-morrow or not, and I make the suggestion that we hear this morning, whatever witnesses are available, and that we adjourn until next Monday.

MR. SILK: Mr. Chairman, I expect to have a report from Mr. Walsh in a few minutes, as to whether or not he will be available at 2.15 this afternoon. He is in the Court of Appeal, and right now he is trying to have his case put at the top of the list, and if he succeeds he can be here at 2.15.

MR. CONANT: What more does he want to discuss with us? He has been here once.

MR. SILK: He would be here on behalf of the Benchers. Mr. D. L. McCarthy had intended to be here, and in his absence Mr. Mason, but they are both in court to-day, and they have asked Mr. Walsh to come here on behalf of the Benchers, to express further views on pre-trial procedure and increased jurisdiction in the County Courts. He would be speaking, not personally, but on behalf of the Benchers of the Law Society.

MR. CONANT: Well, what do you expect this morning?

MR. SILK: Judge Parker will be here at eleven o'clock, and Mr. Fairty of the Toronto Transportation Commission will be here at eleven-thirty, and will take the balance of the morning. I do not know what Mr. Fairty is going to say; he wants to express his views, which will occupy about an hour.

MR. CONANT: Then, you have this uncertain arrangement with Mr. Walsh, and what else have you?

MR. SILK: That finishes everything. I may say, that Mr. Justice McTague advised me last night, that he had discussed the situation with Chief Justice Robertson, and thinks it is unnecessary for him to come. I was talking this morning to Mr. Hellmuth, whom I invited to attend last week, and he says it is absolutely impossible for him to be here to-day, and asks me to express his apologies, and to say that the views of the Benchers had already been well stated, and he has nothing to add.

MR. CONANT: Then, you can finish everything to-day?

MR. SILK: I think so. There is only one further witness, and that is the Hon. Mr. Clark; I have not heard from him, so I don't know whether he intends to come or not.

MR. CONANT: Then, shall we continue on and finish to-day? Is that the probability?

MR. SILK: Yes, that is right.

MR. CONANT: Have you anything to read in until your first witness comes?

MR. SILK: Only one very small item. The County Judges' Association, with regard to appeals from interlocutory motions, have this to say, as the Committee has already been advised; they said:

> "We fully endorse the recommendation for appeals from interlocutory applications in the County Court; and also the recommendation with respect to the practice of issuing orders, which should be signed by the County Court clerk. But it is felt that all appeals, except in interlocutory matters, should be direct to the Court of Appeal."

They wish to have that struck out of their report and this substituted:

"There shall be an appeal from an interlocutory application in the County Court to the Court of Appeal in the Province of Ontario, but only upon leave of the judge making the order or of a judge of the Supreme Court of Ontario; we further endorse the recommendation, with respect to the practice of issuing orders which should be signed by the County Court clerk."

The change is that, while they still consider there should be an appeal from an interlocutory order, it should only be upon leave.

MR. CONANT: Why should an appeal there go to the Court of Appeal?

MR. SILK: I think that is Mr. Barlow's view, is it not?—or does he say that the appeal should go to a single judge? Mr. Barlow's recommendation is that provision be made for an appeal from an interlocutory application in the County Court, to a judge of the Supreme Court in Chambers, upon giving security for costs by depositing the sum of $15.

MR. CONANT: Well, Mr. Barlow is sensible. Why would you want to take a motion in the County Court up to the Court of Appeal?

MR. SILK: Judge Parker is here now.

HIS HONOUR, JUDGE PARKER, County of York.

MR. SILK: Your Honour, there are certain matters with respect to the jury, system with regard to which the Committee is anxious to have your views; particularly, first of all, is it your view that there is some desirability for improving the calibre of the men who make up the petit jury panel in the County of York?

A. Well, with reference to the Act itself, the material we get to choose from we cannot alter; we are restricted to that.

MR. CONANT: Your Honour, I don't want to delay you or burden you ——

A. I have plenty of time this morning.

Q. —— but I think it would be helpful to the Committee; we are all pretty lazy; we could read it all up in the statute, although it is a pretty well mixed-up statute.

A. It is not the only one.

Q. Would you mind outlining, for the benefit of the Committee, the procedure from the beginning, that finally results in a Sessions or a Supreme Court jury panel?

A. Yes, I could do that.

MR. CONANT: Would the gentlemen like to hear that?

MR. STRACHAN: Yes, I would.

WITNESS: First of all, the local selectors from the various municipalities are required to choose from the voters' list, a certain number of men; the number we indicate when we send notice to them.

MR. CONANT: Whom do you mean by "we", in that case? Is it yourself, the senior judge?

A. It is the selectors of jurors, the county selectors, of which I am chairman. We meet in September, to determine the number of petit jurors for the following year for the Assizes and the Civil Courts, High Court, and the number of petit jurors that may be required in the County Court and the Sessions. This year, we are requesting 1,200 names for the High Court for the petit jury.

Q. 1,200 names?

A. Yes; and 1,000 for the County Court and Sessions; that is for the year.

Q. That is, you are requesting that as a total from all municipalities?

A. Yes.

Q. In this judicial jurisdiction?

A. Yes. Then for the grand jury of the High Court 75, and for the Sessions grand jury 100. Now, if you glance at this table, which I will leave with you, we send notice to Aurora, for instance; for the grand jury ——

Q. Pardon me, before you go on: your board of selectors consists of yourself, the sheriff, the clerk of the peace ——

A. The warden, and the treasurer for the county.

Q. The treasurer, the warden, the clerk of the peace, the sheriff and the senior judge?

A. Yes. Then there is the other division for the choosing for the city of Toronto, and that is the senior of the junior judges, the mayor, the deputy sheriff of Toronto, and the treasurer of the city. We meet, and then from past experience, we determine the number of men we want for the petit juries of both courts and for the grand juries. Those names are available to us—at least, that number are available to us to choose from, because we notify each municipality how many we require for the grand jury of the High Court, how many for the grand jury of the inferior court, how many for the petit jury and grand jury in the High Court, and how many for the petit jury in the County Court.

MR. SILK: Your Honour, may I ask a question there? There is a rather odd provision in section 39 of the Act:

> "The number to be selected from the jurors' rolls"—this is by the local selectors—"for a jury list shall be the number of grand jurors that the

county selectors have determined to be requisite for the year, and of petit jurors for the Supreme Court and inferior courts respectively, the number theretofore determined by the county selectors to be requisite as the panels for the year, with one-fourth the number thereof added thereto."

Do you know the purpose of the one-fourth added thereto?

A. I could not tell you the history of that at all.

MR. CONANT: Does that mean, that if the county selectors direct municipality A to send in 100 names, they send in 125?

MR. SILK: That is right.

WITNESS: No, they don't do that. We add a sufficient number to the total list to provide for contingencies such as people moving away, people who are incapacitated, deaf for instance, over age, and for some other reason objectionable.

MR. CONANT: But you, in making your requisition, take care of that contingency, do you?

A. Yes, we do.

Q. And you increase or pad your numbers to take care of that?

A. Yes.

Q. There is no difficulty about that made by the local selectors, then?

A. No.

Q. Then, is that a nullity; is that an obsolete provision there?

A. We send out this notice, with which you are familiar, designating the number, and to my knowledge, only that number of names are sent. But then, while we require so many from each division, we treble the number of names, so that if we require say, 100 from Aurora, we will ask for 300 names, because you then have a choice of names.

Q. Then when your requisition meets the local municipality—or request, or direction, or whatever you want to call it—the local board consists of the head of the municipality, the clerk and the assessor, does it?

A. No, not the assessor. There are two boards. I think they are outlined in section 16. In the County of York, the judge of the County Court, the sheriff for the County of York, or in his absence his deputy, and the warden and treasurer of the county only shall attend when the selection is being made.

Q. That is the County of York; I am referring to the municipal board.

A. Oh, the local selectors?

Q. Yes.

A. They consist of ——

MR. SILK: Section 15.

WITNESS: The head of the council, the clerk, the assessment commissioner, and the assessors of every local municipality. It is from them we depend for the material we choose from. We send this requisition out, and they send in to the clerk of the peace the required number of names. Those are copied in a book, certified and checked, and signed by myself and the clerk of the peace. It is from that list only that we can choose jurors for the coming year, and we generally average choosing one of every three. There are certain localities in the County of York that it would be very unwise to choose from at all.

MR. CONANT: That is a discretion you exercise?

A. Oh, yes. You see, the local selectors are governed by section 16, which in short says, "shall select such persons as in their opinion are, from the integrity of their character, the soundness of their judgment, and the extent of their information, the most discreet and competent for the performance of the duties of jurors." We are dependent entirely on their discretion in the first instance, and I am sorry to say that almost every year we find the names of men who are deaf, over age ——

Q. Sent in by the local selectors?

A. Yes. You see, we are restricted by them entirely. Then the next movement is, that we are supposed to exercise some discretion in choosing from the list they send in.

Q. What is your formula? Have you got a formula for your choice?

A. It is outlined in practically the same words. Then we meet every morning during the period required by the statute, and go through these lists very carefully. Take in the county, it is comparatively easy, because the old county names you know, the sheriff or the other person in the county knows.

Q. You are speaking of outside counties?

A. Yes. It is comparatively easy to choose good names from there, if the good names have been sent to us, and we try to choose a variety of callings. For instance, we don't restrict them to farmers entirely. Take from Markham and Stouffville, there are plenty of good men there who are artisans, for instance. Those names are very, very carefully chosen from the list that we get.

Q. Now, when you say carefully chosen, Your Honour, you have got, as I recall it, about 2,000 names.

MR. FROST: More than that, isn't it?

A. We have 7,152 names.

Q. Usually your requirements multiplied by three?

A. Yes. Yes, on the average, we choose one name out of three. We don't take one out of every three, but we go down to where more desirable names are.

Q. But you ask for three times as many, so that you have a reasonable choice?

A. We have a choice, yes. You hear some criticism about the grand juries, the men composing them. The local selectors allocate certain names for the grand jury from which we have to choose and are restricted, and certain names for the petit jury.

MR. CONANT: How many names are you dealing with there in making your selections?

A. 7,152 this last year.

Q. Beg pardon?

A. 7,152.

Q. Now, how is it possible, or is it possible, for your board to bring to bear on that selection, any personal knowledge of the personnel with which you are dealing, Your Honour?

A. In many cases in the county, yes. The warden probably will know the families; the sheriff may know them. I haven't much knowledge of the outside persons, except their family names. For instance, we always get a lot of Reesor on, because they have a good reputation, and families like that, that we know. They are carefully considered from the locality where they live, and their occupation, of course, their occupation is sometimes very misleading; they use the term "clerk"; that might mean anything. Then, the same care is taken in choosing the ones from the city, but it is more difficult to choose from the city, because you haven't personal knowledge of many of these people. But, if I could suggest any improvement, it would be that the local selectors carry out the request that always goes from the clerk of the peace, and which sometimes has been followed by personal letters from myself, where they have sent in names that were not ——

Q. You think that the local selectors could be more careful?

A. Oh, yes.

Q. Well, how could we deal with that by statute? Could the definition be tightened, do you think?

A. If they would carry out section 16, but frequently—we require as a rule, every three months for the Sessions, and the Jury Court from 60 to 80 petit jurors; we can safely count on twenty percent not being available.

Q. Twenty percent not being available?

A. Yes.

Q. You mean they have moved or ——

A. Moved, or on relief, or something like that. I think the municipalities, the local selectors, do put reliefees on the list in some cases.

Q. You would not suggest there was any ulterior motive there?

A. Oh, except to relieve the municipality. Then the Act provides for the selection by the Sheriff from this list that is copied in the book, and I, in my court, since I have been senior judge, have always—we only summon thirteen for the grand jury, as provided by the Act, and you can always count on some of those not turning up. I have always insisted that the vacancies on the grand jury be filled from the petit juries. That is not always followed, but only in one case I have observed in the seven years I have been senior judge, where the presiding judge slipped up on that, but it has not occurred since and never will occur, because we don't want these professional jurors around that are loafing around the Hall or brought in for that occasion, and for that reason I carefully avoid it.

Q. You think that fundamentally, the chain of events starts with the local selectors?

A. If it is bad timber we can't improve it.

MR. CONANT: What is that formula, Mr. Silk?

MR. SILK: For the local selectors it is, "from the integrity of their character, the soundness of their judgment, and the extent of their information the most discreet and competent for the performance of the duties of jurors." That is section 16, subsection 2. The formula for the county selectors is, in section 21, subsection 1, "and shall make such distribution according to the best of their judgment, with a view to the relative competency of the persons to discharge the duties required of them respectively." They are slightly different.

