Canada. Parl. H.of C. Select Standing Comm.on Banking and Commerce, 1930.

SESSION 1930

HOUSE OF COMMONS

SELECT STANDING COMMITTEE

ON

BANKING AND COMMERCE

BILL No. 9—AN ACT TO AMEND THE COMPANIES ACT

MINUTES OF PROCEEDINGS AND EVIDENCE

No 1.— THURSDAY, 3rd APRIL, 1930
TUESDAY, 8th APRIL, 1930
WEDNESDAY, 30th APRIL, 1930

WITNESSES:

(30th April)

Associate Professor Clifford Curtis, Department of Commerce, Queen's University, Kingston, Ont.

Mr. E. G. Long, K.C., Toronto, Ont.

Mr. B. Osler, K.C., Toronto, Ont.

Mr. G. S. Currie, Montreal, Que.

Mr. J. E. Day, K.C., Toronto, Ont.

Mr. F. W. Wegenast, Toronto, Ont.

Mr. F. Common, Montreal, Que.

Associate Professor Smails, Department of Commerce, Queen's University, Kingston, Ont.

OTTAWA
F. A. ACLAND
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1930

MEMBERS OF THE COMMITTEE

(F. WELLINGTON HAY, Esq., *Chairman*)

and

Messieurs

Allan,
Bennett,
Benoit,
Bertrand,
Bird,
Black *(Halifax)*,
Bothwell,
Campbell,
Casgrain,
Cayley,
Chaplin,
Donnelly,
Dunning,
Ernst,
Fafard,
Geary,
Guerin,
Hanson,
Harris,
Hay,
Hepburn,
Irvine,
Jacobs,
Kaiser,
Ladner,
Lang,
McIntosh,
McPhee,
McRae,
Manion,
Matthews,
Mercier *(St. Henri)*,
Odette,
Perley (Sir George),
Pettit,
Raymond,
Rinfret,
Robinson,
Robitaille,
Ross *(Moose Jaw)*,
Rutherford,
Ryckman,
Sanderson,
Smoke,
Spencer,
Steedsman,
Stevens,
Vallance,
Ward,
Young *(Weyburn)*—50.

JOHN T. DUN,
Clerk of the Committee.

ORDERS OF REFERENCE

Applicable to Bill No. 9, An Act to Amend The Companies Act

House of Commons,
Tuesday, 4th March, 1930.

Resolved,—That the following members do compose the Select Standing Committee on Banking and Commerce:—

Messieurs: Allan, Bennett, Benoit, Bird, Black (*Halifax*), Bothwell, Brown, Casgrain, Cayley, Chaplin, Donnelly, Dunning, Ernst, Fafard, Geary, Guerin, Hanson, Harris, Hay, Hepburn, Irvine, Jacobs, Kaiser, Ladner, Lang, McIntosh, McLean (*Melfort*), McPhee, McRae, Manion, Matthews, Mercier (*St. Henri*), Odette, Perley (Sir George), Pettit, Raymond, Robinson, Robitaille, Ross (*Moose Jaw*), Rutherford, Ryckman, Sanderson, Smoke, Spencer, Steedsman, Stevens, Vallance, Ward, Woodsworth, Young (*Saskatoon*)—50.

(Quorum 15)

Attest.

ARTHUR BEAUCHESNE,
Clerk of the House.

Ordered,—That the Select Standing Committee on Banking and Commerce be empowered to examine and inquire into all such matters and things as may 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.

Attest.

ARTHUR BEAUCHESNE,
Clerk of the House.

Monday, 10th March, 1930.

Ordered,—That the name of Mr. Bertrand be substituted for that of Mr. Brown on the said Committee.

Attest.

THOS. M. FRASER,
for Clerk of the House.

Thursday, 20th March, 1930.

Ordered,—That the name of Mr. Young (*Weyburn*) be substituted for that of Mr. Young (*Saskatoon*) on the said Committee.

Attest.

THOS. M. FRASER,
for Clerk of the House.

Thursday, 20th March, 1930.

Ordered,—That the following Bill be referred to the said Committee:—
Bill No. 9, An Act to amend the Companies Act.

Attest.

THOS. M. FRASER,
for Clerk of the House.

6810—1½

MONDAY, 24th March, 1930.

Ordered,—That the name of Mr. Campbell be substituted for that of Mr. Woodsworth on the said Committee.

Attest.

ARTHUR BEAUCHESNE,
Clerk of the House.

WEDNESDAY, 2nd April, 1930.

Ordered,—That the name of Mr. Rinfret be substituted for that of Mr. McLean (*Melfort*) on the said Committee.

ARTHUR BEAUCHESNE,
Clerk of the House.

WEDNESDAY, 30th April, 1930.

Ordered,—That the said Committee be given leave to sit while the House is sitting.

That 500 copies in English and 250 copies in French of proceedings and evidence which may be taken by the said Committee be printed, as required, and that Standing Order 64 be suspended in relation thereto.

Attest.

ARTHUR BEAUCHESNE,
Clerk of the House.

REPORTS OF THE COMMITTEE

APPLICABLE TO BILL NO. 9, AN ACT TO AMEND THE COMPANIES ACT

FIFTH REPORT

WEDNESDAY, April 30, 1930.

The Select Standing Committee on Banking and Commerce beg to present the following as their

FIFTH REPORT

Your Committee recommend,

1. That your Committee be given leave to sit while the House is sitting.

2. That 500 copies in English and 250 copies in French of proceedings and evidence which may be taken by your Committee be printed, as required, and that Standing Order No. 64 be suspended in relation thereto.

F. WELLINGTON HAY,
Chairman.

(Fifth Report Presented to the House on 30th April, 1930, and Concurred in the same day.)

MINUTES OF PROCEEDINGS

ROOM 429, HOUSE OF COMMONS,
THURSDAY, April 3, 1930.

The Select Standing Committee on Banking and Commerce met at 11 a.m.

Members present: Messrs. Allan, Bird, Bothwell, Campbell, Casgrain, Cayley, Chaplin, Donnelly, Ernst, Fafard, Geary, Hanson, Irvine, Kaiser, Perley (Sir George), Pettit, Raymond, Rinfret, Ryckman Sanderson, Smoke, Spencer, Stevens.

In attendance: Mr. Thomas Mulvey, K.C., Under Secretary of State, and Mr. O'Meara, Solicitor, Companies Branch, Department of Secretary of State.

In the absence of the Chairman (Mr. Hay), and on motion of Mr. Bird, Mr. Allan was elected Acting Chairman.

Mr. Allan took the Chair.

BILL No. 9, AN ACT TO AMEND THE COMPANIES ACT

Mr. Rinfret, Secretary of State, suggested that the non-contentious sections might be adopted forthwith.

Sections 1 and 2 carried.

Section 3. On motion of Mr. Hanson, the word "five" in line 5 of the section was deleted, and "three" was substituted. Section 3 carried, as so amended.

Section 4 carried.

Sections 5 and 6 stood over.

Sections 7, 8 and 9 carried.

Section 10. On motion of Mr. Casgrain, the words "or on public grounds, or otherwise, objectionable" were deleted from lines 8 and 9 of the section, and the words "or otherwise on public grounds objectionable" was substituted. Section 10 carried, as so amended.

Section 11 stood over.

Sections 12 and 13 carried.

Notice of Motion.

Mr. Campbell gave notice of motion, as follows:—

That Bill No. 9 be amended by adding the following sections after sections 13 and 37, respectively:—

13a. Section thirty-one is repealed, and the following is substituted therefor:—

31. (1) All powers given to the Company by letters patent or supplementary letters patent shall be exercised subject to the provisions and restrictions contained in this Part, *but such powers shall only be exercised and carried on in the pursuit of its objects by the company in conformity with provincial legislation of general application validly enacted by the province or provinces in which such company may operate or seek to operate.*

(2) *No powers as given to the company shall be construed to confer power upon any company to interfere with, prevent or control provincial legislation establishing a provincial hydo-electric system in the public interest.*

37a. Section one hundred and fifty-six is amended by adding the following subsections thereto:—

(2) Every company incorporated by the Parliament of Canada by Special Act shall only exercise its powers and carry on business in pursuit of its objects in conformity with provincial legislation of general application validly enacted by the province or provinces in which such company operates or seeks to operate.

(3) No Special Act shall be construed to confer power upon any company to interfere with, prevent or control provincial legislation establishing a provincial hydro-electric system in the public interest.

Section 14 stood over.
Section 15 carried.

The Committee adjourned until Tuesday, 8th April, at 11 a.m.

JOHN T. DUN,
Clerk of the Committee.

ROOM 429, HOUSE OF COMMONS,
TUESDAY, April 8, 1930.

The Select Standing Committee on Banking and Commerce met at 11 a.m. Mr. Hay, the chairman, presided.

Members present: Messrs. Benoit, Bertrand, Bothwell, Campbell, Casgrain, Cayley, Donnelly, Ernst, Geary, Hanson, Hay, Irvine, Kaiser, Lang, McPhee, Odette, Pettit, Robinson, Ross (Moose Jaw), Sanderson, Smoke, Spencer, Steedsman, Vallance.

In attendance: Mr. Finlayson, Superintendent of Insurance. Mr. Mulvey, Under Secretary of State. Mr. O'Meara, Solicitor, Companies Branch, Department of Secretary of State.

BILL NO. 45, IMPERIAL TRUSTS COMPANY OF CANADA

Preamble adopted.
Sections 1, 2 and 3 carried.
Ordered, to report the Bill without amendment.

BILL NO. 9, AN ACT TO AMEND THE COMPANIES ACT

Consideration was resumed.
Sections 16 and 17 carried.
Section 18 stood over.
Section 19 carried.
Section 20 stood over.
Sections 21, 22 and 23 carried.
Section 24 stood over.
Section 25 carried.

Section 26. On motion of Mr. Casgrain, the following words were appended: "Provided no proceeding shall be taken under this section without the consent in writing of the Secretary of State." Section 26 carried, as so amended.

Section 27. On motion of Mr. Geary, line 5 of the section was amended by inserting after "corporation of which he is an officer" the words "or director." Subsection 2(b) was, at the suggestion of Mr. Mulvey, amended by deleting all the words after "declaration" in the seventh line of 2(b), and substituting

therefor the following: "showing that he is qualified for election or appointment as a director in accordance with the provisions of subsection one of this section." Section 27 carried, as so amended.

Section 28 carried.

Sections 29 and 30 stood over.

Sections 31 and 32 carried.

Section 33. On motion of Mr. Hanson, the word "nineteen" was deleted, and "eighteen" substituted therefor. On motion of Mr. Casgrain, "119A" in the fourth line of the section was changed to "119." Section 33 carried, as so amended.

Sections 34, 35 and 36 stood over.

Sections 37, 38 and 39 carried.

Section 40 stood over.

NOTICE OF MOTION

Mr. Kaiser gave notice of motion that he would move that subsection (*u*) of section 14 be deleted.

On motion of Mr. Irvine, it was ordered, That Dr. Curtis, Department of Commerce, Queen's University, Kingston, Ont., be summoned to attend the next meeting of the Committee.

The Committee adjourned until Wednesday, April 30, at 10.30 a.m.

JOHN T. DUN,
Clerk of the Committee

WEDNESDAY, April 30, 1930.

The Select Standing Committee on Banking and Commerce met at 10.30 a.m. Mr. Hay, the chairman, presided.

Members present: Messrs. Benoit, Bertrand, Black (Halifax, Bothwell, campbell, Casgrain, Donnelly, Fafard, Geary, Guerin, Hanson, Hay, Irvine, Kaiser, Lang, McIntosh, Mercier (St. Henri), Odette, Perley (Sir George), Pettit, Rinfret, Robitaille, Sanderson, Smoke, Spencer, Young (Weyburn),

In attendance: Mr. Finlayson, Superintendent of Insurance. Mr. Mulvey, Under Secretary of State. Mr. O'Meara, Solicitor, Companies Branch, Department of Secretary of State. Dr. Curtis, Queen's University, Kingston, Ont. Dr. Curtis was summoned to attend.

BILL No. 46, PREMIER LIFE INSURANCE COMPANY

Preamble adopted.

Section 1. On motion of Mr. Mercier (St. Henri), lines 8 and 9 of the section were amended by deleting "The Premier Life Insurance Company" and substituting therefor the words "Consolidated Life Insurance Company of Canada." Section 1 agreed to, as so amended.

Sections 2, 3, 4, 5, 6, 7 and 8 carried.

Title to be changed.

Ordered, To report the Bill with an amendment.

BILL No. 52, MERCHANTS' AND EMPLOYERS' INSURANCE COMPANY

Preamble adopted.

Section 1. On motion of Mr. Mercier (St. Henri), lines 12 and 13 of the section were amended by deleting "The Merchants' and Employers' Insurance Company" and substituting "Consolidated Fire and Casualty Insurance Company." Section 1 carried, as so amended.

Sections 2, 3, 4, 5, 6, 7 and 8 carried.

Title to be changed.

Ordered, To report the Bill with an amendment.

BILL No. 9, AN ACT TO AMEND THE COMPANIES ACT

Consideration was resumed.

On motion of Mr. Irvine, it was ordered that Assistant Professor Smails, Queen's University, Kingston, Ont., be summoned to give evidence, and that he attend before the Committee to-day.

Associate Professor Clifford Curtis, Department of Commerce, Queen's University, Kingston, Ont., present in answer to summons, was called, sworn, heard and examined. Witness retired.

On motion of Mr. Hanson,

Resolved.—That the Committee request permission to print 500 copies in English and 250 copies in French of proceedings and evidence taken by the Committee.

Mr. Mulvey, Under Secretary of State, addressed the Committee in reply to the arguments advanced by Associate Professor Curtis.

On motion of Mr. Geary that representations from other outside sources be now heard, the following gentlemen were severally sworn and heard, viz:

Mr. E. G. Long, K.C., Toronto, Ont.
Mr. B. Osler, K.C., Toronto, Ont.
Mr. G. S. Currie, Montreal, Que.
Mr. J. E. Day, K.C., Toronto, Ont.
Mr. F. W. Wegenast, Toronto, Ont.
Mr. F. Common, Montreal, Que.

Associate Professor Smails, Department of Commerce, Queen's University, Kingston, Ont., summoned as a witness, was called, sworn, heard and examined. Witness retired.

The Committee adjourned at 1.05 p.m. until 4 p.m.

The Committee reassembled at 4 p.m.

Members present: Messrs. Allan, Benoit, Bertrand, Bothwell, Campbell, Cayley, Fafard, Geary, Guerin, Hanson, Hay, Hepburn, Irvine, Kaiser, Mercier (St. Henri), Odette, Perley (Sir George), Pettit, Rinfret, Robitaille, Ryckman, Sanderson, Young (Weyburn).

