Subsection 4 says:

> (4) Where the Minister deems it advisable, the said conditional licence may provide that the company shall, during the continuance of such conditional licence, arrange for the sale of its assets and for the transfer of its liabilities to some other company under the provisions of sections 86 to 89 inclusive.

When all those things have failed, then the last subsection of 72 states:

> (5) Whereupon the expiration of the conditional licence no arrangement satisfactory to the Minister has been made for such sale and transfer, and the company's condition has not been such as to warrant the restoration of the company's licence, the company shall be deemed to be insolvent.

This is more orderly and it seems to be a more rational way. I do not want to be taken as being totally critical of the method proposed in Part II. I think once it had been settled as to that gap which was indicated in the report of the Porter Commission that existed in the investment area and investment companies not covered by the Bank Act and not covered by all these other statutes I have referred to, once it was decided that that gap had to be closed somehow, then I think they went all out to provide the most drastic and arbitrary procedures that would bring to an immediate end those operations. But it has to be remembered that there are constitutional questions. It has to be remembered there are secured creditors that may have preferred rights and who cannot be stepped on regardless of their rights by invoking the Winding-Up Act or the Bankruptcy Act.

I am sure there is a more orderly way. I am not wedded to the suggestions I have made, but I think that somewhere in that area, when the minister, on the report of the superintendent, and after he has heard the company, has finally decided that this company is not in a position where it should be permitted to carry on, in the interests of protecting those who have their money in there, must decide the best way of going about the situation. I think this is the preferred approach; it would be a simple and a more reasonable approach, in my mind.

Honourable senators, I diverted. I come back to the regulations.

In the Canadian and British Insurance Companies Act we have provided by statute as to the area of investments and the limitations. In the Trust Companies Act and the Loan Companies Act we have provided a similar way; in the Small Loans Act we have provided the same way. If you would look at the Bank Act, you will see that we have put a limitation and a restriction on the nature and kind of investment that may be made by banks.

The question is, whether this is the approach, in relation to investment companies, that you should specifically in the legislation outline the areas as between bonds and preferred shares and real estate, or whether there is a better way of doing it.

Honourable senators, I do not want to appear vain; therefore, I will say that I can think of another way that should be considered. I am not saying that it is a better way—although in my view, it is.

Under the Canada Corporations Act, a company, once it is incorporated, is given broad powers of investment. If you look at section 14 of the Canada Corporations Act, you will see that the incidental and ancillary powers are very substantial. The most general one of all is found in section 14(1)(k), which gives power to invest and deal with the moneys of the company not immediately required, in such manner as may from time to time be determined. Then, they will have power to lend money in certain circumstances, to sell and dispose of assets, and take shares as a consideration.

This bill does not curtail or restrict any of those investment rights that they have under the incidental and ancillary powers. It does provide for certain prohibited transactions, which is not by reason of the nature of the transaction but by reason of the person with whom the transaction takes place. Therefore, we still have, under this bill, the power of investment. The way the power of investment is controlled under the Canada Corporations Act, and the way it must be proposed to put the limitations on this, is general regulations by the Governor in Council, which he may consider appropriate; and, therefore, what he regulates he can unregulate, and he can regulate again in a different fashion.

Where does this put the position of directors of the company? They become supernumeraries, if we have this. If there is to be any restriction on investment, in my submission it should be done by legislation and not by regulation, because it is substantive law and over the years it has been so recognized.