MR. CONANT: Could anything be accomplished by having the assessors indicate more than—well, there is no indication now, excepting that he is eligible for jury duty?

A. That is all.

Q. Would it be possible for the assessors to indicate the suitability or the qualifications of the men, do you think?

A. Well, in the small municipalities, the persons who do select the list should know them as well as anybody. In the city of Toronto, I think that would be a very wise suggestion, because, as I understand it, the assessment is made in zones, and the assessors are more or less familiar with the names. The other officials, like the mayor and the treasurer, wouldn't know anything about it.

MR. STRACHAN: Except that they don't see them, Your Honour.

WITNESS: Oh, no.

MR. STRACHAN: They go around in the daytime and speak to whoever is in the house; probably they don't see the man of the house at all.

WITNESS: But I think the assessment department is rather familiar with the people in their respective localities.

MR. CONANT: I am only groping. This is not a suggestion, even, but would it be possible for these men entered on the assessment roll to be indicated, not only as eligible for jury duty, but to have any further designation, either by grades or by educational attainments or anything else? Would you have a grade A, B and C, or ——

A. That would be very desirable from our standpoint.

Q. For instance, you have got a column in the assessment roll, as I understand it, in which you put the letter "J", and that means he is eligible for jury duty. Would it be feasible to put another column in which you might mark A, B, C, D, or whatever it might be, more or less in the way that they grade soldiers after their medical examination.

Don't they come out with grade A or B, Mr. Strachan?

WITNESS: It would be very desirable. I don't know whether it is feasible in the city of Toronto or not.

MR. FROST: The difficulty about that is, that a man who was put in grade D might take strong objection to it, and have the assessor fired. Do you mean to put that on the voters' list?

MR. CONANT: On the assessment roll.

MR. STRACHAN: I don't see how the assessor could find it out, Mr. Chairman.

WITNESS: Outside of Toronto, it would be a very simple matter for the clerk to mark his column when he sends it in.

MR. CONANT: But the problem does not arise, it seems to me, outside of the large centres. I have sat on county boards of selectors when I was county clerk of the peace, and on that board there was always somebody who knew every name that came up. I think that problem is more acute, and perhaps, limited to jurisdictions like Ottawa, Toronto, Hamilton, and perhaps, London and Windsor; that is where I think the problem arises; don't you yourself, sir?

A. Oh, that is where it is, yes. How to take care of it I don't know. You see—I don't want to be quoted, please; may I speak in confidence now?

Q. The gentlemen of the press will regard your confidence, certainly.

A. The old system of choosing the jurors by the county board, was running down the column and taking every third name; I am speaking of past days, long past days. The system now that we have, as I said, is carefully choosing, not every third name, but on the average, one for every three on the list. We may

take three in succession and skip over the next, depending on say, the locality they live in, because we know from past experience that from at least two localities in the County of York, we daren't choose a jury, because they have openly said, "We will not convict," and there you are deadlocked, so that as far as we are concerned, we eschew those districts. Then what follows after that, as I say, is that the sheriff goes to the clerk of the peace's office, and from this book picks out the number required by the precept that we issue.

Q. For the particular panel?

A. Yes; and that is again copied in the clerk of the peace's book, a certified copy given to the sheriff, and he is restricted to those names to summons for jury duty for that particular court. There is only one loophole or one place that is not checked: after the sheriff gets the list from the clerk of the peace we assume, and have reason to assume, that only those names are summoned, and none others substituted. I only learned that yesterday. I think I can correct that, at least satisfy myself on that.

Q. To make sure that other names are not ——

A. Yes. You know, there are a lot of people in the county clamouring to get on a jury.

Q. Clamouring to get on a jury?

A. Yes; every opening of every court, they are sitting around the court-room hoping to be called in, and that is the reason I put my foot down and said the vacancies in the grand jury can only be filled from the petit jury; otherwise, I would not know whether they were eligible. So that, while it has been said on certain occasions that professional jurors are brought in, that is absolutely in the past as far as our courts are concerned.

Q. Well, have you any suggestions for improving the system, Your Honour? You have had a large experience in it.

A. If the local assessors in the city of Toronto were to attend at these meetings when we are choosing, they would have personal knowledge of their own district, like Ward 4, Ward 3, or whatever it is; when we were dealing with Ward 4, we would have them come in. I suppose we could do that without legislation, if they would do it.

Q. You are referring to the men who go around with the big book under their arm and rap on the door?

A. Yes.

Q. You mean to say, that if they were present when you were making your selections, they might add some personal knowledge to the names?

A. Yes, because they are going around year after year, I think, Mr. Strachan, in the same district, aren't they?

MR. STRACHAN: The same district.

WITNESS: We could request that, I think, without legislation. I think the assessment commissioner would give effect to it.

MR. SILK: There is a proposal made on behalf of the County of York Law Association; I quote Mr. Fowler:

> "For the larger centres we felt that some board of selection was necessary who would perhaps have a list that would come from the assessment rolls, and then there would be a personal investigation of that list, either by having the prospective people come in and see the board of selection or possibly by some private enquiry that would be made through an investigator or through some other agency."

MR. FROST: With 7,000 names that would be a big job.

WITNESS: It would not be feasible.

MR. SILK: That would scarcely be practicable in Toronto.

WITNESS: No. I think the suggestion I made would be feasible and would work out all right. You could soon tell after one or two choosings. But if we had to interview some 4,000 names from the city of Toronto it would take a long time.

MR. FROST: Tell me, sir, that 7,000 you mentioned, is that 3,000 from the county of York generally and 4,000 from Toronto?

A. No. For division number 3, that is the High Court petit jury, 1,445 are listed from the townships and 2,155 from the city; and for the ——

Q. Is that your three to one proportion?

A. Yes. And for the County Court and Sessions, 1,200 from the county and 1,800 from the city; so it works out about one from the county and two from the city, according to population.

Q. What was that again, sir, for the Supreme Court?

A. 1,445 from the county and 2,155 from the city; that is for the High Court. And for the County Court and Sessions, 1,200 from the county and 1,800 from the city. That has been the proportion adopted over a period of years, based to some extent upon the population, and then having all the places represented.

MR. CONANT: When you take your local selectors here in Toronto, what is the yardstick there?

A. I am afraid I could not answer that.

MR. FROST: Sir, I don't want to ask you to repeat, but in connection with

the city of Toronto, the board of selectors there is composed of the head of the municipality, the clerk and the assessment commissioner; is that it?

A. The head of the council—that is the mayor—the clerk, the assessment commissioner and the assessors of every local municipality. The assessors are there, should be there.

Q. Then in the county board of selectors you have the same board for both county and the city?

A. No; separate boards.

MR. CONANT: They have one board which is the county selectors, then they have another board which is the board of local selectors?

A. In the county of York only.

MR. FROST: In the county of York there is the senior judge, the sheriff, the warden and the treasurer; that would be the county of York?

A. Yes.

Q. Now, in the city of Toronto it would be ——

A. The senior of the junior judges, the sheriff of Toronto. By the way, there is no sheriff of the county of York now.

MR. CONANT: No, they are all one; they are merged.

WITNESS: The mayor and the treasurer.

MR. SILK: A very small number constitute a quorum, though, do they not, sir?

A. Well, we have never been without all of them there to my knowledge. You are thinking of the quorum of the local selectors, aren't you?

MR. SILK: Yes; there is a quorum of two there, so that two assessors could sit without any other assistance.

MR. CONANT: Your local selectors, for example, Your Honour, don't take many out of Rosedale in Toronto, do you?

A. Oh, yes; Rosedale and Forest Hill Village get their share.

Q. Perhaps I should go further: do they serve, do many out of Rosedale serve, on juries?

A. Oh, yes. We excuse those where it is a one-man business.

Q. Beg pardon?

A. Where it is a one-man business, for instance, we always try to excuse that man.

Q. Well, there are not many of those in Rosedale?

A. Well, no, not in Rosedale. Insurance men—we always have some insurance men on. One grand jury that some objection was taken to, the foreman of that grand jury was the general manager of an insurance company.

MR. FROST: Sir, do you think that the exemptions are too broad?

A. I don't think so.

MR. CONANT: There are twenty-six classes of exemptions.

A. Yes.

Q. Right from A to Z.

A. You probably might delete the exemption of newspaper men.

Q. They should serve, you think?

A. I don't see any reason why they shouldn't.

MR. FROST: For instance, Hydro employees: is there any reason why Hydro employees should not serve?

A. Well, he might be a technical man; I don't know.

MR. CONANT: I think that the observation of the Chief Justice was that the statutory exemptions should be narrowed and left more in the discretion of the court as to who should be excused; that would be a question of being excused then?

A. Yes; possibly; I have not considered that.

Q. What would you think of that?

A. Well, that would accomplish the same end, would it not, and be more flexible.

Q. Of course, as I remarked at the time, I still think that there is some necessity for a little better machinery than we have for dealing with applications to be excused in advance of the opening of the court.

A. Well, for instance, take the case of a man who is representing a Toronto or Montreal concern, who is going on his annual trip to the Maritimes or the Pacific coast; you can't hold that man very well, unless he is required. I take a reasonable viewpoint always and consider the matter, and also have in mind the number of jurors I have.

Q. What I meant was this, Your Honour: if the statutory exemptions were narrowed, leaving it as a matter of discretion, it might be necessary to provide machinery for dealing with those in advance of the Sessions or the Assizes, because otherwise your list might be seriously impaired?

A. Yes.

Q. And have to be implemented?

A. Yes. Well, I think in both the High Court and our court names are considered in advance.

Q. Are considered in advance?

A. Yes. We consider them and then put them in a folder, and then just before the court is opened we can notify them whether they will be excused or not, save their attendance and save the money ——

Q. And if you think your list is going to be impaired you can bring in more jurymen?

A. Yes. There is one thing I would like to suggest in connection with juries. We lose the value of our petit juries for Sessions for one week. I have made a request before ——

Q. Which?

A. I have made a request before, I think before your time, that we be given power to summon the grand jury one week before the Sessions opens; then the grand jury have found their bills and the petit jury are ready to go on. As it is now, you see, they are sitting around for a week with nothing to do, oftentimes a week. When you have eighty or sixty men, $240 a day is a lot of money.

Q. The petit jury often has to wait until the grand jury has made its findings?

A. Yes.

MR. SILK: Well, Judge, in 1937 we did amend the statute to permit the sheriff to advise the members of the petit jury not to come on the first day of court, to come on the third day or the second week, which I think pretty much serves the same purpose, doesn't it?

A. Well, yes and no. If we had the grand jury in a week ahead of time, then we have work for the Sessions and for the County Jury Court. You see, we have got to keep that in mind. Of course, it is a move for economy; that is about all it is.

MR. CONANT: Yes. Well, I think it is well worth considering.

MR. SILK: Judge Parker has had wide experience in the Court of General Sessions; perhaps you would like to have his views on the grand jury situation.

MR. CONANT: Yes, very glad to have them.

MR. SILK: There is a proposal before the Committee to abolish the grand jury; you probably read Mr. Barlow's report on that?

A. Yes. I have carefully refrained from ever expressing an opinion, because I do not think an opinion should come from one of our judges, but it seems to me that to abolish the grand jury, leaving the rest of the machinery as it is, is like mending an old garment with new cloth. Who is going to take that tremendous responsibility that now rests with the grand jury, to determine whether a man shall be placed on trial or not?

MR. SILK: It has been suggested that that function might be performed by a judge.

MR. CONANT: Oh, no, no.

WITNESS: That would be nonsense.

MR. CONANT: No; with all deference, that has not been suggested. The suggestion was that in those rare cases in which the Attorney-General lays an indictment a judge would function in the place of the grand jury. In other cases there would be the preliminary.

WITNESS: I do not think that would be feasible, for this reason: the very judge who passes on whether the man should be placed on trial may be hearing the trial.

MR. CONANT: Well, of course, the suggestion was because in the other jurisdictions—Quebec, Manitoba, Saskatchewan, Alberta and British Columbia—not only have they no grand juries, but they have no safeguard against the Attorney-General's indictment, and it was suggested that the intervention of a judge who would function in the same way as a grand jury would be a very considerable safeguard against a vindictive or capricious Attorney-General laying indictments.