Associate Professor Curtis was recalled and further examined. Witness discharged.

Mr. F. Common of Montreal, Que., was again heard.

Section 29. At the suggestion of Mr. Mulvey:—

(*a*) lines 7, 8 and 9 of the section were amended by deleting the words "by the shareholders present and representing at least a majority in value of the shares of the company";

(*b*) lines 10 and 11 of the section were amended by deleting the words "and approved by the Secretary of State";

(*c*) lines 17, 18, 19 and 20 of the section were deleted.

Section 29 carried, as so amended.

Section 14. The Committee considered the motion of Mr. Kaiser for the deletion of subsection (*u*). Further consideration will be given. Motion stood over.

Section 24 carried.

Associate Professor Smails was discharged from further attendance.

The Committee adjourned until Tuesday, 6th May, at 10.30 a.m.

JOHN T. DUN,
Clerk of the Committee

MINUTES OF EVIDENCE

COMMITTEE ROOM 429,
HOUSE OF COMMONS,
APRIL 30, 1930.

The Select Standing Committee on Banking and Commerce met at 10.30 a.m., the Chairman, Mr. F. Wellington Hay, presiding.

CLIFFORD CURTIS, called and sworn.

By the Chairman:

Q. What is your title at Kingston?—A. I am Associate Professor of Commerce. I would like to point out that what I have to say deals with only two subsections of Bill 9, and that it is in no way a criticism of the principle of no-par shares, which I wish to acknowledge to be a very sound and I think praiseworthy part of corporation finance. The point I am making is that I am objecting only to two subsections and not to the principle of no-par shares.

Section 6 proposes to amend Section 9 (1) of the Companies Act so as to permit the issuance of stock without par value, having a preference as to principal.

In the first place, it should be made clear that no-par stock preferred as to dividends only, may be issued under the present Companies Act (Section 9). Therefore, the amending section, referred to above, must be intended primarily to deal with stock preferred as to assets.

The intent and purpose of a share of no par value is to require a share of stock to be treated and represented as a mere evidence of an aliquot part or divisional interest in the assets and earnings of the corporation issuing it. I respectfully submit, therefore, that to attach a redemption value to such a share is to defeat this purpose and to invite misunderstanding on the part of the investor. Such misunderstanding would result whenever the actual value of the share differed from the liquidation value stated on the face of the certificate.

By Mr. Hanson:

Q. That is, if the liquidation were less you think there would be misunderstanding.—A. Or if more, either way.

When a stock is preferred as to principal the holders of this stock have a prior claim over the common stock, and on liquidation must be paid the full amount of the preference before the common shareholders receive anything. It is necessary, therefore, that the purchaser of preferred stock know the amount of the preference, that it be fixed and legally immutable from the date of issue, and that the stock certificate should, therefore, state the amount of the preference. If the Act should authorize no-par stock, preferred as to principal, some provision ought to be inserted for the determination of the amount of preference. If this amount be less than the issue price the preferred shareholder would be contributing to the liquidation value of the common shares.

Q. Do you know of any case where that has happened?—A. We have not had many liquidation cases yet. If the amount of preference be larger than the issue price, which is the condition to be expected, then in case of liquidation, part of the common shareholders' contribution would be used to cover the difference between the amount which the preferred shareholder paid for

the share, and that which he is legally entitled to receive. Either of these alternatives present accounting and statistical difficulties. For instance if the liquidation value differs from the amount placed in the capital account, how would the book value of the common stock be ascertained? From this it follows that if no-par stock, preferred as to principal, is to be properly safeguarded in the interests of all parties, it should be required that the preference be the issue price of the stock. From a viewpoint of equity to all parties this conclusion can hardly be questioned.

Now if such necessary requirement be made, it follows that preferred shares of the same company sold at different prices, would have different liquidation values, and different prices in the market. Obviously an investor buying a preferred stock in the market would not pay as much for a share with a preference of $50 as for one with a preference of $75, provided both shares carry the same dividend. Accordingly the different allotments will tend to be distinct and separate in the market, and will be, to all intents and purposes, distinct issues. As different issues of par preferred stock may, under the present Act, be sold at various prices, the unescapable conclusion is that the proposed section (1), if properly safeguarded, will confer no privilege on a company which it does not already possess.

I would submit, therefore that if the present amending section stand as now proposed there will be room for all sorts of difficulties and sharp practices at the expense of the investor. If, however, some such safeguards as here suggested are inserted to protect the investor, then the net result is that companies will be allowed to do precisely that which they are allowed to do under the present Act.

It will probably be said, in support of the Bill, that some jurisdictions, including the Province of Ontario, have allowed the use of no-par stock preferred as to principal, without the suggested safeguards and that no difficulties have arisen. It ought, however, to be kept in mind that the Ontario provision dates from 1924, and since that date Canada has not been through a liquidation period. The real test will come when the country encounters a period of difficulty with many liquidations. As yet insufficient time has elapsed to bring out the difficulties, financial and legal, of no-par stock, preferred as to principal, and the experience of such recent statute therefore cannot be fairly used.

My conclusion, then, is, Sir, that the principal of no-par stock is inconsistent with shares preferred as to principal.

2. *(Capital of a Company Organized with No Par Shares)*

Now to consider Section 9 (6) and (8) as proposed by Section 6 of the Bill. It is my view that these sections would affect the security of both shareholders and creditors.

Hitherto by Section 9 (7) of the present Act a company has been required to place in capital account the whole of the consideration received for the issue of shares of no par value. Amounts placed to the capital fund are non-withdrawable and so a company could declare dividends only out of profits.

These requirements protected creditors by assuring them that the proprietors of the company should always have a substantial fixed and ascertainable amount at stake in the enterprise. They protected shareholders by ensuring that any dividends paid would represent profits over and above the amount invested, and could not consist of a return of capital previously invested.

The proposed Section 9 (6) apparently empowers the directors of a company either by simple resolution or by amendment of letters patent to utilize any part of the issue consideration for dividend purposes and to retain as capital as much or as little as they please. They may declare, for example, that of the $60. received for a share of no-par value, $59. shall go to surplus

and $1. to capital. It is *not* a matter of indifference to the creditor whether the proceeds of sale of shares is treated as capital or surplus. To argue otherwise is to deny the validity of the principle underlying all limited liability company legislation from 1853 to date. This principal calls for the obligatory impounding of contributed capital as a fund for the security of creditors.

For illustration suppose we take two companies A and B each with a net worth of $10,000,000.

That of A is in the form:

Capital	$9,000,000
Surplus	1,000,000

That of B is in the opposite form:

Capital	$1,000,000
Surplus	9,000,000

The members of each company have *at the moment* an equal amount at stake. But by simple resolution the directors of either company can at any moment distribute the whole of the surplus of the company as dividends. The stake of Company A shareholders cannot however be reduced to less than $9,000,000 by this procedure; whereas that of Company B shareholders can be reduced to $1,000,000. Obviously the inalienable security enjoyed by creditors of A is better by $8,000,000 than that enjoyed by creditors of B. So much for effect on the creditor's security.

From the point of view of the shareholders the proposed Section 9 (6) deprives him of the assurance, which he enjoys at present, that the dividend cheque he receives is a share of profits and not a camouflaged return of capital invested. Nor is this criticism met by the claim that the shareholder could discover by examination of the financial statements, and letters patent of his company, the actual character of his dividend. Many published financial statements are so condensed that the source of the dividend is not ascertainable from them.

Section 9 (8) as proposed apparently provides a procedure for making retroactive the provisions of Section 9 (6), which has just been discussed. A company which, since, say, 1924, has shown a capital fund of $1,000,000 in its balance sheet is now by resolution of the shareholders and with the consent of the Secretary of State to have power to reduce its capital to say, $100,000 and to return to shareholders in the form of dividends the remaining $900,000 originally contributed. Reduction of share capital involving the repayment of paid-up capital without compliance with the safeguards of Sections 61-65 of the present Act is thus permitted. Creditors have no right to be consulted nor are any automatic safeguards provided for their protection. The creditors' sole legal security is the discretion of the Secretary of State in deciding on—I quote the bill—"the expediency and bona fide character" of the reduction.

Is it not arguable, then, that if this section becomes law the government will be under a moral obligation to assume liability for any loss resulting to creditors from the exercise of discretion?

The object of section 9 (6) and (8) is apparently to enable a limited liability company to embark on its career with a distributable surplus. I submit, sir, that this object, no matter how desirable in itself, should be abandoned if it can be attained only by legislation which is inconsistent with the root principle of limited liability.

The CHAIRMAN: Gentlemen, we have Professor Smailes here, and I think he may be able to answer some questions as you go along, with the different clauses that we have yet to deal with. Professor Smailes may be able to add, or if you prefer, you may submit your questions to Professor Curtis.

Mr. GEARY: He has been good enough to draft a lot of questions; why not ask them now?

Mr. HANSON: I am impressed with what Professor Curtis has said.

The CHAIRMAN: What do you say as to having this evidence printed?

Mr. HANSON: I move that we ask leave to have this printed.

The CHAIRMAN: How many in English and French?

Mr. IRVINE: The usual number.

The CHAIRMAN: 500 in English, and 250 in French.

Motion agreed to.

Mr. IRVINE: Mr. Chairman, seeing that Professor Curtis and Professor Smailes are collaborating in this matter, I think we ought to hear Professor Smailes either immediately, or after the questions that are to be asked Professor Curtis.

The CHAIRMAN: I have just asked Professor Curtis, and he said he thought Professor Smailes might be left to answer questions on accounting matters that might come up a little later.

Mr. IRVINE: I was just going to suggest that the Professor might elaborate a little more on some of the things he said, and perhaps we could bring it out better by questions. I want to ask a very elementary question, to get a little more explanation on the difference between stock preferred as to principal and preferred as to assets.

The CHAIRMAN: Probably there are some parts of the bill that should be explained by the Department. That might clarify the matter. We have the Minister here; also Mr. Mulvey.

Mr. IRVINE: Mr. Chairman, I think it would have been better to have had the Minister, or some other advocate of the amendment, to state exactly what the reason for the amendment was, and what the object to be gained was supposed to be.

Mr. HANSON: Mr. Mulvey is here for that.

The CHAIRMAN: We have already passed a great many sections, and we have carried some with amendments. We have left over sections 5, 6, 11, 14, 18 and so on.

Mr. MULVEY (Under Secretary of State): This amendment, provided for in Section 6, is not put forward by the Department itself. There have been a large number of requests however, to the Department for it, and the Department has incorporated it into this proposed bill.

Sir GEORGE PERLEY: That means it has the approval of the Department.

Mr. MULVEY: Quite so. Now, no par shares is really the logical method of dealing with company shares, because, as a matter of fact, when a value is placed upon a share certificate, it is a misrepresentation because, at no time does the certificate itself exactly comply with the statement which is upon it. As to value of the assets, it goes up and down, the value fluctuates all the time, so that no par, which is the divisible portion of the value of the total assets, is the real statement of what the shares are worth. That is to say, what appears from the balance sheet. Now this method was advocated for a great many years. It was adopted in the state of New York in 1912, and adopted by the Amending Act of 1917. There were some slight changes made in 1924, but the whole method of modern finance has been changing and going on in a most complicated way, so it was necessary that the Companies Act that we have here, should be brought up to date so as to be an instrument capable of filling the financial necessity of the time being.

Mr. HANSON: That is exceptional.

Mr. MULVEY: Now, it has been found in many quarters, that preferred shares, without par value are an advantage. I do not agree with Professor Curtis's statement in any respect whatever, and I am inclined to think that the purpose is not in the back of his mind, when he made the remarks that he did.

Mr. IRVINE: Would you kindly repeat that? I did not get the significance —what is back of the Professor's mind?

Mr. MULVEY: I say, some things back of the Professor's mind, which are not in accordance with financial dealings.

Mr. IRVINE: Making that plain.

Mr. MULVEY: It is very difficult to go into the precise effect, and precise meaning of these provisions without having a balance sheet before you, and without knowing exactly the position of the company which is going to take advantage of these provisions. In order to make it plain, I can give a couple of simple examples which I think will explain the necessity of this provision. Take a company that is going to exploit an invention: there are many of them carrying on with very sanguine hopes, and a great deal of hard work behind them, all that kind of thing. We will suppose that such a company is incorporated, we will say, with 300,000 shares, no par value, preferred, and a certain amount of common. We will say that in the commencement $100,000 is raised by the issue of some of the preferred shares, and the promoters believe that they will perfect the invention and get the company going. The majority, of course, of the common shares, are allotted to the inventor for his invention. Business goes along for a while, and they find their expectations fail. They cannot get the invention manufactured for $100,000, and they have to get more money. The natural method of doing this is selling more shares, but they cannot sell their shares for $1 each because they have not that value. They go to people who have faith in the concern and they say "We have sold 100,000 shares for $100,000, come in on this and we will let you have 100,000 shares for $75,000." In that case they will have received 100,000 shares for $75,000 and if the company goes on, will receive dividends on $100,000. If the company could do that, it would be saved from ruin. However, it goes on and again they fail to come up to expectations, but they still have hope, and they sell more shares for $50 on the understanding that the investor gets a one dollar share. It is perfectly legitimate but the law should provide for such a case. I have given a simple example to you, but there are many complicated methods; and the purpose of the section was to cover that. There is no extra issue, and there is no calculation regarding divisible amount of capital pertaining to those shares. Of course, the company might have acted differently. They could have, instead of issuing more shares at a reduced rate, made a new issue and there are other methods.

Mr. CAMPBELL: Would it not be the same under no par? If the shares were sold at less than previous?

Mr. MULVEY: But the liquidation will be at the rate at which the issue is made. Under the law, shares of par value must be sold for par. It is illegal to sell them otherwise.

Mr. HANSON: In some jurisdictions you can sell for less than par with the consent of the shareholders; for instance under the New Brunswick Act.

Mr. MULVEY: You cannot under this act. There is provision by which discount might be allowed.

The CHAIMAN: I notice we have counsel, some representing the Montreal Board of Trade and interests in Toronto. I would suggest that if there are

some questions they desire to ask, if they will make a memorandum, then later they can ask these questions through a member of the committee or the chairman. I have no doubt that the committee will be agreeable to have these questions asked directly of the witness.

Mr. MULVEY: I said at the commencement that this provision is introduced at the request of a number of financial gentlemen, and I should be glad, Mr. Chairman, if you would call upon Mr. Long of Toronto.

The CHAIRMAN: I think it will be for the committee to say.

Mr. GEARY: Will you make it clear in our minds what you mean by selling stock at $75 or $50; is that treasury stock?