A. I wouldn't want to be the judge.

Q. I don't see that, Your Honour; why not?

A. A man on the Bench gets a frame of mind—or should, and I think does—that places him apart from all personalities or public questions. He has got to keep his mind free. You are introducing something there where he might be open to approachment. I do not think a judge should be placed in that position.

Q. Well, why would there be anything more invidious in that, Your Honour, than in trying a case as a judge sitting alone in County Court Judge's Criminal Court? You are constantly trying those cases.

A. Well, it is always the duty of the Crown to prove its case beyond reasonable doubt, but to determine whether a man should be placed on trial—I mean, it might expose the judge to a lot of outside influence. He would be exposed to requests, I suppose, such as Crown attorneys are exposed to now, but their task is a different one.

MR. FROST: Sir, there has been some suggestion that grand juries be abolished as far as the Sessions are concerned. Now, the underlying reason for that was this, that it was felt that in the Sessions, while of course there are very important cases tried, and very important criminal cases tried, those cases do not involve murder and the penalty which arises from murder, and that in the ordinary mill run of cases an accused has the right to be tried on his own election by a magistrate, by a county judge in a summary manner or by a Sessions jury, or if he elects trial by a court above a magistrate's court there is the intervention of the magistrate by way of preliminary hearing, and just in view of the fact that in the Sessions there are a large number of cases which are perhaps not of the really serious nature—of course, I suppose all criminal cases are serious, but of the really serious nature—that in the Sessions the grand jury might be abolished, but that it be left in the Supreme Court cases, particularly in view of the fact that they are dealing with murder cases, where there is a penalty that cannot be recalled once it is imposed. What would your reaction be to that?

A. I would have to know what the substitute for it was. There are in the Sessions in Toronto a great many what we might call picayune cases, particularly noticeable in the Sessions of last month. That is unusual. Then there are—I should say the most important cases are heard by a judge without a jury.

Q. That is the point, sir. You asked what the substitute would be. Well, I suppose actually there would not be any substitute. A man accused, for instance, of theft, and coming before a Sessions jury, would go through the ordinary preliminary hearing; his case would be heard by the magistrate, who would then decide as to whether there was sufficient evidence to commit him for trial, and then he would go directly to the petit jury who would try his case.

A. Then how would you deal with the person charged with having committed an illegal operation, which is a very serious thing? Or take conspiracy, which is a serious thing. I don't know how you can segregate them.

Q. You mean to say that, while you do get a number of more or less petty cases, nevertheless you have a residue of very important cases?

A. Oh, yes; and then I think I am safe in saying that fully fifty percent of those who elect trial by jury subsequently re-elect to be tried by a judge without a jury.

MR. CONANT: Isn't there also this angle to it, Your Honour, that it is, I wouldn't say common, but it does happen, that a person accused of an offence, not the most serious offences but the lesser ——

A. Housebreaking and that sort of thing?

Q. Well, yes, and even less serious than that; that they will try to trade on the fact that if the sentence is not to be so-and-so they will go to the jury, the grand jury and petit jury?

MR. FROST: Perhaps His Honour wouldn't know that. Sometimes there is a certain amount of horse-trading with Crown attorneys.

WITNESS: I wouldn't know anything about that. As I said the other day, I am not a bargaining judge.

MR. FROST: There is a matter here, sir, that seems to me to be rather remarkable. For instance, take the Supreme Court sittings of January, 1939. In that sittings there were sixteen criminal cases. The grand jury returned true bills in ten of them, and in six of them returned no bill. Now, how was it that those six got by the committing magistrate? Is there real care taken, or is it more or less of a perfunctory sort of thing?

A. I am not familiar with it.

Q. Well, it hardly seems to me, sir, that it just adds up, that a magistrate, who is presumed to have the general ability to tell as to whether there is sufficient evidence to send a man up for trial or not, would send up sixteen cases, and then a grand jury, hearing only the Crown side of it in camera, would turn down six of those. It seems to me that perhaps the committals for trial here in the city are rather perfunctory, that the magistrates are really not ——

A. You must remember that the grand jury have more time to deliberate.

MR. FROST: Well, after all, it is a very important matter; why shouldn't the magistrate take time to deliberate? Now, sir, I may be wrong about this, but I hardly think that that situation exists outside of the city of Toronto.

MR. CONANT: No, I don't think it does.

MR. FROST: To be frank with you, sir, I don't know, but, taking for instance the courts in Whitby, Lindsay, Peterborough, Cobourg—I am not so familiar with Belleville, but Mr. Arnott would know—the fact is, I cannot say off-hand that I know of one case in which no bill was brought in after it had been sifted through by the magistrate. I know in the magistrate's court that it is not a perfunctory matter, that they go into it with a great deal of care. Now, with this list it is rather remarkable. For instance, here is one case in the Supreme Court in 1937, where it was eleven to eleven. It would almost indicate the magistrates are not taking that angle of it very seriously, and are pushing over these cases with the idea that a grand jury may intervene.

WITNESS: You take in our Sessions in March, 1938, twelve true bills and six no bills. I do not think I ever sat in the Sessions where the grand jury failed to bring in a no bill.

MR. CONANT: Of course, that gives rise to this thought, doesn't it, Your Honour, that if there were no grand juries the magistrates would be more careful, they would deliberate more? I do not think it is unknown for a magistrate to remark, "Well, let the grand jury sift this out."

MR. FROST: On the other hand, there is this angle also to it: These are cases which go to juries and no bill is brought in, but this does not deal with the great mill run of cases in which there is a committal for trial and they come up before you or some other judge. Now, if the magistrates are not sifting over these cases apparently any more carefully than this, the county judges then

must be getting a great number of cases that should never have come before them at all?

A. There is no question about that.

Q. I mean, if that is the case there is the saving the grand jury is making here, but how about the expense to the public of cases that come up on speedy trial before the county judge, in which there is not the intervention of the grand jury, and in which on this basis there must be a tremendous number of them that should never come before the judge at all?

A. The ones we have in mind are generally those where there is a private prosecutor. The Crown attorney, of course, handles the case, but the charge is laid by an individual, oftentimes with the object of procuring a settlement. It is quite obvious when you hear the evidence.

MR. CONANT: Do you think our magistrates are not as careful as they might be, Your Honour?

A. I haven't had a bit of experience with them, Mr. Conant; I do not know at what speed they work.

Q. I thought you remarked a moment ago that there were a considerable number of cases that came up that should not come to the County Court Judge's Criminal Court?

A. Principally where there is a private prosecutor, a private complainant.

Q. Where the Crown of its own initiative institutes, that does not happen so often?

A. No, no; there the evidence is carefully considered, and they are not importuned so much as they are by the private prosecutor. I have had the Crown attorney admit when the Crown's case was in that no case was made out, that the evidence was not there. They take the affidavit or the sworn statement of the private complainant, but his affidavit is not supported by any evidence they can bring forward.

MR. FROST: Well, it is curious that the magistrate would not catch that in going through; why shouldn't he? Instead of his sending that case on for trial, why wouldn't he find that there is not sufficient evidence?

A. Well, I suppose the magistrates in the city of Toronto have such a tremendous amount of work to do that things are sometimes done hurriedly; I don't know, but that may be so.

Q. Of course, in the city of Toronto there isn't any question, there are certain peculiar circumstances that apply.

A. Yes, and everything they can squeeze in in the county of York they do.

MR. CONANT: There is another subject, Your Honour, on which I would

like your comment; that is the question of appeal in summary conviction matters; it has come before you. As you know, at the present time it is a trial *de novo*.

A. In some cases, yes.

Q. Do you think that it would be sufficient if it was tried on the record, those appeals?

A. Take the cases of reckless driving: I think it would be rather impossible to rely upon the evidence that has been taken in the Police Court. In serious cases—there are a lot of other cases, such as breaches of by-laws and that sort of thing, picayune cases, that might just as well be determined without going to the expense of hearing evidence.

Q. Doesn't it strike you as rather anomalous having two trials of the same issue, Your Honour?

A. Yes.

Q. It always did me, and I always felt that substantial justice would be done if there was an appeal on the record. There is also this other angle to it, that if all parties, including counsel, know that an appeal is on the record, they might be a little more careful in putting in the case; don't you think so?

A. Yes.

MR. SILK: Just as they are in the Supreme Court and the Court of General Sessions.

WITNESS: Yes.

MR. CONANT: Isn't there a sub-conscious feeling by counsel in some of these summary matters, "Well, if I lose here I can go through it all over again with the judge"?

A. Yes, I think that is quite true; I don't think it is sub-conscious, though.

MR. CONANT: Well, I was trying to be charitable, Your Honour.

MR. SILK: Would you say that in most cases an appeal on the record would occupy less time?

A. As a rule they don't take very long. We probably have criminal appeals say for a day and a half in the month—a small item; they don't take much time. I think last month we were just a day and a half, and I think that would be a fair average, because the number of appeals that come to us are very few—generally when the municipality passes some new by-law, like these automobile trailers down on the corner of University and that cross street there.

Q. Gerrard, down behind the hospital?

A. Yes. There were appeals up on prosecutions there—something new.

MR. CONANT: Are there any other observations you would care to make, Your Honour, on any matter?

A. I am very unpopular in the City Hall because of the economies I try to effect in our courts. One thing I was just discussing with the Audit Board this morning—I don't know whether it should be brought to the attention of some official here. It is a trifling matter in the individual case, but it amounts to a good deal in the course of a year. Under the administration of justice schedule of fees the crier gets twenty-five cents for every witness that is sworn, and the clerk of the peace gets twenty cents for every witness that is sworn, a duplication just because it is in the schedule. As a matter of fact, the clerk of the peace always swears the witness, and the maximum that the crier does is hand the Bible to the witness, for which he charges twenty-five cents. I think the Audit Board probably could delete those charges.

Q. Couldn't we dispense with the crier, under modern conditions, Your Honour?

A. Well, you would rob him of a lot of sleep, because he generally opens the court and he has a snooze.

Q. Couldn't we provide other places for him to sleep even more economically?

A. Why couldn't the sheriff's officer open the court? You see, you are really paying in duplicate for certain services all the way through, and the administration of justice in the county of York is a terribly expensive thing.

Q. And isn't it rather annoying to counsel and clients, these little bills that the crier makes out at the conclusion of every trial? He wants $1.60 or something like that.

A. Oh, yes; there is no reason for it. I don't think there is any provision for it.

MR. SILK: Except in the schedule; I think that is the only place.

WITNESS: Well, he gets paid by the municipality. First of all, the criers in Toronto get a fixed salary, and then they get fees in addition to that. But his maximum duty is to take the judges books up to the court room and then open court and disappear if he wants to. I have always been of the impression, Mr. Conant, that the position of crier is obsolete.

MR. CONANT: Obsolete, yes.

MR. SILK: Mr. Fairty has pointed out that there is also a practice of requiring the parties to buy the lunch for the jury in some cases; do you know about that, sir?

A. If they manage the case so that the jury are out and out for a long time, one of the parties has to buy the lunch for the jury, there is no other provision for it, but I think as far as our courts are concerned we try to dispense with that

by probably holding the judge's charge to the jury over until after lunch. I think it is a rarity when they do actually buy the lunch. Of course, in the Criminal Court the Crown buys them, and they always let the jury go at eleven o'clock to make sure they won't bring in their verdict till after lunch; I learned that the other day. There is another thing that bothered me a good deal in connection with the administration of justice accounts, and that is the terrific number of constables on the courts.

MR. CONANT: Constables?

A. Oh, yes. I spoke to the Chief Justice one day, asking how many constables he thought he had in his court, and he said, "I don't know; I don't even see them." I said, "You just have sixteen."

Q. Sixteen constables?

A. Yes.

Q. Do you mean as court attendants?

A. Yes, at the door and sitting around the courtroom to keep order.

MR. SILK: I understand that is a matter that is entirely in the discretion of the sheriff.

WITNESS: Yes, it is now, but I have arranged with the sheriff that in certain courts he has four men there, in the Sessions we have six, and in the discretion of the—if there are dangerous characters I leave it up to him to put in more. I can't tell how many are on till I audit the accounts afterwards. I was surprised to find that that number had been increased last month. Of course, the sheriff is responsible for order of the court and the protection of the court; if his discretion is poorly applied, of course, we get too many of them.

MR. CONANT: You think we could get along with fewer constables, though?

A. Oh, yes; they are in the way now, frequently in the way.

Q. Well, that is worthy of consideration, too.

A. Well, constables must cost the city of Toronto upwards of $10,000 in three months.

Q. Your Honour, in the Jurors' Act there was an amendment in 1936 limiting the inspections to six months.

A. Yes.

Q. And then there was a qualification put at the end of the section, "unless specifically ordered by the judge." Do you see any necessity for that qualification at the end?

A. No.

Q. Wouldn't the six months peremptory be sufficient?

A. Yes. Once a year would be plenty now, because that visitation is obsolete. We have newspapers now; we hadn't when the jurors were to make these visitations, but now it is restricted to the High Court grand jury visiting in the spring and the Sessions jury visiting in the fall, and they don't visit many places. But those last words might very well be deleted.

Q. We had evidence here that under that provision which allows the judge to order the inspection there had been I think eleven inspections in Toronto in three years, and the Crown attorney explained it by the fact that the judge had ordered the inspection, thus overriding the statute.

A. Well, speaking for the last three years, I do know that the Chief Justice has disparaged the visiting, and I have done the same thing. It is a nuisance. You see, there are five Assizes and four Sessions in Toronto every year; not infrequently the grand jury of the High Court will be entering a building when the grand jury of the Sessions are coming out; that has actually occurred.

MR. FROST: Do you think, sir, that the visitation of grand juries to public buildings is desirable, or do you think it might be dispensed with?

A. I think it is obsolete. That was started when we didn't have publicity and government inspectors and all that sort of thing, but these are all covered by government inspectors, and if anything is wrong anywhere the newspapers soon tell us about it. I think it is obsolete, myself.

MR. CONANT: Well, thank you, Your Honour. I am sure we are greatly obliged to you for coming up this morning.

MR. SILK: Mr. Fairty is the next witness.

IRVING S. FAIRTY, K.C., Toronto Transportation Commission.

MR. SILK: Mr. Chairman, you remember when Mr. Dawe was here the other day he promised to put in a memorandum. I have just received it.

Q. Mr. Fairty, you have been general counsel, or, rather, Chief Legal Adviser, to the Toronto Transportation Commission since 1920?

A. Since 1920, yes.

Q. And you have indicated to me that you want to make certain representations to the Committee on the matter of juries?

A. Yes, and a number of things, if the Committee will permit it. May I, in opening, because I have not been in politics for thirty years, express my congratulations to the Government and to the Legislature of this province in appointing this Committee. I think it was an excellent thing to do, it was much needed, and I appreciate very much, from what I have seen of the Committee, the open-minded manner in which they have accepted opinions from everybody and refused to accept those necessarily because they came from exalted sources.

I may say further that, although I am general counsel of the Toronto Transportation Commission and president of the Canadian Transit Association, I had deliberately refrained from seeking instructions from either body before coming to you. I come to you as a lawyer of some thirty-three years' experience. I cannot get away from my affiliations, of course, and I shall refer to them later, but I come to you as a man who has had as much to do, possibly, with civil litigation, civil negligence litigation, in this city as any other man, with the possible exception of Mr. Thomas Phelan. I also have in my office, I think it is fair to say, much to my dislike, as much litigation, possibly, as any other office in the province of Ontario, so I think I have some qualifications for appearing before this Committee.

I want to say, first of all, in opening, that I am going to throw a discordant note into the chorus of harmony which I have heard all the times I have been up here. I have not heard all the evidence, like the members of the Committee have, but what I have heard would rather lead me to believe that the Benchers and the members of the Bench that have appeared before you consider this juridically the best of all possible worlds. I don't. I think there is a great opening for judicial reform along some of the lines that have been suggested to this Committee.

I stand with Lord Buckmaster in what he said when he addressed the Canadian Bar Association some years ago. He made the whole theme of his address judicial reform. He pointed out, for example, that in the nineteenth century the Registrar of the Court of Chancery in England was the Duke of St. Albans; that was a hereditary office, and the reason that was so was that in a fit of whimsy Charles II had appointed Nell Gwynne to that exalted office, and the Dukes of St. Albans were her descendants. I suppose the junior Bar would welcome such an appointment. However, he said, why did those things continue till almost the middle of the nineteenth century, and other things just as bad? Well, he said, because we never see the things that lie closest to us. He said, if we look carefully there is room for reform of our judicial system even yet, and that is the attitude I take, and that is the attitude that Mr. Kenneth Mackenzie, the Vice-President of the Canadian Bar Association, took, as I understand it, before this Committee. I heard him, and he said the profession should not look at these things from their own selfish attitude, they should look at it from the standpoint of the public and what is best for the public, and that is the attitude in which I approach this Committee. I am blunt about the thing: I do not think lawyers should be judged in their attitude to the public in any other way than garagemen or plumbers. It is how best they can serve society, and if they don't serve society some change should be made. I do not think our civil negligence sustem is efficient, and I intend to say so.

Now, I want to clear some more ground. We hear a lot of loose talk even from exalted sources in this connection. I was present the other day at the opening of the Assizes in Toronto, and the judge, whom I admire and respect very much, told the grand jury that in his judgment the grand jury was the foundation stone of our civil liberties. Now, I don't know anything about the grand jury, never had a criminal case in my life, and my opinions are of no value whatever, but I thought if that is so England, Ireland, Scotland, five provinces of Canada and South Africa have lost the foundation stone of their civil liberties. I mean, that is loose talking, from whatever source it comes, and the same sort

of loose talk is all the time being adopted and used in connection with petit juries, and I think it is about time we looked at these things on their merits and demerits; and because somebody says—which is not true—that the petit jury was an advantage in the seven bishops' case, is no reason why it should be continued in the city of Toronto between Jones and Smith in the year 1940. Let us look at these things with the idea of seeing whether they really do serve the public.

First of all, we have it on record here, and we have Benchers coming up and telling you, that our petit jury system was guaranteed to us by Magna Charta. Magna Charta was passed in 1215, and there was not anything like the petit jury system in force at that date; in fact, it was not till the reign of Queen Anne that the petit jury became anything like the institution it is at present. So let us get away from that kind of loose talk.

I am not dealing with it in regard to its efficiency in criminal cases; it may protect the liberty of the subject in criminal cases; I don't know anything about it. I don't imagine Mr. Comba of Renfrew thinks it did. There was a man, a young boy practically, who was sentenced to be hanged for a terrible murder, and the Court of Appeal and the Supreme Court of Canada said there was not one tittle of evidence to justify that conviction. It did not protect him from the local situation in Renfrew, and I don't know whether it does protect the liberty of the subject, but, anyway, it has nothing to do with civil matters.

I have always had the habit, and I like the study of constitional law and history, and I have never in my reading of the situation ever seen where and when the jury system has protected the liberty of the subject, and I would challenge those who say it does to give me illustrations of when and where it has done so. I want to read from the latest book on the subject, a book which, if it had not been for the war, would have received far more attention than it has. It is written by Professor Jackson of Cambridge University. He has not gone against the jury system, he leaves his whole chapter with an open mind on the matter, but he examines into the question of whether in the past it is true that the jury system has protected the liberty of the subject, and I should like to read this to you. This gentleman is a practising solicitor himself. He says:

> "Modern writers are singularly chary of committing themselves to any opinion about juries. The eulogies of Blackstone are definitely unfashionable. The current opinion is perhaps on these lines: jury trial in civil cases is sometimes satisfactory and sometimes most unsatisfactory, and hence the restriction of jury trial has been a wise development; however, there is much to be said for jury trial in criminal cases and (in the past at least) in cases where the liberty of the subject is concerned. If juries have in the past protected persons against political oppression, and if the conditions under which they did so are still existing or reasonably possible, then we have a point of such importance that it should receive priority in discussion.
>
> In the late eighteenth century we get many professions of enthusiasm for trial by jury. Lord Camden said: 'Trial by jury is indeed the foundation of our free constitution; take that away, and the whole fabric will soon moulder into dust. These are the sentiments of my

youth,—inculcated by precept, improved by experience, and warranted by example.' When Erskine was made Lord Chancellor in 1806 he took 'Trial by Jury' as his motto, although it was said that 'by Bill in Equity' would be more suitable for the Woolsack. Erskine was so enthusiastic about juries that Lord Byron, after sitting next to Erskine at dinner and hearing about little else, felt that juries ought to be abolished. Lord Loughborough, before his appointment as Lord Chancellor, declared that: 'Judges may err, judges may be corrupt. Their minds may be warped by interest, passion and prejudice. But a jury is not liable to the same misleading influences.' "

MR. FROST: How could you get away, Mr. Fairty, from the fact that juries themselves bring the people in touch with the administration of justice, and give the man on the street the feeling that he is part and parcel of it, and that he is going to get a square deal when he goes to court? How can you get around that?

A. I am coming to that. I am trying to clear the ground. I am saying first, that is a point in favour of juries, and I admit it, and I am coming to that.

Q. Isn't it the important point? How can you get away from that?

A. I think so. Then the other, as I suggest, is not the important point, and it is not proved, that they have been the protectors of the liberty of the subject. Could you let me finish this? This is not bad. He goes on:

"Even Lord Eldon, when he was Solicitor-General and found that for political reasons he could not oppose Fox's Libel Bill, began his speech 'by professing a most religious regard for the institution of juries, which he considered the greatest blessing which the British Constitution had secured to the subject.' The old constitutional law books are in the same tradition. In two more recent works, intended for a wider range of readers, we get stress on the past value of juries. Modern books on constitutional law, such as Wade and Phillips, make no comments upon jury trial.

The assertions that have been made can be tested against decided cases. If all the cases cited in Wade and Phillips, Constitutional Law, in the section on the Citizen and the State, are examined, it will be found that juries played an insignificant part. First, the divisional court of the King's Bench Division seems the most important court, whether for prerogative writs, appeals by case stated from summary courts, appeals from Quarter Sessions, or (until recently) appeals from County Courts. These functions have always been exercised without juries. Secondly, where a jury was used, the jury either (a) answered questions so put that the jury cannot have known in whose favour they were finding, or (b) followed the judge's opinion.

Cases reported for their legal interest are not a fair sample of the cases that come before the courts. Pleasant chatty reports like Howell's State Trials give us a better indication, for we get all the political trials worth noting, irrespective of their legal interest. Many of these were sedition trials. Dr. Jenks points out that the vagueness

of sedition is 'a danger to the liberty of the subject . . . Happily, in the days when this danger was greatest, the sturdy independence of juries was a real safeguard against oppression, and a strong justification of the jury system.' I have examined many of the late eighteenth-century trials for seditious libel, and failed to find any justification for this view. In reading these cases I found it quite impossible to predict what the jury was going to do; for every acquittal there was a conviction to balance it. In 1792 Paine was convicted for publishing the Rights of Man, whilst in 1793 his publisher Eaton was virtually acquitted. The jury found Eaton 'guilty of publishing'; the judge pressed the jury to alter their verdict, but all the jury would agree to do was to alter it from 'Guilty of publishing' to 'Guilty of publishing that book'. As Fox's Libel Act had been passed, the effect was an acquittal. Poor Daniel Holt was convicted in 1793, and completely ruined, for publishing suggestions for mild reform of the franchise and parliamentary constituencies," ——

and the poor fellow was deported ——

"whilst the case of John Reeve in 1796 is a standing warning of the danger of knowing too much legal history. The list could be continued. The only cure for admiration of these juries is to read the State Trials, and ponder over the possibility that if the printer put 'guilty' when he meant 'not guilty' and *vice versa*, you would not have noticed anything odd."

Now, that is what the latest commentator on our constitutional history says. I shall come afterwards to its effect, to the arguments in favour of the jury system, but before doing so might I go over with the Committee, if you will permit me, the cases in which juries are permitted by civil practice—I suppose the members of the Committee are all familiar with it, but I should like to enumerate them.

MR. CONANT: You mean the statutory cases?

A. All the cases in which they are permitted and not permitted. If I am not boring the Committee, I would like to. In the first place ——

Q. Well, you refer to the statutory requirements?

A. I will summarize them. First of all, there are equitable issues, many of which are questions of fact, which are not allowed to be decided by juries.

Q. But outside of the statutory cases it is always in the discretion of the court, isn't it?

A. Well, of course, they can always strike out a jury notice, but in practice they never do it. In practice it is just as strong as any written law in that regard. Let me mention the case of Davies v. Nelson (61 O.L.R. 457), the trial of an equitable issue. That was an action brought against executors for alleged breach of trust in selling lands at an under value. The trial judge did not recognize the case as one involving an equitable issue and refused to strike out the jury

notice. The jury found in favour of the plaintiff and awarded damages against the executors. The Appellate Division held that as the issue to be tried was an equitable one, the jury notice should have been struck out but instead of granting a new trial, it reviewed the evidence and found there was no evidence whatever of any negligence on the part of the executors and dismissed the action with costs. That goes to show that it was on just more or less a technicality that that man escaped a wrong verdict against him.