Mr. MULVEY: Yes. I mean stock of the company. But there is one thing I overlooked in answer to Professor Curtis. I think he quite properly refers to the provision in the Act which post-dates the provision for the accumulation of a surplus. That section should be amended; it should not go as it is. As a matter of fact, there are a number of companies that carry on their business with the expectation that this clause would go through and it should be limited to those, and in their annual statements it should be provided that the surplus be put forward in this way.

Mr. IRVINE: To whom do you refer, Mr. Mulvey, when you say this amendment was suggested by financial men? What do you mean by financial men?

Mr. MULVEY: As a matter of fact, what I should have stated is that those representations came from lawyers who had clients promoting and dealing with companies that required these provisions. The ultimate request comes from financial gentlemen, and they are gentlemen who are promoting companies and dealing with company shares.

Mr. IRVINE: Really, the requests come from promoters. We have to distinguish between promoters and financial men. For instance, I am a financial man, but I do not promote anything.

Mr. MULVEY: Promoters are usually financial men.

Mr. GEARY: Mr. Chairman, we seem to be reversing the ordinary procedure by hearing those against the section rather than those who are justifying it. We had Mr. Mulvey's explanation, and we have heard Professor Curtis. If there is anything further to be said for the section, I suggest that we hear it now. If not, and there is any objection to it, I would move that the committee hear the other gentlemen. I think Mr. Long was mentioned, and there are a great many gentlemen here who desire to say something, I should judge, rather against the contention of my learned friend over here.

The CHAIRMAN: Let us start with Section 5, and see if we can get a common ground, and then go on with the sections.

Mr. MULVEY: We cannot discuss Section 5 now because there are other sections to be considered which will affect it, and it will be the last section we will deal with.

Mr. HANSON: This section 6 is very important. We have a number of legal gentlemen here connected with the financial world, and I think we had better hear those who are for the section.

The CHAIRMAN: Would you suggest that the committee hear Mr. Long of Toronto?

Mr. HANSON: I suggest we hear Mr. Long, or any gentleman who is for this section, and later hear the others who are against.

E. G. LONG, K.C., called and sworn.

Mr. IRVINE: Before Mr. Long begins I would like to know who he is, what his interests are and whom he represents, whether financial gentlemen or promoters.

The WITNESS: Mr. Chairman and gentlemen, it is a little difficult to deal with what Professor Curtis has mentioned in his remarks without having any preparation on them, and without having a copy of what he had to crystalize his views. There are several ways of looking at no par value, and section 9, as it is now, practically covers the basis of no par stock. Professor Curtis says that it is comparatively new, and that there has not been very much decision, if any, by our courts on the meaning of it. So far as the stress of liquidation is concerned, I compliment Professor Curtis when he says he has not heard of any liquidation that has taken place since no par value stock came into vogue, because others have stressed the peculiar varying interest and value. The object of no par stock was to facilitate the financing of companies.

Mr. IRVINE: How does it do that? Will you carry out the explanation of that?

The WITNESS: One feature of that was that under the English law, and under practice, with par value stock, you had to have a hundred dollars assets against a hundred dollar debit when you issued one share of par value stock. Now, as Mr. Mulvey has said—and there is no question about it—one thing you are sure of is that the stock marked at $100 is never worth exactly $100. Therefore, when you come to finance and find that you have not got $100 for each par value share of stock, you find companies embarrassed, particularly by future issues. You make an issue to-day, and you may be able to get $100 par value. Next month, or a year later, if you need more capital, the market value of your stock is not worth $100, but you must get $100 according to the law, if you are going to sell it. What are you going to do then?

From the other point of view, a share of stock represents an interest, an aliquot part of that share in relation to all other shares in the assets of the company. If there are 1,000 shares and I own 10, I have ten-one-thousandth interest in that company. The no par value was developed and has been found very useful during the time it has been in force in the United States, and Canada is not giving flexibility to companies in the matter of market conditions when they come to get capital. If I have no par value stock I go into the market and say "this stock is worth $25 a share, we will sell it for that." In a year from now we need more capital, and sell for $35 a share, having been more successful If it had not been quite so successful, and the public is still willing to buy, they sell it for $20 a share. In other words, the flexibility of value enables them to meet the market value when they go into the market for funds. Now, there is no question, I take it, as to the advisability of no par value stock. If you take it, as Professor Curtis would seem to indicate, that all capital must be no par stock and no preference stock, and you give them no par value common, and par value preferred, it seems to me it is a contradiction in terms to say that $100 par value is all right; either preferred with some common, no par, and you deny putting no par value stock with a preference stock of so many dollars which is specifically mentioned when your charter is granted. Under the Act, and under practice also, if you have no par stock with the preference as to assets, that condition must appear first in the letters patent, which is a public document, and next, it must appear in your certificate, so that nobody buying a share, is under any misapprehension because the conditions of the preference appear plainly on the certificate for everybody to see. So far as the accounting practice goes, it is hard to say the practice is absolutely universal, but I would say, in properly run companies and under proper accounting practice, the debit against the no par stock, that is the preference, that the capital is carried out on the capital side of your ledger in the amount or measure of that preference. Now, what objection is there to he no par share having attached to it this statement; if the company is wound p or dissolved, the owner of a share will get $25 before the common stock

holder gets anything. There is no objection, apparently, and has not been since the Companies Act, to saying that the owner of $100 par value will get $100 before the common stock gets anything, and I fail to see the difference between saying he would get $25, which is alleged to be bad, and saying he will get $100, which is admitted to be good when in each case everything that pertains to the capital structure is obvious, not only to the shareholders, but also to the creditors.

By Mr. Irvine:

Q. Will you explain a little more fully what would be the object of the preferred stock? You have explained the object of the no par value stock; would you explain the advantage to the company of issuing preferred stock? —A. The object of the preferred is to enable the company to get money from investors who want to feel sure, or reasonably sure, that the money they contribute will come to them first ahead of the common shareholders who are willing for that reason to take a fixed dividend, 7 per cent preferred or 6 per cent preferred. These people know, first of all, that that dividend is a first charge on the earnings They know if the company fails or goes into liquidation or winds up or dissolves, they come in first on the assets, and for that reason there is a large section of the investing public that likes preferred stocks, and when you find them issued by a seasoned company, they are a first-class investment.

By the Chairman:

Q. And could that preferred be paid out of the capital of the company provided that there were no earnings?—A. Oh, no, the preferred only comes when the assets of the company are distributed, and that distribution takes place in one or two ways: the company goes out of business through liquidation, or it winds up voluntarily.

By Mr. Geary:

Q. Fixed charges come first and mortgages afterwards?—A. Yes, because the preferred shareholder is the proprietor in the enterprise. He is not a creditor of it. The chief advantage of the no par stock is that same flexibility. Let a company say that this no par stock will get $25 a share on a wind-up or distribution of assets, let it get $30, let it get $35, let it go at whatever the people who are financing consider to be the soundest method of attracting investors in a fair way to put their money into the company, it is the most common knowledge that investors and companies who put their securities out are benefited when you get their shares down to a moderately small value You will have a better market. You will have more people buy Ford shares at $25 a share than you will when they were selling at $700; and if the company is sound it is advisable to give investors an opportunity to put their money into companies, and not to limit good companies to men of wealth who can afford to pay $500 or $600 for a share instead of a little man who has made a small saving and cannot pay more than $25 or $30 or $40 a share. There is another reason why no par value stock has been so popular and so helpful from both ends, to the company that sells it and to the investor who puts his money into it. As far as the creditor is concerned, the creditor lends money or supplies goods to the company, if he has any judgment at all, only after he has seen what the financial position of the borrower is going to be. Now, that is ascertainable just as much with no par shares—just as much with no par preference shares as any other capital set-up you can make. He comes ahead of the proprietary interests represented by share capital. And that brings you to the question that Professor Curtis raised as to this allocation of a certain number of dollars you get in as

between capital and distributable surplus. One of the reasons why that was suggested by Mr. Mulvey when this bill came up, and has been suggested more than once, because the bill in this somewhat similar form has come up more than once, and has not got quite as far as the Royal Assent, you frequently find this state of affairs: there is an existing company that has a paid up capital and it has an accumulated surplus for any one of a thousand reasons, and it desires to reincorporate At the present time a purchasing company that buys that business has to crystallize into fixed capital what was capital and surplus of the original companies. That is, Company A has a million dollars of capital paid up and $500,000 surplus; Company B wants to buy it and pays for it by giving its own shares; it seems unfair that Company B cannot put into its own books the same situation as Company A, namely, one million dollars permanent capital and $500,000 of distributable surplus. That is one of the reasons, Mr. Mulvey, that we do urge as a reason for allowing that company to declare so many dollars of fixed, irremovable capital and so many dollars of surplus. Now, who is affected by that? First, take a company that either takes over another company or a company that goes to the public for funds on a new enterprise—two classes are interested, the shareholders and the creditors. Now, that company takes over a timber limit and goes to the public and has one million dollars of no par shares. It says, when they get that money, "We will make that $800,000 capital and $200,000 surplus, distributable surplus." It deals with its shareholders to start with. They are the first people who are a party to that, through their directors. If the shareholders want it, there is no complaint; they are the last people that would be affected. They want that. They are the people that do it. Now, take the creditors: if a man wants to deal with that company, he must know what the situation is. He knows that there is $800,000 of fixed capital, and he knows that there is $200,000 of surplus, which, as long as the $800,000 is intact, may go out to shareholders, and what he makes up his mind to is, "how much credit will I give that company?" The thing would be exactly the same if the company had a million dollars par value, and the company sells that at a premium. You gentlemen have dealt with an insurance matter this morning. In that form of insurance a $10 share is sold for $15. The $10 is permanent, non-withdrawable, the $5 is premium surplus which can be distributed the next day in dividends. Where is the difference between those two situations?

By Mr. Hanson:

Q. Is not there quite a difference?—A. No, not so far as creditors are concerned. In each case they say, what is the position of the company? In one case you have a million dollars par value and there is $100,000 premium, and you have $1,100,000 in you treasury, and $100,000 is withdrawable. Of no par value stock you sell a million and you declare that $300,000 will not be withdrawn and there is $200,000 there. It seems to me a mere juggling of phrases and a confusing of practical business relations whether you call it discount or selling it at a premium, whether you call it no par or par value. The fact is that business men dealing with business situations—and as a lawyer who has the pleasure occasionally of acting for people who run companies and finance companies—what we want is to have Mr. Mulvey's Act—and it is an awfully good Act and it is administered uncommonly well—we want it improved now to meet the development of corporate business here in Canada. What we need in Canada is capital, and we cannot get capital unless you give it what it demands. If it can get what it wants in the United States and cannot get it here, Canada is the loser. Now, I do not want to suggest opening up corporate finance in any way that is going to harm either investors or creditors, but the suggestions of Professor Curtis do not justify the criticism of these two

items. I think they are purely theoretical. I think when you examine them you will see that you are dealing with phrases, and you will not find that fundamentally, in a business way, there is any difference. But there is a difference from a legal point of view, and unless you give this facility you will find capital not coming to Canada. And even if it does come you will find that a certain amount of it—and this is a thing that any practising corporation lawyer knows—you will find that a lot of business will go to the province where this has already been allowed. And one likes to deal with Ottawa. One does not like to see what they think is the Dominion Companies Act lagging behind the recognized improvements in the corporate structure that you find in other jurisdictions. This kind of act has been in use in the States. Hundreds of millions of dollars have been financed on it. It is in use in Ontario now.

By Mr. Hanson:

Q. I do not think there is much of an argument.—A. I do not see why we should say there is nothing good to be found outside of Canada. We sometimes have learned a couple of things.

By Sir George Perley:

Q. Sometimes there is and sometimes there is not?—A. Quite. I know the company knows what is good to discredit and what is bad. They do not allow no par shares in England.

By Mr. Geary:

Q. They do not consider the neecssity?—A. Absolutely not. The English system of financing is so different from ours.

By the Chairman:

Q. Isn't there something there for no par shares?—A. Yes.

Q. It was considered in the amendments of 1928.

By Mr. Hanson:

Q. Having regard to subsection 4 of section 6, do you consider that it is wise to leave the division—so much for capital and so much for reserve—wide open?—A. How do you mean "wide open;" it says that it is fixed by the directors.

Q. It is done by the directors. It is left to them to make the division, "and in fixing the amount of such consideration the board may provide that a part thereof may be set aside as a reserve." Mr. Curtis gave an illustration of where they took 80 per cent or 90 per cent and made a reserve and paid it out as dividend and left only 10 per cent in.—A. If you were a shareholder of that company you would probably be tickled to death.

Q. What about creditors? We must be just before generous.—A. Quite. And if you are a creditor and have acumen, it is obvious from where you stand. You would only lend on that basis of $100,000. Suppose they have sold that par value stock at $900,000 and put $800,000 to premium reserve, it is exactly the same situation. Of course, you can take extreme figures and you can make a thing look as if it were absurd. You have got to allow for ordinary sound common sense in dealing with a company's affairs by its directors. The shareholders control the directors, so they are satisfied.

By Sir George Perley:

Q. In theory?—A. No, practically. The electors sometimes control members of parliament, or bring them in here anyway, and it is exactly the same way with company shareholders.

Q. I should like to ask Mr. Long if he will draw a sharp distinction between the common par value shares and the preferred in regard to this point he raised. Now, I quite agree with the view he takes about the common low par value shares, but I am thinking about the ordinary common people in this country who buy preferred shares because they think they are bonds, or better than some other kind. Mr Long represents, no doubt, very reputable people all the time, and these people that come in in large numbers often want this arrangement about no par value preferred shares, but the ordinary person in the country who buys a preferred share thinks he is getting something that is practically a bond.

Mr. HANSON: That is all wrong.

Sir GEORGE PERLEY: He is bound to do so. If you take it and put in the reserve and pay it out in dividends, where does he come in? Where does the ordinary common citizen come in? That is the man I am interested in. There has been so much done in this country with the shares that are sold, and people lose their money; and if you make no par value share, and you can dispose of the money any way you like, is that fair to that sort of investor?

The WITNESS: When you have a no par share and have a declaration on it that it is a preference, say, $25—or if you want to make it $100—and make it look like what it almost is, a par value share, that preference is always carried as fixed non-withdrawable value, because the man has a preference on it, and it has to go in there and stay there with the capital.

By Sir George Perley:

Q. Does not this clause say that the money can be put into surplus profit? Is not that what the clause says? If I have a preference share and give $100 for it—it is to say how much I have in preference on the capital of the company.—A. I think you will find in the case of a wind-up or dissolution that the shareholder will get $75.