Our courts have gone further, as Chief Justice Rose pointed out yesterday, in striking out jury notices than the English courts. For example, I could suggest to you such cases as Banbury v. Bank of Montreal, which is almost the same type of case as Wise v. Canadian Bank of Commerce. The Banbury case was tried by a jury, and in the Wise case the jury notice was struck out, and why I do not know. Why should banks be protected against unjust verdicts when other people are not? It is hard for me to see.

Q. That word "protected" you use is rather ——

A. Well, I do use the word "protected". I will go further than that, and I am going to be pretty strong about this matter; I am going to be quite blunt.

Here are some of the matters in which the courts have ruled that they will not allow jury notice in Ontario: Actions against physicians, surgeons and dentists for malpractice,—they do in Manitoba, though—to determine fraud on an insurance policy, issues involving complicated facts or law, actions against banks or financial institutions involving allegations of fraud, and actions involving intricate or specialized knowledge such as actions on a patent.

Q. Those are derived from practice, you mean?

A. Yes, that is all it is. There are other cases: it was not allowed in an action to determine the proper fees for medical attendance, an action against a college by a master for wrongful dismissal, an action against a police officer for alleged assault and battery, and of course we know the rule in the case of malicious prosecution.

Why—may I ask any defender of the jury system *in toto* to answer me this — why is it that it is not allowable to disclose to a jury the fact that a defendant is insured? There is no statute to justify that; that is completely judge-made law. If they have the complete confidence in the jury that the Bench claim they have, why have they made such a rule? Is there any reason why a jury should know that they can go after the C.N.R., the C.P.R. or the T.T.C., but they must not know that when they are going after Mr. Jones they are going after the Employers' Liability Company or some other company? Is there any reason for it?

Q. What do you suggest is the reason for it?

A. The reason for it is disclosed in the decided cases, because they say that juries would be prejudiced against the defendant if they knew he was insured; and that is the same Bench that say they are all in favour of the jury system.

MR. FROST: Well, of course, I admit this, that I think perhaps there is a good deal in what you say about keeping back from the court the fact that there is insurance, but, on the other hand, on the merits of the case, what difference does it make to the merits of the case whether the man is insured or not?

A. It doesn't make any, but that is the whole thing.

Q. Why then bring something into the case that has nothing to do with the merits of the case at all?

A. The answer is this: because if insurance is disclosed the case will not be decided by the jury on its merits.

MR. FROST: Of course, mark you, there are a lot of people who fail to understand what insurance is for, and they think because there is insurance and because an accident takes place the insurance company inevitably should pay; it is curious what a misunderstanding there is among the ordinary mill run of people.

MR. STRACHAN: They think that the insurance companies have to pay.

MR. FROST: Well, not necessarily, but you run across people who say, "Well, the other man has public liability and property damage on his car, and I have had an accident and I haven't any insurance; why shouldn't he pay? He has got insurance." That is not what insurance is for.

WITNESS: Well, it is not what it is for, but may I give you a perfect illustration of the matter? I happen to know. I meet every year a good many men in the same class of work as mine in the United States, and I have discussed this very point with the people from Boston, which is in the only state, the only jurisdiction, that I know that has compulsory insurance. They say that there is never, practically, a verdict for the defendant in the jury courts at common law.

MR. CONANT: Never a jury verdict for the defendant?

A. Yes. Now, why is that? The defendant must be right sometimes. Of course that is why, because the jury don't care, they think they are taking out of a big pocket, and that is all they are looking at. Will the defenders of the jury system *in toto* come out and tell me why they should not be allowed to disclose insurance, if they have complete confidence in the jury?

MR. STRACHAN: Often both parties are insured, and the jury spends its time figuring out which one of the two is insured.

WITNESS: Well, why should they look into those things at all? Let me be fair; I want to be fair on this thing. Juries vary. I have seen some excellent juries, and I have admired some of the decisions they have given in many cases. And juries vary, I am going to say, in Toronto and the outside points, according to my experience. Juries in the outside points are for better than the juries in Toronto, for some reason. That is a matter I intend to take up later.

In 1896 the Legislature decreed that municipalities should not be sued in

actions for non-repair of a highway with the aid of a jury. I was amazed to hear Chief Justice Rose suggest yesterday that that legislation was instigated by plaintiffs. I should think it would be the defendants. However, no matter by whom it was instigated, isn't the answer the same—a lack of confidence in the jury which inspired that legislation?

MR. CONANT: One of the Justices here yesterday, I forget which one ——

A. Chief Justice Rose dealt with it.

Q. I asked him if he knew the genesis of that, the reason back of it. I was surprised at his observation; I never thought it was that way.

A. I don't think it was.

Q. What is your observation?

A. My belief is that it was inspired by the municipalities. However, I am trying to check it up, and if I find anything I will certainly bring it before this Committee. But, as I say, no matter which it was, it was inspired by a lack of confidence in the jury verdicts.

Q. I always thought that that originated from the thought that where the municipality is concerned, and the defendant is really ten thousand people or six hundred thousand people, there would be a tendency for the jury to mulct the defendant.

A. To dip into the big pocket.

Q. His Lordship takes exactly the opposite view.

A. Takes the opposite view. But may I ask the Chairman to test it? If there is any doubt upon the matter, I suggest, let us hew to the line and be completely logical, and introduce an amendment to the Judicature Act at the next session of the Legislature, that these actions shall be tried by juries, and see what the attitude of the municipalities is. If Chief Justice Rose is right we will soon find out.

Finally, in 1930 the Legislature passed a special Act with relation to the Sandwich, Windsor and Amherstburg Railway; that is the institution that runs all the transportation systems down at Windsor. I don't know whether it got through without knowledge of anybody or not, but they took away in the case of that company all rights to trial by jury.

Q. Why?

A. I don't know.

Q. You should have the answers to these, Mr. Fairty.

A. I don't know. I think it was probably—probably the Government had something to do with it; I imagine that is the answer. Wasn't it the Hydro?

I think so. So I say in regard to that, the Legislature has in respect of that municipal enterprise adopted the suggestion that has been made by several members of the Appellate Division several times, that in the case of municipal institutions they should be protected against trial by jury in just the same way as the municipality is protected in cases of non-repair of a highway.

Q. You use that word "protected" quite frequently, Mr. Fairty.

A. Well, I am speaking from our own experience. I am saying this, that I feel that I represent the workers of Toronto far more directly than anybody else can possibly do, because every cent that comes out of our revenue is directly taken from their pockets, and I am telling you that it is ——

Q. You mean by that that your deficits go on the taxpayer?

A. Not a cent on the taxpayer, but it comes directly out of the car riders—or the service, because the carfares have not been changed.

Q. Well, if there were a deficit it would go on that?

A. It would go against the car riders; they would have to have either worse service or higher fares.

MR. FROST: What is your experience?

A. My experience is definitely this, that in a great number of cases juries have rendered unjust verdicts against us—a great number of cases; I will go so far as to say I will put it seventy percent—I will even make it fifty percent, to be absolutely conservative; I do not believe that fifty percent of the litigation brought against us to-day would be brought at all if they had a trial by judge without a jury and they knew that justice would prevail.

MR. CONANT: Well, would it remedy the situation if the jurisdiction of the Court of Appeal were enlarged?

A. Yes, I think so. May I come to this in logical sequence? I am going to deal with all the suggestions that have been made for reform, but I want to point out one thing that possibly this Committee did not consider, not sitting in the position I am sitting in. It is not the verdicts against us that count so much; it is the fact that we have to settle all claims on the basis that we may have to go before a jury who will give an unjust decision, and that costs us far more than any verdicts that are given against us. I have had a lawyer come into my office and say, "I haven't any case here to speak of, but I have got a woman plaintiff, and that is all I need"—and it is the truth.

Q. Of course, if you were here you would recall, I think it was Chief Justice Rose—I asked a rather guarded question along that line, and he did not indicate that he was aware that such actions were prosecuted.

A. May I ——

MR. FROST: Chief Justice Rose here yesterday—I don't know whether you

heard his evidence, but in effect he said this, that in his long experience with juries he found that they were pretty nearly always right.

WITNESS: Now, just a minute. When he said that, one case flashed through my mind. It was tried before Chief Justice Rose and a jury about three years ago, and I could mention the plaintiff's name, but I won't bring it out in public. A lady was boarding a car at the corner of Albert and Bay. The door was open; the car was stopped; there was no suggestion that either the step or the car moved or anything. She fell, and she broke her ankle. She had no evidence whatever of any kind, and her own evidence I think was fairly honest. She said, "I fell, and I wouldn't have fallen if it hadn't been slippery, and it wouldn't have been slippery unless there was some snow or ice or other foreign substance on the step, but I never saw the step and I can't say from observation whether there was or not." There was plenty of evidence to the contrary, that the step was dry and clean. On that tittle of evidence—it is not evidence at all—on that conjecture, the judge charged strongly in our favour. The jury brought in a verdict directly against us. We took it to the Court of Appeal, and by a majority of two to one it was sustained. Now, with all due respect to Chief Justice Rose, I do not think he can defend that verdict. He would say, I suppose, that is a sporadic case.

MR. FROST: He was speaking of the great run of cases.

A. Yes, I suppose he was.

Q. I suppose that there are exceptions; there are bad decisions from both judges and juries, aren't there?

A. Oh, there are, but the situation is this, as I see it: Juries are not corrupt or anything of that sort, but they are not experienced. A judge has all his life been accustomed to the weighing of evidence and the sizing up of witnesses and that kind of thing; he knows, for example, what is the relative standing of the doctors in a community, and when we have one of the best surgeons in Toronto opposed by a man that everybody knows is a quack, he can size that sort of thing up, but the jury can't; they give the same weight to some doctors I could name as they do to Dr. Gallie, and there you are; it is a case of experience. I have too much respect for my fellow men to suggest that they would do anything deliberately dishonest or wrongful, but they don't know.

MR. CONANT: Mr. Fairty, I don't want to shut you off at all, but I think your advocacy of the abolition of the jury system would be rather futile. If you want to direct your remarks to let us say curtailment of the system ——

A. Before I finish with my question of the efficiency or inefficiency, let me say that I made a careful study of a whole year's cases in the jury and non-jury cases, the same type of cases, and I found that the average jury case took eleven hours and one minute, and the average non-jury case took six hours and thirty minutes.

Q. There is no doubt about that.

A. And when you consider—I was told by the sheriff that the cost of sum-

moning jurors and constables was $208 a day, and when you add the light and the heat and everything else of the courtrooms it must be nearly $500 a day.

Q. Well, what curtailment do you think there should be, Mr. Fairty?

A. Well, now I come to the question of remedies. The first remedy that could be suggested would be complete abolition. I am frank to say that if I were in your position, sir, I would find it difficult to recommend such a thing, because it does run contrary to public opinion; it may be uninformed public opinion, but it is public opinion—although it has been done at the present time in England, except where they are permitted as a special measure.

Q. You are referring now to the burden in England to-day?

A. Yes.

Q. Have you any remark to make on that?

A. Yes.

Q. That is a very interesting subject to me. In England, as I recall it, and in one of our provinces, they have shifted the burden.

A. New Brunswick.

Q. New Brunswick?

A. Yes. Well, as to that, I only have to say this: After all, the courts have got to use a judicial discretion, and why should they not grant juries in one negligence case unless they grant them in all? I mean, there is no reason that I can see why it would not be just an extra application to the court, because the judges would come around to a practice whereby they would grant them in every negligence case anyway unless there was something very, very intricate about it, and we would be just as bad as we were before, and with the extra expense of another interlocutory application.

Q. Of course, you are confining your remarks particularly to negligence cases?

A. I am.

Q. There are a great many other categories.

A. Well, if you will permit me to confine myself to negligence cases, that is all I am dealing with.

Q. All right, go ahead.

A. Then the second thing that is suggested is making it more expensive, that is to say, instead of the average fee for setting down a case now, to make it $25 or $50 or something. I am completely against that, because if the jury system is right it should be available to the poorest in the land, in my judgment.

There should not be one law for the rich and another for the poor, and in any case in practice it would come against the poor defendant anyway, so I see nothing in that.