Q. Does not this clause permit you to take that $100 and put it back into surplus?—A. I don't think so, sir.

Mr. MULVEY: On the question of accounting, it would never be done. As a matter of fact it does not do so. This provision is that they must keep at $100, but any surplus above that may be distributed in dividends, but they must have the $100 of assets before they can distribute.

The WITNESS: I do not think there is any question about that, sir. I thank the Committee for allowing me to bother them to this extent. I have nothing more to say. I would rather deal with it in a general way, and just conclude by saying that these sections, after a very great deal of very careful study—they were considered two years ago—they were considered very carefully last year when the bill was up before the Senate Committee—and if they are carried out they will permit what we consider—and I think Mr. Mulvey too—a marked improvement in the Act with facilities to corporate finance. They safeguard against improper action against either shareholders or creditors, and we urge very strongly that the Committee take them as they are.

By Mr. Hanson:

Q. I should like to refer to subsection 4 of section 9 which says, "In the absence of other provisions in that behalf in the letters patent, supplementary letters patent or by-laws of the company, the issue and allotment of shares without nominal or par value authorized by this section, may be made from time to time for such consideration as may be fixed by the board of directors." That is all right so far as it goes. "And in fixing the amount of such consideration the board may provide that a part thereof may be set aside as a reserve."—A. Yes.

Q. That is wide open.—A. Yes.

Q. Now, take this illustration. Supposing we issue these shares at $25 and they set aside $5 for reserve which may be distributed back to the shareholders, is there anything in the bill or the Act that will then provide that $20 is the amount of the redemption shares, we would say, on a liquidation?—A. You are speaking now of no par common shares?

Q. No par preferred shares.—A. The letters patent themselves provide that. You cannot get a preferred stock from Mr. Mulvey without having that clearly stated in your letters patent.

Q. Subsection 4 of the present section has it in there, "The certificates of preferred shares having a preference as to principal shall state briefly the amount which the holder of any such preferred shares shall be entitled to receive on account of the principal from the surplus assets of the company in preference to the holders of other shares, and shall state briefly any other rights or preferences given to the holders of such shares." Is not that eliminated in the present bill?—A. No, I do not think the effect is changed.

Q. That is my understanding of the effect of this bill.—A. No, I do not think so, sir.

By Mr. Geary:

Q. I have not got the whole story, because section 20 of the amending act has just as much to do with the matter as the one we are discussing. Section 20 provides for everything going on.—A. Yes, I stated that.

Q. We must consider some of these sections together because they interlock.—A. That is what I stated, or intended to say, that the certificate, as a matter of law, must contain on the face of it the story of your rights and preferences, and where you have not preference shares issued or deferred each certificate on the back of it has the whole story of letters patent.

By Mr. Hanson:

Q. That is all right if the preference is contained in the letters patent, but it is a case of where it is not in either of them.—A. You cannot get it anyway.

The CHAIRMAN: There is an amendment proposed by Mr. Mulvey.

Mr. MULVEY: Yes.

The WITNESS: Section 20 of this act, page 10.

Hon. Mr. RINFRET: That is provided for.

The CHAIRMAN: Now, gentlemen is it agreeable to the Committee to hear Mr. Osler of Toronto?

Witness retired.

BRITTON OSLER, K.C., called and sworn.

The WITNESS: Mr. Chairman, and gentlemen, my interest here is entirely from the point of view of a practical working Companies Act for the Dominion, which, while being careful of both creditors and shareholders and the public, will give a flexible working basis for corporations to finance and operate on. It is the life blood of the country. Now, with regard to these two sections, I think it is proper to point out that prior to 1924 the position under the act as to setting aside a cerain part of the purchase price or consideration for no par value shares —was that no par value shares could be dealt with exactly as this amendment provides. That is to say: you receive $50 for a no par value share. You could declare your capital with which you are going to do business as $20, or $30, or $40, leaving the balance as stock premium or surplus and the reason is obvious, and I am speaking of this not theoretically but practically; if you establish a

company with a capital say of $100,000 and $100,000 surplus, if by any chance it made a loss that year, the directors will be put in this quandary: shall they pay dividends or make up that loss out of the profits of the year and perhaps cut off dividends to do so? From the public and financial standpoint, continuity of dividends is very essential, and, therefore, the effort is to create a financial structure which will result in a capital which the ordinary fluctuations in values will not impair, especially during the early life of the company and to protect this capital by creating a surplus or reserve. Now, that surplus may be from earnings, but in the initial stages it must be from stock premium on shares. That is to say, of the price paid for a share, so much is received as capital and so much as stock premium. In the old days of par value stock—whether preferred or common—the situation was met by selling $100 shares at $110, and $10 went into the stock premium reserve and $100 went into capital. It is not necessary to repeat, after Mr. Long's very able expostion, that there should be no distinction between par value and no par value stock and that what was and is good practice in the case of par stock is good in the case of no par. All conditions are fully set out on the share certificates and in the prospectus, so that there could be no mistake on the part of a shareholder, and the creditor was also protected. Before 1924, no par value was exactly in the same position as par value stock. You could create a stock premium or cushion reserve. It did not make any difference to anybody; it did not harm anybody; but in 1924 when the Act was amended with regard to the amount of capital required to be paid up before the company commenced business, the amendments went further than was intended, and resulted in the whole consideration received from the share becoming capital.

Now, I have spoken of the disadvantage of having no stock premium, but let me call your attention by a few illustrations to the practical difficulty one runs up against in dealing with that section and which, frankly, has driven a lot of corporations either into Ontario where they have this provision, or into the United States. A company wants to acquire the stock of another company. It offers the shareholders of that company one share of its stock for one share of their stock. Under the Act the consideration received for the company's stock is its capital. What is the consideration received? Some value has to be put on that stock that it acquires. It may be quoted in the market or it may not. If it is quoted in the market and you apply the market price, that market price may be the price at the end of a long boom such as the boom that broke last autumn, and the consideration, we will say, is the market quote say $90 when you made the exchange, therefore, your capital is $90 share in October. In December the stock is down to $50 or $60 your capital is depleted by half, an absolute loss of capital.

The logical and proper thing to do when the company exchanges its stock for the shares of the other company is to say "what does that share represent?" It represents a certain capital and a certain surplus in the books of that company whose stock is acquired and the wise person would say "take that into the books of the company acquiring the stock in the same way, that is treat as capital what is shown as capital in the books of the company whose stock is acquired and treat the surplus in the same way." If you do not do that you are not dealing fairly with the shareholders or the public, because what the acquiring company can do is this: Suppose the Act stands as it is the consideration for that stock is $90 a share; $90 is the purchasing company's capital but market fluctuations have knocked that down to $40. Very well, the capital is depleted, but the company goes on doing business and paying dividends because it is still earning money. It can go further than that. It can cause the company whose stock it acquired to declare a dividend and the purchasing company notwithstanding its depleted capital can declare it out again, and in effect it is declaring a dividend out of capital.

Now, if this amendment is passed the prudent directors checked, of course, by the Secretary of State say how much of the value of the shares being acquired is capital and how much is surplus or reserve the shareholders must approve before letters patent issue and the creditors are not harmed because they are protected. Full information has to be given, and so forth. But if this amendment is not passed then the state arises that I have described.

Section 8 is merely to leave the act in the condition it would have been in if the amendment of 1924 had accomplished only what was intended. In other words, it permits a company to set up a stock premium under the proper safeguards. Nothing can be done without the action of shareholders and the issue of supplementary letters patent which may be refused if the facts are not clearly set forth, or the creditors object, or there is any doubt substantial as to the bona fides of the application. The whole question is, are there proper safeguards, and for the reasons I have mentioned as to the necessity for stock premium on no-par value shares, this amending Act is absolutely necessary if the Dominion Act is going to be kept abreast of other company acts for the purpose of modern financing.

It is hardly necessary perhaps to answer some of the suggestions that were put forward, but one objection which was specially urged against having preferred no-par value stock namely that the preferred shareholder was either contributing to the value of the common stock or the common shareholder was contributing to the value of the preferred stock. The answer is that exactly the same thing happens with par value stock. You sell preferred par value stock at a premium of $10 or $15. Where does that come from? It comes out of the preferred shareholders as it would with a no-par value stock.

It seems to me that the whole question is, what is the practical thing to do? Now, remember that prior to 1924 the stock premium was permissible under the Dominion Act in the case of no-par value stock. We have heard of no troubles arising. No vice has been shown by reason of that, and why not put it back and get in line with the other countries which we have to compete with financially, much as we may dislike it, put it back so that we will be able to compete with them, and be on a par. As I say, for a long period of years no trouble has appeared to have arisen by reason of either of these two sections.

By Mr. Kaiser:

Q. I would like to get this clear. In the selling of this preferred no par stock you dwell on the necessity of creating a surplus. That surplus must be created or taken out of the price that I pay for a preferred share. Who is it that determines that? For instance, I buy a preferred stock for $50. You are the company. You apply that in two particulars, one to the stock of the company and the other to the surplus. Who determines how much of that $50 goes into the surplus and how much into the stock of the company? After crediting that you pay a dividend. Are not you paying me back a dividend out of the money that I gave you?—A. Let me answer it in this way: In the case of an original issue, if a company is putting out an issue now, it is offered to you, or whoever it is, as preferred stock, whether par or no par it does not matter; you are paying for something that will be redeemed at a certain figure. The directors of the company make the offer of that issue; the terms are before you, and you buy it or not as you like, but in connection with any stock already issued the body of shareholders must approve of any change in the capital structure, and that approval is subject again to the Secretary of State's office which sees that both creditors and shareholders are protected.

Q. I understand quite distinctly, that if I get a certificate that states that it is $100, a preferred share, but it is sold at a premium and I pay you $110, then $100 goes into the company and $10 goes into surplus, is that so?—A. Yes.

Q. You say this is sold at no par value and it comes to me as a no par stock at $50, so how can you split it in the same way?—A. You mean, when you purchase a no par value stock. The prospectus of the company should set out the facts on which that has been sold.

By Mr. Hanson:

Q. They could not sell it unless it was known in advance and so it must be known in advance, and it must show in the prospectus.

By Mr. Mulvey:

Q. Subsection 8 provides for the establishment of this surplus in companies which were created since 1924. Would you be quite content to have it limited in this way, that it would only apply to companies that have carried in their balance sheets that surplus?—A. I do not know the general effect of that, Mr. Mulvey, but what struck me about this was, having a good deal of corporation work to do, and having pointed out from time to time to the department defects in this Act as compared with other legislation which appeared to be working satisfactorily, and with no special interest in view except that one wanted to be able to say to Canadians and more especially to people from across the line, "Now, we can give you just as flexible and as safe—subject to ordinary precautions—corporate legislation here as you can get across the line," and having that in view, when this question came up of the amendment to the Act I wrote Mr. Mulvey saying that these are the points which have come up which in my practice appear to need correction if the Act is to be used generally for international finance, and on that I had several discussions with him.

This special section 8 I suggested because I know that in the interim between 1924 and this present time one or two companies have been incorporated which had not the ability to put part to premium and part to reserve, so as to reflect properly the capital structure of the companies which they had acquired

Q. Have those companies carried their surplus as such in their balance sheet?—A. In one case I know they have, but I do not know what others may have done. It seems to me the section, as drawn, leaves the matter in the position where there can be no wrong done or hardship to anyone, but it does enable something to be righted which should have been righted long ago.

By Mr. Hanson:

Q. Subsection 8 certainly helps the situation.—A. I think so. I do not think that that subsection can be used wrongfully But it does give the chance to a company, for instance, to come along and say we can put our capital structure in proper shape and not have to incorporate again, and if they start incorporating again, you do not know where they swing to in the incorporation, perhaps across the line. I have one in mind now, quite a large corporation, that may have to incorporate again. If we have this amendment we could say to them you are just as well off here as anywhere else.

I am glad to say that I am not a financier. I am a mere lawyer. I know of one case at least where the financiers came to me and said, "We can sell preferred no-par value stock if we can prefer it as to a specific amount of capital," and I had to tell them that under the Dominion Act they could not do so and they went elsewhere. Now they had a reason for it, I presume; they thought that they could sell preferred stock in that way to advantage, and the people wanted that surplus stock, because after all it is a question of what they want. There are a minority of people who will never be saved from trouble in the stock market. I am thinking of the minority we cannot save. Some of them you can save, but do what you can, you cannot save some people as I have found out to my cost. But the bulk of the investors, with the Act as it stands, get a very fair

picture of what is being presented to them, and, after all, we have got to go to the practical thing, not to the theoretical. Theoretically, one can sit in one's office and write a very nice treatise or essay on corporation business, but when you have to sit in your office and work it out then you run up against what you must really take care of, and if we could control the business and say that we are the only people from whom you can get a corporate entity all right, I agree, there are a lot of things I would change. But when you have in direct competition, especially in international finance with the people across the line, you have either got to fall in with it or see our sinews dry up.

By Mr. Hanson:

Q. After all, that is the strongest part of your argument. We must give jurisdiction here the same as it can be obtained elsewhere.—A. So long as we safeguard and we are safeguarding—

By Mr. Campbell:

Q. There is just one point I want to be clear on. A certain amount of non-preferred stock is sold, say at $100 a share. Later on it drops in value and another allotment is put on the market at $50 a share. Now, is the man who bought the $100 share in the first place only entitled to the same distribution as the other man?—A. Is that no-par value?

Q. No-par value preferred stock.—A. If it is of the same value, he is entitled to exactly what the other is no matter what he pays for it.

Q. The stock has dropped to $50.—A. You see, the man who has bought that at $100, and the stock has dropped to $50,—it is only worth $50 now, and, therefore, it is no hardship to him if other people will come in at the same price.

Q. I understood that he had that preferred position over the second person. —A. Not unless his preferred stock calls for payment ahead of the other stock.

By Mr. Geary:

Q. After all, these gentlemen have been very clear to some of us who have had some experience in these matters, but to some of the members of the committee it has not been made quite clear. I wonder if Mr. Osler could categorically say why the change made by the amending Act is in the section in the present Act on preferred only.—A. On preferred only. The amendment, as I read it, simply gives the power to state an amount as to which that no-par value stock is preferred in the winding-up of the company.

By Mr. Hanson:

Q. And you can sell it at any price.—A. You can sell it at any price you can get for it.

By Mr. Geary:

Q. It is not a vital change?—A. It is not a vital change if you follow this line. The difference between par and no-par value stock is only, after all, a figment. "I will sell you a share of stock and I will pay you $100 preferentially for every share when we are winding up, that is, ordinary par-value stock." In the other case I say "I will sell you a share of preferred no-par value stock and pay you $40, or $30, or $20, upon winding up. What is the difference? None whatever.