I think that the Legislature might seriously consider the abolition of the jury in actions against municipal public bodies, for the reason that all these revenues are public revenues, and justice is absolutely assured to everybody by a trial before our excellent and patient Bench.

Q. You mean what might be called creatures of the municipality?

A. Yes.

Q. Hydro commissions?

A. Hydro commissions.

Q. Public utilities commissions?

A. Yes, all through the province.

Q. Transportation commissions—and there are quite a large number of such organizations.

A. Just the same as a bill that was introduced in the House a couple of years ago. I suggest that, or I suggest that Mr. Justice Middleton's remedy might be adopted; that is, by giving the Appellate Courts more power. I am not at all sure that the remedy proposed by the judges is the proper remedy, which means, as I understand it, practically the thing that Mr. Chitty suggested in the *Fortnightly Law Review*, that a decision of a jury should be given the same treatment as the decision of a judge.

Q. You would not go that far?

A. I would, but I don't think that is far enough. I mean, I have seen plenty of decisions of judges treated with far more respect than I would suggest they are entitled to, and I am not at all sure that that will cure things very much. I think that remedial action should be taken where there is a plain case of injustice, and this is the way I would do it: I would pass this Act:

> "Section 26 of Chapter 100 of the Revised Statutes of Ontario is amended by adding thereto the following subsection: ——"

Q. Wait a minute till I compare this with the judges'.

A. Well, I haven't had a chance to see theirs. Here is mine:

> "(4) Where a verdict or finding of a jury is, in the opinion of the Court of Appeal, at such substantial variance with the evidence or the weight of evidence as to constitute a miscarriage of justice, the said court may set aside such verdict or finding."

Now, what is wrong with that? If it is plainly a miscarriage of justice, shouldn't it be set aside?

Q. Mr. Fairty, the longer I have considered this and listened to the submissions the more I think it comes down not so much to a matter of verbiage or phraseology or formula, but it all depends upon the method in which the Court of Appeal applies that formula.

A. Yes, to a large extent it does, or, worse still, the method in which the Supreme Court of Canada applies the formula; because the Supreme Court of Canada at the present time takes this plain attitude: "We are not interested in the results of the machinery, the product of that machinery; we are only interested in whether the machinery works." So when the Chief Justice of Ontario told you lately that the Supreme Court of Canada has said in several cases that the Appellate Division was wrong, I think that is an inaccurate way to put it. What they have said is: "We don't care whether it is right or wrong; we don't care whether injustice has been done or has not been done; the only thing we are looking at is, did the machinery work? If it worked, we care not what came out of it." That is the whole attitude of the Supreme Court of Canada to-day, and, to my way of thining, it is practically a denial of an appellate jurisdiction. On that I should like to read something else, if you are not wearied.

MR. FROST: Did you hear Chief Justice Robertson yesterday?

A. Part of it.

Q. Did you hear his reference to that?

A. I did, and that is what I was rather surprised at. He said, "The Supreme Court of Canada said we were wrong."

MR. STRACHAN: I thought they went a good deal further than that; I thought the Supreme Court's decisions went a great deal further than that.

WITNESS: I am bound to agree with Dr. Wright at the Law School; I think a great deal of the best thinking on jurisprudence these days, whether you like it or not, comes from south of the line, I mean by the law schools there and their commentators and what I might call their judicial philosophers. One of the books I should like to refer to is a book that was published last year, which is commented on very favourably by Dr. Wright. It has to do with Criminal Appeals in America, and is written by Professor Orfield of Nebraska Law School. Although he deals primarily with criminal appeals, what he says has also validity with regard to civil appeals, and if you will permit me I should like to read—it is not long—what he says about this:

> "Excessive powers of juries are partly a remnant of pioneer conditions in which there was something like contempt for scientific methods and technical skill and over faith in versatility—in the ability of any man to do anything. . . . Reluctance to review the case, leading to ultra-technical review of the record is an outgrowth of a conception of the jury in criminal causes as more than a fact finding agency—as an ultimate tribunal. . . .

> At any rate, successive appeals confined to search of the record for error are no guarantee of sound results on the facts."

And yet that is all the Supreme Court of Canada ever undertakes to do.

> "Even with respect to the facts the view of the jury should not be treated as final. The notion of democracy involved can offer little solace to a defendant improperly convicted. Jury trial can serve its function as a safeguard against arbitrary invasion of individual rights, without being treated as final or absolute. This function does not demand that arbitrary convictions be accepted. True, as a matter of convenience an Appellate Court will generally take the view of the jury or trial court as to the facts of the case. But the Appellate Court should not be precluded from reviewing the facts. There should be nothing sacrosanct about the view of twelve laymen who happen to sit on a case. The whole history of juries has involved efforts at controlling their verdicts. The theory of finality of jury determination of facts must be thrown into the scrap heap of discarded absolutes."

MR. FROST: That, of course, sounds logical, but, Mr. Fairty, in practice how can you get away from the great advantage that the jury has, that has the opportunity of seeing the witnesses and sizing them up and applying that human nature, that human quality that jurors as a cross-section of the public are supposed to have? How do you get away from that?

A. Now, just let me take that illustration I have given you, about that lady on the step. There was really no evidence there of any negligence—mere guesses; one guess superimposed on another guess is not evidence, surely—and how can you defend a jury verdict of that sort? And should not the Court of Appeal be given power to set a thing like that right?

Q. I agree; but how are you going to get the formula that is going to permit them to distinguish between what is perverse and unjust and the other run of cases?

A. Well, the Chief Justice of Ontario yesterday, to my way of thinking, made a very wise remark; he said that that thing, in his judgment, could be safely left to the good sense of an Appellate Court.

MR. CONANT: If it were broadened, you mean?

A. Yes.

MR. FROST: Who said that?

A. The Chief Justice of Ontario, and Mr. Justice Middleton, who has had more experience and, in my judgment, is as good a judge as there ever was.

Q. Chief Justice Robertson said this, that he thought that this matter should stand over until a better formula was obtained. Now, the big question is, what is the formula?

MR. CONANT: What is the formula?

MR. FROST: What is the formula?

A. Well, how long does it take to get a formula? If it stands over it will stand over forever.

MR. CONANT: Mr. Fairty, I am not prejudging; I am not expressing my final opinion. It seems to me this question comes down to a consideration of this more or less fundamental proposition: You have from jury trials, from my experience and from what I know of such things, two different classes of verdicts, which may be subject to appeal: a judgment which we will call perverse, and another class, in which different minds might honestly differ. Now, so far as I am concerned, I am disposed, if a formula could be developed to deal with the perverse judgment ——

MR. FROST. So would I.

MR. CONANT: —— to open the Court of Appeal to deal with that, but I am not disposed at the moment to allow the Court of Appeal to reverse what may be a difference, an honest difference, of opinion.

A. Well, that is how I have approached the situation. I go completely with you, sir. I think that is the way it should be.

Q. Now, where is the formula?

A. If it is so at variance with the evidence and the weight of evidence as to constitute a miscarriage of justice—which is pretty strong language, and it is used elsewhere in the Judicature Act—surely that is a good formula. You wouldn't ask anything better than that.

Q. Well, of course, but with that opening, under that guise, if you want to call it that, a Court of Appeal might call any judgment a miscarriage of justice simply because they honestly disagreed with what the jury had found.

A. Well, if you lose all confidence in your Court of Appeal, then I don't know where you are. But at the present time let me say this, that my experience is just this: The last case in which I was up before the Court of Appeal, Mr. Justice Fisher said in open court to me, "I am sorry, Mr. Fairty. I appreciate your point of view, I think you are right in coming here, but, in view of the attitude of the Supreme Court, I do not see there is any hope whatever of bringing any more cases before us."

Q. Well, of course, that is a denial of justice, for the court to ——

A. That is what they said, "There is no sense bringing any more cases up here of this kind." That is true. Then what happens? I have found, as you do find when there is practically no appeal, I have found that reacting upon the trial courts. I am not going to go into details, but you know perfectly well the difference in treatment in a Division Court case when you can appeal and when you can't appeal, and it is coming right down to that, that if you deny a practical right to appeal it is affecting the validity of our trial courts. That is a very serious thing, in my way of thinking, and it is all based upon the attitude of the Supreme Court of Canada, which I think is an outworn and an outmoded attitude.

Q. I am going to ask you the same question as I asked Chief Justice Rose yesterday. I may not be framing it the same way, but I asked him if he thought that with our present system, with the jury's verdict practically the final say, it did not lead to the carrying on or promotion of actions that never would otherwise have been started?

A. I say definitely. Chief Justice Rose, as I understand it, said, "Yes, that happens in sporadic cases." I say it happens in fifty percent of our cases.

Q. Well, my recollection of what the Chief Justice said is that he was reluctant or hesitated to admit that that was the case. Wasn't that his reaction?

MR. FROST: Yes, I think it was. He said it was, in effect, the exception.

WITNESS: I think there is a great deal of perjury going on in that class of action, there is a great deal of subornation of perjury, and a lot of things I can't prove.

MR. CONANT: Well, Mr. Fairty, frankly, I think perhaps that is the most serious aspect of the whole thing. I am only expressing my own view, not the view of the Committee.

A. I brought it to the attention of the law officers of the Crown on one occasion, a case where a juryman told us he had accepted a bribe, and he intimated that he had been bribed before. Now, how are you going to prove those things? You can't get a conviction, there is no way at all of getting anywhere, but those things I think are going on and have gone on in our courts. Mind you, I think that is a very, very isolated case; I would not for one moment suggest that that is the common thing with jurymen—as I say, I think the average common man is a pretty decent fellow—but that sort of thing does creep in. And, furthermore, I was going further—I have rather lost the thread of things—I was going further into the question of juries. You have heard here how they are picked, and you know it better than I do; all I know is what I get, what I run up against.

Q. I would not be so sure of that.

A. Here is a set of jury lists, the first that come to hand. First of all, I suppose, there is a fairly decent selection from the voters' lists, and practically every man of substance in that whole list is struck off before we see it. Here is H. C. Hatch; he could afford to come and act as a juryman; he is off. Thomas H. Fox, who I happen to know is sales manager of the Imperial Oil, he is off. And so it goes. If by any chance some people respect their citizenship so highly that they come and say, "I will serve as a juryman," what happens? They go off with the four challenges right away on the part of the plaintiff, and who is left? You have left the residue of this list, who probably have a majority of people who are dissatisfied with the world, disappolnted, and have a grudge against society.

MR. FROST: Of course, I agree with you; I think that the exemptions are altogether too broad, not only too broad ——

A. Well, look at it; there is the way it comes to us in the office.

MR. FROST: The truth of the matter is this: in this day and generation the people owe a great deal to their country, and one of the ways in which they can serve their country is on the jury, and they should be there regardless of position.

MR. CONANT: These red lines indicate that they have been excused?

A. Yes, have been excused.

Q. By the presiding judge?

A. I don't know; that is the way it comes to us.

MR. SILK: The sheriff takes it up to the judge.

WITNESS: Maybe some are dead; I don't know; there may be one or two men dead.

Now, may I go on, with the permission of this Committee. I have been speaking pretty frankly, I think; I am going to even treat the members of the Bench, with the greatest respect I hope, but still as public servants and not demigods, and I cannot help feeling that a certain percentage of the failure of the jury system lies in the far too perfunctory charges that are made by judges to the juries. I do not think it is good enough. In that case of Banbury v. Bank of Montreal, Lord Justice Scrutton said it was not to be tolerated that they should say, "You have heard an excellent address by each counsel, and you have heard the evidence; you can retire to your jury room," and that is what too many of our judges do. I don't know what you are going to do about that, but in itself that is a criticism of the jury system. In fact, a man who has been Treasurer of the Law Society said that he thought the fault lay more with judges than with juries; I do not think so, but that was his opinion, anyway, to me expressed.

The worst of it is, as I say, the penalty that we pay through the fear of injustice, not the actual injustice suffered. I have it here, and I want to be sure that I have it accurately: the average time for a non-jury negligence case in 1936 was six hours and twenty minutes; the average time for a jury case was eleven hours and two minutes. In that connection, think of it from the public aspect. Here were two cases that we had in 1938 of which I have a memorandum:

> "A youth who was riding a bicycle westerly on Dundas Street near Augusta collided with the side of a street car behind the exit doors. He claimed a truck backing up caused him to swerve, and his claim against the Commission was that the car was proceeding at an excessive rate of speed, although what bearing this had on the accident was hard to see.
>
> The bicycle the boy was riding was damaged and he received slight and trivial bruises. I think that either of us would have thought that $50.00 would have been adequate compensation for his injury.
>
> His action came on for trial before the Honourable Mr. Justice

McFarland and a jury in the Supreme Court and lasted on the 9th inst., from 3.00 to 5.00, all the day on the 10th, 14th and 15th and the jury were out till 8.30 p.m. They brought in a verdict dismissing the action against both defendants and assessing his damage at $238.75, an amount as stated above extremely generous but doubtless in part caused by the exaggerated claim put in by the plaintiff.