Q. That is, under the present Act.—A. You cannot do it under the present Act. You are permitted to sell par value stock under the present Act preferred as to principal, but you cannot do it with the no-par value stock.

By Sir George Perley:

Q. Can you sell preferred stock to me at less than par value.—A. Well, you are allowed to sell subject to a certain discount, subject to a certain commission.

By Mr. Hanson:

Q. You have to take care of the commission.—A. But substantially it is correct to say that you must receive par for par stock.

Q. Theoretically you cannot do it, practically you can do it.—A. Practically you can beat it down a little bit.

The CHAIRMAN: We have some gentlemen here from Montreal, representing the east, also Mr. Day from Toronto, and some others, who are not entirely in accord with the bill. Will you hear Colonel George S. Currie of Montreal?

Mr. HANSON: Perhaps we should find out if he is in favour of the amendment.

Mr. CURRIE: I am in favour of the section.

Colonel GEORGE S. CURRIE (Representing Montreal Board of Trade) called and sworn.

Gentlemen, I am not a solicitor, I am a practicing public accountant, a member of the Montreal Board of Trade, and of the Legislative Committee there. Our job is to look at bills that are proposed, to study them and, if we can offer any constructive criticism thereto, to do so. We have examined this bill number 9, and in connection with Section 6, we have raised the same point that different members of this committee have, that is, as to the sale of preferred no par stock. I shall put it in brief form, the way we have written it down, which will explain it very thoroughly.

In the proposed amendment to Section 9 of the principle act, as set forth in Section 6 of Bill 9, subsection 6 reads in part as follows:

> Any balance of the consideration so received over and above the portion thereof declared to be capital in accordance with the provisions of this subsection shall be distributable surplus.

We have seen the difficulties that certain gentlemen have raised here in that $50 is paid for par stock, and the company might contribute $40 to surplus and $10 to capital. We say in view of this section, that it would seem advisable that Sections 51 and 52 of the Companies Act be amended to provide that.

> Where no par value shares are offered for subscription, any portion of which consideration is to be carried to surplus account, the maximum so to be distributed, shall be stated in any prospectus or statement in lieu of prospectus filed in respect of the issue of such shares.

We say, if you pass that section, that there should be some way that we can find out how much is credited to surplus, and how much is credited to capital. We follow that further and say that if that is the case—and here is where we come to the accounting. In view of the provision of Section 9, clause 6, quoted above, which permits the consideration received for capital issues to be applied in part as distributable surplus, it would seem that Section 136, paragraph 3—that is the section that gives the details of what the items in the balance sheet shall cover—should be amended to provide for the distribution of capital and surplus as follows:

(*a*) Total amount received on issue attributable to capital;
(*b*) Surplus.

It is the practice, and if you pick up any financial review you will see that a balance sheet will be drawn up consisting of capital and surplus representing

$200,000 no par, so much. We suggest that they should be compelled to divide that amount first, into attributable to capital, secondly, amount attributable to surplus. In that way, we say, in so far as the section we are on is concerned, first of all we can find out how much is credited to capital at the beginning in the original issue, the prospectus must show it, and how much is surplus. Then when the company publishes a balance sheet, we can see how much is still in capital and how much is surplus, so that the shareholder will know exactly what the situation is.

That is all our recommendations on that particular section. We have two others.

The CHAIRMAN: Mr. Mulvey says that those suggestions made by you, are quite acceptable, and will be added. What have you next?

The WITNESS: I have one in connection with my own profession. "That neither the auditor of any company, nor a member of his firm, should be a director or associated in any way with the administration of the company, except as a shareholder."

That is, if I am the auditor for a certain company, or my firm is, my partner cannot be a director or employee of the company.

Mr. GEARY: How about co-directors when incorporated?

The WITNESS: I do not think the auditor should have anything to do with the company at any time.

Mr. GEARY: You want to go that far; you have no partner?

The WITNESS: We have not done any incorporated company practice auditing.

Mr. GEARY: What about shareholders?

The WITNESS: As a shareholder? I would be very glad to be auditor for the Canadian Pacific Railway, and a shareholder.

Mr. HANSON: Is there a reason for that underlying, or is it general principle?

The WITNESS: I am speaking from my experience as an accountant. I think it is good practice and desirable. Where there are two members of a firm, one should not be a director.

Mr. MULVEY: This suggestion refers to subsection 3, Section 123 of the Act; you would modify that section.

The WITNESS: Yes.

Mr. MULVEY: You would recommend that the auditor or his partner may not be an officer or director.

The WITNESS: That is it. The auditor may not be an officer or director.

The CHAIRMAN: That is the suggestion made by the Montreal Board of Trade through Colonel Currie.

Mr. MULVEY: I see no objection to that.

The CHAIRMAN: The Department will give it every consideration.

The WITNESS: The next suggestion we have is in reference to paragraph 3, Section 34, subsection 120A.

Mr. HANSON: Are you speaking of the bill, or the Act?

The WITNESS: The bill.

Hon. Mr. RINFRET: 34 is the bill, 128 the Act.

The WITNESS: It is provided that a certificate signed by the Secretary of State, with regard to the failure of an investment trust company to comply with the provisions of the section, shall be deemed sufficient evidence that it is just and equitable that the company should be wound up.

Mr. MULVEY: The Department is going to suggest that that section be withdrawn entirely.

Hon. Mr. RINFRET: Besides, that is dealing with the investment sections, and I do not think that we should mix them up with what we are dealing with this morning. We might hear what this gentleman has to say, but not discuss it, just have it taken down for the present.

The CHAIRMAN: The Department is going to suggest that that section be withdrawn.

The WITNESS: This confers undue and arbitrary powers on that minister and drastically curtails the functions of a judge, for which reason it is suggested that the section be amended as follows:—

That the word "or" on line thirty-five of Section 34 of the bill, subsection 120A, should be changed to read "and".

"If, at any time such demand for a statement of the affairs of the company as aforesaid is not complied with within the time required by such demand, 'or' if the company, its officers or agents, refuse or neglect to submit the affairs of the company to inspection—"

That following the word Canada, on line 38, all words up to and including paragraph E on line 40, should be deleted and that there be substituted therefor the following: "May apply to the proper court for a winding up order under the provisions."

Mr. HANSON: You object to the State Department?

The WITNESS: We say it should be before a judge.

Mr. HANSON: Mr. Mulvey would not want that.

Hon. Mr. RINFRET: We are only taking this up now as a matter of record. This section will either be dropped or considered later.

The WITNESS: We suggest it should be taken out of the hands of the Secretary of State, and that you must go before a court of justice.

Mr. HANSON: The lawyers will agree with that.

The WITNESS: We suggest that all words after the word "shall" in the concluding two lines of this paragraph, be deleted and the following substituted therefor

> Have the effect of throwing the burden of proof upon the company to show why it should not be wound up.

That means they must go before a court and prove their case. We are afraid of manipulation of stock by directors and others. That is the reason for that.

The CHAIRMAN: I am quite pleased to know that the recommendations of the Montreal Board of Trade are going to be practically concurred in by the Department We are glad to have here to-day Mr. F. W. Wegenast, barrister, of Toronto. Also Mr. Day. We will ask Mr. Day, and later any others who cai'sh to speak. I am hopeful we may satisfy ourselves to-day with regard to wh.e outside witnesses and perhaps conclude with them if it is possible and desirable. We will hear Mr. Day.

JAMES E. DAY, K.C., called and sworn.

I have not had the advantage like Mr. Long and Mr. Osler, in representing the parties they do, but I have been acting during the last twenty years, and I think four-fifths of my work has been in connection with the incorporation and carrying on of companies of much more ordinary nature, and also the semi-despised mining companies.

The CHAIRMAN: Wholly.

The WITNESS: It depends whether you hold Smelters, or some other stock. I have put in a good deal of time looking over the proposed changes, and I have sent to the Secretary of State a long memorandum and I am quite content if anything I have said does not meet with his approval, and it can be dropped. I do hope, however, that he does bring it before the committee. As to this particular section, I do not know whether the committee seriously considers the proposition that we are not going to have no par value stock. After all, the whole object of the Companies Act is that the Dominion will help in the getting of money required for industry, the development of mining and other resources of Canada. On that there is only one thing I ask, and that is that the Dominion continue its act distinct from the provinces, and introduce no unnecessary restrictions or unnecessary interference. The very last suggestion not to leave those matters to the Department that can be left anywhere else, is an example. Section 6, with all the memoranda that was made, after all was very short and very much approved. I had thought, and it just shows the dangers of amending the act as to that reserve and surplus in the matter of providing, instead of the directors fixing it, that it should be the shareholders. But, in the Province of Quebec, with all their experience, they leave it to the directors to do everything. If you provide that the shareholders should fix the reserve it will not mean anything. For instance a company in its beginning has five or six shareholders, they are full shareholders just the same, and the result is that the directors will pass the surplus resolution. The directors are the five shareholders and are just as much shareholders all the way through. However there is one point of detail, I think, that has to be considered in it, and that is the clause fixing the capital. "The amount of capital shall not be less than the amount," and so on, "of the par value of the shares." You have overlooked one thing. Under the act as it stands to-day under section 34 a company can give an applicant for stock a commission up to twenty-five per cent. It is lawful for the company to pay a commission. Suppose a company has issued $100,000 or $1,000,000 stock and has paid twenty-five per cent, it only has $750,000 capital, and if you pass this section with the words as they are you are going to have it in the hole. Its capital is actually depleted by the amount given as commission. We have a lot of members of the Senate and the House of Commons who have had experience in financing, and suppose it should become a case where the liquidator thinks that they have to pay that back. There is the point that I think will require consideration. If you say that this company cannot carry on business unless it has the amount of its capital, how is it going to get back the percentage given for commission. The intention is all right that the net amount they have received is that amount of capital. That clause, I think, will be unworkable, but as to the necessity of the clause itself you only have to look to the old act which contained a clause that you had to fix the price of the stock. If it was not fixed by the charter it might be fixed by the directors or shareholders. The department will not take the responsibility to say what price the stock shall be sold for, but how could you fix the price at a meeting of both common and preferred shareholders when you have not got them? That was the old act—to be fixed at a meeting of both classes of shareholders and they do not have any preferred shareholders. They have wiped that out and have given us a workable clause.

You will have to amend the clause to provide that the amount of capital on hand will be the amount it has lawfully received, less the commission.

I have no more to say as to this; I have other points in reference to a lot of other sections and if I can be of any assistance when they come up I will be glad to render it. I wanted to clear up this one point now.

F. W. WEGENAST, barrister, called and sworn.

The WITNESS: Mr. Chairman and gentlemen, what I have to say approaches the subject, particularly the subject of setting aside a part of the consideration received for no par value authorized as a reserve—approaches that subject from a point almost the direct opposite of Professor Curtis' position; but I want to be understood as being absolutely in agreement with what he says. I won't venture to repeat what he said. When I say that I am speaking from an opposite standpoint, I mean this: I am approaching it from the standpoint of the small investor who has put his money in a company on the representations of a promoter, or, as they are now called, investment banker or his agent, high pressure or otherwise. It has been my fortune—I will not say good fortune—to represent many thousands of these people, and I frankly admit I am prejudiced in favour of the position of the small shareholder, just as frankly against the promoter—at all events, with respect to some of the methods employed. Now, may I point out this, that the two main safeguards of the small investors—the shareholder generally of a company—have been, first, that stock could not be sold at a discount and that you cannot pay dividends out of capital. Those have been the two great principles that have been the safeguard of the shareholder. This thing must be looked at from the standpoint of the small householder, the small shareholder who is approached by a high pressure salesman. What are the points that he stresses? I am addressing myself for the moment to the second point which is a very important item of salesmen's talk, to say that your dividends are going to be guaranteed from the start. It is one of the most common items of salesmen's talk, very often not true, but he will come around to that in some fashion or other.

Mr. HANSON: Nearly always untrue.

The WITNESS: Yes. Let me point out this first, that the scheme of no par value stock has completely wiped out any fears, namely, that you could sell stock at a discount up to the time of no par value stock being invented. The man who took his stock at a discount took his chance, just as manufacturers, financiers and others. May I point this out—it has not been mentioned this morning—that when you say that the share certificate represents on its face that the stock is worth say $100—when you say that is a misrepresentation, it is only misrepresentation from this standpoint, that it may not be worth $100 in a few years or in a few days, but it should be worth $100 at the start. Is it not worth exactly what the man puts in? All that that certificate means is that $100 has been put in it, or its equivalent, but if none of us has got paid it is there yet, and it is worth it. It is not a misrepresentation from the immediate standpoint of promotion and organization of the company, and it should not be. That is the very purpose of a par value. It is not to insure that the stock is going to be worth $100 a year from now or ten years from now; it is to insure that they all get off to an even start, and that the man who pays in his money at the beginning will be guaranteed that somebody does not come along afterwards and get in on a better basis.

By Hon. Mr. Rinfret:

Q. A no par value stock is sold for so much; it is worth that much the day it is sold. I do not see how it does not apply to the other kind of a stock. —A. The trouble is in par value matters that you can come along later and without asking anybody's permission sell the stock for less and let in the favourite sons on a better basis. Now, it is quite true with the passing of time and the fluctuation of money that stock may be worth more or less and that you should not be tied down to the par value. This whole subject was investigated very thoroughly by the Board of Trade in England in 1928 with the

result that certain amendments were put through in the English Act in 1929; and in these amendments the Committee of the Board of Trade definitely negatived that no-par value stock provision and adopted instead a provision that under certain conditions—for example, three months after the original issue and with the consent of certain authorities—I think it is left to the courts—stock may be issued at a discount but when you do that you know exactly what you are doing, and this scheme of no par value shares is simply a means of kidding the shareholder in the belief that a state of affairs exists which does not exist at all.

By Mr. Hanson:

Q. No par value shares are here to stay.—A. Assuming that—I wanted to mention that because the English Act has been mentioned to support a certain clause as if in England this scheme were in favour too.

Q. What you are proposing to-day is what Professor Curtis has pointed out.—A. I am looking at this thing not from the point of view of the large companies and promoters of the investment bankers but of the companies promoted by a man I had a good deal to do with, A. J. Brooks; because this Companies Act is going to be used for everybody. It is absolutely true that a scheme will be made out in a lawyer's office with the dummy shareholders and directors where the directors will be told to guarantee dividends from the start. Is there anything to prevent that?

By Hon. Mr. Rinfret:

Q. I do not want to argue against the evidence you are giving, but considering the question I put a moment ago, it strikes me the other way, that when that share has no par value it is up to anybody who buys it to find out what it is liable to be worth at the moment; but as it has a share value at the time it is sold, when it is resold there is also the intimation that it is worth so much.—A. In answer to that, sir, I will have to offend Mr. Hanson. It has been said that a share with no par value represents an aliquot part, a definite fractional part of the capital of the company. It is not so.