We, therefore, had a case involving a trivial amount which took up the time of the Assize Court for nearly three and a half days at a cost to the public of probably between $1,000.00 and $1,500.00."

MR. CONANT: How much was the verdict?

A. If he got it, it was $238.00, but they refused to give it to him.

Q. You say the jury's verdict was $238?

A. Yes.

Q. And what would the total costs and expenses be involved in that case?

A. I say from $1,000 to $1,500 to the public.

Q. Now, to the parties themselves; another $500.00 altogether?

A. I would easily say that.

Q. So that that case would perhaps involve expenses of $2,000.00, would it?

A. I think so, yes.

Q. And the amount adjudicated was $238.00?

A. Yes; and $50.00 would have been plenty, because he was not hurt at all.

MR. STRACHAN: Of course, that brings up another point, Mr. Fairty—the light-hearted way in which counsel issue writs for twenty and thirty thousand dollars in the Supreme Court, where perhaps, as in this case, the total damage could not possibly be more than two or three hundred dollars. There is no way of checking that.

A. Things are worse in the County Court, much worse. Not only do we have frequent cases in the office where the taxed costs far exceed the verdict, but I make this definite statement, that in my judgment, going through the County Court list and considering that those things take two to three to four days to try, with a trivial case, with a jury of twelve men and the same constables and that sort of thing, honestly I think the county and the city would be money in pocket to pay the claims asked by the plaintiff.

MR. FROST: What do you think of Mr. Justice Middleton's suggestion yesterday, that the whole County Court procedure should be simplified, with an idea of making it less expensive, in other words to have the County Court system an intermediate system between Division Court and Supreme Court?

A. I am all in favour of that.

Q. And to abolish all the multiplicity of rules and powers and what-not, and make it, as I say, a court that would lie in between, that would be very much less expensive and more summary?

A. Well, I am in favour of it completely.

MR. CONANT: In regard to that observation, Mr. Fairty, really don't we have to admit that our profession is responsible for some of these abuses?

A. Well, I think their attitude is largely wrong; they are too complacent.

Q. Yes, I know; but the litigants themselves, the people themselves, can hardly be accused of promoting or carrying on all this elaborate litigation; do you think so?

A. No, I don't think so; I am bound to say that; that is unquestionably true in some cases. Now, I am going to suggest another remedy which I imagine you will think is revolutionary, but I think it is of distinct value. If we are going to have the untrammelled jury system I personally would like to see women on juries. They are citizens, they should have the rights and duties of citizens, and, to my judgment, they are the custodians of the family pocketbook, they are the local ministers of finance, and they have far more common sense about money than the men have, and they size up their own sex far better. As I say, probably you couldn't have that kind of story, "A woman plaintiff is all I need," if you had six women on the jury.

MR. FROST: They would be more critical, you mean?

A. Yes. I have made enquiries from the American jurisdictions where this practice is in effect, and they are all in favour of it; they all think it works out.

MR. CONANT: They have women jurors in England, have had for some years.

WITNESS: Yes, and it has worked well; and if you are going to have the jury system at all, I should like to see women on juries myself.

I don't know about the calibre of jurors. I would like to see it improved. On the other hand, I am bound to say this, that I think I have as much regard for the liberty of the subject as anybody, and I hate bureaucracy as much as anybody, but I do not see any reason why every citizen should not have a right to sit on a jury if the jury system is right, and I do not see why men on relief should be barred from sitting on juries. I think it should be a complete cross-section of the community.

Just one other thing while I am on this subject: I am more than impatient with the attitude of mind which keeps on harping about the rigidity and the bureaucracy of the administrative machinery that every community has had to set up these days. Why have they had to set it up? Why do we have these boards and commissions? Because of the failure of the common-law system to work. And I ask members of my profession whether they really are not short-

sighted in opposing these things. The best illustration I can give of that is the Workmen's Compensation Act. I imagine every one of you knew the conditions before the Act was passed; they were shocking to employer and to workman alike. The Workmen's Compensation Act—and I can speak with authority, because we have thousands of cases before it every year—has worked excellently and well, and when Chief Justice Meredith refused to let lawyers have anything to do with it, except possibly as chairman, he did an excellent job, in my opinion. Some of our profession were in favour of it, but those whose pocket it touched took the attitude of the silversmiths at Ephesus, that they would have nothing to do with it, and they opposed it vigorously, and they are doing the same thing to-day. So let Lord Hewart talk about the new despotism, and let Sir William Mulock talk about the infringement of liberty of the subject: if you are going to object to those things, have something better in their place.

MR. CONANT: Of course, your observation is pertinent, Mr. Fairty; we have had considerable evidence, and I think that a great many people have ignored, or at least have not faced the realization or the reality that these commissions have developed because of the expense, the involvement and the delay of litigation through the courts.

A. Certainly; of course.

Q. And various parliaments before us—because this is not the result of five or six years', it is the result of twenty-five years' experience—have developed these boards and commissions to expedite, simplify and make readily available the adjustment of conditions and rights; there is no doubt about that.

A. My experience is, they have done good work.

Q. Isn't that the case?

A. That is what I think about it, yes, that is exactly what I think about it.

Now I want to deal with the question of challenges. As I say, it works out that every man of obvious substance is challenged by the plaintiff the minute he is put in the box. Now, why should there be any challenges at all? I really challenge anybody to say why, and I do not see why there need be.

Q. You mean except for cause?

A. Except for cause. I have had plenty of my friends who have said, "Well, as a citizen I thought I ought to sit on juries." They have been up there, and they have gone through the whole Assize, they have been called half a dozen times, and the minute their names appear, as manager or accountant or something of the sort, off they go; or even if they are dressed well they are not allowed to sit there. The result is, as I say, what you have left are some uneducated, unintelligent men who have a grudge against society, and what sort of justice do you expect from that type of system?

Q. How much longer will you be, Mr. Fairty? I don't want to hurry you.

A. I think I am getting close to the end; twenty minutes, or fifteen.

Q. Well, that's all right.

A. Then this is more or less of a small point: I cannot see why the debate upon the issues laid before the jury is carried out in the way it is. In the ordinary debate the affirmative opens, the negative replies, and the affirmative has a short answer. In this case the negative has to go first, the affirmative goes after it, and the negative has to guess what the affirmative has to say; and plenty of times there are things I could answer but I have no chance to answer them, and even an appeal to the judge does not necessarily produce results.

Then I want to deal with the question of the place of trial; I will deal with that only briefly. I can only suggest this, that here is the situation: The place of trial is regulated by the plaintiff at the present time; he is *dominus litis*, and must show extraordinary reasons to have it changed. It is not balance of convenience; there must be substantial injustice before it is changed. Why should that be so? That is not the rule in England. Why should the fact that an accident happens, and two fellows rush to the Registrar's office, each trying to issue his writ ahead of the other, determine the place of the trial? I mean, that sort of thing should be done as it is in England. I do not suggest there has to to be a summons for directions.

Q. What difference is there in England?

A. It is a summons for directions there, and that, among other things, is one of the matters that is dealt with.

Q. On the directions is the place of trial determined?

A. Yes. Now, going on, the question of jury challenges: This is more or less of a trivial thing, but there is a serious defect at the present time in the law. At the present time four challenges are allowed to each party, and if there are more than one plaintiff or more than one defendant, still the challenge must be split up among them. There is nothing at all to indicate how such challenges are to be split up. Perhaps the trial judge in the case of two defendants would allow each party to challenge two, although there is no obligation on his part to adopt this procedure. What would happen in the case of three defendants I do not know. There is a mistrial if you allow more than four challenges by all defendants or all plaintiffs, as the case may be. So I think that should be looked into, because it often happens that the issue is between the two defendants, and not between the plaintiff and the defendants at all.

Q. Do you think there should be four for each defendant or each party to the action?

A. As I said, I think there should not be any, but if you have the present system something should be done to change the law and make it clear what the Legislature wants.

Q. Of course, in an action with a large number of parties, you might largely exhaust your panel; that is the difficulty.

A. Then, in regard to experts, I am inclined to agree with the members of

the Bench who spoke yesterday, that that thing is not as serious as apparently it looms before this Committee, especially with regard to medical men. I find the average medical man in Toronto, with rare exceptions, fair and reasonable, and there is not as much controversy as one would think, but, even so, there has been enough so that the medical profession have been very restive. I don't know whether you have seen the report that they suggested should be adopted. I have it here. We would not accept it at all.

Q. What's that?

A. We would not accept it at all.

Q. What is it?

A. Their suggestion for a remedy.

MR. SILK: I think this is what you want on place of trial.

WITNESS: Place of trial: this is the English rule:

> "There shall be no local venue for the trial of any cause, matter or issue, except where otherwise provided by statute, but in every cause, matter or issue in every division the place of trial shall be fixed by the court or a judge.
>
> In fixing the place for the trial of any action, cause or issue or matter the court or judge shall have regard to the convenience of the parties and their witnesses and the date at which the trial can take place, and when a view may be desirable the locality of the object to be viewed; and to the other circumstances of the case, including (*inter alia*) the wishes of and expense to the parties, the relative facilities for trial in Middlesex or at the assize and the burden imposed on jurors.
>
> This rule shall apply to every cause, matter or issue notwithstanding that it may have been assigned to any judge."

Well, that is pretty well common sense; but our law, as I say, is that the plaintiff is *dominus litis*, and the venue will not be changed unless the defendant shows some serious injury or injustice to his case will arise from trying it at the place proposed. That is Atwood v. Hall, 27 *Ontario Weekly Notes*, page 86. Surely the English rule is more in accordance with common sense.

MR. CONANT: Well, do you think there is any substantial injustice arising from our rule, Mr. Fairty?

A. Well, I don't know. There was a case we had, of an automobile colliding with a street car at Bay and Fleet. The plaintiff happened to live in St. Catharines. Practically everybody connected with the case, including all the witnesses, resided in Toronto, and yet we were forced to go to St. Catharines to try the case. I do not think that is fair.

Q. You went to St. Catharines to try a case against the Toronto Transportation Commission?

A. Yes. The accident took place at the corner of Bay and Fleet. That is the law. You may be amazed, but that is the truth, and it has happened to other litigants. We had to take twenty witnesses to Belleville in one case.

Q. They could take you to North Bay or Port Arthur on the same basis?

A. Yes. We have had to go down to St. Thomas. I think that law should be changed.

MR. FROST: Of course, that seems to be an absurdity.

WITNESS: As far as experts are concerned ——

MR. CONANT: Mr. Fairty, have you made up any short or concise list of your recommendations?

A. I made some recommendations. I want to change one. I did say at first blush that I thought the cost of juries should be increased, I thought possibly that the cost of juries to the litigants should be increased. I recant that attitude; I do not think it is right.

I suggest this about experts: At the present time you can have your property valued by the Toronto Real Estate Board; they appoint the men best suitable for the job, and they give you a report for a modest fee. Now, it might not be a bad thing if something along that line were adopted so that the litigants in an action might have the Academy of Medicine or somebody appoint somebody to go and give evidence in court. I almost agree with Mr. Justice Middleton, that the parties should be able to call their own men, but the opinions of such a board would carry much more weight than the opinions of the witnesses called by either party, and I think it would be substantially in the interests of justice. I know the system is not perfect, but I think it is more perfect than our present system.

MR. SILK: That might also apply to assessment appeals.

WITNESS: Here is what I have said about a thing that I think is of very serious importance. It has nothing to do with me except as a solicitor trying to help this situation. This is in regard to small claims courts. I will read what I have said:

> "In addition to our other work, our legal staff voluntarily gives free advice to or train men who are in need of the same. Other than this, of course, we do not do legal work for them. This brings us in contact with the domestic problems of a great many men of moderate income and I have been struck with the inefficiency with which our Division Courts are functioning as small claims courts. The costs for institution of action in Division Court for small claims are as a matter of fact higher in proportion than in the higher courts whereas the reverse should be the case. These fees should and could be substantially lowered. I see no reason why most services of process should not be done by registered mail. Further, the amount of time taken out of a working man's day to press a small claim makes it almost impossible

for him to proceed with the same. Again, it is not always that a small claim in the Division Court is treated with the respect and tolerance by a judge that it shonld be, considering the importance it may have to the parties.