Q. Why not?—A. If it were all issued at one time and never interfered with it would be so, but the minute you issue an extra share you start off and you have 50,000 shares issued and then every share represents 1/50,000.

By Mr. Hanson:

Q. At that time.—A. At that time. The next day you sell one share, and then what have you got? Every shareholder has just 5/0001, and when you sell the next share—50,000 shares—this man who had 1/50,000 has now 1/100.000.

Q. The gentleman agreed to it. It is an aliquot part.—A. He only agreed to it in the sense that he is content to take a share in the company under this Act. If you preserve that with all the proper safeguards around it—if you have your safeguards so that a new man is not let in on another basis, you might do it all right. If you have the matter properly regulated, I doubt if two or three shareholders should be enough to sanction the new bill. All of us who handle companies know how this is done.

By Mr. Geary:

Q. May I follow that for a moment? When there is a second issue of stock money is received from that second issue and that amount is added to the assets? —A. Yes.

Q. Well, there is a less aliquot part, 1/100,000 instead of 1/50,000. There are additional assets.—A. Yes, if you sell the first 50,000 for $50,000 and you

sell the second $50,000 without proper safeguards for $25,000, then what the man gets is 1/75,000.

Q. How are you going to sell that?

Mr. MULVEY: I understand you oppose this no par value method altogether.

The WITNESS: Not now. Since I have gone so far, it is only because I have been drawn out. Assuming that you have a no par value system saddled on you in this country, I say you do not make it any worse by enabling the directors to set aside any part they like to the capital without any proper safeguards as a reserve out of which they can pay dividends from the start.

By Mr. Geary:

Q. Your remarks have been directed to that.—A. Yes.

Q. I gathered you were opposing it?—A. I would if this were the time and place. What I am addressing myself to is subsection 4, the latter part of subsection 4 of section 9 as introduced by section 6, "The board may provide that a part thereof may be set aside as a reserve." I say that without much better safeguards than this bill provides for, that section is bad. I go further and say that it is vicious.

By Mr. Hanson:

Q. If that power were limited to a special provision in the letters patent would that meet your objection?—A. That would go a long way to meet it. You have taken away that flexibility for which my friend pleads. It is that very flexibility that is the promoter's charter and is the safeguard of the small investor.

Q. Is not that a very important factor in assisting companies to finance—that very flexibility?—A. Assisting men like A. J. Brooks, yes.

Q. I do not know anything about A. J. Brooks. I will tell you I have never heard of him. A. I only use him as a type because I know him, and I have reason to know that other people know him; but I refer to that type of promoter, and you are leaving it wide open.

By Sir George Perley:

Q. May I ask if we had the system no par value for common—that is here to stay—is there any reason why we should not have no par value for preferred as well?—A. I am prejudiced, but I say that there is no reason. I am very much disappointed to see the Department fall for it.

By Mr. Geary:

Q. Do you think section 20 will help us at all?—A. To some extent, it would; it does not go far enough.

Q. How far should it go?—A. I would not like to say offhand, when my words are being taken down. I should like to think that over a little longer. I think this Committee might well pause before sanctioning the principle setting aside any part of the principle as reserve.

By Mr. Hanson:

Q. Now, you are confronted by a condition. You have the jurisdiction in the province of Ontario to do this. In the province of New Brunswick you have the jurisdiction on the sanction of shareholders to issue par value shares at a discount. A. I cannot speak of New Brunswick. It is the same as the English Act, and I suppose I can speak for Ontario. There is almost a complete answer so far as Ontario companies are concerned, at all events. They have their Securities and Frauds Prevention Act under which they can absolutely control the whole thing, and it is a matter of arbitrary control by the registrar under

the Act and the Attorney General, so there is no question there. As regards Dominion companies there is not that safeguard, although the provinces purport to govern Dominion companies as well.

Q. When they come to sell the provinces are supposed to have jurisdiction? —A. My own opinion is that the Act is ultra vires in that respect. I do not think the provinces have any right to say to the companies how stock of a Dominion company should be sold when it is issued; but there is one reason in particular why I am so much concerned about this. I do not think it will be very long before we will have a case in the courts in which the provincial Securities and Frauds Prevention Department will be relegated to provincial authorities. We will leave the promoter to the Dominion authority to do what he likes under this Act if this goes through.

Witness retired.

R. G. H. SMAILS called and sworn.

By Mr. Geary:

Q. Would you tell us what your position is?—A. I am Associate Professor of Economics at Queen's University, a graduate of London University, England, and a member of the English Institute and the Ontario Institute of Chartered Accountants. I think that is all.

Q. When did you graduate from London?—A. I am not as young as I look. I graduated as a chartered accountant in 1920; that is ten years ago. I am in complete sympathy with the views expressed by Professor Curtis. I can only justify my intrusion as an accountant by training. I have one point on which I wish to concentrate in that capacity. First, I would like quite definitely to dissociate Professor Curtis and myself from any criticism of the principle of the no par share. We are enthusiastic about the uses of that share providing it is properly safeguarded—the principle of the no par share, both the no par common share and the no par share preferred as to dividends. We are discussing this morning the no par share preferred as to principle. The present Act empowers a company to issue a no par share preferred as to dividends but not a no par share preferred as to principal, and the amending bill proposes to authorize the issue, to legalize the issue of a no par share preferred as to principal, and it is to the no par share preferred as to principal that we are strenuously and consistently opposed to. The remarks, particularly by Mr. Long, seem to me to imply that there is some relation between the redemption or liquidation value of a no par share preferred as to principal and the amount which the company issuing that share had to carry to capital, as being distinct from surplus. That is to say, if the company sold a no par share preferred as to principal in the amount of $50 and sold that share for $60, either it would or it would have to, or at any rate it would carry $50 to capital account where it would be locked up and retained as a fund for the security of redemption of that share. I am not a lawyer but I understand from the lawyers—

By Mr. Geary:

Q. The $10 would be carried?—A. Surplus. I understand there is no substantial or effective difference between the proposed subsection 91 and the provisions of the Ontario Act. Now, there is no requirement upon an Ontario company under the Act to carry any specific proportion of the issue price of a preferred no-par share to capital account. I have in my hand the balance sheet of a company—a certified balance sheet of a company which issued 22,000 shares of no-par stock preferred as to principal in the amount of $60 per share and simultaneously issued no-par common shares. The preferred shares were pre-

ferred as to principal in the amount of $60 per share. I do not know at what figure the company sold the shares to the investment banker although we can make a guess at it. The balance sheet of the company shows 22,000 shares of $3 accumulative convertible preference stock without nominal or par value at $22,000 in the capital fund. That is $1 per share of no par preferred stock redeemable either at option of the company during the life of the company or on liquidation at $60 per share.

By Mr. Hanson:

Q. They carried them at $1?—A. Yes.

Mr. LONG: An Ontario company?

The WITNESS: Yes. I prefaced my remarks with the statement that I did not think there was any safeguard in the proposed Dominion bill which was absent from the Ontario Act. The common shares, 40,000 of them, show at $40,000 in the capital fund. The total capital fund of that company is $62,000, it having a total equity of $767,000. The remainder of the equity is shown as surplus at organization, this being the initial balance sheet of the company. Now, there is nothing, as I understand, in law to prevent the company utilizing that surplus for dividend purposes—that is, returning it to shareholders, and so reducing the stake for all the shareholders to $62,000.

Meanwhile, is it correct to say the common shareholders are in possession of an equity of $40,000 when, in fact, they have no equity whatever in the assets of that company. Until that point is reached I submit the common shareholders have no equity in that company, and that there is raised a problem of the first magnitude. That is the only point on which I wish to make an observation.

FRANK COMMON, sworn.

WITNESS: I am a member of the legal committee of the Montreal Board of Trade. I represent the Quebec branch of the Investment Bankers Association.

The point which I wish to submit is designed to meet what I consider to be the very well addressed question of Sir George Perley on the question as to what steps would be taken in order to permit a distribution of moneys paid to a company as dividends in payment for preferred shares no-par value carrying preference as to capital.

I suggest that the committee should consider the insertion of a provision that the capital of the company shall not be less than the amount received by the company on its disposal of all no-par value shares carrying preference as to principal which have been issued. That would prevent such a thing happening.

The CHAIRMAN: The Department say that is the way the Act reads now.

WITNESS: If the Act does read that way that is a good answer to the question. If it does not I would suggest that it be made clear. I would suggest that all of the amount received for no-par value shares be carried into capital.

By Sir George Perley:

Q. Should be all considered as capital.—A. Yes. That would prevent such an operation as was forecast by the gentleman who last spoke, where only $1 was credited to capital.

The Committee adjourned at 1.05 p.m. to resume at 4 p.m.

AFTERNOON SESSION

The Committee resumed at 4 p.m.

CLIFFORD CURTIS, recalled.

WITNESS: Mr. Chairman, I do not know that I have a great deal more to say than I did before, other than to repeat. I would like to make it clear, however, that I am not opposed to the principle of a no-par share at all. I think that properly safeguarded it is a very necessary agent of finance. I do want that understood. I did believe—and I do believe—that those clauses were not the most suitable in the broadest sense. I do not question that they may facilitate financing of companies. The offsetting effect, as I see it, will they be equally sound for the investor, and it seemed to me—and it is a theoretical point that we are considering—whether the gain to incorporators bounces the possible loss to investors. I was inclined—and I am inclined—to question that. I am inclined to doubt if the investor generally would gain through that.

By the Chairman:

Q. Through the issue of the non-par preferred stock.—A. Through the issue of the non-par preferred stock and through allowing part of the consideration to go to a surplus account. I do think that one should be very careful in changing a principle that has been followed in company legislation for years, that is, the capital of the company is inviolate to be kept for the treasurers and for the shareholders, and that capital should not be returned in the form of dividends. That is a principle that has been followed for years, and I feel myself that one should be careful in departing from such a principle.

By Mr. Mulvey:

Q. There is no question about that fundamental principle, but can you point out where that principle is being departed from.—A. If you allow a part of the capital paid in to be returned to a man as a dividend.

Q. Well, now, it has always been the practice that a subscriber, a shareholder should pay a premium which should be attributable to dividends. Do you object to that. The point there, Mr. Mulvey, was a practical protection. Very few concerns outside of banks and insurance companies could very well—

Q. You are quite wrong there. Very many companies do that.—A. I am not aware of very many.

Q. Oh, yes.—A. I still stand by that.

By the Chairman:

Q. Recognizing the surroundings under which we dwell by the Provinces granting certain rights, etc., and being associated closely in finance with a big neighbouring country, do you see any objection and could you suggest to the committee a safeguard that might be wrapped around the granting of no-par value preferred stock.—A. Well, the safeguard which I would suggest would be that the amount of the preference be the amount contributed to the capital fund or that the amount of the consideration go to the capital fund. I think it immaterial which way it is put.

By Mr. Mulvey:

Q. That is provided for in a suggestion which Mr. Common has made.—A. I understand that, Mr. Mulvey.

Q. That covers your point asked.—A. Yes that meets the point.

By Mr. Irvine:

Q. May I ask, Professor Curtis, what your opinion is in respect to the contentions of some of the witnesses this morning, that if this amendment were not put into force we would jeopardize the inflow of capital into this country.—A. I would be inclined to think that in the long run the soundest corporation law would draw the best and, I think, the greatest amount of capital.

Mr. KAISER: The sounder the law the sounder the business.

WITNESS: That is, it seems to me that foreign investors will invest more readily in companies that are organized under a fairly strict law.

By Mr. Hanson:

Q. As I understand you, you are agreeable to the principle of no-par value shares both for common and preferred.—A. Quite true.

Mr. KAISER: I do not think he said so.

Mr. HANSON: Preferred, with proper safeguards. Mr. Common, at my suggestion, made an amendment to subsection 4 of Section 9, that is Section 6 of the Bill, in line 37 after the word " and " he suggests this, interpolating the words:

> Except in respect of shares without nominal or par value having a preference as to principal the Board may.

Now, the effect of that would be, they could not take into surplus any premium or any part of the consideration.—A. My impression is that that covers my point completely.

Mr. HANSON: Well, that is satisfactory to me.

The CHAIRMAN: What number is that, Mr. Hanson?

Mr. HANSON: It is in Section 6, page 2.

Sir GEORGE PERLEY: Mr. Chairman, regarding the question of whether it will interfere with the inflow of capital, Mr. Common did not have much chance this morning to give his evidence, and I would suggest that he be heard now.

FRANK COMMON recalled.

Mr. Chairman and gentlemen, in considering this question, and all of the changes that are now before this committee, it would appear to me from the discussion, perhaps we might run the risk of the feeling that the suggested changes were proposed for the benefit of either one class or another. If there is any suggestion from which all classes in Canada are not going to benefit in full, if there is any change, I do not feel that any change is justified. The changes that are under contemplation, and that have been the subject of most of the discussion to-day, have been changes which have been addressed to provide Canada with proper corporate machinery for securing the necessary capital for the development of this country, and when you consider this matter it would appear that we should keep the interest of the country strongly before us. What is the position with respect to these changes, that is, the changes in respect to no par value shares? Where is Canada drawing her capital from at the present time? We are all pleased to know that Canada is drawing more and more capital from within her own confines for the purpose of industry, and every one of us is anxious that in so far as Canadian industry is concerned, it shall remain under Canadian control, but as we are by comparison with some other countries, more or less young, and a country requiring at this stage a considerable amount of capital for the development of our natural resources, we find in order to raise that capital, and raise it on the terms that are most favourable for the development of industry and sound operation, that those

who are furnishing that capital have to resort to the places from which money can be bought at the most reasonable rates. The result is that when a large issue is brought into Canada a substantial portion of that, in some cases more and in some cases less, it goes to other countries, it goes to England, it goes to France, it goes to Switzerland, it goes to Belgium, it goes to the United States, and how do we get this foreign money? These securities have to go to the investment bankers in those other countries, who have charge of the distribution of securities, and money, among their clients. These people are, more or less, accustomed to being able to put before their clients the securities in a form that has been approved by the most up to date practice in corporate finance, as best suited to, not only the company that is issuing the security, but also the people who are going to buy, because if you were to offer a security that does not look favourable and does seem to carry the necessary protection to the purchaser, if the purchaser is at all well informed, and we know perfectly well that the sources from which the vast bulk of capital comes are well informed, they will not take the security, so it must be made suitable to the purchaser and it is in order that the securities shall be made suitable to the purchaser in many cases, and I think in most cases, that these changes are most important.

Mr. HANSON: In other words, it is marketability.

The WITNESS: It is marketability. What happens? A company requires money and it goes to the investment banker, whose business it is to furnish money for the development of industry. They say, "Will you buy some of our securities?" The investment banker makes his investigation of the enterprise, and considers whether or not it contains all of those degrees of merit which warrant the investment banker approving the investment to his client. If he comes to the conclusion that the investment is a sound one, and he can recommend it to his client, he then says to the company making the issue, "I think well of your general structure, and I think well of your future, but if we are going to do business we must have a security which I can hand on to my clients, which will suit them." Then comes the suggestion in most cases, I think, from the investment banker as to the further interests of his client because the interest of the investment banker is not to fleece and cheat his client, it is to serve him well.

Now, we are in competition in this matter. Say a banker takes a fifteen million dollar issue of securities in Montreal. He does not sell in many cases, all of that in Montreal. A certain amount of that goes to New York, a certain amount to England and other European countries, and although in England they have not, so far as I know, these no par value shares, still the English investor is becoming more and more familiar—and this does not only apply to England, but it applies to most of the European countries, with the New York system, and the New York method of financing, and he therefore is going to look for a security which he considers to be most advantageous and he has before him the practice in the United States in that regard.

Now this morning, when we were having our discussion, some references were made to certain unfortunate cases of corporate finance, where highly improper methods had been adopted. I have never heard previously, of any one particular case that was referred to, and I do not know how much money was involved, whether a large amount or small. It is unfortunate, however, that it was lost, and that somebody was imposed upon, but it would appear to be a great mistake if we should frame all the laws of this country in such a way, having in mind only the malpractice in the corporate field. The vast bulk of the money that goes into the development of this country comes from security houses that have the interests of their clients at heart, because that

is their interest. If they do not serve their clients well, they will go out of business. That is the condition, and it would be a great mistake if Canada, needing money as she does, is going to put an impediment in the way of those who are helping to supply the capital for the development of our industry, and for that reason it seems to me important that our Companies Act should contain all the facilities that are consistent with sound, corporate practice, and for the protection of the investor for the purpose of furnishing capital coming to this country.

It may be said, when I am talking in this way, that I appear to be talking from the standpoint of private interests. I am not talking from the standpoint of private interests. I must say that I have had fairly extensive experience with investment banking houses, but I have had an equally extensive experience with industries that are developing this country, and have had occasion to view both sides of the picture. Furthermore, we have had, I think, with all of the lawyers who are here to-day, occasion to view what is a growing movement and that is the investment of foreign capital in Canada, and when we come to discuss matters with these foreign people, we have to satisfy them in so far as we can, and it is in the interests of Canada to do so, that we have not only sound means of investment, but that we can afford all facilities in the matter of corporate machinery that they can get elsewhere, so far as they can be imported with safety to the investor and with the change that has been suggested this afternoon, as the result of the question raised by Sir George Perley this morning, it will appear that we do get adequate protection in our securities by inserting a prohibition against any part of the consideration received from the sale of no par value shares, having preference as to principal, but attributable to surplus. I might read a suggestion as to accomplishing this result.

In Section 6, subsection 4, we find that the concluding words of that subsection, which empower in so far as this act does at all empower, the carrying of any part of the consideration to surplus, and it is now suggested that the last three lines of that section should read as follows:—

> and except in respect of shares without nominal or par value, having a preference as to principal, the board may provide that a part thereof may be set aside as a reserve.

If we put it in that language it would appear that the preferred stock would be taken out of operation entirely of this clause, in so far as carrying part of the consideration to surplus is concerned.

Mr. GEARY: Before that, won't you have to carry some change into subsection 6?

The WITNESS: I considered that, Mr. Geary, but section 6 does not amplify section 4. It is section 4 that grants the power, but in so far as section 4, as now suggested for amendment, is concerned, it would carry no power. I do not think that any modification of section 6 would be necessary, because section 6 only refers to what may be done legally by supplementary letters patent or by-laws. With the amendment now proposed to section 6, it would be illegal to insert in the supplementary letters patent or by-laws, any provision to carry part of the consideration from preferred shares to surplus.

Mr. WEGENAST: Would that mean, Mr. Common, in every case where there was only what you might call common stock, no par value, and where there was no preferred stock without par value, any part of the consideration could be set aside as part of reserve.

The WITNESS: That is the way the law would remain.

Mr. HANSON: You can do that to-day.

The WITNESS: I do not think that it is clear under the present phraseology of the act that that can be done. It has been suggested that that be done now by the Montreal Board of Trade. They suggest, if such be done with regard to the common shares, the amount going to surplus shall be shown on any prospectus or statement in lieu of prospectus, and in the balance sheet.

Mr. GEARY: You do not draw any distinction between reserve and distributable surplus?

The WITNESS: I think the word "reserve" would include distributable surplus.

Mr. GEARY: I should think it would. The language, however, is different, and I wonder if there is any object in doing it that way.

The WITNESS: I would prefer the words "distributable surplus" to "reserve".

Mr. GEARY: In section 4 it is called reserve, and in section 6 it is called distributable surplus, is there any distinction?

The WITNESS: I do not think there is any distinction, and if there is any doubt as to section 4, I would think it was cleared up by section 6.

Mr. MULVEY: The amendment you suggest now should be carried into section 136, which provides the terms of the balance sheet; it should not be section 6 as here.

The WITNESS: We are suggesting an additional clause to section 6. The insertion would make it illegal.

Mr. MULVEY: As now carried in the balance sheet?

The WITNESS: The Montreal Board of Trade recommended that amendment this morning.

Mr. MULVEY: That is section 136.

The CHAIRMAN: We have Mr. Hyde of Montreal here.

Mr. HYDE: Mr. Chairman, I have nothing to add to what has been said by Mr. Common and Mr. Long. We are not trying to protect any particular interest, so far as I know, we just want a workable act.

The CHAIRMAN: We also have Mr. Hughes here.

Mr. HUGHES: I associate myself with Mr. Hyde. I think the two amendments suggested, the first one worked out by Mr. Common, and the other suggested by the Montreal Board of Trade, are satisfactory and I approve them thoroughly. I think a new section, amended by the two sections, will be very good, and at the same time make it safe for the investor.

Discussion follows.

The committee adjourned.

SESSION 1930

HOUSE OF COMMONS

SELECT STANDING COMMITTEE

ON

BANKING AND COMMERCE

BILL No. 9—AN ACT TO AMEND THE COMPANIES ACT

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 2—TUESDAY, MAY 6, 1930

WITNESS:

Mr. John Appleton, Secretary, Dominion Mortgage and Investment Association.

OTTAWA
F. A. ACLAND
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1930

REPORTS OF THE COMMITTEE

APPLICABLE TO BILL No. 9, AN ACT TO AMEND THE COMPANIES ACT

SIXTH REPORT

TUESDAY, 6th May, 1930.

The Select Standing Committee on Banking and Commerce beg to present the following as their

SIXTH REPORT

Your Committee have considered the following Bills and have agreed to report them with amendments, viz:—

Bill No. 9, An Act to amend The Companies Act.

Bill No. 57, An Act respecting the Confederation Life Association.

Your Committee have ordered that Bill No. 9 be reprinted, as amended.

All of which is respectfully submitted.

F. WELLINGTON HAY,
Chairman.

MINUTES OF PROCEEDINGS

ROOM 429, HOUSE OF COMMONS,
May 6, 1930.

The Select Standing Committee on Banking and Commerce met at 10.30 a.m. Mr. Hay, the Chairman, presided.

Members present: Messrs. Allan, Benoit, Bertrand, Bothwell, Campbell, Casgrain, Cayley, Geary, Harris, Hay, Kaiser, McIntosh, Matthews, Mercier (St. Henri), Pettit, Rinfret, Sanderson, Smoke, Spencer, Steedsman.

In attendance: Mr. Finlayson, Superintendent of Insurance; Mr. Mulvey, Under Secretary of State; Mr. O'Meara, Solicitor, Companies Branch, Department of Secretary of State.

BILL No. 57, CONFEDERATION LIFE ASSOCIATION

The Preamble having been read, Mr. Finlayson was heard.

Preamble adopted.

Section 1. At the suggestion of Mr. Lash, K.C., of counsel for the promoters, and on motion of Mr. Bothwell, line 5 of the section was amended by adding the following words: "with effect as of the 11th day of April, 1882," and lines 7 to 11 of the section were amended by deleting all the words after "each" in line 8. Section 1 carried, as so amended.

Section 2. At the suggestion of Mr. Lash, and on motion of Mr. Geary, the following words were added to the section: "and the shares of the capital stock of the Association shall be and are hereby vested in the same persons and with the same effect as if section 2 of the Act, chapter 45 of the statutes of 1890, had not been enacted." Section 2 carried, as so amended.

Section 3 carried.

Ordered, To report the Bill with amendments.

BILL No. 9, AN ACT TO AMEND THE COMPANIES ACT

Consideration was resumed.

Mr. John Appleton was called and sworn. He filed a statement respecting Investment Trusts, which statement appears in the Minutes of Evidence. Mr. Appleton retired.

Section 5. At the suggestion of Mr. Mulvey, and on motion of Mr. Mercier (*St. Henri*), the following changes were made:—

Line 7. "114 to 116, both inclusive" deleted, and "115, 116, 116a" substituted therefor.

Line 8. "120a" deleted and "119" substituted therefor.

Line 10. The word "and" after (*j*) was deleted. After (*k*), there was inserted "(*n*) and (*o*)".

Section 5 carried, as so amended.

Section 6. Subsection (1), (2) and (3) carried. In subsection (4), all the words after "company" in the sixth line of the subsection were deleted, on motion of Mr. Mercier (*St. Henri*), and the following was substituted therefor: "and in fixing the amount of such consideration, except in respect of shares without nominal or par value having a preference as to principle, the board may provide that a part thereof may be set aside as a distributable surplus." Subsection (4) carried, as so amended. Subsection (5) carried. Subsection (6). On motion of Mr. Mercier (*St. Henri*), all the words after "outstanding" in the seventh line were deleted, and the following was substituted therefor: "exclusive of such part of such consideration as may be set aside as distributable surplus in accordance with the provisions of subsection (4) hereof." Subsection (6) carried, as so amended. Subsection (7) carried. Subsection (8). On motion of Mr. Mercier (*St. Henri*), line 2 of the subsection was amended by deleting "first day of July, 1930" and substituting therefor "date of the coming into force of this Act".

Subsection (8) carried, as so amended.

Section 11 carried.

Section 14. On motion of Mr. Kaiser, subsection (*u*) was deleted. Section 14 carried, as so amended.

By leave of the Committee, Mr. Campbell withdrew his notice of motion respecting proposed sections 13A and 37A.

Section 18. On motion of Mr. Lang, the section was deleted, and the following was substituted therefor:

> 18. The principal Act is hereby amended by inserting immediately after section 50 the following section:—
>
> 50*a*. The chief justice or the acting chief justice of the court of final resort of the province in which the chief place of business of the company is situated, or a judge of the said court designated by either of them, on being satisfied that the omission to file a prospectus, or a statement in lieu of prospectus, or that the omission or mis-statement of any particular prescribed to be contained in such prospectus or statement, was accidental, or due to inadvertence, or some other sufficient cause, or is not of a nature to prejudice the position of subscribers to any issue of shares or securities referred to in such prospectus or statement, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested, and on such terms and conditions as may seem to the said judge just and expedient, order that the time for filing be extended or dispense with the signature of any director or directors or make such other order as to the said judge seems proper, and a copy of the prospectus or statement filed in accordance with any order of such judge, together with a copy of the said order, shall be deemed for all purposes a compliance with subsection two of section fifty and/or section fifty-two of this Act.

Section 18 carried, as amended.

Section 20 carried.

Section 30 carried.

Section 18*a*. On motion of Mr. Lang, the following was inserted after Section 18.

> 18*a*. Subsection 1 of section 51 of the principal Act is amended by adding thereto the following:—

(*o*) The proportion, if any, of the consideration received for the issue of shares without nominal or par value set aside as distributable surplus in accordance with the provisions of subsection (4) of section 9 of this Act.

Section 34. On motion of Mr. Lang, this section was repealed, and the following was substituted therefor:

34. Subsection 3 of section 123 of the principal Act is repealed and the following substituted therefor:—

3. Neither the auditor of any company nor any partner nor associate in any accounting or auditing company or business with the said auditor shall be capable of being appointed a director or officer of the company.

Section 34 carried, as so amended.

Section 34A. On motion of Mr. Mercier *(St. Henri)*, the following was inserted as section 34*a*:

34*a*. Subsection 3 of section 136 of the principal Act is amended by adding thereto the following:—

(*n*) The total amount received upon the issue of shares of the capital stock which is attributable to capital;

(*o*) The total amount received upon the issue of shares of the capital stock which is attributable to surplus.

Section 35. On motion of Mr. Mercier (*St. Henri*), this section was repealed, and the following was substituted therefor:—

35. Section 144 of the principal Act is hereby repealed and the following substituted therefor:—

144. (1) Where a compromise or arrangement is proposed between a company and its shareholders or any class of them affecting the rights of shareholders or any class of them, under the company's letters patent or supplementary letters patent or by-laws, the chief justice or acting chief justice of the court of final resort, or a judge of the said court designated by either of them, of the province in which the chief place of business of the company is situated may, on application in a summary way of the company or of any shareholder, order a meeting of the shareholders of the company or of any class of shareholders, as the case may be, to be summoned in such manner as the said judge directs.

(2) If the shareholders or class of shareholders, as the case may be, present in person or by proxy at the meeting, by three-fourths of the shares of each class represented agree to the compromise or arrangement either as proposed or as altered or modified at such meeting, called for the purpose, such compromise or arrangement may be sanctioned by the said judge, and if so sanctioned such compromise or arrangement and any reduction or increase of share capital and any provisions for the allotment or disposition thereof by sale or otherwise as therein set forth, may be confirmed by supplementary letters patent, which shall be binding on the company, and the shareholders or class of shareholders, as the case may be.

(3) Where at a meeting called as hereinbefore provided dissentient votes are cast by shareholders of one or more class affected, and where, notwithstanding such dissentient votes, the compromise or arrangement is agreed to by the holders of three-fourths of each class represented, it shall be necessary that the company notify each shareholder in such manner as may be prescribed by the said judge of the time and place when application will be made to the judge for the sanction of the compromise or arrangement.

Section 36 carried.