In the public interest I suggest a real small claims court for large cities where the fee for entering an action would be nominal and where the sessions of the same would be held in the evening. I am sure that the services of members of the Junior Bar to act as judges in such courts could be secured for a very reasonable amount and those taking such work would receive an invaluable training. This would also relieve the present intolerable congestion in the Division Courts in the larger cities."

What I mean is, something under $50 or so, for the poor man. At the present time, suppose a workman has a claim to which he is legally entitled of four to six dollars; he can't afford to take it to Division Court. I would have those small claims courts set up in four sections of Toronto, where they could go in the evening, and where there would be no red tape or anything but strict equity, and where young lawyers would get an invaluable training, and their services would be remunerated very lightly. I think it is worthy of consideration. It has been done; there are nineteen states that have small claims courts at the present time.

Third-party procedure in Division Court: I cannot see why the Division Court Act or rules do not permit third-party procedure. If it is necessary in the higher courts it may become equally necessary in this court.

MR. FROST: I agree with that.

WITNESS: Negligence Act: It would seem proper that a plaintiff under this Act could admit partial responsibility and sue for a percentage of his damage. Under Parker v. Hughes, 1933 O.W.N., 508, however, the percentage of damage found is applied to his claim not his damage, a situation which, as Mr. Justice Masten pointed out, demanded legislative intervention.

MR. CONANT: How would you attack that? How would you approach that?

A. I would file a claim saying, "The plaintiff admits that he is fifty percent liable for this collision, and he therefore sues for the other fifty percent." Why not? That is surely the logical sequence of our Negligence Act.

Plural trials: Many cases are arising at the present time where the same issue is being litigated in more than one action. A short time ago one of our buses was proceeding south on Lansdowne Avenue when it was run into by an automobile proceeding at a high rate of speed which knocked the driver off his seat, and the bus, out of control, crashed through a property owner's fence. We first were sued by the property owner and succeeded. We then were sued by the owner of the automobile and, after an appeal, succeeded. Finally, we were sued by a passenger in the bus and succeeded again after a trial which took about three days in the Supreme Court. That trial took place, I may say,

before the Chief Justice of the High Court. In the above case it is fortunate that the results in all cases were the same, but it is suggested that to have the same issue litigated three times with possibly varying results, brings the administration of justice into contempt. It may be unjust that a man's rights should be determined behind his back, but even this I think is preferable to the present situation.

Q. How could you make a man come in if he didn't move himself?

A. Well, I don't know. I think something could be done. There should not be a multiplicity of trials; I think it brings the administration of justice into contempt, if one jury decides one way and another jury decides another way. I think it is worthy of consideration.

I can only say that I understand this Committee have already practically decided that there should be no more juries in Division Court.

Q. Well, if you want to argue that there should be, we will hear you.

A. No, I do not.

Trial lists: I don't know whether this has anything to do with this Committee or not, but there has been too much criticism, I think, of the profession by the Bench about cases breaking down on the trial lists, and, to be perfectly fair to the Bench, I think it often happens because of interference with the clerk. The clerk should be allowed more freedom and discretion on the question of trial lists and less interference from the Bench, and I think things would work out a lot better.

Q. You are referring to the trial lists in getting on?

A. Yes, that kind of thing.

Q. Are you aware that in England they have a much more definite system than we have here?

A. No, I am not; I don't know the rule there.

MR. CONANT: That was presented to me during this Committee. Not only do they have a trial list, but they allocate to each case the estimated time that is to be involved, and the litigants and counsel can accept that as correct and come to court at the time that is indicated on the list.

Did you show that to me, Mr. Silk, or was it Mr. Magone?

MR. SILK: It was Mr. Fowler who gave that in evidence; and he also pointed out that they have two trial lists in most courts over there, one for long cases and one for short cases.

WITNESS: Now, this is one thing that has always appealed to me: I do not think there are many things that are more unseemly in our administration of justice than the treatment of witnesses called to our trials, especially in Toronto.

To have ladies and gentlemen forced to wander around the corridors of the Court House or to sit in the most unsatisfactory and inadequate quarters provided for them is not apt to give the public a favourable impression of the administration of our judicial system. This may be, in Toronto, not susceptible to reform until the provision of a new Court House, but provision for decent accommodation for witnesses and the profession should be one of the first objectives of any such new building.

I may say further that I have no admiration for the physical treatment of witnesses once they are called to the box. The judge is sitting, the jury are sitting, but the witness, unless an invalid, is forced to stand, in an uncomfortable position, it may be for some hours; a circumstance which greatly adds to the nervous tension which a witness called for the first time is probably undergoing. In most of the American jurisdictions the witness box is abolished and a comfortable chair is furnished in which the witness can sit. I cannot see that this practice in any way curtails the dignity or decorum of the court proceedings and it shows a consideration for persons called to court usually in reference to a matter in which they probably have no personal interest, which in my judgment they deserve.

Now about pre-trial: I have discussed that at length with American jurists. One of the judges referred to it as a myth. It is not a myth, but it may be a mirage, because it has worked well over there, and I suspect it has worked very well over there because of the great congestion of their lists and the fact that most of those jurisdictions have nothing at all approximating our examination for discovery. If pre-trial is going to add substantially to the cost and expense to the litigants in an action, then I am not in favour of it. On the other hand, it does seem to me that there are plenty of things that can be brought up before a pre-trial judge that could be very satisfactorily disposed of, with the effect of shortening the proceedings at the trial—such things as plans, admissions, and all that kind of thing—and, even if the judge does see how far the parties are apart on the question of settlement, that is a distinct advantage. In the American courts I imagine fifty percent of the cases are settled at pre-trial, possibly because it takes so long to get on.

MR. FROST: That is probably on account of the state of their lists, too, I suppose?

A. Yes, it is. Then there is one other thing about it: the efficiency of pre-trial, I am told, depends substantially upon the judge that is assigned to do it; if you get a good judge you get good results; if you don't, you don't.

MR. CONANT: The hypothetical dialogue that Mr. Justice Middleton gave us here yesterday was not very encouraging.

WITNESS: There is no judge on the Bench for whom I have a greater respect than Mr. Justice Middleton, but I think Mr. Justice Middleton is wrong in confusing pre-trial with the English summons for directions. I do not think the functions are at all the same—hardly the same, in any event. They are not at all identical. In other words, the summons for directions is simply arranging for the machinery of the case, that is all, venue and that kind of thing. I agree with him that that is unnecessary in our practice, but it might easily be that

that pre-trial idea should be watched, and possibly it can be found to be of value in our courts.

MR. SILK: Just before Mr. Fairty goes, I have something here I should like to put on the record. I wrote to officials in the various other provinces to find whether they have any special law applicable to jury trials where corporations are involved, and I can put that on the record in just a moment.

Mr. J. B. Dickson, Deputy Attorney-General in New Brunswick, says:

> "Our laws respecting juries have no special provisions dealing with corporations. This question has never arisen in the province, so far as I am aware."

Mr. Pitcairn Hogg, from British Columbia, says:

> "As in Ontario so in British Columbia, a mistrial results where it is mentioned in the course of a jury trial that the defendant is covered by insurance. There are, however, no provisions in force in this province in relation to jury trials dealing especially with the case where the defendant is either a municipal corporation or a limited company."

Mr. Juneau, from Quebec, who was before the Committee, says:

> "With reference to your letter of the 13th instant, I beg to inform you that, after many searches, I have been unable to find out that any steps have been taken, in the province of Quebec, regarding jury trials when a corporation is involved. However, I have before me a letter dated September 19th, 1939, addressed to Mr. F. H. Barlow, C.R., Supreme Court, Toronto, Ont., by Mr. Guillaume St. Pierre, Chief Attorney of the city of Montreal, a copy of which is enclosed.
>
> You will note that Mr. St. Pierre informs Mr. Barlow that municipal corporations have made a demand to the effect that the jury trials be abolished in cases of falls on the sidewalks, etc., but that said demand was not granted on account of the opposition by the members of the Bar."

From Prince Edward Island, Mr. Bentley, who is in private practice, says:

> "Answering your letter of 13th inst., the inclination of juries to give verdicts against corporations, especially insurance companies, is well recognized here also, but no steps have been taken in this province by way of general legislation to prevent the jury trial of an action where a corporation is involved. In the case of an action for damages such as a collision action against the owner of an automobile where the owner is insured against loss, the knowledge that the fair trial of the action would be affected by a disclosure of the fact of insurance seems to be general, and I can recall no case where a motion has had to be made based upon such disclosure. If disclosure were made I have no doubt the court would hold a mistrial took place.

There is no statute here preventing a jury trial of an action where a municipal corporation is concerned."

Mr. Wilson McLean, Legislative Counsel of Manitoba, says:

"The only information with respect to jury trials in this province along the line of that which you desire is to be found in section 65 of 'The King's Bench Act,' cap. 44, R.S.M. 1940.

You will note that we have the same provision with respect to trial of actions against municipal corporations in our Act as in yours. We have not, however, any provision preventing trial of actions against other corporations being held with a jury.

Without comparing the Ontario law with the Manitoba law, I am under the impression that out right of trial by jury is somewhat more restrictive than yours."

Mr. Runciman, Legislative Counsel for Saskatchewan, says:

"In the circumstances mentioned at the beginning of your letter," ——

that is, as to what occurs when insurance is mentioned —

"it is recognized here that the judge, following the cases on the question, may in his discretion take the case from the jury or adjourn it for trial before another jury.

We have not in Saskatchewan a provision such as that contained in section 53 of The Judicature Act of Ontario."

That is in regard to non-repair of highways.

"With reference to your inquiry as to any steps taken in this province with respect to trial before a jury where a corporation is involved, I may say that the Legislation Committee of the Law Society, prior to the 1940 Session of the Legislature, recommended amendments providing that in respect of malpractice and in actions against hospitals the action be tried by a judge without a jury unless on special application it be otherwise ordered, and it was suggested that actions against municipalities for negligence be included.

No amendments in this respect were made at the 1940 Session."

Mr. Henwood, Deputy Attorney-General of the Province of Alberta, says:

"There is no legislation in this province denying to a plaintiff the right to a jury if the defendant is a corporation, municipal or otherwise, nor has anything come to the attention of the Department indicating a desire for any statutory restrictions of the kind under consideration by your Committee.

I note your observation with regard to the effect of disclosing to the jury that the defendant is protected by insurance. I presume that the practice in Ontario is the same in that respect as in England. See *Grinham et al vs. Davies, 1929 2 K.B. 249.* See also the judgment of *Dysart J.* in *Wood vs. Armstrong, 1931 2 W.W.R. 359.*

I have not been able to find any reported case of an Alberta court nor of an Ontario court with reference to this practice; if you have any citation would you kindly advise me."

MR. FAIRTY: May I leave with you, Mr. Chairman, for your information, the report of the Ontario Medical Association on expert evidence?

MR. CONANT: Yes.

MR. FAIRTY: And also my suggestion as to amendment to the Judicature Act?

MR. CONANT: Yes.

Now, what else, Mr. Silk?

MR. SILK: I have heard nothing definite from Mr. Walsh. The last word we had, which was at 12.20, was that he could not be sure he would be here.

MR. CONANT: Well, we can't sit this afternoon just on that vague kind of information. What is your wish now, gentlemen? Have you any further evidence you want to bring in?

MR. SILK: Nothing at all. Mr. Dawe wanted to know whether he should come back and explain his memorandum.

MR. CONANT: I don't think that is necessary.

Now, what is your wish, gentlemen? I make the suggestion that if we could agree upon a date, we adjourn for say two weeks or thereabouts to consider this, and then to discuss our finding. Perhaps we could leave it this way: As soon as the transcript of evidence heard this week is available I will endeavour to fix a date say approximately two weeks from now, and we will meet here to discuss the matter further, if that is agreeable. I think perhaps it is well not to fix a definite date at present.

Adjourned at 1.00 p.m.

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TO APPENDIX No. 2

REPORT AND PROCEEDINGS OF THE SELECT COMMITTEE APPOINTED TO INQUIRE INTO THE ADMINISTRATION OF JUSTICE

SESSION OF 1941