Section 40. On motion of Mr. Lang, this section was repealed and the following was inserted as section 40 and carried:—

40. Form F of the principal Act is hereby repealed and the following substituted therefor:—

Form F

STATEMENT IN LIEU OF PROSPECTUS

Fyled by Limited

Pursuant to section 52 of the Companies Act

Presented for fyling by

The nominal share capital of the company.	$
Divided into..... (*Here show the several classes of shares and the amount of each class.*)	Shares of $ Each " $ " " $ "
Names, description, and addresses of directors or proposed directors.	
Minimum subscription (if any) fixed by the letters patent, supplementary letters patent or by-laws on which the company may proceed to allotment.	
Number and amount of shares and debentures agreed to be issued as fully or partly paid-up otherwise than in cash. The consideration for the intended issue of those shares and debentures.	1. shares of $ fully paid. 2. shares upon which $ per share credited as paid. 3. debenture $ 4. Consideration.
Names and addresses of (*a*) vendors of property purchased or acquired, or proposed to be (*b*) purchased or acquired by the company. Amount (in cash, shares and debentures) payable to each separate vendor.	
Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill.	Total purchase price $ Cash..... $ Shares ..... $ Debentures..... $ Goodwill..... $
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscription for any shares or debentures in the company, or Rate of the commission.	Amount paid. " payable. Rate per cent.
Estimated amount of preliminary expenses. Amount paid or intended to be paid to any promoter. Consideration for the payment.	$ Name of promoter. Amount $ Consideration:—
Dates of, and parties to, every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the company or entered into more than two years before the fyling of this statement).	
Time and place at which the contracts or copies thereof may be inspected.	
Names and addresses of the auditors of the company (if any).	

Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the company, or, where the interest of such director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.	
Whether the by-laws contain any provisions precluding holders of shares or debentures receiving and inspecting balance sheets or reports of the auditors or other reports.	Nature of the provisions.
The proportion, if any, of the consideration received for the issue of shares without nominal or par value set aside as distributable surplus in accordance with the provisions of subsection 4 of section 9 of this Act.	

(Signatures of the persons above-named as directors or proposed directors, or of their agents authorized in writing.).....

.....

.....

1917, c. 25, s. 18; 1918, c. 13, s. 4.

On motion of Mr. Lang,

Ordered, That Bill No. 9, an Act to amend the Companies Act, be reprinted as amended by the Committee.

Ordered, To report the Bill as amended.

The Committee adjourned, to meet at the call of the Chair.

JOHN T. DUN,
Clerk of the Committee.

MINUTES OF EVIDENCE

COMMITTEE ROOM 429,
HOUSE OF COMMONS,
MAY 6, 1930.

The Select Standing Committee on Banking and Commerce met at 10.30 a.m., the Chairman, Mr. F. Wellington Hay, presiding.

JOHN APPLETON called and sworn.

The WITNESS: I am the Secretary of the Dominion Mortgage and Investment Association, which comprises the principal trust companies operating in the Dominion.

I submit the following statement:—

Memorandum, re Investment Trusts

APRIL 5, 1929.

MEMORANDUM for submission to the Banking and Commerce Committee, April 17, 1929.

Re Investment Trusts

The Trust Company Members of The Dominion Mortgage and Investments Association, representing a preponderance of those carrying on the trust company business in Canada, would respectfully submit that it is desirable to regulate the use of such words as "Trust" and "Investment" in the titles of corporations in accordance with the established, and until quite recently, the invariable practice in Canada.

The word "Trust" was not used in the titles of financial companies not authorized to do a trust business until late in the year 1926. At that time and early in 1927, several companies not authorized to do a trust business obtained incorporation under the Dominion Companies Act, with the word "Trust" in their titles.

In the provinces, some companies received incorporation to do identically the same business as those incorporated as "Investment Trusts," so-called, but were not permitted to use the word "Trust" in their titles. The use of the word "Trust" by non-trust companies, therefore, is an innovation in Canada dating from the latter months of 1926.

The use of the word "Trust" in the titles of non-trust companies which do a general financial business is not general, and some of the larger ventures in that particular field have not deemed it advisable to use the word "Trust."

In the United States, the larger proportion of the companies operating on the so-called "Investment Trust" basis have not found it necessary to use the word "Trust" in their titles. Its use has been discouraged by the supervising banking authorities in many states as it is deemed appropriate that the word "Trust" should be used only in the titles of corporation which actually have trustee powers.

In Canada, the practice of confining the use of the word "Trust" to companies with trustee powers is exemplified by the action of the Province of Quebec. By Section 35, Chapter 248, R.S.Q. 1925, it is provided—

> 35. Every person or company not registered in virtue of this act is forbidden, under the penalty enacted by section 34, to make use in the Province of the word "trust" combined or associated with the words "company," "society," "association" or "corporation," or any other words of a nature to lead the public to believe that such company is a company registered to carry on trust business.

Similarly, the limitation of the use of the word "Trust" to trustee companies is made obligatory in Ontario by Section 129, Chapter 184, R.S.O. 1914, as follows:—

> 129. Any person, partnership, organization, society, association, company or corporation, not being a corporation registered under this Act or under The Ontario Insurance Act, assuming or using in Ontario a name which includes any of the words "Loan," "Mortgage," "Trust," "Trusts," "Investment," or "Guarantee," in combination or connection with any of the words "Corporation," "Company," "Association" or "Society," or in combination or connection with any similar collective term, or assuming or using in Ontario any similar name, or any name or combination of names which is likely to deceive or mislead the public shall be guilty of an offence; and any person acting on behalf of such person, partnership, organization, society, association, company or corporation shall also be guilty of an offence; but where any of such combinations of words formed part of the corporate name of any corporation theretofore duly incorporated by or under the authority of an Act of Ontario or the Parliament of Canada, the combination may continue to be used in Ontario as part of the corporate name.

In view of the existing practice, therefore, it is urged, on behalf of the Trust Companies which for so long a period have been operating satisfactorily in the Dominion, that

(1) the word "Trust" should be permitted only in the titles of corporations or companies invested with powers of trusteeship, and

(2) to permit its use in any other sense in the titles of companies, especially in conjunction with the word "Investment," creates confusion in the public mind.

It may be pointed out that the public in Canada, for upwards of half a century, has had prominently and continuously before it the idea that a company with the word "Trust" in its title was subject to the body of legislation which so carefully protects the exercise of trusts and executorships; and subject also to state supervision. In the public mind there is only one kind of company which is distinguished from others by the use in its title of the word "Trust," signifying that its business pertains to—

Executorship under Wills,
Administratorship of Living Trusts, Life Insurance Trusts and Escrows,
Guardianship,
Service as Custodian, Depositary, Transfer Agent, Registrar and Fiscal Agent,
Investments on a "Trust" or "Trustee" and guaranteed basis.

Half a century of trust company effort has succeeded in giving, in Canada, a significance to the word "Trust" in financial companies' titles which definitely associates it with trusteeship, with investments made within the limits set by legislation, and with supervision of a public character. In no other country, perhaps, has this conception of trust company service been so impressed upon the public mind and that it has met a public need is shown by the degree of confidence and respect with which the investing and financially conscious public has come to regard any business which makes use of the word "Trust" in its title or in the literature descriptive of its operations.

Trust Companies, as so well known and understood in Canada, make investments, and it is well known that the limit of those investments is set by statute, and they are commonly known and well understood to be trustee investments.

As a result, there is no combination of words more confidence-begetting than "Investment Trust" and therein lies the danger of its being mis-used. In practice, the investment of, or the deposit of moneys with a trust company, subject to statutory regulation and inspection, differs fundamentally from a corresponding investment in a financial company which adopts the use of the word "Trust" in its title with freedom from the restrictions and supervision, and the obligations of a trust company.

The trust companies have no complaint to make, nor objection to take to the operation of financial companies under any title, so long as they do not include in them the word "Trust"; if they do, then they should be, it is respectfully urged, subject to restrictions, inspection and obligations corresponding to those imposed upon trust companies.

Mr. MULVEY: We were referring to section 5, Mr. Chairman. This section 5 provides for a certain number of the sections of the Act not being applicable to companies that have no share capital. That is a different class of company altogether. Now, we are introducing a number of new sections here which will have still to be taken up and made not applicable to companies having no share capital; for instance, prospectus clauses and all that kind of thing. It is not until we have all the amendments ready that we know what sections are going to be put in here.

The CHAIRMAN: I gather that Mr. Mulvey is of opinion that section 5 should now be passed subject to the changed numbers that will be affected by section 5 when a conclusion is reached by the committee. There is nothing contentious in section 5 at all. Is section 5 carried?

Carried.

The CHAIRMAN: Now, Mr. Mulvey, I think you might clarify that. I find that some of our friends on the committee are not clear as to the relationship of preference shares no par value. By that I mean, if the company winds up or sells out, what would the holders of preference shares of no par value, receive, comparable with the common stock?

Mr. MULVEY: The charter creating the company will set out what is to be paid for each share in companies on a winding up.

The CHAIRMAN: That is, granting that the letters patent carry on the business?

Mr. MULVEY: Yes, the letters patent will state the preference, that is the amount which the holder of preferred shares without par value is to receive ahead of the common shares. For instance, we will suppose there is a surplus

beyond that, then the common shares will divide up equally between them; that is, shares without par value. But the preferred shares without par value will be paid the amount that is fixed as a preference in the charter.

The CHAIRMAN: They are preferred both as to interest and as to the assets of the company.

Mr. MULVEY: Well, you referred to a winding up?

The CHAIRMAN: Yes, a winding up. Whether alive or dead.

Mr. MULVEY: That will depend on the clauses which create the preferred shares. The preferred shares may be cumulative and provide that a certain dividend is to be paid whether it is earned or not, but cannot be paid until profits accumulate in order to pay debt; that is, accumulative dividends. And it may also provide that these cumulative dividends shall be paid, the whole of the preferred shares without par value, before the common shares can get anything, when the company comes to be wound up. It depends on the provisions of the charter creating the preferred shares how they are to be paid.

The CHAIRMAN: So it is flexible?

Mr. MULVEY: Surely.

The CHAIRMAN: It is not a standard act which says that a company incorporated under the act shall, and so on.

Mr. MULVEY: No, it is merely permissible. It enables Parliament to authorize a charter which will contain these powers, and these provisions have to be definite.

The CHAIRMAN: How do you deal with this case? If you have a non par value preference stock, might it not happen that the preference shareholders would get one hundred cents on the dollar only and the shareholders of the common stock might get two or three dollars?

Mr. MULVEY: No, that could not be.

The CHAIRMAN: Why not?

Mr. MULVEY: Suppose there were only sufficient assets to pay the preference shares?

The CHAIRMAN: But suppose there were assets.

Mr. MULVEY: For everbody? Then the preference shares would get their preference and nothing more, and the balance would be divided among the common stockholders.

The CHAIRMAN: So that the preference shares would get their preference, and the common might get all the rest.

Mr. MULVEY: Yes.

The CHAIRMAN: The preference have no voting power.

Mr. MULVEY: That depends on the power that is provided for in the charter.

The CHAIRMAN: Gentlemen, we have Mr. Lash here from Toronto. Shall we proceed with him?

Mr. CAMPBELL: May I ask Mr. Mulvey a question? I am not quite clear on the relative value of the two stocks. For instance, the preferred stock is issued first at 100, and suppose there is another element that has dropped in value to 50, and another might come down to 25 and so on. I am still not clear on the relative value. The common stock will probably depreciate more than the preferred. In the winding up, how is that taken care of? I cannot see that point yet.

Mr. MULVEY: It is a very difficult thing to answer that question. There are no two cases that are alike. We would have to find out what condition the

company is in, in order to give you a complete answer. We will say there are sufficient assets to pay everyone something. Then it does not make any difference whether they pay 100 or 75 or 20, they will get their 100, if the assets are there to pay it. That is one of the provisions for no par value stock which makes it advantageous for the companies, because if they are in a position of difficulty, nevertheless they can go to the public and get money and it avoids the necessity of a complete reorganization. They all come in on an equal basis, getting in the winding up what the charter provides for.

Mr. CAMPBELL: The power is vested in the common shareholders, so that the rights of the preferred shareholders might be jeopardized. The voting power is in the hands of the common stock shareholders, is it not? The preferred shareholders have no vote.

Mr. MULVEY: It does not necessarily follow that the voting is always in the hands of the common shareholders. They may differ in half a dozen ways. There are many different ways of providing for it. It may provide that when the dividend on the preferred shares is paid, the common shareholders shall have a vote. It may provide that when there is double in payment of the dividends on the preferred shares, the common shareholders shall have the vote. It depends on the provisions which you put in the charter. It may be different in as many cases as there are kinds of contract entered into between the shareholders and the company. The company offers its shares to the public under the conditions provided for.

The CHAIRMAN: Mr. Mulvey, I have a letter asking if it would not be possible that an act should pass—this act may be included—providing that all companies operating in Canada would operate under Canadian charters; that they should take out a charter in Canada before operating in Canada. There is no provision of that sort in this?

Mr. MULVEY: No provision at all. Of course that is not a very generous provision. We want foreign companies to come here, if we can do business with them, and I think it would not be fair to say that no foreign company shall come in here at all. It might be a proper thing to regulate foreign companies if they do business here, but there is no provision in the revised statutes of the Dominion regulating foreign companies—none whatever. There is provincial legislation on the subject, which I believe is ultra vires; because I believe that a province has no right to lay down any provision whatever respecting a foreign company; it is only the Dominion that has, because "aliens and naturalization," under the British North America Act, are given to the Dominion; and an alien company is an alien just as an alien individual is, and it is under that provision that foreign companies should be regulated. It has not been done.

The CHAIRMAN: We want just a qualification of it. The people have a right to general expressions from your department. Now, you stated the other day, or some one from the department, or some one, in evidence, stated that you wanted to clean up the question of issuing charters to companies, and the thought was that we wanted them to come here and obtain their charters to operate in the Dominion; and if we did not adapt ourselves to modern methods of financing and granting charters, that they might go to Delaware or New Jersey or somewhere else for a charter.

Mr. MULVEY: That is so.

The CHAIRMAN: The thought in my mind was that we might prevent that by saying, if you are going to carry on business in Canada, your charter must be Canadian.

Mr. MULVEY: I would not go so far as to say that every company doing business in Canada should have a Canadian charter, but I think every foreign

company should be regulated, and I think that should be under Dominion legislation. But, that legislation has never been put forward.

The CHAIRMAN: There is nothing in sight yet that would provide for that.

Mr. MULVEY: No. As a matter of fact, the whole situation between the Dominion and the provinces is still under consideration and it may be a result of these negotiations that Dominion legislation, such as I have suggested, will be brought in.

(This concluded the evidence taken respecting Bill No. 9, an Act to amend the Companies Act.)

Discussion followed.

The Committee adjourned, to meet at the call of the chair.